



Jury Duty

For some it's a chore, for others it's a hard-won right

by Sarah Geer

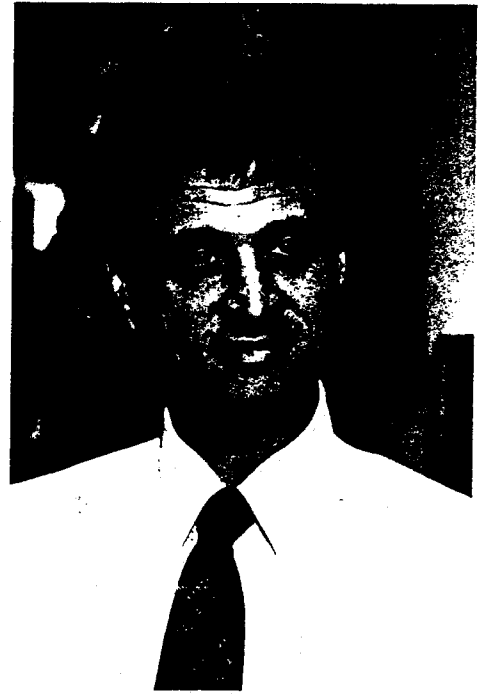
The ancient symbol of justice is a blindfolded woman holding aloft a scale for weighing right and wrong. Ironically, early state laws prohibited both women and blind people from serving on a jury. Deaf people were also excluded from jury lists because state laws required jurors to "be in possession of their natural faculties" or to be able to "speak and understand the English language."

Today, no state jury pools may exclude people on the basis of race, gender, or financial status. But many states still prohibit deaf or other disabled people from serving on a jury.

These state laws are slowly being changed to permit deaf people to be jurors. While many Americans want to avoid serving on a jury, some deaf Americans are fighting to be allowed to serve, insisting that with reasonable accommodations they can be fair and effective members of the jury team. They see serving on a jury as a civic duty and responsibility, symbolic of their status as equal citizens.

Wayne Shook, a deaf man from Arlington, Va., recently served on juries in two criminal cases. He encourages deaf people to serve on juries when they are given the opportunity. "They need to be courageous, because it's not an everyday thing to do," says Shook. "They need to know their rights, because some court clerks will intimidate them and tell them they have no right to serve." But Shook found participating in the criminal justice system fascinating and challenging.

According to a list compiled by the



Former jury member Wayne Shook

Sarah Geer, J.D., is a staff attorney for the National Association of the Deaf Legal Defense Fund.

National Center for Law and the Deaf in 1987, 10 states provide specific statutory authorization for deaf people to serve on juries. In at least 12 other states, deaf people have been seated on juries or grand juries, even though the state laws do not specifically allow or prohibit deaf jurors. And several federal courts have held that state court systems that receive federal funds must permit deaf people to serve as jurors and must provide them with necessary interpreter services.

Fairness in selecting a jury

Many people assume that criminal defendants are entitled to "a jury of their peers," but the Constitution simply guarantees criminal trials "by an impartial jury." In civil cases, state laws and constitutions impose similar requirements for an impartial jury.

This does not mean that litigants, hether deaf or hearing, should have a jury of people who are just like themselves. It means that the jury must be selected from a group that represents a fair cross-section of the community, from which no group has been systematically excluded. In this way, the justice system tries to make sure that court decisions reflect community values, and not just the values of one small group of people.

The jury selection process

Most states summon jurors from voter registration lists, census information, or city directories. Deaf people as well as hearing people will therefore get a notice asking them to report to the court for jury duty.

The jury questionnaire form or the court clerk will ask whether the potential juror has a disability or some personal or professional reason for being excused from jury duty. At this point, most deaf people are eliminated from consideration. Traditionally, any person with impaired hearing is automatically excluded.

Groups of prospective jurors then appear in court to be considered as members of the jury in a particular

case. During this "voir dire" procedure, the judge and lawyers for each side question the jurors about their ability to serve. They ask if the juror knows any of the parties or witnesses, or has strong feelings about the issues in the case that will affect his or her ability to make a fair decision based only on the evidence presented during the trial.

The lawyers then approve or challenge each prospective juror; each side can reject a limited number of jurors for any reason it wishes, without explaining why. This is called the "peremptory" challenge. Also, each side can challenge any juror for "cause" meaning that the side can exclude a juror who has any identifiable bias or other reason that makes the person unable to give a fair verdict. For example, jurors who have read newspaper articles about the case and have already made up their minds should be excused for cause.

A lawyer who challenges a juror for cause may cite a deaf person's hearing impairment as the reason for objecting. If state law prohibits disabled people from serving, or if it requires the ability to "speak and understand the English language," then the judge usually excuses the juror. But in states where deaf people are explicitly permitted to serve, the lawyer would not be able to challenge a deaf person for cause. Even so, either party could dismiss the deaf juror for some other valid reason, or by using a peremptory challenge.

Fairness during the trial

Judges and legislators often believe that a hearing impairment will interfere with a juror's ability to understand all the trial testimony. Jury trials are considered fair because the decision is based only on evidence that all of the jurors have seen and heard during the trial.

How can a juror who cannot hear make an informed decision based on testimony and evidence presented at the trial? Today, courts have learned that sign language interpreters can effectively convey information to a deaf juror who uses sign. Oral interpreters can effectively convey information to a deaf person who is a skilled lipreader. Qualified interpreters can translate rapidly and accurately to deaf jurors, giving them the same information that is being heard by the hearing jurors.

When Joanne DeLong was excused from a Pennsylvania jury pool because of her deafness, she brought a lawsuit against the judge in federal court. That federal court recently ruled that she should have remained in the jury pool, where she might have been selected to serve on an actual jury. The court held that with a skilled sign language interpreter, DeLong could meet the statutory requirement that she "speak and understand the English language." Because the state court received federal funding, it could not discriminate against her on the basis of her deafness.

It should be obvious that only a highly skilled interpreter belongs in courtroom proceedings. Some of the state laws that address this question call for certified interpreters, often with the highest level of certification available. Even if the state law is silent, judges usually question the in-



A deaf juror watches a sign language interpreter during court proceedings.

interpreters and the deaf person carefully to ensure that each interpreter has the level of interpreting skill necessary. Even so, challenges to the competency of interpreters in court do occur.

Jurors have another important function: They decide whether or not they believe a witness. A juror must evaluate the witnesses' credibility and decide whether or not the witnesses appear to be lying, or exaggerating, or simply wrong.

Hearing jurors often rely on factors such as tone of voice, subtle vocabulary choices, and other speech-related factors when making these decisions. Should a deaf person be excluded from a jury because these factors are not readily obvious? No, according to deaf people who have served on juries.

Deaf people have access to many of the same indicators of credibility as hearing people. Clues based on a witness's demeanor may be equally obvious to a deaf juror as to a hearing

juror. For example, hesitancy or confusion in answering a question will be noticeable to both deaf and hearing jurors. "Body language" is clearly visible and is something to which both hearing and deaf people are highly attuned. Finally, a skilled interpreter conveys much more than simple words in sign, translating intangible factors such as tone, emphasis, and verbal style.

When Wayne Shook served on two criminal juries recently, he said that his interpreters gave him some description of the defendant's tone of voice. He had no trouble understanding what was going on in court.

"Both interpreters were good," says Shook. "The only problem was that in one case, the prosecutor had a tendency to walk around when he was questioning the witnesses. But he quickly adjusted and learned not to block my line of sight. In the second

case, I did not have that problem because I sat close to the witness stand."

Some judges are afraid that a deaf juror, watching the interpreter, will not be able to observe the body language and facial expressions of the witness who is testifying. Most judges resolve this by placing the interpreter next to or behind the witness, rather than next to the juror in the jury box. This permits the deaf juror to observe the witness easily, without missing the signed translation of the actual testimony.

No juror hears or sees everything that happens in a witness box. Jurors may take notes, daydream, or simply not be listening at critical moments. This does not interfere with a "fair trial," and deaf jurors say it would be unfair to expect a higher standard of awareness of them.

A final concern about the trial itself is that the use of an interpreter would delay or disrupt the proceedings, or distract the witnesses, the parties, or the other jurors. When Ann Eckberg, a teacher at the Nebraska School for the Deaf, served on a civil jury in a medical malpractice case, she reported that the placement of the interpreter created problems when the jury needed to see models and drawings. Her interpreter also had to interrupt the proceedings occasionally when the lawyers spoke too quickly or blocked her vision. But, as she points out, the judge had told all of the jurors to interrupt any time they did not understand something. Her main concern was that the judge had refused to hire more than one interpreter because of the cost, and her interpreter was fatigued after several hours of nonstop interpreting.

As all Americans become accustomed to seeing interpreters in public forums, political debates, classes, and on television, this concern about delay and disruption seems to have lessened. The United States Court of Appeals for the Tenth Circuit, in the 1987 case of *Dempsey v. United States*, stated that inter-

preters have come to be seen "more as part of the background than as independent participants."

In that case, a man was found guilty of stealing a trailer load of television sets from a railroad yard. At his trial, he objected to the seating of Wendy Hoffman, a deaf juror who was assisted by an interpreter. The defendant then appealed his conviction, complaining that the presence of a deaf juror and the presence of an interpreter in the jury deliberations had denied him a fair trial. The Court of Appeals upheld his conviction and stated that Hoffman was able to serve satisfactorily as a juror. In fact, she was elected as the jury foreman.

If the defendant had wanted to use one of his "peremptory" challenges to exclude her, he was free to do so, but he had used his peremptory challenges to exclude other jurors. The Court of Appeals ruled that there was no reason to exclude Hoffman for cause merely because of her deafness.

Fairness in the jury deliberations

Another problem arises when a deaf person uses an interpreter during the actual jury deliberations. The jury meets in complete secrecy to make its decision. No judge or court official is allowed into the jury room. No one is permitted to talk to the jurors about the case during the trial or during jury deliberations. Their decision is intended to be theirs alone, without any outside interference.

In the past, most judges have assumed that an interpreter could not be allowed into the jury room. The presence of the interpreter would be in effect a "thirteenth juror," contaminating the jury process by letting a non-juror observe and even participate in the jury deliberation. But today judges are coming to realize that without the assistance of an interpreter, the deaf juror would be unable to participate equally in the jury discussion and decision.

When Wayne Shook served on criminal juries, he found that he could understand and participate easily. But even though his inter-

preter was present, the jury deliberations were still difficult, though not because of his deafness.

"It's tough work," says Shook. "It's not easy to decide other people's fates, how long they should stay in jail. I hated that, but it has to be done."

Shook found that the jury deliberations tended to be well organized, and he had no problems expressing himself or following the discussion. His interpreter explained at the outset of the deliberations that the jurors should not speak at the same time, and they had no difficulty in following this procedure.

In another case in Cleveland, a deaf man, Charles Williams, was selected as foreman of the jury. With a certified interpreter, he effectively participated and helped guide the jury deliberations.

Courts have found that a jury and a professional interpreter can be clearly instructed on the interpreter's role during jury deliberations. The interpreter must function strictly as a translator, without participating or injecting personal opinion into the deliberations in any way. The interpreter has the same responsibility as the jurors to maintain the secrecy of the deliberations. The interpreter also has the additional obligation to translate fairly and accurately.

Judges may require interpreters to take a special oath to this effect. The judge may also question the interpreter and the jurors before accepting the verdict, to make sure that the interpreter followed the court's instructions.

Payment of interpreters for deaf jurors

An issue that puzzles many people is who is responsible for paying the fee of an interpreter when a deaf person serves on a jury. In most cases, the court provides the interpreter. This is true in states that explicitly require courts to provide interpreters for deaf jurors. Occasionally, a deaf person has paid for an interpreter, or the interpreter has volunteered, to establish the principle that deaf people are capable of being good jurors.

But interpreter fees are sometimes considered part of the "costs" of a court case. Often, court costs are charged to the losing party. Few litigants would want to risk having to pay for an interpreter for a deaf juror, so it is likely that the parties would automatically object to having deaf jurors.

If the court system receives any financial assistance from the federal government (e.g., grants from the U.S. Department of Justice), then federal law requires the court system itself to provide and to pay for interpreters, so that it will be accessible to disabled people.

In *Peck v. Alameda County*, Charles Peck served on a jury in California, but the court refused to pay for his interpreter. After he and the interpreter agency sued the county court system, a federal court ordered the county court to reimburse him and pay the interpreter fees.

The court relied on regulations adopted by the U.S. Department of Justice that required court systems to provide interpreters and other auxiliary aids to disabled people. The federal court cited part of the rule, which states: "Court systems receiving federal financial assistance shall provide for the availability of qualified interpreters for civil and criminal court proceedings involving persons with hearing or speaking impairments." The regulation also requires the courts to pay for these interpreters.

Conclusion

As the judicial system gains increased experience with the qualifications of deaf jurors and the professional demeanor of courtroom interpreters, the concerns are diminishing, but they have not disappeared.

Ann Eckberg was shocked at the end of the case she served on when the judge asked all of the hearing jurors to write down whether they thought the presence of an interpreter had interfered with the case. When she asked if she could write down her own reaction to the use of the interpreter, the judge refused. He also lectured her after the case was over about the cost of providing the interpreter and the fact that courtrooms were not set up to accommodate the special needs of disabled people.

"I think that if deaf people want equal rights, then they are going to have to stand up and say they will serve," Eckberg says. "Jury duty is a right for every American citizen. Many deaf people complain that they are denied their rights, but when they are asked to do something, they refuse to stand up for themselves, and they take the easy way out. I could have told them I didn't want to serve and gotten off, but I felt that I had to fight to get what was mine."

People concerned with promoting deaf people's right to serve on juries hope that all state laws can be changed to provide that:

- no person shall be excluded from jury solely because of hearing impairment;
- qualified interpreters will be provided for deaf jurors and for deaf parties and witnesses to judicial proceedings; and
- no jury verdict will be subject to challenge merely because a sign language interpreter was present to assist deaf juror during the deliberations.

Under this approach, a hearing impaired person could still ask to be excused from jury duty if he or she believed that hearing impairment would interfere with the ability to participate in the proceedings. For example, people with limited knowledge of sign language or limited lipreading skills may not believe they can follow testimony adequately to render a fair verdict. But deaf people who believe that their deafness does not interfere with their abilities as jurors would be entitled to necessary interpreter services and would be permitted to perform this civic responsibility along with their peers.

Vicki Hurwitz of Rochester, N.Y., received a standard jury questionnaire asking, "Do you have any physical or mental infirmities impairing your capacity to serve as a juror?" She had no hesitation in simply answering "No." As she told the *Rochester Democrat and Chronicle*, "I made up my mind that I was going to go, and they were not going to excuse me [for my deafness]." She served successfully on a civil jury in a New York trial court, and she and the lawyers for both sides found that she could participate fully in the jury process. More and more deaf people are making the same decision. □



Gallaudet graduate Gary Viall, an accountant and assistant supervisor for the U.S. Small Business Administration, is a member of the Virginia Department for Deaf and Hard of Hearing Advisory Board. Among other items on its agenda, the board is working on legislation that would permit deaf people to serve on juries with the assistance of sign language interpreters. Similar legislation is being introduced in many states to clarify the rights of deaf jurors.