

# Ruston: the foundational case for interpreting with deaf parties in Anglo-American courtrooms\*

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## Abstract

*Though not the first legal matter to admit a sworn signed language interpreter, this precedent-setting case that codified early protocols of courtroom interpreting for deaf parties under common law in Great Britain and the United States was heard in the London Central Criminal Court in 1786. During a larceny trial, a woman endured such an adversarial voir dire process, that it cleared the procedural hurdles of that day to admit her deaf brother as a witness for the prosecution, and she was permitted to act as his interpreter. Supported by the sitting justice, her insightful answers to a belligerent defense counsel, and nuanced interpreting of witness testimony elevated the citation into the Anglo-American legal lexicon as "Ruston's Case." Named as such for the deaf witness and not the defendant, it has influenced centuries of legal signed language interpreting case law and practice.*

## Keywords

Ruston's Case, historical interpreting for deaf parties, 18<sup>th</sup> century legal signed language interpreting.

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Though by far not the first legal matter to admit a sworn signed language interpreter, arguably the foremost precedent occurred on 11 January 1786, at the Trial of William Bartlet and codified the protocols of courtroom interpreting for deaf parties under Anglo-American common law. Martha Ruston accompanied her deaf brother John to the London Central Criminal Court to facilitate his witness testimony in a larceny case. 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.

Since first appearing in Leach (1789), the unique instance was digested and reprinted in legal reference texts in the UK and US for centuries, and persists in scores of written opinions, headnotes and other academic sources. More recently, the exchanges have been examined from the point of view of the barrister and the witness (Beattie 1991; Hostettler/Braby 2010), were included in the rough taxonomies of Old Bailey cases with deaf parties in Stone and Woll (2008), and developed briefly in Woll and Stone (2013).

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 publication by the first prothonotary to report it (Leach 1789), the case entered the legal lexicon as “Ruston” and has been universally cited as such. This study adopts the preferred spelling from contemporaneous official sources. The unofficial Old Bailey transcripts were drafted by journalists with entertainment and commercial interests, but because of their documentary importance, in “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 *et al.* 2015). According to Shoemaker (2008: 563), publishers composed “copy from one or more note takers and shorthand writers who attended the trials”. By the 1780s, the “sessions papers achieved their greatest detail,” but it was operationally impossible to include a verbatim transcript (Langbein 2003: 185). Therefore, the *Proceedings* of this period tend toward a more reliable record, with an acceptable margin of inaccuracy and omission.

The Rustons’ testimony and interpretation displayed a nuanced understanding of language and the examination process, both in John’s ability to offer precise responses, and Martha’s careful explanations to subtle points of fact. The Ruston citation created both the text for an interpreter oath “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: 348), and the legal protocol to permit such an accommodation in future matters.

The first legal tests 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: 245). As the rise of legal representation flooded 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: 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 *Proceedings* 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). Garrow did likely promote the phrase, and certainly crafted his tactics to fix 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: 247). An expert defense lawyer, Garrow attempted to strike John’s damning testimony, either by way of the witness himself or via the interpreter. An exploration of the transcript (“Trial of William Bartlett” 1786) reveals how Martha, with a vexed Justice John Heath, neutralized Garrow’s attack.

## 1. Round I

The first rhetorical target was deaf parties (DPs) in general, and specifically John Ruston, the second witness 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: 34).

Justice Heath at once recognized and completed the Hale reference, alluding to 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 citations for the balance of this article (“Trial of William Bartlett” 1786) demonstrate these complimenta-

ry aspects of his character. John Ruston was ultimately 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.

## 2. Round II

After silencing Garrow, Heath reverted to judicial prerogative under common law prior to the eighteenth century to conduct direct and cross-examination (Beattie, 1991) and personally resumed the *voir dire* process for Martha Ruston:

Court: Now how is it that you wou. communicate the question you wou. 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 inserted is one familiar to all signed 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, especially when there is a risk of semantics and precision operating at cross-purposes. Martha delivered 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 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: 76) instructs today’s working interpreters that they are technically “officers of the court”, which position Macy (1948: 945) clarified is founded in “an independent trust toward the parties, the court, and the jury”. 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 the 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 interpreter and 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 secular law. Both Church and Court require the same test of an agent, e.g., knowledge of right vs. wrong, truth vs. lie, and past actions vs. future punishment for a breach. If the DP cannot demonstrate understanding and consent via the oath, the testimony to follow would be null and void. The judiciary of the Ruston's era sought proof of Christian fear, and Martha vouched that she believed John had sufficient respect for that 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 interactive patterns, and use of language (Gumperz 1962). Nonetheless, no hearing persons from 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: 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" (ibid.) opens to their experience. If John did not access the newly-emerging educational opportunities for deaf people 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: 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 her boundary as an interpreter, and not co-author of the testimony.

### 3. Round III

The Court was satisfied as to the fitness of the DP and the qualifications of the interpreter, so Garrow was released from temporary silence, 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 raised 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 a deaf man more than having his hands restrained for hours or possibly 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. In many other cases (Leahy 2014), deficits in vocabulary and grammar for the DP or interpreter proved a barrier to the oath, and could derail due process, regardless of fitness to comprehend questioning or stand trial.

Martha rejected a free indirect rendition, and 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 saw, and not what the witness might be thinking. Garrow continued to press her in the hope 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.

The above refers 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: 507). Even if spoken conversation and printed advertisements were inaccessible, John Ruston along with the whole of London would have seen the “endless paraphernalia” (ibid.: 508) commenting on the spectacle. In his attempt to be cunning, Garrow handed Martha the one ubiquitous image from current events that was the simplest to render into iconic and unambiguous gestures. 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 had transmitted the interpretation, she could not purport to read John's mind. However, she could assess the appropriateness of his responses through mentally pivoting to his perspective, and using nuanced linguistic feedback to gauge whether or not the exchange was successful.

Aware of other precedents 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 translated in signs and “Not letters or Syllables”, it is unlikely that John used fingerspelling (distinct signs for each letter of the Roman alphabet). By 1786, fingerspelling was an established literacy tool for deaf pupils, as well as augmentative communication for hearing people who could not speak for medical or religious reasons (Padden/Gunsauls 2003). From Martha’s specificity, she implied John 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 and requested sight translations at home, correspondence on paper was ineffective, as “he does not understand reading”.

Goffman (1981) defines Martha’s strategy as a *response*, in which the unstated implication from the question is embedded in return, instead of a mere *reply* to a *prima facie* statement (35, 43). She had the instinct to “break frame and reflexively address” (ibid.) 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. She effectively re-imagined the conversation from Garrow’s position, and re-formulated a different question through her answer. Charon (1998: 121) claims these role shifts regularly assumed by all interpreters are “the most important” of the “skills for success in interaction situations”, and allows one to “control the interaction situation through knowing how to manipulate, direct, or control others” (ibid.: 118). Discerning and preserving the speaker’s meaning and intent despite the source text 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 have risked perjury, but also inserting, omitting, or fundamentally altering the message to save face. A lack of transparency and overconfidence in her interpretation may not have allowed for dysfluency, equivocations, or inconsistencies from the DP, and the listener could have misclassified the source of any confusion. With the slightest contradiction or unfinished thought, defense counsel could have pursued her, instead of respecting the process, which might have included a convoluted source message, or the flaws inherent in translation.

#### 4. Round IV

Perhaps sensing defeat, Garrow launched into a rant of some fifteen to twenty minutes (delivered with the requisite oratorical flair), in which he put 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. The Court allowed him to expend his energy, and promptly overruled every objection. Again, Heath dispensed with the advocates and personally directed 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?<sup>1</sup>
- 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. Woll and Stone (2013) astutely observe that while “Garrow appears to deliberately avoid using the term *interpret*, instead using terms such as *convey*, *express*, and *communicate*, Mr. Justice Heath uses the term *interpret*, to reinforce the legitimacy” (564) of the mediated testimony. He also did not extemporaneously draft the interpreter oath from the bench for the purposes of this trial alone. The language 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: 281), further validating the role. 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: 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 frozen form specifically intended for interpreters and not merely Crown witnesses, sealed a precedent to be repeated for centuries (Leahy 2014). For example, Chitty (1816: 329) transcribed and labeled the “Oath of interpreter to a deaf and dumb witness” from Bartlett, which codified it with the unnecessary constraint to apply to 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.

1 Demonstrating further familiarity with the legal landscape, Heath may be citing a 1720 case wherein a deaf party swore through the interpreter's proxy oath, which had been improvised for the occasion (see Leahy 2017).



Everyone present was compelled to recognize Martha's conclusive authority as an official channel of communication at the trial. Once again, she demonstrated 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 the reminder that her work would serve the Court only insofar as her ability could ensure, 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, Martha 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 his family, he had internalized the group's expectations of piety and fidelity, and co-developed symbolic representations of those abstract concepts.

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: 62) calls this evidence of shared "rules, ideas, and values of the group as well as coming to learn...roles in relation to everyone else". The case of a DP produces layered minded and embodied communicative actions. Like the prior confirmation, John understood the absent referent of the 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 Rustons' depiction of God indexed the top of the signers' articulatory space; this area near or above the head (also the location of religious vocabulary and pronominal references in British Sign Language and American Sign Language) made sense to court personnel, who understood the metaphor invoked in the back-transliteration.

## 5. Round V

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” (ibid.: 125), then Martha’s strategy is to manage both sides of her interaction – first with the professionals, and then with the witness. Analysis of this second and much briefer precedent set in Bartlett will concentrate on Martha’s actual interpreting work. As with the preceding excerpts, the transcriptions to follow should be received with scrutiny. Experienced interpreters will immediately identify the dynamics at issue – a consistency with contemporary practice makes the record credible and authentic to those familiar with the task. As Justice Heath examined John Ruston through Martha, questioning began with the familiar identification of the defendant seated in the courtroom, and quickly transitioned 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’s English rendition used the third person, “leaving one of the ground rules of court interpreting” (Elsrud 2014: 45) or indeed any interpreting situation. 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” (ibid.). Martha was 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, Neumann Solow (1988: 21) recommended conveying dysfluent DPs in the third person, “so that the interpreter can interject comments” 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/second person, and likely simplified the grammatical work of pronominal references. According to Prinz and Prinz (1985: 2), learning to hold a conversation “involves the integration of cognitive, linguistic, and social interactional abilities”. 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: 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 pivoted 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 statements. After confirming that John saw the victim previously unknown to him, the examination sought to gauge his proximity to the alleged theft. To describe how 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 that the interpreter, who was not present at the scene, could use with confidence. John testified he was known, if not among the parties who apprehended and conveyed Bartlett to the constable, where he was likely 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. Bartlett is universally cited not with the defendant, but as "Ruston's Case," presumably for him. Leach (1789: 347) distilled the rule: "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". Highmore (1822: 84) rehabilitates the last phrase to read "through the medium of an interpreter", who in this instance will be remembered as the named figure behind "Ruston's Case".

## 6. Dénouement

In 1824, eighteen-year-old Silvia Penny was granted leave from her position in service to be reunited with her deaf mother, who was called as a complaining witness in a burglary trial. They were joined by a sister, two years younger and living at home during the robbery some months previous, who 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 interpretation 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 whether 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 in official sources, 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 sur-

prised the Court; and were delivered by the daughter with a touching simplicity of manner, adroitness, and intelligence (“Oxford Circuit” 1824).

The article’s author further 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 moved the sitting justice to act 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 the Court 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 have overseen sessions immediately previous to or following the Penny matter (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 defeat as a young advocate against the clever and nimble work of Martha Ruston a generation earlier, supported by her own benefactor on the bench. Edwards (1832: 180) 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”. 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” (ibid.: 181). Ultimately, in any “matter of serious moment,” there was no question that the interpreter “is required and admitted” in such cases (ibid.: 181). Upheld by the force of case law and sustained by respected voices in contemporary authoritative texts, nineteenth-century Deaf communities in Great Britain and the United States that thrived after Ruston, encountered a legal system better prepared to accommodate them through a sworn interpreter.

## References

- “Assizes: Oxford circuit (1819 Lent-1825 Lent)”, *Crown Minute Book*, National Archives of the UK.
- Beattie J. M. (1991) “Scales of justice: defense counsel and the English criminal trial in the eighteenth and nineteenth centuries”, *Law and History Review* 9/2, 221-267.
- Charon J. M. (1998) *Symbolic Interactionism: An Introduction, an Interpretation, an Integration*, Upper Saddle River, Prentice Hall.

- Chitty J. (1816) *A Practical Treatise on the Criminal Law* 4, London, A. J. Valpy.
- Edwards C. (1832) *A Practical Treatise on Parties to Bills and Other Pleadings in Chancery*, New York, Gould, Banks, & Co.
- Edwards R. A. R. (2012) *Words Made Flesh: Nineteenth-century Deaf Education and the Growth of Deaf Culture*, New York, New York University Press.
- Elsrud T. (2014) "Othering the "other" in court: threats to self-presentation during interpreter assisted hearings", *International Journal of Law, Language & Discourse* 4/1, 27-68.
- Emsley C. / Hitchcock, T. / Shoemaker, R. (2015) "The value of *The Proceedings* as a historical source", <<http://www.oldbaileyonline.org/static/Value.jsp#poplit>>.
- Forbes W. (1730) *The Institutes of the Law of Scotland* 2, Edinburgh, John Mosman.
- Foss E. (1864) "Heath, John. Just. C.P. 1780", in *The Judges of England; With Sketches of their Lives* 8, London, John Murray, 301-303.
- Goffman E. (1981) *Forms of Talk*, Philadelphia, University of Pennsylvania Press.
- Gumperz J. T. (1962) "Types of linguistic communities", *Anthropological Linguistics* 4/1, 28-40.
- Hale M. (1778) *Historia Placitorum Coronæ. The History of the Pleas of the Crown* 1, London, T. Payne.
- Highmore A. (1822) *A Treatise on the Law of Idiocy and Lunacy*, Exeter, George Lamson.
- Hostettler J. / Braby R. (2010) *Sir William Garrow: His Life, Times, and Fight for Justice*, Hook, Waterside Press.
- Keen P. (2006) "The 'balloonomania': science and spectacle in 1780s England", *Eighteenth-Century Studies* 39/4, 507-535.
- Langbein J. H. (2003) *The Origins of Adversary Criminal Trial*, Oxford: Oxford University Press.
- Leach T. (1789) *Cases in Crown Law*, London, T. Whieldon.
- Leahy A. M. (2014) *Interpreted Communication with Deaf Parties to 1880*, unpublished database.
- Leahy A. M. (2017) "Historical mis-interpretation of signed language interpreting", in A. Kershaw / P. J. Davies (eds) *Translation Talk*, publication pending.
- Linell P. (1991) "Accommodation on trial: processes of communicative accommodation in courtroom interaction", in H. Giles / J. Coupland, / N. Coupland (eds) *Contexts of Accommodation*, New York, Cambridge University Press, 103-130.
- Macy J. E. (1948) "Use of interpreter in court proceedings", *American Law Reports* 172, 923-952.
- Mathers C. (2006) *Sign Language Interpreters in Court: Understanding Best Practices*, Bloomington, AuthorHouse.
- McKinney V. (1983) *First Language Learning in Deaf Persons beyond the Critical Period*, PhD dissertation, ProQuest Dissertations and Theses.
- Neumann Solow S. (1988) "Interpreting for minimally linguistically competent individuals", *The Court Manager* 3/2, 18-21.
- "Oxford Circuit" (1824, March 31) *Hereford Journal*, 3.
- Padden C. / Gunsauls D. C. (2003) "How the alphabet came to be used in a sign language", *Sign Language Studies* 4/1, 10-33.

- Prinz P. M. / Prinz E. A. (1985) "If only you could hear what I see: discourse development in sign language", *Discourse Processes* 8/1, 1-19.
- Shoemaker R. B. (2008) "The Old Bailey Proceedings and the representation of crime and criminal justice in eighteenth-century London", *Journal of British Studies* 47, 559-580.
- Stokoe W. (1960) *Sign Language Structure: An Outline of the Visual Communication Systems of the American Deaf*, Buffalo, University of Buffalo.
- Stone C. / Woll B. (2008) "Dumb O Jemmy and others: deaf people, interpreters and the London courts in the eighteenth and nineteenth centuries", *Sign Language Studies* 8/3, 226-240.
- "Trial of William Bartlett" (1786, January 11) *The Proceedings of the Old Bailey, London's Central Criminal Court, 1674-1913*,  
<http://www.oldbaileyonline.org/browse.jsp?div=t17860111-30>
- "Trial of William Wilkins and Richard Gwilt" (1788, September 10) *The Proceedings of the Old Bailey, London's Central Criminal Court, 1674-1913*,  
<http://www.oldbaileyonline.org/browse.jsp?div=t17880910-27>
- Wadensjö C. (1998) *Interpreting as Interaction*, London, Longman.
- Woll B. / Stone C. (2013) "Deaf people at the Old Bailey from the 18<sup>th</sup> century onwards", in M. Freeman / F. Smith (eds) *Law and Language: Current Legal Issues 2011*, Oxford, Oxford University Press, 557-570.