

**Effective  
Communication in the  
Criminal Justice  
System:  
Lessons from Case Law**




**will begin at 12:30 pm ET**

Audio and Visual are provided through the on-line webinar system. This session is closed captioned. Individuals may also listen via telephone by dialing 1-857-232-0476 Access Code: 368564 This is not a toll-free number.

---

---

---

---

---

---

---

---

---

---

### Webinar Platform Keyboard Shortcuts

**Full list** – Keyboard shortcuts from the help menu on the Menu Bar.

**Chat:** Move cursor to the Message text box  
Windows: Ctrl+M      Mac: Command-M

**Speaker level Up:**  
Windows: Ctrl+Alt+Up Arrow  
Mac: Command-Option-Up Arrow

**Speaker level Down:**  
Windows: Ctrl+Alt+Down Arrow  
Mac: Command-Option-Down Arrow

2




---

---

---

---

---

---

---

---

---

---

### Captioning Keyboard Shortcuts

**Open Closed-Captioning window**

- Window: Ctrl+F8
- Mac: Command-F8

**Close Closed-Captioning window**

- Windows: Alt+F4 or Ctrl+W
- Mac: Command-W

3




---

---

---

---

---

---

---

---

---

---

## Captioning

Real-time captioning is provided during this webinar.

The caption screen can be accessed by selecting the “CC” icon in the AUDIO & VIDEO panel.



- Once selected you will have the option to re-size the captioning window, change the font size, and save the transcript

4



---

---

---

---

---

---

---

---

---

---

## Sign Language Interpreter

- To view the Sign Language interpreter expand the panel by selecting the right arrow next “Audio and Video”.

- To ensure that your system retains focus on the Sign Language Interpreter make sure that **everything** is **unchecked** in the dropdown options menu



5



---

---

---

---

---

---

---

---

---

---

## Listening to the Webinar

Online:

- Please make sure your computer speakers are turned on or your headphones are plugged in
- Control the audio broadcast via the AUDIO & VIDEO panel
- If you have sound quality problems, please go through the AUDIO WIZARD by selecting the microphone icon within the AUDIO & VIDEO panel



6



---

---

---

---

---

---

---

---

---

---

## Listening to the Webinar (cont.)

- To connect by telephone:

**1-857-232-0476**  
**Pass Code:**  
**368564**

This is **not** a toll-free number

7



---

---

---

---

---

---

---

---

## Customizing Your View

- Resize the whiteboard where the presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard; the default is “fit page”



8



---

---

---

---

---

---

---

---

## Customize Your View *continued*

- Resize/Reposition the CHAT, PARTICIPANT, and AUDIO & VIDEO panels by “detaching” and using your mouse to reposition or “stretch/shrink”
- Each panel may be detached using the  icon in the upper right corner of each panel

9



---

---

---

---

---

---

---

---

## Technical Assistance

If you experience technical difficulties

- Use the CHAT panel to let us know
- E-mail [ADAtraining@transcen.org](mailto:ADAtraining@transcen.org)
- Call 301-217-0124

10



---

---

---

---

---

---

---

---

## Archive

- This webinar is being recorded and can be accessed within a few weeks
- You will receive an email with information on accessing the archive

11



---

---

---

---

---

---

---

---

## Certificate of Participation or CEUs

- Certificates of participation or continuing education credits
- Will **NOT** be provided for this session

12



---

---

---

---

---

---

---

---

## About Your Hosts...

- TransCen, Inc.
  - Mission Statement: Improving lives of people with disabilities through meaningful work and community inclusion
- Mid-Atlantic ADA Center, a project of TransCen, Inc.
  - Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services



13



---

---

---

---

---

---

---

---

---

---

## Effective Communication in the Criminal Justice System: Lessons from Case Law



Rachel Weisberg  
Equip for Equality



---

---

---

---

---

---

---

---

---

---

## CLE Credit for Attorneys

- This session is eligible for 1.5 hours of continuing legal education credit for **Illinois** attorneys.
- We can provide certifications to attorneys in other states; some other states will accept CLE certification.
- **Attorneys** interested in obtaining continuing legal education credit should contact Rachel Weisberg at: [rachelw@equipforequality.org](mailto:rachelw@equipforequality.org)

15



---

---

---

---

---

---

---

---

---

---

## Today's Webinar

- Refresher on the ADA's Effective Communication Requirements
- Focus on Law Enforcement
  - Exigent Circumstances
- Focus on Correctional Facilities
  - Focus on Communication for Inmates who are Blind/Low Vision
  - Sign Language Interpreters
  - Telephone Access
  - Accessible Notification System
  - Affirmative Assessment of Needs
- Recap of Lessons Learned

16



---

---

---

---

---

---

---

---

---

---

## Refresher: Effective Communication Requirements

- Covered entities must provide **auxiliary aids and services** when needed to communicate effectively with people who have communication disabilities
  - **Examples:** Braille, electronic material, qualified sign language interpreter, written materials, using communication board
- **Key:** Consider the nature, length, complexity and content of the communication and the person's normal method of communication
- Title II entities: Must give **primary consideration** to the choice of aid or service requested by the person with a disability
  - Choice must be honored *unless* entity can demonstrate that another equally effective means of communication is available OR would result in an undue burden or fundamental alteration

[www.ada.gov/effective-comm.htm](http://www.ada.gov/effective-comm.htm)

17



---

---

---

---

---

---

---

---

---

---

## ADA & Law Enforcement

18



---

---

---

---

---

---

---

---

---

---

## Law Enforcement: Exigent Circumstances

- **DOJ and most courts:** ADA applies to all aspects of law enforcement, including arrests - but exigency is a factor in determining what auxiliary aids and services to provide
- **Some courts (minority view):** ADA does not apply to an officer's on-the-street responses to reported disturbances prior to securing the scene and ensuring that there is no threat to human life
- **Lesson:** Create policies and practices about how to communicate in both emergency and non-emergency situations

***Bircoll v. Miami-Dade County***  
480 F.3d 1072 (11th Cir. 2007)

- Plaintiff is deaf. Asserts that he requested an oral interpreter during a traffic stop, but was not given one
- Given field sobriety tests and taken to station for Intoxilyzer test

19



---

---

---

---

---

---

---

---

---

---

## Law Enforcement: Exigent Circumstances

County argued that arrest was "exempt" from the ADA

**11<sup>th</sup> Circuit:** Rejected complete exemption from ADA

- "The exigent circumstances presented by criminal activity and the already onerous tasks of police on the scene *go more to the reasonableness of the requested ADA modification* than whether the ADA applies in the first instance."
- But found no interpreter required due to exigent circumstances
  - DUI stop on the side of the highway, on-the-spot judgment, serious public safety concerns
  - Waiting for interpreter would alter results of blood alcohol level
- Circumstances of a DUI arrest on the roadside are different from those of an office at a school or police station
- Noted Plaintiff's primary form of communication is lip reading and that he can speak with a speech impediment

20



---

---

---

---

---

---

---

---

---

---

## Law Enforcement: Exigent Circumstances

**Lesson:** Don't overextend the argument that exigent circumstances require immediate action without effective communication

***Taylor v. Mason***  
970 F.Supp.2d 776 (S.D. Ohio 2013)

- Deaf man called the police after physical altercation with a partially deaf woman at his home
- Each alleged the other engaged in an assault
- Police arrived and used the woman as an interpreter while waiting for the qualified interpreter to arrive
- **Court:** Found for plaintiff (denied motion to dismiss)
  - No exigent circumstances existed to require a rushed investigation – no imminent safety risk
  - Police should have waited for a qualified interpreter

21



---

---

---

---

---

---

---

---

---

---

## Law Enforcement Exigent Circumstances

- Other reasons interactions were problematic under regulations -- 28 C.F.R. § 35.160
  - Woman was not an appropriate person to use as an interpreter, given the circumstances
  - Man did not consent to using the woman as an interpreter
- Communication at police station
  - City provided an interpreter who was not ASL certified
  - Man complained but city refused to replace the interpreter
  - When a law enforcement agency does not defer to the deaf individual's requests, the burden is on law enforcement to ensure that communications with a deaf individual are **as effective** as communications with hearing individuals

22



---

---

---

---

---

---

---

---

---

---

## DOJ Agreement: Focus on Exigent Circumstances

Tip: Learn from comprehensive DOJ agreements

**DOJ Settlement with City of Philadelphia Police Department**  
[www.ada.gov/ppd\\_sa.html](http://www.ada.gov/ppd_sa.html) (Aug. 2, 2018)

- **2016:** DOJ issued letter of findings
- **Settlement Agreement:** Addresses exigent circumstances
  - If an emergency involving an **imminent threat** to the safety or welfare of an individual (including law enforcement personnel or members of the public)
  - **And** there is **insufficient time** to make available appropriate auxiliary aids and services
  - **Then** law enforcement personnel will use **whatever** auxiliary aids and services are **most effective** under the circumstances to communicate with persons who are deaf or hard of hearing, **consistent** with an appropriate law enforcement response to the imminent threat

23



---

---

---

---

---

---

---

---

---

---

## DOJ Agreement: Focus on Exigent Circumstances

In other words:

- When exigent circumstances exist, officers don't necessarily need to stop to secure *specific* auxiliary aids and services
- But even in those circumstances, officers should provide the *most effective* auxiliary aids and services they can *under the circumstances*
  - Example: Use pen/paper if can't wait for ASL interpreter
- And, as soon as there is no longer an imminent threat, officers will follow its procedures to assess and provide appropriate auxiliary aids and services to ensure effective communication

**Same requirements in DOJ Agreement with Columbia Police Department, South Carolina:**  
[www.ada.gov/columbia\\_pd/columbia\\_pd\\_sa.html](http://www.ada.gov/columbia_pd/columbia_pd_sa.html) (May 3, 2016)

24



---

---

---

---

---

---

---

---

---

---

## DOJ Agreement: Assessing Communication Needs

### Additional Highlights of the City of Philadelphia Settlement Agreement

- **Develop a communication assessment process**
  - Personnel will use a Communication Card during routine interactions (where no imminent threat exists)
  - Uses pictograms to communicate basic information and ask about preferred method of communication
- **Use Communication Assessment Form**
  - Asks individual what auxiliary aids and services are desired, and includes a list of possibilities
  - Clarifies that they will be provided free of charge

25




---

---

---

---

---

---

---

---

---

---

26




---

---

---

---

---

---

---

---

---

---

## DOJ Agreement: Providing Effective Communication

- Gives "primary consideration" to expressed preference
- Police Department will ensure appropriate auxiliary aids and services are made available, including qualified interpreters
- Interpreter provided ASAP (within one hour of identified need)
  - Requires maintaining contract with qualified interpreter agencies with oral and sign language interpreter agencies to ensure services will be available on a priority basis
- Update electronic detainee tracing system to notify enforcement personnel of a detainee's disability and preferred auxiliary aids
- Develop a training program for personnel
- Monetary payment of \$97,500

27




---

---

---

---

---

---

---

---

---

---

## ADA & Correctional Facilities

28



---

---

---

---

---

---

---

---

### Effective Communication in Prison

**Lesson:** Consider both systemic and individual needs when ensuring effective communication (requests + acquisition of technology)

**Disability Rights Florida v. Jones**  
16-cv-47 (N.D. Fla. 2017)

[www.clearinghouse.net/chDocs/public/PC-FL-0027-0003.pdf](http://www.clearinghouse.net/chDocs/public/PC-FL-0027-0003.pdf)

- Lawsuit about diverse group of inmates with disabilities
- **Highlights:** Focus on inmates who are blind / have low vision
  - Materials distributed must be in an accessible format (paper forms, signs, handbooks, orientation materials)
  - Talking watches to remind inmates about necessary events or appointments, in certain circumstances
  - Plastic magnifying sheets in dorms as an accommodation
  - Library/law library will have magnifiers, a CCTV video magnifier, large print books and other resources

29



---

---

---

---

---

---

---

---

### Effective Communication in Prison

- If library has a computer, the computer will have font enlargement feature and screen magnifier
- At least one computer in law library will have JAWS software and training on this software will be available
- Upon request and demonstrated need, a recorder (in or near law library) to dictate correspondence
- Access to inmate assistants, law clerks or library clerks to, among other things, help prepare grievances, grievance appeals, requests for modifications/accommodations, responses to disciplinary actions

**See also Wells v. Thaler**, 460 Fed. Appx. 303 (5th Cir. 2012) (concluding that prison did not violate the ADA by failing to provide inmate with Braille/audio versions of legal resources because inmate had effective communication to law library due to a qualified reader and facility found that alternative resources were not available).

**Tip:** Even though in prison, enable independence as much as possible

30



---

---

---

---

---

---

---

---

## Correctional Facilities

### Common themes in the case law:

- Cases with a broad range of issues
- When ASL interpreters are required
- Accessible telecommunications—focus on video phones
- Accessible notification systems
- Throughout all – balance with security needs

**Lesson:** Use "high stakes interactions" concept as a shortcut about when to provide ASL interpreters

### **McBride v. Michigan Dep't of Corrections** 294 F.Supp.3d 695 (E.D. Mich. 2018)

- Class action of deaf and hard of hearing inmates – asserted systemic failure to provide auxiliary aids/services
- **Court:** Found for class (granted motion for summary judgment)
- MDOC violated ADA by failing to provide ASL interpreters

31



---

---

---

---

---

---

---

---

---

---

## Interpreters for High Stakes Interactions

- **Ordered:** Provide necessary auxiliary aids to participate equally in programs, including ASL interpreters for all "high-stakes" interactions, including religious services (even if voluntary)

### **Holmes v. Baldwin ("Holmes Settlement")** 11-cv-2961 (N.D. Illinois class settlement approved July 26, 2018)

[www.equipforequality.org/wp-content/uploads/2018/09/Holmes-Settlement-Agreement-all-attachments.pdf](http://www.equipforequality.org/wp-content/uploads/2018/09/Holmes-Settlement-Agreement-all-attachments.pdf)

- Class action lawsuit against the Illinois Department of Corrections on behalf of deaf and hard of hearing inmates
- **Settlement highlights:**
  - Individuals whose primary language is ASL will receive ASL interpreters for all "high stakes interactions"

32



---

---

---

---

---

---

---

---

---

---

## Interpreters for High Stakes Interactions

- **High stakes interactions include:**
  - Medical care and appointments, including dental, vision, audiological, mental health care and appointments, and include both individual therapy and group counseling sessions
    - Narrow exception for routine appointments without substantial conversation, such as allergy shots
  - Disciplinary investigations and disciplinary hearings
  - Educational programs, specific training sessions and general educational opportunities that include a verbal component
  - Vocational programs that include a verbal component
  - Transfer and classification meetings
  - Meetings with the ADA Coordinator to Communication Plan

**See also DOJ Settlement with South Carolina DOC**  
[www.ada.gov/south\\_carolina\\_doc\\_sa.html](http://www.ada.gov/south_carolina_doc_sa.html) (2018) (listing important communications for auxiliary aids and services and interpreters)

33



---

---

---

---

---

---

---

---

---

---

## Video Phones

**Lesson:** Provide video phones to ensure equivalent access

**McBride:**

- **Court:** MDOC violated ADA by failing to provide VPs; ordered VPs must be available for all deaf/hard of hearing inmates
- MDOC asserted defense of “possible safety concerns” but failed to explain why traditional safety policies were insufficient
- Must have communications that “are as effective” as communications with others – Defendants’ own witness compared TTY system to “sending someone a fax to their homes versus an email to communicate”

**Holmes Settlement:**

- Increased number of TTYs (at least two per facility)
- Video phones at all facilities with class members

34



---

---

---

---

---

---

---

---

---

---

## Video Phones

**Other cases on video phones:**

- **Heyer v. U.S. Bureau of Prisons**, 849 F.3d 202 (4th Cir. 2017)
  - Failure to provide access to video phone improperly restricted First Amendment rights
  - Rejected BOP arguments re: security, cost, TTY alternatives
  - Called TTY “old technology that is fast becoming obsolete”
  - “We believe that a factfinder could reasonably conclude that BOP’s refusal to provide a videophone is an exaggerated response to the perceived security concerns.”
- **DOJ Agreement with Arlington County**
  - [www.ada.gov/arlington\\_co\\_sheriff\\_sa.html](http://www.ada.gov/arlington_co_sheriff_sa.html) (2016)
- **Disability Rights Florida v. Jones**, 16-cv-47 (N.D. Fla. 2017)
- **Minnis v. Johnson**, 10-cv-0096 (E.D. Va. 2010)

35



---

---

---

---

---

---

---

---

---

---

## Accessible Notification System

**Lesson:** Consider how inmates are receiving notifications and consider whether they are accessible

**Bearden v. Clark County**  
2016 WL 1158693 (W.D. Wash. March 24, 2016)

- Plaintiff brought lawsuit stating that the jail’s alert system was inaccessible and that he commonly missed alerts
  - Example: Name called over loud speaker for medicine
- **Court:** Found for plaintiff (granted summary judgment) on issue

36



---

---

---

---

---

---

---

---

---

---

## Accessible Notification System

### Similar conclusions in settlement agreements:

- **Holmes:** Tactile alert system to provide a safe way to provide accessible notifications about fires, emergencies, evacuations, meals, showers, yard time, doctor or counselor appointments
- **DOJ Agreement with South Carolina:** State will "provide an effective visual or other notification system so that inmates who have a hearing disability do not miss announcements, alarms, or other auditory information, including times for meals, recreation, education, work assignments, and other events"

37



---

---

---

---

---

---

---

---

---

---

## Affirmative Evaluation of Disability-Related Needs

- **Lesson:** Be proactive. Develop process to assess inmates' disability-related needs

**Pierce v. D.C.**  
128 F. Supp. 3d 250 (D.D.C. 2015)

- Deaf individual was incarcerated for 51 days
- Prison staff never assessed Plaintiff's communication needs
- Assumed lip-reading and written notes were sufficient
- Plaintiff asserted he asked for an interpreter for medical intake, health services and various classes
- **Court:** Violated ADA/504 as a matter of law by failing to evaluate Plaintiff's need for accommodation when taken into custody
  - **Prisons have an affirmative duty to assess the accommodation needs of inmates with known disabilities**

38



---

---

---

---

---

---

---

---

---

---

## Affirmative Evaluation of Disability-Related Needs

### Holmes Settlement

- Enhanced screening process to assess whether someone is deaf/hard of hearing (at intake and during periodic exams)
- Third-party communication assessors will assess communication needs and help develop inmate's communication plan
- Set principles to follow when creating communication plan
  - Example: *If primary language is ASL, then needs an interpreter for all High Stakes interactions*

### Disability Rights Florida

- At reception, evaluation to identify whether an inmate has a hearing, vision (or mobility) disability and whether they need accommodations
- Verbal/written communication/ASL skills will be evaluated by professional, including inmate's requested communication needs

39



---

---

---

---

---

---

---

---

---

---

## Recap of Lessons Learned

- Create policies and procedures about how to communication as effectively as possible during exigent circumstances
- Don't overextend the argument that exigent circumstances require immediate action without effective communication
  - Training, training, training – hands on, when possible
- Learn from comprehensive DOJ agreements
- Consider both systemic and individual needs when ensuring effective communication (requests + acquisition of technology)
- Use "high stakes interactions" concept as a shortcut about when to provide ASL interpreters
- Install and use video phones instead of using TTY only
- Provide ASL interpreters for all "high stakes programs"
  - Contract with interpreting agencies to ensure priority
- Ensure oral information is communicated in alternative ways
- Develop process to assess inmates' disability-related needs.

40



---

---

---

---

---

---

---

---

---

---

**Rachel Weisberg**  
**(312) 895-7319**  
**rachelw@equipforequality.org**

41



---

---

---

---

---

---

---

---

---

---

## Contact Us

### ADA questions

- **ADA National Network**
  - 1-800-949-4232 V/TTY
  - [www.adata.org](http://www.adata.org)



- **Mid-Atlantic ADA Center**
  - 1-800-949-4232 V/TTY (DC, DE, MD, PA, VA, WV)
  - 301-217-0124 local
  - [www.adainfo.org](http://www.adainfo.org)
  - [ADAttraining@transcen.org](mailto:ADAttraining@transcen.org)



42



---

---

---

---

---

---

---

---

---

---

## Webinars and Training

For upcoming webinars and trainings check out:

- Training section at ADAinfo.org
- Events section at ADATA.org

43



---

---

---

---

---

---

---

---

# Thank You!

44



---

---

---

---

---

---

---

---