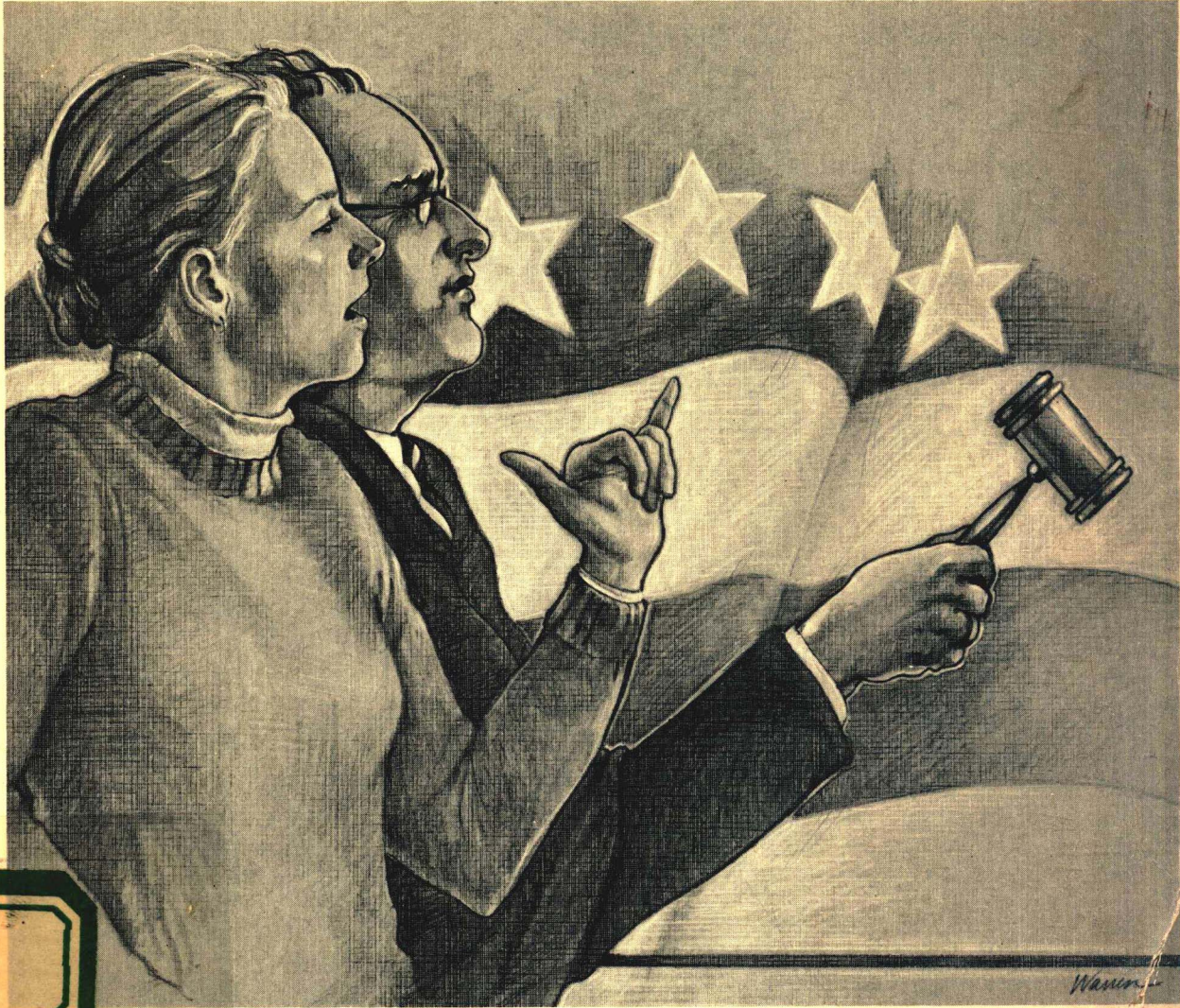


LEGAL RIGHTS of Hearing-Impaired People

Third Edition



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LEGAL RIGHTS of Hearing-Impaired People

**National Center for Law
and the Deaf**



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In memory of Fred Schreiber, the happy warrior for deaf people's rights

Preface

Hearing-impaired people are confronted with barriers to communication throughout and in all aspects of their lives.

State and federal laws have begun to break down these barriers. This book explains how these laws can help hearing-impaired people in areas where their needs have been ignored or inadequately addressed.

We have tried to provide one comprehensive and current resource on legal rights and remedies for hearing-impaired citizens. We also describe flexible ways to ensure effective communication and better understanding through technological advances, interpreting alternatives, and deaf awareness.

In the 1980s there have been threats to cut back on legal protections for disabled people. But organizations of and for disabled people have caused the federal government to withdraw attempts to weaken regulations under the Education for All Handicapped Children Act and Section 504 of the Rehabilitation Act of 1973. There has

also been a positive trend in court decisions, especially at the federal appellate level, to evaluate individual ability on a factual record. With increasing frequency, courts are striking down exclusionary policies grounded on stereotypic attitudes and unsupported fears.

This Third Edition includes recent U.S. Supreme Court decisions affecting disabled people in education, employment, and access to services. Recent court and legislative advances in the fields of mental health and telecommunications are also discussed.

Our democratic society has a responsibility to ensure that all its citizens, including those with disabilities, are given an equal opportunity to lead productive lives. This book discusses the legal tools now available to all citizens concerned with securing this fundamental equality.

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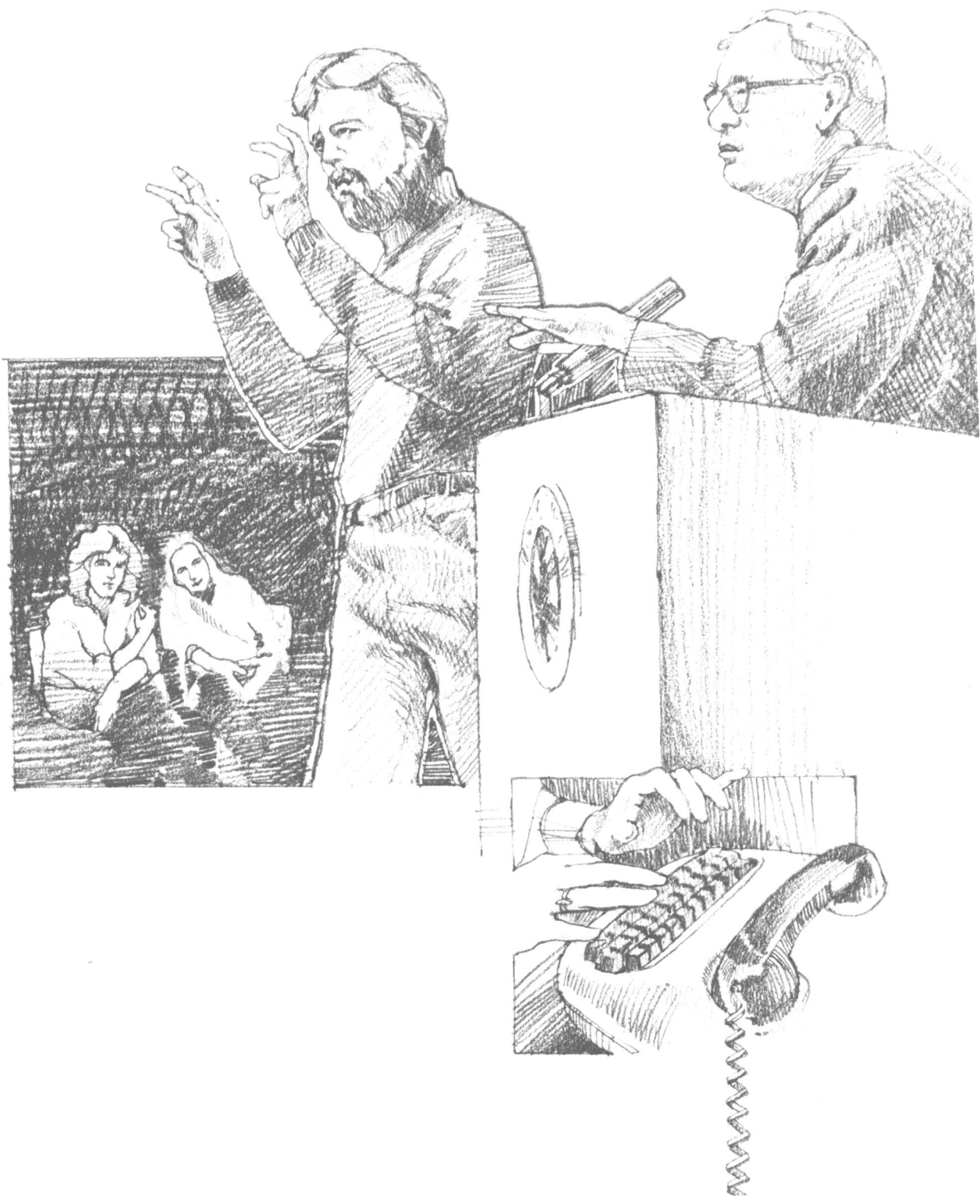
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CHAPTER ONE

Communicating with Hearing-Impaired People

More than merely a barrier to sound perception, hearing loss is a barrier to communication and understanding. It is a major, chronic disability that affects one out of every sixteen Americans. One in every 100 Americans is profoundly deaf—unable to hear speech well enough to understand it.¹ The wide range of impairment, the variety of methods of communication, and differences in the age of onset of disability make it difficult to generalize about hearing-impaired people. But certain facts are apparent.

Hearing-impaired people rely on information they can see. Some means of making communication visible is necessary to ensure that hearing-impaired people are able to explain their needs effectively and understand what is expected of them. With some auxiliary aid or accommodation and some sensitivity to their condition by those around, hearing-impaired people can communicate and participate fully and easily in most settings.

Hearing-impaired people have not re-

ceived fair treatment from professional, social, and government service providers or from the courts and police. Some accommodation to the condition of hearing loss can make a critical difference in whether hearing-impaired people receive services they need and to which they are entitled and whether they can participate satisfactorily in society. The material cost of such accommodation is modest in comparison with the gain realized.

As we review the various methods that hearing-impaired people use to communicate, one general rule to bear in mind is that the hearing-impaired person knows what method is best, because he or she has spent a lifetime negotiating the problems that hearing loss imposes. Whatever method is natural for that person is the method that should always be used, preferably from the first moment of contact.

Sign Language and Interpreters

American Sign Language (ASL) is a visible language that is linguistically

independent of English. Its signals are handshapes and movements that represent words, concepts, or letters of the English alphabet. Many deaf people use sign language rather than English as their primary mode of communication. For many deaf people it is a native language with rich cultural associations.

An interpreter is a skilled professional who can translate the meaning of spoken words into sign language as the words are spoken and translate sign language messages into correct English as they are signed. Interpretation of written or spoken English into ASL requires a high degree of skill. It takes as much time and effort to learn sign language as any other language.

At times a specialized interpreter must be used. For example, a person who is both deaf and visually impaired may need a specially trained deaf-blind interpreter. Some deaf people do not use sign language but require an “oral” interpreter who silently mouths the speaker’s words to them. The oral interpreter is usually a person whom the deaf person finds easy to lipread and who knows how to substitute synonyms for words that are difficult to lipread. Another unusual situation occurs when the deaf person has rudimentary language skills or does not use conventional sign language. In this situation, another deaf person may have to provide interpretation into conventional sign language, which can then be interpreted into English by the regular interpreter.

Qualified interpreters can be found through local and state chapters of the Registry of Interpreters for the Deaf (RID), a national professional organization that certifies interpreters in various skill specialties, including legal interpreting.² Interpreters can also be located through local organizations of deaf people, the state association of the deaf, a state commission or agency for hearing-impaired people, or schools for deaf children. In addition, deaf people may themselves suggest local interpreters. Professional offices and service agencies should develop their own lists of interpreters whom they know to be reliable and competent.

Using the same interpreter regularly can enhance the quality of the communication, since an interpreter who is familiar with a speaker’s vocal style and customary phrases will be able to interpret more effectively. The interpreter also can provide valuable assistance to service providers by advising them about effective use of an interpreter and about other means of communicating with deaf people.

While professional certification may be useful in evaluating the skills of an interpreter, the ultimate authority on an interpreter’s qualifications should be the deaf person. An interpreter who cannot provide effective communication to a deaf person in a particular situation cannot be considered qualified despite professional certification.

Relying on amateurs who may know some sign language is a frequent error.

Interpreter Guidelines

A professional interpreter should uphold the National Registry of Interpreters for the Deaf Code of Ethics, which carefully defines the role of an interpreter. This code prohibits an interpreter from continuing in any assignment if attempts to communicate are unsuccessful for either party.

The following are guidelines for use of interpreters:

- When talking, look at the deaf person, not the interpreter; speak directly to the person as if the interpreter were not present. For example, say, "The hearing will be on Tuesday," rather than, "Tell him that the hearing will be on Tuesday." The interpreter will sign exactly what is said.
- Some deaf people will speak for themselves. Others will not speak, so the interpreter will say in English what the person signs. In both cases, respond by talking to the deaf person, not the interpreter.
- The interpreter should be directly beside the speaker so that he or she is easily visible to the deaf person.
- The interpreter should not be placed in shadows or in front of any source of bright light, such as a window.
- No private conversation should occur with the interpreter or with anyone else in the deaf person's presence. The interpreter must interpret everything that is said in front of the deaf person. Any discussion of the deaf person's language or communication level should take place privately with the interpreter. Ask the deaf person, not the interpreter, if he or she understands what is being said.
- Speak naturally and not too fast. Remember that names and some other words must be fingerspelled and that this takes more time than signing. The interpreter will indicate whether it is necessary to slow down. Avoid jargon or other technical words with which the deaf person may be unfamiliar. If possible, meet with the interpreter before the interview to discuss the best way to interpret certain technical concepts into sign language without losing any of the meaning.
- Make sure that the interpreter understands the need for complete confidentiality. Do not allow the interpreter to discuss the deaf person's problems with the person or to give any advice about the problem. The interpreter's only role is to facilitate communication with the deaf person.

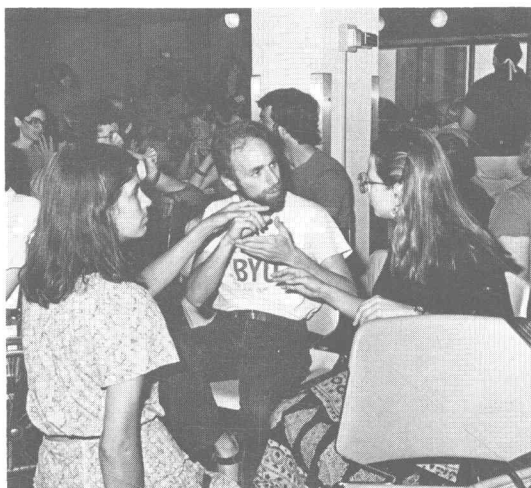
The ability to make or read a few signs or to fingerspell is no substitute for proficiency. A well-meaning, beginning signer will usually not know sign language well enough to interpret or to communicate effectively with most deaf people.

Many inexperienced interpreters do not sign in ASL but use signs borrowed from ASL in an English word order. They may frequently impose a completely incorrect English meaning on a sign, such as using the sign for the adjective *fine*, meaning "good," to connote the noun *fine*, meaning "penalty." An unqualified interpreter might fingerspell words when he or she does not know a sign; but directly translated English idioms are rendered meaningless in ASL. For example, a direct translation of the English idiom *have to* would mean "possess" in ASL.

Problems of Notewriting

Many deaf people rely on written notes to communicate with hearing people or to supplement other modes of communication. However, writing is not always effective or appropriate. A written conversation is tedious, cumbersome, and time-consuming. Written messages are frequently condensed. The writer omits much of the information that would otherwise be exchanged, so the deaf person does not get the same amount of detail that a hearing person would.

Some deaf people are highly educated. Others are not. A common



misconception is that deaf people compensate for their inability to hear by reading and writing. Many deaf people, especially those who lost their hearing before they learned to talk, have difficulty with written as well as spoken English. Data from a 1971 national survey of hearing-impaired students showed that reading comprehension is the hearing-impaired person's most difficult academic area. It is the area most severely affected by deafness.³

Most people learn their native language by hearing it spoken around them from infancy. But a person who is born deaf or who loses the ability to hear when very young cannot learn English in this way. Therefore, despite normal intelligence, a deaf person may have limited competence in English. For such people, English is virtually a second language. They may have a limited English vocabulary and grammar, a

condition that can lead to numerous misunderstandings.

The extensive use of idioms in English also poses significant reading problems for deaf people. For example, the expression *under arrest* in the *Miranda* warnings (discussed in Chapter Nine) would be puzzling to many deaf people because *under* to them means only “beneath.”⁴ For these reasons, written notes or materials will often be inadequate to achieve effective communication with a deaf person. The effectiveness of notewriting as a method should be observed carefully to avoid miscommunication.

Lipreading Comprehension

A common misconception about deaf people is that they all read lips. Very few people can read lips well enough to understand speech, even under optimum conditions. Information collected during the 1972 National Census of the Deaf Population indicated that 21.4 percent of deaf adults who completed one or more years of senior high school considered their lipreading ability to be poor to nonexistent.⁵ “In fact, even the best speechreaders in a one-to-one situation were found to understand only 26 percent of what was said [and m]any bright deaf individuals grasp less than 5 percent.”⁶

This low level of comprehension occurs because many English speech sounds are not visible on the mouth or lips. Certain spoken words or sounds create similar lip movements. The am-

biguity of lipreading is demonstrated by the fact that the sounds of T, D, Z, S, and N all look identical on the lips. The words *right*, *ride*, and *rise* would be indistinguishable to a deaf person, as would the sentences, “Do you have the time?” and “Do you have the dime?” The meaning of entire sentences can be lost because a key word is missed or misunderstood. When a deaf person does not understand a sentence, the speaker should repeat the thought using different words. The speaker should use gestures freely, for example, pointing to a wristwatch to indicate time.

Many factors hinder one’s ability to lipread. Lipreading is difficult when

- the speaker is in motion or not directly facing the lipreader;
- the lips are obscured by hands, beards, or mustaches;
- the speaker does not articulate carefully or has distorted speech;
- the speaker has a regional or foreign accent;
- the speaker is using technical or unfamiliar words;
- the lipreader is not familiar with the language structures and vocabulary of spoken English;
- the speaker is not well-lighted;
- the lipreader must look into a glare or light;
- the lipreader has poor vision.

Lipreading often supplements other modes of communication, but it is seldom sufficient in itself to ensure effective communication. Unless the deaf person indicates a preference for using only lipreading, it should not be relied upon extensively.

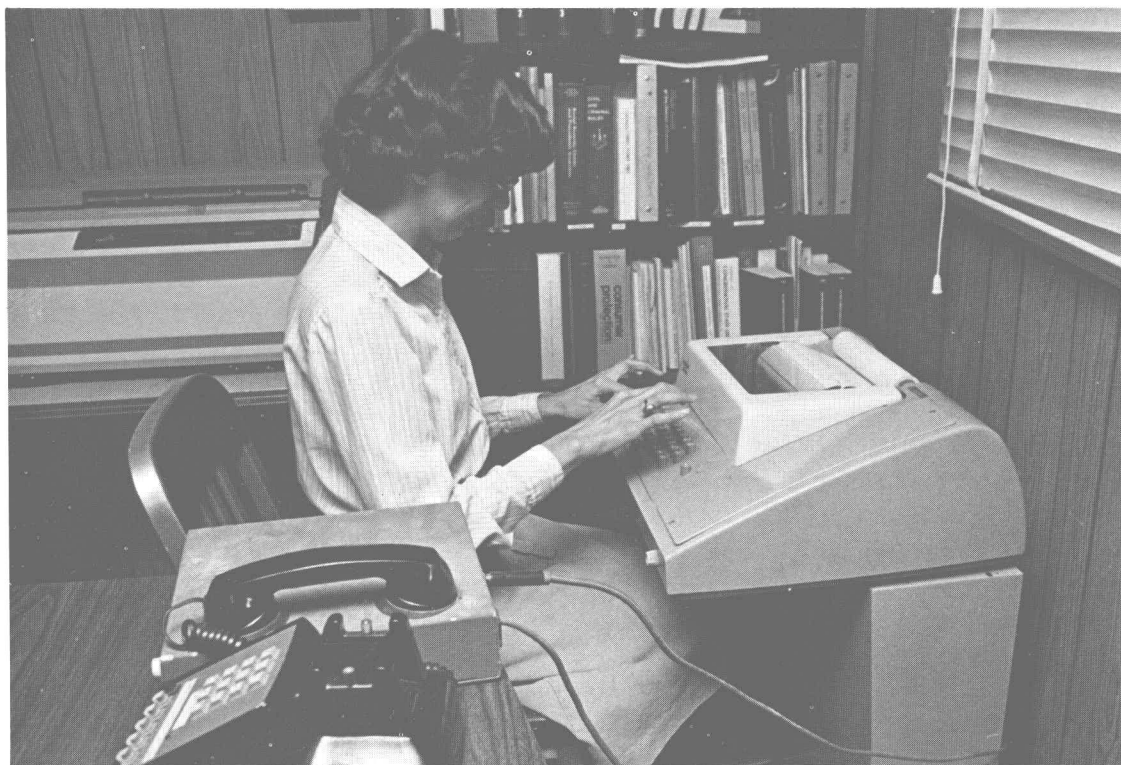
Environmental Interferences

Environmental factors often interfere with communication with a deaf person. The room should be adequately lighted, without glare. While profoundly deaf people will not be affected by background noises, they will be distracted by a great deal of background

movement or changes in lighting. A person who uses a hearing aid or who has residual hearing may be seriously distracted by background noises. One should try to talk in a quiet place, away from the noises of machinery and other conversations.

When talking to a hearing-impaired person, one should speak directly to the person without moving around, turning away, or looking down at papers or books. Speak naturally, without shouting or distorting normal mouth movements.

Some deaf people have normal and intelligible speech. Others do not speak





at all. Early deafness interferes with language and speech acquisition. Many deaf people who can speak exhibit unusual tones, inflections, or modulations. Whether or not a deaf person uses speech is a matter of individual preference. Difficulty in understanding a deaf person's voice can be relieved by listening without interruption for a while until the person's particular voice patterns become familiar.

The phrases "deaf-mute" and "deaf and dumb" are considered by most deaf people to be insults and should not be used.

Communication Devices

One frustration of deafness is the inability to use a conventional telephone. Hearing people rely heavily on the tele-

phone and take it for granted in communicating with businesses, friends, government agencies, and emergency services. With new devices for deaf people coming into more frequent use, the telephone has become a means rather than a barrier to communication.

A TDD (Telecommunication Device for the Deaf), commonly referred to as a TTY (teletypewriter), is a machine with a typewriter keyboard connected by an acoustic coupler to a regular telephone.* Two people with compatible equipment can have a typed conversation over the telephone, enabling hearing- and speech-impaired people to have the same functional telephone service as other people. The devices are relatively inexpensive and easy to use.

If a professional, agency, or business office does not have a TDD, deaf people will not be able to get information, make appointments, or transact business by telephone. The office will be unable to contact deaf clients except by mail, resulting in frustrating delays, inefficient service, and lost business. The office should publicize the fact that its telephone is TDD-equipped and should

*Although most deaf people use the term TTY generically to refer to any of several telecommunications devices, technically TTY refers only to converted teletypewriter machines. The broader term TDD includes not only the TTY but also new video and electronic machines such as the C-Phone, Manual Communications Module (MCM), and Portatel. Hereafter we will regularly use the inclusive term TDD; in certain contexts, however, the more common, everyday term TTY will be used.