

Disability Justice in the Age of Mass Incarceration

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Racism, classism, ableism, and other oppressions intersect to create and shape how marginalized people are made vulnerable to surveillance, criminalization, police violence, and all forms of incarceration (Gibson & Lewis, 2018; Kaba, 2018; Kinna & Gordon, 2019; Lewis, 2017a, 2017b, 2017c, 2020). In this chapter, I highlight how different regimes within the criminal legal system¹ effectively collaborate to produce and exploit these vulnerabilities. Consider the following:

- Disabled people represent more than half of those killed by U.S. law enforcement annually (McNamara, 2016).
- Of 15 documented fatal police encounters with deaf² people in the past 20 years, all victims had at least one other marginalized identity, the most common being that victims were negatively racialized (i.e., ostensibly Black, Indigenous, Latinx) and/or had or were perceived to have other disabilities (Helping Educate to Advance the Rights of Deaf Communities [HEARD], 2020).
- Children with disabilities are four times more likely to end up in the juvenile legal system than children without disabilities—again, with percentages increasing exponentially with racially marginalized disabled children (Shaban et al., 2017).³
- People with disabilities represent the largest “minority” population in U.S. jails and prisons nationwide (U.S. Department of Justice, Bureau of Justice Statistics, 2006).

The story is about intersectionality at the level of both social category and structural systems (Crenshaw, 1989, 1991; Kinna & Gordon, 2019), especially because within disability communities, ableism, racism, classism, and other forms of systemic oppression abound (refer to note 2). As such, my effort is not just to bring to the fore experiences of a group that has been largely invisibilized in

debates about the criminal legal system; it is also to examine and critique current trends in advocacy by and for disabled people and organizations as they attempt to respond to the criminal legal system. Innovative and intersectional advocacy approaches that are guided by and rooted in antiracist, antiableist, anticapitalist, abolitionist principles are essential to stemming the tide of mass incarceration of all people. The issue of injustice embedded in the criminal legal system has been documented for generations and it is not an abstract matter. These injustices continue to harm actual people, entire families, and whole communities, not to mention the broader harms to public health and safety. The criminal legal system so profoundly harms marginalized people—including especially negatively racialized deaf and other disabled people—that the system *must* be dismantled and marginalized communities allowed to lead the efforts to redefine justice, reimagine how true justice can be realized and restore and rebuild communities in the wake of immense harm experienced due to the current “justice” system. There are many layered issues that contribute to this injustice and harm, but this chapter will only focus on a few of these issues to illustrate the larger point.

I begin with a brief account of the phenomenon of mass incarceration. My analysis here is decidedly truncated because this chapter is part of a much larger project. But it provides context to my examination of how mass incarceration responds to and interacts with disability generally and deafness specifically.

MASS INCARCERATION

The United States imprisons more people than does any other nation in the world—and the burdens of our incarceration nation are not borne equally (Mensah & Kaufman-Mthimkhulu, 2020; Schenwar & Law, 2020). Incarceration statistics for Black, Indigenous, Latinx, and low- and no-income people are grossly disproportionately high. Black and Latinx people make up less than one-third of the U.S. population but represent nearly 60% of the incarcerated population (National Association for the Advancement of Colored People, 2018). Moreover, in 2014, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than that of nonincarcerated people of similar age (Rabuy & Kopf, 2015). Significantly, this gap in income is

not solely the product of the well-documented disproportionate incarceration of [Black and Hispanic people], who generally earn less than [white people], . . . incarcerated people in all gender, race, and ethnicity groups earned substantially less prior to their incarceration than their non-incarcerated counterparts of similar ages. (Rabuy & Kopf, 2015)

Changes in crime rates do not explain the unprecedented increase in the U.S. jail and prison populations—from less than 200,000 in 1972 (U.S. Department of Justice, Bureau of Justice Statistics, 1982) to 2.2 million today (U.S. Department of Justice, Bureau of Justice Statistics, 2015). Instead, empirical evidence suggests that the phenomenon of mass incarceration is a function of socioeconomic and racial inequities and a range of “law and order” legal regimes (Balko, 2018,

updated 2020). These regimes include drastic increases in size, scope, investments in, and reliance on what abolitionist, activist, public intellectual Angela Y. Davis has popularized as the “prison industrial complex” (Schenwar & Law, 2020), shifts in sentencing law in the direction of mandatory minimums and “three strikes” laws (Butterfield, 1998; The Sentencing Project, 2018), a weakening of already limited constitutional criminal procedural protections, and an expansion of police power and resources to surveil, stop and frisk, and arrest (Carbado, 2017). Indeed, the normative weight of carefully crafted and selectively enforced “law and order” imperatives on the criminal legal system has substantively erased notions of due process, equality, and justice, often not leaving even a veneer of fairness.

Although disparities in the treatment of and outcomes for marginalized communities have long been a hallmark of the U.S. legal system (Alexander, 2010; Blackmon, 2008; Davis, 2003; Stevenson, 2015), the sheer number of people trapped by the clutch of mass incarceration has both exacerbated “the ordinary injustices” of the criminal legal system and helped illuminate sweeping inequities inherent within it (Cooper, 2017). Ironically, mass incarceration has aided researchers, attorneys, policymakers, and advocates in tracking trends of inequity within the criminal legal system and identifying the subtle and not so subtle ways in which other spaces of state governance, such as schools, foster programs, child and family regulation agencies, and medical, mental health, and substance use programs, serve as gateways to the criminal legal system and as sites of criminalization, pathologization, and criminal enforcement (Cloud, 2019; Lewis, 2020; Mensah & Kaufman-Mthimkhulu, 2020; Roberts, 1997).

Notwithstanding a growing consensus that the criminal legal system has had—and continues to have—devastating effects on marginalized communities, by and large, opponents of mass incarceration articulate their opposition to that system regarding the harms the criminal legal system visits on negatively racialized communities; low- and no-income communities; women; lesbian, gay, bisexual, transgender, queer or questioning, intersex (LGBTQI); and other marginalized communities in silos (Center for American Progress & Movement Advanced Project, 2016; Coates, 2015; Kajstura, 2017). Most analyses wholly disregard the inextricable links between disability identities and other marginalized social categories (Kinna & Gordon, 2019; Lewis, 2020). That is to say, contestation of the criminal legal system—whether from the right or the left, whether through an abolitionist frame or a harm reduction approach—have elided the ways in which the criminal legal system decimates disabled communities.

With very few exceptions, the research (Morgan, 2017) and advocacy (Gibson & Lewis, 2018) that do focus on disability in legal and carceral systems focus almost exclusively on mental health disparities. Consequently, other disabled people—including people with mental disabilities who have other disabilities—are being funneled into courts, jails, prisons and other carceral facilities across the United States with practically no public awareness, scrutiny, or outcry (HEARD, 2018a; Lewis, 2014). I call this problem the “disability consciousness gap”—and it pervades just about every form of social justice advocacy, from organizing and litigating against police violence and ending the

school-to-prison pipeline to welfare benefits interventions and LGBTQI political organizing. Consider, for example, the following empirical findings that are all but absent from mainstream discussions about social justice, in general, and policing and incarceration, in particular:

- Disability is more prevalent in marginalized communities, with disabled people being disproportionately represented among economically and racially disenfranchised communities (Berne, 2017; Vallas, 2014).
- Children with disabilities, including deaf children, are three times more likely to be placed in the foster system (National Council on Disability, 2008), and children in the foster system are at increased risk of incarceration (Cloud, 2019).
- People with disabilities experience rape and sexual assault at more than twice the rate at which persons without disabilities do and experience non-fatal violent crime at 1.5 times the rate at which persons without disabilities do (Rand & Harrell, 2007).
- Deaf children experience trauma more frequently than their hearing peers, with approximately 50% of deaf girls having been sexually abused compared with approximately 25% of hearing girls. Approximately 54% of deaf boys have been sexually abused as compared with approximately 10% of hearing boys (National Child Traumatic Stress Network, 2006).
- Young adults with disabilities are three times more likely to live in poverty as adults than their peers without disabilities (National Collaborative for Workforce & Disability for Youth, 2016).
- One study indicates that 65% of boys and 75% of girls in juvenile prisons have at least one mental health disability (Teplin et al., 2002), and up to 85% of children in juvenile prisons have at least one disability (National Council on Disability, 2015).

These data reveal that being a low- or no-income negatively racialized person with a disability is a profound “risk factor” for the very problems with the criminal legal system that scholars, policymakers, community organizers, and advocates decry. Case studies across disabilities indicate that people with disabilities have worse outcomes throughout the criminal legal system (HEARD, 2020; Nelson, 2010). Researchers have also found that “deaf people are actually overrepresented in the criminal and quasi-criminal [legal] system” (Ekes, 2007). Although some researchers suggest that a general “lack of communication and resulting knowledge deprivation makes [some deaf people] susceptible to. . . getting involved with the police” (Andrews et al., 2007), history, research, and narratives indicate that disabled people—including deaf people—are chief among the intended targets of a calculated and complex mass incarceration machine (Lewis, 2020).

Studies also indicate that people with disabilities living at the intersection of disability and other marginalities often have vastly different experiences with the system than a person who only has one marginalized identity (HEARD, 2020;

Nelson, 2010). Even still, racial justice advocates rarely view the crisis of mass incarceration through a disability justice lens or approach reform, decarceration, or abolition from a truly intersectional framework (Gibson, 2016; Lewis, 2017a, 2017b, 2017c, 2020). The converse is also true. Disability rights advocates, more often than not, fail to develop and integrate a genuinely intersectional (i.e., antiracist, anticapitalist, etc.) lens or approach to advocacy. Although single-identity advocacy approaches are most commonly employed, they are the least successful in challenging injustices within the current criminal legal system and often do more harm than good.

When well-intentioned advocates are blithely unaware of how high the stakes and how deep the injustice visited on marginalized and multiply marginalized people overcome by the criminal legal system, disabled defendants and survivors end up with the worst that mass incarceration has to offer. Indeed, the legal system's regular and casual failure to provide even the most basic access to disabled people has led to and perpetuated death by law enforcement, decades stolen from families due to wrongful convictions, and unmitigated terror behind the walls of every jail and prison in the United States. There is much that we still do not know about how people with disabilities experience the criminal legal system. One reason for the lack of information is the willful neglect of the government to track police violence or to adequately track and disaggregate disability-related data on jails, prisons, other carceral facilities, and reentry (Lee & Samee, 2016).

The failure of the government to track and disaggregate these data hurts marginalized and multiply marginalized people who have fewer resources to track this information on their own; whose stories are rarely believed without empirical evidence and published sources; and who have less economic, social and political capital to find a way to be heard (Brown et al., 2018; Gibson, 2016). Marginalized people and multiply marginalized people who cannot "provide a source or citation to verify and validate their lived experiences often never obtain resources to address the root causes of the problems" (Brown et al., 2018). Therefore, many people in positions of power, including academics, researchers, media, policymakers, politicians, law enforcement, and resourced organizations and foundations funding these organizations, reinforce violence through erasure or dilution of the narratives of marginalized people (Brown et al., 2018). In this way, cycles of violence are actively perpetuated and invited to continue.

Currently, data collection about police violence against deaf people and about deaf people in jail, prison, detention, civil commitment, and on parole and probation is being crowdsourced—mostly by the volunteer-dependent nonprofit organization, Helping Educate to Advance the Rights of Deaf Communities (HEARD). HEARD's findings to date are bleak. An alarming number of deaf people across the country are incarcerated because law enforcement, courts, court-mandated programs, and parole and probation programs refuse to provide interpreters and other reasonable accommodations (*Harris v. Georgia Department of Corrections*, 2018; *Cobb v. Georgia Department of Community Corrections*, 2019; Lewis, 2018; Nović, 2018). Instead, these systems surveil,

pathologize, criminalize, incarcerate, and punish. Notably, even if the criminal legal system provided mandated access, systemic and structural inequity in the U.S. social service and criminal legal systems would all but guarantee disparate outcomes for disabled people compared to nondisabled people (Tastrom, 2020).

The narratives in this chapter illustrate the real-life consequences of systemic injustices and illuminate how even one biased, discriminatory, inaccessible, or violent law enforcement encounter leads to an irreversible cascade of injustice—especially for marginalized people. Many decades on, the carceral system still employs policies and practices that criminalize and further marginalize perpetually oppressed peoples, including those who are Black, Indigenous, Disabled, and LGBTQI. Over a very long time, the system has still not “corrected” itself (Lewis, 2019). Although law enforcement often serves as the entry point into the criminal legal system, they are not alone in their lack of disability consciousness.

TRACKING AND ACCOMMODATING

On the whole, local, state, and federal governments are not tracking disaggregated data on or about the incidence of deafness or other specific disability categories in foster systems or juvenile and adult legal or carceral systems (Gibson, 2016; Nović, 2017). On the rare occasion that deafness or disability is acknowledged within police use of force or carceral system statistics, for example, either there is no specific disability/deaf index or filter (“The counted,” 2016) or people with specific disabilities such as deafness are placed into the broad and amorphous category of “disability.” Other crowdsourced databases track mental health disabilities/diagnoses to the exclusion of all other disabilities (“Fatal force,” 2018). Alternatively, and more commonly, disability is simply not tracked at all (Smith, 2016). Omission, as well as overly broad and overly narrow categorizations of disability, are unhelpful to courts, prisons, advocates, attorneys, incarcerated people, and society because they do not tell the story of which disabilities are present or what accommodations should be—or should have been, in the case of fatal police, jail, prison, and reentry incidents—provided by the government.

Importantly, it is nearly impossible to arrive at reliable figures on how many people with disabilities exist (Stein, 2003). This difficulty is attributable to myriad factors, including “differing operational definitions of disability, divergent sources of data, and inconsistent survey methodologies” (Stein, 2003). Difficulty in tracking disability also arises because of racialization and other societal constructions and structural inequities and perspectives that inform and mediate who can be understood to be “disabled” and what behavior is indicative of “disability” at both individual and community levels (Artiles, 2014; Ribet, 2011; Withers et al., 2019).

In any case, the failure to disaggregate and appropriately categorize various disabilities found within people and communities affected by mass incarceration leaves critical gaps in society’s understanding of the full breadth and scope of the crisis of mass incarceration. Moreover, this failure to accurately disaggregate

and classify various disabilities ignores the fluid and spectral nature of disability (here, spectral is used as a double entendre, mainly to connote “of or related to a spectrum” and, secondarily, to denote the incorporeal, intangible, imperceptible nature of many disabilities—especially to the outsider). Indeed, the class of disability is so expansive, and each disability so unique to each disabled person that the acknowledgment of disability *always* requires further inquiry and analysis. For example, one person with a chronic illness will differ in ability and disability from the next person with a chronic illness—even if the chronic illness is the same. A person with a chronic illness has different abilities and disabilities from a person with a different kind of disability—a DeafBlind person who does not have a chronic illness, for instance. There are also people who live with multiple disabilities—having chronic illnesses and posttraumatic stress disorder, or being DeafBlind and having complex posttraumatic stress disorder, and so forth.

Taking this analysis a step further, and honoring the ways disabilities arise, exist, and articulate themselves in and through different bodies and minds, we must not take for granted the fluidity and complexity of disability. Disabilities respond to the body, mind, family, and community they inhabit and the attention they receive. Thus, the same disability can be experienced by and expressed through people in different social, racial, gender, class, and other categories quite differently. *And* the same disabled person may express disabilities or symptoms of their disabilities differently depending on myriad factors, including what is going on with or around them, what supports they have access to, and who they are around. In short, disability is both overrepresented and often goes undiagnosed, misdiagnosed, and unaccommodated in Black/Indigenous, low-income, and other marginalized communities largely because of how structural inequities work to create, perpetuate, and erase disabilities in the *most* marginalized communities (*Peter P. v. Compton Unified School District*, 2014; *Stephen C. v. Bureau of Indian Education*, 2018; see also Smith, 2012; Tastrom, 2020). For these reasons and more, it is imperative to note that safe and holistic culturally responsive and adaptive practices for addressing and reducing harm and violence are available, attainable, broadly implementable, and necessary (Gilmore & Kilgore, 2019; Lewis, 2020). Policing is *not* such a practice.

Deaf identities are a prime example of how disability exists on a spectrum; some deaf people use hearing aids, whereas others use implants; others still do not want, use, or need any auxiliary aids—often identifying as culturally Deaf, DeafBlind, or DeafDisabled. Yet all of these people are, in fact, deaf. In terms of communication, the spectrum is even more diverse. Some deaf people use sign language, whereas others do not; some deaf people speak orally, whereas others do not; some use tactile sign language or augmentative and alternative communication; and others still rely on written communication or other communication systems, such as cued speech. Many deaf people use a fusion of several of these and other methods. Significantly, regardless of a deaf person’s language or communication and auxiliary aid use, deafness falls squarely within the legal definition of disability.

A Primer: Disability, Policing, and Legal Considerations

Federal law enforcement is governed by Section 504 of the Rehabilitation Act, which prohibits disability discrimination by any federal agency or by any federally funded program or activity. The law states:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency. (Rehabilitation Act of 1973, 2012)

State and local law enforcement fall under Section 504 and Title II of the Americans With Disabilities Act (ADA). The ADA defines “disability” with respect to an individual, in part, as “a physical or mental impairment that substantially limits one or more major life activities” (42 U.S.C. §§ 12131 *et seq.*; 28 C.F.R. §§ 35.101–35.190). Title II of the ADA applies to “any [s]tate or local government” and “any department, agency . . . or other instrumentality of a [s]tate . . . or local government” (42 U.S.C. § 12131(1)) and applies to all police activities (28 C.F.R. § 35, App. B, Subpart A). Police departments and prison systems must “furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities . . . an equal opportunity to participate in and enjoy the benefits of [these agencies’] service, program, or activity” (28 C.F.R. § 25.160(b)). Importantly, police and prison systems must give primary consideration to the disabled person’s request for a particular auxiliary aid or service (28 C.F.R. § 35.160(b)(2)). Courts have also long since established that state and local law enforcement and carceral systems are subject to the ADA (*Pennsylvania Department of Corrections v. Yeskey*, 1998). Under Section 504 and the ADA, police and prison systems have affirmative obligations to provide meaningful access and effective communication, among other things.

Sworn and civilian law enforcement personnel may not exclude or segregate deaf people from services or deny services to or otherwise discriminate against deaf people (U.S. Department of Justice, 2006). This is an affirmative obligation, and it survives regardless of where a person exists on the spectrum of disability and regardless of communication, language, and accommodation or auxiliary aid need. Accordingly, deafness should trigger the compulsory provision of auxiliary aids, reasonable accommodations, or modifications by law enforcement if law enforcement continues to be called on during sensitive and critical interactions (American Civil Liberties Union, 2016; Mizner, 2015). Data and narratives from disabled people indicate that law enforcement continues to disregard these laws (HEARD, 2020). This is another reason law enforcement should not be called for sensitive or critical interactions with disabled people or people experiencing emotional or mental disruption or distress (Çevik, 2019; Lewis, 2019).

Federal disability rights laws explicitly recognize the reality of disability being fluid by (1) demanding an individual analysis of each person's disability and support needs such that the reasonable accommodations or modification adequately suits each qualified person with a disability, and (2) insisting that primary consideration be given to the accommodation requested by the disabled person. Put plainly, federal law mandates that every qualified disabled person be provided with equal—not the same—access to programs, services, and activities by law enforcement and in courts, diversion programming, jails, prisons, and parole and probation situations, and so forth. In law and in actuality, two deaf people participating in the same prison reentry program may have different accommodations if one communicates best with the support of Deaf interpreters and the other relies on real-time captioning, for example. These federal laws are often disregarded by power holders within the criminal legal system.

In the uncommon incidences where law enforcement and related systems track disability, haphazard mass categorization of people with all manner of disability persists. This mass categorization is most harmful to people with disabilities who are deemed by the dominant majority to be particularly “nonnormative” and whose disabilities are often difficult to perceive—those who have disabilities or cultural or communicative characteristics that are not in line with the dominant majority. This group includes at least deaf people; autistic people; people with mental health disabilities/diagnoses; people with intellectual/developmental disabilities; people with traumatic brain injuries; people with auditory or visual processing or expression disabilities; people with cerebral palsy, epilepsy, and diabetes; and people experiencing strokes and other medical emergencies, among others—especially those living at the margins of the margins (e.g., Black/Indigenous, houseless, trans people with these disabilities or disability labels or symptoms).

The application of this mosaic of thought (e.g., intersectionality, disability consciousness, fluidity, spectrality) is particularly important when considering authority and carceral systems precisely because society, generally, and “authority,” specifically, perceives and responds to disability differently depending on the body/mind that the disability inhabits (Nelson, 2010; Lewis, 2020). This mosaic of thought helps explain why a struggling low-income Indigenous student diagnosed with attention deficit hyperactive disorder (ADHD) is more likely to be labeled “defiant” and in need of restraint, seclusion, suspension, expulsion, or arrest, whereas a struggling upper-middle-class white student diagnosed with ADHD and precisely the same behaviors is more likely to be identified as needing additional supports, modification of their individualized education program (IEP), a little bit of grace, a few more chances, and other nonpunitive approaches (Garvey, 2018; Mizner, 2017). The next part expands this analysis by focusing specifically on policing [disability].

Policing [Disability]

Law enforcement interactions with deaf people and people with communication, intellectual, and mental disabilities and diagnoses, among others, are often

unnecessarily fraught and perilous (Center, 2016). The following scenarios seem to be among the most common during law enforcement interactions and “investigations” with respect to deaf people.

Scenario No. 1

In the first scenario, a deaf person might be walking down the street using sign language or otherwise engaging in their daily life activities when an officer spots them and perceives their language or mannerisms as “unlawful,” “unruly,” “gang-related,” or questionable for some other reason. After verbally ordering the person to follow commands, the officer either fails to recognize or refuses to believe that the person is deaf. When the deaf person does not respond, the officer frequently escalates the situation raising their voice and trying to restrain or incapacitate the deaf person—often by grabbing, tackling, beating, tasing, or shooting the person. The officer determines that the deaf person is refusing to comply with orders. Once a mistaken use of force has commenced or is complete, officers tend to double down instead of simply admitting that they made a mistake (AJ+, “Deaf Oklahoma man Pearl Pearson wins \$195,000,” 2018; Halsne, 2012). In furtherance of the officer’s narrative, the deaf person is almost always charged with one or more of the catch-all charges of “resisting arrest,” “obstructing,” or “disorderly conduct,” even where all other charges are dropped (AJ+, 2018; “Deaf Oklahoma man Pearl Pearson wins \$195,000,” 2018; Halsne, 2012; HEARD, 2020). As seen in almost every example provided in this chapter, there is a prevailing idea within police departments that people pretend to be disabled or exaggerate the extent of their disability to give officers a hard time, to challenge officers’ authority, to get out of trouble, etc. However, it is exceedingly rare for people to pretend to have disabilities during interactions with law enforcement.

Examples of this first scenario play out in the cases of Esther Valdez, a young Latinx Deaf woman tackled on a busy street by an Austin Police Department officer (Smith, 2010), and of John T. Williams, a 50-year-old seventh-generation Nitinaht carver of the Nuuchah-nulth First Nations, who was fatally shot by a Seattle Police Department officer while walking down the street (Renville, 2011). Like most deaf victims and survivors found in HEARD’s database, both of these people are ostensibly negatively racialized and have other marginalized identities.

Video shows Officer Steven Willis shouting commands, then running behind Valdez, roughly grabbing Valdez, and shouting “Did you hear me?” (Smith, 2010). Valdez’s partner immediately and continuously informs Willis that Valdez is deaf (Smith, 2010). The officer retorts, “No! She can comprehend what I am trying to tell her.” The officer continues shouting orders at Valdez, who tries to call her mother for communication support, saying to the officer, “I’m calling my mom so she can talk to you” (Smith, 2010). This only further enrages the officer, who shouts, “You can call your mom when I’m done! You aren’t in

charge of this call! I'm in charge of this call!" Valdez walks away, upset and confused when Willis tackles her to the ground. She begins crying and becomes short of breath while the officer continues shouting orders (Smith, 2010). After being tackled and handcuffed, Valdez is distraught, injured, and inconsolable. Video shows her in handcuffs limping to the police cruiser, crying. The police had already ordered Valdez's partner to stay back. When the officer puts Valdez into the cruiser, the partner asks the officer again, "What is the matter with you? Don't you understand that she is deaf?" The officer responds, "Yeah, I know that, but she understands enough that she can hear you." The second officer, who arrived with a mace stick at the ready, responds with a supportive, "Yeah" (Smith, 2010).

This incident occurred in Austin, Texas, a city with one of the largest deaf populations per capita in the country, with a police department that had, a decade earlier, instituted formal protocols for interacting with deaf people and had begun training officers on Deaf culture and communication (in accordance with a settlement following a lawsuit by a DeafBlind man and his deaf wife for violating their rights during an arrest). Amber Farrelly, attorney for Esther Valdez and hundreds of other deaf defendants in Texas, stated that in just over a year, she had been appointed or hired to represent roughly 50 deaf clients. All but a very few have eventually had the charges against them dismissed by county prosecutors because "the majority of the charges filed by police have been based on misunderstanding or miscommunications" (Smith, 2010). This encounter is not exceptional (HEARD, 2020).

Video of John T. Williams's final moments are captured on dashcam (Miletich, 2011). On a sunny fall afternoon, Williams, a woodcarver who was deaf in one ear and hard of hearing in the other, calmly walked across the street in the crosswalk (Miletich, 2011). Williams was focused on the small piece of wood he was whittling with a legal three-inch carving knife (Miletich, 2011). The video shows Officer Ian Birk exiting his cruiser, walking behind Williams and, out of sight of the dashcam, shouting at William's back to stop and drop the knife (Miletich, 2011). Within 4 seconds of the first command, five gunshots are heard in rapid succession, and people walking down the busy street stop in their tracks, appearing shocked and confused (Miletich, 2011). One witness immediately confronts Birk, saying, "Did you just shoot him? He didn't do anything!" The officer shouts back, "Ma'am, he had a knife, and he wouldn't drop it!"

Birk's report stated that Williams was "brandishing" a knife in a "very confrontational posture" despite other officers finding the knife in a closed position and multiple witnesses saying Williams did nothing threatening before being fired upon. As is customary following lethal use of force by law enforcement, law enforcement, in concert with news media, dredged up and publicized Williams's history of arrests and mental health disabilities/diagnoses and drug use history in an attempt to portray the victim in a negative light (Renville, 2011). King County prosecutors declined to file charges against this officer, and

the state's taxpayers paid \$1.5 million to settle claims brought by Williams's family (McNerthney, 2011; Miletich, 2011).

Scenario No. 2

In the second common scenario, a call is made or a complaint lodged, and law enforcement shows up at the scene for a "welfare check" or investigation that results in injury to or death of the deaf/disabled person. Ironically, in many of these incidents, the deaf person called law enforcement for aid or protection through a video relay service or via text.

In 2012, Robert Kim, a deaf man with Type 1 diabetes, pulled over to fix a flat tire when he began slipping into a life-threatening diabetic episode (Harris, 2014). Kim was seated on the grass when the first officer from the Bridgeton Police Department (Missouri) arrived (Harris, 2014). Kim informed the officer that he was deaf, that he had trouble speaking, and that he was going into diabetic shock. This officer called for backup instead of calling emergency medical services (Harris, 2014). The second officer arrived either unaware of or unconcerned about his disabilities. Kim's complaint notes that the second officer showed up angry, screaming verbal orders that Kim could not comprehend. Then the second officer drew and fired a taser, hitting Kim in the chest, shocking Kim at least three times (Harris, 2014). Both officers also struck Kim multiple times. Doctors at the hospital where Kim was subsequently taken and assessed noted that his blood glucose level was life-threatening. In 2014, Kim filed suit against the two officers and the city of Bridgeton (Harris, 2014). Kim was the second deaf person within 30 days to sue this police department for tasing them (Harris, 2014).

Another case that exemplifies this second scenario is that of Pearl Pearson Jr., a 64-year-old Black deaf man who was pulled over by Oklahoma Highway Patrol (OHP) troopers after allegedly bumping another car while steering a large SUV ("Graphic," 2014). The driver of the other car called 911 and tailed Pearson until OHP (together with a civilian ride-along) caught up. Dashcam video shows Pearson pulling over as soon as the troopers activated their lights to indicate that he should pull over. Trooper Eric Foster springs out of his cruiser and quickly approaches Pearson's SUV, shouting commands in rapid succession ("Graphic," 2014). Pearson attempts to communicate his disability to the troopers but never has an opportunity to do so (AJ+, 2018; "Deaf Oklahoma man Pearl Pearson wins \$195,000," 2018). As Pearson attempts to hand his driver's license to the troopers and inform them that he is deaf, Trooper Foster hits him directly in the eye, making communication literally impossible (AJ+, 2018; "Deaf Oklahoma man Pearl Pearson wins \$195,000," 2018). Troopers Eric Foster and Kelton Hayes dragged Pearson from the vehicle and pummeled him for nearly six minutes (Thompson, 2018). Hayes, who weighed nearly 300 pounds, and Foster put their full weight on Pearson, making it difficult for him to breathe. With no pause in the violence and

with blows to his face continuing, Pearson was unable to see, sign, or figure out what was going on (AJ+, 2018; “Deaf Oklahoma man Pearl Pearson wins \$195,000,” 2018). After the beating, Pearson’s eyes were black, bloodied, and swollen shut, and his shoulder dislocated, among other injuries (AJ+, 2018; “Deaf Oklahoma man Pearl Pearson wins \$195,000,” 2018). Still, troopers did not call emergency medical responders or move quickly to provide immediate first aid to the elderly man they had severely injured. The hospital, at the troopers’ request, ran blood work on Pearson. Pearson had no alcohol or other substances in his blood. Instead, doctors reported that Pearson, who also had diabetes, had dangerously high blood sugar levels (AJ+, 2018; “Deaf Oklahoma man Pearl Pearson wins \$195,000,” 2018). At least two of the troopers who beat Pearson are caught on the dashboard camera immediately afterward, cursing when they run a check of his license and find out that he is deaf (Thompson, 2018). Then, they quickly double down:

Trooper Foster: [types information while holding Pearson’s driver’s license and looks at the computer screen] It says hearing-impaired on the thing.

Trooper Two: It says hearing impaired!

Trooper Three: Oh, shit!

Trooper Foster: Like deaf.

[brief pause, then an inaudible comment from a trooper off dashcam, which is cut short by Trooper Foster]

Trooper Foster: It doesn’t matter when we’re trying to get his hands, and he’s fighting. The dude was strong, man.

After that, troopers are seen and heard joking and laughing about the incident and about Pearson’s badly battered face while they develop their narrative and coach one another on what to write in their reports. During the following conversation, Pearl Pearson is seated in the police cruiser with two black eyes and a dislocated shoulder, in obvious need of immediate medical attention:

Trooper One: Good job, man!

Trooper Two: [inaudible] . . . I woulda shot him.

[laughter followed by a few seconds of inaudible banter and more laughing]

Trooper Three: Hey, you know why he was resisting you? Cuz he was trying to grab this fucking card.

Trooper Foster: Ooohhhh! That’s what it was! [The tone here is as if he was just learning this information, and it sounds like a good idea.]

Trooper Three: That’s what it was!

Trooper Foster: I knew it!

Trooper unknown: His face is jacked up! [intense laughter from multiple troopers]

Trooper Three: Hey, make sure you record that . . . that thing was not on the outside or inside. That was in the fucking side pocket. And he never even . . .

Trooper Foster: Right. Yeah.

Trooper Three: He never said shit about it!

Trooper Foster: Yeah.

[more laughter]

Pearson, a Black deaf man, who keeps a “deaf driver” placard in his truck, and who has two sons who work as police officers, maintains that he knows precisely what to do when approached by police officers (AJ+, 2018; “Deaf Oklahoma man Pearl Pearson wins \$195,000,” 2018; Thompson, 2018). He asserts that he was attempting to inform the troopers that he was deaf so they could communicate effectively, and he could comply with whatever they wanted him to do (AJ+, 2018; “Deaf Oklahoma man Pearl Pearson wins \$195,000,” 2018; Thompson, 2018). He says he never had a chance to comply because troopers punched him in the face and assaulted him before he had an opportunity to communicate or comply (2018). Video verifies Pearson’s account.

Despite these videos, District Attorney David Prater declined to charge the troopers (“Graphic,” 2014). Instead, Prater praised these troopers, stating that

Trooper Foster and Trooper Hayes demonstrated commendable restraint and judgment throughout the incident. Only minimal necessary force was employed by the troopers to defend themselves and civilians at the arrest scene from physical harm and to affect the arrest of Pearson. (“Graphic,” 2014)

Prater further stated that Pearson’s was a “textbook case of police restraint.” As is typical in these scenarios, Prater charged Pearson with resisting arrest (“Graphic,” 2014). In January 2017, after 3 years of legal battles, and with Pearson’s legal team ready to go to trial the very next week, Prater dismissed the charge against Pearson, citing the “cost to taxpayers” (“Graphic,” 2014).

Pearson was relieved that charges against him were dismissed after *years* of court battles. But Pearson was fearful that something similar or worse would happen to others if no meaningful steps were taken to address local law enforcement’s race and disability consciousness and sensitivity issues that nearly led to his death (Thompson, 2018). After District Attorney Prater dropped the charges, Pearson sued the OHP and the troopers involved in his beating. A federal judge approved a settlement between Pearson and the State of Oklahoma (Oklahoma Department of Public Safety) and the Oklahoma County Board of County Commissioners for \$175,000 and \$20,000, respectively, attorney’s fees not included (Stipulated Judgment, 5:15-cv-00574-W; Order and Judgment, 5:15-cv-00575-W). In the end,

Oklahoma taxpayers paid at least five times as much as they would have had Prater gone forward with prosecution, and many more times as much had no violence been used or charges been brought against Pearl Pearson in the first place (Thompson, 2018). The troopers are still working. None received any reprimand, disciplinary records, or other consequences for the extended physical beating of Pearson or their lack of candor, professionalism, courtesy, and consideration for human life in the aftermath of the incident (Thompson, 2018).

Police departments and district attorneys' responses to law enforcement's "use of force" incidents against disabled people have the potential to either decrease their frequency or to enable law enforcement to continue this behavior. District attorneys can use their platform and authority either to share accurate information about deaf and disability cultures and hold law enforcement accountable or to peddle misinformation and perpetuate stereotypes about disability while permitting and excusing violence.

Fewer than 3 years later, the Oklahoma City Police Department—also under the purview of District Attorney Prater—killed a low-income, brown-skinned DeafDisabled man named Magdiel Sanchez (Chuck, 2017). In September 2017, officers arrived at Sanchez's house at nighttime, searching for his father, who was alleged to have left the scene of a car accident. Sanchez, who used a walking stick whenever he was out in his neighborhood, saw the lights and came out to see what was going on. A home security camera shows Sanchez retreating from police officers and heading back to his home. According to neighbors, this is when officers began to shout commands at him (Chuck, 2017). Two officers simultaneously tased and shot Sanchez, killing him. Neighbors repeatedly informed officers that Sanchez was deaf and could not hear them before they tased and shot him. During the press conference where District Attorney David Prater announced his decision not to charge the officers responsible for Sanchez's death, Prater stated that "you don't need to hear to know what these officers are saying to you" (Chuck, 2017).

The next scenario relates to police investigations involving deaf people and criminal procedures that further disadvantage disabled/deaf people.

Scenario No. 3

In the third scenario, officers conduct an "investigation" without ever hearing from the deaf or disabled suspect or witnesses, or the officer bypasses an investigation altogether (Bernstein, 2012). This is especially true of deaf suspects as opposed to deaf complainants and witnesses but happens quite frequently to deaf complainants who are otherwise marginalized (Bekiempis, 2016 [Black woman]; Bernstein, 2012 [white gay man]; Matter & Heath, 2017 [white deaf androgynous person alleged to have mental illness by roommates]; Ogunyipe, 2012 [Black queer-presenting woman]). In this scenario, a deaf/disabled person is arrested,

booked, jailed, sent to psychiatric detention, charged, or has their children taken, usually based solely on the word of a hearing/abled person. Similar to the preceding scenarios, once an arrest is made or charges recommended or levied, there is more pressure on law enforcement and prosecutors to continue prosecution even when there is less than adequate evidence tending to prove this deaf/disabled person's culpability. This is especially true if the person is held in jail.

The profound lack of understanding of and deeply ableist response to disability across the entire criminal legal system means that deaf people are more likely to be jailed for offenses that hearing people would not be and to spend more time in jail once they arrive (HEARD, 2020). While in jail, deaf people usually have no contact with counsel for extended periods of time even when they have requested the presence of counsel largely because of the pace of the criminal legal system in light of mass incarceration, and also because of the failure of most law enforcement, jails, and defense attorneys to appreciate the need for or provide access to qualified interpreters, accessible telecommunication, and other accommodations or auxiliary aids.

Sometimes, law enforcement does obtain *some* information from the deaf person but through unqualified people attempting to "interpret" (e.g., police officers, complainants, children) or through technology that may not be suitable for high-stress or high-stakes legal situations (e.g., cell phone note or text exchange, video remote interpreting, note pads). In many cases, deaf people who have experienced extreme physical violence and trauma are left to try to develop their own transcript of what occurred without the support of qualified interpreters (or with interpreters they have contacted and paid for on their own due to the failure of law enforcement and their own defense attorneys to follow the law). Police officers, as recently as 2020, have used or attempted to use family members, police officers, and even the alleged suspect (e.g., person alleged to have harmed a deaf person) to serve as a conduit for communication between officers and deaf people (HEARD, 2020). Each of these methods directly violates federal disability rights laws. Although all wrongful arrest and conviction cases are difficult to challenge, cases in which law enforcement, attorneys, or the courts have relied on unqualified people to interpret in cases involving deaf/disabled suspects are among the most difficult.

The following case illustrates some of these practices and is in line with policing trends related to deaf people—especially deaf people with other disabilities—across the country. This case will be referenced throughout this chapter to illustrate and challenge common law enforcement, attorney, social service agency, and advocacy practices.

Scenario No. 4

In August 2011, the Carterville Police Department (Illinois) was called to the home of a deaf mother and her upset hearing teenager. The mother communicates only through ASL—which she was introduced to particularly late in life,

during college. Before learning ASL, she struggled to communicate in any language. She emphasized that English was not a language she was comfortable using. Her written and signed communication indicated that she knew her language capacities and access needs well. HEARD collected the following information from the mother. She had collected dozens of pages of documentation from the police, public defender, court, Child Protective Services (CPS), and others involved in this case.

On the evening in question, the teenager became upset when the mother picked the teenager up from a friend's house. There had been a miscommunication via text about how long the teenager would stay at the friend's home—the mother thought she was to pick up her teenager at 8:00 in the evening, whereas the teenager thought she would be picked up at 8:00 the next morning. On the way home, with hopes of a sleepover dashed, the teenager became upset, which led to a heated sign language exchange in the car. The teenager then placed a call to 911 while in the car without the mother realizing it. When the family of two arrived home, a police officer from the Carterville Police Department met them there. The officer urged the upset teenager to interpret between the officer and the mother, and the mother told the teenager to let the officer know that she would talk to him only through a qualified sign language interpreter. The officer then wrote questions down on a piece of paper. Again, the mother told the teenager to tell the officer that a qualified sign language interpreter was necessary. At this point, the mother showed the officer her personalized deaf identification card, which indicated that she was deaf and that the accommodation required for this situation was a qualified sign language interpreter (Figure 1).

The officer, feeling slighted by the mother's persistence, called the precinct to ask for advisement from the chief. Specifically, the officer's notes state that he called the chief "to ask what to do about the circumstances surrounding the difficulties in communicating with [the mother] and her demands of a Signed English Translator." The chief responded that "we would not get

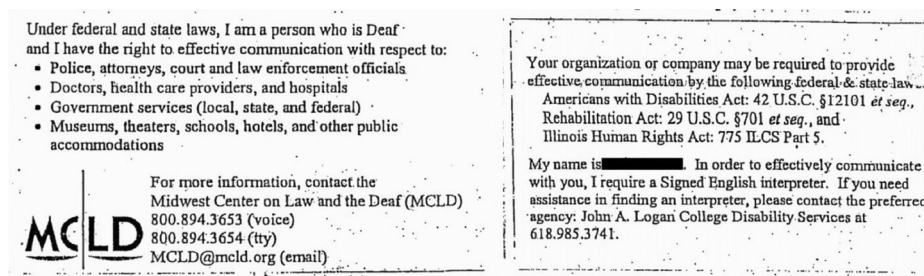


FIGURE 1. Personalized "Deaf Card" shown to the police officer, attorneys, and the court by the mother whose name is redacted on the card.

a Signed English Translator and to only attempt to make effective communication through writing our questions and responses on paper.” The chief also advised that “if it was okay with [the child] an arrest would not be made on [the mother] for Domestic Battery, due to [the mother’s] failure to communicate with law enforcement on the scene effectively.” The hearing teenager was then taken by the police officers and given to the hearing father, and charges were recommended against the mother. The Carterville Police Department admits in its own documentation that the mother was *never* consulted about the alleged incident, specifically because she requested an interpreter and that they did not think an interpreter was needed for communication or believe that they were required to provide one (Figure 2a and 2b).

When the mother went to the precinct on the same evening to figure out where her child had been taken, she was threatened with arrest. Confused, afraid, angry, and without her child, she returned home. The mother, while still in shock, contacted an ASL/English interpreter and asked them to support her in developing a written explanation of what occurred so she could share that information with the police department in hopes of getting her child returned. If our legal system worked as it should, this story would end with an officer returning later that night or early the next morning with an interpreter to parse

Contact with Chief of the Carterville Police Department, Carterville, Illinois

Due to the circumstances surrounding the difficulties in communicating with Mother and her demands of a Signed English Translator, I called Chief of Carterville PD for his advisement. He stated that we would not get a Signed English Translator and to only attempt to make effective communication through writing our questions and responses on paper. He also stated that if it were okay with Child, an arrest would not be made on Mother, for Domestic Battery, due to Mother’s failure to effectively communicate with law enforcement on scene.

FIGURE 2a. Redacted Excerpts from the responding officer’s notes, Carterville Police Department, Carterville, Illinois, dated July 9, 2011.

Interview with Mother

Child stated that her mother was deaf. Upon attempting to communicate with mother, she initially refused to make any type of response to me or even acknowledge my presence and only continued signing with child, which only caused child to cry more. Child stated that their mother was saying that she would only talk to me through a Signed English Interpreter. I next began writing my questions on paper and again child stated that their mother was saying that she was refusing to effectively communicate with me through writing our responses on paper. Mother continued to deny my presence and failed to even make eye contact with me.

FIGURE 2b. Redacted excerpts from the responding officer’s notes, Carterville Police Department, Carterville, Illinois, dated July 9, 2011.

things out. This, however, would not be the case. The mother was charged with misdemeanor domestic battery, and so began the avalanche of injustice for this mother.

The fact that this Carterville police officer recorded his and his chief's refusal to provide an interpreter and the removal of a child from their mother without ever having taken a statement from the mother (though they took a statement from the hearing teenager who was the complainant) seems to indicate that the officers believed they were doing the right thing. They, in fact, thought they were doing the mother a favor by not arresting her. The mother was using sign language with her child, and the police interpreted her signing as threatening—with some parts of the police statement indicating that the “domestic situation” was “ongoing” when he arrived, whereas the mother was merely communicating in sign language with her child. Sign language is not dangerous, but law enforcement often misunderstands sign language and its attendant body language and classifiers (Smith, 2010), especially for those whose body language is decidedly exaggerated (often Black people and other negatively racialized people; deaf people with other disabilities; and people who are in pain or fear, or who are upset) or those who are seen as particularly atypical by authority figures in other ways, for example, owing to traumatic brain injury, cerebral palsy, or other disabilities.

Finally, even though the mother was cooperating with law enforcement and rationally and responsibly educating them about what was required for effective communication (which they should already have known), officers wrote the police report such that it portrays the mother as irrational and obstinate. The report states that the mother was “*unwilling* to communicate with law enforcement by writing on paper” and that she was “*unwilling* to cooperate with law enforcement’s requests” (emphasis added). Evidence shows that time and again, when a deaf person asserts their right to communication access, law enforcement interprets the mere request as disrespect, intransigence, or evasion (HEARD, 2020). In the mind of police officers, any refusal to communicate in the officer’s requested method is noncompliance, which, to them, points to possible culpability. Deaf people are often forced to accept less than adequate communication with law enforcement because law enforcement makes it patently clear that the mere assertion of communication access rights is a “threat” to law enforcement’s authority (HEARD, 2020).

Obviously, the truth in this case and in others is innocuous and straightforward: A deaf person is the expert on their own abilities, disabilities, and communication access needs.

This mother refused to write back and forth with law enforcement, as is her right under federal disability rights laws. Federal law was on her side. It likely never crossed her mind that her request for a reasonable accommodation would not be met and her child taken. Many deaf people in her situation resort to using writing (in a language they do not use or fully understand) or to accepting less-than-qualified “interpreters” to communicate with police

out of fear of retaliation or worse punishment for the continued assertion of their rights.

In this case, the mother struggles mightily with English. She assessed the serious nature of this situation and knew that her teenage child of deaf adults (Coda) was in no position to attempt to mediate between herself and law enforcement when the child had called law enforcement and was still upset with the mother. Here, the mother was correct in all of her assessments. Law enforcement was wrong. Right does not prevail in these scenarios, however. As a matter of fact, marginalized people who are in the right are often wronged by the criminal legal system. This story, like others involving law enforcement misjudgments, missteps, and mistakes, does not end here. Just one error anywhere in the criminal legal system can lead to a lifetime of consequences. In the case of deaf suspects in the criminal legal system, errors are often made at *every* step. In that regard, this mother's ordeal is particularly informative and tragic.

In October 2011, the Illinois Department of Children & Family Services (DCFS), in conjunction with domestic battery allegations against the mother, sent two letters stating that the agency had completed its investigation and determined the allegations to be "unfounded." Both letters also state that the recipient has exactly 10 days to request a report that states that the report against the recipient was falsely filed. For a person who does not read English, these letters are completely inaccessible. The mother could not understand these letters, yet she gave the letters to her appointed public defender in the hope that her attorney could help decipher them. She attached her own handwritten letter with the two DCFS letters when she shared them with her attorney. Her note read:

I got two letters from Department of Child and Family Services (DCFS) in mail last October 28, 2011.p.m. I never meet someone from IL DCFS and got those letters from them . . . I had very hard tried to understand those letters and never understood why those letters??? Words. Lack of accessibility to the justice system.

By now, the mother had been making multiple visits to the court for nearly three months, with no sign of getting her child back and no effective communication with her attorney—still not understanding what she was accused of or why her child had been removed from her home. Unable to secure an interpreter, the court reset her case numerous times. On at least two occasions, despite requests for interpreters, the court told the mother that she did not need interpreters. Finally, in December, the court provided an interpreter. The mother had now been away from her child for a full 5 months—including 2 full months since CPS sent a letter indicating that the allegations against her were unfounded. Unfortunately, this was too little, too late. Mass incarceration was not done with this mother yet.

Mass incarceration has left the most marginalized and least resourced people with little or no option other than to plead guilty. Deaf people are no exception. Jail conditions and the “trial penalty” and “bail trap,” coupled with “tough on crime” policies that mandate longer sentences, has led to over 90% of people in state and federal cases pleading guilty (Rakoff, 2014). That is to say, of the 2.3 million people imprisoned, over 2 million are there because they accepted guilty pleas. Thus, innocent people plead guilty to crimes they did not commit (Rakoff, 2014). The likelihood of an accused person pleading guilty goes up exponentially if they are low- or no-income, disabled, otherwise marginalized, or at risk for losing their house, job, children, etc. Possible collateral and social consequences of pleading guilty to a crime—even one that you did not commit—are not often thoroughly explained to defendants. Notably, the implications of a guilty plea cannot be anticipated or explained by counsel who fails to follow federal disability rights laws to ensure that they can communicate effectively with their client. Defendants certainly cannot participate in their own defense in these situations. Yet most attorneys are not providing qualified sign language interpreters to communicate with deaf clients.

With no communication access to understand the letters, and no meaningful access to her own attorney, the mother, like over 90% of defendants, pled guilty to a lesser offense. She felt coerced to take the guilty plea because she thought by pleading guilty, she would be able to be with her child, whom she had now been separated from for 8 months. Her handwritten notes from this visit to court paint a clear picture of the coercion, confusion, and rights violations:

public defender talked that state atty and walked to the room with me and same interpreter and had a supervision contact ready and explained to the interpreter that 12 months supervision is better than probation and what was on that contact and left quickly to go back to court room. The same interpreter helped telling me what I should do on that contact to sign my name on it. After signing my name on it, we went back to court room . . . I stood up to the judge to sign his name on it. I went back to work. After work at night I was thinking about court contact and was very shocked and re-read about “no initiated contact with [child]” I felt very bad about “no contact” with [child]. How very upset I was.

My mental health counselor [counselor’s name] read it and handed it back to me without knowing “no initiated contact with [child].” So I had to discuss what “no initiated contact with [child]” meant!! I was very upset . . . I am not allowed to see be with back home.[child] is my only family in IL state [child] til end of 12 months supervision on [date] 2013!

Notably, the mother and her counselor communicate through an ASL interpreter. It was only with the counselor, where there was adequate time and access to process the plea agreement and effective communication, that the mother finally gained a full understanding of what she had signed. Also important to

note is that the sentence was rendered almost a full year after initial contact with law enforcement (largely because of the attorney and court's failures to request and provide interpreters for several proceedings). The supervision condition lasted a full 12 months, although the mother had already spent nearly a year away from her child while the case wound its way through the criminal legal system, often delayed solely on account of the system's accommodation failures. This is another example of deaf people being unjustly accused and receiving disproportionately harsher punishments or longer sentences because of systemic failures.

In addition to not adequately explaining what the conditions of this agreement meant, no one adequately explained that this plea could be used against her by the child's other parent to help them gain custody of the child. The other parent did just that, and the mother permanently lost custody of her child. When the mother communicated with HEARD after already having pled guilty, it was patently clear that no one had taken the time to explain even the most basic information to her. She could not explain the meaning of the words "innocent" or "guilty." Specifically, when asked whether she was guilty or innocent, she responded in written English via email: "I was told that I was guilty of the crime. I don't know difference between innocent and guilt for that crime I pled guilty, but I think I am innocent of that crime." After all was said and done, this mother was ordered to pay more than \$500 in fines and fees to the court, attorneys, and attendant social service agencies.

In the perfect world, someone along the long and winding trail of "justice"—CPS, the mother's defense attorney, the prosecutor, the judge, an interpreter—would have noticed and cared that this mother was not participating in her own defense or understanding what was going on or the consequences of her plea. Instead, the mother requested and was denied interpreters at every step of the criminal legal process until the very last legal proceeding, where an interpreter was provided.

Another profoundly concerning and all too common pattern with cases involving deaf people is interpreters being provided at formal court proceedings but not being at the stages prior to formal proceedings. Red flags immediately go up when interpreters are required for court proceedings but not provided during police interrogations, attorney-client meetings, and other critical steps toward this penultimate stage of the legal process. In some cases, courts provide hearing interpreters *and* certified/deaf interpreters for communication with deaf people who were provided no accommodations at all during the arrest, interrogation, or for attorney-client communication. Yet the system regularly claims that due process has been satisfied even where accommodations—inefficient though they might be—are provided for trial but disregarded for all other contacts with the system and case development.

By all accounts, this mother did everything right. She put the police, public defender, and court on notice of her disability with a personalized card provided by disability rights attorneys. The card clearly denoted the laws implicated,

entities covered, and accommodations required for effective communication and provided attorneys' numbers should they require additional information. She asserted her right to an interpreter multiple times and documented every interaction with police, attorneys, and the courts. Her notes reveal clear disability rights and constitutional violations at every stage of her interaction with the system. And yet she never regained custody of her child, still has a domestic violence charge on her record, and has been permanently traumatized by the very system that claims to mete out justice.

It is also worth noting that it is practically impossible for many deaf people to file formal complaints about these persistent violations and inequities, in part because of the very inaccessibility that caused the deprivation of their rights in the first instance. In this case, even with the support of committed advocates and attorneys from nonprofits across the United States, she could not find an attorney licensed in her state who was willing and able to support her in appealing her criminal conviction or filing a civil action for disability rights violations. No one was held accountable. In this case, as in most of these cases, apart from the story the mother has and the information HEARD saved, there would be no record of the incident at all.

This case is not exceptional but for the fact that the mother was not arrested, that she was charged with just two alleged offenses as opposed to multiple charges, that the charge was relatively low-level, and that she was able to plead to a low-level charge and receive relative leniency on pleading. If she had other marginalized identities, this tragedy might have been even more tragic.

Scenario No. 5

The final scenario discussed in this section is that of signing police officers and other coercive and confusing interview and interrogation practices, namely, those practices rooted in the Reid technique (Starr, 2013; Trainum, 2016). Although many countries have banned this interrogation technique altogether because of the high risk of eliciting false confessions and misinformation, this deliberately manipulative method of questioning suspects has been used widely by law enforcement agencies in the United States for half a century (Hager, 2017; Trainum, 2016). In 2012, a Canadian provincial court judge ruled that "stripped to its bare essentials, the Reid technique is a guilt-presumptive, confrontational, psychologically manipulative procedure whose purpose is to extract a confession" (Quan, 2012). In 2017, one of the largest law enforcement consulting firms in the United States announced that it would no longer train detectives in this method, citing academic research that showed other interrogation styles to be "much less risky" (Hager, 2017).

The Reid technique is a three-phase process that begins with factual analysis, followed by a behavior analysis interview and then a nine-step interrogation (Jayne & Buckley, n.d.). Reid trainers claim to be able to determine whether a suspect is lying based on attitude, verbal and nonverbal cues, paralinguistics,

and responses to interview and interrogation questions (Jayne & Buckley, n.d.). Reid trainers advise that particular behaviors are indicative of untruthfulness and others indicative of honesty (Jayne & Buckley, n.d.). Trainees are advised to interview people only when the information developed from the interview and investigation indicates that the subject is involved in the commission of the crime (Jayne & Buckley, n.d.).

Critics of the Reid technique note numerous concerns with the process (Starr, 2013; Trainum, 2016). The approach is subject to confirmation bias (i.e., likely to reinforce inaccurate beliefs and assumptions) (Starr, 2013; Trainum, 2016). The interrogation is intentionally confrontational, guilt-presumptive, and psychologically taxing, and officers are instructed to lie to make suspects believe they have evidence against them (Starr, 2013; Trainum, 2016). Ironically, the interrogation that gained the creator of the Reid technique wide acclaim actually elicited a false confession that spurred the wrongful conviction of a man whose wife had been murdered (Starr, 2013; Trainum, 2016).

The Reid technique is an example of a common practice employed by the criminal legal system that makes historically marginalized people more vulnerable because of a centering of and deeming “normal” a particular way of existing, thinking, and responding. Much of what Reid practitioners label as “deceptive” behavior is quite ordinary for many people and particularly common for many marginalized and multiply marginalized people interacting with police. The most common Reid interview and interrogation techniques and behavior evaluation criteria will achieve many more false positives and false confessions.

For example, the Reid technique teaches that someone who does not make or maintain eye contact is likely being deceptive—that truthful subjects usually maintain direct eye contact when answering key questions (Jayne & Buckley, n.d.). However, many people, including those with disabilities, either struggle with eye contact generally, are particularly averse to making eye contact when interacting with authority figures or look away when processing or expressing information, or during emotionally tinged or stressful situations. Many people from different cultures are taught not to make eye contact for culturally appropriate reasons. Although this is no indication of their untruthfulness or guilt, the Reid technique’s behavior symptom analysis training offers that nonverbal behavior is harder to control than verbal behavior and that the meaning of the verbal answer is either supported or contradicted by the corresponding nonverbal behaviors (Jayne & Buckley, n.d.). Specifically, the training tells law enforcement to believe a subject’s nonverbal behavior if it contradicts their nonverbal behavior—to believe the head nodding yes despite a subject saying “no,” and vice versa (Jayne & Buckley, n.d.). This contradicts basic principles of human information processing and leads to misinterpretation and miscommunication with disabled people who use head nods and other movements very differently than hearing nonsigning, abled people. Despite studies having proven these theories and practices to be unreliable, law enforcement leave Reid technique trainings believing that they can

distinguish between honest and dishonest people on the basis of body language, verbal and nonverbal cues, attitude, the timing of responses, lenience toward wrongdoers, etc.

During an interrogation, typical deceptive behavioral attitudes include being apologetic/accepting or quiet. Typical behavioral attitudes include being unyielding or persistent.

Figures 3a and 3b depict just some of the ways that, under the Reid praxis, many marginalized people's responses to policing systems and interactions with law enforcement are deemed "deceitful," although they are typically privileged (i.e., hearing, abled, white, wealthy, cisgender, masculine, etc.) ways of thinking, responding, behaving during police encounters deemed evidence of "truthfulness."

phase of the process	typical deceptive behavioral attitudes	typical truthful behavioral attitudes
during an interview	<ul style="list-style-type: none"> • overly anxious • unconcerned/unrealistic • uncooperative/defensive • guarded/evasive/hesitant • rationalizing/unhelpful • insincere • defeated 	<ul style="list-style-type: none"> • composed • concerned/realistic • cooperative • direct/spontaneous • open/helpful • sincere • confident
during interrogation	<ul style="list-style-type: none"> • apologetic/accepting • quiet 	<ul style="list-style-type: none"> • unyielding • persistent

FIGURE 3a. The chart lists two phases of the process: the interview and interrogation.

typically deceptive nonverbal behavior symptoms during interview or interrogation	<ul style="list-style-type: none"> • retreating from investigator • slouching • frozen • non-frontal alignment • barriered posture • erratic and rapid posture changes • head and body slump
typically truthful nonverbal behavior symptoms during interview or interrogation	<ul style="list-style-type: none"> • upright • open and relaxed • lean forward on occasion • frontally aligned with the interviewer • casual posture changes

FIGURE 3b. Examples of typically deceptive nonverbal behavior symptoms.

It is well settled that youth and people with mental disabilities are known to be especially susceptible to false confessions (Crane et al., 2016; Rogal, 2017). Less acknowledged and discussed is deaf and other disabled people's extreme susceptibility to the same false confession-inducing jeopardies as other marginalized populations. These jeopardies include coercive and confusing psychological interrogation techniques; vulnerability to suggestive questions and pressures to please and accommodate authority; being deferential to and trusting of authority (e.g., believing detectives who assert that they have extensive evidence proving culpability; or who say "we already know you did it, you just need to tell us exactly what happened"; or "this will be better for you if you tell us now," etc.); and cross-cultural miscommunication.

Intentional dishonesty coupled with the system's failure to provide effective communication also further impairs disabled people's ability to fully comprehend the gravity of law enforcement situations. All of this coupled with the general lack of accessible information about the dangers of the legal system; constitutional rights; and the importance of every person, regardless of disability, to immediately invoke the right to counsel and to remain silent during police questioning only contributes to the likelihood of deaf people being misunderstood, presumed guilty, and falsely confessing or providing statements that will be used against them in legal proceedings. Furthermore, many deaf suspects and defendants have other disabilities, although they are rarely discussed or accommodated. Presumptions about deaf suspects' language, literacy, mannerisms, and the tendency among officers who "know" sign language to insert themselves into this already fraught interview and interrogation calculus have disastrous and irreversible consequences. The criminal legal system has continued to churn, largely oblivious or indifferent to these dangers and injustices.

The Reid technique, coupled with disability, is the perfect storm for wrongful convictions, but an in-depth analysis of problems inherent to the Reid technique is beyond the scope of this chapter. However, it is worth noting that "more training" does not address, remedy, or end policies and practices, like the Reid technique, that create and exacerbate structural and systemic inequity—whether such trainings are related to race, ethnicity, gender, sexuality, class, age, disability, religion, or other identities. Moreover, in many cases involving wrongfully convicted disabled people, law enforcement exploits suspects' vulnerabilities and disabilities.

DEAF WRONGFUL CONVICTION CASES

Decisions about accommodations cannot be left to law enforcement at the expense of disabled people whose lives and liberty depend on having access guaranteed by federal disability rights laws, the Constitution, and basic principles of fairness and decency. The narratives below prove that under current law enforcement regimes, it is not only possible, but *highly probable* that an innocent

deaf person who is being truthful, when not provided with reasonable accommodations (especially while under great pressure, operating on very little sleep, and being misled about the weight of evidence against them) can “look guilty”; be persuaded to sign documents they cannot comprehend; and even confess to crimes they did not commit. Notably, while Black people represent just 13% of the American population, they also represent the majority of innocent defendants who are wrongfully convicted in all major crime categories—accounting for 47% of the 1,900 exonerations listed in the National Registry of Exonerations as of October 2016 (Gross et al., 2017). The risk of wrongful conviction for Black disabled people is therefore exponentially increased.

Case Study No. I: Stephen Brodie

Stephen Brodie’s case illustrates what happens when a deaf person is subjected to customary police interview and interrogation practices and the whim of what law enforcement believes to be “effective communication.” Stephen Brodie was a white Deaf teenager who had been through the foster system as a child (Denzel, 2016). Brodie, who uses ASL as his only language, was arrested for stealing coins from a soda machine, then subjected to a grueling interrogation about the rape of a small child, a crime he knew nothing about. The interrogation lasted 18 hours over the course of 8 days (Denzel, 2016). Officers conducted this interrogation without an interpreter for *at least* half of the time (Denzel, 2016). Transcripts from the interrogation both with and without an “interpreter” illustrate endless miscommunication and misunderstanding.

Brodie made his best attempts to understand and provide responses to officers, but their failure to provide adequate accommodations made communication impossible. Officers here likely believed that they were communicating effectively. Not only that, but applying the Reid behavior analysis framework, Brodie’s responses would be deemed telltale signs of deception, evasion, and lack of cooperation. The Reid technique instructs officers to continue interrogations until the suspect is ready to confess (Jayne & Buckley, n.d.). The result in cases like this is prolonged and more intensified interrogation tactics as opposed to reprieve, reassessment, and regrouping. In command-and-control settings, “failure to comply”—even when this perceived failure results from the inability to comply—is taken as a form of defiance or resistance necessitating reprisal (Lowery, 2017). So a Deaf teenager like Stephen Brodie who responds “incorrectly” to what law enforcement deems straightforward interview and interrogation questions is presumed to be untruthful or attempting to conceal guilt as opposed to being completely disoriented and, in Brodie’s own words, feeling “intimidated and scared” (Miller, 2010).

Stephen Brodie succumbed to this pressure and “confessed” to a crime he had not committed, getting many of the details of the crime wrong (Denzel, 2016). Brodie also “confessed” to many other crimes fabricated by

the police (Denzel, 2016). His trial attorney attempted to suppress Brodie's false confession, to no avail (Miller, 2010). Facing a 99-year sentence, Brodie pled guilty to rape and received a 5-year sentence (Denzel, 2016). After serving his term for a crime he did not commit, Brodie refused to register on the sex offender registry, so he was incarcerated for more than ten additional years (Denzel, 2016).

In 2010, Brodie's father persuaded the Dallas County District Attorney's Conviction Integrity Unit to review Brodie's case (Denzel, 2016). It was the Integrity Unit that argued for Brodie's release (Denzel, 2016). It was discovered that the police had withheld evidence from Brodie's trial counsel, namely, that a hair found on the victim's blanket did not match Brodie and that the bloody fingerprint found on the window screen matched a man convicted of child rape who was suspected in other assaults in the area (Denzel, 2016). In 2010, a Texas district court judge vacated Brodie's conviction on the grounds of actual innocence (Denzel, 2016). By then, Stephen Brodie had spent 17 years in prison for a crime he did not commit (Denzel, 2016). Taxpayers paid for this injustice to the tune of millions of dollars between his near twenty year incarceration (wherein he was deprived of accommodations) and through a state compensation package of nearly \$900,000 and monthly annuity—a pittance compared with what he needlessly endured. These injustices are only magnified and compounded for multiply marginalized deaf people.

Case Study No. 2: John H. L. Wilson Jr.

John Wilson Jr., a Black, DeafDisabled, low-income man from the District of Columbia, spent 25 years in prison after being convicted of second-degree murder in 1996 and receiving a life sentence ("Deaf man who was incarcerated," 2019). He returned home in March 2019 only after more than a decade of advocacy from HEARD and the Public Defender Service for the District of Columbia ("Deaf man who was incarcerated," 2019).

In 1994, the DC Metropolitan Police Department (MPD) interrogated John Wilson and other Black deaf/disabled witnesses—all of whom used ASL as their only or primary language and worked with ASL interpreters during subsequent grand jury testimony and trial⁴—without sign language interpreters. MPD instead used written notes and a police officer who knew how to fingerspell, Officer Myra Wheeler. One witness worked with deaf and hearing interpreter teams during Wilson's 1996 trial but received no accommodations during police interviews. The trial transcript from this witness depicts confusion during police interviews and illustrates how after advising the lead detective (Baylor) that she could not understand the fingerspelling officer (Wheeler), that Officer Baylor continued the interview. The witness admits to signing (i.e., adding her signature to a document) a statement that she could not read or understand (Figures 4a–d).

Monday, June 10, 1996.pdf

1 Detective Baylor at this time?
2 A Oh, it was very brief, it was not long.
3 Q During the interview you never said to Detective
4 Baylor that you were not able to communicate well with or
5 through the female police officer who was using sign.
6 THE INTERPRETER: The interpreter needs to ask
7 the witness to repeat the answer.
8 THE WITNESS: I did tell the police that I did
9 not understand, this officer was just finger spelling not
10 signing and I did tell them.
11 BY MR. KIERSH:
12 Q Who did you say it to?
13 A The black male that was there, the black man.
14 Q Now you're able to read something that's typed
15 up, aren't you?
16 A Well, I can read some; I don't read very well.
17 Q Do you read the newspaper ever?
18 A I can read some of it. Most of it is very hard
19 for me to understand. It's very hard for me to understand,
20 I really don't read very much.
21 Q After you gave the statement to Detective Baylor
22 he gave you the chance to sign the statement, isn't that
23 right?
24 THE COURT: Put her signature on it?
25 MR. KIERSH: Yes.

FIGURE 4a. Trial transcript, June 10, 1996, *United States v. John H.L. Wilson, Jr.*, F-9188-94.

Monday, June 10, 1996.pdf		
1	Q	Now that woman is Officer --
2	A	Just, there was just one woman officer who was
3		there.
4	Q	That woman officer was Officer Wheeler, is that
5		right?
6	A	Who was Officer Wheeler.
7	Q	Did that police officer, the woman police officer
8		sign to you?
9	A	Was that a black female?
10	Q	The question is the woman officer who was
11		present, did she use sign language in your presence?
12	A	Yes.
13	Q	Is that how you communicated with Detective
14		Baylor using that person and her abilities to sign?
15	A	Yes, that's how it was, that's right, the woman
16		was there and she helped with the signing, yes.
17	Q	Do you recall whether or not there was a third
18		police officer present during this interview?
19	A	No, it was just three of us who were in that
20		room.
21	Q	So your testimony is that you are certain that
22		during this interview it was just yourself and two other
23		police officers.
24	A	Yes, I'm sure of that answer.
25	Q	For how long were you being questioned by

769

FIGURE 4b. Trial transcript, June 10, 1996, *United States v. John H.L. Wilson, Jr.*, F-9188-94.

Monday, June 10, 1996.pdf

2 BY MR. KIERSH:

3 Q And before you put your signature on the paper,

4 Detective Baylor gave you the chance to read what it is

5 that he typed up --

6 THE COURT: Sorry to do this to you, Mr. Kiersh,

7 but you can't stand --

8 MR. KIERSH: I appreciate that, Your Honor.

9 BY MR. KIERSH:

10 Q Before the detective gave it to you to put your

11 signature on it, he gave you the chance to read what he had

12 typed up, isn't that right?

13 A Right, I was given the time to read them. I read

14 it and then I signed it.

15 Q And before he asked you to put your signature on

16 it, he gave you the chance to make any corrections to what

17 was contained in the statement that he had typed up, isn't

18 that right?

19 A Really I read it and I didn't understand all of

20 it. I can't read that well but I signed it.

21 Q You did sign the statement after you had the

22 chance to read it and after you had the chance to make any

23 corrections, isn't that right?

24 A Right, I read through it. It was not real fast.

25 I read through it and then I signed it.

700

FIGURE 4c. Trial transcript, June 10, 1996, *United States v. John H.L. Wilson, Jr.*, F-9188-94.

1 Q And you didn't say to Detective Baylor sir, I
2 really can't read this ps, paper that you typed up or I
3 don't understand this paper that you typed up.
4 A No, I didn't.
5 Q And in that paper that was typed up by Detective
6 Baylor that you signed, it says that you did not see John
7 again in three days later.
8 A I meant that his girlfriend Elise has been gone
9 for three days.
10 Q When you put your signature on the paper that
11 Detective Baylor typed up, after you had the chance to
12 review it you didn't tell that to Detective Baylor what you
13 told, just told this jury, did you?
14 A I didn't mean John. I had meant Elise but I
15 didn't say anything.
16 Q As a matter of fact, what the paper says that you
17 signed is that --
18 A The police did not understand me.
19 Q What the paper says that you put your signature
20 on is that Darlene stated that she did not see John until
21 three days later, isn't that your recollection what this
22 paper says?
23 A The police did not understand me.
24 Q Would you like to see the paper?
25 A Because the paper is wrong. And I was talking

FIGURE 4d. Trial transcript, June 10, 1996, *United States v. John H.L. Wilson, Jr.*, F-9188-94.

MPD also did not provide accommodations for communication with John Wilson. Information from these grossly deficient interviews and interrogations led to Wilson's wrongful arrest and conviction. Interrogation notes and Wilson's Miranda waiver cards illustrate Wilson's earnest attempts to communicate without accommodation and ensuing frustration, confusion, and desperation (Figures 5 and 6).

The Reid technique trains law enforcement to perceive as deceptive people who are overly emphatic or repetitious about their innocence or truthfulness and those who struggle to respond clearly and directly to key questions (Jayne & Buckley, n.d.). Wilson's desperate attempts to communicate his truthfulness and innocence together with other cross-cultural miscommunications were taken as indicia of deceit and guilt as opposed to overcompensation for and confusion from MPD's failure to provide reasonable accommodations. These are just a few of countless misunderstandings. Cultural and linguistic differences between Wilson and the government's deaf/disabled witnesses, and the police officers, attorneys, and judges with whom they interacted, played a significant role in Wilson's wrongful conviction. Three of Wilson's four children were sent to the foster system following his arrest—their lives irrevocably altered by the injustice visited upon their father. This scenario continues to play out decades later.

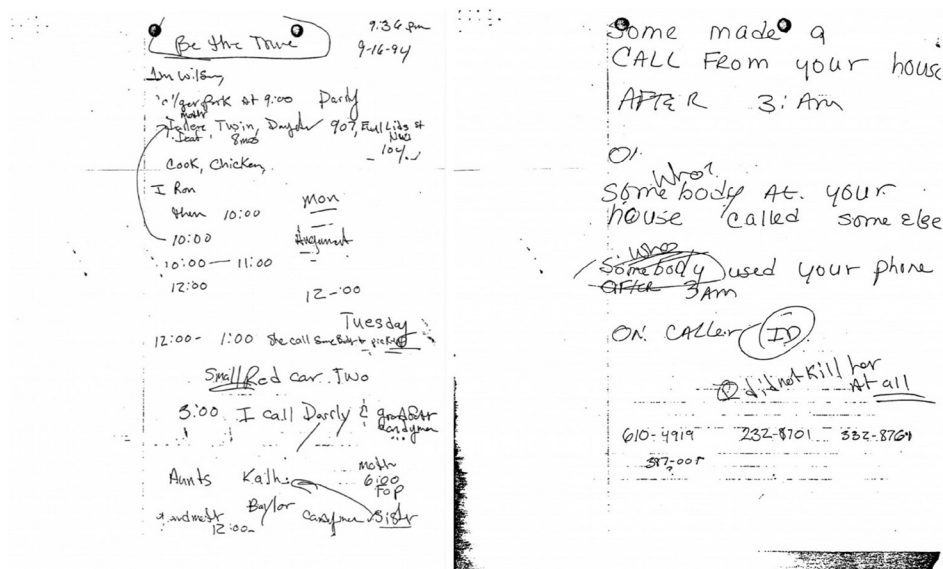


FIGURE 5. John Wilson Jr.'s interview.

PD 47
Rev. 8/73 METROPOLITAN POLICE DEPARTMENT

WARNING AS TO YOUR RIGHTS

~~Before we ask you any questions, you must understand what your rights are.~~ Before we ask you any questions, you must understand what your rights are.

You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you.

If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

1. Have you read or had read to you the warning as to your rights? yes JW
2. Do you understand these rights? yes V-STW
3. Do you wish to answer any questions? yes V-STW
4. Are you willing to answer questions without having an attorney present? yes V-STW
5. Signature of defendant on line below.

6. Time 9:35

Date 9-16-94

7. Signature of Officer Michael R. Smith

8. Signature of Witness Talila A. Lewis

FIGURE 6a. Miranda cards from John Wilson's interviews and interrogations.

PD 47
Rev. 8/73 METROPOLITAN POLICE DEPARTMENT
WARNING AS TO YOUR RIGHTS

You are under arrest. Before we ask you any questions, you must understand what your rights are.

You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you.

If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

1. Have you read or had read to you the warning as to your rights? Yes
2. Do you understand these rights? Yes
3. Do you wish to answer any questions? Yes
4. Are you willing to answer questions without having an attorney present? Yes
5. Signature of defendant as to line below. [Signature]

6. Time 12:15

Date 11-19-94

7. Signature of Officer [Signature]

8. Signature of Witness [Signature]

FIGURE 6.b Miranda cards from John Wilson's interviews and interrogations.

PD 47
Rev. 8/73 METROPOLITAN POLICE DEPARTMENT

WARNING AS TO YOUR RIGHTS

You are under arrest. Before we ask you any questions, you must understand what your rights are.

You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you.

If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

1. Have you read or had read to you the warning as to your rights? YES JW
2. Do you understand these rights? Yes JW
3. Do you wish to answer any questions? YES JW
4. Are you willing to answer questions without having an attorney present? YES JW
5. Signature of defendant on line below.
[Signature]
6. Time 12:15 Date 9-20-94
7. Signature of Officer [Signature]
8. Signature of Witness [Signature]

FIGURE 6.c Miranda cards from John Wilson's interviews and interrogations.

Case Study No. 2: Ricardo Harris

We see this scenario play out in the 2013 case of Ricardo Harris, a Black deaf student visiting the South for winter break from university and who is presently serving a life sentence for murder after almost precisely the same situation as occurred in John Wilson's case 20 years earlier ("Black deaf man," 2020; Lewis, 2018). Police detained and interrogated Harris about a murder using an unqualified, uncertified police dispatcher, Barbara Bell, who had a basic grasp of some signed English. Bell relied mainly on fingerspelling for expressive communication, and she could not understand Harris's ASL ("Black deaf man," 2020; Lewis, 2018).

Detectives strategically used techniques designed to gain Harris's trust prior to the interview (Jayne & Buckley, n.d.). Detectives brought food for Harris and informed him that they had called an interpreter. Officers did not put handcuffs on Harris while he waited at the precinct, so he had no reason to know that he was suspected of any crime, much less murder. Bell, a police dispatcher, arrived in all-black plain clothes to "interpret," so Harris thought Bell was an interpreter. When she signed, Harris recalls being surprised to find that she did not know ASL. Harris recalls asking if she was certified, and Bell indicated that she was certified and that no one else was available. Harris continued with the interrogation, despite not being able to fully understand Bell because he had already spent half a day waiting for an interpreter and wanted to simply share what he knew about the incident and go home. At one point, Harris diplomatically informed the detective and his attorney that he could not understand Bell because he "did not use spelling," and his sign language was from "a different state." The response to Harris's missive was to offer yet another inaccessible method of communication: "If you have any trouble, let me know? Ask for paper and a pen!"

Harris followed these instructions and attempted to aid the fingerspelling dispatcher by supplementing fingerspelling with writing and voicing. After witnessing and experiencing a traumatic event and spending almost a full day awake and on edge—a good many hours in the small windowless interrogation room with no communication—Harris spent several more hours in the same interrogation room trying to decode fingerspelling and attempting to express himself through a mix of spelling, writing, and speaking—all of which are inaccessible to him (Figure 7).

Neither the detective nor his own attorney appreciated that Harris uses ASL as his primary language or that Harris had just informed them that he could not understand the person being called to and relied upon to interpret. Harris is used to being in a position of accommodating the dominant hearing, white majority. He intuitively feels that it is best to keep additional requests to a minimum because further requests could lead to more long hours of waiting for another interpreter. Harris does not realize that he is in danger of being charged with a serious crime. Hearing police officers and attorneys often presume and assert

Can You UNDERSTAND THE
INTERPRETOR ?

Somewhat yes mostly I dont used spelling
~~new~~ words since my language is different from
different state as National Deaf of Institute

If You HAVE Any Trouble, Let
ME KNOW? will do

Ask for paper & pen!

That's what I'm plan to if not understand
my sign to make sure as clarity.

FIGURE 7. Handwritten note from the police interrogation of a Black deaf student, 2013.

that effective communication is occurring when it is not. It is also particularly difficult for police and attorneys to understand that a person who uses a signed language, whether or not they have attended university, might not be able to use or understand English or language of their home country.

Notably, even if Bell had been fluent or certified in ASL, she would still have been unqualified to interpret for this interrogation. Using officers and other law enforcement personnel as ASL interpreters raises grave concerns over confidentiality, impartiality, and conflicts of interest. An inherent imbalance of power is created by using law enforcement as interpreters with deaf suspects that makes it even more difficult for the deaf person to admit when communication is not effective. The ADA requires the use of “qualified interpreters,” 42 U.S.C. § 12141 *et seq.* The implementing regulations define a qualified interpreter as one “who is able to interpret effectively, accurately, and *impartially* both receptively and expressively, using any necessary specialized vocabulary,” 28 C.F.R. § 35.104 (emphasis added). Signing police officers are not neutral and therefore are never “qualified” to interpret with deaf suspects.

Harris succumbed to systemic pressure to accept less than adequate accommodations. Detectives cited “inconsistencies” in his story as it was written in English, told through the fingerspelling police dispatcher, and how it was told through a qualified interpreter some days later. In the end, Harris was charged with and convicted of murder, receiving a life sentence. Harris’s defense attorney, Tom Ford, not only failed to provide interpreters for confidential attorney-client communications but also allowed his client to share information with

detectives through a police employee in a language that the attorney could not understand. Ford encouraged his client to handwrite a statement in English when the detectives complained that they were unable to understand Harris through Bell and failed to hire an expert to challenge this police employee's qualifications or interpretation, among numerous other errors.

Videos of the interrogation clearly show that the communication was anything but clear. Bell repeated signs; did not share a good amount of information spoken by detectives and Tom Ford or signed by Harris; made up signs and gestures; fingerspelled; and used incorrect signs throughout grueling hours of interviews. Meanwhile, Harris politely "deaf nodded" and tried to accommodate her to the best of his ability ("Black Deaf man Ricardo Harris says he was wrongfully convicted," 2020).

These cases are generally not corrected on appeal for myriad reasons that are beyond the scope of this chapter. Ricardo Harris's case was no exception. He lost his appeals. In January 2020, the Georgia Supreme Court issued an opinion affirming his conviction. The opinion illustrated an unfortunately typical, yet still jarring, ignorance of Deaf culture and communication, specifically, and disability, generally, by the courts. The opinion stated, in part, that despite the fact that "[t]he record contains no evidence establishing Bell's professional qualifications as a sign language interpreter," Bell communicated effectively because

the prosecutor stated that Bell was 'capable of signing, though much of her signing is by spelling out words . . . [and] . . . she was capable of communicating with the defendant, but a lot of it was slow because she was having to spell things out.' The video-recordings of the interviews in which Bell participated show her signing with Harris, and the trial court could draw inferences from those interviews about whether they were able to effectively communicate with each other. (*Harris v. Georgia*, 2020)

Obviously, people with no background on Deaf culture and who do not know sign language would be unable to determine whether the communication was effective by watching this video. The Georgia Supreme Court went on to state that "[t]he video recording of this interview shows that [Detective] Erion read the entire Miranda waiver-of-rights form to Harris and that Bell interpreted it in sign language. Harris nodded affirmatively as Bell signed to him, indicating that he understood." The criminal legal system is as fallible as the humans driving it. In far too many cases, especially those involving disabled defendants, efficiency and finality trump truth and justice. In 2020, after years of attempting to support Harris's trial and appellate attorneys, HEARD began working with the National Habeas Institute to support Harris who has now been incarcerated for nearly a decade. Harris's children and family have been harmed mentally, emotionally, physically, financially, and more.

The next section *very briefly* touches on just a few concerns related to judges, attorneys, and interpreters. Because this is an ongoing project, more in-depth treatment of these and other criminal legal system actors, practices, oversights, and errors related to deaf and other disabled people is forthcoming.

SYSTEM, PROCESS, AND ACCOUNTABILITY FAILURES: INTERPRETERS, ATTORNEYS, JUDGES, AND THE COURTS

People often assume that because prosecutors, defense attorneys, and most judges are attorneys, they are fully aware of and in compliance with their obligations pursuant to federal disability rights laws. Unfortunately, legal professionals and the courts are also lacking in deaf and disability cultural competencies. This leads to technical errors as well as outright constitutional violations in cases involving disabled defendants (Alfisi, 2013).

As noted above, federal disability rights laws require attorneys and courts to provide “qualified interpreters” and other reasonable accommodations for deaf and other disabled defendants, witnesses, 42 U.S.C. § 12141 et seq. The implementing regulations define a qualified interpreter as one “who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary,” 28 C.F.R. § 35.104. To begin with, many courts are not following this most basic mandate (see examples below). In addition, however, the provision of interpreters is often still insufficient (LaVigne & Vernon, 2003).

Deaf people represent a relatively small minority of defendants in criminal cases, so judges, attorneys, and others who regularly participate in “the administration of justice” rarely come into contact with or make legal decisions concerning deaf people (OCIS, 2013). For instance, in 2011, 19,593 felony and misdemeanor cases were presented in the DC Superior Court (OCIS, 2013). During that same year, the DC Superior Court’s Office of Court Interpreting Services dispatched 206 ASL interpreters and 16 ASL relay teams. Deaf defendants who required communication in a tactile or visual signed language therefore represented far less than one-half of 1% of all felony and misdemeanor cases in the District of Columbia, which boasts one of the largest deaf populations per capita (OCIS, 2013). This relatively low incidence contributes to gaps in disability (here, specifically deaf) consciousness in criminal law, procedure, and practice. This, coupled with the pace of proceedings, and other systemic inequity factors discussed throughout this chapter, only further thwarts a fair administration of “justice” for deaf people.

So, while in theory the criminal legal system has many people in positions of power who *should* serve as checks on errors and abuse of power, and many laws that *should* ensure that disabled people are treated with decency, reality in the era of mass incarceration is quite different.

Judges and the Courts

Courtrooms are often one of the very few places where deaf defendants may receive access to accommodations, including interpreters, transliterators, and CART. However, the provision of accommodations in the penultimate or ultimate phases of the criminal legal process does nothing to remedy the preceding accommodation failures. Additionally, when courts do provide

accommodations, defendants still do not necessarily have full and equitable access. And many courts still refuse to provide accommodations. For instance, family members are still being tasked with trying to interpret during court proceedings (*see* 2016 court transcript later), and as recently as 2016, attorneys were threatened with contempt and jail time for reminding judges of their obligation to provide and pay for accommodations pursuant to federal disability rights laws and state law and court procedures (“Interview with Amber Farrelly, Esq.,” 2016).

In 2016, one Black Deaf family in Mississippi requested interpreters for a court proceeding involving a young Black Deaf member of the family and his Deaf mother who planned to attend the proceeding to support her son. Multiple members of the family called the clerk of the court during the several months leading up to this proceeding to explain that the defendant was deaf and required qualified interpreters to participate in this proceeding. During this time, the defendant, like many other deaf defendants, was being held in a local jail with no access to telecommunication, accommodations, or counsel.

On the day of the hearing, no interpreters were present. Appointed counsel discussed plea agreements with his deaf client without the support of a qualified interpreter. The public defender, judge, and prosecutor then coerced the defendant’s Coda sibling to attempt to interpret for her brother’s proceeding. The Coda made clear to the judge that she was not an interpreter and that she was “not skilled in English.” The judge responded that she did not have to worry because if she missed a word, they would just slow down and spell it for her so that she could then spell it for her brother (Figure 8).

The 43-page transcript paints the picture of coercion and confusion for the defendant and Coda. Both siblings and the Deaf mother knew that what was occurring was improper but felt as though they had no choice but to comply with the demands of those in positions of authority who held the son’s life in their hands. The transcript also paints a picture of complete obliviousness of or disregard for Deaf culture and communication and for decades-old federal disability rights laws. Importantly, this case took place in the Deep South, and everyone in the courtroom except the family was white—the judge, prosecutor, defense attorney, clerk, and court reporter. There are complex and layered power dynamics and cost-benefit analyses (e.g., the harm of allowing a young Black Deaf person to be held in an adult jail with no accommodations), involving at least race, class, and disability, that led this family to feel that they had no option but to comply. The same is true in other courts across the United States.

This defendant, despite receiving no access, was ordered to pay more than \$3,000 in fees to the court, public defender, and prosecutor—with each individual charge costing the defendant \$451.50 in “court costs.” The system continues to incentivize attaching more charges to each defendant, making it harder for the defendant to beat their case, pay mandatory fees, get jobs, and more (Romo, 2018). Then the system punishes low-income people by making payment of fines, fees, drug testing and treatment, electronic monitors, and so on, a condition for probation and arresting people who simply cannot afford to pay these fees (Romo, 2018). Mass incarceration and the criminalization of poverty

4 THE COURT: Okay. And are you related
 5 to Mr. Doe?
 6 MS. Doe: My brother.
 7 THE COURT: Okay. And I noticed that
 8 you are doing sign language; is that
 9 correct?
 10 MS. Doe: Yes, sir.
 11 THE COURT: And is Mr. Doe, he has a
 12 hearing impairment, correct?
 13 MS. Doe: Yes, sir.
 14 THE COURT: And can he understand your
 15 sign language?
 16 (Ms. Doe signing to defendant.)
 17 MS. Doe: He can understand some.
 18 THE COURT: Mr. Doe, can you answer out
 19 loud at all?
 20 (Ms. Doe signing to defendant.)
 21 THE DEFENDANT: (Affirmative response).
 22 THE COURT: Okay. Does he have any
 23 voice?
 24 (Ms. Doe signing to defendant.)
 25 THE DEFENDANT: (Affirmative response)

FIGURE 8. Transcript from a 2016 hearing where a Coda was forced to interpret for her brother's hearing.

disproportionately affect negatively racialized people and disabled people (Gibson & Lewis, 2018).

Courts and attorneys also discriminate against deaf jurors, making it difficult for deaf people to have deaf people on their juries if their case goes to trial (Montemayor, 2017). This discrimination also makes it less likely that court officials have interacted with deaf people. Relatedly, juries are provided with no information or instruction about deaf or disability cultures and communication or about what considerations exist concerning deaf/disabled defendants or witnesses, for example. As a result, deaf/disabled defendants and witness behaviors such as nodding or, particularly, emotive signing or voicing can be misunderstood and used against them during the legal process (*see Georgia Supreme Court Opinion in Ricardo Harris case above*).

Attorneys

Most attorneys representing deaf clients have never met or interacted with a deaf person, and they often make elementary communication mistakes (Alfisi, 2013). Attorneys are also unable to catch communication-related errors made by law enforcement or between law enforcement and their clients. Often, courts and bar associations do not discipline attorneys who fail to satisfy their obligations pursuant to federal disability rights laws (grievance processes are often inaccessible

to disabled people) (Alfisi, 2013). In 2017, a HEARD advocate-attorney contacted Mississippi's Consumer Assistance Program (CAP), which purports to "help people with questions or problems with Mississippi's attorneys" to find out complaint options for the Black Deaf family whose Coda was forced to pose as an interpreter. This state bar association is tasked with handling complaints and discipline of its attorneys. The call lasted four minutes and ended with the attorney in charge of CAP shouting at HEARD's advocate-attorney. The bar association attorney's response to the scenario was, "if the court allowed it, then it is up to the court's discretion." HEARD informed this attorney about federal disability rights laws requiring accommodations be provided by the court and attorney. The CAP attorney responded, "I don't think that's what the law says." Upon the HEARD advocate confirming that is, in fact, what the law says, the attorney shouted, "Are you trying to dictate the law to me?"

In yet another state, a judge issued an order acknowledging that a privately retained attorney for a deaf defendant was unable to communicate with their client. Instead of ordering the attorney to hire a qualified interpreter at their own expense, as required by federal law, the judge issued an order to the sheriff requesting that the defendant's father be permitted to enter the county jail with the private attorney to attempt to mediate between the defendant and the privately retained attorney. The father only knew home signs. However, again, even if the father had been a certified interpreter, he would have been unqualified to interpret for reasons similar to the Coda and the fingerspelling police officer in the preceding scenarios (Figure 9). These and other errors frequently occur in cases involving deaf people.

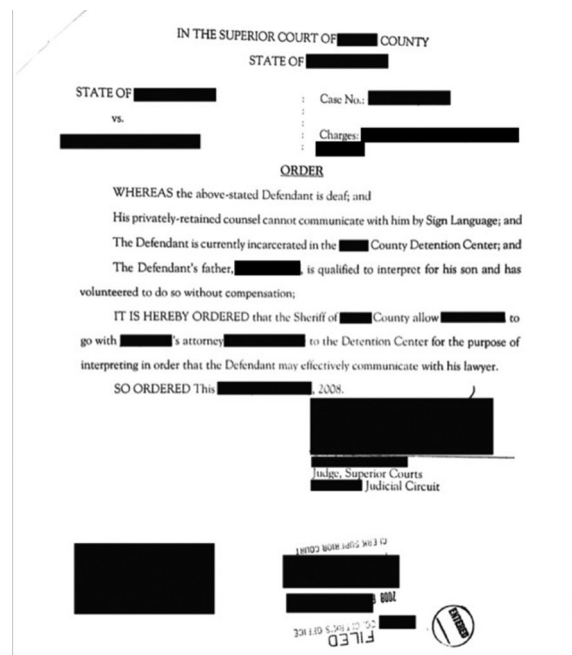


FIGURE 9. Official 2008 court order.

Attorneys rarely challenge qualifications of purported interpreters or other communication-related errors at pretrial or trial phases, so the record is not preserved for appeal. Even the sharpest appellate attorneys struggle to resurrect a worthy argument if it was not properly preserved for appellate review. Many cases will ultimately have to be addressed on appeal, so it is imperative that trial counsel adequately preserve the record. Successful appeals often hinge on the record developed by defense counsel during trial. Appellate attorneys' petitions on behalf of deaf people are often unsuccessful for the same reasons trial attorneys' efforts fail deaf people.

Interpreters

The legal system does not understand or honor even the most basic tenets of language justice or cross-modal and cross-cultural communication and interpretation: language justice requires time, patience, innovation, and humility; interpreters make mistakes all the time; certifications do not make an interpreter qualified, and a qualified interpreter may still be unqualified for portions of even the same meeting or proceeding; having a team of long-time certified interpreters present *does not* mean that a disabled person has full access. The harmful hallmarks of the criminal legal system (i.e., efficiency, expediency, and finality) also elicit the worst in communication access and interpretation.

As evidenced in the preceding narratives, law enforcement, attorneys, and judges often cannot ascertain whether interpreters are qualified or whether the information is being successfully rendered or understood. To further trouble the interpretation issue, certified interpreters are sometimes not qualified (LaVigne & Vernon, 2003). Research and narratives show that an alarming number of hearing interpreters are not qualified to interpret in situations involving marginalized deaf people within the criminal legal system (Bryant, 2017) and very few interpreters understand systemic oppressions and the criminal legal system. Interpreters should come into the criminal legal system assuming mistakes have been made by police, prosecutors, defense attorneys, other interpreters, and others, and be on guard for red flags that may be indicative of wrongful arrest, coerced confessions, or other access or rights violations.

Because disabled people in stressful legal predicaments often do a cost-benefit analysis and decide against raising communication issues, interpreters in legal settings often get a pass (see previous scenarios). Faith in the legal system; the urgency of a dangerous situation; fear of and trust in power holders (including interpreters); as well as the exclusion of access to culturally competent advocates, and other cultural and sociolinguistic factors, hinder disabled people from being able to make informed decisions about whether to raise access and communication issues. Instead, disabled people overcompensate for law enforcement, attorney, and interpreter shortcomings by working even harder, extending themselves well beyond the range of their own language, communication, and fatigue capacities (Bernstein, 2012). Thereafter, misinformation

and misunderstandings are attributed to the deaf person, *not* to hearing officers, attorneys, judges, or interpreters. If a deaf person raises communication concerns after spending considerable time trying to work with insufficient or improper accommodations, they are often not believed because everything *seemed* fine at the outset to the hearing power holders involved (HEARD, 2020).

Again, because many of these interactions are either not recorded or not fully recorded (e.g., recorded on body camera, which does not capture the “signing” officer’s rendition of the message) or are memorialized only via audio or text, and because the criminal legal system is led by hearing/abled people who do not understand Deaf culture or communication, legal challenges to communication failures are difficult, if not impossible. Because sign language fluencies can change over time, even if an interpreter’s qualifications are challenged, it is difficult to determine what level of proficiency the individual had in months or years past without an accurate and clear recording. Strict procedural time bars and the lack of disability consciousness of appellate attorneys makes it difficult to remedy cases even where a clear recording depicts jarring misinterpretations and miscommunications (see wrongful conviction cases mentioned previously).

Hearing interpreters and officers who can sign are often unable to assess whether a deaf person is fully comprehending the message. Interpreters and signing officers are often concerned about expediency and maintaining their careers and reputations, so they can be hesitant to share with their employers or colleagues their inability to communicate with a deaf person. Some unqualified interpreters and police officers and family members who have served as “interpreters” have expressed that they are “better than nothing” or “better than other local interpreters,” or that they “knew the police would not provide an interpreter” (HEARD, 2020). As a result, unqualified people, including certified interpreters, have themselves reported and been reported as having continued “interpreting” despite their own recognition of being unqualified for the interaction.

ASL interpreter credentialing bodies and processes are inherently structurally and systemically inequitable (Bryant, 2017). This only compounds systemic inequity faced disabled/deaf people swept into the criminal legal system. Ironically, interpreters with the highest levels of certification are often least able to meet the communication, culture, and access needs of those trapped in the criminal legal system. In addition, the pool of court-certified interpreters is further limited due to these and other factors:

- Systemic and structural barriers to joining the interpreting profession, obtaining legal certification, and staying in the interpreting profession experienced by negatively racialized and low-income people, and disabled/deaf people and heritage signers (Bryant, 2017; Project CLIMB, 2017; Registry of Interpreters for the Deaf [RID], 2016)
- an indefinite moratorium on legal certification by the nationally recognized organization that issued legal certifications from 1998 through 2016 such that many jurisdictions require this particular certification to interpret in their courts (RID, 2018)

- conflicting out of certified legal interpreters once they have worked on different aspects of the same case (e.g., interpreters should not work as an interpreter with a complainant and a defendant in the same case; the Proceedings Interpreter should not serve as Interpreter for Counsel, although many interpreters continue to violate these and similar rules often asserting that the court, attorneys, or others have “waived” these conflicts, etc.)
- court and legal interpreter certification entities’ discrimination against people with criminal records (RID, 2016b; Md. Rule 1–333 [2015]).

Some interpreters with legal certification are not “court ready.” Many interpreters with legal certification are not fully bilingual, multilingual, or qualified to work with deaf people in the criminal legal system (Bryant, 2017). Importantly, *all* interpreters will have at least some people for whom they cannot interpret. Not being qualified to interpret for one or several deaf people does not necessarily call into question an interpreter’s qualifications more broadly. It is actually *likely* that hearing interpreters—especially those who are not accustomed to a particular deaf person’s culture, sign language, dialect, accents, or jargon—will struggle to communicate with people trapped in the carceral web. This is, in part, a testament to the spectral and intersectional qualities of deaf people, together with interconnected identities and attendant sociolinguistic expression.

The RID (2016b) membership demographics indicate that more than 87% of self-identified members identify as white, whereas Black, Latinx, and Hispanic interpreters make up less than 10% of self-identified members; and Indigenous, Native, Asian, and Pacific Islander interpreters together represent just 3% of self-identified interpreters (RID, 2018). Cross-cultural mismatching is therefore intensified in the criminal legal system, where divergence between the pool of interpreters with legal certification and deaf people they are attempting to work with is even more glaring because the criminal legal system disproportionately targets low income, negatively racialized, disabled and otherwise marginalized people, and systemic and structural barriers to certification ensure that the pool of legally certified interpreters is even less able to meet the needs of multiply marginalized people trapped in the legal system.

The interpreting profession has a white and hearing/abled supremacy problem and is long overdue for a dismantling or at least a radical shift in many areas, including increasing its number of multiply marginalized interpreters. That said, there is a common misconception that having deaf and/or negatively racialized interpreters and others who “match” the identities of targeted populations makes the criminal legal system fair. This is patently false. The legal system and interpreting industry often exploit marginalized interpreters at the expense of some of the most marginalized people in deaf communities (e.g., legal decisions are even harder to challenge if there are four interpreters—especially if two are deaf—than if there are two hearing interpreters). Unfortunately, “diversity and inclusion” models as related to the entire carceral system

often only make decisions more final and cause a fundamentally unjust system to become more expensive, inordinate, palatable, and intractable.

TROUBLING “SOLUTIONS”: CONTESTING THE DOMINANT RECOMMENDATIONS

In the past few decades, in the wake of dozens of lawsuits against cities and counties nationwide for their police departments’ failures to follow long-standing federal disability rights laws, a flurry of “solutions” have been proposed by law enforcement, judges, and hearing/abled and deaf/disability rights groups alike (Gottfried, 2018). When hastily adopted with no consideration of the larger machinery of policing and mass incarceration, these solutions operate as a bandage on a gaping, infected wound (Lewis, 2019).

There is a dangerously optimistic notion that lawsuits and settlements, policy adoption, police registries of deaf/disabled people, police trainings, and community policing are the remedies for injustice experienced by communities subject to policing systems (Kaba, 2014). After each tragedy, one or more of these “solutions” are used to pacify affected communities. Then, notwithstanding the application of said “solution,” another tragic incident occurs, and we see the next iteration of yet another quick, feel-good solution that also fails to resolve the issues that lie at the heart of these tragedies (Schenwar & Law, 2020).

This section briefly explains some of the most commonly proposed and adopted “solutions” and advocacy strategies, offering critical intersectional analysis and recommendations based on over a decade of data and narrative collection from hundreds of disabled people and of direct support and trainings for thousands of criminal, appellate, and parole attorneys and judges.

Single-Issue Advocacy, Erasure of Intersectionality

Interactions with law enforcement are multifaceted and even more treacherous for people who exist at the intersections of marginalities (Çevik, 2019; Tastrom, 2020). The best way to tackle a colossus of a system that has so many intersecting prejudices—short of abolition—is to ensure that proposed reforms are not “reformist reforms” and to ensure that these proposals center on people living at the margins of the margins. Those in positions of influence must be accountable to and constantly centering multiply marginalized communities in conversation and negotiations with powerholders. For instance, one study found that

discrimination and harassment by law enforcement based on sexual orientation and gender identity is an ongoing and pervasive problem in LGBT communities . . . with police abuse, neglect and misconduct consistently reported at higher frequencies by respondents of color and transgender and gender-nonconforming respondents. (Mallory et al., 2015)

Forty percent of the respondents in this study who identified as gay or bisexual men believed that contacting the police in response to a violent incident from an intimate partner would be unhelpful or very unhelpful, and 59% believed that the police would be less helpful to a gay or bisexual man than to a heterosexual woman in the same situation (Mallory, 2015). Countless stories from deaf LGBTQI people have also borne this out.

Take the case of a queer white Deaf man who survived a spate of domestic violence with a domestic partner in Portland (Bernstein, 2012). The alleged perpetrator in his case was his partner, who happened to be a hearing man. In 2012, while in the midst of one physically violent altercation, the Deaf man texted a deaf friend to ask them to contact 911 (Bernstein, 2012). The deaf friend called 911 through VRS and requested that police *and interpreters* show up to support the deaf man (Bernstein, 2012). Officers from the Portland Police Bureau arrived without interpreters (Bernstein, 2012). Police could not communicate effectively with the Deaf complainant. Instead, officers spoke to the hearing partner, who was the alleged perpetrator (Bernstein, 2012). The Deaf man showed officers his bruises and tried to communicate while “overwhelmed, disoriented, and hurt,” but officers still did not provide an interpreter, making effective communication impossible (Bernstein, 2012). He did not understand that he could request that the alleged perpetrator be arrested, and police admit that they thought the Deaf man simply wanted to get back into his apartment. Once the Deaf man was back in the apartment, the police left, leaving him at risk (Bernstein, 2012).

Later that evening, the hearing partner kicked in the Deaf man’s locked bedroom door and allegedly assaulted the Deaf man yet again (Bernstein, 2012). The Deaf man texted his deaf friend, who again contacted the police, requesting police and a sign language interpreter (Bernstein, 2012). Some of the same officers who responded to the earlier call showed up, again with no interpreter (Bernstein, 2012). Police reports stated that the Deaf complainant could communicate with police through writing and gestures, yet one officer called dispatch and asked for someone who knew ASL (Bernstein, 2012). A “signing” officer arrived who had basic signing skills (Bernstein, 2012). The officer apologized for her lack of fluency but also failed to call an interpreter to the scene (Bernstein, 2012). An arrest was made on the hearing partner but no statement was taken from the Deaf complainant (Bernstein, 2012). The Deaf man, who has used ASL as his primary language all his life, wrote a statement in English on his own after what could only be described as a long and traumatic day. Police finalized their report before receiving a written statement from the Deaf complainant. Charges were brought against the hearing partner and were dropped after the hearing partner died by suicide just three months after this incident.

Other recent episodes of police violence also highlight an alarming pattern of multiply marginalized disabled people being more likely to be caught in police crosshairs. Advocates and organizations who erase the racial, economic, LGBTQI, and disability status of deaf victims of police violence are unwittingly perpetuating this violence and making all communities more susceptible to this harm because it becomes increasingly more difficult to identify the underlying

and interconnected causes of such violence (Lewis, 2017c, 2019; Tastrom, 2020). For instance, in the weeks following Magdiel Sanchez's murder, the National Association of the Deaf and the Oklahoma Association of the Deaf developed a joint response that failed to adequately place his murder within the context of the broader trend of police violence against marginalized people or even to mention race, class, or disability (National Association of the Deaf, 2017)—this when Sanchez existed at the margins of multiple identities, including but not limited to intellectually disabled, negatively racialized immigrants (e.g., dark-skinned Mexican man) living in a lower-income community. His existence at the intersections of these identities is precisely what caused police officers to view him as more of a “threat” than if he had been a white, abled, deaf upper- or middle-class man. This kind of erasure by resourced and influential organizations and advocates exposes all marginalized communities to further risk of police violence.

Relatedly, these organizations announced a “partnership” with the Oklahoma Police Department when deaf/disabled people from multiply marginalized groups had neither been consulted nor been invited to be involved in determining how to proceed in dealing with accountability measures. This concession and acquiescence stifled the righteous indignation of local Deaf communities, who, prior to this announcement, were out protesting the killing together with other nondeaf marginalized communities. These organizations' misguided actions chilled protest and removed the spotlight and pressure from the city and district attorney, making it that much easier for District Attorney Prater to weeks later declare Sanchez's murder to be “justified” and boldly announce that “you don't need to be able to hear to know what these officers are saying to you” (Chuck & Connor, 2017).

One example of an intersectional response to police violence is the 2016 HEARD statement on police brutality in the wake of two police killings of multiply marginalized deaf men. In August 2016, two deaf men were killed by police officers in the United States within 10 days of each other. Daniel Harris, a young white DeafDisabled man with a history of confusing and scary encounters with law enforcement and medicalized carceral systems, and Darnell Wicker, a Black, hard of hearing military veteran, were both shot within minutes of encountering law enforcement in Kentucky and North Carolina, respectively (Bailey, 2016; Helsel, 2016). Compounding the tragedy, both men were killed in front of their own homes in the presence of their loved ones (Bailey, 2016; Helsel, 2016). HEARD's letter highlighted the history of police violence against all marginalized people and placed deaf people and multiply marginalized deaf people in the larger context of policing. It states, in part:

Already this year, over 750 people have been killed by law enforcement. Studies show that no less than 60–80% of these victims are people with disabilities. Notably, Black people and other people of color are disproportionately represented among these victims. Similarly, HEARD's multi-year investigation into police brutality against deaf people illustrates

a clear pattern of police violence against deaf people with more than one marginalized identity. So, DeafDisabled, Deaf Black, Latinx, Indigenous, and deaf people who live in low/no-income communities, for example, are disproportionately represented in the narratives we have collected. Although many are just now taking notice, police brutality against marginalized and multiply-marginalized communities has long-since demonstrated the need for honest discussions about the very real connections between racism, classism, and ableism (e.g., audism, vidism, sanism, linguicism, etc.)—each of which are deeply embedded in police culture, policies and practices. (HEARD, 2016)

HEARD's statement goes on to caution organizations calling for more training and deaf driver cards, and encouraged solidarity across communities and movements to help end police violence through and through. This statement was shared in ASL, Spanish, and English and drafted and translated by people on three continents. Negatively racialized disabled people who are marginalized in other ways (e.g., youth, queer, migrant, undocumented, low-/no-income) led this action. This is a good example of how organizations can work toward connecting with marginalized groups and uplifting the most marginalized people within already marginalized communities to advance the rights and causes of all people. Influential, powerful, and resourced organizations must be particularly mindful of their comments about and actions in response to policing and other state violence. Their proposed solutions should be informed by those at the margins of their and other oppressed communities. Proposed solutions should make it easier, not harder, to disentangle our communities from the ever-expanding net of law enforcement.

Deaf Driver/Identification Cards and Police Registries of Disabled People

Since these and other incidents of police violence against deaf people, over a dozen police departments across the nation have begun to heavily invest in deaf driver identification placards (several of which are dangerously confusing, like those of Massachusetts and Michigan showing a picture of a gun to inquire about whether a person has a firearm license). These departments urge deaf drivers to use “the new communication tool [which is] designed to store on a sun visor, in a bag or backpack, or on a passenger seat for easy access” (DeLamielleure-Scott, 2016). According to police departments, these placards will improve safety for deaf people as well as for law enforcement (DeLamielleure-Scott, 2016). Several recent settlement agreements with police departments require the adoption of placards while other police departments are uncritically mimicking other departments (DOJ, 2016).

New York Police Department (NYPD), which has paid nearly \$1 million in settlements to deaf plaintiffs in recent years, just rolled out its own version of the cards in 2018, complete with a ceremony honoring the hearing officer

who “convinced the department to use these cards” (Siff, 2018). NYPD planned to send cards to 12,000 people who registered as deaf with the Department of Motor Vehicles (DMV) for such a designation to appear on their driver’s license (Siff, 2018) (Figures 10 and 11).

Another concerning proposal that will allegedly address police violence against disabled people includes the formation of police and DMV registries for disabled people. In the months following the deaths of Daniel Harris and



FIGURE 10. Michigan’s Deaf Driver Visor Placard.







Communication Access Card	
My Name is _____	The best way to communicate with me is: (check all that apply to you)
I am: <input type="checkbox"/> Deaf <input type="checkbox"/> Hard of Hearing <input type="checkbox"/> Deaf-Blind	<input type="checkbox"/>  Interpreter <input type="checkbox"/>  Texting <input type="checkbox"/>  Writing <input type="checkbox"/>  Large Print <input type="checkbox"/>  Lip Reading <input type="checkbox"/>  Assistive Listening
Quick Communication Tips <ul style="list-style-type: none"> ○ Get my attention first before you start speaking. ○ Speak normally. Do not yell, exaggerate, or over pronounce. ○ Look directly at me when you're speaking. ○ Do not place anything in your mouth when speaking. ○ Be courteous to me during conversation. ○ Use open-ended questions that must be answered by more than 'yes' or 'no'. ○ Use the words 'I' and 'you' (Refer me in the first person). ○ Regularly check to ensure communication is effective. 	
Disability and Communication Access Board health.hawaii.gov/dcab/ E-Mail: dcab@doh.hawaii.gov http://health.hawaii.gov/dcab/files/2016/03/How-to-obtain-a-sign-language-interpreter.pdf (808) 586-8121 (Voice) & (808) 586-8162 (TTY)	
<small>Disclaimer: This is not a state identification card. Individuals with this card self-disclose their status. DCAB is not responsible for providing services listed on this card.</small>	

FIGURE 11. Hawaii's Deaf Driver Visor Placard.

Darnell Wicker, some people within deaf and disability communities in North Carolina, Kentucky, California, and other states have agreed to have police registries for deaf/disabled people (Molina, 2017). Articles and dialogue around these proposed measures by privileged people within deaf communities include statements like “Deaf people who get pulled over by police would no longer have to fear miscommunications with officers if [the bill] . . . becomes law” and “The symbol [on the driver’s license] helps ensure mutually safe interactions during traffic stops and other situations between drivers who are deaf or hard of hearing and law enforcement officers” (Molina, 2017). But officers themselves warn that DMV registries alone may not be successful because an officer making a traffic stop gives the license plate to dispatch. Nondisabled advocates and parents of autistic children have been supporting autistic child registries and wristbands despite calls from autistic adults not to provide information to or allow tracking of autistic children by law enforcement (Biscobing, 2017).

The foregoing approaches—placards, registries, identification bands, and cards—have not proven effective in mitigating or eliminating police violence against people with disabilities (Lewis, 2019). With respect to placards, for example, there is evidence and reason to believe that they may cause police officers to behave more aggressively toward deaf people. To the extent that a person with disabilities reaches for their placard, police frequently assume or assert that they were not following instructions or are reaching for a weapon, as with Pearl Pearson (Çevik, 2019; “Graphic,” 2014; Lewis, 2014; Lewis, 2019). This is

particularly risky if the person with disabilities is also a negatively racialized person for whom assumptions about criminality and dangerousness presumptively attach or if the disabled person has other marginalized identities (Kindy, 2015; Lee, 2014; Tastrom, 2020; Voigt et al., 2017).

With respect to registries and placards, there is no evidence that they work, and they have the negative effect of siphoning massive amounts of funds that might otherwise be directed into social services, community-based resources that help keep Deaf communities healthy and safe and decrease reliance on police. Both approaches ignore race and class and create a false sense of safety, making disabled people less attentive during interactions with law enforcement. Moreover, registries—inside and outside of the criminal legal system—have been a basis for targeting, surveilling, and criminalizing already marginalized communities (Matter & Heath, 2017). From the internment of Japanese Americans to the use of gang databases to the arguments in favor of Muslim registries, the end result is that registries put the state in a stronger position to surveil, police, and incarcerate vulnerable communities.

Assertions that cards or registries will prevent violence and improve communication run counter to what continues to play out in police interactions with disabled people nationwide. People who show these and other cards to law enforcement are often laughed at or ridiculed, with the information on the card being completely disregarded and officers becoming agitated (HEARD, 2020; *see also* case of the Illinois mother, *supra*). People like Pearl Pearson who have a card but are beaten before having an opportunity to show them are blamed after the fact for not properly using the card or for allegedly reaching for it. People who do not have cards or who are not registered are post facto blamed for not putting the police on notice of their disability status (AJ+, 2018). These cards and registries put the onus on disabled people while requiring nothing of the hearing, abled dominant majority who hold all the power in these situations. They place the burden (and the blame when situations go awry) on individual disabled people for a systemic and structural problem. They lead to yet more money going into “reforms” that will not end criminalization, police violence, or the other myriad harms of the criminal legal system.

As for deaf communities specifically, there are additional problems with the employment of registries. For one thing, there are significant barriers to deaf people actually utilizing registries. Deaf people who are most susceptible to police violence do not often use English as a primary language. Ironically, not one state that has launched deaf/disabled registries has created an accessible ASL (or other signed language), captioned and transcribed video explanation of the rationale behind these registries; what data will be taken and what such data will be used for; who will have access to this data and how privacy will be guaranteed; what the consequence of not registering might be; or even provided basic instruction on how to get through the registration process for those who choose to do so.

Additionally, many deaf people are survivors of domestic or sexual violence or are undocumented or formerly incarcerated who are already targeted for surveillance and violence, so they may be unable to register. Others still are low- or no-income, houseless, or unable to afford costs associated with having a fixed address and other proof associated with these registries. Many registries and placards are tied to the possession of a vehicle, so those who do not drive or who cannot afford vehicles are automatically unable to register or make use of a placard. Many negatively racialized disabled people who are already skeptical and untrusting of policing systems assert that they would never register with law enforcement. Negatively racialized people are then placed in even more peril where some from their disability community (privileged people) register and they do not.

Law enforcement may presume that these ideas are fully supported by disability communities and expect all disabled people to have these verifications of their identity when only privileged and powerful people within disability communities can or will utilize these instruments. In this way, police departments can decry the failure to register as the cause or explanation of police violence against disabled people. They could also employ the presence of registries as defenses against subsequent lawsuits when they injure or kill disabled people. Arguably most important is that none of the aforementioned approaches directly engage racism, classism, or ableism as related to systems of policing.

Yet “More Training”

The demand for police training has been a particularly common and strong refrain of disabled communities. For many who have not been engaged in anti-police violence work or who have not studied the work of activists who have been engaged in decades of work to end police violence, the knee jerk reaction to police violence is to call for “more training” (NAD, 2017). Yet, despite over 50 years of police training related to disability, police violence against people with disabilities has not decreased, resources for training continue to increase, and officers who have received extensive training are themselves responsible for violence against—including the death of—disabled people (Çevik, 2014, 2019; Lewis, 2019). Of course, one can argue that perhaps the problem is not with training per se but the nature of the training and the trainers. In other places, I argue both. My view is that whether police training is helpful or not, it cannot solve the broader structural problems of policing, including the concentration of broken windows policing in low- and no-income negatively racialized communities, the commodification of criminalization, and the proliferation of racism, classism, ableism, and more in police culture. If the culture of policing systems invalidates the training, the training is rendered obsolete.

There has also been a nationwide increase in “signing” police officers and “deaf and hard of hearing liaison units.” Regardless of their intention, officers who can sign continue to be the cause of a great deal of miscommunication and numerous wrongful arrests and convictions for many of the reasons

listed previously (and other reasons that are beyond the scope of this chapter) (Aubrecht & Lewis, 2016). These officers tend to know just enough sign language to be dangerous (Aubrecht & Lewis, 2016). Despite often having a rudimentary knowledge of sign language, many still understand very little of the cultural, sociolinguistic, and intersectional dimensions of Deaf communities (Aubrecht & Lewis, 2016). Yet they tend to be the first people called to the scene in situations that would be best served with multiple deaf and hearing qualified interpreters and deaf advocates (HEARD, 2020). When information is taken through one of these officers, usually no qualified witness is present to correct any errors or oversights (HEARD, 2020). These officers' communication proficiency and qualifications are rarely challenged. When their qualifications are challenged, jurors and judges rarely doubt police officers.

As depicted in several foregoing scenarios, the mere presence of signing officers makes it more likely that a deaf person will not request appropriate accommodations and that the deaf person feels like the officer is "on their team" when nothing could be further from the truth (HEARD, 2020). This is why law enforcement serving as "interpreters" in law enforcement settings—regardless of their deaf status, signing qualification, or certification—is a direct violation of federal disability rights laws (HEARD, 2020).

Some disability and deaf schools and organizations help encourage community members to concede constitutional rights in legal settings. Between 2016 and 2019, for example, numerous national and state disability and deaf rights organizations and schools have hosted and sponsored law enforcement-led workshops wherein law enforcement—who themselves are often ignorant of policing systems, structural and systemic oppression, and the complexities of Deaf/disability cultures and communication—have been invited to "educate" Deaf/disabled people about how to interact with law enforcement. Ironically, many of these same officers are responsible for wrongful arrests and convictions of deaf people and hold high positions on deaf liaison units within their departments.

At one session in upstate New York, for example, law enforcement told disabled/deaf people that it was "okay to touch police officers as long as it is not on the side with the weapon." At every session, officers intentionally downplayed the seriousness and dangerousness of police interactions and became defensive when disabled people challenged or were confused by what the officers shared. At every session, law enforcement withheld critical information about constitutional and other protections like the right *not* to communicate with law enforcement and the right to counsel. Those withheld rights and liberties exist as a shield against illegal search and seizures, wrongful arrests and convictions, self-incrimination, regularly practiced coercive and confusing interrogation tactics and other legal and illegal injustices. Moreover, these trainings *never* addressed issues of race, nationality, ethnicity, class, gender, LGBTQI identities, etc., nor did they consider people with more than one disability in the category of disability being addressed (e.g., deafdisabled people were not considered at deaf-specific sessions or at disability-specific sessions).

When deaf and disability organizations and universities endorse these “trainings,” they put disabled and deaf people in more danger, not least because they leave with a false sense of safety and more misguided trust in police and policing systems. The result is disabled people—especially those who are negatively racialized, queer, low- or no-income, etc.—coming away *less* prepared to safely interact with police or to navigate high-risk law enforcement interactions. Arguably more important, these approaches limit disabled communities’ creative capacities to prevent, repair, and address intracommunity harm outside of policing systems.

There is an idea that if a disabled person merely acquiesces to police officers, they will be fine—that if they do not have anything to hide, they can allow authority figures and officers to search or interrogate them. However, this approach fundamentally misunderstands autonomy, consent, freedom, the criminal legal system, constitutional rights, and mass incarceration. It results in disabled people waiving their constitutional right to counsel, permitting illegal searches and seizures, and waiving their rights to trial by pleading guilty although innocent.

Too often, disability and deaf schools and rights organizations simply tell deaf/disabled people to demand “equal access.” There is nothing inherently wrong with equal access. But when dealing with a system of this kind, disabled people of all ages must understand the risks and know that they have a constitutional right *not* to communicate with police and that they *must* assert this right and their right to counsel to protect their “right to remain innocent” (Duane, 2016). If a particular practice is not good for hearing, abled people (e.g., talking to the police, consenting to searches, taking polygraph examinations), making it easier for police to take advantage of having access to disabled cultural-linguistically marginalized people for the same interactions without clear explanation to disabled people about risks and rights is not only unhelpful but incredibly harmful. This lack of transparency with disabled people about risks within the legal system and naïve single-issue advocacy is dangerous (Lewis, 2019). Gaining access at the expense of freedom is not justice.

Disability and deaf schools and organizations must be at the forefront of decarceration and abolition advocacy that in the interim (pre-abolition of carceral systems) foregrounds the protection of constitutional rights and decreases acquiescence to authority, including law enforcement. Disability communities’ anti-incarceration efforts must also be intentionally intersectional, centering the most marginalized community members among us.

Lawsuits, Mere Policy Adoption, and Settlement Agreements

Law enforcement does not follow its own policies, training, settlement agreements, or state and federal civil or disability rights laws (*United States v. City of Portland*, 2012; *Philip Wolfe v. City of Portland*, 2012; *Philip Wolfe v. City of Portland*, 2020). There is no evidence that taxpayer-funded lawsuits or DOJ settlement

agreements lead to systemic or enduring change. In fact, many of the police departments with some of the most egregious disability rights violations have been sued or agreed to settlements addressing exactly the same violation within months or years of the next incident.

The 2017 civil complaint against the Alameda County Sheriff's Office (ACSO) for the assault and arrest of Hui Jie Jin, a 76-year-old deaf Asian American grandmother, states that "this incident is especially outrageous because only years prior, Alameda County and ACSO had been sued by the Department of Justice for precisely the same failure" (*Jin v. Alameda County*, 2018). Jin's attorneys cite a 2010 U.S. Department of Justice (DOJ) agreement with the Alameda County sheriff to "Guarantee Effective Communication for Persons Who Are Deaf, Hard of Hearing or Deaf-Blind" (*Jin v. Alameda County*, 2018). The plaintiff's attorneys go on to state that "[i]n order to settle the case with the DOJ, Alameda County, and ACSO agreed to, *inter alia*, provide sign language interpreters, auxiliary aids and services to deaf individuals, and to establish nondiscriminatory policies" (*Jin v. Alameda County*, 2018). The attorneys continue: "Based on the unlawful conduct described herein, Alameda County and ACSO clearly failed to comply with, ignored, and/or forgot about their agreement with the DOJ regarding discrimination against deaf individuals" (*Jin v. Alameda County*, 2018).

In 2012, following the domestic violence incident mentioned earlier, the Deaf man sued the city of Portland for violating the ADA. More than 20 years after the enactment of the ADA, the Portland Police Bureau ("PPB")—like countless departments across the United States—did not have policies or protocol on how to interact with deaf people. In 2013, this man settled a lawsuit against the city. A federal district court judge ordered the city of Portland to pay \$51,500 and ordered the city to adopt the DOJ's model policy on how to communicate with people who are deaf. His attorney stated that "the requirement for the city to adopt this policy is a win for ensuring fairness for those with hearing problems." But ending decades of systemic ableism is not so simple, and DOJ's model policy is neither up to par or followed by other jurisdictions that have adopted the policy. Case in point: This Deaf man and other disabled people spent *years* working with PPB to try to help improve their policies and practices regarding disabled people to no avail. In 2020, he joined Disability Rights Oregon and other disabled Oregonians in a lawsuit against the City of Portland seeking injunctive relief for disabled people in Portland following PPB subjecting disabled people to excessive force and crowd control policies that failed to account for or accommodate their disabilities during protests against police violence and racial injustice, no less. (*Wolfe v. City of Portland*, 2020). All this is to say nothing of the federal government having also sued Portland in 2012 for PPB's pattern and practice of unconstitutional use of force against people with or people perceived as having mental health disabilities—a consent decree that was set to run for 5 years that is now approaching its tenth year due to persistent noncompliance. In any case, DOJ's now 15-year-old model policy template was quite literally meant to be a *model* policy, not a

final policy for law enforcement, with DOJ's own introduction to the document stating in part:

This 4-page document serves as a model for law enforcement agencies when adopting a policy on effective communication with people who are deaf or hard of hearing. Agencies are encouraged to download and adapt the policy to suit their needs. (DOJ, 2016)

However, some departments adopted this policy with no revisions. Many of these departments, like the Lakewood Police Department (Colorado), are in areas populated more densely by deaf people because of their proximity to deaf schools and service providers. Other departments, including the Charlotte-Mecklenburg Police Department, responsible for the shooting death of Daniel Harris, have adopted part of DOJ's policy almost verbatim but heeded DOJ's advice and adapted the policy to "suit *their* needs" (Charlotte-Mecklenburg Police Department, 2007) (emphasis added). And the Louisville Metro Police Department had also adopted a policy that in many ways mimics the DOJ model policy prior to its officers mortally shooting Darnell Wicker (Louisville Metro Police Department, effective 2008, revised 2016, 2017). The rush to quickly adopt written policies without taking stock of policing culture or the seminal event(s) that led to the adoption of the policies does not inspire or force change. There are rarely affirmative measures to *at least* ensure that the entire department is doing the necessary work to address structural and systemic discrimination and inequities, and with the passage of just a bit of time and turnover there is almost always blanket disregard for these policies regardless of how or why they came about. Again, if the culture of policing systems invalidates policies, policies are rendered obsolete. The same is true with settlement agreements. While DOJ has settled a few cases with police departments that move beyond the model policy (DOJ, 2016), these settlements are largely short-lived or disregarded.

DOJ's attempt to standardize a policy seems to have originated vastly different policies that are often in conflict and frequently directly counter to federal disability rights laws, criminal procedure, interpreters' codes of professional conduct, and so on. In many instances, following police departments' policies would violate deaf people's rights. In addition to being considerably outdated (i.e., mentioning teletypewriters and telecommunications devices for the deaf but not videophones, video relay service, captioned telephones, real-time text, or any other modern technology), the model policy fails to make clear that ASL—along with hundreds of other sign languages—is a full and complex language, and many deaf people do not use English (or the spoken language of their home country) as a first language or at all. This is a grave omission.

Furthermore, the model policy misconstrues the ADA and is far too generous in its assessment of the ADA's deference to law enforcement's power to (1) reject requested accommodations; (2) make determinations about the significance or weight of particular interactions and conversations; (3) decide what communication is "equally effective" for a person with whom they likely cannot

communicate effectively; and (4) determine what an undue administrative or financial burden is as related to a cultural–linguistically marginalized person, the likes of whom they have never interacted with. Importantly, law enforcement generally has no context as to what case law says about legal terms of art used in the policy. The model policy states in part:

To serve each individual effectively, primary consideration should be given to providing the type of communication aid or service requested by the individual. Officers should find out from the person who is deaf or hard of hearing what type of auxiliary aid or service he or she needs. Officers should defer to those expressed choices, unless:

there is another equally effective way of communicating, given the circumstances, length, complexity, and importance of the communication, as well as the communication skills of the person who is deaf or hard of hearing; or doing so would fundamentally alter the nature of the law enforcement activity in question or would cause an undue administrative or financial burden; only the Agency head or his or her designee may make this determination.

The input of people who are deaf or hard of hearing who are involved in incidents is just as important to the law enforcement process as the input of others. Officers must not draw conclusions about incidents unless they fully understand—and are understood by—all those involved, including people who are deaf or hard of hearing. (DOJ, 2006)

The model policy fails to appropriately consider the hyperauthoritarian posture of law enforcement; the realities of day-to-day law enforcement operations; presumptions made by law enforcement about people with whom they interact (i.e., often, behaviors that are seen as “suspicious” or “evasive” by law enforcement are actually typical for those expressing these behaviors, especially when they are not provided with meaningful accommodations and supports); the effects of hierarchical structures, power, and oppression on the application of this and other related policies; and the complexities of communication itself. In addition, the model policy completely lacks an intersectional perspective—failing to note that many deaf people have disabilities or that deaf people from other countries may use a different sign language, for example.

DOJ’s model policy first states that the primary consideration of accommodation goes to the deaf person (pursuant to the ADA). Then it can easily be misconstrued to grant law enforcement discretion to reject a deaf person’s requested accommodation in place of that which the officer *thinks* is “equally effective.” This, however, runs directly counter to the ADA and judicial interpretations of the ADA. Law enforcement’s unchecked authority and lack of knowledge of the law and case law, and of Deaf and disability cultures and communication, make it especially important that model policies grant no leeway to law enforcement. This is a particular imperative where civil rights and liberties are at stake, and history points to disability communities showing *extreme* deference to law enforcement and other authority figures.

So why, then, after law enforcement has violated a deaf person's rights, a lawsuit has been filed or settlement agreed upon, and policies have been put in place, do we continue to see the same problems? The missing components in these "solutions" are as follows: a fundamental misunderstanding of the actual functions and practices of policing systems (versus their stated functions and practices); lack of proper individual ownership and accountability for harm; failure to address the root cause of the violation(s) and violence; and continued investment in law enforcement coupled with divestment from community-based solutions, which only serves to increase law enforcement interactions with marginalized communities. In recent years, with a greater focus on "community policing" and on these tragic incidents, police understand that community buy-in is necessary for the survival of law enforcement (Schenwar & Law, 2020). Numerous police departments have quickly and publicly met with disabled people while in the midst of litigation—likely to moot legal claims, minimize damages, and stifle public outcry and calls for defunding and abolishing the police (Gottfriend, 2018; Schenwar & Law, 2020; Tastrom, 2020).

All of the "solutions" listed in this section inure chiefly to the benefit of law enforcement and to those possessing power and privilege within the marginalized group (e.g., Deaf people who are white, nondisabled, wealthy, literacy privileged, sighted, etc.) (Çevik, 2019; Lewis, 2019). These "solutions" often operate to protect law enforcement or reduce liability should another incident occur regardless of whether there has been an actual change in how officers interact with the marginalized community in question. These approaches make it *more* difficult to identify and address the generational, legalized, structural, and systematic problems inherent in policing systems (Carbado, 2017; Schenwar & Law, 2020; Tastrom, 2020). Many of these approaches exacerbate the problems by removing accountability from law enforcement and creating a false sense of relief for people within the marginalized groups. Since the needs of those at the margins of the margins are rarely considered, multiply marginalized people within the group frequently cannot even access these "solutions."

These "fixes" end up providing cover for and legitimizing exactly what they were supposed to address, thereby making it more difficult to hold police and policing systems accountable for their violence against disabled people (Çevik, 2019; Lewis, 2019). Or, as one professor explains this point:

The problem is not police training, police diversity, or police methods. The problem is the dramatic and unprecedented expansion and intensity of policing in the last 40 years, a fundamental shift in the role of police in society. The problem is policing itself. (Vitale, 2017)

RECOMMENDATION: PRINCIPLED STRUGGLE

The purpose of this chapter is not to provide solutions but, instead, to serve as a framework to help move advocates and others toward the development of a set of values and principles that guide our collective struggle (Lewis, 2019).

Those values and principles should guard against the entrenchment of systemic and structural inequities while people work across identities, across communities, and across movements to end *all* forms of violence, including mass criminalization and incarceration.

Mass incarceration on the scale of that which exists in the United States is unprecedented, so many of the solutions to this crisis will be novel and seemingly impossible. Some solutions may be unsuccessful or lead to unintended, unanticipated, negative consequences. Principled struggle understands “getting it wrong” as part of the work and recognizes the collective journey as part of the victory. Federal and state laws exist to protect the rights of people with disabilities, but these laws are often not followed by power holders or are not considered when it comes to multiply marginalized disabled people. Disability justice moves us beyond disability rights frameworks that focus on rights-based achievements that do not challenge systems (Lewis, 2020). Achieving true access to justice and decreasing violence against people with disabilities will require imagination, dis/investment, flexibility, oversight, and critical reflection (Duda, 2017; Gilmore & Kilgore, 2019; Schenwar & Law, 2020). Any proposed solution to police violence against disabled people should focus on decreasing the power and budgets of law enforcement and increasing the well-being, resources, opportunities, and power of disabled communities to heal, protect, and provide for themselves (e.g., self-determination). Solutions must not develop or hone more ways to help police register, monitor, surveil, control, or punish disabled people or put any nondisabled marginalized community at further risk for police violence. Here are some suggestions that may reduce ongoing harms within the criminal legal system while we continue to work to build the world we all deserve:

- In solidarity with *all* marginalized peoples, direct time, energy, and resources into dismantling white supremacy and providing marginalized communities with the knowledge, tools, and resources necessary to reduce health, education, income, and other inequities (e.g., investment in social services; clean water and healthy food; stable quality housing; harm reduction and other drug use, dependency, and addiction support; high-quality free universal medical and mental health care; high-quality free education and early access to language for all children).
- Dismantle police unions and require law enforcement and prosecutors to have personal insurance and remove procedural and other barriers to law enforcement accountability.
- Build cross-movement campaigns to vote out district attorneys who refuse to hold law enforcement accountable for discrimination and violence against any and all people—especially marginalized people.
- Track and disaggregate data about school, police, and all institutional violence by various disabilities as well as other marginalized identities (e.g., race, class, gender, incarceration history, addiction).
- Ensure that youth understand and are prepared to combat mass criminalization and incarceration at the individual, community, and systemic levels.

- Develop knowledge of systemic and structural oppression, transformative justice, healing justice, disability justice, etc., and advocacy and community organizing skills during childhood; refine those skills through adolescence; and implement them throughout life.
- Remove law enforcement from campuses with deaf/disabled students and severely restrict or curtail schools' and universities' freedom to contact law enforcement for on-campus incidents.
- Conversations about "solutions" must center disabled people who have experienced or are at the highest risk for experiencing carceral violence (e.g., youth, negatively racialized people, including Black/Indigenous deaf people, previously institutionalized and incarcerated, low- and no-income, trans- and gender-nonconforming, DeafDisabled people, and disabled people involved in informal economies).
- Multiply marginalized disabled advocates should be hired to work with attorneys to create participatory defense models⁵ for disabled people trapped in the criminal legal system. A participatory defense-like strategy should be developed for disabled defendants' cases whereby advocates and attorneys who are knowledgeable about disability and deaf cultures are welcome members of the defense. This allows disabled communities to learn more about the criminal legal system and exposes defense attorneys to disabled communities' wisdom, thereby better equipping disabled and legal communities to challenge the system through and through.
- Make the study and continuing education of antiracism, antiableism, and other anti-oppression praxes a mandatory requirement for *all* interpreters. Interpreters who do not *at a minimum* understand and practice these should not be deemed qualified to interpret, especially in legal settings.
- Intensive disability and antiableism courses should be mandated for all law students, especially those interested in the criminal legal system and all attorneys and judges operating within the same.
- Challenge policies and practices within courts, interpreting programs, and professions that have discriminatory intent or impact on marginalized people (e.g., do not hold out interpreter certification as the most important determinant or qualification for legal interpreters). The people most qualified to work with those trapped in the carceral system are often unable to access or "pass" tests/requirements established by the dominant white, hearing, wealth-privileged majority who spearhead the interpreting industry. Hire deaf incarcerated and formerly incarcerated people as evaluators of interpreters seeking legal qualification and develop a pipeline of formerly incarcerated deaf interpreters and advocates to support other deaf people affected by the criminal legal system.
- Attorneys and judges must request, provide, and pay for accommodations, and defense attorneys representing deaf defendants must challenge interpretation and other access issues for disabled clients.
- Law enforcement must audiovisually record interviews and interrogations with deaf and signing people such that the signs of all signers (i.e.,

interpreters, interviewees, signing officers, etc.) are fully visible and all people speaking are clearly audible. Defense attorneys must demand access to all audiovisual footage *and* hire experts to challenge communication, culture, and interpretation issues. Where there is incomplete or no audiovisual record (e.g., body camera), attorneys should move to suppress statements purportedly made to law enforcement.

- Where interpreters or other accommodations are not provided with law enforcement or attorney–client communication, a presumption of prejudice should attach, statements should be suppressed, and complaints filed against police and attorneys, respectively. These complaints should name police departments, officers, and attorneys and should be published periodically, translated into signed languages, and remain publicly available.
- Courts must audiovisually record all proceedings with deaf/signing people such that the signs of *all* signing people can be clearly seen and all voices of people speaking can be clearly heard.
- Appellate, habeas, actual innocence, and conviction integrity communities must work in partnership with disability communities. Communication access and disability cultures must be considered for disabled people seeking postconviction support and relief. Cases involving multiply marginalized disabled people should be prioritized.
- Advocates should create a publicly accessible complaint (and accountability) process by supporting affected community members with submitting formal complaints. Create a centralized community database of complaints if it is not safe to file complaints with law enforcement in your locality because many police departments use the fact that disabled, deaf, and signing people have filed few or no complaints as evidence of these departments' success instead of proof of inaccessibility of their complaint process.

CONCLUSION

Disability rights advocates have neglected issues of racial justice for far too long, and racial justice advocates have, similarly, taken for granted the ways in which ableism interacts with racism, classism, and other oppressions to create and perpetuate systemic inequity. Ending state violence requires a deep appreciation of how disability is created and constructed and of how disability exists, arises in, and interacts with marginalized people and communities and other oppressions. Advocates must view the crisis of mass criminalization and incarceration through a disability justice lens and approach decarceration advocacy with a truly intersectional framework that recognizes that government oppression of and violence against negatively racialized and educationally and economically disenfranchised communities has *always* been deeply rooted in, *at least*, race, class, and disability (Lewis, 2020).

Successful advocacy strategies will help weave communities together by highlighting the ties between oppressions that lead to intractable structural and

systemic inequity. These integrated and intersectional advocacy approaches will provide the requisite relationships, knowledge, and tools to help organizers practice accountable advocacy that builds across identities, communities, and movements.

Effective advocacy in the 21st century looks like being “in community,” creating accomplices, and acting in solidarity with *all* marginalized communities—constantly learning with and from those communities. No single group can dismantle oppressive systems on its own because all oppressions and oppressive systems are linked and depend on each other to survive and thrive. Advocates must approach legal and carceral systems with a deep understanding of the past and present inequities within these systems that demand nothing less than abolition. Only when advocates are able to name racism, classism, ableism, audism, and other forms of oppression as central to the perpetuation of mass criminalization and incarceration can we begin to end generational cycles of violence and heal our communities (Duda, 2017; Gilmore & Kilgore, 2019).

NOTES

1. The author uses the term “criminal legal system” instead of “criminal justice system” because the systemic and structural injustices that pervade the legal system make it undeserving of justice-inclusive monikers. This term also serves to distinguish between the civil legal system and the criminal legal system.

2. The author uses the term “deaf” to refer to people who are Deaf, DeafBlind, DeafDisabled, Hard of Hearing, Late Deafened. The author uses precise identifiers where necessary. For example, DeafDisabled is used when a deaf person has other disabilities. The author also honors identifiers used by individuals. In this chapter, “disability” and “disabilities” include all deaf people unless otherwise noted. Disability hierarchies (e.g., “I am Deaf, not disabled,” “I am Autistic, not disabled,” “I can do anything except hear,” etc.) are particularly harmful to disabled people, communities, and movements. This chapter very intentionally rejects this ableist rhetoric and ideology because it reinforces the dangerous myth that there is something wrong with disability or being disabled. Disability is a natural part of the human experience that should be honored and respected. Disability hierarchies within disability communities help society and systems like the legal system to continue to engage in ableism, including audism, vidism, sanism, and other forms of oppression. This kind of intracommunity ableism harms *all* deaf people, especially multiply marginalized deaf people. This chapter challenges privileged people in deaf and other disability communities to reject this kind of horizontal ableism. The author and other Black/Indigenous community builders, cultural workers, and social justice advocates have developed and presented extensive information about ableism, racism, classism, and other oppressions within disability communities, including deaf communities.

3. Investigation finding that a Black teen with disabilities is 16 times more likely to be arrested at school than white students without disabilities and four times more likely to be arrested than white students with disabilities.

4. <https://www.participatorydefense.org/>

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