Interpreted Communication with Deaf Parties under Anglo–American Common Law to 1880

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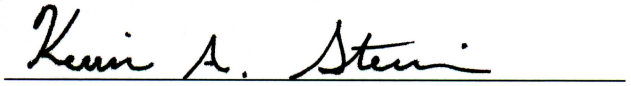

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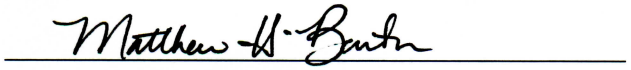

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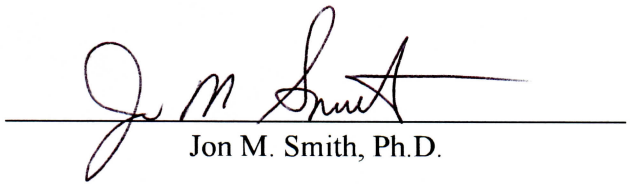

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Interpreted Communication with Deaf Parties under Anglo–American Common Law to 1880

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Abstract

The conception of sign language interpreters as communication professionals was formed in the 1960s, but there is no complete, authoritative treatment of the role which was formed centuries earlier. The common law is an ideal seat of inquiry for a study, as both the best-documented venue, and the birthplace of protocols that were ultimately applied throughout generalist interpreting practice. Through qualitative survey of foundational texts from Deaf studies and interpreting praxis, with legal commentary and newspaper accounts, this research lays out the first pedigree of sign language interpreting based in Anglo–American courts. Where possible, the problem of perpetually-recycled secondary material is resolved with greater attention to primary and contemporaneous citations. From the medieval practice of assigning curators for the management of property and tutors for the personal caretaking of deaf wards, through the first published description in the early modern period, the role of interpreter matured over the centuries as an intermediary who communicates effectively with a signing deaf party to enact their legal agency. The study is necessarily bounded by 1880, when deaf education policy attempted to ban the use of signs, thereby conflating interpreting issues with pedagogical battles. Symbolic interactionism, intercultural and communication accommodation theories unite with literature from Deaf studies, signed language interpreting, and disability legal history, to construct a novel approach to the main research questions: 1) What was the path for interpreters prior to organized institutions for deaf people? 2) How did legal developments create the role of sign language interpreter?

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Chapter 1: Introduction

Long before sign language interpreters were lampooned on television programs and the Internet for presumed histrionics next to New York City mayors (Grynbaum, 2015; Peters, 2012), or a sham performance during Nelson Mandela's funeral (Gumuchian, 2013), they built a rich legacy of legitimate hard work. However, that account has never been fully and accurately portrayed, until now.

Deaf studies has burgeoned within academia in recent decades, but interpreters who are trained to be impartial are loathe to insert their story into the dialogue. From that philosophically Deaf center, most interpreters repeat the received explanation of their role as an allegiant apparatus to signing communities, emphasizing a formation out of the Deaf-world (Cokely, 2005; Fleischer, 1975; Jones, 1988). As a creation myth, it is useful in the abstract, but does not withstand scrutiny. The legend may be oversimplified, incomplete or factually wrong, but perhaps it was considered too transgressive to question, much less revise it. After twenty-three years as a sign language interpreter, this thesis actually marks the opening *anti*thesis to that folktale.

Indeed, the interpreting field did mature in the eighteenth and nineteenth centuries during the rise of Deaf-led communities, but the historical arc extends far further into the past. As Malcolm X warned, "If you don't know the origin, you don't know the cause. And if you don't know the cause, you don't know the reason, you're just cut off, you're left standing in midair" (X, 1967, p. 4)—exactly the suspended state of interpreters' sense of purpose today. This study became more urgent after recent crises within the interpreting field: just as physicians make the most intractable patients, interpreters can be the least mindful communicators. In 2013, the Registry of Interpreters for the Deaf (the national association and credentialing body for sign

language interpreters in the United States) held a fiftieth anniversary convention, and the industry paused to celebrate with what they thought would be an affirming and inspiring program. However, decades of demographic shifts (Babbini Brasel, Montanelli, & Quigley, 1974; Cokely, 1982; Cokely, 2005; Nowell & Stuckless, 1974; Stauffer, Burch, & Boone, 1999) came to a head. Dialogue deteriorated in painfully public and adversarial ways, as family-of-origin (deaf or hearing) and language politics locked in a power struggle, and the entire event devolved into factions. For example, some demanded all proceedings be conducted in American Sign Language (ASL) and accused others of profiteering without ties to the Deaf community, and others advocated for language choice and a dispassionate professionalism.

Notwithstanding decades of research that developed the discussion, the field remains moored on a shifting foundation, susceptible to ceding the floor to the loudest voice. Over sixteen thousand interpreters in the United States (Registry of Interpreters for the Deaf, 2014a, para. 2) were left to re-examine the meaning of the profession and one's role within it. This work offers evidence of desperately-needed shared fundamentals, free from constraining fads in theory, politics, practice and pedagogy.

Orientation to Legal Sign Language Interpreting

Sign language interpreters mediate a bilingual and bicultural bridge between parties who do not share the same language or mode of communication. Norbert Wiener (1967) asserted the perspective of a hearing person, in "the fact that hearing is not only a sense of communication, but a sense of communication which receives its chief use in establishing a rapport with other individuals" (p. 232). This loss of social interaction and "intellectual company" among hearing people was a consequence of deafness, which Helen Keller famously observed (Love, 1933, p. 68). When any non-signer interacts with a deaf signer, interpreters present one option to mitigate

this dual communication barrier—the physical truth that many deaf people do not access spoken communication, and the social truth that most spoken-language users do not sign (see also Garretson, 1972).

Victor Galloway, the late deaf educator and community leader taught that "the legal rights of deaf persons are a function of communication, either as it pertains to the mechanical processes or as it relates to the congruence of relative cultures of the persons involved" (Galloway, 1970, p. 11). He enumerated three barriers to a DP's participation: inexperience with procedure and etiquette, the "[c]omplexity of legal principles which tests…the comprehension of deaf persons," and the often unmet necessity of "third parties in court proceedings or other legal situations" (Galloway, 1970, p. 11). Shepherd (1970) agreed that most difficulties arise due to a lack of communication and familiarity with courtroom operations; for a DP who signs as their primary mode of communication, the interpreter mitigates all of these disconnects either directly or indirectly. Galloway emphasized that "[a]n interpreter or an intermediary who is familiar with deafness and deaf persons often must enter the proceedings as a third party" (Galloway, 1970, p.13), a function which will be further explored in chapter four.

Though these are deficit-driven assessments of courtroom communication which ascribe any difficulty to the DP's disability rather than the inaccessibility of the legal system, they capture the moment when the field began to develop a platform for rights-based participation. The transition between viewing sign language interpreters as mediating disability or non-English language users is still underway today, and that philosophical tension will not be treated in this paper. Though not all jurisdictions universally comply with current standards based on either perspective, the expectation today is for appropriately trained, qualified and credentialed

professional interpreters to assist the courts in working with DPs (Registry of Interpreters for the Deaf Professional Standards Committee, 2007).

Problem Statement

This project aims to produce the first careful and complete academic treatment of the development of the interpreter role within an Anglo–American legal setting, rather than from the perspective of the participating deaf party (DP). As common law principles gave rise to the legal philosophy applied in the United States, British cases were read discerningly and applied selectively in U.S. courts (Wallace, 1845). The exchanges of best practices under the doctrine of precedent (Goodhart, 1948) provide the organizational landscape for the study of sign language interpreting as it developed in common law courtrooms. While this is not a study of interpreting between deaf and hearing people at large, the legal venue is an ideal seat of inquiry for a study of sign language interpreting proper, as both the best-documented setting, and the birthplace of protocols that were ultimately applied throughout generalist practice as well.

Very few other authors have treated the three intersecting social constructs of law, language, and disability (or in this case, signing deaf parties). After consulting hundreds of sources, no reliable, complete, and authoritative source has emerged that examines the bases for legal sign language interpreting. In the absence of direct mentions of the sociolinguistic and legal arguments, several theoretical perspectives can be applied, tested, and assessed against the data. Literature covering general communication and gesture theory, Deaf studies and signed languages, interpreting, specialized legal interpreting, disability legal history, and other domains combine to create a novel approach to the main research questions:

RQ_1 What was the path for interpreters prior to organized institutions for deaf people?

RQ_2 How did legal developments create the role of sign language interpreter?

Definitions and Assumptions

As with any text dealing with signed language communities, this paper will use the well-established deaf/Deaf (Padden & Humphries, 1988; Woodward, 1982) and hearing/Hearing conventions to maintain working definitions. While "deaf" will indicate the lack of auditory function for the purpose of communicating, the cultural marker "Deaf" will be applied only when a firm link to an established community is relevant to assessing and accommodating the DP. The same holds for "hearing" people versus societal institutions which are materially "Hearing" insofar as the interpreter's task includes navigating, or mediating disconnects between the DP and other participants who identify with this spoken-language majority.

Senghas and Managhan (2002) agree with Plann (1997) that some scholars avoid universally capitalizing "Deaf because they hold that the notion of Deaf identity is a bounded sociohistorical phenomenon" (Senghas & Managhan, 2002, p. 71). To further clarify from a related domain, Nielsen (2009) recommends "the much more sophisticated historical realization that experiences of disability change over time because they are shaped by both large structural factors" and do not merely represent "an ahistorical category grounded in the physical body" (p. 41). In later cases that emerge in the timeline of this study, an interpreter may facilitate interactions between hearing court personnel and a DP who was educated at a school for the Deaf, assuming a usable signed language, and a high probability of enculturation as distinct from the Hearing world. With a focus primarily aimed toward the interpreter whose work ranges along vast linguistic and cultural continuum, absent the luxury of deciding how d/Deaf their clientele are, this paper will adopt that assumption, and distinguish between deaf or hearing people and Deaf or Hearing cultural affiliations.

Common law can be defined as an ongoing interaction between existing statute, unwritten customs that have "obtained the force of a law" (Viner, p. 164), and decisions of the legal institution (Hogue, 1966). After the political, creative and social crises of the Middle Ages, a fragmented Europe clung to "faith and trust in the 'sacred' texts of the *Ius commune*, to the everyday practice of written law, and to the emergence of the figure of the 'jurist'" (Bellomo, 2005, p. 33). A network of these learned justices created a system which "values experience more highly than logic," and where "grounding in reality is intended to promote desirable and orderly change, not forestall it" (Kempin, 1973, p. viii). Quite simply, Anglo–American jurisprudence "prefers to adopt as law the practical rules that experience has proved to be workable" (p. viii), as the maxim *Optima est legis interpres consuetudo* — Custom is the best interpreter of the law—recommends (Broom, 1858). As the sitting judiciary encountered novel cases, results were published according to the doctrine of stare decisis, or "let the decision stand" for application under similar circumstances. In collaborating across both time and great distances within the realm, precedents could be applied, but not enshrined. Judgments were localized, modernized, and tempered by "experience and tradition [which] provide the basis for stability but are also the starting points for change" (Kempin, 1973, p. ix).

The primary analysis will be confined to interpreting between signing deaf and non-signing hearing people, capturing the "historically created solutions" (Padden & Humphries, 1988, p. 120) which incorporate the DP's primary mode of communication as a resource. Other sources which refer to: no interpreter and no attempt at communication; communication via mutually intelligible gestures; communication via writing only, or; speech and speechreading with or without the use of limited hearing ability will be included only insofar as they further the historical status, role, and purpose of sign language interpreters. Attention to critical theories of

ability, culture, gender and socioeconomic class will largely be left to experts in those domains. This paper will avoid blunt evaluative claims, as grievances stripped out of context would overburden the evidence with unnecessary anachronisms, which Pym (1998) agrees makes for "an unfashionable and perilous exercise" (p. 5).

Theoretical Grounds

Because this paper charts new academic territory, an interdisciplinary perspective is crucial. To varying depths, the theoretical frameworks scaffold the social, linguistic, and legal forensics brought out by the historical developments and case studies. These include symbolic interactionism, listening theory, intercultural communication, and communication accommodation theory. In addition, the methods of linguistics, sociolinguistics, anthropology, ethnography and translation studies bolster the argument to create a nexus of new scholarship.

Evans and Falk (1986) documents an ethnographic study of a contemporary residential school for deaf children in the United States through a symbolic interactionist lens. The authors considered it nearly impossible to capture any inward- or outward-facing dialectic and "research the self-social interaction relationship if no language [was] present" (Evans & Falk, 1986, p. 182) in some of the children. The study concluded, however, that in the language colony of a Deaf school, newly-arrived pre-lingual pupils *can* master observational/imitative behavioral patterns, and adopt a localized, improvised, and context-bound communication repertoire specific to the self-contained world of residential life. They stop short of agreeing with Mead that subjects who do not express themselves in formal symbols have no awareness of a social self, but wonder whether people in that stage find it "less possible to express a sense of self" (Evans & Falk, 1986, p. 182) without standardized sign language. Prior to such organized communities of deaf signers, and absent the social structures and interactive routines of an educational

institution, a DP could still access and develop relationships "dialectically interwoven with his own construct" and become a "social creature" (Evans & Falk, 1986, p. 205), as available physical objects acquired shared labels, and evolved into social objects.

To describe the basis of speech–sign bilingualism among hearing lay people, an unexplored orientational other from symbolic interactionism theory are a variation on the "listener" mentioned in Shotter, (2009). In this case self-selected hearing people extended solitary DPs' individual actions into shared, communicative behaviors. A loose social group is formed with the DP, partly defined in Kuhn (1964) as "the others in communication with whom his self-conception is basically sustained and/or changed" (p. 18). Through repeated interactions, early hearing signers may have mitigated social deprivation and substantiated isolated deaf individuals' sense of identity and standing before a standardized signed language formed and a distinct Deaf reference group was recognized. Evans and Falk (1986) declared that when pre-lingual deaf people are drawn into regular exchanges, it proves "axiomatic that language arises out of interaction and is subsequently maintained and altered via interaction (p. 19). Ladd (2003) described the proto-diglossia which pre-dated formalized deaf education and reified Deaf communities: "In some of these environments, the percentage of Deaf members may be such that numbers of the hearing members use forms of sign language as one of the languages of the community" (p. 90).

This study will not attempt psychological speculation on deaf subjects' internal processes, attitudes and responses to conditions. Behavioral and linguistic acts will be the focus, primarily from the perspective of the interpreter as the social object used and referenced in constructing encounters where participants better "understand their environment through interaction with others" (Charon, 1998, p. 58). The legal record steadily builds a repository of

memory that can query best practices, and develops communicative norms between individual interpreters and DPs. As interactants applied such lessons to the "world of social objects," their participation was in part "defined by others through symbolic communication" (Charon, 1998, p. 60). As group life within and between interpreters and deaf parties matures, this shared social corpus creates standardized symbols, predictable communicative routines, and a catalog of strategies and solutions to promote due process in legal venues.

As language and culture were reified and organized within Deaf communities, the interpreted interaction acquired its own history, future expectations, and has now amassed sufficient time in role to hold its own internal conversation. Direction from Charon (1998) aptly extends the personification: if others are to understand interpreters, "we must understand ourselves, which demands that we symbolically interact with ourselves as we communicate with others" (p. 65) in the Deaf-world. Such reflexive analysis is a primary aim of this study.

Bienvenu (1987) explored the "third culture" that exists between contemporary interpreters and deaf people, who inhabit different but overlapping social worlds and forge a shared future (Bienvenu, 2000). The similar case of listeners in Shotter (2009) also mutually influence one another, so that:

> in their meetings, they always create a third or a collective form of life within which (a) they all sense themselves as participating, and which (b) has a life of its own, with its own voice, and its own way of "pointing" toward the future. (p. 26)

Pym (1998) ascribes this phenomenon to the "interculturality" physically carried by the translators who are not merely bilingual, but embody an interactive duality, by turns extending their own individual relationships into separate social worlds. The unique physicality of gestural communication further illustrates Shotter (2009) well, in that an "utterance achieves something

bodily and relational in both together; it works to create a shared orientation toward their shared situation—a moment of common reference" (p. 24). Schippers, Roebroeck, Renken, Nanetti, Keysers, and Hari, (2010) uncover neurological evidence for what practicing interpreters call "mind-meld"—increased mirror neuron activity during the task of translation as opposed to simply viewing another's gestures. By contrast, Bakhtin's apt metaphor describes a posture of *monologism* as closed and figuratively "deaf to other's response," denying any outside "consciousness with equal rights and equal responsibilities" (as cited in Shotter, 2009, 21–22).

After surveying "[r]eferences to encounters with deaf people in diaries and literature," Cockayne (2003) believes the evidence to "suggest that through improvised languages composed of signs and gestures they managed to communicate crudely with strangers and elaborately with close intimates (p. 503). If these hearing listeners engaged with deaf people well before there were established "voices that speak from within" the Deaf community (Lane, 1992, p. xiv), these individuated social and linguistic connections may have been assembled into the foundation for a distinct Deaf-world. This journey from the margins of Hearing culture to membership within a receptive Deaf culture is a nearly universal rite of passage for the majority of such people born into hearing families (Lane, Hoffmeister, & Bahan, 1996; Mitchell & Karchmer, 2004). Absent any deaf peers, when hearing family and neighbors historically collaborated with deaf people on a gestural communication system, this may have allowed otherwise estranged individuals to orient themselves within a social context, albeit limited. Deaf people who gathered into signing families, population centers and specialized schools may have integrated these seeds of language and interactional norms and ultimately formed the fabric of a Deaf-world-view.

Some hearing lay people chose to embrace the gestural system of an individual or learn the language of a Deaf community, despite vast differences to their own way of speaking

(Davidson, Kovacevic, Cave, Hart, & Dark, 2014). Communication accommodation theory (CAT) expanded "in a more interdisciplinary direction and the focus has broadened from exploring specific linguistic variables to encompass nonverbal" aspects of social behaviors (Giles, Coupland, & Coupland, 1991, p. 7). This study advances CAT from a strategy of code or dialect switching to wholesale modality shift from spoken to signed communication. CAT describes how messages given with "addressee focus" and "audience design," (Coupland & Giles, 1988, p. 177) can achieve "speech convergence...[as] dissimilarities between interlocutors' speech styles or codes come to be reduced" (p. 176) through imitating register, prosody, and nonverbal signals originated by the other. Ad-hoc adaptation is an especially common feature of working with DPs lacking formal language; Neuman Solow (1988) advises in courtroom practice, to "[c]onstantly monitor the vocabulary of the deaf client and use signs and gestures he or she introduces" (p. 21). By mindfully adopting the mannerisms and mirroring the language and discourse structure of deaf people, "listener adaptive" (Coupland & Giles, 1991, p. 8) hearing signers can form a reliable intersection to the Hearing world.

Such CAT dynamics are amply evidenced in historical interpreters' interactions, both as an actor in working with the DP, and as a listener during exchanges regarding "courtroom formulae" (Gibbons, 1999, p. 163) and other matters of protocol with clerks and judges recording and overseeing the proceedings. Though not applying CAT in the customary way to gain social approval, these principles of "using existing knowledge…to accommodate communication behaviors toward members of a particular group" (Ryan, Bajorek, Beaman, & Anas, 2005, p. 122) map neatly onto sign language interpreter pedagogy. CAT orients students to aim for convergence during "dialogic encounters" (Llewellen-Jones & Lee, 2014, p. 10) and

adapt production of signed target messages to the DP's preference or spoken renditions into English equivalents of what DPs might produce if they were hearing speakers.

Another evolving body of work suggests grafting CAT into disability studies to form interability communication theory. Fox and Giles (1996) analyzed able-bodied persons' reactions to problematic encounters, with an "emancipating" (p. 287) activist stance to change future behaviors. These authors select from among "social identity theory (SIT), communication accommodation theory (CAT), and intergroup contact theory (IGCT)" toward an "understanding of the communication occurring within, and the consequence of, interability situations" (Fox, Giles, Orbe, & Bourhis, 2000, p. 204–205). The same article develops and dissects many interpersonal, group, and cultural approaches, and re-constitutes a "complex yet increasingly complete" (p. 218) synthesis to address many inadequacies in individual frameworks applied elsewhere to disability. While the concepts of interability communication deserve mention, and could broaden the analysis of early interpreted encounters between deaf and hearing people, this theory's evaluative stance will not be featured in this study.

Mindess (2006) effectively applies sign language interpreting to the foundation laid in Hall (1976), that ranked cultures along a high-context (HC) to low-context (LC) communication continuum, depending upon "how much information must be made explicit in a given culture compared with how much is already understood implicitly because of shared experience" (Mindess, 2006, p. 46). Hall (1976) observes, "HC transactions feature preprogrammed information that is in the receiver and in the setting, with only minimal information in the transmitted message…If this programming does not take place, the communication is incomplete" (p. 101). This leads to the myth that signs are shorthand of spoken tongues. In many cases, economy of expression can actually be traced to many linguistic features such as classifier

predicates, temporal markers, pronominalization, and most importantly, an implied understanding of the Deaf-world-view.

This divide between non-signers and DPs is exaggerated in legal settings, which Hall (1976) deems the "epitome of low-context systems" where lay English speakers find courtroom discourse too specialized, rhetorical, and "set apart from real life" (p. 107). Questions structured to force yes–no responses, and strictures barring opinion and hearsay create an artificially-bounded communicative atmosphere, where "only established facts, stripped of all contexting background data, are admissible as evidence" (p. 107). This rhetorical disparity is widened for many DPs, for whom Mindess (2006) extends Hall's labels as members of a high-context and collectivist community, valuing shared experiences. Between this extreme and low-context individualist mainstream American culture, the legal interpreter must traverse a double distance.

This general linguistic and cultural incompatibility outside of the courtroom may be a more recent phenomenon after deaf children and educated adults settled into communities surrounding specialized schools beginning in the eighteenth century (Parks, 2007). This migration "rearranged the geography of deaf communities in the United States" out from isolated individuals and small clusters (Padden, 2005, p. 510) within spoken-language society. As hearing people lost regular access to Hall's necessary pre-programming, deaf norms diverted away from the mainstream. As mimetic social behaviors and unambiguous movements matured and ceded to increasingly conventionalized vocabulary, signers required mastery in the specific patterns to decode the communication (Frishberg, 1975). What had formerly been mutually intelligible gestures were abstracted and reduced over time to discreet lexical signs (Marsh, 1864).

One example is depicted in Lane's (1984) seminal history of deaf education. A biographical portrait of the teacher Jean Massieu, the first deaf giant in education and an early

advocate of signed instruction, offers the perfect laboratory to isolate the phenomenon of contextual programming (Hall, 1976). Massieu was born into a family with five other deaf children besides himself, where he mastered a gestural "familylect," but was not exposed to a written form of spoken language until he was nearly fourteen (see Lane, 1984), reporting "[s]trangers did not understand us when we expressed our ideas with signs, but neighbors did" (p. 19). Such bi-modal and well-programmed hearing neighbors of multi-sibling deaf families such as the Massieu children may have functioned as early interpreters.

Even a deaf child isolated within a hearing family can develop his gestural language with willing and creative interlocutors. Before entering school at age ten, Melville Ballard had such fellows in communication. In his case, they were the family members who typically show greater interest—his mother and those siblings born closest to him. On one occasion, his brother interpreted a newspaper article to him; the plot was particularly given to pantomime, and recounted the accidental death of a careless hunter by his own gun. At this, Melville "understands the story perfectly, and soon after tries to make it known by signs to the boys of the neighboring school, but without success" (Porter, 1881, p. 114). Once again, the Ballards' nuanced gestural system was sufficiently impenetrable to his untaught peers. These playmates were certainly familiar enough that Melville felt the spark of camaraderie to include them in a bit of fun gossip, but perhaps the boyish play at the core of their relationship had required little interpersonal communication.

The initiated listener to deaf people has not always been a relative. In 1666, Samuel Pepys recorded that a young deaf servant of his friend was "mightily acquainted" with well-known Londoners with whom he discussed current events. The diarist noted how "he made strange signs of the [Great] fire [of London], and how the King was abroad, and many things

they understood, but I could not, which I wondering at, and discoursing with Downing about…" This seventeenth-century deaf man had no access to formal education, but obviously signed a more complex system than charades, as he was intelligible to hearing people who held regular exchanges with him, but not to a stranger. Downing assured Pepys as such, chiding, with "only a little use, and you will understand him, and make him understand you with as much ease as may be" (Wheatley, 1893, para. 1). Pepys pressed Downing to interpret some instructions to the servant,[1] which were immediately dispatched; this unnamed man did exactly as he was asked, then returned to make a report which was again interpreted and corroborated.

As Pettingell (1875) also believed, the matured sign language of his day was "founded in natural pantomime, but when elaborated and systematized for the more precise expression of ideas, it becomes a conventional language and is unintelligible to those who have not learned it" (p. 4). Haviland (2013) presents a careful and well-documented account of such a nascent language in progress. Applying Gumperz' (1962) view of "multilingual speech communities" (Haviland, 2013, p. 160), he presents a small but linguistically complex first-generation signing group formed by three deaf siblings isolated from any formal education or outside deaf peers, and their hearing relatives who have acquired an aptitude in their signing system. Two hearing women raised in an environment rich in this familylect emerge as confident "interlocutors and translators" (p. 163), with occasional misunderstandings.

Roy (2000) declared, "Any theory of interpreting must include describing and accounting for the role of the interpreter" (p. 121). From industry-wide required readings (Registry of Interpreters for the Deaf, 2011), she cites Frishberg (1986) who for generations of interpreter

[1] In 1771, the London Central Criminal Court recorded another deaf servant's unnamed former employer acting as "sworn interpreter, who explained to him the nature of his indictment by signs" (See *Old Bailey Proceedings Online*, Trial of James Saytuss).

candidates, fostered the notion of a bilingual "communication cop" directing "timing and the rhythm and the pause sequencing and the languages" (p. 104). This sense of acting as regulator exceeds merely transmitting the message from source to target language. One type of more complex mediation is described by Goffman (1981) as unpacking "what is said (locutionary effect), what is *usually* meant by this (standard illocutionary force) and what is in fact meant on that particular occasion" (p. 65), which can occur in either direction between English and ASL.

Roy (2000) also troubles the taboo of addressing the interpreter directly, and advocates for a more liberal and "realistic" (p. 106) portrayal of a tempered interactivity with the primary participants. She seeks to reconcile the hypothetical and "idealized norms" (p. 105) of an absented, unbiased messenger with the practical, living reality. The interpreting field still pardons instead of predicts a measure of "participant alignment" in the interpreter role which "does not conform to the ideology" (p. 111). Metzger (1999) also recognized that "[r]ecent sociolinguistic analyses of interpreted interactions indicate that the role of interpreters is not as neutral as much of the literature has either assumed or prescribed" (p. 4). Her study of recorded events confirmed that unvarnished neutrality is impossible, but adds that most interpreters do not intend any harm when acting along the continuum from conduit to mediator. If in general, "what interpreters struggle with is how to explain this activity best" (Roy, 2000, 104), this study will significantly contribute to understanding the bases for this bifurcated sensibility which has come to be embedded in the interpreter role, and enrich the discussion in modern praxis.

The foregoing sections have introduced the interdisciplinary theme of a legal pedigree for sign language interpreting in the Anglo–American judicial system, and posed a two-fold enquiry, namely: 1) the path for interpreters prior to organized institutions for deaf people and 2) how legal developments created the role of sign language interpreter. These questions will be

explored from a theoretical perspective assembled from facets of symbolic interactionism/listening, communication accommodation, and intercultural communication.

The balance of this paper will be structured as follows: Chapter two will review literature from the canon of Deaf studies, with particular attention to historical and legal strains. Selected sources covering sign language interpreting which trace relatively recent developments in generalist practice and legal specialization will be followed by references to accommodating signing DPs from the vantage point of disability law. Chapter three gives a snapshot of the data (Leahy, 2014) and a sketch of the evidentiary arc they reveal. The scope and organization of time frame, types of sources, and methods of gathering and prioritizing material are also described. Chapter four builds the discussion of how the interpreter role developed through four legal advances portrayed with sample data, and chapter five culminates with a thorough analysis of the dramatic final steps toward a presently recognizable depiction of effective legal sign language interpreting to serve due process and inform modern practice. Chapter six summarizes this paper, responds to the research questions, and reinforces the conclusions through additional data items. Finally, the possibilities to improve and expand upon this study with future research are outlined and thereafter seeded by hundreds of references in chapter seven.

Chapter 2: Literature Review

Like the theoretical bases of gestural, intercultural and mediated communication, a survey of extant literature supporting the foundations of legal sign language interpreting cuts a broad swath through several intersecting domains. The following analysis will capture the communicators (DPs), the medium (gestural or signed languages), the venue (Anglo–American common law) and of course draw the messenger (interpreter) out of the periphery.

The Deaf Canon

Signed language linguistics and related treatments of Deaf culture are well-traveled subjects in English-language material in particular (Baynton, 1996; Deuchar, 1984; Edwards, 2012; Jackson, 1990; Klima & Bellugi, 1979; Kyle & Woll, 1985; Ladd, 2003; Lane, 1984 and 1992; Lane, Hoffmeister, & Bahan, 1996; Padden & Humphries, 1988; Stokoe, 1960; Sutton-Spence & Woll, 1999; Valli & Lucas, 1992; Van Cleve, 1999). These necessarily approach the topic from a Deaf center. For general academic readers seeking those perspectives, these excellent sources situate deaf signers and sign-conversant hearing people more broadly within their respective time periods. In this setting, these authors are consulted only insofar as they illuminate the path to legal sign language interpreting.

In the groundbreaking *Sign Language Structure: An Outline of the Visual Communication Systems of the American Deaf*, William Stokoe (1960) inaugurated the modern conception of the Deaf community as a sociolinguistic minority by proving that signing indeed met the formal criteria of a language. The opening page of that seminal announcement recognized not only what would come to be called American Sign Language, but that deaf signers shared features of their language among their "hearing partners in communication," who also conversed "in different ways from the normal communication of the culture" (p. 7).

Pioneer educator and interpreter Harvey Peet benefited from his lifetime of experience among a newly-established American Deaf community. His legacy was furthered through the work of his son and granddaughter who shared his perspective, and magnified his commitment through their own similar careers and dual roles of educator/interpreters. The elder Peet (1855) recognized the familiar process of ad-hoc communication between hearing laypeople and the isolated deaf person, who begins to reach out:

> …at first from instinct, and then from design, to make a language of his own…of gestures. This language he endeavors to teach to those around him; and greatly is the shadow resting on his earlier years lightened, if he can find companions ready in perception, gifted in mimicry, and kind in heart, who will learn his language, aid him to develop and improve it, and put it to such use as shall afford him some share of social enjoyment. (p. 5)

Peet may be overly sentimental here; at the risk of fetishizing signed language as so many hearing acolytes do, Pym (1998) considers the kind of "operational fiction" in this depiction useful, as "a story that can help us think critically about other stories" (p. 177), or in this case, early interactions between deaf and hearing people that produced the first proto-interpreters.

Deaf legal studies. John R. Burnet (1853a) was the first deaf person who publicly sought to examine the legal liabilities of DPs, and recognized that regardless of standing statute, "the rule of the law would be to employ a sworn interpreter, familiar with their modes of communication" (Burnet, 1853b, p. 196). Perhaps in response, Peet's (1856) survey of Eastern, Western, ancient, medieval, and early modern history provides the main point of departure for any analysis of deaf parties under the law through the mid-nineteenth century. Gaw (1907) updated the foundation Peet laid fifty years previous, and improved the organization of evidence

with a comparison to civil law. Unfortunately, he includes personal observations and reported anecdotes which are interesting and supportive of his points, but with missing and incorrect citations, it is difficult for a modern researcher to corroborate his claims. King (1996) offers an underused and artful revision of the often-repeated and unexamined references in Peet (1856) and Gaw (1907). In particular, she rejects derivative texts and relies on primary materials to rehabilitate the argument that Augustine in particular had a negative view of deaf people, which was also observed by Ladd (2003). Peet's son carried on his father's work, and emphasized the necessity of an interpreter as the main thrust of his concluding appeal for the access of DPs to a Hearing legal system:

> To save time and meet all the contingencies to which allusion has been made, it is preferable, as it is usual, to have an interpreter swom as to his own competency to communicate by means of signs and the manual alphabet and placed under the obligation of an oath to render faithful service, who shall transmit all direct questions and answers, and also keep the deaf-mute party to the action informed of every thing that is said in his presence. (Peet, 1888, p. 50)

Macy (1948) annotated best practices and precedents with DPs, confining most of the discussion to the usual notable cases which admitted the services of interpreters. It cites clear authority to do so for DPs and other "inarticulate witnesses" such as people with speech disabilities, who do not access written or spoken English, stating that "[a]lthough the statute of a state pertaining to interpreters may contemplate only persons who speak foreign languages, the inherent power of the court will enable it to appoint one for a deaf mute" (p. 939).

One hundred years ago, the sociologist Best boldly stated "the sole special consideration" to communicate with DPs in legal matters was "the procurement of interpreters to act for them

on proper occasions" (Best, 1914, p. 74). He believed this "true view in regard to the deaf" to be accommodated through "the employment of interpreters" was firmly supported by "the ordinary rules of the court, as well as to the good sense and justice" of those in authority (Best, 1914, p. 315). The commercial tone of a respected and paid service is significant, given the pre-professional atmosphere of the field to be explored in the next section. Best (1943) updated his study in the mid-twentieth century, and expanded his progressive ideas. He applauded state laws for DPs in legal, mental health and other social institutions, but again qualified such "express authorization of the use of duly qualified interpreters" as statutory icing on the cake. Sufficiently moved by the current of existing best practices, "such special enactment is hardly necessary, the courts in general being quite willing of their own accord and of their own initiative to bring in suitable persons capable of properly communicating with the deaf" (1943, p. 304).

A few decades later, the late deaf attorney Lowell Myers gave a nod to the same historical developments, and his "first book on the subject of law as it applies to the deaf" (Myers, 1967, p. vii) was recommended as a primary text for interpreters' legal specialization training (Galloway, 1970). In describing the best practices available in his day to train professionals working with DPs, the sections advising specifically on interpreter protocols include how to locate a provider and determine skill level; principles of confidentiality and impartiality; the form of the voir dire and oath; accuracy and errors in the target language; team interpreting with deaf intermediaries; and the particular importance at criminal and commitment cases which capably cover the period since Gaw (1907).

In the above surveys, as well as narratives featuring DPs published more recently in Jackson (2000, 2007) and Leonard and Jones (2012), interpreters are occasionally mentioned, but without in-depth analysis to position the interpreter at the center of inquiry. Tuck (2010) declares

the interpreter is a "relatively new fixture in American courts" (p. 906), but data reveal sworn sign language interpreters used in legal matters since the early nineteenth century. British appearances begin in the mid-eighteenth century, after oblique mentions in medieval and early modern rhetoric had been hinting toward sign language interpreting from even earlier. Albert Pimentel, a deaf man and the first executive director of the Registry of Interpreters for the Deaf (RID), echoed the received legend that the interpreting field began as a recent avocation of hearing people connected with educational systems for deaf children (Pimentel, 1973).

Table 1.

First Schools for the Deaf within Anglo–American/Irish Jurisdictions

Location	Scope	Year
Edinburgh	Private	1760
London	Private	1783
Edinburgh	Public	1799
London	Public	1792
Ireland	Protestant	1816
America	Public	1817
Belfast	Public	1836
Ireland	Catholic (Girls)	1846
Wales	Public	1847
Ireland	Catholic (Boys)	1856

(Volta Bureau, 1902)

Milestones in the growth of specialized schools for deaf children (see Table 1) are significant to the story of interpreting. Whether or not a particular DP had the benefit of instruction and exposure to a signing peer group shaped their hearing associates' exposure to different varieties of signing, and complicated the interpreter's task of accommodating them all. Baynton (1993) outlines the late-nineteenth-century campaign against signed languages in deaf education, and children were thereafter systematically forbidden any manual-gestural

communication method. As politics and pedagogy became increasingly intertwined, interpreting progress was conflated with a period of decline in the encouragement of signed languages for deaf people of all ages (Caldwell, 1911; Ladd, 2003). On September 7, 1880, the International Congress on the Education of the Deaf ruled in a 160 to 4 vote of acclamation for the "incontestable superiority of speech over signs" (Kinsey, 1880, p. 19–20). Therefore, a straightforward study of the foundations of legal sign language interpreting is well-circumscribed by an endpoint of that year.

Sign Language Interpreting

Generalist practice. After the late eighteenth century in Britain, and the early nineteenth century in the United States (Volta Bureau, 1902), the majority of non-relative interpreters were hearing faculty and administrators of residential schools. These interpreters were pressed into volunteer service largely to accommodate the students, graduates, staff and faculty from their communities at events outside of the bilingual school environment (Caldwell, 1911; Convention of American Instructors of the Deaf and Dumb, 1850, 1870; Peet,1888). However, the assumption that "the story of interpreting begins with the introduction of the language of signs to the public education system" (Frishberg, 1986, p. 10) in 1817 does not take into account the legal developments to be covered in chapters four and five.

In the United States, the second wave of sign language interpreting for largely educated and culturally deaf people was formally organized in the mid-twentieth century, and any examination of the interpreter's work generally begins thereafter. Frishberg (1986) rightly summarizes the problem of locating hearing bilinguals who serve this function in Deaf studies, recognizing that this "historical record does not focus on interpreters, but merely alludes to them by noting that various deaf leaders participated in administrative or policy-making positions in

mixed hearing and deaf groups" (p. 11). With the brief exception of mentioning deaf educator Laurent Clerc as language advisor and proto-interpreter-trainer to Gallaudet on their voyage from Paris to Connecticut, Ball (2007) substantially begins her survey of interpreter education in 1900. Generalist sources wholly ignore the first wave of interpreting, which as this study demonstrates was fueled by the ad-hoc work of family and neighbors of uneducated DPs appearing in courts.

Until the 1960s, most interpreters were what Rudser and Strong (1986) label "pseudo interpreters" (p. 326) and still functioned as such in a secondary role such as "church members or professionals in deaf education. Interpreters were to some extent peripheral members of the community, had a vested interest in its welfare, and often acted out of pure charity" (Mathers, 2006, p. 205). The final ascent to professionalization came about through specialists from related fields lending credence to the task of interpreting because they performed the service. In addition to faculty and school administrators, a common entrée is through relatives, especially among the overwhelmingly hearing (Mitchell & Karchmer, 2004) children born to deaf parents who had courted and married out of the rich social environment of residential education. These hearing bilinguals naturally acquire both signed and spoken language (Cokely, 1980; Cokely 2005; Riekehof, 1976; Wilcox & Wilcox, 1991) with varying degrees of fluency. This pattern of a practical path to interpreting for hearing bilinguals also extended to social service professionals and clergy working with Deaf communities (Adam & Stone, 2011, Best, 1914; Cokely, 1992; Fant, 1990; Solow, 1981; Von Der Lieth, 1978;). However, Schein (1984) cautions that old paradigms of charitable and filial piety outlive their usefulness, and "teachers, religious workers, and children of deaf parents often find a strict interpreter role difficult to maintain" (p. 120).

Since Nowell and Stuckless' 1974 study, there has been a sharp rise of native English speakers and those who took interpreting as a sole and primary role (see also Quigley, Babbini

Brasel, & Montanelli, 1973; Cokely, 1982; Riekehof, 1976; Stauffer, Burch, & Boone, 1999). Cokely (2005) offers a superb analysis of these twentieth-century shifts in the professional posture of sign language interpreters in the United States, but confines his well-supported argument to the relatively recent past. His promise of "historic footing" may overreach with the claim that "the roots of the practice of sign language interpreting/transliterating lie squarely within the aegis of Deaf Communities" (p. 3). Though intended perhaps as a lighthearted opener, Humphrey and Alcorn (1996) at least broaden the discussion with the observation that before such communities existed,

> Sign Language interpreters have probably been around since the first deaf/signing cave person needed desperately to communicate something of substance to a hearing/speaking cave person. They probably grabbed a family member who could hear, talk and sign to serve as an intermediary. (p. 91)

The exhaustive work of Adler (1969) enumerates the explosion of interpreter recruitment and training efforts which spread throughout the United States beginning in the 1960s. The employment and education of interpreters and their deaf clients are intertwined; the legitimization of the service largely grew out of Public Law 89-333 (1965), which amended the vocational rehabilitation statute authorizing state agencies to train deaf people for work (Adler, 1969, p. 7). With Public Law 94-142 (1974) and the Rehabilitation Act (1973; amended 1978), the increased demand for educational access toward increased work readiness created a federally-subsidized supply chain with American Sign Language (ASL) and interpreter preparation classes (Riekehof, 1976), which fueled the burgeoning academic interest (Babbini, 1969; Brasel & Shipman, 1969; Chatoff, 1976; Flathouse, 1967; Fleischer, 1975; Humphries, 1977; Hurwitz, 1980; Jones, 1966; Kirchner, 1969; Kirchner, 1970; Lloyd, 1974; Pimentel, 1973;

Quigley, 1965; Quigley, Babbini Brasel, & Montanelli, 1973; Riekehof, 1976; Smith, 1964; Smith & Peterson, 1966; Taylor, 1965).

During this time of transition, Adler was hopeful that "[i]nterpreting for deaf people, a long unrecognized art, is receiving deserved research attention. The eventual status of interpreting as a professional calling will be very helpful to deaf people who need this service" (Adler, 1969, p. 11). By 1974, the conditions had shifted little, and she noted that "[i]nterperters are relatively scarce, and those who are available are largely self-taught" (Adler, 1974, p. 228), and "most interpreters for deaf people have no formal preparation for their demanding work" (p. 234). Nowell and Stuckless (1974) recognized that the growing volume of requests for services could not be met solely by those who merely "learned to interpret through experience, and have not benefited from structured training programs" (p. 69). Federal grants to a consortium of post-secondary institutions sought to replicate "short-term training to develop interpreters from persons without prior knowledge of sign language…in a major attempt to make a substantial addition to the body of qualified interpreters and bring an end to [the] long-standing critical shortage" (Adler, 1974, p. 228).

What began as ad-hoc volunteerism and social services have matured into a bona fide profession today, with the attendant industries of ASL instruction, interpreter preparation, for-profit video-based services and in-person booking agencies. Over the decades, research on sign language interpreting has been framed in terms of current fashions: social work, a cybernetic conduit model, translation theory, sociolinguistics, bilingual-bicultural mediation, demand-control occupational psychology, and currently power dynamics (Llewellyn-Jones & Lee, 2014; Mindess, 2006; Monikowski & Winston, 2003; Stewart, Schein, & Cartwright, 1998).

Because the rapid development of sign language interpreting is accessible within the lived experience of contemporary practitioners, educators, and other thought leaders who witnessed the transition to professionalization, these and many other derivative sources not mentioned here are often repeated as authorities. Thompson (2000) noted that research agendas of the respective domains of communication and disability tend to be closely linked to personal experience—this aptly describes the roots of sign language interpreting, which began the conversation at the confluence of both streams of discourse. Most historical observations in the field echo anecdotes and memoir of some of the foundational authors presented above, and occasionally over-generalize received oral folklore as unquestioned fact.

Legal interpreting. The first known legal interpreting workshop in the United States was held in July, 1965 (Youngs, 1969). Surprisingly, Youngs introduced concepts most commonly associated with more recent developments in the field: advisory interpreters who monitor and object to the working interpreters' ability, and the use of deaf intermediaries in communicating with a DP who is particularly monolingual in ASL, or perhaps dysfluent in any standard language. While these concepts also appear in the nineteenth-century data (Leahy, 2014), Youngs and the other presenters reference cases only since the early twentieth century.

Caldwell (1911) speaks authoritatively of the turn of the nineteenth to twentieth centuries, confessing the risks unique to the legal setting, such as intent of counsel to "befog" the examination and "conceal the speaker's meaning" (p. 173). He laments the heightened linguistic and social distance between courtroom discourse and the monolingual DP signer through untranslatable and manipulative abstractions in English, and absent referents of time and place which are crucial to build a complete grammatical structure in ASL. For example, with the common topic-comment sentence, "the most satisfactory plan to follow is first to make a

statement and then inquire if it is true," chancing "leading questions" (p. 174). Davidson, Kovacevic, Cave, Hart, and Dark (2014) admit the "nature of sign languages can result in interpreters needing to pose questions in a way that provides the client with the answer (p. 7). There are also the pitfalls of translating the subjunctive mood, and laboring to establish the understanding of an imaginary, rhetorical scenario. If opposing counsel discovers that inadvertently or out of desperation a point of fact is introduced, the interpreter risks an objection in "immediate and vociferous protest." In the end, the best outcome could be permission for a more liberal translation from the bench, if "the judge 'instructs' the sign-maker to 'put the question plainly'" (Caldwell, 1911, p. 174). In over one hundred years, truly little has changed.

By 1966, a dictionary of English idioms was specifically crafted for deaf people (Boatner & Gates, 1966), and that same year another project imitated the format, with a brief glossary of common legal terms intended for a deaf audience (White, 1966). A similar list of suggested translations as well as draft language for both the interpreter and witness oath appeared in Youngs (1969).

On April 1, 1967, San Fernando Valley State College—now California State University at Northridge—convened "judges, attorneys, interpreters, police officers and deaf persons in an exploratory study of the need for and problems faced by interpreters in the legal setting" (Leibert, 1967). Judge Joseph Pernick, who himself had deaf parents and signed from an early age, claimed that due process could only be served by a capable interpreter, but conceded there were "very, very few interpreters that are qualified today" (Leibert, 1967, p. 30). Once again, the discussion addressed a need for protocols for challenging the work of a courtroom interpreter, and the use of deaf intermediaries with language-deprived or non-standard signing DPs. Jonas (1970) offered practical guidance for the conditions of his time, including best practices for

acting as a "necessary piece of machinery" with a "double responsibility" (p. 29) toward the court and the DP. These sources communicate the novelty, difficulty and solemnity of the role, but none seeks to explain the pedigree of the courtroom interpreter, who by 1973 included sixty percent of all active practitioners (Quigley, Babbini Brasel, & Montanelli, 1973).

The preponderance of contemporary sources for interpreters focus on diagnostics and skill building for the legal practitioner (e.g., Mathers, 2006, 2012; Russell, 2000; Russell & Hale, 2008, Shlesinger & Pöchhacker, 2010), but neglect the foundation of the role. Monikowski and Winston (2003) lists the various pedagogical approaches, and chart the credentialing and evaluation of prospective practitioners, sign language instructors, and interpreter educators. In highlighting relevant research on praxis, they lament a lack of academic excellence, and recognize the need to appropriate the work of spoken language theorists.

From a longitudinal perspective, Morris (1999) recognized the rise of sign language interpreting in the late eighteenth century, and draws fruitful parallels to spoken languages. The simplistic taxonomies of Old Bailey cases in Stone and Woll (2008), are developed somewhat in Woll and Stone (2013), which occasionally shifts focus to the interpreters through plot summary, tabulation of instances and characteristics of cases. They offer more a careful exposition and supporting discussion for Martha Ruston, whose work with a deaf witness is recorded in greatest detail (and will be further developed in chapter five). Adam and Stone (2011) retreat from earlier assumptions to qualify that the London Central Criminal Court was among "the first *systematic* institutional instances of sign language interpreting is in the courts in England" during the eighteenth and nineteenth centuries (p. 231). However, sources persist which mine one publicly available online database from a single venue, and suggest origination claims for legal interpreting that overlook earlier cases in other courtrooms (e.g., Stone, 2010).

More recently, the interpreter role has been elevated into statute; Daynes (1968) cites the unfolding of eight state laws specific to DPs which originated from 1894 to 1966. These required an interpreter for a range of matters including some with language mandating the service for all DPs, but reference no previous statutory authority or precedents from case law. Jones (1971) cites a similar survey by Judge Joseph Pernick, with conflicting results that claim "providing with an interpreter for a deaf person is discretionary with the court in forty-nine states" (p. 2). Mathers (2006) provides a nuanced account of the legal right to an interpreter. While recognizing the "current climate of providing access to judicial proceedings is a far cry better than in the days when deaf people were considered incompetent" (p. 34), her focus remains contemporary best practice. She details the competing views of accommodating DPs as a class of people with disabilities, versus categorizing them with non-English speakers, and includes laws with national reach, such as the Federal Court Interpreters Act (1978) and Americans with Disabilities Act of 1990. Even after the ADA, Smith (1994) agreed with Best (1943) and Burnet (1853a) to hold that the mandate for sign language interpreters in U.S. legal venues is broader than individual statutes. The established rights to be present, confront accusers, assist in defense and receive effective counsel conclude that justification specific to signing DPs "would not be needed since the right is already guaranteed" by the Constitution (p. 125).

The pivot point for texts that reference sign language interpreting is Swinburne's *A Treatise on Spousals, or Matrimonial Contracts*, which appeared in 1686. The only Englishman who was a traditional canonical jurist, and the first such scholar to publish commentary in English (Derrett, 1973), Swinburne is widely cited by later authors covering the topic of deaf parties under the law (e.g., Gaw, 1907; Peet, 1856; Wharton & Stillé, 1860), but there is no known attention to his implications of a "third person uttering the words" (Swinburne,

1686/2002, p. 206) of a signed vow. The unfinished work on marriage law was published posthumously, so the adjusted origination should be assumed shortly before 1624, the date of his death. This offers the earliest references yet found to an interpreter with signing deaf parties in a legal/ecclesiastical context, and will be further treated in chapter five.

Since 1998, RID has offered a specialist exam for practice in legal settings (Registry of Interpreters for the Deaf, 2014b, para. 1).The preliminary written legal specialist certification test covers "[l]aws regulating the right to an interpreter in the federal, state, and local judicial systems" and the "[r]oles and responsibilities of judicial personnel (e.g., interpreter…" (Registry of Interpreters for the Deaf, n.d., Legal written test). The scope of assessment is confined to practical skills, contemporary best practices and relevant laws, so does not cover the legal basis for the role as laid out in chapters four and five of this paper.

Disability Law

Historically, pleading before a legal authority was a ritual encounter requiring direct, verbal responses (Forbes, 1730). An interactive arrangement, which relies on hearing and speech necessarily creates a barrier for the DP, who as it will be shown, may even be misidentified with a cognitive or psychiatric condition. Highmore (1822) made a thoroughgoing review of these past doctrines related to DPs and interpreters, and charted progress gained in the U.K. and U.S. He assured a new direction in legal philosophy in hopes that "the observation suggested… relative to this disability, which is now better understood not to be an affection of mind may, it is presumed, be sufficient to correct this doctrine" (p. 92). After Goffman (1963), Braithwaite and Thompson (2000) observe that any perceived disability "is a negatively valenced characteristic" (p. 2) in any communication situation. This can be an especially tenuous position for a DP as witness in the justice system which hinges on a speaker's orality, mental capability and

believability. Braithwaite and Thompson (2000) comment further on the general social reality of people with disabilities:

> It is seen as a limitation and is defined as stigmatizing. Because of one characteristic, everything about how that individual is seen changes, and in a rather negative fashion. The negative valence spreads, and the individual is also seen as less competent in other ways. (p. 2)

As Anglo–American jurisprudence increasingly favored a posture of participation and equal rights, deaf parties were seen less as a threat to the procedural status quo and more as part of the citizenry, due in large part to the services of sign language interpreters.

Before Lord Matthew Hale died in 1676, his respect for due process took priority over a slavish adherence to historical authorities (e.g., Bracton, 1878, Justinian, 1911). He rehearses the ancient standard for legal competence—namely that the law presumes the deaf party to be an idiot, or incompetent—and expands the rationale to be "because he hath no possibility to understand what is forbidden by law to be done, or under what penalties" (Hale, 1778, p. 34). Hale deftly applies this revised assumption to allow that "if it can appear, that he hath the use of understanding, which many of that condition discover by signs to a very great measure, then he may be tried, and suffer judgment and execution, though great caution is to be used therein." While not explicitly stated, it would follow that caution would be best exercised through an interpreter, in order for the court to assess the deaf party, and receive their "understanding."

One of the earliest known test cases for interpreters working with deaf defendants did not involve sign language, but an eighty-three year old nobleman who had lost his hearing. On February 11, 1679, Sir Thomas Gascoigne appeared for his treason trial, having received prior permission to bring an intermediary to stand inside the bar and verbally repeat the proceedings to

him. The attorney general announced, “My lord, here is an extraordinary matter: Sir Thomas Gascoigne had a rule for some friend to assist him, by reason of the defect of his hearing…” (Salmon & Emlyn, 1730, p. 3). The transcript shows the chief justices consistently prefacing their statements with “Tell him…” and repeatedly snapping censure and corrections to Hobart, the ad-hoc “interpreter.” At times, he is instructed to simply “tell him the effect of it” (p. 3) in procedural matters, and then told “you skip over the main thing” (p. 11) when witness testimony is too liberally summarized. As the trial progresses, he is ordered, “You need not tell him” (p. 12) about a repeated detail that was testified to much earlier in the proceedings, as a matter of convenience. Hobart is reprimanded for leading the witness, but also allowed to enter his own testimony. The amateurish execution according to improvised protocols presents a credible record, as it resembles sign language interpreter dynamics of unnecessary oversimplifications, omissions, and intrusions upon the source text, which persist as common features today.

McKenzie (2005) gives an excellent description of standing mute, the procedural hurdle “expressed in the First Statute of Westminster in 1275” (p. 283) for distinguishing between defendants who would not or could not speak. Daniel and Resnick (1987) explains that “[b]ecause reverence for the ritual of law made it unthinkable to proceed with the trial unless the defendant pleaded guilty or not guilty, mutism was a critical issue” (p. 303). Before a criminal trial, prisoners were first put before a type of grand jury who determined whether they were feigning deafness as an obstructionist maneuver, or “mute by visitation of God.” The punishment for the former was torture that typically caused death, and there is only one case she cites for miscarriage of justice in the execution of a man who was allegedly legitimately deaf.

Sir William Wilde (father to Oscar Wilde) was a renowned otolaryngologist with a particular sociological interest in deaf lives. He explained the how the procedure still operated during the mid-nineteenth century for DPs accused of a crime:

> When a deaf and dumb prisoner cannot be made to comprehend the nature of the proceedings and the details of the evidence, the usual course is, after the jury have found him "mute by the visitation of God," to re-impannel the jury, to inquire whether he is able to plead to the indictment: and if [so], then they are re-sworn again to inquire if the prisoner be sane or not; and if the jury find him insane, the judge will order him to be confined... (Wilde, 1854, p. 64)

For those DPs deemed sane, but educationally deficient and therefore unable to knowingly plead, the common law did not allow trials to proceed; throughout the data, judges variously opt to release an incompetent prisoner, or commit them. Wilde (1854) saw the latter not as oppressive sentencing in lieu of due process, but more hopefully, "as, peradventure, he may at some future period be made to understand the nature of the charge" and be tried fairly, "so as to make a proper defence" (p. 64) under the same principles of law that any defendant might be tried.

Ward (2012) extends the discussion by examining commonly cited cases subject to this test, and how sign language interpreters could legitimate the participation of DPs, recognizing these proceedings "raise important questions about the nature of the trial as a communicative process" (p. 16). After the Criminal Lunatics Act of 1800 (officially An Act for the Safe Custody of Insane Persons charged with Offences, 39 & 40 Geo 3 c 94), the fitness of deaf defendants to plead was further verified under a "statutory system for detaining those who could not be tried" due to mental incompetence (Ward, 2012, p. 13). The judgment "'mute by visitation from God' initially included the literally deaf and mute, but over time was expanded to include the

'lunatic'" (Melton, Petrila, Poythress, & Slobogin, 2007, p. 126). Presented with a DP of limited education and signing fluency, the stakes for interpreters were heightened. While a court could not uphold due process to convict a DP who was unable to communicate, defendants without an adequate accommodation could be deemed unfit or legally insane, and institutionalized "to abide his Majesty's Pleasure" (Great Britain, 1800) indefinitely.

This extensive review of the literature on Deaf historical and legal studies, examined alongside sign language interpreting in legal and generalist contexts, reveals no foundational treatment of the interpreter role prior to the twentieth century. While Deaf historians are masterfully and continuously enriching that corner of academia, the interpreter role is understandably perceived to be an unnecessary focus. Disability studies emphasizes the experiences of pupils, inmates, and patients, from available records, neglecting other public spheres, such as courtroom appearances (Turner, 2012). Similarly, Deaf studies tends to confine the discussion to social and political arguments surrounding educational struggles of the last two hundred years, with less attention to other sectors of society where deaf people participated. The institutional memory of the interpreting profession relies heavily on a lived historical approach, which exhausts the pool of possible informants before penetrating the nineteenth century. Lastly, no legal commentary describing protocols for interacting with DPs either as persons with a disability or signed language users offers the underlying bases justifying when and why interpreters are included. Chapters four and five will unite all the above domains for the first accurate and complete picture of the legal pedigree for sign language interpreting at common law. Samples taken from the data will illustrate the component steps in the argument for how the sign language interpreter role came to be a matter of legal, not social or charitable enterprise.

Chapter 3: Method

To begin a proper corpus, further these questions and launch the work of other researchers, the tremendous task of gathering primary data must be done to form initial hypotheses and guide next steps. The research questions will be answered through qualitative analysis of a database begun at Southern Utah University during the summer 2014 term in COMM 6850, Individual Graduate Research. Dr. Lindsey Harvell was the faculty advisor, and among the final deliverables was a 139-page spreadsheet described below.

Relevant sources begin with the legal principles outlined in Judeo-Christian law, which were subsumed into Canon Law. Papal decretals from Innocent III upheld by Gregory IX, and patristic commentary from recognized authorities such as Peter Lombard guided Canon lawyers for centuries. Secular Roman codes of Justinian were a major influence on foundational medieval jurists' reference texts and legal analyses. Tribal and imperial rule within what would become the United Kingdom led to Crown law under Edward I, where the first unifying statutes of England, Scotland and Wales indirectly impacted the interpreter role. Finally, common law systems created oblique mentions in pre-Revolutionary colonial statutes in America, and a body of case law in Anglo–American courts. Recalling Table 1, education for deaf children within the Anglophone world launched from Scotland, and over the next century spread throughout the Commonwealth countries. This study assumes that even with distinct justice systems and sometimes adversarial political atmospheres (Wallace, 1845), there was ample exchange among Great Britain, Ireland, the American Colonies and eventually United States with regard to solutions to accommodate DPs in legal settings.

In this environment, a precedent in one country was often considered as a solution when similar circumstances arose elsewhere. Beginning in the seventeenth century, a surge of

advocacy texts regarding the status of deaf people in general appeared, and the evidence moves from rhetoric to lived cases. These are available through reported proceedings in periodicals and digested reports, penal files, and eventually formal articles in the legal and popular press in all of the jurisdictions for the next several centuries. Where possible, vital, sacramental, governmental records, and mentions in periodicals of the subjects' lives contextualizes and situates their experiences within a larger social framework.

Relevant repositories included governmental archives at the United States federal, state and municipal levels, and British and Irish national, county and municipal levels. Working in the Library of Congress, as well as the Church of Jesus Christ of Latter-day Saints' Family History Library allowed tremendous coverage within the vast holdings. Carefully-crafted search terms produced results in both public and subscription electronic and online databases such as Westlaw, LexisNexis, *HeinOnline*, *JSTOR*, *GoogleBooks*, *EBSCOHost*, *ProQuest*, the Library of Congress' *Chronicling America*, the *British Newspaper Archive* and *Newspaper Archive*, newspapers.com, the U.S. Department of Education *Education Resources Information Center (ERIC)*, Ancestry.com, the *Internet Archive*, and *Proceedings of the Old Bailey, 1674–1913*. Dozens of other websites generated leads, and physical records proved no less productive from special collections at Utah's Sanderson Community Center of the Deaf and Hard of Hearing, Catholic University's Canon Law collection, and law libraries of Georgetown and Brigham Young Universities, and the University of Utah. The Gallaudet University Deaf Vertical Files, Deaf Stacks, and Deaf Archives supplied a perspective nowhere else available. Lastly, other university digital collections such as Princeton's *American Libraries to 1876*, Bodleian *Library of Early Journals*, The University of Houston's *Anglo–American Legal Tradition*, and Emory's *Early American Documents* allowed access to rare and fragile documents.

Data

Within the sources mentioned above, and in chapters one and two of this paper, many interpreters have been merely grazed past, or entirely overlooked. Re-orienting the foundational texts of the Deaf canon and related legal analyses away from the DP and toward the interpreter's standpoint culls abundant data from known cases, and uncovers rich new examples. Where possible, the "echo chamber" effect of perpetually recycled secondary material is resolved with greater attention to primary and contemporaneous citations. A credible narrative of the forensic and sociolinguistic progression of the role of sign language interpreters emerges, though at times through indirect strikes at the largely unwritten record of ad-hoc signed communication before such languages were standardized or transcribed.

Pöchhacker (2011) observed that "data typically encountered in interpreting research are of the non-numerical kind" (p. 14), and "interpreting studies could therefore be characterized as an empirical-interpretive discipline" (p. 15). A quantitative organization may not be soundly descriptive, since there is no way to ensure the collection is representative, much less complete. Greater or fewer items in one time period, category, or region are too dependent upon search arguments in various spelling and usages, and which documents are accessible, digitized, or even still extant. Some items have several corresponding entries, e.g., a digested record in a law report or commentary, an original court or prison document, and a news article may cover different perspectives or offer unique details for the same matter.

As more deaf people were educated and participated in society more fully, the numbers of cases involving interpreters rises sharply. With the increased expectation of due process through an interpreter, precedents become standards in later decades, these instances are excerpted into digests and reported in newspapers with decreased regularity, and fewer novel

cases appear. There is lighter attention given to many cases in Irish jurisdictions, anticipating Leonard (2015) to include those interpreters within the context of Irish institutions. As the database grows over time, more attention to quantity and completeness will doubtless reverse the trend. Nevertheless, a thematic arc is gathering which will be expounded in the next chapter.

Table 2.

Abstract of Data

Major Divisions	Items
Pre-1700	72
1700–1760s	41
1770s–1780s	30
1790s–1810s	34
1820s–1830s	41
1840s–1850s	39
1860s–1870s	23
Total	281

With such a substantial time span for these data, a synopsis of the story they reveal is in order. Preliminary broad-brush patterns emerge in the legal and social movements, which originated in England, spread throughout the United Kingdom and colonies, and finally settled in American jurisprudence. Under feudalism, tribal and imperial powers dictated a militaristic social structure: if an army were to be drawn from vassal landholders, it follows that deaf people would be restricted in primogenital inheritances because of an assumed deficit in battle, and their perceived inability to serve the king in this way. With the rise of intellectual ideals during the Norman and late medieval periods, deaf people were marginalized in a social and legal posture of protectionism: if understanding verbal or written communication was seen as impaired, so too were their moral and logical merits. The religious and political leaders who upheld these

stereotypes considered themselves less brutish than the ancients, so Christian pity, and state-sanctioned care became the default course.

As common law principles were debated and distributed through improved scholarship and technology, the judicial system valued the participation of all parties, and with the Enlightenment turned toward an expectation of civil rights (Best, 1914).[2] With that shift, the role of interpreter began to take hold. The seventeenth century brought an explosion in legal and social rhetoric regarding DPs, with the possibility of educating deaf children becoming a proven art in pockets of Europe. In the eighteenth century, methods in deaf education were firmly underway, and evidence of lived cases gathered apace.

By the nineteenth century, interpreting began to resemble modern practice; the data reveal a general repetition in types of interactions, with fewer precedent cases to extract and report in lay periodicals and legal digests. Rather than locating every case manually in thousands of local courts, the entries during the decades approaching 1880 contain only those most representative or best-documented. Lastly, the appearance of second-generation interpreters from families associated with schools and organizations became increasingly common as the twentieth century approached; through these channels, combined with colleagues modeling best practices to new interpreters, the foundations for contemporary protocols were conclusively in place.

[2] Many thanks to Dr. David Million, English legal historian and J. B. Stombock Professor of Law at Washington and Lee University, for confirming these observations (personal communication, June 26, 2014).

Chapter 4: Discussion I: Legal Developments in the Role of Sign Language Interpreter

Prior to the use of sign language interpreters, all deaf parties who could not, or were not permitted to use speech and speechreading or the written word could not access legal matters for themselves or in proceedings concerning other people. The path to a legally-sanctioned role of interpreter for DPs is neither linear, nor chronological. Hogue (1966) grants that "[s]ocial change and legal change are more easily discerned than accounted for, and the process by which legal changes are made" are often unclear, and complicated by "judge-made law" (p. 4). The jurist-driven doctrines of stare decisis and precedent can be untidy—though transactionally it may contradict and double back upon itself, the system eventually achieves net progress. While no clear narrative of causality can be drawn through all successive instances that marked the practice of sign language interpreting, the data define five constituent requirements of the role; these are not discrete or ordered steps, but will be parsed separately for the purposes of analysis. This chapter will cover the first four, namely 1) the presence of a deaf party, 2) with legal agency, 3) who signs, 4) and is represented through an intermediary.

Deaf Party Present

Since antiquity, deaf people have interacted with legal structures. Numerous authors have cited the Judeo-Christian, Roman, and other ancient sources tracking these strands which fed into Western thought (Gaw, 1907; King, 1996; Ladd, 2003; Peet, 1856). For the purposes of this study, the relevant backdrop for common law includes postures of prohibitions from the Welsh king Hywel the Good (880–950 A.D.) with an added protectionism from the Anglo–Saxon king Alfred the Great (849–899 A.D.). These early mentions are neither good nor great for the prospective deaf religious communicant or legal witness. Largely deriving the legal disability of deafness as dictated by Roman law (Harris, 1875), Alfred's fourteenth law extends Christian

justice to full absolution by proxy: “On the deeds of a dumb one—If a man is born dumb or deaf, so that he can not renounce sins nor confess, the priest shall compensate for his misdeeds.” (Thorpe, 1840, p. 32). These were absorbed into the laws of King Henry I (1068–1135 A.D.), LXXVIII § 6 with similar wording and intent (Thorpe, 1840, p. 255).

Roughly contemporaneous decisions by Hywel insisted that a deaf witness could not appear at all:

> Henceforward mention is to be made of further law incumbent to be maintained, instituted by the concurrence of country and lord: the testimony of these persons is of no effect in any case. 1. The first is a bondman. 2. A mute. 3. A deaf person. (Wales & Owen, 1841, p. 595)

According to the above source, Hywel Dda’s order to preserve his decision was carried out, and the proscription was recorded into the twelfth-century Welsh Dimetian Code, Book 3 Chapter II. Though by 1822 nearly a millennium of precedent admitted DPs, a Louisiana law of that year used similar language, expressly stating that people who were “insane, deaf, dumb, or blind” were “incapable of being witnesses” (Griffith, 1822, p. 715–716). The decisions rendered by ancient Irish judges (Kelly, 1988) created a parallel tradition elsewhere in the Celtic world. Wilde (1854) observed that under the oral transactions of pre-Norman “Brehon Law, a deaf mute could not appear in any way in a court of justice” (p. 63) in Ireland.

In other words, persons who cannot hear or speak for themselves were recognized to exist, but participation in the legal process is problematic, due to a perceived insurmountable communication barrier. Linell (1991) posits that any attempt at “accommodation conceptually implies adjustment *to someone and something,* that is, to some perceived communicative attribute of a particular interlocutor (or category of interlocutors)” (p. 126), in this case parties

who do not use speech or hearing to participate in judicial matters. Communication accommodation theory terms a more resistant stance as divergence between speakers, often driven by negative preconceptions, and resulting in non-adaptive and dysfunctional exchanges. As "accommodation is often cognitively mediated by our stereotypes of how socially categorized others" (Giles, Coupland, & Coupland, 1991, p. 16) communicate, it is remains a common reflex of legal and other authorities to treat DPs and their interpreters with responses that range from confusion, to incredulity, and ignorance.

Peet (1856) calls attention to (though inaccurately cites) a felony case between 1352–1353: Brooke (1573) extracted a brief mention of a deaf and mute man sent to prison by the court of Edward III in lieu of a trial ("Corone," no. 216). An earlier English case demonstrated a contrary decision wherein "the fact of deafness or dumbness was an absolute defense to crime, and not merely a ground for pardon" (Woodbridge, 1939, p. 836). On May 26, 1297, representatives of Edward I heard testimony in the case of John Legat, confirming that he killed a man named Robert de Turbervill in Chichester. Oxford Justices Hugh de Braunteston and John Neyrenuyt had the authority to imprison Legat, but the king superseded any guilty verdict with a judgment (British Archives C 66/116 mem. 6; Public Record Office, 1895/2003) that the defendant was "and from birth has been deaf and dumb, and therefore, according to law and the custom of the realm, cannot put himself upon the country" (Boynton, 2003, p. 250). This alleged deaf murderer's name *legat* means delegate, designee, deputy, ambassador, or messenger—and the letter patent of his pardon reinforced the message that the physical difference of DPs was interpreted as a legal disability, and such persons were not universally considered to be officially present in their own affairs of church or state.

The data show that by degrees, common law admitted DPs into principles of family law and its close relative testamentary law, onto property transactions and civil disputes. By the dawn of the eighteenth century, DPs' access in criminal matters began to move toward resolution as well. Early threads appeared in Lambarde (1588) to affirm that in larceny and homicide cases:

> there is no person to bee punished, to whom the law hath denied a will, or minde to do the harme: as…he that is borne both deafe, and dumbe…unlesse it may by some evident token appeare, that he had understanding of good and evill. (p. 234–235)

To overturn the a presumption of lack of volition, a DP had to first demonstrate their capacity to receive and respond to communication within a justice system that operated on principles of both orality and performance—also the companion functions of sign language interpreting.

Deaf Party Has Legal Status, Standing and Agency

The first codification of deaf personhood by way of expressing unspoken consent within Canon law is a result of an unknown parishioner of Archbishop Imbert of Arles, France requesting the marriage sacrament. Such an application assumes both parties undertook mental sensemaking and moral choice within themselves, and the social communication tasks to reach the decision together and approach the archbishop. Charon (1998) categorizes this higher order engagement as self-communication, self-perception, and self-control, whereby the agent learns to perceive, interrelate, and direct the socially-organized self through symbolic interaction with others. In this case, the DP would have received and understood the minded abstractions such as future time and emotional attachment, as well as the practical expectations of monogamy and cooperative group life. Church authorities recognized these criteria had been internally met and interactively communicated, the request was "right," rational and appropriate (Charon, 1998, p. 90) and validated the symbolic indications of sound judgment and earnest intent.

In a papal decretal dated July15, 1198 (Denziger, 1911, p. 177), Pope Innocent III responded, setting forth the results of a discussion among his advisors. The Vatican likely consulted an earlier source, which arrived at a similar double-negative conclusion of not prohibiting a deaf candidate for marriage. *The Catholic Encyclopedia* places the completion of Peter Lombard's *Liber Sententiarum* around 1150 (Ghellinck, para. 5); in this standard Canon reference, Book IV of *The Sentences*, "On the Doctrine of Signs," distinction number 27, § c roughly states "If one feels consent, and not express in words or certain signs, such consent does not effectuate the marriage" (Lombard, 1632).

The same question arose from a parish in Brescia, Italy in 1206. The original Latin from Innocent III was repeated and upheld by the subsequent pope Gregory IX, from whose citation the following translation comes:

> You have rightly asked us by messengers and letter whether the mute and the deaf can be joined in matrimony. We answer Your Fraternity thus concerning this: The law specifies what is prohibited in contracting marriage; thus whoever is not prohibited is consequently permitted. Matrimony requires only the consent of the parties whose union is in question. Thus it seems that, if such persons wish to contract, this cannot and ought not be forbidden, since they can declare by signs what they cannot say with words. (Thompson, 1993, c. 23)

The importance of the original announcement from Innocent III cannot be overstated, especially from a pontiff so situated at the apex of medieval papal, political, financial and military power (Smith, 1947). This decision carries a weight and a finality greater than a secular king could enforce, both in authority and precedent.

Thomas Aquinas reaffirmed the protocol soon thereafter in his masterwork *Summa Theologiæ* (Aquinas, 1867, Quaestio XLV, Articlus II), and it was distributed and solidified as doctrine, even if local practices were still developing. Where Crown law states no precedent, Canon authority is invariably consulted, and three important points can be distilled from this endorsement. First, the absence of direct prohibition will carry the same de facto force as permission, or approved practice for deaf people to appear before a legal representative. Second, deaf parties may give consent and participate in the oath—indeed, they ought not be barred. The third point, that signs are a valid medium for enacting a binding contract, leads to the next step in the formation of a sign language interpreter role.

Deaf Party Uses Signs and Gesture as Mode of Communication

Centuries after the papal decretal, McGrath (1973) observed that Roman Catholic "Liturgy is completely in the realm of signs" (p. 153). He believed that in daily discourse, "we act through signs," and a performative approach to worship offers an explanation uniquely "suitable and comprehensible" to deaf communicants (p. 153), though today, signed languages are not yet an approved liturgical language without spoken interpretation or accompaniment (Peters, 2013).

The deaf marriage candidates in Arles and Brecia were not unique in the ability to improvise and express themselves in gesture. Peet (1856), Gaw (1907), and Ladd (2003) agree that it is likely "Deaf people who communicate by gesture or sign have existed as part of humanity from its inception" (Ladd, 2003, p. 90). Socrates recognized the same, asking Cratylus, "If we had no faculty of speech, how should we communicate with one another? Should we not use signs, like the deaf and dumb?" (Jowett, 1892, p. 275–276). Armstrong and Wilcox (2007) take this hypothesis further, and allow that deaf-originated vocabulary, or "homesigns may

expand beyond small groups of family members to larger social groups, including hearing people" (p. 124). This echoes the claims of theorists cited earlier, and validates the presence of sign-conversant laypeople (Ladd, 2003), who formed proto-linguistic groups with DPs, and from whose ranks interpreters would evolve.

An early rhetorical mention of a DP in a property case originated from the Court of Common Pleas under Edward III, and has been noted by Coke (1628), Peet (1856) and others. In 1352, the matter under discussion concerned a hearing ward's legality to participate in a land transaction. The defense attempted to argue that "if the services of a very deaf man, or a man of unsound memory, were granted by fine, they would never acknowledge." Serjeant-at-law John de Moubray countered the restriction, claiming "It was said that one could attorn by signs" (Seipp, 2004a). In other words, such a protocol—though not directly pursuant to the case before them—was already a matter of precedent, and could strengthen a related argument.

One possible source for the unnamed standing opinion authorizing a signed attornment of lands occurred under the previous regime of Edward II. In the patent rolls on December 13, 1324, the case of John de Orleton appears (UK Enrolment Office, ca. 1324). A more recent work translated the original Latin chancery script into a fairly complete English abstract,[3] and reveals a surprising case of a DP who attorns, or transfers management of his property in Nottingham to his brother-in-law:

> Appointment, during pleasure, of Warin de Rugge, brother of Isabel, wife of John de Orleton, who has been deaf and dumb from his birth and insufficient for the rule of himself and his lands, as appears to the full examination of him before the king in

[3] Many thanks to Nathan W. Murphy, MA, AG, accredited genealogist specializing in British historical sources, who offered tremendous expertise in reading and interpreting archaic writing in both English and Latin for this and other records appearing throughout this project.

> Chancery and by signs has given his consent to this appointment, to have the custody of the said lands, which are held in chief, that these be not dilapidated on account of his insufficiency, on condition that the said Walter keep the premises without dilapidation and out of the issues maintain John, his wife and children and necessary household according to the quantity of the said lands; and that any balance remaining over be converted by him to their use; and that he answer to the said John for the issues by account. (Public Record Office, 1904/2003, p. 62–63)

This is unique for several reasons. The DP, a landowner, already a husband and father, was either compelled to or freely admitted his inability to manage his estate. Yet during what was not an adversarial, but a strongly asymmetrical encounter, he retained a kind of ownership and control, and the appointed curator of the property remained beholden to return all proceeds to the DP's family, instead of seizing and profiting from them as shown in cases elsewhere in the data. Lastly, this transaction was conducted by the appearance of the DP, who representing his own interests, ratified this contract "by signs" in the presence of his (presumably) hearing wife who may have been functioning in a dual role as his co-party and language broker, and royal representatives in chancery, if not Edward II himself.

In doing so, John demonstrated the ability to store and reference shared experiences with mental and expressive language because he had command of social and linguistic structures shared with the group. The de Rugge and de Orleton families had reached prior agreement, yet this wholly interactive proceeding validated John's agency as a present party in his own right. According to Charon (1998), ideas from symbolic interactionism center on similar dynamics, e.g., being in the present among and in response to others, and operating in a social world with clarity and volition. The account depicts John as an actor subject to "full examination," and a

willing participant in a mutually-agreed and doubly-reliant arrangement 1) to establish a situational go-between in the proceeding 2) to form a legal relationship with a permanent representative. Following Goffman (1959), Wadensjö (1998) defines the former as a social or "spontaneous" mediation role (p. 64) between the languages used during the interactive event, and the latter an authoritative function of a "formalized" regulator of information (p. 64–65).

John and Isabel de Orleton were not the only deaf–hearing couple who left a legal legacy. A few instances of early modern weddings involving deaf people are now well-known in British Deaf history. These examples were originally extracted as curiosities by hearing compilers, but have since bolstered arguments from historical signed language linguistics to Deaf legal personhood, and an echo chamber of recurring sources from Deaf history have repurposed the same evidences. In two examples to follow, the Innocent III decision was endorsed anew by the Church of England and British law, as ecclesiastical and governmental authorities were in attendance to ratify the ceremonies.

As early as 1883, the 1618 marriage of Thomas Speller to Sarah Earle was highlighted to demonstrate how "deaf and dumb persons signified their consent by signs" within the marriage vow (Waters, 1883, p. 30–31). The event was a curiosity to the eponymous parish clerk John Clerke, who "had never had the like" during his tenure. Rather than simply note names and dates, he entered a long synopsis of the wedding into the register, showing the deaf groom was intent to have this ceremony conducted literally by the book:

> Speller the dumbe partie, his willingnes to have the said Mariage rites Solemnized, appeared, by bringing the Booke of Comon prayer and his licence in the one hand; and his Bride in the other unto the Minister of our parish Mr Brigges, and made the best Signes he could, to shew that he was willing to be maried, which was performed

> accordinglie. And also, the Lord Cheife Justice of the Kinges Bench (as Mr Brigges was informed) was made acquainted with the Said Mariage before [erasure] it was celebrated, and allowed the Same Mariage to be lawfull. (Church of England, ca. 1618)

An earlier marriage than the Speller-Earle union was solemnized between Thomas Tilseye and Ursula Russel at St. Martin's Parish in Leicester in 1576 (Church of England, ca. 1576). A transcription for this record first appeared in 1815 (Nichols, 1815, p. 589), and has become well-documented for centuries in Deaf publications to the present day, although with varying accuracy to the original.

The clerk who recorded the Thomas Tilseye vow made no observation of a book or written documents of any kind. Instead, we learn that Thomas was "naturally [or, from birth] deafe, and also dumbe" (Church of England, ca. 1576). The parish register continues that "the order of the form [or script] of marriage used usually amongst others, which can heare and speake, could not for his parte be observed," assuming that the vow Thomas made was not based on the canonical form.

However, parsing the text suggests that Tilseye indeed knew his prayer book, and in addition to satisfying the legal and ecclesiastical authorities present, he provided a partly alternative and partly faithful translation of his "parte." He seems to have studied the "Fourme" or frozen text of the ceremony, and appears to have worked out a gestural version of the groom's responses. Tilseye could not have approached his audience with vocal features such as speech rate, register, volume, or variously relinquishing or monopolizing turn-taking, In this case, communication accommodation theory identifies several adaptive strategies in his broader communication act to reach toward the hearing participants and onlookers through a wholesale shift in modality. Tilseye incorporated text, gesture, and drew upon shared social, religious, and

historical contexts embedded within the Anglican marriage rite. Though a primary participant, as a deaf person, the groom in this instance is the only mentioned member of his "outgroup" (Giles, Coupland, & Coupland, 1991). However, he is not isolated. His audience, namely the majority-affiliated Anglophone officers of church and state along with his co-covenanting bride, received and reciprocated his statements, moving toward his primary mode of visual rather than spoken language. Just as speech accommodation theory expanded to allow a more holistic description of the "discursive dimensions of social interaction" (Giles, Coupland, & Coupland, 1991), examples in this study provide new signposts in the transition to sign language interpreting through verbal/aural, and signed/visual communication accommodation performed by participants, and more importantly, the mediator. The Leicester parish clerk did not record Ursula Russel's responses, but one can imagine as she faced Thomas and signed to him, she may have also uttered her "parte" aloud for the priest and gathered congregants.

What follows in Table 3 is a line-by-line comparison of the transcribed ceremony including description of Tilsye's signs, alongside the Church of England's matrimonial liturgy found in the 1559 *Book of Common Prayer*—the most recent edition which would have been available to him. In some cases, the material below is redacted and re-arranged to allow it to be parsed more closely.

Table 3.

Deaf Groom Thomas Tilseye's Signed Translation of the Anglican Marriage Vow

1559 *Book of Common Prayer* The fourme of solempnizacion of Matrimonye	Parish Book of St. Martin's, Leicester February 5, 1576
At the daie appoincted for solempnizacion of Matrimonye, the persones to be maryed shal come into the body of the Churche, wyth theyr frendes & neighbours. And there the Pryest shall thus saye.	1576, February the 5th day Thomas Tilsye and Ursula Russel were maryed,
Therefore if any man can shewe any just cause, why thei may not lawfully be joined together let hym now speake, or els hereafter for ever holde his peace.	and because the sayde Thomas was and is naturally deafe,[4] and also dumbe, so that the order of the form of marriage used usually amongst others, which can heare and speake, could not for his parte be observed.
At whyche day of Maryage, if any man do allege and declare any impediment, why they may not be coupled together in matrymony by Gods Law, or the lawes of thys realme, and wyll be bound…to prove hys allegation: then the solempnization must be deferred unto such tyme as the truthe can be tried.	After the approbation had from Thomas, the Bishoppe of Lincolne, John Chippendale, doctor in law, and commissarye, as also of Mr. Richd. Davye, then Mayor of the town of Leicester, with others of his brethren, with the rest of the parishe
If no impediment be alledged, then shall the curate saye unto the man.	

[4] Or *born deaf*.

N.[5] Wilt thou have thys woman to thy wedded wyfe, to lyve together after Goddes ordynaunce, in the holye estate of Matrimony? Wylt thou love her, comforte her, honour, and kepe her in sickenes and in healthe? And forsakyng al other, kepe thee onely to her, so long as you both shall live?

The man first saying,

I N. take thee N. to my wedded wyfe, to have and to hold from thys day forward, for better, for worse, for richer, for porer, in sickenes, and in healthe, to love and to cheryshe,

and the man shall geve unto the woman a ring,

With this ring I thee wed: with my body I thee worship, & with all my worldly goodes I thee endow. In the name of the Father, & of the Sonne, & of the holy Ghost. Amen.

till death us departe, accordynge to godes holy ordinaunce: and thereto I geve thee my trouth.

the said Thomas, for the expressing of his mind instead of words, of his own accord used these signs:

first, he embraced her with his arms,

and took her by the hand, putt a ring upon her finger,

and layde his hande upon his hearte, and then upon her hearte, and held up his handes toward heaven.

And to show his continuance to dwell with her to his lyves ende, he did it by closing of his eyes with his handes, and digginge out of the earth with his foote, and pullinge as though he would ring a bell

with diverse other signes approved.[6]

[5] The officiant here inserts the candidate's name.
[6] Or *testified*. This implies additional portions of Tilseye's vows were unfortunately not recorded.

The pattern shown by Thomas Speller and Thomas Tillsye remains today that barriers are removed when a few exceptional deaf people navigate a system independently in order to prove that they are capable as a category. Afterward, interpreters might be admitted to facilitate the same process for others in the community who prefer interpreted interactions in certain situations. Technically, Tillsye functioned as his own interpreter—perhaps the first deaf interpreter of record. From this literal demonstration that "gestures obviously can be freighted with ritual significance" (Goffman, 1981, p. 36) for a mixed audience of deaf and hearing people, the argument progresses to the individual who embodies and enacts the interests of both.

Deaf Party Communicates through Recognized Intermediary

Despite the decision from Rome and later Anglican authorities for equal participation in a church-sanctioned wedding rite, and the autonomy retained by John de Orleton regarding his property rights, the next several centuries will wend toward progress before deaf parties appear for themselves through an interpreter in all matters pertaining to family, testamentary, property, civil and criminal cases. Common law principles vacillated between opting competing Roman conceptions of wardship of DPs. By turns, they are classified as infants to be attended by tutors for their persons, or of majority age but deemed mentally incompetent necessitating curators for their estates. As signs became the inroad to determining fitness and legal emancipation, the role of legal protector and guardian took on a communication advocacy function.

The legal category of proxy representation for all parties began with the Statute of Westminster; in 1275, Edward I decreed that "a minor may bring a suit by a Prochein Amy" (§ 48) or next friend, a term still in use today for a court-appointed guardian. In 1285, the Statute of Westminster II expanded this role to include absentee representation to plead, allowing that even when not physically present, the minor may bring a suit by a prochein amy (§ 15). The king also

gave relief to a valuable source of income and soldier conscripts for the Crown—his beleaguered landowners who were perpetually summoned to courts throughout the country. They were the intended original clientele for the pronouncement that "[a]ny person may make a general attorney…with full power in all pleas" (§ 10). Interpreters and attorneys, therefore, share a common legal antecedent: the same law which invested lawyers with authority to speak and act for another also created the proto-interpreter role of proxy for all persons who were legally underage, including DPs. Indeed, lawyers still perform the linguistic functions of explaining the legal process and translating the required language to allow their clients to participate.

In the thirteenth century, Henri de Bracton was the first jurist to gather the *Laws and Customs of England*, (Bracton, 1878) and would have been influenced by the twelfth-century Sentences (Lombard, 1632) and the 1198 papal decretal allowing signed assent to the marriage sacrament. This attention to both legally codified and socially upheld convention is foundational to the common law mechanism, balancing precedent with progress. Bracton's thirteenth-century compendium was widely cited as preeminent legal authority, and available to a general readership by the sixteenth century. Edward I himself referenced this corpus in the 1297 pardon for deaf murderer John Legat, who "according to law and the custom of the realm, [could not] put himself upon the country" (Boynton, 2003, p. 250). Advocates for the legal standing of signing deaf people lament Bracton's assertion that only those who can communicate verbally and aurally, but with difficulty, may participate independently. One who hears but remains mute, and those who are "slow of hearing," or hard of hearing, may express their consent "at least by signs and by nods" (Bracton, 1878, p. 455). The population most likely to prefer gesture, "those who are naturally deaf and dumb" could neither "give, nor stipulate anything for themselves" (Bracton, 1878, p. 455). However, he adds a useful detail for future interpreters, allowing that

"because one who is dumb cannot say the words of the stipulation nor can a deaf mute hear them, but they may do so by others, as tutors or curators, by the animus et corpus of another" (Bracton, 1977, vol. 4, p. 178). That third party whose mind and body are providing legal proxy for deaf parties will evolve into the interpreter role.

This convention inherited from the Roman legal tradition allowed that governors were to be provided "for those that are not able to help themselves, nor follow their affairs, [e.g.,] Idiots, to persons that are deaf and dumb, and to such as labour under such an incurable disease…and renders them unfit to attend their business" (Wiseman, 1686, p. 177). Crompton (1787) further clarified that Edward's statute held for civil suits only, and infants were represented by self-selected prochein ami, but in the case of idiots, "the court will take care of their interests" (p. lvi). For those defendants in the above named categories, it was expected that in "all *criminal cases* the party must appear in his own proper person" (p. lvi). By the seventeenth century, it was held that the DP was the named party, but for one who sought to "bring action, he shall plead by prochein amy" (Finch, 1678, p. 27). Celebrating the progress of his age, Coke (1628) conceded that notwithstanding past practice, the named DPs' legal agency was expanding, through a third party who would "follow" (or *attend* in the usage of his time) them in court:

> Also there was a time when Ideots, Madmen, and such as were deafe, and dumbe, naturally, were disabled to sue, because they wanted reason and understanding…but at this day they all may sue; for the suite must bee in their name, but it shall be followed by others. (Coke. 1628. p. 135)

The data are replete with such examples. An early mediated case was heard in the Common Pleas in 1352, in which a "muet" woman brought a "writ of formedon in the descender," or type of land inheritance claim, against two other parties. During the proceedings,

she “was always present in her own person” and appeared “by her next friend, who sued for her” in the customary way (Seipp, 2004b).

Centuries later, this pattern was recapitulated in what would become the United States. When Connecticut was still a British Colony, brothers Isaac and David Smith, “upwards of thirty years old” and “from their Birth both Deaf and Dumb” had “a mind to sell or exchange some of their said Lands, but by reason of their aforesaid Disability” could not enter into “any legal contracts or covenants” (State of Connecticut, 1749, p. 167). Their hearing brothers Jonas and Thomas asserted Isaac and David could not plead verbally or in writing, and were indeed “unable by any articulate sounds to Communicate their ideas, yet are persons of good understanding & can with Ease communicate…with [those] whom they are intimately acquainted, their thoughts as to all things relating to their business & affairs, by well known Signs & motions” (p. 168).

The Smiths may have never visited the American School for the Deaf founded in nearby Hartford sixty-eight years later (Volta Bureau, 1902), met any of the deaf and hearing signers on campus, or used a recognizable form of historical ASL which grew out of that community. Even so, their intentions “collected from Dumb Signs” (p. 167) were made clear through relatives vouching to “understand the minds of said Deaf & Dumb by signs and motions” (p. 169). As deaf and hearing members of the Smith family discovered meaning in behaviors and responded to mental and tangible symbols, they literally reached outward to co-construct and share social objects through gesture. Charon (1998) traces all social interaction to a minded dialectic within individuals. Considering that interactants are reflexively also their own audience, the case of signers offers a unique visual artifact placed in view of the speaker and the group. Symbols are coined, imitated, altered, remembered, and recruited back into conversation in a sensorially and therefore socially distinct way. For example, instead of involuntarily hearing or voluntarily

listening to speech, unseen signing is a complete disconnect, creating more repetition among members of the group, even when in close proximity. The mechanics of watching rather than merely seeing may also be disrupted by the environment, or muscle fatigue not possible with receptors in ears. In developing a distinctive home sign system, the Smith family seemed to have physically interacted in "mutual social action" (Charon, 1998, p. 152) to accommodate everyone.

The guardianship case was heard at the highest venue available to the colonists. Both houses of the Connecticut General Assembly ratified the request, with the postscript "that the Wife of the said David Smith appear also with her Husband the said David and together with [Jonas and Thomas] declare under oath" (State of Connecticut, 1749, p. 168) that the interaction to be heard before the sitting local authority would be valid. Whether including Mary Smith for reasons of language or spousal equity, the legislators sought to ensure the DPs also understood the intermediaries, "have been fully Informed of the Contents" of the deeds, and "approve[d] of the same taking Effect" (p. 169). Though the hearing Smiths were sworn to their duty, according to Dundas (1711), minors and incompetents who were not landholders were eligible for tenancy only "by the help of a Curator...and they may act as a Substitute to Services, and even take the Oath of Fidelity so...or, the Superior may dispense with that Oath" (p. 22).

Many wardship cases in the data portray a less autonomous DP, wherein the guardian exerted more control. Perhaps the earliest known instance was the 1352 wardship of Isabella de Grantham, who though of majority age was barred from becoming legal guardian to her younger sister Alice. The girls' persons and property, including "moiety of a certain messuage and shops" was turned over to their curator Simon de Iswode, a lay churchman (Sharpe, 1905, p. 2). Such was also the case of procurator Francis Hay of Balhousie, who was assigned to the care of his relative James, a man reportedly "without sense, deaf and mute" (National Records of Scotland,

1648) or John Jackson, so appointed for his deaf brother Henry who though "thirty years of age" had either a real or perceived "incapacity" (Church of England, 1673).

As gestural idiolects sprang up between deaf and hearing family members and associates, or matured into shared systems among pockets of deaf people, common law thinkers began to absorb the linguistic developments around them. Stair (1693) recognized the unwritten folk law, or custom "extended to Deaf and Dumb Persons" was adopted from protocols for legal minors to be assigned tutors to manage their affairs, "albeit they have sufficient Judgment, since they cannot act by it" (p. 51). When DPs demonstrate "the use of Reason, and if it appear that they understood what was done," they could enter into contracts through expressing "Consent, by their ordinary known Signs" (p. 99). Before signed language became standardized within communities, legal proxies functioning as language mediators needed to be familiar with the idiom peculiar to the DP. When proto-interpreters facilitated a valid exchange to a judge's satisfaction, they were a reliable conduit to assess fitness to be sworn, plead, stipulate, or testify.

An ideal person to track this moment of transition is Benjamin Ferrers, Britain's first successful deaf artist. Jackson (1990) describes him as "mainly a portrait painter who specialised in Chancery Court scenes around Westminster where he lived" (p. 17–18). Perhaps his professional experiences emboldened his personal suits, or vice versa. Ferrers appeared in 1708 (Chancery and Supreme Court of Judicature, 1708) by his "next friend" John Ashford in a property dispute, and again in 1718 through his siblings in a matter alleging mismanagement of his accounts by hearing "confederates & accomplices" with "evill designs…to make some fraudulent & sinister advantage" (Court of Chancery, 1718) of his fortunes. Ferrers' third case will be discussed in the next chapter, as possibly the first to admit an intermediary specifically referred to as an interpreter in official documents.

Chapter 5: Discussion II: Intermediary Communicates Effectively with Signing DP

Gradations in historically-situated and culturally-learned perspectives inform the relationship that spoken language users maintain with gesture. Vernon (1978) asserted that currently, "our socialization practices" (p. 171) favor teaching overt verbal communication over unwritten and unspoken paralanguage features, including gesture. For example, Pizzuto and Volterra (2000) proved that non-signing hearing Italians were better able to interpret selected items in Italian Sign Language (24%) than English speakers could discern ASL signs (10%), due to a "richer gestural culture in which Italian participants are immersed" (p. 271). The data suggest that as hearing Anglophones lost their gestural vocabulary, and DPs' language grew increasingly sophisticated, the questions to interrogate symbolic behavior, "What did he do?" and "What did he say?" were no longer interchangeable, and the latter required a mediator to unlock an answer. The case of Martha Elyot from between 1666–1667 is early evidence of this drive to reduce uncertainty as an advance in the role of sign language interpreter.

Elyot appeared with her hearing sisters before the chief justices in the Court of Common Pleas to make a property transaction, transferring their house and land to an uncle in exchange for his continued care of her—an ongoing verbal arrangement that had already been privately conducted in good faith which she wanted to make permanent. The surviving transcription here and other cases throughout this study unfortunately reduce examinations to the verbal information alone. Absent the cues of "phrasal stress, facial gestures, and body orientation of the speaker," we cannot entirely reanimate the "shift from what was said to what was meant" (Goffman, 1981, p. 33–34) by either the spoken or gestured utterances. When speech and gesture co-occur, "it is much easier to reproduce words than gestures (whether vocal, facial, or bodily), and so sample interchanges tend to rely on the verbal portion of a move that was entirely

gestural" (p. 36). Elyot is a rare and early example of described gestures that widen the fissure into forensic analysis and re-viewing. A close reading that transcends the legal particulars opens up a larger discussion of Elyot as a mediated, bilingual communication event.

The hearing sisters entered testimony vouching for Martha's intelligence, and that "*she knows and understands the meaning of all this*" (emphasis in original). Recognizing the rights of a "woman *born* deaf and dumb" to her own property, and seeing the possibility of graft, Chief Justice Orlando Bridgman "demanded, what sign she would make for passing away her lands" (Robertson, 1912, p. 820). The question was relayed to Elyot, who indicated to social objects she had established with her sisters in a series of shared gestures in a response that Bridgman was unable to decode in that form. He requested a translation, and recounted "*as it was interpreted to me*, she *put her hands* that way, where the lands lay, and *spread out her hands*" (Wallace, 1882, p. 331). While this English transcription of Elyot's statement lacks sufficient detail to asses her full intent, it can be argued that the gestures described indicate to a British or American signer a reference to geographic space, and possibly denote possession. Neuman Solow (1988) shows the grinding struggle for an outside interpreter unacquainted with a DP's idiolect, but certainly the Elyot sisters had conferred about what Martha's statement would be in court, and they were prepared with a "mutual knowingness" (Goffman, 1981, p. 11) to deliver a persuasive argument and speak to her wishes with ample context, putting Justice Bridgman at a disadvantage.

Also, Martha Elyot's statement was an assertion, and lacked any iconic descriptors of movement, size, shape, or position of objects and people. Beattie and Shovelton (2007) claim these elements increase both the viewer's reception of a gestured message, as well as self-confidence in comprehending it. They further allow that while gesture can also augment speech, "that does not mean that you have to get the full meaning at the highest level before any

information is transmitted via the gesture" (p. 227). The study uncovered significant individual differences among otherwise linguistically- and culturally-homogenous research participants' abilities to decipher purely gestural utterances. They concluded that successful reasoning reached from the general to the specific and vice versa:

> The meaning of the gesture may still be global in one sense, with the meaning of the individual parts determined by the meaning of the gesture as whole, but the process of decoding can operate even when there is considerable ambiguity at the highest level. (p. 227–228)

The account of the Elyot case originated with Samuel Carter, whose reports have come under harsh criticism for wavering accuracy when compared to primary sources (Wallace, 1845). Nevertheless, Elyot has been quoted countless times to uphold various principles of law regarding DPs. Wallace (1861) later softened his critique to say "I do not, of course, refer to these records as showing the most complete and satisfactory way imaginable" (p. 94), and he demonstrates a nuanced understanding of the interpreting process as Carter's version depicted it:

> Yet it would appear plain, that an interpreter present—one of her sisters probably—understood by the act of her hands, that which even so intelligent a person as Chief Justice Bridgman—one of the very first men of that or of any day—*of himself*, did not understand. In itself, therefore, the action of the hands, whatever it was, conveyed no meaning: or in other words, the woman and the interpreter conferred only by conventional signs. (Wallace, 1882, p. 333)

Wallace qualifies the distinction between a generalizable and mimetic communication style accessible to non-signers, and a more developed system which required knowledge of shared context and previously-agreed conventions among the Elyot sisters. The other justices in

deliberation on the bench that day cited a similar precedent involving a deaf man through his hearing brothers, as well as "the rule in law" for property transactions that DPs proved to be intelligent "may be admitted to make contracts for their good" (Robertson, 1912, p. 821). They reasoned if DPs "are admitted upon examination to marry, and upon examination to receive the sacrament…[and] may make contracts for their persons, why not for their lands?" (p. 821).

From an item with a recorded albeit loose "interpretation," to possibly the first instance of a named interpreter who is identified in that role: the 1720 case brought by DP Benjamin Ferrers referenced in the previous chapter. To assess mental competence to appear for himself, the sitting justice undertook an unusual examination of English literacy and world knowledge. It was proven "he could write his own name very well and some other things, yet could read but little writing, tho' he distinguished several countries by a map" (Cooke, 1742, p. 19).

Two years after Ralph Russell was a defendant named in 1718 as the ringleader of a group of hearing hangers-on who exploited Ferrers' generosity and naïveté, he appears as the interpreter of record in another case involving both competency and a property transaction (Cooke, 1742, p. 19). The 1718 bill (or private petition) characterizes Russell as the main bilingual interlocutor who "particularly doth well know" Ferrers' estate, and the conversations they shared as containing "such signs & tokens were either unintelligible or also they were willfully or otherwise misunderstood." The siblings alleged an obfuscation of "the true meaning of [Ferrers] thereby willfully misconstrued & mistaken on purpose by them the said Ralph Russell & all his said confederates & accomplices" (Court of Chancery, 1718) to gain the financial advantage of his trust and friendship.

Russell might have agreed with the spirit of the accusation that he knew Ferrers particularly well, as in 1720, he swore an improvised interpreter's oath that "he had been used to

converse with him in that manner for seventeen years and upwards, and that he understood his meaning perfectly by those signs" (Cooke, 1742, p. 19). Before educational opportunities were available to deaf people in the United Kingdom, only scattered pockets of signers existed, and therefore the early iterations of a standardized British Sign Language (BSL) among a critical mass had not yet formed. Without a linguistic community to "visit," Russell would have pursued one-to-one socially adaptive strategies with Ferrers to gain fluency in his idiolect.

Communication accommodation theory describes this dynamic, perfected after nearly two decades of ongoing interaction. This social integration bonded the two men to a degree, and regular association seemed to achieve communicative convergence in Ferrers' idiolect. For the prospective interpreter, this strategy allowed Russell to fashion a signing self, so the pair could "become more similar to [one] another, [in] the reduction of linguistic dissimilarities" (Giles, Coupland, & Coupland, 1991, p. 18). The most salient demographic that divided the men is that one was deaf and the other hearing, and secondarily they were dominant users of signs and English respectively. If Ferrers was functionally illiterate as the evidence suggests (Cooke, 1742), it was Russell who, to paraphrase Coupland and Giles (1988), attuned his talk to some characteristic of the other (p. 178) in adopting a gesture-based communication system.

In the 1720 matter, Russell also entered expert testimony evaluating the DP's legal competence, asserting that Ferrers was a shrewd businessman, and "would not take under five Guineas" for a commissioned portrait. Perhaps to dispel the earlier complaint that the artist was a puppet of hearing opportunists, Russell attempted to rehabilitate the DP from what Goffman (1963) would consider negative social presentation, stressing professional and social acumen which elevated his standing. He continued that "he believed [Ferrers] understood the Value of Things very well, especially Paintings" (p. 19). Here the tension between the DP's family and

friends is compounded, as Ferrers petitions an "order for the dismission of a bill in Chancery, which had been brought to prove his incapacity to manage his affairs; and a decree in Chancery appointing a partition of the estate" (p. 19). This is clear indication the two men achieved a shared language: concrete referents of a land transaction are compounded by abstract conceptualizations of legal fitness and agency, "not possible to nonsymbol users" (Charon, 1998, p. 67). It is unclear whether Russell orchestrated the counter-strike, but in the later matter, the DP testifies by proxy oath, but acting in full legal agency, unlike his previous two appearances. Ferrers is permitted to speak upon "great examination in Court, by Russell the interpreter, about several matters, to which he in all appearance made a ready answer by signs to Russell" (p. 19). With "Ferrers's appearing to consent, as well by his own gesture as upon Russell's oath," the Court approved the request, and set forth "a special rule…for that purpose" (p. 19).

The first known case in the United States that names an interpreter was not concerning property, family or any category of civil law, but a criminal matter. In 1811, Timothy Hill was accused of "larceny in a dwelling house" (Lincoln County, Maine, 1811). Sherriff Joseph Boswell escorted the prisoner, and acted as "an Interpreter, duly sworn" as "Timothy Hill [was] set to the bar & [had the] Indictment read to him." Through Boswell, he plead "that he is guilty," but the Court still invoked the ancient procedure that would normally follow a grand jury's judgement that a defendant who did not speak was not held in contempt, but standing "mute by visitation of god." It was decided that "the said Timothy being deaf & dumb, the court order, that he be tried in the same manner as if he had pleaded not guilty, & thereof for trial said Timothy [was] put on the country" (Lincoln County, Maine, 1811).

Hill's recidivism must have made him a familiar character to the local constabulary. In 1817 he returned for a second larceny offense, and once again a lawman reported to be "an

acquaintance of the prisoner" (Tyng, 1818, p. 207) was subpoenaed to act as his interpreter. The latter transcript reads similarly to the earlier documents:

> And now the said Timothy Hill is set to the bar and has this Indictment read to him by Jonathan Nelson, an Interpreter duly sworn (the said Timothy being deaf & dumb), & by the said Jonathan Nelson, his interpreter, he says that thereof he is not guilty, and thereof for trial puts himself on the country. (Lincoln County, Maine, 1817)

Though no specifics of the interaction survive, the straightforward appointment of interpreters in Hill's trials—without great ceremony or argument over his competence, or whether he can swear an oath—is a remarkable departure in Anglo–American jurisprudence. There was no education available to deaf children in the United States, yet Timothy Hill's neighbors saw fit to apply unvarnished judicial procedure in two felony cases. Even after schools drew deaf pupils and staff in numbers disproportionate to the general population, and thereby drove language standardization, Wilde (1854) agreed that "if the prisoner is uneducated, then some one, either in the habit of communicating with the deaf and dumb, or acquainted with the prisoner's peculiar mode of signing, is usually employed to explain to him the nature of the evidence" (p. 63–64).

Swinburne's (1611) work on testamentary law was clearer and more permissive for DPs than previous jurists; he drew on Tiraqueau, (1560) for authority regarding the allowance to make a will by signs. He did not allow those born "both deafe and dumb" to "make any kind of Testament or last will; unless it doe appeare by sufficient arguments, that he understandeth what a Testament meaneth, and that he hath a desire to make a Testament" (Swinburne, 1611, p. 53). Once again, the test for competence "if hee have such understanding, and desire" and the right to act as an agent is that "he may by signes and tokens declare his Testament" (p.53).

Swinburne's (1686/2002) unfinished work at his death in 1624 on matrimonial contracts introduced in chapter two extended the DP's right to use gesture-based language. In section XV, entitled "Of Contracting Spousals by Signs" (p. 203), he did not cite them as such, but he clearly would have approved of the Tilseye–Russel and Speller–Earle ceremonies, and brought out an unimpeachable case for the validity of a signed vow, citing numerous authorities. In this last work, he did not rest on the finality of his argument for signing only as with *A Brief Treatise on Testaments and Last Willes*. Instead, he concedes that an optional verbal accompaniment could follow the ceremony, but spoken independently of the bride and groom, not by a guardian ad litem, and not via proxy agency:

> Likewise albeit neither of the parties express any words at all, but some third person recite the words of the Contract, willing them if they be therewith content, to joyn their hands together, or to embrace each other, the Parties so doing, the Contract is of like Efficacy, as if they themselves had mutually expressed the words before recited by that third person…when the one Party useth words, and the other Signs; or when a third Person uttering the words, both the Parties use Signs of Consent, is the Contract good. (Swinburne, 1686/2002, p. 206)

Such a parallel recitation of vows would most likely be rendered in first-person language read from the liturgy. Charon (1998) calls this mental transition "taking the role of the other" (p. 110) and describes this ability as uniquely non-egocentric, and a "central quality of the human being" (p. 111). Though Swinburne's guidance suggests a scenario that is scripted and ritually spoken and not extemporaneously interpreted, his claim of "like Efficacy" is revolutionary. If the ecclesiastical or legal authorities who witnessed and ratified those earlier signed and silent translations by deaf grooms had been unable to apprehend their meanings, Swinburne endorses

the contract—without, or more importantly for the goals of this study, *with* an interpreter. Without denoting the role as such, this is the first text to comment on sign language interpreting procedure in the Anglo–American tradition. Swinburne recognized that signs were becoming sufficiently complex to graduate from the realm of universal gesture, and interpreters could facilitate a communication event that requires linguistic transfer and later cultural mediation.

Ruston's Case

Though by far not the first legal matter to admit the services of an interpreter with a deaf party, arguably the most important precedent-setting case occurred in 1786. Martha Ruston accompanied her brother John to the London Central Criminal Court to enable his witness testimony to be entered in a larceny case (Trial of William Bartlett, 1786). She endured an adversarial voir dire process to such a degree, it cleared the procedural hurdles of that day to admit the deaf witness, provided John was credible and the Rustons proved they could indeed communicate effectively with each other.

It bears explanation that the following analysis refers to Martha and John with the surname spelled "Ruston" instead of "Rasten" as shown in the *Old Bailey Proceedings Online*. Since Lynch (1789) first published the account, the case entered the legal lexicon as "Ruston" and has been cited as such in innumerable reference texts and case notes, and this study will adopt the preferred spelling from contemporaneous official sources. The unofficial Old Bailey transcripts were drafted by reporters with entertainment and commercial interests, but because the importance of these documents to the legal process, during "the 1770s the City began to exercise more scrutiny, and in 1778 it required that the publisher should provide a 'true, fair and perfect narrative' of the trials" (Emsley, Hitchcock, & Shoemaker, 2015). According to Shoemaker (2008), publishers composed "copy from one or more note takers and shorthand

writers who attended the trials" (p. 563). By the 1780s, the "sessions papers achieved their greatest detail," but it was operationally impossible to include a verbatim transcript (Langbein, 2003, p. 185). Therefore, the *Proceedings* of this period tend toward a more reliable record for qualitative inquiry, with an acceptable margin of inaccuracy and omission.

The Rustons' testimony and interpretation recorded a nuanced understanding of language and the witness examination process, both in John's ability to offer precise responses, and Martha's careful and thorough explanations of subtle points of fact. The citation created both the text for an interpreter oath to "well and truly to interpret…the questions and demands made by the Court to the said John Ruston, and his answers made to them" (Leach, 1789, p. 348), and the legal precedent to permit such an accommodation in future matters.

The first tests to be parsed below are the witness oath and interpreter's preliminary voir dire examination; the first barrier was the defense counsel. William Garrow was "clearly one of the lawyers carrying defense advocacy to a new level in the 1780s" (Beattie, 1991, p. 245). As the rise of advocacy flooded 1780s courtrooms with defense lawyers, Garrow distinguished himself as "a pioneer in using cross-examination as a means to comment on the evidence, refute or discredit the prosecution case and aggressively battle for the accused" (Hostettler & Braby, 2010, p. 53). Though in popular history he is credited with coining the presumption of innocence with a version of the maxim, "innocent till proved guilty," there is evidence in the *Old Bailey Proceedings Online* that a prosecuting attorney used the phrase in Garrow's presence three years before he is purported to have used it (Trial of William Wilkins and Richard Gwilt, 1788). Regardless of who first said it, Garrow likely popularized the phrase, and he certainly crafted his tactics around fixing the burden of proof upon the prosecution.

To that end, Garrow's performance against the Rustons exhibited his characteristic showmanship, "in his insistent and pressing and revealing cross-examinations of prosecution witnesses, in his challenges to the rulings of the bench, [and] his dominating presence in the courtroom" (Beattie, 1991, p. 247). Like any good defense lawyer, Garrow attempted to strike John's damning testimony, either by way of the witness himself or via the interpreter Martha. These exchanges have been well-travelled in the literature from the point of view of the barrister and the witness (Beattie, 1991; Stone & Woll, 2008; Hostettler & Braby, 2010; Woll & Stone, 2013), but what follows for the balance of this chapter is an exploration of the *Old Bailey Proceedings* (Trial of William Bartlett, 1786) transcript of how Martha, with a vexed Justice John Heath, neutralized Garrow's attack.

The first rhetorical target was DPs in general, and specifically John Ruston, the second witness to be called for the prosecution:

Garrow: my Objection is that there is no way in which you can possibly communicate with a deaf and dumb man.

Court: You assume that.

Garrow: I assume it on the authority of my Lord Hale who lays it down that a man who is Surdus et Mutus &c. is in presumption & Ideot.

Court: upon what Authority

Garrow: Upon the Authority of my Ld. Hale

Court: Every body knows that there are certain signs.

Garrow: the Argument is this that you have no way of communicating with a deaf & dumb man but by signs which convey total Ideas.

Court: You must not interrupt your objection is premature.

In this preliminary skirmish, Garrow quotes the seventeenth-century legal authority Sir Matthew Hale, and conveniently omits the second half, which clarified:

> …but if it can appear, that he hath the use of understanding, which many of that condition discover by signs to a very great measure, then he may be tried, and suffer judgment and execution, tho great caution is to be used therein. (Hale, 1778, p. 34)

Justice Heath at once recognized and completed the Hale reference, alluding to this long-established practice of using signed communication to adjudicate the fitness of a DP to participate at trial. Heath's reputation on the bench was for being fair, but severe with offenders; in personal interactions, he was just as well-known for his kindness and generosity (Foss, 1864). The William Bartlett trial (Trial of William Bartlett, 1786) cited for the balance of this chapter demonstrates these complimentary aspects of his character. John Ruston was permitted to enter testimony with "certain signs" and corroborate the victim's earlier statement, while Garrow challenged the ruling, and was nearly ejected and committed to prison himself for impertinence.

After silencing Garrow, Heath reverted to the practice of justices conducting direct and cross-examination themselves in common law courts prior to the eighteenth century (Beattie, 1991) and personally resumed the voir dire process for Martha Ruston:

> Court: Now how is it that you wod. communicate the question you wod. ask to your brother are they signs that you make or are they expressive of any particular words or are they expressive of letters or Syllables?
>
> Martha: Not letters or Syllables but by motion of words

The first brief point Justice Heath establishes is one familiar to all sign language interpreters: how do the features of signed language compare with the letters and words of spoken language? Countless interpreting assignments have been interrupted by this legitimate

curiosity, and especially so when there is a risk of semantics and precision operating at cross-purposes. Martha expertly delivers an armchair linguistics response nearly two centuries before the research community came to a similar conclusion (Stokoe, 1960). She understood that what the parlance of her day termed *motions*, or the home signs and conventionalized gestures John used with her, did not equate to English words, and were not analogous to the component letters of a written language.

After setting forth the medium of communication, Heath undertook a careful dissection of the DP's mental, spiritual and ethical competence to comprehend and swear to an oath:

Court: can you express this Idea to your brother? whether or no he knows the nature of an Oath?

Martha: So far as a short motion he has been taught that by others not by me.

Court: can you make him sensible of the meaning of this question?

Martha: Yes he has a very great sence of Scripture, tho' he cannot express it.

Court: Is he acquainted with the principles of the Christian Religion?

Martha: He is very well Acquainted with them.

Court: Has proper pains been taken to Instruct him in it?

Martha: they have.

Court: Have you any doubt at all whether you can convey the meaning of this question whether he has any Idea of the Nature of an Oath?

Martha: I have no doubt but he understands it.

Mathers (2006) instructs today's working interpreters that they are technically "officers of the court" (p. 71), which Macy (1948) clarifies is founded in "an independent trust toward the parties, the court, and the jury" (p. 945). As such they are subject to the process of qualifying

their credentials and abilities. The line of questioning above, however, exceeds the contemporary boundaries of vetting an interpreter as a recognized specialist, and thrust Martha into the role of expert witness regarding the character and faculties of DP himself, rather than commenting merely on her own facilitation. One of the main hallmarks of Bartlett is the firm administration of an oath to both the interpreter and the DP in order to safeguard courtroom protocol. Swearing to the oath is the fulcrum of the entire legal project, laying the intersection between foundational ecclesiastical authority, and the ethical principles of common law. Both Church and Court require the same test of the agent, e.g., a knowledge of right vs. wrong, truth vs. lie, and future punishment for a breach. Unless a DP demonstrates understanding and consents via the oath, the case is over before it has begun. The judiciary of the Ruston's era sought proof of Christian fear, and Martha vouched that she believed John had sufficient respect for the higher law.

The second point from this passage is Martha's assertion that John moves between multiple social worlds, belongs to a community of signers apart from the family, and has developed his sense of self as a member of both groups, defined by role, interactive patterns, and use of language (Gumperz, 1962). Nonetheless, no hearing persons in that other social world appeared, prepared to interpret. John's first exposure to communication was probably with his immediate household, coined in "so-called home signs to communicate at least on a rudimentary level" (Edwards, 2012, p.12). However, once one deaf idiolect comes into linguistic contact with other similarly situated individuals, pockets of signers, and eventually the full-fledged Deaf community, a world "wider than home" (p. 12) opens to their experience. Even if John did not have access to the newly-emerging educational opportunities in Britain, he certainly was not isolated. Whether Martha's signing was informed by her brother, but influenced heavily by spoken English, "from the point of view of social function," there is no significant "distinction

between bilingualism and bidialectalism" (Gumperz, 1962, p. 31). This is vital to Martha's testimony that she is not the DPs sole source of language and information about the machinations of the world, and clarifies the boundary of her impartiality as an interpreter, and not co-author of the testimony.

The court was convinced as to of the fitness of the DP and the qualifications of the interpreter, so Garrow was released from temporary orders to remain quiet, on the condition that he "behave with decency," and was permitted to stand and resume the examination. Not to be outdone, he carried on with Heath's line of questioning and could not resist raising the tension with dramatic imagery:

Garrow: you have no doubt but you can Communicate to him the nature of an Oath?

Martha: I have not.

Garrow: Could you venture to say you are sure that he understands you?

Martha: I cannot pretend to swear to his thoughts but as far as motion.

Garrow: How shall you be able to communicate to him that if he was to tell a falsity upon his Oath he will be put in the Pillory for Perjury?

Martha: Oh Sir he is very well convinced of that.

Doubtless John had seen public pillorying of offenders in London, and humiliation aside, no threat of punishment would likely haunt him more than having his hands restrained for hours or even days. From this exchange, it seems likely that after years of imitation and collaboration, the Rustons shared some grammatical or discourse-level marker for causal and hypothetical constructions, and perhaps even the subjunctive mood. Command of these types of structures are lacking in other items in the data, where the signers cannot enact a predictable set of rules between them (Gumperz, 1967); in some cases, deficits in vocabulary and grammar for either

person can prove a barrier to interpreting the oath, and thereby derail due process for the DP, regardless of their fitness to comprehend it or be put to trial.

Martha deftly deflected Garrow's prodding into John's receptive ability onto her own—the only half of the conversation to which she could attest. She swore to interpret only what she sees, and not re-interpret what the DP might be thinking. Garrow continued to press her in hopes he might expose the limits of her abilities:

Garrow: Suppose you was to tell him that Mr Lunardi had arisen into the Air in a Balloon, how sho'd you communicate that Idea?

Martha: Oh very well.

Garrow: Do you think he would understand that without seeing it?

Martha: I am sure by his motion in return.

Garrow is referring to several hot-air balloon flights throughout Britain during the previous two years, which overtook the public consciousness and "was all that anyone was talking about" (Keen, 2006, p. 507). Even if inaccessible in the form of spoken conversation and printed advertisements, John Ruston along with the whole of London would have seen the "endless paraphernalia" (p. 508) commenting on the exhibitions. In an attempt to be cunning, Garrow handed Martha the one ubiquitous image from current events that would have been the simplest to render into gestures that were more iconic than symbolic. Of course she could communicate such familiar and compelling moving pictures to her brother.

The latter point is one of the best-parried maneuvers of Martha's mounting victory. Again, Garrow challenged John's reception of the fantastic message, which she spun around to her own perceptions, and the only available information that validated her experience. Once she has transmitted the interpretation, she cannot purport to read the DP's mind. However, she can

assess the appropriateness of his responses through mentally accepting his role as her other, and rely on nuanced linguistic feedback to gauge whether or not the exchange was successful.

Aware of the precedents not covered by this study in which DPs opt to or are limited by the Court's pleasure to direct communication in writing, Garrow tested to see whether Martha's services were even necessary:

Garrow: Does he read?

Martha: He does not understand reading but he will look over & we explain to him.

Garrow: can he write?

Martha: Not to correspond.

Combining these facts with her earlier testimony that she translates in signs and "Not letters or Syllables," it is unlikely that John used fingerspelling (distinct handshapes indicating the individual letters of the Roman alphabet) which by 1786 was used as a literacy tool for deaf pupils, as well as an augmentative communication strategy for hearing people who could not speak for medical or religious reasons (Padden & Gunsauls, 2003). From Martha's specificity, she implied he could technically *write*, or make meaningful marks on paper. Perhaps he held a pen correctly, wrote his name, or the numerals from one to ten. Even if John handled written material for himself, or initiated the request for a sight translation, it was an ineffective accommodation, as "he does not understand reading." Goffman (1981) terms this a more interesting *response*, in which the unstated implication from the question is embedded in return, instead of a mere *reply* to a prima facie "meaningful statement" (p. 35). Martha had the instinct to "break frame and reflexively address" (p. 43) what Garrow's question was truly understood to be, namely, if direct two-way communication in writing was an option, and whether he could overpower the witness without a mediator. Taking the role of the other in symbolic interaction,

she effectively re- imagined the conversation from Garrow's perspective, and re-formulated a different question revealed through her answer. Charon (1998) claims these role shifts regularly assumed by all interpreters are "the most important" of the "skills for success in interaction situations" (p. 121), and allows one to "control the interaction situation through knowing how to manipulate, direct, or control others" (p. 118). Discerning and preserving the speaker's meaning and intent despite the choice of linguistic symbols composing source texts is central to any effective interpretation, and Martha managed her expert testimony with equal mastery. With this, counsel made one last attempt to discredit her:

Garrow: Then you guess that he understands you & you guess at the responses he gives you?

Martha: Yes.

Instead of becoming entrapped, Martha sealed her credibility with this final candid response, ending the voir dire process. To claim unimpeachable certainty would not only risk perjuring oneself, but also inserting, omitting, or fundamentally altering the message to save face. A lack of transparency and overconfidence in the interpreter may not allow for the messy features of language—dysfluency, equivocations, or inconsistencies from the DP—and a hearing audience could misunderstand the source of the problems. In the case of the slightest contradiction or unfinished thought, defense counsel could pursue her, instead of respecting the process, including a convoluted source text, or the flaws inherent in translation.

Perhaps sensing defeat, Garrow launched into a rant of some fifteen to twenty minutes duration (if delivered with the requisite oratorial flair), in which he puts innumerable points on trial: John Ruston's mental competence, Christianity, the Ruston's language, his own reverence for common law and the English judiciary, and so on. Justice Heath allowed him to expend his

energy, and promptly overruled every objection. Again, Heath dispenses with the advocates and directs the conversation:

> Court: Can you interpret the oath to him, you have sworn well and truly to interpret to John Rasten, a witness here produced on behalf of the King against William Bartlett, now a prisoner at the bar, the questions and demands made by the Court, and also well and truly interpret the answers made to them?
>
> Martha: There may be some things I do not understand.
>
> Court: You cannot interpret farther than you know. I remember a deaf and dumb man being sworn in the Common Pleas to suffer a fine?
>
> Martha: I have interpreted the oath to him and he understands it.

By this exchange, Martha seems to have won the trust, and an atmosphere of collaboration with the Court as the interpreter of record. Justice Heath did not extemporaneously draft the interpreter oath for the purposes of this trial. It was derived from the formula already in use for "Cases, where the Prisoner doth not understand the British Language" for which "an Interpreter must be procured and sworn thus by the Clerk" (Forbes, 1730, p. 281). One version of the original oath for a spoken language interpreter reads:

> [Y]ou shall well and truly interpret unto A. B. now Prisoner at the Bar, the [crime] whereof he stands here indicted, as the Court shall direct you, and also the Questions and Demands which shall be made by this Court, concerning the same [crime]; and also shall well and truly interpret to this Court, the answers which the said A.B. the Prisoner shall thereunto give, so help you God. (Forbes, 1730, p. 281)

Court personnel obviously consulted a legal reference text similar to the above to swear Martha. The strength of a successful voir dire, combined with the choice to adopt a set form

specifically intended for interpreters and not merely Crown witnesses, sealed a precedent which was repeated in many other sources as seen in the data. For example, Chitty (1816) transcribed and labeled the "Oath of interpreter to a deaf and dumb witness" (p. 329) from Bartlett, which codified it with the unnecessary constraint to apply in cases with deaf witnesses for the prosecution only:

> You shall well and truly interpret to E.F., a witness here produced on behalf of the king against C.D., now a prisoner at the bar, the questions and demands made by the court to the said E.F., and his answers made to them. (Chitty, 1816, p. 329)

Everyone present was compelled to recognize Martha's conclusive authority as an official channel of communication at the trial. Once again, she demonstrates a command of her position, and reasserted the caveat Justice Heath gave earlier to preserve the boundaries and limitations of her role:

> Unnamed: Are you sworn?
>
> Martha: Yes.
>
> Unnamed: To interpret?
>
> Martha: Yes, as far as my knowledge.

With this reminder that her work was guaranteed to serve the court only insofar as her ability could perform, she was at once accepted as an expert witness and interpreter. As such, she remained exposed to further enquiry into her process:

> Unnamed: Swear her to all such questions as shall be asked of him.
>
> Garrow: What sign have you to put these questions to him, what is the nature of an oath, by what sign would you ask him that question?
>
> Martha: We look up to heaven and shew him that he is to answer seriously.

In keeping with previous lines of examination directed to her, and echoing Justice Bridgman's examination of the sibling interpreting team for DP Martha Elyot centuries earlier, Martha Ruston was expected to decode the finer points of her translation choices to counsel's satisfaction. Garrow could not abandon the foundational importance of a valid oath, and made a final volley to impeach or at least prejudice it. In the absence of a second interpreter in the courtroom, the plural "we" as transcribed reinforces earlier testimony that the Rustons held prior discussions on the gravity of religious observance, and John had been "well Acquainted" with the topic. Within the life of his family, he had internalized the group's memory to expect piety and fidelity, and co-developed a symbolic representation of those abstract objects.

The partial description of the interpreted oath paints a rich image of John's socialization through significant symbols—in this case, combining church and country to invoke a secular justice overseen by a godly one. Charon (1998) calls this symbolic interaction evidence of shared "rules, ideas, and values of the group as well as coming to learn…roles in relation to everyone else" (p. 62). The case of a DP produces layered minded and embodied communicative actions. Like the prior confirmation John understood the absent referent of a pillory symbolizing punishment, he also had the mental construct of a higher power adopted from Western thought and Anglophone religious discourse, proving he was a member of those social worlds. The signed representation of that abstract social object indexed physical space above the signer in a way common to BSL and ASL, and made sense in back-translation to court personnel.

Though Linell (1991) describes only the examination phase of a trial as strictly dialogical, these preliminary exchanges far outpaced the witness testimony that followed. If "dialogue is by definition accommodative in character," (Linell, 1991, p. 125), then Martha's strategy is to manage both sides of her interaction first with the professionals, and then with the

newly-accepted witness, her brother. Analysis of this second and much briefer precedent set in Bartlett will concentrate on the actual work Martha did translating John's statements. As with the preceding excerpts, the transcriptions to follow should be received with scrutiny. Working interpreters will immediately identify the dynamics at issue—this consistency with contemporary practice makes the record credible and authentic to those familiar with the task. As Justice Heath examines John Ruston through Martha, questioning begins with the familiar identification of the defendant seated in the courtroom, and quickly transitions to the facts of the case:

Court: Ask him if he has seen the prisoner before?

Martha: He shews me that he is positive to the prisoner.

Court: Ask him if he knows any thing of the offence which is charged against him; what he saw the prisoner do?

Martha: He shews me that he saw the prisoner get the watch behind him.

Court: Ask him if he knows how the prisoner came by the watch?

Martha: He shewed me he did not see it taken out of the pocket, only given behind.

Several features of this interpretation stand out to the modern reader. Firstly, Martha rendered the spoken English in the third person, "leaving one of the ground rules of court interpreting (Elsrud, 2014, p. 45) or indeed any interpreting situation involving both spoken and signed languages. Today, first-person speech not only guarantees that "a translation should be as close to its source as possible," but it is also seen as a tool to preserve neutrality, as "it prevents the interpreter from becoming an independent party in the conversation" (p. 45). Martha is untrained, and so fell naturally into a reporting mode; it likely never occurred to her to adopt her brother's perspective in her speech. To the listeners, it may have created more distance between the interpreter and the DP, not less, ensuring she remained safely outside of John's account, so as

not to invite a challenge from Garrow during cross-examination. Though not standard practice today, Neuman Solow (1988) recommended conveying dysfluent DPs in the third person, "so that the interpreter can interject comments" (p. 21) in first person, with real-time guidance on the content of the testimony to the court, such as the historical expert witness role once entailed.

Martha situated herself as John's orientational other and interlocutor, e.g., "He shews me…" and not a conduit for John to address the Court directly. This implies the signed portion of her interpretation adhered to first person, and likely simplified the grammatical work of pronominal references. According to Prinz and Prinz (1985), learning to hold a conversation "involves the integration of cognitive, linguistic, and social interactional abilities" (p. 2). Surely John had mastered these, and had an adequate communicative competence to glean which person in the room was actually initiating the questions to him. Unlike the culturally- and linguistically-unaffiliated deaf subjects in McKinney (1983), he appears conversant with the interrogatory process of answering questions in an interview format. Still, Martha's translation posture is to maintain a direct "state of talk" (Goffman, 1981, p. 130) with her brother, in the manner most familiar to him. Wadensjö (1998) confirms that interpreter-mediated encounters display features of both triads and dyads, depending upon the direction of interactive priority in the task. In this case, there is very little evidence Heath and John were experiencing even an approximated direct conversation, or were intentionally accommodating one another through the interpreter. Combined with the bulk of Martha's participation during voir dire, she pivots relaying and reporting between two dyads: herself and the court, and herself and John.

Both the DP and the interpreter demonstrated a high degree of reliability in the above section. To the open-ended question whether "he knows any thing" about the crime, and the more specific follow-ups regarding "what he saw" and "if he knows" how Bartlett got the watch,

Martha's translation revealed precise, consistent responses. Twice, John specifically testified to seeing Bartlett hand the watch off, or secrete it behind his back. Afterward, the Court pursued the antecedent event, or the actual picking the victim's pocket, which John repeated he had never seen. This episode could be easily mimed by even the most amateur signer during a parlor game, but John and Martha used a more specific system unavailable to the hearing viewers, wherein they could linguistically recreate the scene: identify the actors, name the objects, and also narrate, order, negate, and affirm the events. These features, with an added richness of spatial understanding, are exemplified again in the final testimony excerpt:

Court: Ask him if he knows the person that lost the watch?

Martha: He shewed me he never saw him before.

Court: But did he know him now?

Martha: Yes, he points to him

Court: Ask him how near he stood to Williamson when he saw the watch in the prisoner's hand?

Martha: I understand him he was near, but I cannot answer how near, he shews me by the length of a yard but I cannot pretend to say to the space.

Court: Ask him if he knows any more of the matter?

Martha: No more than the taking him to the constable.

Court: Ask your brother how far off he was when he saw him give the watch to another?

Martha: He shews me a very little way, but I cannot take upon me to say how near.

The above substantiates a nuanced command of referential space in the Rustons' signing, and in Martha's ability to find an equivalent English reflection of John's source message. After

confirming that John saw the victim previously unknown to him on the day in question, the examination sought to gauge his proximity to the alleged theft. To describe now near he stood, John extended his arm as a measurement, and seems to have added a cue to indicate close pedestrian space, but perhaps not breaching personal space. Martha read both signals, and paired a transliteration of the literal sign, "the length of a yard," with the mediation that this meant "near" enough for a sightline to the defendant's actions and possession of the watch, but not to be strictly understood as thirty-six inches. With this, Martha's work makes the theoretical leap toward cross-cultural interpretation, as she transfers socialized and habituated viewpoints from one modality—and one reality—to another.

Justice Heath left nothing to doubt regarding John's relative position to the transaction, and corroborated this detail by referring to earlier testimony recalling the moment of a hand-off. John repeated his assertion that he was only "a very little way" away, but did not offer anything more specific which the interpreter, who was not present at the scene, could use with confidence. John testified he was known to if not among the parties who apprehended and conveyed Bartlett to the constable, was likely there recruited as a witness, and found a way to communicate his identity to local authorities for later subpoena. With that insight, the story comes full circle.

The summons that eventually reached John, could not have anticipated the impact of his participation. Throughout the literature, this case is universally not cited as "Bartlett," but as "Ruston's Case," all stemming from Leach (1789), the first prothonotary to publish it, and distill a rule therefrom: "A witness, though *deaf* and *dumb*, may be sworn and give his testimony for felony, if intelligence can be conveyed to, and received from him by means of signs and tokens" (p. 347). Highmore (1822) rehabilitates the last phrase to read "through the medium of an interpreter" (p. 84). There are innumerable references to Leach throughout the case law and

reference texts dealing with DPs in general, and the best practices for admitting sign language interpreters. Table 4 below is a selected list of early U.K. and U.S. citations which demonstrate the reach of this precedent throughout the Anglo–American judicial system:

Table 4.

Earliest British and American Publications Citing "Ruston's Case"

Year	Reference
1789	Leach, T. *Cases in Crown Law*. London: T. Whieldon & Dublin: T. Caddell.
1802	MacNeely, L. *Rules of Evidence on Pleas of the Crown Illustrated from Printed and Manuscript Trials and Cases*. London: J. Butterworth & Dublin: J. Cooke.
1804	Peake, T. *Compendium of the Law of Evidence.* Walpole, NH: Thomas and Thomas.
1816	*The Crown Circuit Companion. 1st American Edition*. New York: R. M'Dermot & D. D. Arden.
1816	Chitty, J. *A Practical Treatise on the Criminal Law* (Vol. 4). London: A. J. Valpy.
1819	Chitty, J. *A Practical Treatise on the Criminal Law* (Vol. 1). Philadelphia, PA: Edward Earle.
1822	Highmore, A. *A Treatise on the law of idiocy and lunacy. First American from the last London edition. to which is subjoined an appendix, comprising a selection of American cases; in which some important subjects of this treatise have been investigated and new principles settled*. Exeter, NH: George Lamson.
1823	Tomlins, H. N., & Jones, J. A. *A digested index to the crown law containing all the points relating to criminal matters...To which is added a digest of all the criminal cases which have been decided in the supreme courts of the United States, &c.* New York: Stephen Gould.
1824	Robinson, W. *Formularies, or, the magistrate's assistant: Being a collection of precedents which occur in the practice and duties of a justice of the peace out of sessions*, (Vol. 2). London: William Benning.
1831	Saunders, J. S. *The law of pleading and evidence in civil actions: Arranged alphabetically: With practical forms: And the pleading and evidence to support them* (Vols. 1–2). Philadelphia: Robert H. Small.

Upheld by the force of case law and sustained by respected voices in contemporary authoritative texts, the Deaf communities which thrived in the nineteenth century encountered a legal system which had been prepared for centuries to accommodate them. Edwards (1832)

allowed that local custom could prove inconsistent throughout common law realms, where some "courts of law and equity do not always keep pace and mingle with modern circumstances" (p. 180). He held that the time for barring the DP from appearing was past, "for he might do it through a sworn interpreter," difficulties notwithstanding, "namely: as to the sufficiency of understanding and memory, and the risking of an answer through the interpreter" (p. 181). Ultimately, in any "matter of serious moment," there was no question that the interpreter "is required and admitted" in such cases (p. 181).

In that same decade, this absolutist view was held by an English chief justice assigned to the bench in Australia. In a reversal of rhetoric, he challenged the local Attorney General on a negligent attitude toward accommodating non-English speaking Aboriginals at trial with an argument about DPs:

> The Chief Justice said that in every case of this kind, which he had seen either at the Old Bailey or on Circuit, every question was interpreted to the prisoner whether defended or not...The Chief Justice said that he must deal with them the same as with a deaf and dumb man—he must deal with them by the law of England, which is the law of this Colony. ("Law intelligence," 1839, p. 2-S)

Though created and administered under a civil law regime, Napoleon's Code d'instruction criminelle of 1808 (book II, chapter 3, article 333) affirms the necessity of an interpreter to facilitate due process. Perhaps on the strength of Ruston, and a vibrant French Deaf community, it adds that the preferred interpreter is someone familiar to the DP:

> If the accused be deaf and dumb, and cannot write, the president ex officio shall appoint for his interpreter that person who has been most accustomed to communicate with him. The same shall be done in regard to a deaf and dumb witness. (Griffiths, 1810, p. 457)

An interlocutor–intimate who shares and often co-composes the social world of the DP is the standard for preferred interpreters rarely questioned in the data. Where the interpreter and DP are not well-acquainted, courts often allow for pre-trial visits, and the report of the interaction—including an opinion regarding language and mental competency—is entered as expert testimony. This posture contradicts contemporary professional standards in the *Code of Professional Conduct* (Registry of Interpreters for the Deaf, 2005) in the U.S., and the *Principles of Professional Practice* (Association of Sign Language Interpreters, 2014) in the U.K. However, this guidance comports with Haviland (2013) and Schaller (1991) which evidence that in a microcommunity of signers, some DPs resist influences from the main group, and absent a standard lexicon available to an outside interpreter, may retain personally-coined vocabulary choices. Citing Ruston, Macy (1948) explains that "the view that it is within the discretion of the trial judge to accept a relative of a party or witness as interpreter rests more on practical grounds than on legal" (p. 945). Moore, Schmitt, and Grupp (1973) agree that the "history of relationships" produces greater prevalence of orientational other standing among "family, friends, work-related and religious" (p. 516) associations. In that order, these roles parallel the earliest interpreter pipelines shown in the data.

Chapter 6: Conclusion

Treatments of the recent professionalization of sign language interpreting since the mid-twentieth century share a shallow institutional memory, largely omitting centuries of accumulating best practices. Deaf studies, signed languages, gesture, and legal history justifiably lack a focus on the interpreter in favor of the deaf party, and generalist and legal specialist sign language interpreting has a weak historical scope, often making errant claims.

Symbolic interactionism, along with listening, communication accommodation, and intercultural theories support the scant literature and portray a more nuanced story. Symbolic interaction depicts a communicative environment of social objects defined through co-created language. Conversant hearing signers who constructed a living record of exchanges with DPs advanced as intermediaries, and communication accommodation fittingly describes the compensatory and outward-facing reach both sides extended to build harbors of convergence. As a distinct gestural lexicon, and habituated behavioral norms of DPs became fixed points along a bi-modal, bilingual, and finally bi-cultural continuum, proto-interpreters navigated increasing distances between camps of speaking and signing interlocutors.

Such approaches already applied to signed language linguistics and interpreter training curricula are valuable to interpreter praxis in working with others, they can also validate personal experiences which complement the group memory of the Deaf-world. When two historical accounts differ in recollection, relational and cultural meaning for the actors, Campbell and Friend (1998), believe such can be “characterized as a type of historical pluralism, which operates within a field of plausibility where difference is not viewed as a conflict or error” (p. 431). In other words, both deaf parties and interpreters are entitled to their own realities. Rightly

bound by confidentiality and occupying a hybrid participant/observer position (Wadensjö, 1998), interpreters have never collectively shared that privilege across the centuries.

The discussion presented in chapters four and five coalesces toward the primary purpose of the sign language interpreter serving due process for the DP and the legal system, in order that each may access the other. The culminating directive to enlist an interpreter for a deaf witness in Leach (1789) was enlarged for criminal defendants by Chitty (1819):

> When the party indicted is deaf and dumb, he may, if he understand the use of signs, be arraigned, and the meaning of the clerk who addresses him, conveyed to him by signs, and his signs in reply explained to the court, so as to justify his trial and the infliction of legal penalties. (p. 284)

The assumed token verdict of legitimate deafness, and not simply "standing mute" (Daniel & Resnick, 1987; McKenzie, 2005; Ward, 2012; Wilde, 1854) aside, the instructions serve several points of procedure. The DP must have facility in some kind of signing, whether an individuated system or standard language; the clerk addresses the DP directly, not by proxy; the unnamed intermediary is tasked with "conveying" and "explaining" the interaction both from spoken English to signs, and vice versa. These practices are specified not merely as an appendage to the DP, but an accommodation for the court to oversee the administration of justice. Chitty (1835) later expanded the reach to any DP who wishes to "give evidence" in general, celebrating from the perspective gained by his "more modern times, that a person deaf and dumb is not on that account incompetent" (p. 289).

How did Anglo–American jurisprudence arrive at this innovation? Pöchhacker (2011) identifies "practices in history" and "analysis of mediated interactions" as research tools that "increase our understanding of particular facets of interpreting and will, hopefully, add up to

show a, if not the, bigger picture" (p. 9). As such, the research questions are given final attention in turn below.

RQ_1 What was the path for interpreters prior to organized institutions for deaf people?

More recent shifts in the sign language interpreter role have long overshadowed any previous pedigree. In the United States, Registry of Interpreters for the Deaf did come about as an appendage to the National Association of the Deaf (Galloway, 1970), but this study proves the interpreter role was not originally begotten of a matured Deaf community.

Goffman (1981) believed that watching talk is an important component to round out verbal language, and "it is obvious that sight is organizationally very significant" (p. 129) for any interpersonal communication. For centuries, hearing signers drew upon natural "paralinguistic function of gesticulation" (Goffman, 1981, p. 129) in close exchange with deaf people, well before there was a Deaf community to inform the relationship. Imitative social behaviors between regular deaf and hearing interlocutors created reduced, interpersonal signs with meanings and forms that stabilized over time. Why some sign hobbyists excelled as self-taught proto-interpreters may be down to an ineffable talent, but Vernon (1978) explains how some intimates of DPs instinctively received, and responded to a gestural system:

> The human capacity to perceive differences is biologically provided. The likelihood that a capacity will develop into ability is influenced by the language one learns. Language directs perception into channels that are presumably useful for the interaction which a person engages…A given language however may inhibit certain experiences while facilitating others. (p. 40)

At the dawn of publically-available educational opportunities for deaf children (see Table 1), the legal precedents in chapter five were already in place—carried out by neighbors, co-

workers, siblings, parents and others with a demonstrated acuity in visual expression. The data clearly show that the first legal sign language interpreters were not bilingual hearing products of schools which formed and catered to Deaf communities. The practice evolved during a period of pedagogical trends from the late-eighteenth to late-nineteenth centuries which promoted signed languages and therefore an educated deaf civitas grew increasingly accustomed to participation in mainstream society through working with interpreters.

By the late-nineteenth century, obsessive attention to competing pedagogical methods for deaf children tends to overtake most Deaf-themed analyses that followed. After 1880, the use of sign language to deliver instruction to pupils was subordinated in favor of articulation training over academic content, and many who grew to adulthood under that regime were understandably less prepared for successful interactions with the legal system. Since the interpreter's task becomes complicated by a diminished quality of learning and subtlety of expression among deaf parties in general, this study is necessarily bounded by that period.

Eventually the educational, social, and pastoral branches of the mature Deaf-world flooded the interpreter pool. To Best (1943), familiarity with the language and cultural norms of the communities formed by pupils and graduates, meant the "most acceptable interpreter may be an officer or instructor from the State school for the deaf" (p. 312). Social and religious workers serving signing deaf people followed on in the secondary capacity of volunteer interpreters (Cokely, 1992; Fant, 1990; Solow, 1981; Von Der Lieth, 1978). Wilcox and Wilcox (1991) reflexively highlight what was actually the more familiar final interpreter pipeline of adults born to deaf couples who met and courted at the schools. However, the data show unrecognized work of centuries before communities sprang up around these critical masses, and such families produced native-signing hearing children.

Goffman (1981) observed "three kinds of listeners to talk: those who *over*hear…ratified participants but are not specifically addressed…and those ratified participants who *are* addressed" (p. 9). Throughout the story of sign language interpreting, at first self-selected, and later culturally-appointed interpreters have accompanied DPs through these experiences. First by listening to them, then by listening for them, the first hearing collaborators communicated heard messages in mutually-developed gestural codes. These systems eventually normalized into formal signed languages when circumscribed by a Deaf linguistic community, and generated cultural boundaries within the membership of the social reference group.

RQ_2 How did legal developments create the role of sign language interpreter?

Chapters four and five described the common law innovations which led to the recognition of the sign language interpreter as an instrument of due process. With the appearance of deaf parties, legal rhetoric in medieval documents borrowed heavily from Canon law. By the early modern period, interest in gestural languages expanded, and the Enlightenment drew out challenges to prohibitions and protectionism regarding the intelligence and reason of deaf people. Eventually, people who did not use hearing and speech to communicate were seen as having inherent legal agency and status. Whether the DP signed or not, the court could appoint an intermediary deemed to be devoted to their best interests, to carry out procedural and verbal formulae. Before educational opportunities and standardized signed language, those who devised a mode of bodily expression for themselves with the occasionally deaf, but mainly hearing interlocutor could access justice through this "next friend." When such proto-interpreters became sufficiently familiar with the idiolect, the DP could represent their own interests by proxy in asynchronous communication, and later directly in real time. As stare decisis, or compliance with

prior decisions, balanced with modernizing conditions faced by the courts over time, the DP's fitness to represent themselves became a right.

A source only very recently added, dated just past the scope of this data set, confirms these conclusions were understood by 1890. A defense attorney representing a DP in the Armagh, Northern Ireland petty sessions court requested strategic assistance from an expert consultant in Manchester, England. [7] The correspondent was a longstanding hearing leader in education and social services for deaf people, who as mentioned earlier, would have been among the primary gatekeepers of interpreting in the late nineteenth century.

The reply from David Buxton (D. Buxton to W. Johnson, May 15, 1890) enumerates many of the points treated in this study, beginning with the procedural determination the DP was legitimately deaf, or "mute by the visitation of God." He counseled that the DP's degree of education is the proxy for moral culpability, to which there must be an "expert" opinion entered regarding "(1) the capacity and (2) the responsibility of the prisoner for the act, in addition to "character, temperament and demeanor." He instructed that if the DP used "signs, natural or conventional," then "the interpreter for the prisoner should be one who knows his personal & the local signs," and emphasized the interpreter must add no advice or invention that would alter the testimony. Buxton agreed with the logic in Davidson, Kovacevic, Cave, Hart, and Dark (2014) that the only way to communicate the question of guilt to a DP without standardized language would be "performing the act before him by pantomime" then asking whether "he had done so" (D. Buxton to W. Johnson, May 15, 1890). He further conceded that so liberal and leading a translation could elicit silence or a head shake to equate to "not guilty," or a nod, which "is not

[7] Many thanks to Cormac Leonard for this source.

the legal plea of 'Guilty', but it would be received and recorded as such," so advised counsel to coach the DP on the appropriate response beforehand.

Buxton's letter, though dated outside of this study, demonstrates degradation in common law practitioners' ability to apply standing precedent to administer and adjudicate cases involving DPs. As the courtroom interpreter role was appropriated by extralegal cultural gatekeepers, historical bases under common law were stripped in favor of institutional, ministerial, relational, and nearly universally patronizing ones. These sectors of the broader Deaf community formed a living repository of judicial best practices; the legal interpreter role lost its former footing in Anglo–American justice, in favor of standards of linguistic and cultural competence among Deaf people. These dynamics are still underway, as described in chapters one and two.

Contemporaneous to the above 1890 correspondence, legal texts decoupled the interpreter's authority from the DP's rights, to be fully enmeshed with court procedure. References to "Interpreter" in Wharton and Lely (1883), and Black (1891) are not under the "Deaf" entry, but in a discrete definition which includes both deaf and non-English-speaking parties. In particular, Thompson (1890) traverses the commonly-cited case law and mechanics of the interpreter oath, and other expediencies. He organizes the information specific to the "Deaf and Dumb Witness" (p. 525) as a subheading under "Interpreter," suggesting legal primacy of the role for any party who does not use spoken English to communicate.

This modern conception that "legal rights are more or less a function of communication" (Galloway, 1970, p. 12) for the DP was well-illustrated by James Donnelly, a passionate leader in the American Deaf Community who said:

> For instance, take a deaf-mute criminal, who is brought up before the court. The clever and wily lawyer, in words of touching eloquence tries to show the presiding justice that the deaf-mute is a being to be pitied...Deaf-mutes receive a liberal education. They know the difference between right and wrong. A deaf-mute criminal should be punished to the full extent of the law. No mercy should be shown—not a whit. (National Convention of Deaf-Mutes, 1884, p. 16–17)

In his day, it was assumed that a court would rely on an interpreter to interact with a signing DP as a legal agent, and not undermine due process.

The prime concern of courts has always been a valid oath; if it is omitted or compromised, the entire process could be nullified. The final sample form the data introduced below will satisfy the matter of swearing the DP at trial, and reconcile the entire project of analyzing the legal interpreter pedigree.

In 1824, eighteen-year-old Silvia Penny was granted leave from her position in service with another family to be reunited with her deaf mother, who was called as a complaining witness in a burglary trial. They were joined by a younger sister, who was still living at home during the robbery some months previous and would also testify. Their hearing father had died as a result of the incident. The newspaper account yields two important details; the first is an excellent transcription of Silvia's translation of her mother's responses to the witness oath:

> The girl having been sworn to interpret between the Court and her mother, was directed to put to her some preliminary questions, in order to ascertain that she had the due sense of the obligation of an oath. On the question whither the soul went after death, the girl interpreted her mother's answer—"To the place of eternity;" and on the question, what

> reward awaited the good, she answered, “They go to happiness.” (“Oxford Circuit,” 1824)

Certainly Mrs. Penny, who with her daughters, “dressed in a very decent mourning,” were still in the throes of grief, and this question likely was as painfully raw to deliver, as it was to answer.

The voir dire was dispatched without objection, and the examination proper began. The interview was not recorded, but the journalist summarized by noting the “communication by gestures between the old woman and the girl was the most expressive pantomime…answers were given distinctly, and with a rapidity which surprised the Court; and were delivered by the daughter with a touching simplicity of manner, adroitness, and intelligence.” The article’s author hinted the Penny daughters possessed an attractive appearance and bearing for the children of a laborer, “and would have been taken as of much higher station than they were.” After the verdict was pronounced, the impact of tragic circumstances, combined with both form and content in Silvia’s presentation and interpretation to move the sitting justice to do something outside of protocol. With cinematic dash, “he called to Silvia Penny, and thanked her for the very intelligent and modest manner in which she had interpreted the evidence of her mother.—The old woman and the girl curtsied, and retired together (“Oxford Circuit,” 1824).

This postscript inserts the second and perhaps more notable revelation. What so invested this judge in the testimony of a deaf witness, and why was he moved to praise the young woman who interpreted it? Because this was *Baron* William Garrow, now advanced thirty-eight years in his career to a comfortable post as a country judge. Garrow does not appear to oversee sessions immediately previous to or following this one (Assizes: Oxford Circuit, 1819–1825), and it is tempting to infer he was apprised of the docket, and made special arrangements to attend.

It is fitting to end with Silvia Penny, who, before the legendary judge, embodied the resolution of his experience as a young advocate against the clever and nimble work of Martha Ruston a generation earlier, supported by her own benefactor on the bench. This study has come full circle to revise and fasten together the record of episodic and memoir treatments largely focused on the DP, and offer the first foundational narrative to the role of sign language interpreting in legal contexts. As with any bounded analysis, there remain many clipped threads of inquiry which must be laid out for further projects and future researchers to discover new patterns and repair missed stitches.

Future Directions

The obvious constraints could be resolved by the ample time and budget to conduct careful research in far-flung repositories, and grow the scope of the data set in terms of time, venue, role of the DP, and filling in personal details about the interpreters' lives, as well as the political, social, and religious milieu in which they operated. Future extensions of this work must reach past derivative and underdeveloped treatments, and give attention to local records and primary sources which can only be uncovered by methodical onsite research of unpublished materials. The difficulty remains that only after documents are digitized and correct search arguments are applied can most of these obscure items be discovered at a distance.

A lengthier format, or several coordinated and focused projects could broaden the analysis to more complex facets of legal interpreting, such as settings with secondary spoken languages other than English, and the growth of Deaf interpreters working in courts after 1880. The obligations to swear the oath, offer expert testimony, and remain impartial have been introduced in chapter five, but must have further consideration, along with the full range of expediencies faced by early interpreters. British and American examples which trace the

dynamics of compulsion, recusals, and teamed interpreting warrant extensive additional investigation. The more uncomfortable topics also need to be addressed. These include managing miscommunication; the attendance of other non-teamed interpreters who act as a monitor; payment; court personnel addressing the interpreter directly; and admissibility of reported speech in hearing witnesses' testimony, or the "reported signs" of a DP, whether present or not.

Notwithstanding the decline and outright ban of signed instruction, deaf people continued to appear not only as parties in legal matters through the late nineteenth and early twentieth centuries, but as attorneys, expert witnesses and interpreters in their own right. This expanded participation of deaf lay and professional people in the legal system usually guarantees that a hearing interpreter was also present. Continued re-parsing these and even the most well-travelled Deaf studies, Deaf history, and legal histories will bring more interpreters out of the shadows.

Wadensjö (1998) recognizes that interdisciplinarity in a young field can mean either a corporate effort to solve a multi-faceted problem, or a rich shared subject area many scholars can exploit. This work serves as both: as an academic exercise, it reaches across the domains of communication, history, anthropology, linguistics, cultural studies, and interpreting studies to serve the aims of each. Scholars of related fields are welcome to appropriate, interpolate and hopefully interrogate these analyses, identify theories, and overlay labels which their respective emphases are more qualified to apply. As a practical tool, it presents a unique scholarly contribution, with direct application to deepen the pedagogical approach to generalist and specialized practice that will ground the work of signed language interpreters throughout the English-speaking world.

Exhaustive references have been prepared in chapter seven to inspire repeatable and expandable projects to follow. Any popular or practical version for inservice interpreters must

engage self-examination and derive concrete comparisons to historical interpreters and the forces which created them. As new interdisciplinary channels open up across academia to solve old problems, the fields of interpreter preparation and continuing education, Deaf studies, Deaf history, disability law, translation studies, and translation history have richly contributed to this unique fusion. Beginning with this paper, new chapters for all these domains can be drafted, and existing theses strengthened and clarified as sign language interpreting, with a deepened perspective on the origins and undercurrents that continue to shape it, returns the favor.

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