

FORENSIC ASPECTS OF DEAFNESS

AND FITNESS TO PLEAD

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INTRODUCTION

It is not possible to address issues in relation to forensic aspects of deafness and fitness to plead (ie competency of a person to stand trial) in isolation. Issues have to be considered in the context of psychiatry and mental health proceedings in general. The aim of this paper is to heighten awareness of the complex issues that may arise when a deaf person is subject to the criminal justice system, and for professionals employed in the mental health field to be able to function more effectively when dealing with deaf people in a legal situation.

I will put the issues in context by giving an historical perspective of the law and deafness, look at the role of psychiatrists in the judicial process, and comment briefly on mental disorder and current legislation. Consider some of the difficulties in the assessment of deaf people, provide an outline of the 1991 Criminal Procedure Act and, finally, discuss some interpreting issues.

HISTORICAL PERSPECTIVE

Throughout history the rights of deaf people have been abused. In ancient Greece deaf babies were abandoned on mountain tops to be devoured by wolves because a supposed imperfection was interpreted as a sign of a spiritual defect. Not only were deaf people without any legal rights but they were denied the right to live. Romans chained deaf people in cages by the side of major thoroughfares for the entertainment of others.

As recently as 1987 at the WFD Congress in Helsinki, Gloria Pullen, a Deaf Researcher, presented a paper outlining the rights (or lack of them) of deaf people, highlighting problems in some European countries where deaf people could not legally inherit property.

Up until the 1940s, deaf people in America were presumed by the law to be mentally and legally incompetent. They could not sign contracts, inherit property, nor adopt children. Deaf people were protected by the law as a state protects its 'incompetent wards', and deaf people did not have full citizen's rights.

Today, deaf people have the same rights as hearing people but there are still immense problems. In judicial settings they often cannot fully understand or participate in legal proceedings: they are at the mercy of solitors and barristers who often, though well-meaning, have little understanding of the complexities involved. They may be dependent upon social workers with deaf people, interpreters, or other workers who may not have an understanding of the judicial system. Opportunity for advocacy is rarely afforded.

Turning our attention to deaf people with mental disorder, access to appropriate services has historically been poor. When assessed by psychiatrists and other professionals who are without an appreciation of the psychosocial, cultural and linguistic aspects of deafness, many have been wrongly diagnosed when suffering from mental illness or learning difficulties, and subjected to inappropriate treatment and detention in hospital.

During the 25yr history of our service, many deaf people have been referred by solicitors and the courts, often at the instigation of social workers with deaf people. Usually referrals are made in respect of persons alleged to have committed serious offences or when issues of Fitness to Plead have been raised.

The psychiatric assessment of deaf people can be complex. In the context of the judicial process, the issues are often compounded. Even if assessment is completed, making recommendations to the courts can be problematic in terms of the most appropriate way to proceed.

It is also our experience that deaf people have often not been charged with offences because of their deafness or, if charged, dealt with leniently by sympathetic magistrates and judges which has not always been in their best interests or that of society in general.

THE ROLE OF PSYCHIATRISTS IN JUDICIAL PROCEEDINGS

Psychiatrists may be asked to prepare reports for defence lawyers, prosecuting counsel or the magistrate/judge. Typically, the role of the psychiatrist would include:

- 1) **Assessment** of the person's mental state at the time of the alleged offence and trial. In this capacity the psychiatrist would be attempting to determine whether the person was suffering from any mental disorder, and whether this had a bearing on the offence. On the basis of the evidence from two psychiatrists, the person may be found Not Guilty by Reason of Insanity (a

special verdict), which means that the accused did not know either the nature or the quality of the act or that it was wrong.

- 2) Advising Whether the Accused is 'Fit to Plead'.
- 3) The psychiatrist may be asked to make recommendations to the court in respect of disposal.

Typical questions raised by counsel in forensic referrals might include the following:

- 1) The assessment of deafness, possible implications and modes of communication, intellect, knowledge and literacy.
- 2) Whether the accused is mentally disordered and its implications.
(Treatability is an important concept, especially in respect of those suffering from a psychopathic disorder.)
- 3) Can the person give a clear account of the offence and reason?
- 4) Do they understand right from wrong?
- 5) Do they feel remorse/feelings of guilt?
- 6) Was there intent/was the act premeditated?
- 7) Were they influenced by alcohol/drugs?
- 8) Did they understand police interviews, agree with statements/depositions?
- 9) Is the person potentially dangerous?
- 10) Will person be able to understand the proceedings via an interpreter?
- 11) Is the person 'fit' to enter a plea?

MENTAL DISORDER AND LEGISLATION

The 1983 Mental Health Act defines mental disorder as 'mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind'.

The term 'mental illness' is used to describe a psychiatric condition where there has usually been some definable change. Illnesses are classified under organic states where there is an underlying cause (eg dementia) and functional illnesses such as neurotic and psychotic disorders.

Mental impairment, ie arrested development or incomplete development of mind, and psychopathic personality disorder, are generally considered as being more persistent conditions. Under current legislation the person suffering from psychopathic disorder cannot be detained in hospital unless they are 'treatable', ie treatment is likely to bring about an improvement or prevent a deterioration.

1983 Mental Health Act (patients concerned in criminal proceedings or under sentence). This act empowers courts and the Home Secretary to make Orders in respect of people concerned in criminal procedures which includes remand to hospital for psychiatric reports on the accused's mental state (Section 35). Remand to hospital for treatment (Section 36). In the case of convicted persons they can be detained in hospital for treatment (Section 37), or an Interim Hospital Order can be made to assess treatability (Section 38). The higher courts also have the power to restrict the discharge of patients from hospital orders (Section 41).

The 1983 Act also covers the transfer to hospital of prisoners serving sentences (Section 47), and restrictions on discharge.

See Table 1 Appendix for the most important Orders, the criteria, decision-maker and effect.

THE ASSESSMENT OF DEAF PEOPLE

People with all types of deafness may find themselves subject to the judicial system: this includes deaf sign language users, deafened and hard of hearing people. A significant percentage of deaf people will have disabilities, intellectual, sensory, motor, or specific language disorders.

Modes and fluency in communication will vary widely. Whereas there are deaf people who can clearly cope with the stress of interrogation, instruct counsel and put up a defence if given access to an interpreter, at the other extreme are 'non-communicating' deaf people, who may be unable to give personal details, let alone an account of circumstances leading to arrest. Deaf people are potentially disadvantaged from the point of arrest. It is vital that the mode of communication and facility is properly assessed.

FITNESS TO PLEAD

To be tried for an offence, the person must be present at the trial and plead guilty or not guilty. If there is no plea the trial cannot take place.

During the Middle Ages, a person who did not plead was subject to 'peine forte et dure'. In effect they were tortured until they made a plea. The most common system in England was a great weight on the chest which slowly crushed the victim. Since being found guilty or pleading guilty meant losing all property to the state and leaving the family worse off, most people were willing to die rather than plead.

In the present state of the legal system, a jury has to decide whether a person is 'fit to plead'. Up until 1991, people found under 'Disability', ie Unfit to Plead, or Not Guilty by Reason of Insanity, were made subject to Section 5 of the 1964 CPI Act which had the same effect of being detained in hospital under Section 37 of the Mental Health Act, with Section 41 restrictions. In other words, a person accused of an offence and unable to enter a plea was detained in hospital irrespective of whether the act had been committed or not.

The recent change in the law resulted in part, from the case of a deaf man, Glen Pearson, who had learning difficulties. He was found under Disability in 1986 after stealing £5 and three light bulbs, and was imprisoned whilst awaiting a place in a special hospital, without limit of time. The legal profession grasped the initiative and used this case in campaigning for changes in the legislation. 'Unfit to Plead' has no legal or psychiatric definition. It arose from several historical events in the courts. In particular, in 1836, in a case of Rex versus Pritchard (a deaf man accused of bestiality) the jury were instructed to consider the accused was of 'sufficient intellect' to comprehend, make a defence, challenge a juror and understand evidence.