Best Systemic Practices for the Management of Deaf Suspects, Defendants & Offenders

A dissertation submitted to the
Division of Research and Advanced Studies
of the University of Cincinnati

in partial fulfillment of the
requirements for the degree of

Doctorate of Philosophy (Ph.D.)

In the School of Criminal Justice
of the College of Education, Criminal Justice, and Human Services

2015
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ABSTRACT

Deaf suspects, defendants and offenders are a largely underexplored population in criminal justice research, and there are very few studies that have examined their involvement in the criminal justice system. In addition, virtually no research has been conducted on how to manage the deaf from a systemic perspective. Without standardized practices and procedures for handling the deaf, the criminal justice system runs several risks, including disparate treatment and violations of ADA-guaranteed rights that may lead to inadmissible evidence, dismissals of cases, and not guilty verdicts, as well as lawsuits and litigation, all of which create additional strain on an already overburdened system.

The current study combines previous research on the deaf and their involvement in the criminal justice system with the findings of data gathered from practitioners nationwide to gain an understanding of how best to handle, process, and communicate with the deaf at each stage of the CJ system. The goals of this study are twofold: to identify questions and concerns criminal justice practitioners face when managing deaf suspects, defendants and offenders, and to address the questions and concerns through the assembly of lists of best practices for managing the deaf at each stage of the criminal justice system. The lists of best practices can be used by law enforcement, attorneys, judges, and correctional personnel to ensure that they are adhering to ADA requirements, and may serve as a springboard for the development of evidence-based departmental, courtroom, and institutional policy for agencies nationwide.
ACKNOWLEDGEMENTS

This dissertation completes a long and arduous journey that I could have never made alone. To the UC faculty, thank you for the wonderful educational experience. To Dr. Latessa, Dr. Manchak, and Dr. Miller: thank you for your support and guidance throughout my dissertation process. Your efforts made my final product one that I am proud of moving forward, and I’m extremely grateful. And to Dr. Browning, thank you for serving as my chair, and for your friendship. Your professional efforts during my journey have been exceeded only by your personal efforts, and your mentorship, concern, and assistance mean more than I can put into words.

To Cordelia Greer and Sue Bourke: thank you for instilling a passion for teaching in me, as well as working with me to refine my abilities, so that I can make every course I teach a valuable one, both to myself and my students. I could not be happier as a postsecondary educator, and I owe a great deal of that you the two of you. Dr. Fisher, thanks for bringing me aboard your research study and giving me the opportunity to work with and learn from you first-hand.

To my friends, family, and colleagues: thank you for your continual support throughout the process. Bobbie and Jamie, thanks for your help and encouragement along the way. Dad, you knew when and how to get me to take a step back and relax, as well as when to light a fire and get me moving.

And finally, to the two most important women in my life, my mother and my wife. Mom, thank you for your tireless efforts to give me all the opportunities you never had. Your selflessness has known no boundaries, and were it not for your sacrifices, I can say with 100% certainty that I wouldn’t be where I am today. And Erin, thank you for your love, patience, and support. You make me want to be a better husband and a better man, and I can say with equal certainty that I would not be where I am today without you either.
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CHAPTER 1: STATEMENT OF THE PROBLEM

Introduction

Deaf suspects, defendants and offenders are a largely underexplored population of the criminal justice system, and there are very few research studies of the deaf and their offenses (Vernon & Greenberg, 1999; Miller, Vernon, & Capella, 2005). Even less information is available on the best ways to handle deaf suspects, defendants and offenders at each stage of the criminal justice system. Without standardized practices and procedures for handling the deaf, the criminal justice system runs several risks, including inequitable treatment and violations of rights that may lead to inadmissible evidence, dismissals of cases, and not guilty verdicts, as well as litigation and lawsuits costing taxpayers enormous amounts of money (Seaborn, 2004; Brodin, 2005; Vernon & Miller, 2005).

The Rehabilitation Act of 1973 codified equal treatment of individuals with disabilities by prohibiting their discrimination by any federal department or agency, as well as any department or agency receiving financial assistance from the federal government (ada.gov, 2015). More specifically, Section 504 of the Rehabilitation Act of 1973 bans agencies from denying people with disabilities an equal chance to receive benefits and services. In addition, Section 504 addresses accessibility requirements by mandating that individuals with disabilities have equal access to all resources and services subsidized, either directly or indirectly, by the federal government.

In addition to the Rehabilitation Act of 1973, The Americans with Disabilities Act (ADA) was created in 1990 and “prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental
activities” (U.S. Department of Labor, 2015). The ADA was developed to afford all citizens equal rights and reasonable accommodations, regardless of mental or physical impairments. Naturally, these rights were extended suspects, defendants and offenders involved in the criminal justice system, and have had a profound impact on the way the system handles individuals with disabilities.

The impact of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 has been overwhelmingly positive, narrowing the divide of opportunities between the disabled and those without disabilities, and integrating people with disabilities into all segments of society (Travis, 2005). However, the acts have created challenges too, particularly from organizational perspectives. In terms of the U.S. criminal justice system, police departments, criminal courts and correctional agencies were forced to address their disparate treatment of individuals with disabilities, or face penalties and litigation.

Since the passage of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, litigation involving deaf suspects, defendants and offenders in the criminal justice system has been extensive (Wood, 1984; Vernon, Raifman, & Greenberg, 1996; Vernon & Miller, 2005). Evidence has been rendered inadmissible, charges have been reduced, appeals have been filed, convictions have been overturned, cases with strong evidence of guilt have been dismissed, and lawsuits have been filed, all resulting from errors in the processing and handling of the deaf once they enter the criminal justice system. The deaf face disadvantages at every stage of the criminal justice system, presenting two systemic concerns. First, disadvantage undermines the credibility of the CJ system due to systemic injustice via disparate treatment; and second, not providing the deaf with equal rights raises fiscal as well as ethical concerns. The prevention of equal rights and reasonable accommodations to the deaf at the hands of criminal
justice practitioners has led to additional expenses via added appeals and civil court costs, as well as large financial settlements.

**Evidence-Based Practices in Criminal Justice**

Rooted in the evidence-based policy movement, best practices and evidence-based approaches have been gaining momentum over the past two decades, and their impact has been felt at every stage of the criminal justice system. Evidence-based policing has become its own style of policing (Sherman, 1998; Sherman, 2013), and has led to evidence-based crime prevention (Sherman, Farrington, Welsh, & MacKenzie, 2002) and collaborative initiatives with institutions of higher learning, bridging the gap between theory and practice, and reducing crime and saving lives in the process (Engel, Skubak-Tillyer, & Corsaro, 2013; Williams, Currie, Linden, & Donnelly, 2014). Courts have adopted evidence-based practices as well, with judges increasingly relying on research, data and offender risk assessment instruments to shape sentencing decisions (Warren, 2009). And at no stage of the criminal justice system have evidence-based practices been more widely adopted than the correctional system, with *what works* in correctional programming being a longstanding priority and ever-growing body of empirical research (Andrews, Zinger, Hoge, Bonta, Gendreau, & Cullen 1990; Latessa, 2004; Petersilia & Turner, 1992; Listwan, Cullen, & Latessa, 2006).

Despite the growing movement towards evidence-based practices in the criminal justice system, most departments, agencies and institutions do not have protocol to follow or specific training to deal with deaf suspects, defendants and offenders. Deaf people run an increased risk of serious injustices at every stage of the justice system (Vernon & Miller, 2005). Such injustices often stem from a lack of awareness of the deaf, their ADA-granted rights, and the challenges they face, as well as indifference and hostility, and the inability of CJ practitioners to
grasp the linguistic, educational and cultural norms of the deaf population. One explanation for
the lack of protocol and training is both simple and understandable: the deaf comprise a very
small proportion of suspects, defendants and offenders in the U.S. criminal justice system. A
mere 2.1% of U.S. citizens are deaf (American Community Survey, 2012), and there is no
evidence to support that the deaf engage in criminal activity at a disproportionately higher rate
than people who can hear. Other estimates of the prevalence of deafness are even more
conservative, with only one in every 110 Americans unable to hear (Wood, 1984). As such,
many practitioners have little to no contact with the deaf, and are not aware of their legal rights

This dissertation aims to contribute to the extant body of evidence-based criminal justice
research by providing U.S. criminal justice practitioners with information on deaf suspects,
defendants and offenders, as well as identifying best practices for managing, processing and
communicating with the deaf at each stage of the criminal justice system. The significance of
this project will be to extend what is known about the handling of the deaf within the criminal
justice system, with special attention being paid to any unique issues and challenges practitioners
face when approaching, arresting, interrogating, prosecuting, sentencing, and managing deaf
suspects, defendants and offenders.

The ADA, Systemic Concerns & the Need for Best Practices

The American with Disabilities Act (ADA), while extremely important in insuring equal
rights and treatment of individuals with disabilities, also created a host of new concerns for
police officers and personnel who deal with deaf suspects. Some of the main issues affecting
police departments and their handling of the deaf include making sure deaf suspects understand
their Miranda Warnings, have access to interpreters, know search and seizure laws and their
rights relating to them, understand trespassing notification warnings, and give their consent to polygraph tests and blood alcohol samples knowingly and willingly, and without any misunderstandings or feelings of coercion (Wood, 1984; Vernon & Miller, 2005). These issues, left unmanaged, can lead to inadmissible evidence, dismissals of cases, and not guilty verdicts, despite strong evidence that a deaf suspect has engaged in criminal activity (Seaborn, 2004; Brodin, 2005; Vernon & Miller, 2005). As such, there is a need to develop a list of best practices for police officers and personnel who encounter deaf suspects during confrontations, arrests, interrogations, and bookings.

The weight of the Americans with Disabilities Act has been felt in the courtroom too. In fact, barriers experienced by deaf suspects in court may be even greater than at the time of arrest (Vernon & Miller, 2005). Due to linguistic and reading limitations, many deaf suspects are convicted and sentenced without understanding their full rights or comprehending the legal procedures leading to their convictions. Criminal trials operate at the speed of the courtroom workgroup, not at the processing speed of deaf defendants. Research has shown that even among higher-educated deaf populations, it takes three to four times longer for the deaf to decode content via American Sign Language (ASL) than it does for someone who can hear to process it audibly (Brauer, 1993; Steinberg, Lipton, Eckhardt, Goldstein, & Sullivan, 1998). Worse yet, 25% of deaf suspects do not have a certified interpreter on hand during their legal procedures (Miller, 2001; Miller & Vernon, 2002). The undereducated and/or prelingually deaf are at an even greater disadvantage when they enter the criminal justice system, as they have no understanding of legal terms, and there are no equivalent terms in American Sign Language to fully convey their meaning (Vernon et al., 1996). Finally, deaf offenders are overrepresented in institutional settings (Zingeser, 1999; Miller, 2001). One explanation offered for their
overrepresentation in prisons and jails is that they are unable to fully participate in their own defense. As such, there is a strong need for a standard set of practices and procedures when trying cases involving deaf suspects, both to maximize equity and minimize subsequent appellate litigation filed by deaf offenders on the basis of disparate treatment and violation of civil rights protected by the ADA.

The American correctional system has been impacted by the Americans with Disabilities Act as well. Since the inception of the ADA in 1990, penal institutions have been mandated to provide deaf offenders with equal access to communication (Vernon & Miller, 2005). In addition, institutionalized offenders with disabilities are required to be housed in the most integrated setting appropriate based on the needs of the inmate and facility (ADA, 2010). Also, eligible inmates with disabilities must have access to all programs to which they would otherwise be entitled, including education and vocational training, rehabilitation, religious programming, employment, and work release, whether mandatory or voluntary. However, even the most ADA-compliant jails and prisons have fallen short of achieving the mandate (Miller, 2001; Tucker, 1988). In addition, incarceration is additionally difficult on deaf inmates because most jails and prisons are not designed to accommodate the deaf (Gibbs & Ackerman, 1999). Correctional officers generally give instructions orally or via buzzers, including head counts and meal times. If inmates do not respond to these audible queues in a timely fashion, they are often subjected to additional punishment. Due to these concerns, it is imperative that correctional personnel understand the most effective way of communicating with and managing deaf offenders.

**Methods & Research Questions**

Given the limited amount of research available on managing the deaf from a systemic perspective, this qualitative study employed a dual survey design to construct lists of best
practices for dealing with the deaf at each stage of the criminal justice system (police, courts and corrections). Data were gathered through the use of purposeful sampling, a type of nonprobability sampling that involves targeting respondents for a specific purpose (Patton, 1990; Tashakkori & Teddlie, 2003; Teddlie & Yu, 2007). The first wave of data collection used a critical case sample to identify issues and concerns related to the management of deaf suspects, defendants and offenders by law enforcement, courtroom and correctional practitioners. An open-ended questionnaire was developed and disbursed to practitioners to gain a deeper understanding of issues and concerns regarding the deaf and their involvement in the justice system, allowing for the development of generalizations from themes and consistencies identified (Flyvbjerg, 2006).

The second wave of data collection employed expert sampling (described in Chapter 3) to gain insight from practitioners in the field who have had experiences dealing with deaf suspects, defendants and offenders, and could draw from their experiences to provide researchers with insight for the lists of best practices being constructed. Guided by previous research and the results of the wave 1 data, a survey was developed and disbursed to police, courtroom and correctional practitioners to figure out the best practices of managing the deaf at each stage of the criminal justice system.

Once the data from the wave 2 survey were collected and analyzed, lists of best practices for managing the deaf suspects, defendants and offenders were created. These lists will be disbursed to all departments, courts and correctional agencies who contributed to the study. Three lists were constructed: one for law enforcement, one for courts, and one for correctional facilities. The lists of best practices were assembled through the findings of the current study and previous research, and will be made public for all criminal justice practitioners.
CHAPTER 2: LITERATURE REVIEW

Obstacles Faced by Deaf Suspects, Defendants & Offenders in the CJ System

According to research conducted by Vernon & Miller (2005), the deaf are at risk for serious injustices at every stage of the criminal justice system. This is particularly true for those who are not well-educated. Such injustices, which will be identified and discussed in subsequent sections, stem from a lack of understanding of deaf people and the obstacles they face. To be fair to practitioners, it is not entirely their fault, given that only one to two percent of Americans are deaf (Wood, 1984; American Community Survey, 2012).

One reason the deaf are at risk for systemic injustices is indifference and hostility (Vernon & Miller, 2005). Given practitioners’ infrequent contact and experiences with deaf suspects, defendants and offenders, they are not privy to the most effective means of communicating with them. As will be discussed later in more depth, this can lead to situations escalating over relatively benign sets of circumstances.

The other, and perhaps largest, problem deaf suspects, defendants and offenders face is the inability of criminal justice professionals to understand the linguistic, educational and cultural characteristics of the deaf population (Vernon & Miller, 2005). Once again, these differences, when unrecognized and managed inappropriately, result in injustices at every stage of the criminal justice system, creating a snowball effect that puts the deaf at a significant disadvantage. Given that equality is a central tenet of justice, it is imperative that these issues be identified and addressed, so as to minimize disparity at each stage of the CJ system. Moreover, with the passage of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, discrimination on the basis of disabilities became prohibited.
The Rehabilitation Act of 1973

Established in 1973, the Rehabilitation Act mandated equal treatment of the mentally and/or physically disabled by banning discrimination against them by any federal agency or department, as well as any agency or department receiving funds from the federal government (ada.gov, 2015; McEntee, 1995; webaim.org, 2015). The act paved the way for a wide range of services for the physically and mentally disabled. Rooted in the Civil Rights Act of 1963, which prohibited employment of the basis of race and religion, the Rehabilitation Act of 1973 was created to minimize barriers to employment, the pursuit of autonomous living, self-determination, and inclusion in American society. Since its inception, the act has been amended twice: first in 1993 and again in 1998. The Rehabilitation Services Administration (RSA), an agency of the United States Department of Education, oversees the act. There are two sections of the act that are applicable to the criminal justice system: Sections 504 and 508.

Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability (Wegner, 1984; hss.gov, 2006). The nondiscrimination requirements of the law apply to employers and organizations that receive federal funding. Section 504 prohibits employers, agencies and organizations from excluding or denying people with disabilities an equal opportunity to receive services and benefits. Individuals with a history of, or who are regarded as having a physical or mental impairment that “substantially limits one or more major life activities,” are also covered. Major life activities include being able to walk, hear, speak, work, learn, and live independently. Examples of disabilities that can substantially limit major life activities include AIDS, blindness or visual impairment, deafness or hearing impairment, diabetes, cancer, heart disease, drug and/or alcohol addiction, and mental illness. The federal government has provided billions of dollars in
equipment to state and local law enforcement agencies since the passage of the Rehabilitation Act, and especially since 9/11 (Williams, 2014). In fact, from fiscal year 2009 to fiscal year 2014, the federal government allocated nearly $18 billion dollars in funds and resources to support state and local law enforcement programs by providing equipment and tactical resources. In addition, federal law enforcement agencies are funded entirely through federal assistance. As such, Section 504 of the Rehabilitation Act of 1973 applies to every criminal justice office, agency and institution in the United States.

The Rehabilitation Act was amended in 1998, mandating that federal agencies make their electronic and information technology accessible to the disabled (ada.gov, 2015). Section 508 was passed to reduce technological barriers and create equal opportunities for people with disabilities, and to prioritize the development of technologies to achieve these goals. As such, the Department of Justice (DoJ) began employing accessible software, video and media programs to assist the disabled, including those who are deaf and hard of hearing (ada.gov, 2015; gsa.gov, 2015). In addition, Section 508 requires the Attorney General to submit reports to the President and Congress on compliance with the act’s mandates. The DoJ creates the reports by surveying federal agencies to attain Section 508 compliance data. Every federal department and agency is required by Section 508 to provide the Department of Justice with the information needed to generate the reports.

The Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 added to the framework of the Rehabilitation Act of 1973 by furthering equal opportunities and accessibility for the disabled. The Americans with Disabilities Act is a comprehensive addition to civil rights legislation that forbids disability-based discrimination relating to employment, state and local government,
public accommodations, commercial facilities, transportation, and telecommunications (ada.gov, 2015; McEntee, 1995). The ADA only applies to people who qualify as disabled. According to the act, an individual is considered disabled if he or has a mental or physical impairment that significantly impedes upon a "major life activity." Major life activities are defined as the core activities involved in day to day life, including walking, talking, seeing, hearing, and learning. The ADA does not individually itemize all eligible disabilities, but common examples of disabilities include dependence on a wheelchair or other assistive devices including walkers and canes, deafness, blindness, learning and developmental disabilities, and certain mental illnesses.

There are five titles in the Americans with Disabilities Act spanning across several dimensions, the first four of which are applicable to the current research (Title V covers Miscellaneous Provisions). ADA Title I covers Employment and requires employers with 15 or more employees to provide eligible people with disabilities equal access to the benefits of employment-related opportunities available to others. The act “prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment” (ada.gov, 2015). The act also restricts questions that can be asked about an applicant's disability before a job offer is made and demands that employers provide reasonable accommodation for individuals with qualifying disabilities, unless it results in undue hardship. Finally, Title I of the ADA prohibits discriminating against the disabled when it comes to pay and termination of employment (Acemoglu & Angrist, 2001). Religious organizations that employ fifteen or more people are also required to abide by Title I requirements.

ADA Title II covers state and local government activities and public transportation. Title II states that local and state governments must provide the disabled with an equal opportunity to participate in and benefit from all programs, activities, and services, including but not limited to
public education, employment, transportation, social services, courts, health care, recreation, voting, and local government meetings (ada.gov, 2015). State and local governments must meet architectural requirements when constructing or modifying existing government buildings, to allow for equal access. In addition, state and local governments are required to either relocate programs or provide access in inaccessible buildings still in use, and must provide the means to communicate effectively with people who have hearing, vision, or speech disabilities. While public agencies and organizations are not required to take actions that would lead to undue financial and/or administrative burdens, they must make reasonable adjustments to policies, practices, and procedures in order to avoid discrimination, unless they can show that making such adjustments would fundamentally alter the nature of the program, service, or activity being administered. Finally, public transportation services, such as city buses and public rail transit may not discriminate against people with disabilities in the provision of their services. They must follow accessibility requirements when purchasing or leasing new or used vehicles and remanufacture public transportation vehicles and equipment in an accessible manner, unless it would lead to an undue financial or administrative hardship.

ADA Title III covers public accommodations and applies to businesses and nonprofit service providers deemed public accommodations, for-profit businesses and companies administering certain types of courses and exams, private transportation, and commercial facilities. According to the Americans with Disabilities Act, “public accommodations” are defined as private businesses and companies who own, lease, lease to, or operate facilities including restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs (ada.gov, 2015). Title III
requirements of the ADA also apply to transportation services provided by private sector businesses and companies. Public accommodations must adhere to basic nondiscrimination requirements, as well as to specific requirements related to structural standards for new and redesigned buildings; reasonable modifications to policies, practices, and procedures; and providing effective means of communication for individuals with hearing, vision, or speech disabilities. Courses and examinations involving “professional, educational, or trade-related applications, licensing, certifications, or credentialing” (ada.gov, 2015) must be given in a location and way that is accessible to people with qualifying disabilities, or accommodating arrangements must be offered.

ADA Title IV covers telecommunications relay services, addressing phone and TV access for individuals with hearing and speech disabilities (ada.gov, 2015). The act requires telephone companies to implement interstate and intrastate telecommunications relay services (TRS) around the clock. TRS enables callers with hearing and speech disabilities who use TTYs (a device that allows people with speech or hearing disabilities to use the telephone to communicate, by typing notes to each other) and callers who use voice phones to converse via a third party communications assistant. The Federal Communications Commission (FCC) has established minimum criteria for TRS services. In addition, Title IV mandates funded public service announcements (PSAs) to be delivered in closed captioning.

After the passage of the Americans with Disabilities Act of 1990, several civil rights cases came before the United States Supreme Court. A chain of Supreme Court decisions, including Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the ADA of 1990 in a way that made it challenging to prove that an impairment is a "disability," consequently
failing to protect those who the legislation was designed for (eeoc.gov, 2008; dol.gov, 2015). In 2008, the ADA Amendments Act (ADAAA) was passed, making major changes to the ADA’s definition of "disability" and widening coverage under both the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. The changes defined what had been implicit up to that point, which was the basis for the Supreme Court’s difficulty in proving that impairments qualify as disabilities: an impairment that significantly impedes upon one major life activity is not required to inhibit other major life activities in order to be deemed a disability (USEEOC, 2008; Long, 2008). In addition, the ADAAA of 2008 expanded the list of “major life activities,” including but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

In 2010, the ADA was revised, updating accessibility standards (ada.gov, 2015). The standards, known as “ADA Standards for Accessible Design,” were approved by Attorney General Eric Holder on July 23rd, 2010. On March 15th, 2012, compliance with the 2010 accessibility standards became required for new construction and modifications under Titles II and III, and became the compliance date for using the 2010 Standards for program accessibility and barrier removal. All agencies, organizations, and businesses identified in Titles II and III are required to follow the updated accessibility standards, which were implemented to improve accessibility in newly constructed and reconstructed buildings for individuals with disabilities.

Issues Surrounding Deaf Suspects and the Police

Research examining deaf suspects and their interactions with the police, while still in its infancy, is more extensive than research involving the deaf at any other stage of the criminal justice system. Given that the police are the first stage of the CJ system, it is critical that officers
understand how to best manage and process deaf suspects when they come in contact with them. If this does not happen, disparity can be introduced, either via more hostile and punitive treatment, or due to procedural errors that may lead to dismissals of cases or not guilty verdicts, despite strong evidence of guilt (Seaborn, 2004). In addition, inappropriate treatment of deaf suspects can result in large lawsuits and settlements, costing taxpayers a significant amount of money (Brodin, 2005; Vernon & Miller, 2005).

Before going through and identifying all of the issues and concerns regarding the management and processing of deaf suspects by the police, it is important to identify such issues. One case that does a good job illuminating some of the problems between police and the deaf is the example of McCray v. City of Dothan (1997).

**McCray v. City of Dothan**

On July 24, 1997, Douglas McCray, a married deaf African-American man, took his two young children (ages four and three) out for dinner to Quincy’s in Dothan, Alabama (169 F.Supp.2d 1260, 2001). Upon arriving, Mr. McCray parked his car next to a Corvette. As he and his children exited their car, his four year old daughter nicked the Corvette with their car door. Because he was deaf, Mr. McCray did not hear the impact; however, the owner of the Corvette, Wayne Hart, said he witnessed the incident from inside the restaurant.

Upon entering the restaurant, Mr. McCray and his children were approached by Mr. Hart, who attempted to address the issue with Mr. McCray. Mr. McCray, unable to communicate with Mr. Hart, instructed his daughter to tell Mr. Hart that he was deaf. She did so, and after the two men attempted to communicate unsuccessfully, Mr. Hart spoke with restaurant employees, who in turn contacted the police.
Dothan PD dispatched Officer Woodruff to what she described as a “private property traffic incident.” Upon her arrival, Mr. Hart spoke with Officer Woodruff, telling her what he had witnessed. Mr. Hart went on to tell Officer Woodruff that Mr. McCray was uncooperative when he approached him about the incident. During their conversation, Mr. Hart made it known to Officer Woodruff that Mr. McCray was deaf, and thus, unable to communicate with him.

By the time Officer Woodruff approached Mr. McCray, he and his children were eating dinner. Upon Officer Woodruff’s approach, Mr. McCray pointed to his ears to signal that he was deaf. He also signaled that he was unable to read lips. Officer Woodruff then tried to communicate with Mr. McCray by writing questions down on paper. Mr. McCray, having been deaf before he was ever able to speak, could only communicate via American Sign Language, which does not translate verbatim to English. As such, he was unable to fully understand what Officer Woodruff was attempting to relay, and the attempted exchange was ineffective. At that point, Mr. McCray requested that his wife be called so she could interpret for him.

Officer Woodruff openly admitted that she had no reason to think that Mr. McCray had committed any crime and that there was no indication that he had personally caused any damage to Mr. Hart’s Corvette. Nevertheless, she became irritated and left the restaurant, before returning to write a note asking Mr. McCray to show her his license. Mr. McCray, unaware of the situation in its entirety, wrote that his interpreter would be arriving soon to get the situation resolved. Once again, Officer Woodruff became upset and walked out of Quincy’s. She went on to call her supervisor and request an additional officer on the scene based on the unusual nature of the circumstance and so that “nobody got hurt,” despite admitting that Mr. McCray never did anything to indicate that he was violent or aggressive.
After Officer Woodruff’s call to her supervisor was made, dispatch sent a second officer, Officer Howell, to the scene to deal with a “disorderly person,” despite Officer Howell’s admittance that he had not seen Mr. McCray do anything to suggest he was behaving in a disorderly manner. Officers Woodruff and Howell then went back into Quincy’s to get Mr. McCray to fill out a property damage report (which he was not responsible for filling out in the first place; it is the responsibility of the person who initially calls the police). At this point, two additional officers, Officers Carpenter and Carmichael, arrived on the scene. Upon reaching the table where Mr. McCray and his children were sitting, Officers Woodruff and Howell attempted to communicate with him verbally once again. Mr. McCray signaled with gestures that he wanted to communicate by writing notes, a request that was refused by one of the officers. Officer Woodruff signaled for him to stand up and come outside. Mr. McCray looked up and shook his head to indicate “no,” and pointed to his children and continued eating. Officer Woodruff made contact with Mr. McCray’s elbow twice, and he pulled away from her both times. Then, as Officers Woodruff and Howell both grabbed Mr. McCray to force him to stand up, Mr. McCray swung his arms because he thought he was going to be handcuffed. Both officers admitted at the time that Mr. McCray was not under arrest. Mr. McCray stated that Officer Howell pulled him up and slammed his face onto a table, causing the table to break.

According to witnesses, Officers Carpenter and Carmichael were standing nearby and threw Mr. McCray onto the floor. Officers Woodruff and Carpenter held Mr. McCray’s legs while Officer Carmichael held him down by pressing his forearms on Mr. McCray’s throat. Mr. McCray testified that he was being choked, causing him pain and making it hard for him to breathe. Mr. McCray acknowledged that he attempted to free his head so that he could breathe, but denied that he resisted arrest or fought back.
Mr. McCray was forcibly removed from Quincy’s with his hands handcuffed behind his back, eliminating his ability to communicate. His wife, Kim Stanford, arrived shortly after Mr. McCray was brought outside and indicated she knew ASL and could communicate on his behalf if they freed his hands. The officers placed Mr. McCray in a squad car without allowing him to communicate with Stanford and took him to the police station. Mr. McCray was not asked if he was injured, nor was he examined by paramedics, who were already on the scene examining Officer Woodruff for injuries she allegedly suffered at the hands of Mr. McCray. Mr. McCray's children, who witnessed the incident, were left alone in the restaurant while police responded to the incident. When their mother arrived, she found them distraught and in tears.

As is standard procedure, all officers involved filled out PD-12 reports, which are submitted to the chief of police whenever force is used. In each of their reports, the officers stated that Mr. McCray resisted by kicking, fighting and struggling violently. No officers indicated that Mr. McCray pushed Officer Woodruff backwards as she had stated.

Mr. McCray was taken to the local jail. When Kim Stanford arrived at the jail, she was not allowed to interpret for him. However, Mr. McCray was able to communicate to his wife and a jailer that he was hurt and needed medical attention. His request to go to the hospital was denied, and he was placed in a cell. He had blood on his clothing and had pain in his throat and chest. When Mr. McCray's family was finally allowed to visit him, they asked that he be taken to the hospital. Jail employees responded by saying that he was not injured and denying their request.

Although Mr. McCray was eventually taken to the hospital, he could not communicate because he was handcuffed and denied access to an interpreter. Mr. McCray said that he eventually received minimal medical attention from a doctor. After being released from jail, Mr.
McCray suffered from tenderness over his larynx, wrist and knee pain, and severe pain in both sides of his rib cage. X-rays indicated a possible rib fracture. He was prescribed pain medication and given a hand splint for his wrist.

Mr. McCray remained in jail overnight and into the next day until he was transported to court. He was not granted his release until posting $10,000 for bail. His charges included two counts of second degree assault, resisting arrest and obstructing government operations. None of the officers involved testified that they heard or saw any of their fellow officers tell or signal to Mr. McCray that he was under arrest, nor were any aware when the arrest took place. In addition, none of the officers involved could explain the basis for his obstruction charge. All of the charges were dismissed at a preliminary hearing due to lack of probable cause, and Mr. McCray filed a civil suit against the city of Dothan on the basis that his mistreatment was a result of his deafness, violating the Americans with Disabilities Act, which prohibits discrimination and ensures equal opportunities for people with disabilities (ADA, 1990). He also sued for lack of reasonable accommodations on the basis of not being provided an interpreter. The lawsuit resulted in a settlement of $575,000 awarded to Mr. McCray, an expense picked up by taxpayers (Brodin, 2005).

**The Application of the ADA to Policing and Deaf Suspects**

There are many applications of the ADA for police officers and personnel who deal with deaf suspects, including Miranda Warnings, access to interpreters, search and seizure waivers, trespassing notification warnings, polygraph test consent, and blood alcohol sample consent (Vernon & Miller, 2005). In addition, how the police handle these issues can have a major impact during a criminal trial, as evidence may not be admissible if there were procedural errors made (Vernon & Miller, 2001). The failure of police departments to provide effective
communication to deaf suspects during the arrest and interrogation processes has been
documented in several post-ADA cases, including Michigan v. Brannon (1992), Rawls v.
Rosen v. Maryland (1997), and Tennessee v. Perry (1999) (Miller & Vernon, 2002). Finally,
inadequate access to rights and resources guaranteed under the ADA may not only lead to
inadmissible evidence and dismissals, but (as was the case in McCray v. City of Dothan) civil
suits against police departments leading to large awards and settlements at the expense of
taxpayers. Given the elevated stakes of handling deaf suspects, it is imperative that law
enforcement personnel understand the rights of deaf suspects, as well as proper procedures for
handling and processing them.

Before proceeding, it is important to mention the two different types of deaf people and
the differences between them. There are the postlingually deaf, or those who could hear and
speak at one time and later lost their hearing, and there are the prelingually deaf: those who have
never heard the English language spoken (Vernon, 1968). Prelingual deafness (also referred to
as congenital deafness) is the most common hereditary sensory disability (Denoyelle et al.,
1997), and is associated with poor language and communication performance (Bubbico et al.,
2007). One option for the prelingually deaf is to be fitted with a cochlear implant, a surgically
installed electronic device that provides a sense of sound to people who are deaf. Beginning in
2000, cochlear implants were FDA-approved for usage in children as young as 12 months old
(National Institute on Deafness and Other Communication Disorders, 2014). For prelingually
deaf youths, early implantation grants them exposure to sounds during the most optimal time of
language and speech development. Research funded by the National Institute on Deafness and
other Communication Disorders (NIDCD) has found that when infants and toddlers receive a
cochlear implant followed by intensive therapy prior to 18 months of age, they develop language skills at a level similar to children without a hearing disability. However, the device and surgery are expensive, and not all health insurance providers cover the procedure. This is important to note, as the prelingually deaf without cochlear implants are at an even greater disadvantage when they enter the criminal justice system, as they have no understanding of legal procedures or terms (Vernon et al., 1996). In addition, prelingual deafness can lead to personality disorders such as arrested personality development, which may add to the likelihood that they get brought into the justice system, as a result of the behavioral disturbances associated with such disorders (Harry & Dietz, 1985). Unfortunately, attempts at researching prelingually deaf offenders have been thwarted due to the low frequency of prelingual deafness (Schein & Delk, 1974).

Perhaps no body of research involving police interactions with deaf suspects has been studied and published on more than Miranda Warnings. All criminal suspects are entitled to a Miranda Warning as afforded by the Fifth Amendment’s privilege against self-incrimination (Miranda v. Arizona, 1966; Helms, 2003). In 1966, the Supreme Court ruled that suspects are not required to answer questions asked by interrogators. The Supreme Court found that answering questions or making statements may result in self-incrimination, and that suspects being questioned have the right to remain silent. In addition, the Supreme Court’s decision stated that suspects have the right to coercion-free interrogations, the right to be free from unlawful interrogation, and the right to an attorney. Despite this Constitutional right, approximately 30% of deaf suspects with educational deficits are inadequately informed of their Miranda Warning, as well as their right to legal representation (Vernon & Coley, 1978).

Police have three options to choose from when administering Miranda Warnings to deaf suspects: written warnings, lip reading, and sign language (Vernon et al., 1996). While some
deaf people are able to read and write, according to SAT scores analyzed by Traxler (2000), the median reading comprehension score for deaf high school students is around the fourth grade level. Lip reading is another means of communication deaf people can use to communicate with their hearing and speaking counterparts. Unfortunately, the mean of lip reading accuracy scores is around 10%, meaning that the overwhelming majority of information being relayed via lip reading is translated inaccurately or misunderstood entirely (Altieri et al., 2011). Of the three methods of delivery, only sign language is appropriate (although it too is not without its concerns).

Based on data collected and analyzed using the Measurement of Readability (Klare, 1963), administering Miranda Warnings in written form requires the suspect to have an average reading level of sixth to eighth grade (Vernon & Coley, 1978). However, according to an analysis of data collected in the Annual Survey of Deaf and Hard of Hearing Children & Youth (1992), 60% of deaf suspects cannot read at this level. In addition, only 10% of the prelingually deaf read at a sixth grade level or higher (Vernon & Coley, 1978). If the majority of deaf suspects are unable to read at the required level necessary to understand their Miranda Warning and the content therein, written warnings should not be used, as it could lead to a dismissal of evidence attained from an interrogation during trial.

Another way interrogators not accustomed to dealing with deaf suspects use to administer Miranda Warnings is via lip reading. Formally known as speechreading, lip reading is extremely challenging. In fact, half of the 42 phonemes of the English language look the same as others or are not visible coming off the lips (Davis & Hardick, 1981). Due to this and other factors, deaf speech readers only understand about 5% of what is communicated orally (Vernon & Andrews, 1990). In fact, the best speech readers comprehend roughly 25% of what is spoken (Vernon &
Andrews, 1990; Lowell, 1959). Given these statistics, speechreading is also an unacceptable way of administering Miranda warnings to deaf suspects.

The final way to administer Miranda Warnings to deaf suspects is via sign language. However, it is not without its own set of challenges (Vernon et al., 1996). The most common form of signing used by the deaf in the United States is American Sign Language. However, there are no equivalent ASL signs for many of the words and phrases used in Miranda Warnings. While some signs are similar to English words, there are no precise synonyms for the legal language contained in the warnings. While a handful of criminal justice practitioners accustomed to working with the deaf are familiar with legal signs, such signs are not common knowledge outside of people working in the field (Vernon et al., 1996). The postlingually deaf who know ASL and can read and understand English can have words spelled out via sign language. However, for the prelingually deaf, the Miranda Warning (as administered in most jurisdictions) is worded in a way that is incomprehensible to 90% of them (Vernon & Coley, 1978).

Access to sign language interpreters is another major issue law enforcement faces when dealing with deaf suspects. Per the ADA, the deaf have the legal right to an interpreter without cost when dealing with the police if they are incapable of communicating effectively otherwise (Vernon & Miller, 2005). As an ADA guideline, if the legitimacy and admissibility of a conversation may be questioned in court, including when Miranda warnings are given and during interrogations, a sign language interpreter may be needed. Law enforcement personnel should be aware of the potential for misunderstandings in the absence of a qualified interpreter; nonverbals including shakes of the head should not be perceived as answers to questions, as they may not represent the intentions or responses a suspect intends to convey. In addition, inadequate access
to effective communication can lead to evidence being suppressed, which has the potential to lead to a reduction in criminal charges. One such example is the case of Maryland v. Barker (1977), where a defendant charged with 1st Degree Murder filed a motion to suppress his statements to police because of an insufficient understanding of his Miranda Warning (Seaborn et al., 2010; nad.org, 2015). The defendant was signed his Miranda Warning by an interpreter, but was found to have an inadequate understanding of his Miranda Warning, and the court decided in his favor, leading to the suppression of evidence gained during his interrogation. Other cases involving motions to suppress evidence on the basis of ineffective communication of Miranda Warnings to deaf suspects include Oregon v. Mason (1980), Wisconsin v. Rewolinski (1987), Minnesota v. Goehring (1993), Wisconsin v. Hindsley (1999), and Tennessee v. Jenkins (2001).

Videotaped interrogations are another important issue when police officers deal with deaf suspects. When interrogating deaf suspects, the interrogations should always be videotaped, and should show the signing of the deaf suspects and interpreters (Vernon & Miller, 2005). The reason for the video recording is twofold. First, the videotape provides a formal record of the communication between the deaf suspect and police; and second, it allows for the assessment of the sign language interpreter and whether (s)he communicated the officer’s and suspect’s messages effectively. In addition, interrogations are conducted without being video recorded, all signs that a deaf suspect relays are hearsay evidence based on the sign language interpreter’s understanding of what the suspect attempted to say, and could potentially lead to any evidence gained during the interrogation being suppressed in court. This is because there is no way to assess the accuracy of the exchanges between the interpreter and deaf suspect or that the suspect fully comprehends his rights. With hearing suspects, interrogations can be reviewed by
replaying audio recordings. However, this is not the case with deaf suspects. As such, law enforcement should videotape all interrogations involving deaf suspects.

Finally, it is imperative that police officers understand and respect the role of the sign language interpreter during the arrest, interrogation and booking processes. Legal interpreters shoulder a great deal of responsibility in the criminal justice system (Miller & Vernon, 2002). In addition to needing to be well-trained and experienced, interpreters must identify and referee complicated linguistic and cultural issues, and conduct field assessments of the communicative abilities, literacy, and legal knowledge of deaf suspects to see if further assistance may be required (Benshoff & Souheaver, 1991; Frishberg, 1990). Sign language interpreters are frequently the only individuals present on a scene with a thorough understanding of how to communicate with and manage deaf suspects in a manner that is consistent with ADA requirements. According to research conducted by Miller & Vernon (2002), legal interpreters identified barriers to successful police-suspect interpretation, including an inadequate amount of interpretation time during arrests, and a lack of awareness and understanding of deaf suspects, the ADA, and their rights afforded by it. It is imperative that law enforcement personnel and sign language interpreters work together (1) to manage the linguistic diversity and challenges of deaf suspects in order to adhere to the requirements of the ADA; (2) to uphold equity and avoid discrimination; and (3) to minimize procedural errors and inadmissible evidence associated with the improper handling of and communication with deaf suspects.

Issues Surrounding Deaf Defendants and the Courts

The courts are not without their own issues when it comes to adhering to ADA standards and upholding equity during criminal trials involving deaf defendants. One concern relates to
linguistic and reading challenges they face. Due to their limitations, deaf defendants may have difficulties participating in their own defense and are convicted and sentenced without fully comprehending their rights or the legal process, particularly the undereducated and prelingually deaf (Vernon et al., 1996). This is known as “linguistic incompetence” (Vernon & Miller, 2001). According to Vernon & Miller (2005), when a deaf suspect is deemed linguistically incompetent, (s)he should be found incompetent to stand trial, and unable to be tried until deemed competent. Unfortunately, once deaf defendants are deemed linguistically incompetent, they are infrequently found to be competent at a later date, and their cases are often discharged. Such was the case in the Ohio Supreme Court’s decision of Ohio v. Burnett (2005), who avoided criminal prosecution due to his linguistic incompetence.

In March of 2003, Bobby Burnett was charged with operating a vehicle while under the influence of alcohol with three or more prior convictions (Eckes, 2007). Burnett's defense requested that the court conduct a competency evaluation because Burnett was a deaf mute and communicating with him was extremely challenging. Burnett's social worker was fluent in ASL, and testified that Burnett tried to communicate through a variety of methods, including some formal American Sign Language (ASL), gestures, and an informal sign language he developed and used with his family. The variety of methods of communication led to significant misinterpretation, resulting in instances where the social worker, Burnett's sister, and his mother each had three interpretations of what Burnett stated. The social worker went on to testify that Burnett could not grasp abstract legal concepts, and that when Burnett became confused, he would regularly share unrequested and inconsistent information, or would nod his head like he understood when he actually did not. The trial court deemed Burnett to be linguistically incompetent to stand trial, and three months after the decision, the court found that there were no
cognitive learning programs to increase his competency to a level satisfactory to stand trial in a reasonable timeframe, and ordered that the charges be dropped. The prosecutor appealed the decision, which was overruled in appellate court, and the defense took the case to the Ohio Supreme Court, where it affirmed the original judgment of the trial court, thus barring him from being prosecuted for his alleged crime.

Deaf offenders with linguistic challenges should not be excused for engaging in criminal activity; their disability should not function as a shield to protect them from prosecution (Miller, 2004). In England, linguistic incompetence has been addressed through the establishment of linguistic criteria for defendants who are unable comprehend their legal proceedings or participate in their own defense. Deaf defendants who are deemed linguistically incompetent are given a “trial of the facts,” which establishes their likelihood of guilt. In the event that a linguistically incompetent defendant is found guilty, the judge has a full range of sentencing options at his/her disposal. This practice delineates the inability to understand legal proceedings from mental illnesses or cognitive impairments that lead to judgments of incompetency, and a similar system warrants serious consideration in the U.S.

Another concern criminal courts face when trying deaf defendants is that legal proceedings are dictated by the pace of courtroom workgroups, not at the processing speed of the defendants. Even among higher-educated deaf people, it takes three to four times longer for the deaf to process American Sign Language than it does for people who can hear to understand spoken English (Brauer, 1993; Steinberg et al., 1998). Interested in time differentials between speaking and signing messages, Brauer (1993) translated the Minnesota Multiphasic Personality Inventory (MMPI) into sign language and recorded it on videotape. Using a sample of deaf graduate students (75%) and deaf professionals working at Gallaudet University (25%), Brauer
found that it took participants an average of 120 minutes to translate the MMPI via sign language, as opposed to only 42 minutes that it took to present orally. Similarly, Steinberg et al. (1998) used a different psychological questionnaire to compare time differentials between speaking and signing, and found that the questionnaire took 4 hours to administer orally, and 16 hours to administer via ASL. If legal proceedings are happening faster than a deaf defendant can process them, then his/her ability to work on his or her own defense is inhibited, putting the deaf defendant at a disadvantage and undermining justice. In addition, more than half of the deaf offenders incarcerated at one penal institution in Texas did not understand their sentence or how the legal process works (Miller, 2001). If deaf defendants are unable to comprehend the legal process, it also inhibits their ability to work on their own behalf, exacerbating their disadvantage during their trial. The inability for deaf suspects to fully participate in their own trials as a result of the disadvantages mentioned above has led to an unfortunate injustice: deaf offenders are overrepresented in jail and prison settings (Zingesser, 1999; Miller, 2001).

While it is important for deaf defendants to understand their rights and the legal process, issues surrounding the ADA and courtroom interpreters are an even bigger issue for the courts. There are two major concerns when it comes to courtroom interpreters: accessibility and qualifications.

**Courtroom Interpreters and ADA Requirements**

State and local courts are bound by Title II of the ADA, which applies to "public entities." The U.S. Department of Justice has issued regulations defining its expectations. Title II of the ADA requires local and state courts to provide qualified sign language interpreters and other auxiliary aids such as transcription or assistive listening systems, to ensure effective
communication with deaf and hard of hearing individuals. Preference of what auxiliary aid he or she needs is given to the deaf defendant (28 C.F.R. Section 35.160). While some courtrooms now have "computer-assisted transcripts," which allow immediate transcripts of trial testimony and discussion to appear on screens, such a system may be useless for a defendant who only communicates through sign language. In the event that a defendant’s only means of communication is ASL, a qualified interpreter is required. Despite this requirement, 25% of deaf defendants do not have a certified interpreter on hand during their legal proceedings (Miller, 2001; Miller & Vernon, 2002).

The DoJ has also stated that a qualified interpreter may be necessary when the information being relayed "is complex, or is exchanged for a lengthy period of time." A qualified interpreter is defined by the Title II regulation as one who is able "to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary" (28 C.F.R. Section 35.104). The Department of Justice goes on to note that this definition does not limit or invalidate state-regulated requirements that are more stringent than the ADA’s definition; rather, it sets minimum standards that state and local governments must adhere to. Along with the ADA, several states have their own standards for effective communication in criminal trials (nad.org, 2015). Federal courts are also required to follow the Federal Court Interpreters Act of 1978 and the Bilingual, Hearing, and Speech-Impaired Court Interpreter Act of 1979, which demand the assignment of a qualified interpreter to any criminal or civil case brought by the federal government involving a deaf, speech-impaired, or non-English-speaking participant (McEntee, 1995, LaVigne & Vernon, 2003; Pravda, 2011).
Expenses associated with courtroom interpreters may not be passed on to defendants, regardless of whether or not they are convicted, as effective communication is a right guaranteed by the Americans with Disabilities Act. As such, the federal government has stated “where a court system has an obligation to provide qualified interpreters, it has the corresponding responsibility to pay for the services for the interpreters” (45 Fed. Reg. 37630, 1980).

Since the passage of the Americans with Disabilities Act of 1990, reports of increases in court-requested interpreting services have been on the rise (Alston, 1998). However, despite these increases, state and local courts nationwide have fallen short of ADA standards, both in terms of accessibility and reliability.

**Other Courtroom Interpreter Considerations**

Despite qualified interpreter requirements, cases have arose where family members interpret for defendants during their criminal trial. Such was the case in Palermo v. Olivarez (2000), when the mother of a deaf defendant charged with shooting someone aided the court by signing during this trial (Miller, 2001). Such actions are a conflict of interest and should not be allowed by any state or local criminal courts. Under the ADA, a “qualified interpreter” is someone “who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary” (National Association of the Deaf, 2000). The problem is that the federal government has not set standards for what is effective, accurate and impartial, leaving states to define it as they see fit, either formally in a codified manner, or informally on a case by case basis. While some states have gone on to establish standards and certification requirements for courtroom interpreters, many have not, leaving the decision of what constitutes as a qualified interpreter up to presiding judges, who often do not
know enough about deafness or sign language interpreting to make an informed decision (Pottemveld, 2008).

The Department of Justice, in an analysis of Title II, suggests family and friends of deaf criminal suspects or defendants should not interpret for them during legal proceedings. The DoJ suggested that friends and family usually are not familiar with legal code even if they are fluent in American Sign Language, and that even if they are familiar with legal terms, their "emotional or personal involvement or considerations of confidentiality . . . may adversely affect the ability to interpret effectively, accurately, and impartially" (56 Fed. Reg. at 35701, 1991). In addition, in states where there are no additional laws governing qualified interpreters, legislation should be established to ensure their accuracy and objectivity (Belliveau, 1991). Such standards have already been established by the federal government, where a Specialist Certificate is required and a nationwide database known as the Registry of Interpreters for the Deaf (RID) is managed (uscourts.gov, 2015; rid.org, 2015).

Another courtroom interpreting issue involves the use of simultaneous vs. consecutive interpreting. Simultaneous interpreting is the most common form of interpreting, whereby the interpreter facilitates communication immediately interpreting from one language to another (Simon, 1993). An example of simultaneous interpreting is when an interpreter is signing something in real time, like when the National Anthem is being played at a sporting event. On the other hand, with consecutive interpreting, the interpreter takes notes on what is being relayed before communicating the message in the target’s language. While more time consuming, consecutive interpreting is better in instances where precision is key. In federal courts and some state courts, consecutive interpreting is required when witnesses who cannot speak English give testimony (Simon, 1993). However, additional consideration should be paid to consecutive
interpreting, not only for witness testimony, but any time someone participating in a criminal trial is not fluent in English.

According to research by Russell (2002), consecutive interpreting is significantly more accurate during trials than simultaneous interpreting. In citing research she completed for her doctoral dissertation, Russell challenged the accuracy of simultaneous interpretation in courtrooms by conducting and videotaping four mock trials with courtroom interpreters, judges and attorneys, and deaf and hearing witnesses. Each interpreting team translated for two trials, signing simultaneously for one and consecutively for the other. After the trials, Russell interviewed all participants and analyzed the videotaped interpretations for errors. The accuracy of interpreting in the consecutively interpreted trials was at or above 95%, while the accuracy of the simultaneously interpreted trials ranged from 83% to 87%, underscoring the difference in accuracy between the two interpretation methods.

The final issue related to courtroom interpreting involves the use of dual interpretation. Dual interpretation involves using two interpreters – one deaf and one hearing – to facilitate communication between parties. For instance, if a deaf defendant was communicating with the court in a dual interpretation format, the deaf defendant would sign his/her message to a deaf interpreter, who would then sign the message to a hearing interpreter, and then the hearing interpreter would translate the message to the court. While on its surface dual interpretation may seem excessive and impractical, there is good reason for it. According to Smith (1991), the deaf are collectively communal, and interpreters who are deaf themselves can aid in the integrity of the legal process by highlighting cultural differences in communication to the court that might not be picked up by hearing interpreters. In addition, deaf interpreters have a more thorough understanding of linguistic differences that need to be addressed during the course of
examination, testimony, etc. (Wilcox, 1995). As such, additional consideration to the role of
dual interpretation in the courtroom should be considered.

Issues Surrounding Deaf Offenders and Corrections

The U.S. correctional system also faces issues involving the deaf. However, the
challenge for researchers has been studying the deaf in institutional settings. One explanation for
the relatively limited body of extant research on deaf prisoners is their limited numbers in
institutions nationwide. If the criminal justice system is envisioned in the shape of a filter, the
component of the justice system that comes in contact with the most people overall is law
enforcement. Due to a host of reasons, many cases are dismissed before they ever go to trial
stage, including lack or loss of evidence, procedural errors, and witnesses refusing to testify. As
a result, the number of deaf suspects that advance to trial shrinks. The courts can be seen as the
middle section of the filter, with the number of defendants they deal with narrower than the
number of suspects police encounter. Once in the courts, over 90% of cases are resolved through
plea bargaining, the vast majority of which do not result in prison sentences (Champion et al.,
2012). In addition, some cases end with a jury finding the defendant(s) not guilty, as well as
mistrials that do not lead to later convictions. Even among offenders convicted of crimes, many
avoid jail and prison. That leaves a fraction of offenders sentenced to correctional facilities
relative to everyone who comes in contact with the criminal justice system, which is why the
corrections component of the justice system can be viewed as the narrowest part of the filter,
with far less people passing through its area than pass through its systemic counterparts. This
reduction in numbers is even more pronounced among the deaf, who make up roughly one to two
percent of the population (Wood, 1984; American Community Survey, 2012).
In addition, inmates are classified as a vulnerable population by the Department of Health & Human Services, leading to additional research requirements and regulations (U.S. Department of Health and Human Services, 2009). However, despite these challenges, researchers have been able to shed some light on deaf offenders and the issues institutional facilities face when managing them.

**Correctional Facilities and ADA Requirements**

Since the passage of the ADA in 1990, correctional facilities have been required to provide deaf inmates with a host of accommodations, including equal access to communication (Vernon & Miller, 2005), equal access to programs and activities (Miller, 2001), and housing in settings qualified to manage the needs of deaf offenders (ADA, 2010). However, despite the mandate, even the most compliant institutions have fallen short of ADA requirements (Tucker, 1988; Miller, 2001). Explanations of how and why penal institutions have missed the mark are offered below.

One area where correctional facilities have fallen short of ADA mandates when handling deaf inmates is providing them with equal access to communication. In her study examining the availability of sign language interpreters in various penal institutions, Miller (2001) found that sign language interpreters were available for offenders between 8 to 12 hours a day 30.4% of the time. Almost 11% of respondents indicated that interpreters were available Monday through Friday during normal business hours, and 15.2% of respondents reported that interpreters were available on a half-time or as-needed basis. Only 6.5% of respondents stated that sign language interpreters were available around the clock, and the remaining 37% of respondents were unfamiliar with interpreter schedules in their institutions. The around the clock availability of
interpreter services is imperative to achieve equal access to communication; yet only 6.5% of respondents indicated that such availability exists within their facilities. One concern this lack of availability presents is in regards to following instructions. Correctional officers typically direct inmates orally or through the use of buzzers, including meals and head counts. If offenders fail to act on these queues, they often face additional discipline. Without an interpreter present and absent any assistive technology, inmates are left to figure things out for themselves, often unsuccessfully. In addition, in the event that a deaf offender gets into a dispute with a hearing offender and an interpreter is unavailable, hearing inmates have been used to interpret for correctional personnel (Bonner v. Lewis, Crowley, & Vega, 1988). This presents an obvious ethical dilemma, in that the hearing inmate will only tell his/her side of the story while the deaf inmate is left unaware of what is being said and unable to tell his/her side of the story. Finally, the limited availability of interpreters is particularly concerning in the event of an emergency, as communicating through lip reading or gestures during a crisis is impossible (Miller, 2001).

As stated in Title II of the Americans with Disabilities Act, deaf inmates are required to have equal access to all activities, services and programs offered to hearing inmates (Vernon & Miller, 2005; ada.gov, 2015). However, rehabilitative, religious, educational, and vocational programming and activities are often unavailable to deaf inmates in many facilities due to a lack of interpreter services. This inequity presents two concerns. First and foremost, it is a violation of the ADA; and second, insofar as the above programs, activities and services assist offenders in desisting from crime, making them unavailable for deaf offenders limits their exposure to prosocial tools, skills and activities that can help them once they are released. This inequity puts deaf inmates at a disadvantage upon reentry relative to their hearing counterparts who were able to take full advantage of the activities, services and programs offered in their institutions.
Finally, institutionalization is more difficult on deaf inmates because most correctional facilities are not designed to house the deaf (Gibbs & Ackerman, 1999). In addition to the communication barriers deaf inmates face, they also fall victim to physical danger and isolation. Deaf inmates run a higher risk of being raped or assaulted because they are unable to hear what is going on around them and recognize potentially harmful situations (Ezekiel, 1994). In addition, they are more suitable targets, as they do not have the same social support network as other inmates who can hear and talk and have friends who watch their backs. This not only increases their likelihood of victimization, but also their fear of victimization, and can also contribute to isolation. Isolation occurs when deaf inmates are unable to communicate and interact with hearing inmates. Approximately 90% of deaf inmates express feelings of isolation (Miller, 2001). Many deaf offenders are alone in jail and prison, with no one to communicate with. Isolation may alienate deaf inmates from any available programming and service options, thus inhibiting rehabilitation and other prosocial activities.

In sum, correctional facilities, while moving in the right direction, still have a great deal of work to do when it comes to adhering to the ADA’s mandate of equal access for deaf inmates. Given the concerns associated with unequal access to communication, programming, activities, and services, it is crucial that correctional facilities continue working to reach ADA compliance, both to avoid litigation and to ensure equal treatment of deaf offenders.

**Evidence-Based Policies and Practices**

The evidence-based movement began with evidence-based medicine. Evidence-based practice (EBP) is "the conscientious, explicit and judicious use of current best evidence in making decisions about the care of individual patients. It means integrating individual clinical
expertise with the best available external clinical evidence from systematic research” (Sackett et al., 1996, p. 71), and its origins date back to mid-19th century France (Sackett, 1997). Evidence-based practices took flight in the early 1990s, and incorporate clinical expertise, patient values, and scientific evidence into the decision making process for patient care (McKibbon, 1998). Expertise refers to a medical provider’s training, education and qualifications. Patients identify their preferences, concerns and values, and clinicians work to address each of them. Scientific evidence is gained through clinical research that has been administered employing sound methodology (Sackett, 2002). According to Sackett (1997), evidence-based practices involve 5 steps: (1) converting desired information into questions that can be answered; (2) efficiently finding the best evidence to answer the questions; (3) objectively examining the evidence for accuracy and usefulness; (4) applying the evidence-based answers in practice; and (5) examining its performance.

Due to the successes of evidence-based practices in the medical field, other fields began to join the evidence-based movement. Education, mental health, social work, and other human services began employing evidence-based approaches to decision-making, including the criminal justice system (Dirkx, 2006; Rosen, 2003; Warren, 2009). The evidence-based movement has gained momentum outside of the United States as well, with England investing heavily in the evidence-based policy paradigm (Solesbury, 2001; Nutley, 2002; Young et al., 2002). The history and applicability of evidence-based practices to the U.S. criminal justice system are described below.
Evidence-Based Practices in Criminal Justice

Evidence-based practices have been widely adopted in criminal justice as well, and at every stage of the system. Evidence-based policing was developed by Sherman (1998), and its etiology can be traced back to a study conducted by Sherman & Weisburd (1995) which demonstrated the effectiveness of focusing police resources on pockets of crime known as "hot spots" to prevent crime. According to Sherman (1998), law enforcement is far more effective if it employs tactics proven to work through randomized experiments. In 2000, Sherman co-founded the Campbell Collaboration's Crime and Justice Group (CCJG), a worldwide network of researchers that conducts systematic reviews of top-tier research on ways to prevent crime and ensure justice and equity (campbellcollaboration.org, 2015). Other evidence-based policing initiatives have taken off as well, including the CIRV Initiative, a collaborative initiative between the University of Cincinnati and the Cincinnati Police Department aimed at reducing gang and group-related shootings through specific deterrence (Engel et al., 2013). Results of the CIRV Initiative have been promising, with group/gang-member involved shootings and homicides declining significantly since its inception.

The courts have also adopted evidence-based practices, with judges relying on empirical evidence more than ever when making sentencing decisions (Warren, 2009). Frustrated by high incarceration and recidivism rates, and the fiscal and social costs associated with them, state chief justices nationwide have identified two sentencing-reform priorities: to prioritize crime control and reduce recidivism through evidence-based programming and risk assessment, and to create and institute community-based alternatives to incarceration for low-risk, nonviolent offenders (Peters & Warren, 2006). One such example can be found in Virginia where, starting in 2003, judges began using a validated risk assessment instrument to divert 25% of the state's
nonviolent convicts destined for correctional facilities to community corrections programs, helping to reduce Virginia’s overreliance on incarceration and saving the state money in the process (Ostrom et al., 2002). In addition, many judges have begun working with correctional and treatment personnel to encourage evidence-based risk-reduction strategies in order to encourage compliance and help offenders desist from criminal involvement (Andrews & Bonta, 1998; Cullen, 2002; Rollnick & Miller, 1995).

The correctional system has made evidence-based practices a priority for years, disaggregating correctional programs by intervention types in order to determine “what works” (Andrews et al., 1990; Latessa, 2004; Petersilia & Turner, 1992; Listwan et al., 2006). The catalyst for the paradigm shift towards evidence-based policies and practices began with Martinson’s (1974) “Nothing Works” doctrine, in which Robert Martinson claimed to have examined 231 program evaluation studies and concluded that correctional programmers had no idea of how to effectively and consistently reduce recidivism amongst convicted offenders (Cullen & Gendreau, 2001). However, in reality Martinson only examined 138 studies (not 231), fewer than 75 of which were actually forms of treatment (Cullen & Gendreau, 2000). In addition, Martinson’s review failed to disaggregate programs based on intervention type, including behavioral programs that had shown promise with other problem populations and had achieved successes in some correctional settings (Milan & McKee, 1974; Gendreau & Ross, 1979). Fortunately, thanks to the work of a group of behavioral psychologists from Canada who believed that offenders were capable of change and desistance through behavioral interventions, the flaws of Martinson’s study were exposed (Lipsey & Wilson, 1993). Using a statistical technique known as meta-analysis, the Canadian researchers were able to tease out successful intervention types by identifying the characteristics of “what works” in correctional
programming. Through rigorous theorizing and testing, Andrews, Bonta, Gendreau, and others were able to provide empirical evidence in support of the effectiveness of behavioral programming, paving the way for evidence-based practices in corrections.

Using the limited available research on the deaf in the criminal justice system and pertinent research from the field of deaf studies, along with insights gained from the questionnaire and survey employed in this research, this dissertation seeks to add to the literature of the deaf and their involvement in the justice system by compiling “what works” and identifying the best practices for dealing with the deaf at each stage of the system. The methodology for this research is described in Chapter 3.
CHAPTER 3: METHODOLOGY

This qualitative study employs a dual survey design aimed at assessing the best practices for dealing with deaf suspects, defendants and offenders at every stage of the criminal justice system (police, courts and corrections). In light of the limited amount of research available on handling the deaf from a systemic perspective, a two-part sampling approach was used. The first step was to develop and disburse three informational questionnaires for practitioners working in each stage of the CJ system using critical case sampling, a purposive sampling technique intended to examine rare and understudied phenomena that have been unable to be evaluated empirically (Teddlie & Yu, 2007; Yin, 2003). When limited information is known about a topic, critical case sampling allows researchers to develop generalizations from the themes and consistencies that emerge from the cases examined (Flyvbjerg, 2006). The questionnaires (which can be found in the Appendix section) are open-ended and designed to solicit information about (1) data kept on deaf suspects, defendants and offenders; (2) standard protocols and procedures when dealing with the deaf; and (3) any issues and concerns practitioners would like to see addressed in regards to how best to handle the deaf at each stage of the system.

Guided by the limited available research and literature, along with the information gleaned from the questionnaires, several research questions have been constructed in an attempt to shed light on the best practices of dealing with the deaf in the criminal justice system. The questionnaires also serve as the foundation for the development of surveys sent out to practitioners in the field who come into contact with members of the deaf community. This purposive sampling technique is known as expert sampling. Expert sampling is appropriate when researchers are interested in examining understudied topics and want to elicit the views of people who have specific experience in dealing with the topics of interest.
Absent a sufficient amount of available data to examine and test, expert sampling provides researchers with the best picture of what is going on in regards to the untestable topics of interest (in this case, the best practices for handling the deaf at each stage of the criminal justice system). The surveys (which can also be found in the Appendix section) are constructed based on the themes and issues raised from the exploratory questionnaire data, and their questions are more specific in nature, with the goal of identifying gaps of practitioner knowledge regarding the deaf, their rights and how they should be handled, as well as reemerging themes and information of how to best manage deaf suspects, defendants and offenders at each stage of the justice system.

Research Questions

Early indications gained from the limited available research on the deaf and their involvement in the criminal justice system suggest that police departments, courts, and correctional facilities are not collecting data on deaf suspects, defendants and offenders. These early indications were supported by results from the wave 1 questionnaire (to be discussed more in Chapter 4). If data are not being collected, it is impossible to empirically test any hypotheses regarding the deaf and their involvement in the criminal justice system. That said, a lack of data validates a qualitative approach to develop best practices through expert sampling (which will be discussed more below). Operating on the preliminary assumption that data are not being kept, the following general research questions and specific subquestions were developed with the goal of creating a list of best practices through expert sampling:

1. What are the best practices for police to follow when handling a deaf suspect?
a. When arresting a deaf suspect, is it best to handcuff their hands in front of or behind their back, or best not to handcuff them at all?

b. Once a deaf suspect is arrested, should a sign language interpreter be present for all subsequent communication?

c. What is the best way for law enforcement to inform a deaf suspect of his/her Miranda Warning?

d. What is the best way for law enforcement to administer trespassing notification warnings?

e. What is the best way for law enforcement to gain consent for searches of person and property?

f. What is the best way for law enforcement to gain consent for a polygraph test?

g. What is the best way for law enforcement to administer a polygraph test?

h. What is the best way for law enforcement to gain consent for a blood alcohol sample?

i. When interrogating deaf suspects, should interrogations be videotaped?

2. What are the best practices for courtroom practitioners to follow when handling deaf defendants?

a. What is the most effective way of ensuring the linguistic competence of a deaf defendant?

b. What is the most effective way of maximizing a deaf defendant's understanding of the legal process?

c. What is the most effective way of ensuring deaf defendants are able to participate in their own defense?

d. What are the minimum standards of a "qualified interpreter?"
e. Should family members of a deaf defendant be allowed to interpret in the defendant's criminal trial?

f. When should simultaneous interpreting be used in a deaf defendant's trial?

g. When should consecutive interpreting be used in a deaf defendant's trial?

h. When should dual interpretation be used in a deaf defendant's trial?

3. What are the best practices for correctional facilities housing deaf offenders?

   a. What steps should correctional facilities take to ensure deaf inmates have equal access to communication?

   b. What housing arrangements and technology are needed for correctional facilities housing deaf inmates?

   c. What steps can correctional facilities take to ensure they are providing deaf inmates with equal access to rehabilitative programs?

   d. What steps can correctional facilities take to ensure they are providing deaf inmates with equal access to religious programs?

   e. What steps can correctional facilities take to ensure they are providing deaf inmates with equal access to educational and vocational programs?

   f. What steps can correctional facilities take to minimize the victimization and fear of victimization of deaf inmates?

   g. What steps can correctional facilities take to minimize feelings of isolation among deaf inmates?

Samples

For both waves of data collection, purposeful sampling was employed. Purposeful (also known as purposive) sampling is a form of nonprobability sampling and involves targeting
respondents for a specific purpose (Tashakkori & Teddlie, 2003; Teddlie & Yu, 2007), which in this study is to gain a better understanding of the issues surrounding deaf suspects, defendants and offenders at every stage of the criminal justice system as well as how best to manage them at their respective stages). Purposeful sampling is the methodology of choice when researchers wish to gain information from knowledgeable and experienced practitioners in the field who can shed light on key issues being examined (Patton, 1987; Patton, 1990; Cresswell & Plano Clark, 2001; Suri, 2011; Patton, 2015). The strength of purposeful sampling is the ability to target information-rich cases for evaluation (Patton, 1987; Patton, 2002). Information-rich cases are those from which researchers can learn about key issues relating to their study; hence the title purposeful sampling.

**Critical Case Sample**

After a review of the extant research regarding the deaf and their involvement in the criminal justice system, the decision to employ a critical case sample for the wave 1 questionnaire was made for several reasons. First, it became clear that the deaf and their involvement in the system is an under-researched area, and what research has been conducted was done through the framework of deaf advocacy rather than systemic efficiency. Targeting critical cases to illuminate unexplored issues allows researchers to develop generalizations from themes and consistencies from the cases examined (Flyvbjerg, 2006). Second, while reviewing the research it became clear that the extant research was conducted using case studies. It should be noted that this is no fault of previous researchers, but rather, that due to low numbers of overall involvement in the criminal justice system, data on deaf suspects, defendants and offenders was not being tracked by law enforcement, courts and correctional facilities. The third reason a critical case analysis was selected is that it is the methodology of choice when resources limit the evaluation of the study
(Patton, 1987). When this occurs, it is strategic to target cases (in this case, knowledgeable respondents) that can provide the most information and insight as to the issues being examined.

The fourth reason a critical case sample was selected was to illuminate the issues related to the deaf at their respective stages of the justice system. A large sample size is not required to bring such issues to light, particularly given that some of them have been identified through previous research. What is important is to contact practitioners to confirm the validity of previously documented concerns, as well as to see if there are any additional concerns that may have gone unresearched. The latter rationale is even more important, given that (as mentioned previously) most research has been conducted through the framework of advocacy for the disabled rather than systemic efficiency. Finally, a critical case sample was selected in the name of efficiency. In general, respondents are more likely to participate when the questions being asked of them do not take up too much of their time. The questions in the wave 1 questionnaire are mainly open-ended survey questions. Because of this, concern regarding response rate (which became validated and will be discussed more in Chapter 4) developed, and a decision to keep the sample size smaller for the questionnaire was made. This decision was rooted in Patton’s (1990) conclusion that “there are no rules for sample size in qualitative inquiry,” (p.184) and that sample size should be decided upon based on the information sought and how to maximize time and resources.

In terms of validating the methodology from an academic standpoint, there are several reasons why critical case sampling was appropriate. First, critical case sampling is a form of purposeful, non-probability sampling (Patton, 1987; Patton, 1990; Patton, 2002; Tashakkori & Teddlie, 2003; Teddlie & Yu, 2007; Suri, 2001; Patton, 2015). Nonprobability sampling is appropriate when studying information-rich cases in detail. Conversely, probability sampling is appropriate when researchers want to generalize from a sample to a greater population. However,
implicit in probability sampling is the fact that data has been collected and can be examined for quantitative inference. Absent data, probability sampling is inappropriate, as there is nothing to generalize from.

Critical case sampling is also strategic when specific cases may yield information of vital importance to the research being conducted (Patton, 1987; Patton, 1990). Applying this rationale to the current study, the questionnaires were disbursed to law enforcement, courtroom and correctional personnel in multiple locations across the country. Respondents who have specific experiences with issues are ideal to target when employing critical case sampling (Marshall, 1996). Large cities were targeted for law enforcement and courtroom practitioners because they were likely to have encountered more deaf suspects and defendants due their larger populations, and thus, would be able to provide more insight based on their increased experiences with the deaf at their respective stages of the criminal justice system. Since correctional facilities often are not within city limits, geographic diversity, variation in security level (minimum, medium and maximum), and gender variation (male and female facilities) were selected with the goal of maximizing perspectives and experiences represented in the critical case study.

Finally, critical case sampling was chosen to provide a framework for the wave 2 surveys. While studying small numbers of critical cases does not allow for empirical inferences to be made, logical generalizations may be made from limited cases, particularly absent any other available data (Patton, 1987; Patton, 1990). Information gained through the critical case sampling provides valuable insight into unstudied and understudied research topics (Yin, 2003), and serves as a foundation for the construction of more detailed questions, and eventually, testable hypotheses. Put more simply, it sheds light on what is and is not known about the issues being explored in a study, and provides a framework for which questions to ask moving forward.
Expert Sample

Expert sampling, another form of purposeful sampling, was selected for the second wave of data collection. Expert sampling is a well-established purposeful sampling technique employed in social science research (Trochim, 2006; Ghosh et al., 2013), and it was selected for several reasons. First, it will reveal if data are being kept on the deaf and their involvement in the criminal justice system. The experts (in this case, law enforcement, courtroom and correctional practitioners) will know if there is any data being kept on the number of deaf suspects, defendants and offenders passing through their departments, courts and correctional facilities, and if such data exists, they will be able to provide it for the current study. Conversely, if this data is not being tracked, the practitioners will be able to note it in their responses, which provides information for the current study as well. In essence, no information is valuable information, in that it is telling of the current state of data being kept on the deaf at the various stages of the justice system, and may serve as a justification as to why such data should be tracked in the future.

Expert sampling was also chosen because of the lack of empirical evidence available on topics relating to the current study. According to laerd.com (2012), a research-oriented website committed to the advancement research methods and statistical training, expert sampling is the sampling technique of choice in areas where no empirical evidence is available and no conclusions regarding the topics being examined have been definitively reached. When this is the case, the logic behind using expert sampling is that absent any testable data from which to draw empirical conclusions, it is best to get an understanding of the issues being examined from experts in the field who have had experience with the issues and can draw from their experiences to provide researchers with the best possible understanding of the issues being studied (Trochim,
In addition, absent any empirical evidence, views of experts are more respected than those of people who have no practical experience from which to draw their conclusions (changeinminds.org, 2015). While certainly not without its methodological limitations (which will be discussed below), expert sampling provides insight on topics that, particularly when reinforced by a significant proportion of the sample, help researchers to gain the best possible understanding of their topics of interest.

Finally, expert sampling was selected with the intent of reaching out to practitioners across several geographic regions and population sizes in order to maximize representation and generalizability. Whereas critical case samples examine a relatively smaller number of cases to highlight issues related to research topics of interest (in this study, managing deaf suspects, defendants and offenders from a systemic perspective), expert samples typically employ a larger sample size in order to increase the generalizability of evidence gained through the topics being explored. While information gained through expert sampling is not empirical, its reliability is improved upon relative to critical case sampling because of the increase in sample size. Whereas the goal of critical case sampling in the current study is to identify issues and problems practitioners face when handling the deaf at each stage of the criminal justice system, the goal of expert sampling in the current study is to identify the best ways of handling the issues of managing the deaf at each stage of the system, as identified through the critical case sample. As such, samples that allows for geographic diversity and variation in the population sizes of cities and counties represented in the study are desired.

As mentioned above, geographic diversity and variation in population size are priorities for the expert sample. Geographic diversity is prioritized to (1) identify if there are regional ways of handling the deaf; and (2) to allow for maximum generalizability of the list of best
practices developed from the current study. In addition, the population size of where experts work has been theorized as important, as criminal justice practitioners working in suburban and rural areas may have less experience in dealing with the deaf than their urban counterparts. While practitioners in lower-populated jurisdictions, potentially may not be as experienced in dealing with the deaf as their urban counterparts due to such low numbers of deaf people in their jurisdictions, they are still the experts within their departments, courts and facilities, and should be represented in the expert sample. Moreover, just because lower-populated jurisdictions may have less exposure to deaf suspects, defendants and offenders, they may still have unique and informative information to share that may aid in the development of the list of best practices being assembled in the current study.

Recruitment Process

The recruitment processes for the wave 1 questionnaire and wave 2 survey share similarities. Both employed a two-stage process that involved identifying departments, agencies, offices, and facilities to participate, which required administrative approval, and then identifying practitioners with knowledge of their respective policies and procedures that were willing to complete the questionnaires and surveys. The specifics of the recruitment process for each wave of data collection are described below.

Wave 1 Questionnaire

Recruitment for the wave 1 sample began by reaching out to a handful of police departments, law and judicial offices, and prisons nationwide. Police departments, courtroom practitioners and correctional facilities were targeted based on geographic diversity to capture potential differences in responses due to variation in laws, policies, and procedures, as well as
any potential unknown regional influences that may influence responses. In addition, police departments, courtroom practitioners, and jails in large cities were contacted under the assumption that they would have an increased likelihood of contact with deaf suspects, defendants, and offenders because of larger population size. Population size was not taken into account for state prisons, as many are located in less-populated areas. Once police departments, law and judicial offices, and correctional facilities were selected, they were contacted through non-emergency dispatch lines, legal and judicial office lines, and institutional phone numbers identified through online searches. Once contact with a supervisor in a position to approve participation was established, an Information Sheet explaining the study, its assurance of confidentiality, and its IRB approval was submitted to the each via email. The benefits to completing the study were also explained, which (in addition to contributing to knowledge and research) included assurance that the list of best practices would be disbursed to all participating departments, offices, and institutions once all data was analyzed and the best practices were assembled. The questionnaire was created using a Word document, and respondents were asked to complete it by typing their responses in the Word document and then emailing it back to the PI directly or having their supervisors return it to the PI via email. All data gathered were de-identified, both at the individual and organizational level.

Upon initial contact with police departments, dispatchers were briefly informed about the study and its goals, at which point they provided contact information for law enforcement supervisors in a position to approve or deny permission for someone from their department to complete the questionnaire. Once supervisor contact information was attained, the supervisors were contacted, both via phone and email. Supervisors were informed of the nature of the study and requests for names of officers who knew sign language and/or had previous experience in
dealing with deaf suspects were made. Once departmental approval was granted, the
questionnaires and Information Sheet were forwarded onto law enforcement personnel either
directly by the office supervisors, or by the PI (when the supervisor provided direct contact info
for their department's officers), along with an explanation of the research project and a request to
complete the questionnaire. Law enforcement personnel then decided if they wanted to complete
the questionnaire, which was entirely voluntary and not required by their respective departments.

Administrative assistants responsible for answering prosecutor and judicial office lines
were briefly informed about the study and its goals, at which point they provided contact
information for supervisors from their offices in a position to approve or deny permission for
their respective prosecutors and judges to complete the questionnaire. Supervisors were
informed of the nature of the study, and requests for names of prosecutors and judges with
previous experience dealing with deaf defendants were made. Once office approval was granted,
the questionnaires and Information Sheet were forwarded onto prosecutors and judges either
directly by the office supervisors, or by the PI (when the supervisor provided direct contact info
for their office's prosecutors and judges), along with an explanation of the research project and a
request to complete the questionnaire. Prosecutors and judges then decided whether they would
complete the questionnaire, which was optional and not required by their respective offices.

Jail and prison personnel responsible for answering institutional lines were briefly
informed about the study and its goals, at which point they provided contact information for
supervisors from their facilities in a position to approve or deny permission for their correctional
personnel to complete the questionnaire. Supervisors were informed of the nature of the study,
and requests for names of correctional officers with previous experience dealing with deaf
offenders and institutional administrators familiar with their facilities' policies and practices
were made. In the event that approval needed to be granted by the state DOC, supervisors
provided contact information for the administrators authorized to approve research projects for
their state’s institutions. Once approval was granted, the questionnaires and Information Sheet
were forwarded onto correctional personnel and institutional administrators by the supervisors,
the state DOC, or by the PI, along with an explanation of the research project and a request to
complete the questionnaire. Correctional personnel then decided if they would answer the
questionnaire, which once again, was voluntary.

Wave 2 Survey

Recruitment for the wave 2 sample began by calling a larger sample of police
departments, law and judicial offices, and correctional facilities nationwide. Police departments,
courtroom practitioners and correctional facilities were targeted based on geographic diversity,
with multiple states from each region of the country included in each sample population to
account for possible differences in responses due to variation in laws, policies, and procedures,
as well as any possible unknown regional influences that could shape responses. In addition, law
enforcement, courtroom practitioners, and jail personnel from urban, suburban, and rural
communities were contacted to account for potential differences in responses based on
population size. Population size was not taken into account for state prisons, as many are located
in less-populated areas. Once police departments, law and judicial offices, jails, and prisons
were selected, they were contacted through non-emergency dispatch lines, legal and judicial
office lines, and jail and prison phone numbers found through online searches. Once contact with
a supervisor in a position to approve participation was established, an Information Sheet
explaining the study, its assurance of confidentiality, and its IRB approval was submitted to the
each via email. The benefits to completing the study were also explained, which (in addition to

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contributing to knowledge and research) included assurance that the list of best practices would be disbursed to all participating police departments, legal and judicial offices, and jails and prisons once all data was analyzed and the lists were assembled. The survey was created using Qualtrics (an online survey software company), and respondents were asked to complete it by clicking on the link provided from the PI or their supervisors. As with the wave 1 questionnaires, all data gathered were de-identified, both at the individual and organizational level.

Upon initial contact with police departments, dispatchers were briefly informed about the study and its goals, at which point the dispatchers provided contact information for law enforcement supervisors in a position to approve or deny permission for someone from their department to complete the survey. Once supervisor contact information was attained, the supervisors were contacted, both via phone and email. Supervisors were informed of the nature of the study and requests for names of officers were made. Once departmental approval was gained, the surveys and Information Sheet were forwarded onto law enforcement personnel either directly by the office supervisors, or by the PI (when the supervisor provided direct contact info for their department's officers), along with an explanation of the research project and a request to complete the survey. Once again, law enforcement personnel decided if they wanted to complete the questionnaire, and participation was voluntary.

In addition to prosecutors and judges, public defenders were also recruited to complete the wave 2 courtroom practitioner survey. Administrative assistants responsible for answering law and judicial office phones were told about the study and its goals, at which point they provided contact information for supervisors from their offices in a position to approve or deny permission to complete the survey. Supervisors were informed of the nature of the study, and
requests for names of prosecutors, public defenders, and judges were made. Once office approval was granted, the surveys and Information Sheet were forwarded onto prosecutors, defense attorneys, and judges either directly by the office supervisors, or by the PI (when the supervisor provided direct contact info for their office’s attorneys and judges), along with an explanation of the research project and a request to complete the survey. Courtroom practitioners then decided if they would complete the survey, which was optional.

Upon initial contact with jails and prisons, personnel responsible for answering institutional calls were informed of the study and its goals, at which point they provided contact information for supervisors from their institutions in a position to approve or deny permission for their correctional personnel to complete the survey. Supervisors were informed of the nature of the study, and requests for names of correctional officers and institutional administrators were made. In the event that approval had to be granted by the state DOC, supervisors provided contact information for the administrators authorized to decide on research projects for their state’s institutions. Once approval was granted, the surveys and Information Sheet were forwarded onto correctional personnel and institutional administrators by the supervisors, the state DOC, or by the PI, along with an explanation of the research project and a request to complete the questionnaire. Correctional officers an administrators then decided whether or not to answer the survey, which was voluntary.
CHAPTER 4: FINDINGS

The results of the current study are discussed below. Wave 1 findings are covered first, followed by the wave 2 findings, and each wave is broken down based on the results from the responses of law enforcement, courtroom practitioners, and correctional personnel, respectively. In addition, the wave 2 findings are compared to the extant research to identify consistencies and differences, as well as any new information learned through the results of the current study.

Wave 1 Questionnaires

Law Enforcement Questionnaire

Using critical case sampling, ten police departments around the country were contacted to complete the wave 1 law enforcement questionnaire. Departments were selected on the basis of geographic diversity and size, with large cities targeted on the basis that they were more likely to have encountered deaf suspects due their larger populations, and thus, would be able to provide more insight based on their increased experiences with the deaf. Of the ten departments contacted, six approved an officer from their department to complete the questionnaire (60% response rate). All officers who were approved by their department to participate completed the questionnaire.

Five of the six respondents stated that their department did not keep track of the number of deaf suspects they encounter annually. Two of the six respondents stated that their department had pre-existing protocols and guidelines for dealing with the deaf, including presenting the Miranda warning to deaf suspects in written form, communicating with deaf suspects in writing on the back of the signed Miranda waiver, and summoning a certified ASL interpreter after
arresting a deaf suspect so that the interpreter is present once the suspect arrives at the station to be processed and interrogated (if applicable). One respondent noted that in the event that the arresting officer knows sign language or there is an interpreter present during arrest, communication may also occur via signing when safe to do so, with the arrestee being “restrained in a manner that allows for communication without jeopardizing the safety of the department members, the arrestee, or others.” One of the six respondents noted that their department had formal training on how to manage deaf suspects, including mandatory in-service deaf awareness training and a review of general orders on interacting with individuals with disabilities.

Respondents identified three general issues, problems, and reoccurring themes related to deaf suspects. Miscommunication and misunderstandings resulting from an inability to effectively communicate with deaf suspects when interpreters are not present was the most common problem identified. Next, inexperienced officers may not know that they are able to and/or should call in a certified interpreter when processing and interviewing deaf suspects. Finally, one respondent noted that incidents involving deaf suspects tend to involve burglary and/or sex offenses.

Two items were identified as specific issues related to handling deaf suspects. The first involves securing interpreters for deaf suspects. Some departments contract with a specific company for interpreter services, while others find interpreters through various interpreter networks on a case-by-case basis. In addition, to facilitate communication, one respondent noted that his/her department had TTY services available, as well as trained licensed and certified ASL interpreters on staff.
Respondents identified several things that occur once deaf suspects are arrested. First, respondents noted that in the event that a deaf suspect needs to be interrogated, Miranda warnings would be administered by a qualified sign language interpreter when possible. In the event that a sign language interpreter is unavailable, Miranda warning were to be administered in written format. Respondents also noted that Miranda warnings were only conveyed to deaf suspects if law enforcement personnel wanted to interrogate them. No respondents discussed the potential for suspects who may not know how to read and/or write effectively, so no additional alternatives were offered. No respondents answered how the booking process was explained to deaf suspects, nor did they answer if deaf suspects were held separately from other arrestees.

Lastly, in regards to additional items not covered in the questionnaire, two respondents identified how to handcuff deaf suspects as an important issue. The first respondent stated that deaf suspects should always have their hands handcuffed behind their backs, despite public complaints saying it inhibits their ability to communicate. The justification given for this response was the importance of officer safety. The other respondent noted that while generally a suspect’s hands should be handcuffed behind his/her back, if a qualified interpreter is present and communication needs to take place, the suspect’s hands should be handcuffed in front of his/her body.

**Courtroom Practitioner Questionnaire**

Ten prosecutors and judges from around the country were contacted to complete the wave 1 courtroom practitioner questionnaire. As with police departments, prosecutors’ and judicial offices were selected on the basis of geographic diversity and size, with large cities targeted. Of the ten offices contacted, six approved a courtroom practitioner to complete the
questionnaire (60% response rate). All practitioners who were approved by their offices to participate completed the questionnaire.

Three of the six respondents stated that they had no idea how many deaf defendants are channeled through their court system, and two respondents stated that they have between one to three deaf defendants being prosecuted in their jurisdiction at a given time. One respondent noted that his court encounters approximately 2500 deaf defendants a year (a number that seems extremely high, regardless of how many total cases go before a court in a given year). Two of the six respondents stated that their office had standard protocols used for providing interpreters for deaf defendants, including assigning a qualified interpreter to the defendant. One respondent stated that the competency of the interpreter is tested prior to assignment to ensure (s)he is qualified to interpret in court.

Courtroom practitioners identified several general issues, problems, and reoccurring themes related to cases involving deaf defendants. The first is that there is often a wait list for certified interpreters, which often leads to continuances and slows up the legal process. Occasionally arrangements are made in advance, but most of the time the court does not know that the defendant is deaf until his/her first court appearance. In addition, one respondent noted that trials involving deaf defendants take longer because of the additional time associated with interpreting. One respondent stated that the court tries to hold all hearings by video if the defendant is incarcerated. The respondent went on to say that if a defendant is deaf, it is not possible to hold the initial hearing or bond hearing by video, as the defendant must respond to questions and testify, which presents too many challenges. In such cases, the defendant must be transported to the courthouse, creating additional work for correctional staff and courthouse security. Finally, one respondent noted that the court relies on the defense attorney to notify the
court if an interpreter is necessary. In the event that the court is not notified by the defense attorney, an interpreter is not provided to the defendant, and (s)he relies solely on lip reading.

Four of the six courtroom practitioners stated that they had never encountered a deaf defendant who did not understand sign language, and offered no answer as to how they would handle such an issue, should it arise. The remaining two respondents stated that family members who understand the defendant’s makeshift signs are sworn in and translate for the defendant during trial. Five of the six respondents stated that the percentage of cases disposed of through plea bargaining were identical for deaf and hearing defendants, and that deafness is not a factor in a prosecutor’s decision to offer a plea bargain. One respondent noted that every deaf defendant (s)he prosecuted was offered and excepted a plea bargain, and stated that prosecutors are more likely to make a lenient plea offer to a deaf defendant and courts are more likely to accept a lenient plea offer because the courtroom work group understands how difficult a jury trial would be with a deaf defendant, as well as the difficulties jails and prisons face when housing deaf offenders.

Five of the six respondents stated that their court has never used an interpreter that is deaf himself/herself, while one respondent stated that in the two cases involving deaf defendants (s)he has worked, one interpreter could hear and one was deaf. In terms of problems associated with trying deaf defendants, the speed of the trial was the main issue identified. How to facilitate communication with a deaf defendant who does not know ASL was also a concern identified. All respondents stated that cases involving deaf defendants do not affect the cohesion of the courtroom work group, and that such cases merely slow up the legal process. In addition, all respondents stated that they had never been involved in any cases where a deaf defendant did not
understand the questions being asked of him/her, with one respondent noting that should such a circumstance arise, the prosecution would stop the proceedings until the issues were remedied.

Five courtroom practitioners stated they had no concerns about deaf defendants expressing themselves effectively, with one adding that judges give deaf defendants ample time to express themselves, and in the event that a judge is unable to understand what a defendant is trying to tell the court, the judge will inquire further until clarity is achieved. One respondent stated that lip reading during a trial inhibits accurate communication and could affect the outcome, and as such, an interpreter should always be provided to deaf defendants. No additional items not addressed in the questionnaire were identified by any of the respondents.

**Institutional Questionnaire**

Six correctional facilities (four state prisons and two jails) from around the country were contacted to complete the wave 1 institutional questionnaire. Jails were selected on the basis of population size, with large city and county jails targeted. Prisons were selected on the basis of geographic diversity and total institutional population, since prisons are often placed in less populated areas. Of the six facilities contacted, two prisons and one jail approved a correctional officer or administrator to complete the questionnaire (50% response rate). All practitioners who were approved by their facilities to participate completed the questionnaire.

Deaf offenders were present in all correctional facilities, with a range across the facilities of one to 78 (one, three, and 78, respectively). All three respondents stated that their institutions had standard protocols for handling deaf inmates, including mandatory training on communicating with deaf offenders, contracting with outside companies for certified interpreters, and training on how and when to request an interpreter, should the facility not have one on staff.
Correctional staff all identified effective communication as the biggest problem correctional facilities have with managing deaf inmates. In addition, two respondents emphasized the importance of having access to qualified interpreters as a reoccurring theme involving deaf offenders. TTY access was also noted by one respondent as a need for deaf offenders to be able to communicate effectively. Two respondents identified the reliance on others in the event of an emergency as a safety concern in their facility. All three respondents stated that deaf inmates are treated differently by correctional personnel than their hearing counterparts. Two of the three respondents stated that correctional staff typically spend more time explaining rules and procedures to deaf inmates (often translated by an interpreter), and that staff is more patient with the deaf because they understand that the deaf have a disability. One respondent noted that while some correctional staff are more patient with deaf inmates, others ignore the deaf and tend to be indifferent to them.

Two of the three respondents stated that the deaf are no more fearful than hearing inmates in their institutions, with the third respondent stating that it takes deaf inmates longer to acclimate to their surroundings, but once they learn the ropes, they have no additional concerns or fears of victimization or mistreatment. No respondents noticed that the deaf tend to self-isolate in their institutions, and all three respondents stated that deaf inmates prefer to be housed in general population. Two of the three respondents stated that the deaf were housed in general population, with one noting that the facility does not segregate the disabled unless there is a compelling medical reason to do so. The third respondent stated that deaf inmates are usually housed together so that they can communicate with one another, but in the event that an inmate is participating in a service that is not offered on the unit, (s)he could be housed with other populations.
Two of the three respondents stated that deaf offenders are less likely to be involved in disturbances while incarcerated, with the third respondent stating that their involvement in disturbances mirrors the rate of disturbances among inmates who can hear. All three respondents stated that deaf inmates face the same challenges adjusting to institutional life as their hearing counterparts, but no additional challenges. One respondent noted that all deaf inmates in his/her institution are assigned a sign language interpreter and a caseworker to manage any issues relating to the offender’s hearing impairment. Another respondent noted that the deaf learn the prison routine by observing other inmates.

Two of the three respondents stated that the cells of deaf inmates are the same as every other cell, with no additional equipment or special devices present to facilitate communication. The third respondent stated that cells of deaf inmates are equipped with flashing lights for announcements such as head counts and meals, as well as a “shake awake” alarm clock. The respondent also noted that deaf inmates are given a yellow pass, alerting staff of the inmates’ disability and how to contact their caseworker, should the need arise. The only additional issue not covered in the questionnaire that was identified by a respondent was that the deaf learn slower than their hearing counterparts, which needs to be considered when offering the deaf educational and vocational programming.

Wave 2 Surveys

Law Enforcement Survey

Using expert sampling, thirty police departments around the country were contacted to complete the wave 2 law enforcement survey. Departments were selected on the basis of geographic diversity and population diversity. Thirteen of the thirty police departments
contacted agreed to participate in the study and found an officer willing to complete the online survey (43% response rate).

Nine of eleven respondents stated that their department does not keep track of the number of deaf suspects it encounters annually, with two respondents stating that their departments do record the number. Two of the thirteen respondents did not answer the question. These numbers provide support for the idea that police departments are not collecting data on deaf suspects.

Eleven respondents answered the question, “when arresting a deaf suspect, does your department have a policy on handcuffing their hands in front of or behind their back, or not to handcuff them at all?” Seven respondents stated that their department’s policy is to handcuff a deaf suspect’s hands behind his back, with one respondent stating that their hands should be handcuffed in front of their body. Four respondents stated that there was no departmental policy on the matter, and no one stated that deaf suspects should not be handcuffed unless absolutely necessary. The respondents were then asked, “given that most deaf people communicate with their hands, when arresting a deaf suspect, do you think it is best to handcuff their hands in front of or behind their back, or best not to handcuff them at all?” Ten respondents stated that their hands should be handcuffed behind their back, with one respondent suggesting that their hands should be handcuffed in front of their body. Two respondents did not answer the question.

Nine respondents stated that once a deaf suspect is arrested, their department requires and provides a sign language interpreter to be present for all subsequent communication, with two respondents stating their department did not require and provide interpreters. Two respondents did not answer the question. Respondents were then asked if they thought a sign language interpreter should be required and provided once a deaf suspect is arrested. Nine respondents
answered “yes” and two answered “no,” with two respondent abstaining from answering the question. Given that the ADA applies to arrests and detentions, and that per the ADA, the deaf have a legal right to an interpreter without cost when dealing with the police if they cannot communicate effectively otherwise (Vernon & Miller, 2005; Washington Courts, 2008; Shapiro et al., 2015), it is encouraging to see the vast majority of law enforcement respondents supportive of interpreter services and employing them when handling deaf suspects.

Five respondents stated that their department has a policy on how to inform a deaf suspect of his/her Miranda warning, with six respondents stating their department does not have such a policy. Of the five respondents with departmental policies on how to administer Miranda warning to deaf suspects, three stated it must be communicated via sign language, while the remaining two stated the suspect must be notified in writing. When asked what they thought was the best way for law enforcement to inform a deaf suspect of his/her Miranda warning, eight respondents indicated it should be administered through a written warning, while three stated that it should be communicated via sign language. These findings somewhat contradict what previous research suggests, which is that Miranda warnings should be delivered through a qualified sign language interpreter whenever possible (Altieri et al., 2011). While written warnings may be quicker, they can also be misunderstood, and if an interpreter is not present to address misunderstandings and clarify legal issues and terms, it could lead to a dismissal of evidence gained during an interrogation, particularly for suspects who are unable to read at a sixth grade level or higher (Vernon & Coley, 1978; McAnnany & Shaw, 2011). For each of the questions involving the Miranda warning, two respondents did not answer.

Three respondents stated that their department has a policy on how to administer trespassing notification warnings, with eight respondents stating their department does not have a
policy in place. Of the five respondents with departmental policies on how to administer trespassing notification warnings to deaf suspects, one stated the warning must be communicated via sign language, one stated the warning should be administered through lip reading, and three stated the suspect must be notified in writing. When asked what they thought was the best way for law enforcement to administer trespassing notification warnings, ten respondents indicated it should be administered through a written warning, and one stated that it should be communicated via sign language. For each of the questions involving trespassing notification warnings, two respondents did not answer.

Eight respondents stated that their department has a policy on how to gain consent from a deaf suspect for a blood alcohol sample, polygraph test, or for a search of person or property, with three respondents stating their department has no such policy in place. Respondents whose departments have policies for how to gain consent from a deaf suspect for a blood alcohol sample, polygraph test, or for a search of person or property identified three ways their departments gain consent, including through conversation facilitated by a certified interpreter, by written consent, and through search warrants. Respondents whose department does not have a policy in place suggested that written warnings and conversations facilitated by certified interpreters would be the best way to gain consent from a deaf suspect for a blood alcohol sample, polygraph test, or for a search of person or property. For each question listed above, two respondents did not answer.

When asked if their department videotapes interrogations of deaf suspects, including footage of any sign language communication that takes place during an interrogation, eight respondents said yes and one respondent said no, with four respondents not answering the question. When asked if interrogations of deaf suspects should be videotaped, ten respondents
said yes, zero said no, and three did not answer the question. These responses echo the suggestions of previous research, which state that interrogations should always be video recorded, and recordings should display the signing of deaf suspects and interpreters in plain view (Vernon & Miller, 2005).

One respondent stated his/her department has a policy on how to administer a polygraph test to a deaf suspect, with eight respondents stating their department has no such policy in place. Four respondents did not answer the question. When asked what they thought was the best way for law enforcement to administer a polygraph test, respondents stated that polygraph tests should only be conducted in unison with a certified interpreter, and that the polygraph tests should always be video recorded. When asked if there were any other important issues or information regarding the handling of deaf suspects that were not covered in the survey, respondents identified communication as the biggest challenge when dealing with deaf suspects, but did not mention any specific additional issues.

**Courtroom Practitioner Survey**

Thirty law and judicial offices around the country were contacted to complete the wave 2 courtroom practitioner survey. In addition to prosecutors and judges, the wave 2 courtroom practitioner survey included defense attorneys in the sample. Offices were selected on the basis of geographic diversity and population diversity. Ten of the thirty law and judicial offices contacted agreed to participate in the study and found a courtroom practitioner willing to complete the online survey (33% response rate).

Eight respondents stated that their office does not keep track of the number of deaf defendants it encounters annually. No respondents stated that their office tracks the number of
deaf defendants they encounter annually, and two respondents did not answer the question.
These numbers provide support for the idea that prosecutors, defense attorneys, and judges are
not collecting data on deaf suspects. When asked about the most effective way of ensuring the
linguistic competence of a deaf defendant, respondents stated that court-appointed certified
interpreters should assess the defendant’s linguistic competence prior to trial.

When asked if their state defined the minimum standards for a “qualified interpreter,”
five respondents said yes and three said they were unsure. No respondents answered no, and two
respondents did not answer the question. When asked what the minimum standards for a
“qualified interpreter” should be, one respondent noted that a judge should review an
interpreter’s qualifications prior to trial, and another respondent stated that interpreters should be
certified and should be familiar with legal terminology. These suggestions are similar to the
requirements of federal court interpreters, which must possess and display an understanding of
legal terminology in addition to passing the Administrative Office Certification Examination
(U.S. Courts, 2015).

When asked if they were familiar with the difference between simultaneous and
consecutive interpreting, five respondents stated they were familiar with the difference, three
indicated they were not, and two respondents did not answer the question. When asked if and
when simultaneous interpreting should be used during trial, responses included throughout the
entire trial, anytime the defendant is not testifying, and not at all. When asked if and when
consecutive interpreting should be used during trial, responses included never, only when the
defendant is testifying, and always (because of its improved accuracy in comparison to
simultaneous interpreting). The latter response is the one supported by previous research, which
suggests that consecutive interpreting should always be used in formal courtroom proceedings,
as it is significantly more accurate than simultaneous interpreting (Russell, 2002). When asked if family members of a deaf defendant are allowed to interpret in the defendant's criminal trial in their jurisdiction's court, eight respondents said no, none said yes, and two respondents did not answer the question. When asked if they thought family members of a deaf defendant should be allowed to interpret in the defendant's criminal trial, all eight respondents answered no, with two again abstaining from answering the question. These findings are supported by the Department of Justice's suggestion that friends and family members should not interpret for a deaf suspect in court, as they are usually unfamiliar with the legal code and terminology, and may have emotional and/or personal involvement in the case, which may impact their ability to interpret effectively, correctly, and neutrally (56 Fed. Reg. at 35701, 1991).

Seven respondents stated that their jurisdiction's court always provides sign language interpreters for deaf defendants, with one stating that his/her court did not. When asked if they thought courts should always provide sign language interpreters for deaf defendants, eight respondents said yes and none said no. Two respondents did not answer either question. With the exception of one respondent, these findings support the use of sign language interpreters in all courtroom proceedings, which is not only strongly suggested by previous researchers, but required in most jurisdictions (Vernon & Miller, 2005; Washington Courts, 2008; Mathers, 2009). When asked about the most effective way of ensuring deaf defendants are able to participate in their own defense, respondents stated that deaf defendants must be able to communicate with their attorneys and the court, and that certified sign language interpreters should be present for all court proceedings (which is supported by previous research, as listed above). In addition, one respondent stated that it is the responsibility of the defendant's defense
attorney to explain the legal process to the defendant, and another noted that dual interpreting should be used in any proceedings lasting longer than two hours.

When asked if they were familiar with dual interpretation, six respondents indicated they were and two stated that they were not, with two respondents choosing not to answer the question. Respondents who indicated that they were familiar with dual interpretation were asked a follow-up question regarding when it should be used in a deaf defendant’s trial, and one respondent stated it should be used anytime a court proceeding lasts longer than two hours, as is ensures the accuracy of the interpretation and avoids interpreter fatigue, indicating that he was unfamiliar with what dual interpretation actually is. Dual interpretation, while it may seem impractical, can bolster the integrity of the legal process by recognizing and translating cultural differences in communication to the court that might not be picked up by hearing interpreters (Smith, 1991). Moreover, deaf interpreters have a better understanding of the linguistic differences that need to be addressed during the course of examination, testimony, etc. (Wilcox, 1995). As such, previous research suggests additional consideration should be given to the use of dual interpretation during trials. Finally, all respondents were asked if there were any other important issues or information regarding the handling of deaf defendants that were not covered in the survey, and no additional issues were identified.

Institutional Survey

Thirty-five state prisons and twenty-two jails from around the country were contacted to complete the wave 2 institutional survey, with the sample targeting correctional officers and administrators familiar with their facility’s policies and practices. One survey was created for jail respondents and another was made for prison respondents. While the questions on the two
surveys are identical, the decision to administer separate surveys for jails and prisons was made to identify if there were any substantive differences in the responses between jail and prison personnel. Jails were selected on the basis of geographic diversity and population size, and prisons were selected on the basis of geographic diversity alone (since many prisons are located in less-populated cities/counties). Thirteen of the thirty-five prisons contacted agreed to participate in the study and found a correctional practitioner willing to complete the online survey (37% response rate). Of the twenty-two jails contacted, four agreed to participate in the study and found a correctional practitioner willing to complete the survey (18% response rate).

Three respondents of the jail survey stated that their jail does not keep track of the number of deaf offenders it houses annually, with one respondent not answering the question. Of the thirteen prison survey respondents, four stated that their institution does track the number of deaf inmates it houses annually, with four stating they do not keep track, and five respondents did not answer the question. These numbers provide overall support for the idea that institutions are not collecting data on deaf suspects; however, it seems that prisons are more likely to track data on deaf inmates than jails.

Three respondents of the jail survey stated that their jail does not have at least one sign language interpreter on staff, and one respondent did not answer the question. Of the thirteen prison survey respondents, five respondents stated that their prison does not have at least one sign language interpreter on staff, with three respondents stating their facility does have at least one interpreter on staff. Five prison survey respondents did not answer the question. The differences in results between jails and prisons can likely be attributed to the fact that jails typically house less total offenders than prisons and for shorter periods of time, and thus, may not have enough of a need to justify keeping a sign language interpreter on staff. The three
respondents who noted that their prison has an interpreter on staff all noted that an interpreter works full-time at the institution, but that interpreter services are not available around the clock. The lack of around the clock availability of interpreter services in correctional institutions is consistent with previous research findings, which suggest that only 6.5% of prisons offer around the clock interpreter services, and is concerning, given that interpreter availability is vital to effective communication (Miller, 2001).

Three respondents of the jail survey stated that their jail does not house deaf offenders separately from the general population, with one respondent abstaining from answering the question. Similarly, eight of the thirteen prison survey respondents stated that their facility does not house deaf inmates separately from the general population. Once again, three jail survey respondents stated that their facility provides no additional housing accommodations for deaf offenders, with one respondent failing to answer the question. However, among prison survey respondents, four said their facility does provide additional housing accommodations for deaf inmates, with four stating their facility does not, and five respondents not answering the question. Of the four prison survey respondents who stated that their facility does provide additional housing accommodations, those accommodations listed included marking their cell doors and ID badges so correctional personnel know the inmates are deaf, providing call lights in cells so the inmates know when they are being summoned for counts, meals, work, and programming, and installing a fire alarm that provides visual instructions as well as audible directions.

Two of the four respondents to the jail survey stated that their facility provides communicative technology and devices for deaf offenders, including a TTY with its own kiosk and subtitles on television screens. One jail survey respondent stated that his/her facility did not
provide any communicative technology or devices for deaf inmates, and one did not answer the question. Seven respondents to the prison survey stated that their institution provides communicative technology and devices for deaf offenders, including hearing aids, TTYs, blinking instructional lights, vibrating items (alarms, etc.), and closed captioning on TV screens. One prison survey respondent stated that his/her facility does not provide any communicative technology or devices to deaf inmates, and five respondents did not answer the question. Insofar as such technology and devices facilitate equal access to services, programs and activities, it is imperative that facilities offer such technology and devices, as Title II of the ADA requires deaf offenders to have equal access to all services, programs and activities offered to their hearing counterparts (ada.gov, 2015). When asked what steps they thought correctional facilities could take to ensure deaf inmates have equal access to communication, respondents identified several steps, including staff awareness and training, keeping certified interpreters on staff at all times, offering sign language courses to hearing inmates, and addressing any issues deaf inmates identify as they arise.

When asked if their facility provides deaf inmates with equal access to all rehabilitative programs, three jail survey respondents said yes, and one did not answer the question. Seven prison survey respondents stated that facility provides deaf inmates with equal access to all rehabilitative programs, with one respondent saying no and five not answering the question. When asked if their facility provides deaf inmates with equal access to all religious programs, all three jail survey respondents again said yes, as did six prison survey respondents, with two respondents saying no and five not answering the question. Two of the four jail survey respondents stated that their facility provides deaf inmates with equal access to all educational and vocational programs, with one respondent saying his/her facility does not, and one not
answering the question. Similarly, seven of eight jail survey respondents stated that their institution provides deaf offenders with equal access to all educational and vocational programming, with one saying his/her institution did not, and five respondents who did not answer the question. Given that Title II of the ADA mandates that deaf inmates have equal access to all services, programs and activities offered to hearing inmates (ada.gov, 2015), it is imperative that all correctional facilities prioritize equal programming and services for all.

However, previous research suggests that this hasn’t always been the case, and that rehabilitative, religious, educational, and vocational programming and services are frequently unavailable to deaf offenders in many institutions as a result of inadequate interpreter services (Vernon & Miller, 2005). When asked what steps they thought correctional facilities could take to ensure deaf inmates have equal access to all rehabilitative, religious, and educational programming, respondents noted that communicative tools (written materials, assistive technology, interpreters, etc.) should be provided to facilitate programming across all areas, and that the Department of Education and Division of Vocational Rehabilitative Services should provide assistance for deaf inmates when it comes to educational and vocational programming.

When asked if they think deaf inmates tend to isolate themselves from other offenders, one jail survey respondent said yes, two said no, and one abstained from answering the question. Similarly, two prison survey respondents stated that deaf offenders do isolate themselves from other inmates, with six respondents saying they do not self-isolate and five abstaining from answering the question. These findings contrast those of previous research, which suggest that approximately 90% of deaf inmates display feelings of isolation (Miller, 2001). When asked what steps they thought correctional facilities could take to minimize feelings of isolation among deaf inmates, respondents suggested encouraging deaf offenders to participate in programming,
finding a hearing inmate to volunteer for a buddy system that would facilitate communication with other inmates, making sure staff stays connected with deaf inmates and is understanding of their needs, and allowing deaf inmates to be housed in the general population.

When asked if they think deaf are a bigger target for victimization than inmates who can hear, two jail survey respondents said yes, one said no, and one failed to answer the question. Four prison survey respondents stated that deaf offenders are a bigger target for victimization than inmates who can hear, with four respondents saying they do not self-isolate and five abstaining from answering the question. These findings provide modest support for Ezekiel’s (1994) suggestion that deaf inmates face a higher risk of victimization because they cannot hear what is happening around them and identify potentially dangerous situations. When asked what steps they thought correctional facilities could take to minimize the victimization and fear of victimization of deaf inmates, respondents noted maintaining close contact with deaf offenders and addressing issues as they arise, making sure staff are aware of any special needs of deaf inmates and how to handle them, making sure staff know when there is a deaf inmate on their housing unit so appropriate accommodations can be made, using a buddy system that partners deaf inmates up with hearing inmates that are willing and able to assist them, and housing deaf offenders in a dorm rather than in a cell with a cell mate. Finally, when asked if there were any other important issues or information regarding the handling of deaf inmates that were not covered in the survey, one respondent noted that mass communication to a large number of offenders at one time is difficult, particularly when dealing with offenders with physical disabilities, and that deaf inmates learn to follow visual cues provided by those around them when acclimating to everyday life in a correctional institution.
CHAPTER 5: CONCLUSIONS AND DISCUSSION

Introduction

Research on the deaf and their interactions with the criminal justice system has been a largely underexplored area of interest (Vernon & Greenberg, 1999; Miller et al., 2005). Making matters worse, even virtually no research has been conducted on the best ways to handle deaf suspects, defendants and offenders at each stage of the criminal justice system. Absent such research, it leaves CJ practitioners reliant on a piecemeal approach to handling the deaf at each stage of the system, leaving the window open for inequitable treatment and violations of rights afforded by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 that can and has resulted in inadmissible evidence, dismissals of cases, and not guilty verdicts, as well as litigation and lawsuits (Seaborn, 2004; Brodin, 2005; Vernon & Miller, 2005). As such, there is a strong need for the assembly of lists of best practices for criminal justice practitioners when handling the deaf at their respective stages of the CJ system.

Equally as important is that the lists of best practices be evidence-based. While the evidence-based movement has gained momentum in the field of criminal justice, most departments, agencies and institutions have no formal training in dealing with the deaf or procedures to follow when managing cases involving deaf suspects, defendants and offenders. While the lack of training and procedures is no fault of CJ practitioners, it places them in a difficult position, leaving them to make judgement calls about how to handle the deaf and creating an opportunity for injustices at every stage of the justice system (Vernon & Miller, 2005). Injustices may occur due a lack of awareness of the deaf and their ADA-granted rights, as well as apathy and hostility, and the inability of CJ practitioners to understand the linguistic,
educational and cultural norms of the deaf. When such injustices occur, the ramifications are profound: not only does it adversely affect the deaf and their perception of the criminal justice system, but it undermines the credibility of the system through the inequitable treatment of the deaf. In addition, the subsequent lawsuits lead to undue burdens on taxpayers (Seaborn, 2004; Brodin, 2005; Vernon & Miller, 2005). As such, developing evidence-based practices and procedures for managing deaf suspects, defendants and offenders is a priority.

In light of the limited amount of research available on handling deaf suspects, defendants, and offenders, two waves qualitative data were collected with the goal of constructing lists of best practices for CJ practitioners when dealing with the deaf at each stage of the criminal justice system (police, courts and corrections). Data were gathered using critical case sampling (wave 1) and expert sampling (wave 2), both types of purposeful sampling, a nonprobability sampling technique that involves identifying respondents for a specific purpose (Patton, 1990; Tashakkori & Teddlic, 2003; Teddlic & Yu, 2007). Analysis of the data collected during the study was used in unison with previous research to assemble the lists of best practices, which will be disbursed to all departments, agencies and offices that participated in the study, and will ultimately made public for criminal justice practitioners nationwide.

**Best Practices for Law Enforcement Personnel When Dealing With Deaf Suspects**

I. *When arresting a deaf suspect, is it best to handcuff their hands in front of or behind their back, or best not to handcuff them at all?*

In the event that an arrest is necessary, it is best to handcuff the hands of deaf suspects behind their back. Most of the time a sign language interpreter isn’t present during an arrest, and most officers do not know sign language, so there is generally
no advantage to handcuffing deaf suspects with their hands in front of their back or not handcuffing them at all.

II. *Once a deaf suspect is arrested, should a sign language interpreter be present for all subsequent communication?*

Yes, once a deaf suspect is arrested, a sign language interpreter should be present for all subsequent communication whenever possible to ensure the accuracy of the exchanges in communication between the suspect and law enforcement personnel. Having a sign language interpreter on hand for subsequent communication between deaf suspects and law enforcement personnel increases the accuracy of exchanges and protects law enforcement from procedural errors stemming from subsequent claims of misunderstandings when handling deaf suspects.

III. *What is the best way for law enforcement to inform a deaf suspect of his/her Miranda Warning?*

When sign language interpreters are available or law enforcement has a trained interpreter on staff, deaf suspects should receive their Miranda Warning via sign language, as well as in written form. This is so that the deaf suspect has ample opportunity to seek clarity regarding any items that (s)he may not understand, which protects against the potential for procedural errors. In the event that a deaf suspect cannot read, the Miranda Warning should be administered solely via sign language. Whenever possible, law enforcement should wait until an interpreter is available to administer Miranda Warnings prior to interrogations. If interpreter services are unavailable, Miranda Warnings should be administered in written form. Lip reading
should be used as a last resort, and only when interpreters are unavailable and suspects cannot read, as deaf speech readers comprehend roughly 5% of what is communicated orally (Vernon & Andrews, 1990).

IV. What is the best way for law enforcement to administer trespassing notification warnings?

Trespassing notification warnings are best administered through written warnings. Sign language interpreters generally aren’t present when trespassing warnings occur, and most officers do not know sign language, so trespassing warnings should be administered in written form. In the event that the suspect cannot read, an attempt to administer a trespassing warning orally should be made. While there is no guarantee that the suspect will comprehend the warning, an attempt to administer the warning should always be made.

V. What is the best way for law enforcement to gain consent for searches of person and property?

Requests for consent for searches of person and property are best administered through written warnings. Sign language interpreters usually aren’t present when the need for searches arise, and most officers do not know sign language, so requests for consent should be administered in written form. In the event that the suspect cannot read, law enforcement should wait until an interpreter arrives or until they are able to secure a search warrant, so as to avoid the potential for procedural errors and subsequent dismissals and/or litigation. Consent should not be sought through oral requests, as the potential for error is too high.
VI. What is the best way for law enforcement to gain consent for a polygraph test?

Requests for consent for a polygraph test should be administered via sign language, as well as in written form. In the event that a deaf suspect cannot read, requests for consent should be administered solely via sign language. A sign language interpreter should always be present for polygraph tests, so in the event that law enforcement wants to pursue a polygraph, they should wait to gain consent until one arrives. If interpreter services are unavailable, polygraph tests should not be administered.

VII. What is the best way for law enforcement to administer a polygraph test?

Law enforcement personnel should always administer polygraph tests in the presence of a sign language interpreter, and the polygraph tests should always be videotaped in case questions of the accuracy of the test arise.

VIII. What is the best way for law enforcement to gain consent for a blood alcohol sample?

Requests for consent for blood alcohol samples are best administered through written warnings. Sign language interpreters often aren’t present when someone is suspected of being over the legal blood alcohol limit, and most officers do not know sign language, so requests for consent should be administered in written form. In the event that the suspect cannot read, law enforcement should wait until an interpreter arrives or until they are able to secure a search warrant, so as to avoid the potential for procedural errors and subsequent dismissals and/or litigation. Consent should not be sought through oral requests.

IX. When interrogating deaf suspects, should interrogations be videotaped?
Yes, when law enforcement interrogates deaf suspects, the interrogations should always be videotaped. Videotaping interrogations minimizes the potential for claims of misunderstanding and/or procedural errors.

**Best Practices for Courtroom Practitioners When Dealing With Deaf Defendants**

I. *What is the most effective way of ensuring the linguistic competence of a deaf defendant?*

There are multiple steps that can be taken to ensure the linguistic competence of deaf defendants. The first involves screening the defendant through the court’s pre-trial services program to determine if linguistic incompetency may be an issue. In addition, court-appointed interpreters should assess the defendants’ linguistic competence. Qualified court-appointed interpreters tasked with assessing linguistic competence should not be involved in the trial of the defendant(s) they assess in order to ensure objectivity and impartiality. Finally, in the event that the mode of communication for the defendant is unique or cannot be adequately accessed, the court should appoint a Certified Deaf Interpreter (a specialist who provides cultural and linguistic expertise). Certified Deaf Interpreters are native signers who are deaf themselves, and are trained to ensure that communication is accurate and effective (Tester, 2015).

II. *What is the most effective way of maximizing a deaf defendant’s understanding of the legal process?*
There are several steps that can be taken to maximize a deaf defendant’s understanding of the legal process. First, the deaf defendant should have a confidential discussion with his/her attorney, facilitated by a qualified sign language interpreter, to go over all of his/her Constitutional rights, the charges against him/her and what the potential penalties are, as well as all potential defense strategies that may be pursued. To this end, the use of interpreters that are familiar with legal signs and terms is critical. The defendant should be directed to tell his/her attorney if (s)he doesn’t understand something or needs clarification. In addition, written materials explaining the legal process and rights of the defendant should also be provided.

During the trial, the defendant’s attorney should explain the steps in the legal process to the defendant (via a sign language interpreter) so that (s)he understands the process and knows what to expect.

III. *What is the most effective way of ensuring deaf defendants are able to participate in their own defense?*

There are two steps that courts should take to ensure deaf defendants are able to participate in their own defense to the best of their ability. First, a qualified sign language interpreter should be present for all legal proceedings, as well as for all confidential conversations between the accused and his/her attorney. In addition, the pace of the trial should be slow enough that it allows the defendant enough time to decode the conversations taking place in court and process them. At minimum, it takes the deaf three to four times longer to decode and process American Sign Language than it does for the hearing to understand spoken English (Brauer, 1993;
Steinberg et al., 1998). As such, legal proceedings should be slowed down to provide the defendant ample time to process what is being discussed.

IV. What are the minimum standards of a “qualified interpreter?”

According to Title II of the ADA, a qualified interpreter is one who is able “to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary” (28 C.F.R. Section 35.104). This is the minimum national standard, as set by the U.S. Department of Justice. The USDOJ encourages more stringent state-regulated requirements, and several states have their own (more precisely defined) standards of what constitutes a “qualified interpreter.”

V. Should family members of a deaf defendant be allowed to interpret in the defendant’s criminal trial?

No, family members of deaf defendants should not be allowed to interpret in the defendant’s criminal trial. There are two reasons why defendants’ family members should not interpret during trials. First, most are unfamiliar with legal terms and the legal process, and may not be able to adequately and accurately relay the information being discussed. In addition, the family members are not objective, leaving the window open for them to attempt to work on behalf of the defendants by altering and/or withholding key information that could result in later appeals. With both reasons, opportunity exists for subsequent challenges on the basis of procedural errors. As such, family members of deaf defendants should not be allowed to interpret during said defendants’ criminal trials, a position supported by the U.S. Department of Justice.
VI. *When should simultaneous interpreting be used in a deaf defendant's trial?*

Simultaneous interpreting is the most common form of sign language interpreting, whereby the interpreter facilitates communication by immediately interpreting from spoken language to sign language. While this form of interpreting is quick and convenient, it is best suited for off-the-record communication between the defendant and his/her attorney, not during the formal trial. The reason for this is that simultaneous interpretation is less accurate and more prone to errors than consecutive interpreting (Stewart et al., 2009).

VII. *When should consecutive interpreting be used in a deaf defendant's trial?*

Consecutive interpreting differs from simultaneous interpreting in that the interpreter writes notes on what is being said prior to communicating the message to the deaf via sign language. While consecutive interpreting takes more time than simultaneous interpreting, it is the preferred mode of interpreting in instances where precision is key. In fact, in federal and some state courts, consecutive interpreting is mandatory when defendants, victims, and/or witnesses who cannot speak English provide testimony (Simon, 1993). “When interpreting in court and legal settings, consecutive interpretation is the best practice for achieving an accurate, meaningful, and effective interpretation” (Stewart et al., 2009, p. 14).

VIII. *When should dual interpretation be used in a deaf defendant's trial?*

Dual interpretation involves the use of two interpreters – one deaf and one hearing – to facilitate communication between parties, and is appropriate when the defendant’s
communication skills are severely impaired or the defendant does not know American Sign Language. In such instances, a deaf defendant would sign his/her message to a deaf interpreter who understands makeshift or foreign language signing, who would then translate the message to a hearing interpreter, and then the hearing interpreter would translate the message to the court. While this process may seem excessive and impractical, the deaf are collectively communal, and interpreters who are deaf themselves can bolster the integrity of the legal process by recognizing and translating cultural differences in communication to the court that might not be picked up by hearing interpreters (Smith, 1991). Moreover, deaf interpreters have a better understanding of the linguistic differences that need to be addressed during the course of examination, testimony, etc. (Wilcox, 1995).

Best Practices for Correctional Personnel When Dealing With Deaf Offenders

I. What steps should correctional facilities take to ensure deaf inmates have equal access to communication?

Facilities and institutions should have qualified sign language interpreters on staff at all times. Around the clock availability of interpreter services is essential to achieve equal access to communication.

II. What housing arrangements and technology are needed for correctional facilities housing deaf inmates?

In terms of housing arrangements, call lights should be installed in cells holding deaf offenders so the inmates know when they are being summoned for counts, meals,
work, and programming. In addition, in facilities and institutions where there is a large enough deaf presence, pods should be set up for them and run by staff who are fluent in American Sign Language. Such pods may be created for individuals with other physical disabilities as well, should there not be enough deaf offenders to warrant their own pod. In terms of technology, TTYs should be installed in any pods and/or wings containing deaf inmates. In addition, hearing aids should be provided to deaf offenders who can benefit from their usage.

III. *What steps can correctional facilities take to ensure they are providing deaf inmates with equal access to rehabilitative programs?*

Ideally, correctional counselors fluent in American Sign Language would be available to deliver rehabilitative treatment to deaf offenders. In the event that this is not possible, qualified sign language interpreters should be available to deaf offenders interested in participating in rehabilitative programming. In addition, deaf inmates should be provided with written lesson plans to review before and after each meeting so they can reinforce the lesson(s) covered in the previous session and familiarize themselves with the content to be covered at the next meeting.

IV. *What steps can correctional facilities take to ensure they are providing deaf inmates with equal access to religious programs?*

Ideally, priests, pastors, clerics, rabbis, and other religious leaders fluent in American Sign Language would be available to deliver religious programming to deaf offenders. In the event that this is not possible, qualified sign language interpreters
should be available to deaf offenders interested in participating in religious programming.

V. *What steps can correctional facilities take to ensure they are providing deaf inmates with equal access to educational and vocational programs?*

Ideally, educators and vocational trainers fluent in American Sign Language would be available to deliver educational and vocational programming to deaf offenders. In the event that this is not possible, qualified sign language interpreters should be available to deaf offenders interested in participating in educational and vocational programming.

VI. *What steps can correctional facilities take to minimize the victimization and fear of victimization of deaf inmates?*

Deaf inmates are at a greater risk of being raped and assaulted because they cannot hear what is going on around them, minimizing their opportunity to recognize potentially harmful situations (Ezekiel, 1994). In addition, this increase in the likelihood of victimization also leads to an increase in fear of victimization, and can lead to self-isolation. In facilities and institutions where there is a large enough deaf presence, pods/units should be created for them so they are around others that suffer from the same disability and don’t feel vulnerable in the general population. Such pods/units may be created for individuals with other physical disabilities as well, should there not be enough deaf offenders to warrant their own pod/unit. In the event that there isn’t a large enough deaf/disabled presence to warrant their own pod/unit, correctional personnel should pay special attention to deaf inmates, making sure they
are not being targeted because of their disability and increased vulnerability, and addressing concerns of victimization proactively. In the event that serious fears and/or legitimate threats exist, correctional personnel should contact the institutional administration to address the concerns and work to find an adequate solution for the deaf inmate(s) involved.

VII. *What steps can correctional facilities take to minimize feelings of isolation among deaf inmates?*

Roughly 90% of deaf inmates express feelings of isolation (Miller, 2001). Often times, deaf offenders are not around other deaf inmates in institutional settings, and have no one to communicate with on a regular basis. Isolation, whether self-imposed or otherwise, can alienate deaf inmates from seeking programming and service options, thereby inhibiting rehabilitation, education, vocational training, religious programming, and other prosocial activities. As such, in correctional facilities where there is a large enough deaf presence, pods/units should be created for them so they are around other deaf inmates that they can communicate with. Such pods/units may be merged with inmates with other physical disabilities, should there not be enough deaf offenders to warrant their own pod/unit. In the event that there isn’t a large enough deaf/disabled presence to warrant their own pod/unit, correctional staff and interpreters should stay in close contact with deaf inmates, working to build rapport with them. In addition, staff and interpreters should encourage the offenders to get involved in programming and other structured activities, so as to minimize idle time and the feelings of isolation that can accompany it.
Additional Considerations

In addition to the lists of best practices geared to assist criminal justice practitioners when dealing with deaf suspects, defendants, and offenders, a few suggestions should be considered moving forward. The first is in regards to linguistic incompetence. Deaf offenders with linguistic challenges should be held accountable for their crimes in the same fashion that hearing offenders are; their disability should not serve as a shield to protect them from prosecution (Miller, 2004). However, as mentioned in Chapter 2, once deaf defendants are deemed linguistically incompetent, they are rarely found to be competent at a later date, often resulting in their cases being discharged (as was the case in Ohio v. Burnett (2005). In the U.K., linguistic incompetence has been addressed through the establishment of linguistic criteria for defendants who cannot comprehend their legal proceedings or participate in their own defense. Deaf defendants found to be linguistically incompetent are given a “trial of the facts,” which establishes their likelihood of guilt. Should a linguistically incompetent defendant be found guilty, the judge has a full range of sentencing options at his/her disposal. This practice separates the inability to comprehend legal proceedings from cognitive impairments or mental illnesses that lead to judgments of incompetency, and such a system warrants serious consideration in the U.S.

Second, federal legislation mandating the use of consecutive interpreting in all cases involving deaf defendants should be considered. While more time consuming than simultaneous interpretation, consecutive interpretation is significantly more accurate, and is essential when precision is key. In her research evaluating the accuracy of simultaneous vs. consecutive interpreting, Russell (2002) found the accuracy of interpreting in consecutively interpreted trials to be at or above 95%, whereas the accuracy of simultaneously interpreted trials ranged from
83% to 87%. Accuracy of interpretation is vital both to defendants and to criminal justice practitioners. For defendants, inaccurate interpreting can lead to misunderstandings that can inhibit their ability to comprehend the legal process and/or work on their own defense. In addition, inaccurate interpretation can also compromise the integrity of the criminal justice process, and can serve as grounds for subsequent appeals in the event of a conviction. As such, major consideration for the use of consecutive interpreting involving all cases of deaf defendants nationwide should be granted.

Third, criminal justice departments, agencies, offices, and facilities nationwide should collect data on deaf suspects, defendants and offenders so that future research can be quantitative as well as qualitative. While a handful of jurisdictions and institutions collect data on the deaf, the vast majority do not, particularly outside of prisons. Without the collection of such data, official statistics cannot be attained, and empirical testing is an impossibility. As such, police departments, courts, jails, and prisons across the country should keep track of the number of deaf suspects, defendants and offenders they encounter annually, and should document any issues relating to the research questions of the current study, as well as any additional issues that may not have been identified in this dissertation.

Limitations

As with any research, there are limitations to the methodologies and findings of the current study. These limitations can be categorized into two types: general limitations of qualitative research and specific limitations associated with the study itself. These general and specific limitations are discussed below.
The first set of limitations that need to be recognized involve those relating to qualitative research in general. First, there are no definitive rules for sampling in qualitative research. Whereas sampling techniques for quantitative research are typically well-established, sampling techniques for qualitative research are not explicit, and more than one technique may be used (Palinkas et al., 2013). If different sampling techniques could be used to study similar issues or phenomena, it could leave the window open for different results as a result of inconsistencies in measurement. However, it is also this autonomy in selecting sampling strategies that provides researchers the opportunity to maximize their exposure to information-rich cases that are the cornerstone of qualitative research (Patton, 1987; Patton, 2002).

The other general limitation of qualitative data is that data gained from it is not able to be tested statistically, and therefore not empirically verifiable. This is a limitation of all qualitative research, and should be noted. However, the limited research and virtually nonexistent data on the deaf and their involvement in the criminal justice system do not lend themselves to quantitative analysis, and purposeful sampling is the only option to gain a better understanding of the issues associated with and answers to the research questions. Qualitative research should be judged in context by its contribution to the topics being examined, not by sample size or inferential power (Patton, 1990).

In addition to the general qualitative limitations, there are two limitations specific to this study as well. First, in assembling the lists of best practices, there is the potential for additional unidentified issues to go unaddressed. In assembling the research questions described earlier in the chapter, a thorough review of the research was conducted and wave 1 data was collected and analyzed in order to shed as much light as possible on the systemic issues and concerns associated with managing deaf suspects, defendants and offenders. The research questions
reflect the issues identified through the extant research and wave 1 data, and are intended to offer insight to practitioners in their respective stages of the justice system; however, they are not intended to be viewed as exhaustive. Future research goals in this area should include continuing to identify best practices when handling the deaf, as well as conduct quantitative inquiry if and when data is available to do so.

The second limitation of this study is in regards to its low response rates. While the response rates for both waves of data collection were low, the qualitative data gained during the study was rich with information, and while a higher response rate was desired, it is the author’s belief that the results would not have changed. That is, the lists of best practices assembled would not have changed with any additional information. In addition, the reason for the lower response rates of the wave 2 survey relative to those of the wave 1 questionnaire may have been due to the inclusion of suburban and rural populations in the samples. The decision to include suburban and rural populations in the wave 2 survey was made to include responses across all population levels. However, it is possible that these populations had encountered less deaf suspects, defendants and offenders, and thus, did not see participating in the study as beneficial to their departments and agencies. Nevertheless, it is unlikely that higher response rates would have influenced the lists of best practices, which were the ultimate goal of the study.

Future Research

While this dissertation advances the current knowledge on the best practices for handling deaf suspects, defendants and offenders at each stage of the criminal justice system, there is still much to learn. First, future research should focus on identifying additional best practices that will assist practitioners at their respective stages of the CJ system, such as exploring options for
correctional facilities to deliver religious, rehabilitative, and educational and vocational programming to deaf offenders. Additionally, if and when quantitative data is collected by police departments, courts, jails, and correctional facilities, issues relating to the deaf and their handling at each stage of the system should be explored quantitatively.

Other future interests related to the current research include working with criminal justice departments and agencies to gain access to deaf clients for case studies of their experiences in the CJ system and ways to improve communication and accessibility, and examining offenders with other disabilities from a systemic perspective, with the goal of proactively identifying concerns and offering recommendations for addressing them as they arise, rather than reactively waiting for litigation to pile up (and the potential for systemic injustice via disparate treatment and violations of the ADA as a result of waiting). Ultimately, this dissertation is a first step in understanding the best practices for managing deaf suspects, defendants and offenders, and provides a foundation for which to continue evaluating how best to handle the deaf – and other people with disabilities – at every stage of the criminal justice system.
REFERENCES


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APPENDIX

Wave 1 Law Enforcement Questionnaire

Approximately how many deaf suspects get channeled through your police department per year?

What types of general issues, problems, or reoccurring themes has your police department dealt with in regards to deaf suspects?

Again, in thinking about deaf suspects, what are some of the specific issues they have faced and how has your department dealt with those issues?

Does your department have any pre-existing protocols, best practices, guidelines, or formal training in dealing with the deaf?

If your department provides formal training, could you tell us a little bit about that training?

What happens to deaf suspects once they are arrested? For example, how are the issues of Miranda Rights, booking and holding dealt with? Are interpreters provided to read them their Miranda rights? How is the booking process explained to them? Are they held separately from other arrestees?

Are there any other issues and/or information that we have not discussed that you think are important to understanding what happens to deaf suspects in the criminal justice system?

Wave 1 Courtroom Practitioner Questionnaire

Approximately how many deaf defendants are channeled through your court system?
What type of general issues, problems, or reoccurring themes has the court dealt with in regards to deaf defendants?

What are some of the standard protocols used for providing interpreters for deaf defendants in working with their attorneys?

What about the standard protocols used for providing interpreters for deaf defendants the stand in their own defense?

What happens if a deaf defendant does not understand sign language?

In regards to that last question, has it been your experience that deaf defendants are more or less apt to take their case to trial, or are they more likely to plea bargain?

Similarly, have you noticed either prosecutors or defense attorneys being more or less likely to make or take a plea deal on behalf of deaf defendant?

Are you aware of what type of deaf interpreter your court system uses? In other words, are these interpreters deaf themselves, or are they interpreters who don't happen to be deaf?

What type of problems have you noticed specifically regarding some of the actors in the courtroom work group? Are there noticeable problems judges, prosecutors, or defense attorneys in dealing with deaf defendants?

Similarly to the last question, have you noticed the courtroom members working together to address the issues/problems of deaf defendants, or does the presence of a deaf defendant affect the cohesiveness of the courtroom workgroup?
In regards to statements made by a deaf defendant in a plea bargain for the testimony given by the alleged deaf offender in a trial, are there ever issues of intent that our questioned?

From your observations, is it ever a concern that a deaf defendant may be unable to get his or her point across effectively? And if so, could it affect the outcome of a case?

Are there any other issues that we have not discussed that you think are important to understanding what happens to deaf defendants in the criminal justice system?

**Wave 1 Institutional Questionnaire**

Approximately how many deaf offenders are handled by your correctional facility?

Does your institution have any pre-existing protocols, best practices, guidelines, or formal training in dealing with the deaf?

If your institution provides formal training, could you tell us a little bit about that training?

What types of general issues, problems, or reoccurring themes has your correctional facility dealt with in regards to deaf inmates?

Again, in thinking about deaf inmates, are there specific safety concerns in your institution?

Have you noticed the deaf being treated differently by correctional officers? If so, could you talk to us a little bit about how they're treated differently?

Have you noticed that the deaf are more fearful than other (non-deaf) inmates in your institution?

Are the deaf housed separately from the other populations?
Have you noticed that the deaf tend to self-isolate in your institution? Or do they prefer general population?

Are deaf inmates more or less likely to be involved in institutional disturbances?

Have you noticed the deaf having problems adjusting to the institutional routine? In other words, how do they adjust to the jail/prison routine without being able to hear?

Similarly to the last question, are their cells equipped with any special devices for the hearing impaired?

Are there any other issues that we have not discussed that you think are important to understanding what happens to deaf offenders in the criminal justice system?

**Wave 2 Law Enforcement Survey**

Does your department keep track of the number of deaf suspects it encounters annually?

a. Yes
b. No

When arresting a deaf suspect, does your department have a policy on handcuffing their hands in front of or behind their back, or not to handcuff them at all?

a. Hands handcuffed behind their back
b. Hands handcuffed in front of them
c. Do not handcuff unless absolutely necessary
d. No departmental policy
Given that most deaf people communicate with their hands, when arresting a deaf suspect, do you think it best to handcuff their hands in front of or behind their back, or best not to handcuff them at all?

a. Hands handcuffed behind their back
b. Hands handcuffed in front of them
c. Do not handcuff unless absolutely necessary

Once a deaf suspect is arrested, does your department provide and/or require a sign language interpreter to be present for all subsequent communication?

a. Yes
b. No

Once a deaf suspect is arrested, do you think a sign language interpreter should be provided and/or required to be present for all subsequent communication?

a. Yes
b. No

Does your department have a policy on how to inform a deaf suspect of his/her Miranda Warning?

a. Yes
b. No

If your department does have a policy on how to inform a deaf suspect of his/her Miranda Warning, which way does it use?
a. Written warning  
b. Lip reading  
c. Sign language  

What do you think is the best way for law enforcement to inform a deaf suspect of his/her Miranda Warning?

a. Written warning  
b. Lip reading  
c. Sign language  

Does your department have a policy on how to administer trespassing notification warnings?

a. Yes  
b. No  

If your department does have a policy on how to administer trespassing notification warnings, which way does it use?

a. Written warning  
b. Lip reading  
c. Sign language  

What do you think is the best way for law enforcement to administer trespassing notification warnings?

a. Written warning  
b. Lip reading
c. Sign language

Does your department have a policy on how to gain consent for a blood alcohol sample, polygraph test, or for a search of person or property?

a. Yes
b. No

If your department has a policy on how to gain consent for a blood alcohol sample, polygraph test, or for a search of person or property, how does it gain consent? Please describe.

If your department does not have a policy on how to gain consent for a blood alcohol sample, polygraph test, or for a search of person or property, what do you think the best way would be? Please describe.

Does your department videotape interrogations of deaf suspects, including footage of any sign language communication that takes place during an interrogation?

a. Yes
b. No

When interrogating deaf suspects, do you think interrogations be videotaped?

a. Yes
b. No

Does your department have a policy on how to administer a polygraph test to a deaf suspect?

a. Yes
b. No

What do you think is the best way for law enforcement to administer a polygraph test? Please describe.

Are there any other issues or information regarding the handling of deaf suspects that is not mentioned above and needs to be addressed? If so, please explain.

**Wave 2 Courtroom Practitioner Survey**

Does your office keep track of the number of deaf defendants it deals with annually?

a. Yes

b. No

What is the most effective way of ensuring the linguistic competence of a deaf defendant? Please describe.

Has your state defined the minimum standards for a “qualified interpreter?”

a. Yes

b. No

c. Unsure

If your state has not defined the minimum standards for a “qualified interpreter,” what do you think they should be? Please describe.

Are you familiar with the difference between simultaneous and consecutive interpreting?

a. Yes
b. No

If you are familiar with the difference between the two, when should simultaneous interpreting be used in a deaf defendant’s trial? Please describe.

Again, if you are familiar with the difference between simultaneous and consecutive interpreting, when should consecutive interpreting be used in a deaf defendant’s trial? Please describe.

Are family members of a deaf defendant allowed to interpret in the defendant’s criminal trial in your jurisdiction’s court?

a. Yes

b. No

Do you think family members of a deaf defendant should be allowed to interpret in the defendant’s criminal trial?

a. Yes

b. No

What is the most effective way of maximizing a deaf defendant’s understanding of the legal process? Please describe.

Does your jurisdiction’s court always provide sign language interpreters for deaf defendants?

a. Yes

b. No

Do you think courts should always provide sign language interpreters for deaf defendants?
What is the most effective way of ensuring deaf defendants are able to participate in their own defense? Please describe.

Are you familiar with dual interpretation?

a. Yes
b. No

If you are familiar with dual interpretation, when should it be used in a deaf defendant’s trial? Please describe.

Are there any other issues or information regarding the handling of deaf defendants that is not mentioned above and needs to be addressed? If so, please explain.

Wave 2 Institutional Survey

Does your facility keep track of the number of deaf offenders it houses annually?

a. Yes
b. No

Does your facility have at least one sign language interpreter on staff?

a. Yes
b. No
If your facility has at least one sign language interpreter on staff, how often is a sign language interpreter present?

a. Part-time
b. Full-time
c. Facility has multiple interpreters and one is always on staff

Does your facility house deaf offenders separately from the general population?

a. Yes
b. No

Does your facility provide any additional housing accommodations for deaf offenders?

a. Yes
b. No

If your facility provides any additional housing accommodations for deaf offenders, please describe.

Does your facility provide any communicative technology or devices for deaf offenders?

a. Yes
b. No

If your facility provides any communicative technology or devices for deaf offenders, please describe.
What steps do you think facilities can take to ensure deaf inmates have equal access to communication? Please describe.

Does your facility provide deaf inmates with equal access to all rehabilitative programs?

a. Yes
b. No

What steps do you think facilities can take to ensure they are providing deaf inmates with equal access to all rehabilitative programs? Please describe.

Does your facility provide deaf inmates with equal access to all religious programs?

a. Yes
b. No

What steps do you think facilities can take to ensure they are providing deaf inmates with equal access to religious programs? Please describe.

Does your facility provide deaf inmates with equal access to all educational and vocational programs?

a. Yes
b. No

What steps do you think facilities can take to ensure they are providing deaf inmates with equal access to educational and vocational programs? Please describe.

In thinking of deaf inmates, do you think they tend to isolate themselves from other offenders?
a. Yes
b. No

What steps do you think facilities can take to minimize feelings of isolation among deaf inmates? Please describe.

Do you think deaf inmates are a bigger target for victimization than inmates who can hear?

a. Yes
b. No

What steps do you think facilities can take to minimize the victimization and fear of victimization of deaf inmates? Please describe.

Are there any other issues or information regarding the handling of deaf suspects that is not mentioned above and needs to be addressed? If so, please explain.