

Introduction

Deaf People in the Criminal Justice System: Selected Topics on Advocacy, Incarceration, and Social Justice

Debra Guthmann,
Gabriel I. Lomas, and
Damara Goff Paris

We are pleased to bring you this collection of writings on deaf people in the criminal justice system. Our goal is to educate more people on this often-neglected topic. When reviewing the literature, we found very few scholarly references to the deaf experience when it came to arrests, incarceration, or the court system. We also found that very few police officers, lawyers, advocates, judges, and juries were familiar with the language and culture of the Deaf community. The concept for this book evolved because of the urgent need to have materials available that help professionals who work in a wide range of settings better understand the criminal justice experience for deaf individuals.

When thinking of a title for this book, some of the authors expressed concern about the use of the words “criminal justice.” Unfortunately, our legal system does not always provide “justice” for all deaf people. In the book, several authors share stories and examples of deaf inmates, illustrating a variety of experiences and injustices that happened to them. In reviewing the literature, we discovered that there are few published journal articles or book chapters related to deaf people and the criminal justice system. To address the lack of scholarly material on this topic, we have brought together an interdisciplinary group of authors to share their professional and personal experiences related to deaf people and the criminal justice system. We have included attorneys, clinicians, interpreters, administrators, researchers, and advocates to provide the reader with a broader perspective regarding this largely unexplored topic.

In this book, we focus primarily on the U.S. criminal justice system but have included several authors from Great Britain who have published extensively and have had experience with deaf people and the justice system in their country. The legal systems in Great Britain and the United States have some similarities as well as some differences, and the challenges faced by deaf people in the criminal justice system are global. Readers will find these parallels interesting and may uncover resources that could be helpful in the United States or in other legal systems throughout the world.

The legal system is a complex one to maneuver, and without appropriate access, many injustices can occur. Deaf people in prison may not be given the same access as hearing individuals, and each step leading to and including incarceration has potential barriers. Deaf people in the criminal justice system are routinely denied sign language interpreters, video access, and other accommodations not only while in prison but at each stage of the legal process. The lack of advocates who are qualified to work with deaf people in prison further exacerbates the marginalization of this population.

There is insufficient data regarding the number of deaf individuals who are incarcerated or involved in other aspects of the legal system. The research and data available related to the criminal justice system and deaf individuals are also sparse when it comes to what happens when a deaf person enters the legal system. While working on the book, the editors contacted different states to try to get a sense of the number of deaf individuals who were incarcerated. The information is not publicly available, and most of the states do not keep track of which inmates are deaf. Additionally, in some states the majority of deaf inmates are in one facility, whereas in other locations they are spread out throughout the state system.

There is a lack of prevention, assessment, and treatment available to deaf individuals with mental health and substance use disorders. This absence can lead to deaf individuals being in the legal system without access to therapeutic interventions that could assist in preventing recidivism. There are situations where deaf people are unable to go to treatment in their home community, which a hearing person would have the ability to do on release, and this lack of access exacerbates challenges and increases the risk of relapse for deaf individuals. This is precisely the kind of subject that is addressed in this book because it has been largely overlooked in the academic arena. This book aims to bring interdisciplinary contributors together to shed light on both problems and solutions for deaf people who interact with the legal system. Readers will find such topics and more discussed in greater depth in this book.

DEFINITIONS

Throughout this book, we use the word “deaf” to refer to all people who may identify as deaf, deafblind, deaf disabled, hard of hearing, late-deafened, and hearing impaired. This definition is consistent with the one offered by the National Deaf Center (2020) and recognizes that many people have an identity

that is fluid, changes over time, and fluctuates with the setting. Historically, one of the more dominant views of deaf people has been a medical model in which hearing loss is viewed as a health deficit in need of medical intervention. When referring to the medical model, deaf people are sometimes referred to as deaf, hearing impaired, or people with hearing loss. The term “hearing impaired,” although at one time considered to be appropriate to use, is no longer the preferred terminology. Members of the Deaf community identify as a linguistic and cultural minority group and designate this by capitalizing the “D” in “Deaf.” The Deaf community in the United States uses American Sign Language (ASL) as the shared language. Culturally Deaf people are included in our use of “deaf” throughout this book.

Deaf people typically develop visual language (ASL) naturally, much like the experience of spoken language development of hearing children born to hearing parents. The majority of deaf children are born to hearing parents, and many may not be exposed to ASL during early childhood. Some deaf people may have language development challenges, including language deprivation, cognitive impairment, neuroatypical features, the presence of disabilities, and sometimes exposure to multiple languages with no clear and consistent language for use at home, at school, and in the community.

Typically, prisoners have some access to communication with people outside of prison, although it may be limited owing to the level of security where one is being held. Hearing eligible prisoners may make telephone calls or visit with friends and family members. Deaf people who cannot effectively use the phone rely on other means of telecommunication. In the past, deaf people used a digital teletype device called a telecommunication device for the deaf (TTY or TDD). The device was slow and cumbersome because users were required to type English words to communicate, and the person on the other end had to wait to reply until the user was finished. However, advances in technology and the widespread availability of high-speed internet in most communities have eliminated the TTY. Today, most deaf people prefer to use a videophone (VP), a device that transmits both sound and video, much like Skype. Because deaf people can see each other when using a VP, communication happens in real time. Furthermore, relay services (an operator service that allows a hearing party and a deaf party to call one another) now use video relay services in which interpreters voice and sign in real time, making conversations feel natural and smooth.

There are prisons that do not have VPs for inmates, and because of that, even though they are outdated and cumbersome, TTYs may be used. Even in prisons that have VPs, because of the demand for their use, inmates may revert to using TTYs because they are more available than VPs. Until recently, deaf people have not had access to VPs in prisons. However, lawsuits filed in some states have enabled inmates located in those areas to use VPs to make calls and reconnect with family members. These issues are addressed in several chapters of this book but covered more in depth in Chapter 9 by Barry Taylor and Rachel Weisberg, disability attorneys who have won cases that have increased communication access for some deaf inmates.

HOW THIS BOOK IS ORGANIZED

The book uses a combination of research, clinical, anecdotal, and legal case examples to illustrate key points. All case examples have identifying information changed to protect the confidentiality of the deaf individual. This format helps readers build a greater understanding of the topics. One anecdote that was shared by one of our editors was from John Smith (pseudonym) and illustrates the isolation and communication frustrations experienced by deaf individuals who are incarcerated (Smith, personal communication, May 15, 2018).

There are about 80 deaf prisoners at the Estelle Unit in Huntsville, Texas. Most of them are nicknamed the “Sitting Stones” because they sit and watch TV in the recreational dayroom all day long. Some have longer sentences than others and will be in prison for many years. There was one deaf inmate who refused to become one of the sitting stones. While in school and as an adult, he struggled with his reading and writing skills, and that was a barrier for him. There was also a major shift in his life when he used a VP for the first time. He became reconnected with his deaf nieces and nephews, whom he had not seen for a long time. After chatting with them on the VP, he would feel somewhat inferior because he struggled to understand what they were discussing. He knew what he needed to do and was determined to do it himself. He obtained a dictionary and began reading the newspaper daily. He used the dictionary frequently because there were so many words that he did not understand. He collected piles of magazines, newspapers, and books in his cell. He would look up words from the dictionary and write down the definitions of the new vocabulary on paper. He became motivated to have conversations with his nieces and nephews and discuss the new vocabulary words he was learning.

Being an incarcerated deaf individual can result in significant isolation. This case underscores the importance of having VPs in prisons. VPs ensure that deaf inmates have the same access as hearing inmates. They also help to build a bridge with the outside world and give hope to isolated inmates. Although this example refers to communication with those outside of prison, the inability to interact with hearing inmates and prison personnel may exacerbate the deaf inmates’ feeling of isolation and could impact their mental health.

STRUCTURE OF THE BOOK

The editors reached out to experts in the field who could contribute to key areas related to criminal justice and deaf people. These areas include juvenile and adult justice, language and communication, interpreter issues, substance abuse and mental health, research considerations, and the legal system. The book is divided into three sections, which include: 1. Research and Evaluation; 2. Theory, Practice, and Specialized Services; and 3. Legal Aspects.

In Chapter 1, “Demographics and Etiology in Deafness: Sociocultural Elements of Relevance to the Criminal Justice System,” Damara Goff Paris, E. Basil Kessler, and Gabriel A. “Tony” Martin focus on the issues surrounding concrete

data collection of demographic information pertinent to deaf individuals. Part of the difficulty in identifying accurate numbers has to do with the lack of questions regarding the use of ASL on self-reporting surveys, which can skew the results toward the number of people participating in the surveys who are not cultural representatives of the Deaf community. Additionally, the U.S. Census states on their website that questions regarding languages spoken and English-speaking ability were not designed to collect information about sign language users and that they count ASL users as those who speak English. This lack of data collection on a national level further impacts researchers' ability to determine the number of ASL users in the United States.

In Chapter 2, "Assessing Linguistic Incompetence in the Criminal Justice and Mental Health Systems," Roger C. Williams addresses critical elements related to the court system and linguistic incompetence with deaf people. Williams offers procedures for assessing linguistic incompetence. Linguistic competence is crucial in all cases. Defendants must be able to understand the charges against them. Linguistic incompetence is usually something long-standing, meaning that the individual charged with a crime has struggled with language for most or all of their lives. In some cases, defendants might be linguistically incompetent, resulting in many challenges. At the same time, zealous prosecutors may fail to consider that the deaf person may be innocent of charges brought against them.

In Chapter 3, "Research Methods With Deaf People in the Justice System," Raychelle L. Harris and Donna M. Mertens explore the world of research with deaf people in the criminal justice system and give readers examples of how research with small populations can be done. While research is abundant in the world of criminal justice for hearing people, little research has been done involving deaf people. There are a number of reasons for this, many of which this chapter addresses.

In Chapter 4, "School-to-Prison Nexus: Deaf Youth and the Juvenile Justice System," Gabriel I. Lomas shares his experiences with the school-to-prison nexus for deaf students. He explains how school policies frequently drive deaf students away from treatment and toward the criminal justice system. Examples in the chapter illustrate how multiple systemic challenges may result in deaf students experiencing a nexus that leads to a prison pipeline. Lomas makes recommendations on how to disrupt the school-to-prison nexus for deaf students.

In Chapter 5, "Substance Use Disorders Among Deaf Offenders," Debra Guthmann and Marcia Kolvitz address the presence of co-occurring disorders related to deaf offenders who may have substance abuse and/or mental health conditions. Throughout the chapter, the experiences of two deaf men are included to give the reader insight into what may happen when deaf offenders are incarcerated for substance abuse-related infractions. The intersection of substance abuse, mental health, and criminal behavior among deaf people is explored in greater depth in this chapter.

In Chapter 6, "Deaf People Within the Justice System: Insights From the United Kingdom," Susan O'Rourke, Sally Austen, and Elizabeth Wakeland, all

British, share scholarship and offer insights on the factors that contribute to crimes committed by deaf people. They explore theories of criminal behavior and evaluate it in the context of the deaf experience. They include both challenges and successes experienced with deaf people and the criminal justice system.

In Chapter 7, "Discourse, Sign Language Interpreters, and the Criminal Justice System: Implications for Communicating With Deaf People," Theresa B. Smith explores the complexity of what it means to interpret for people who are deaf within the criminal justice system. Smith discusses why certified and qualified interpreters are essential to this arena. Summaries of actual cases are used to analyze, highlight, and explain some of the issues and implications, concluding with some recommendations for establishing policies and procedures for the use of interpreters within this kind of system.

In Chapter 8, "Deafness, the Individuals With Disabilities Education Act, and the Juvenile Delinquency System," Daniel Shaw reviews special education law, including the Individuals With Disabilities Education Act, and the intersection of these laws with the juvenile corrections system. IDEA is the primary law that allows for communication access for deaf youth in schools. The child's right to a free, appropriate, publicly funded education does not terminate when a deaf youth becomes incarcerated, so IDEA continues to be the primary law of reference for incarcerated deaf children.

In Chapter 9, "Nondiscrimination in the Criminal Justice System: An Examination of the Americans With Disabilities Act and Section 504 of the Rehabilitation Act," Barry C. Taylor and Rachel M. Weisberg address key elements of these laws as well as case law that supports access for deaf clients and inmates. The authors look at a number of issues, including those related to interpreters, videophone access, accessible alerts, and assessments of needs. Taylor and Weisberg also share an overview of the type of defense that law enforcement, corrections, or a criminal court can make when defending ADA cases and touch briefly on the issue of remedies.

In Chapter 10, "The Attorney–Client Relationship," Amber D. Farrelly discusses the role of the attorney when representing deaf clients, and the importance of trust and diligent representation. She emphasizes the importance of ensuring the right to due process and access to counsel through direct communication or sign language interpreters. Finally, Farrelly discusses both mental and linguistic competency and the implications of these situations under the law.

In Chapter 11, "Disability Justice in the Age of Mass Incarceration," Talila A. Lewis comprehensively examines the challenges faced by deaf people navigating the criminal justice system. As the director of the nonprofit Helping Educate to Advance the Rights of the Deaf, and an attorney with a passion for advocacy, Lewis has been successful in advocating on numerous cases in which deaf people have been incarcerated unfairly or are denied access behind bars. Lewis offers readers strategies for advocacy through case examples and case law citations related to deaf people.

Chapter 12, “Deaf People in the Criminal Justice System: Concluding Thoughts,” by Debra Guthmann and Gabriel I. Lomas, brings together the collective viewpoints of all contributors. The chapter expands on some of the key points that have been discussed throughout the book and emphasizes the need for additional advocacy, education, and action in the field. The concluding chapter also offers recommendations for future work.

CLOSING COMMENTS

We have written this book for a broad audience of readers. Of course, those who work in justice and law are a primary audience. Attorneys preparing for cases with deaf people will now have a resource to assist them in their work. Additionally, mental health professionals who work with deaf people will likely find many chapters of this text helpful in their practice and preparations for forensic services. Sign language interpreters have had few resources to turn to when preparing for their role in court. We hope that they, in addition to education professionals, family members, and advocates, will also find the materials in these pages useful in understanding deaf people and the criminal justice system.

Whatever your area of interest, we hope you enjoy reading this book and find the materials in this text beneficial and informative.

REFERENCE

National Deaf Center. (2020). *Defining deaf*. <https://www.nationaldeafcenter.org/defining-deaf>