



The Right to Remain Silent

By [SARA NOVIĆ](#)

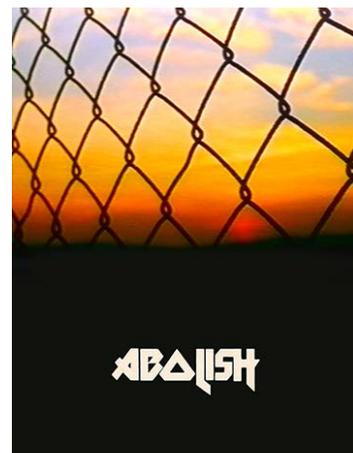


Ableism, the English to prison pipeline, and the plight of deaf inmates

BORN into a working-class family with six children, [Felix Garcia](#) was plagued by ear infections—a chronic source of pain, pus, and, by the time he was about three years old, severe and progressive hearing loss. His family had neither the time nor the resources to accommodate his deafness; he was instead punished for his failure to hear things, and so tried to make do as best he could. Garcia managed to charm his way through school, eventually obtaining his GED, though he'd mastered no language completely, signed or otherwise. In 1981, when Garcia was 19, his brother Frank took him to a pawnshop and asked him to hawk a ring for him. (Frank said he'd forgotten his ID.) As it turned out, the ring had been stolen—it belonged to Joseph Tramontana Jr., who had been murdered six days before.

At his trial, Felix Garcia had no sign language interpreters, could not understand the testimony against him, nor the questions asked when he was on the stand. The only evidence

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linking Garcia to the crime was his brother and sister's testimony and the pawnshop receipt for Tramontana's ring. Conversely, two witnesses—Garcia's girlfriend and his girlfriend's mother—testified that he was across town at the time of the murder. No forensic evidence placed Garcia at the crime scene, though his brother Frank's prints were there. Nonetheless, in 1983, Felix Garcia was convicted of robbery and first-degree murder.

Perhaps the most unsettling part of Garcia's story is that it is wholly unoriginal. It is in many ways the closest we can come to a "textbook case" of a deaf inmate's experience. And just like in Garcia's case, the problems for most deaf inmates begin long before the inmate has been incarcerated.

HOW many deaf people are in prison in the United States today?

It seems a simple enough question for the internet, since the number of prisoners are easy to track. Their names, locations, convictions, and sentence lengths are available via corrections departments' searchable databases. Reform watchdogs and special interest groups likewise collect scrupulous data on the racial makeup of prison populations to track the epidemic of mass incarceration.

But there are few statistics about the number of deaf and hard-of-hearing prisoners. In part the lack of information is logistical—how do you contact a prisoner who cannot use the phone and often has limited English skills? But the gap also exists because few have bothered to notice and count them. [Helping Educate to Advance the Rights of the Deaf \(HEARD\)](#), a nonprofit that works toward equality for deaf people at all stages of the justice system, maintains the only national database for tracking deaf and deafblind prisoners. Firm figures remain elusive. HEARD currently numbers deaf prisoners across the country in the "tens of thousands."

Because we can't say with certainty how many deaf prisoners exist, it's impossible to prove that deaf people are a disproportionately incarcerated population. However, there are risk factors for the early deafened that arise in childhood and mirror the "pipeline" systems we understand to affect racial and socioeconomic minority populations in striking numbers. Children who are prelingually deaf, born deaf, or deafened before they've fully learned a spoken language are at the highest risk for entering this pipeline. Ninety percent of deaf children are born to hearing parents; often, the child is the first deaf person their parents have ever met, and as such, the family is ill-equipped to communicate successfully.

Augmentative technology, including hearing aids and cochlear implants, continues to improve, but the information these instruments provide is not like natural hearing, and the

user requires extensive therapy to learn how to process sound. Even the best implant present interference. Someone's ability to hear depends upon many factors, including a family's level of access to health care. As such, sign language is the only modality all deaf people can access fully and at all times; the best way to ensure a deaf child's learning is not delayed is for parents to dedicate themselves to learning a new language (here in the U.S. it's ASL—American Sign Language) and make a concerted effort to facilitate their child's language acquisition.

The task is not a small one: ASL is neither a signed form of English nor particularly intuitive to English speakers, as it grew organically out of the Deaf community. Rhonda Jacobs, who specializes in the sociolinguistic challenges of second-language learning and ASL, believes ASL to be a [Category IV language](#) based on the [Foreign Service Institute's](#) difficulty index criteria. That means the average ASL student would need 1,100 hours to reach “general professional proficiency.” Other Category IV languages include Icelandic, Greek, Nepali, and Zulu.

Deaf people (an identification demonstrated by the use of the capital “D”) understand ourselves not solely as people with a disability but, rather, as part of a sociocultural minority with our own history and rich tradition of ASL poetry, theater, and art. We also identify as a sociolinguistic minority.

Many in the medical field, however, see only a biological deficiency and attempt not to understand the Deaf experience, but to eradicate it. Statistics vary, but one 2012 study suggests deaf children who cannot communicate with their families have a 400 percent higher chance of developing a mental health disorder. This prevalence is compounded by the lack of mental health resources for deaf patients. Few providers know ASL, so treatment must be conducted through intermediary medical interpreters, who can be difficult to procure despite laws asserting a patient's right to have one. They are often not available in emergency treatment settings. And deaf patients report an above-average level of mistrust and fear of medical professionals, perhaps because of miscommunications in past encounters or on the basis of a very real ideological divide.

Here, too, is another link to how prison pipelines target minorities. Those ignorant of Deaf culture see deafness as an inherently undesirable trait and seek to cure it. The state's first response to difference is to punish it.

GIVEN the established correlation between mental illness and incarceration—(Bureau of Justice Statistics [show](#) 73 percent of females and 55 percent of males in state prison systems have a documented mental health problem)—the link between language deprivation and diminished mental health

and sound decision-making skills puts many deaf people at an increased risk. A discriminatory justice system further exacerbates the divide at every step, with deadly consequences. Police brutality is common from officers who perceive the animated nature of sign language as aggression or “gang signs,” or are angered by a deaf person’s “failure to respond to verbal commands.” In 2016, two unarmed Deaf men, Terrence Crutcher and Daniel Harris, were fatally shot by police.

Officers also routinely fail to state Miranda Rights, explain charges, or otherwise communicate with deaf people during the arrest process. The NYPD recently settled two lawsuits brought against them by Deaf women who had been arrested and detained without explanation and were denied interpreters despite repeated requests: Staten Island landlord [Diana Williams](#), in 2011, and poet [Opal Gordon](#) in 2015. Gordon alleged police at the station even refused to communicate with her via writing. Both were held for 24 hours without explanation or accommodation, and both arrests were later deemed wrongful.

Since the introduction of the Americans with Disabilities Act (ADA) in 1990, instances of deaf people’s official interrogations, confessions, or trials without an interpreter are increasingly infrequent. However, before the ADA was implemented there was no such legal requirement. As a result, many of the deaf people currently incarcerated did not have interpreters at their interviews or trials, casting doubt on interrogative practices and the veracity of confessions and testimonies across this language barrier, even for those without the added complexities of mental health or competency issues.

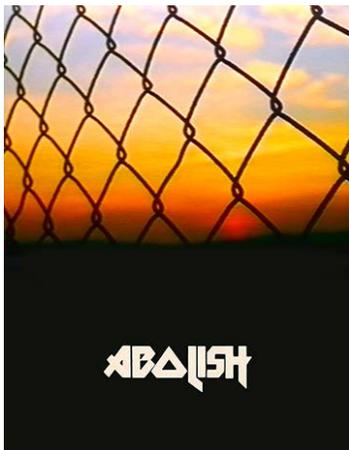
But even after the ADA’s passage, little effort has been made create more inclusive juries. What this means in practice is that d/Deaf people are rarely judged by “peers” with any knowledge of Deaf or disability culture. The potential for neutrality among an all-hearing, able-bodied jury is nearly impossible.

ONCE inside the system, deaf people’s rights are consistently violated through particular patterns, prompting disability advocates to use the term “prison within a prison” to describe the experience. Proponents of prison reform have long considered solitary confinement a form of torture, but what if it is physically impossible for an inmate to communicate with those around them, even in the general population? HEARD’s founder, Talila Lewis, has said that deaf inmates are often referred to as “[the walking dead](#)” by other prisoners because they are so vulnerable on the inside. If and when they are ganged up on, the solution is usually to put the deaf person in solitary confinement for “protection.”

The ADA applies in prison, theoretically, but oversight is limited, given that it is extremely difficult for inmates to seek legal recourse. [Assistive technology](#), including videophones with which to contact the outside world, are rarely available, and hearing aids are taken away as a form of punishment. Partly because of this lack of access to technology, the outside world hardly ever hears about the abuse of deaf inmates. But even among the small pool of known cases, horror stories abound: Abreham Zemedagehu [sued](#) the Arlington, Virginia, prison system after a hellish six-week stay in the county jail. Originally from Ethiopia, Zemedagehu had little capacity with written English, couldn't communicate his need for pain medication with guards or staff, and says a nurse forcibly took his blood after he refused to sign a medical consent form he couldn't read. Though charges against [Joseph Heard](#), a Deaf and developmentally disabled man, were eventually dropped, a computer error had him mistakenly returned to a D.C. prison and left him languishing there for two years, with guards ignoring his attempts to communicate. Ninety-year-old [Elliot Yorke](#) was placed in solitary confinement at the Columbia Correctional Institution Annex in Florida after being attacked by other inmates. While affording him "protective custody" Yorke alleged officers also took away his walker, topical allergy skin salve, and male sanitary napkins for incontinence. He was also denied a tinnitus-masker—a noise-cancelling hearing aid.

Deaf inmates are [punished](#) for missing count or mealtimes, though the announcements are made over loudspeakers they cannot hear. They are beaten by guards for misunderstanding orders, and, when they successfully lip-read one interaction and fail the next, they are beaten for "feigning" their hearing loss. In addition, because prisons rarely provide certified ASL interpreters, the inmates struggle to defend themselves at disciplinary proceedings and have limited or no access to medical, mental health, or justice center professionals. They also lack access to any tailored social, educational, or rehabilitative programming. This, by design, is the nature of prisons—undesirables are hidden, with limited attempts at reintegration or socialization between the incarcerated and society (translating, on its face at least, to less manpower and money spent by the corrections system).

Deaf inmates' daily struggles highlight the root cause of our justice system's failings: those whose duty it is to enforce the law are routinely some of its greatest violators. The ADA has been a federal law for 27 years. There has been plenty of time to train, adjust, and implement structures. But without individuals constantly seeking change and holding those in power expressly accountable, nothing happens. And with an incoming Secretary of Education, President, and Attorney General who seek to dismantle protections afforded to the deaf and disabled, such advocacy is more important than ever.



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In this, we are all indicted. Even as more Americans begin to understand the politics of gender and sexuality and the racialized systems of systematic oppression and how these affect everyone, deaf and disabled people are often left behind by their families. Even as the left mobilizes against a repressive presidential administration, ableism is continually left out of even the most inclusive agendas. Intersectionality, it seems, still cannot cross the sound barrier.

Previously by
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