Widener University Commonwealth Law School

From the SelectedWorks of Randy Lee

1989

Equal Protection and a Deaf Person's Right to Serve as a Juror

Randy Lee

Available at: https://works.bepress.com/randy_lee/33/

EQUAL PROTECTION AND A DEAF PERSON'S RIGHT TO SERVE AS A JUROR

RANDY LEE*

INTRODUCTION

Until the late seventies, little thought was given to the issue of deaf people serving as jurors. Conventional wisdom dictated that deaf people could not serve, regardless of whether or not they were aided by an interpreter. Even in those instances when an interpreter would aid the deaf person, the hearing world's understanding of deafness indicated that deaf people lacked, at the very least, the language skills and ability to evaluate credibility that are essential to a juror's function and required by the sixth amendment to guarantee a criminal defendant a fair jury at her trial.[1] Furthermore, although an interpreter could not remedy any of these problems, an interpreter would almost certainly complicate the trial and invade the privacy of the jury room.[2]

* Assistant Professor of Law, Widener University School of Law, Harrisburg Campus. The author would like to thank his research assistants Mr. Gil Duncan and Ms. Sharon Brustein for their help, as well as Ms. Alice Lawson and the Word Processing Staff at the University of Pittsburgh School of Law. The author would also like to acknowledge the contributions of all those people who allowed themselves to be interviewed for this Article and, in particular, the contributions of Professor Welsh White, Ms. Tracy Walk, Ms. Sheila Conlon Mentkowski, Mr. Robert Lape, Mr. Tom Cartwright, Mr. Mac Brownlee, and Ms. JoAnn DeLong.

1. Eckstein v. Kirby, 452 F. Supp. 1235, 1242-43 (E.D. Ark. 1978).
2. *Id.* at 1244.

During this same period of time, states had decided that other groups were inappropriate for jury service as well. In particular, states had sought to exclude African-Americans[3] and women[4] from serving as jurors. In the first half of the 1970s, however, the Supreme Court concluded that the states could no longer rely on the conventional wisdom that had for years supported the prejudice and paternalism used to keep African-Americans and women off juries. First, in *Carter v. Jury Commission of Greene County*,[5] the Court held that the fourteenth amendment's equal protection clause prohibits states from excluding African-Americans, as well as any other competent class of people, from jury service. Then, in 1975, in response to a criminal defendant's sixth amendment challenge, the Supreme Court held in *Taylor v. Louisiana*[6] that a state could not exclude women from jury service. These cases recognized that the conventional wisdom concerning the incompetency of certain classes of people to serve as jurors was grossly misguided.

Although the time had come to recognize that the states had misperceived African-Americans and women, similar acknowledgements came more slowly for deaf people. In 1978, accompanied by her interpreter, Ms. Teresa Eckstein reported for jury service in a state court in Arkansas but was excluded because she was deaf.[7] Three months later, in *Eckstein v. Kirby*, a federal district court rejected her claim that the exclusion had violated her right to equal protection.[8] In doing so, the court relied on those arguments that have been associated with conventional wisdom.[9] Although Ms. Eckstein's claim was rejected, her suit became a topic for debate.[10]

Since Ms. Eckstein's exclusion, deaf people, aided by interpreters, have served as jurors in at least eighteen states.[11] The most notable of these instances occurred in 1987 when Ms. Wendy Hoffman, a computer operator for

---

3. Carter v. Jury Commission of Greene County, 396 U.S. 320 (1970).

4. Bailey v. State, 215 Ark. 53, 219 S.W.2d 424 (1949).

5. 396 U.S. 320 (1970).

6. 419 U.S. 522 (1975).

7. *Eckstein*, 452 F. Supp. at 1236-37.

8. *Id.* at 1245.

9. *See supra* text accompanying notes 1-2.

10. *See, e.g.*, Note, *Jury Selection: The Courts, the Constitution, and the Deaf*, 11 PAC. L.J. 967 (1980); Note, *Due Process: The Deaf and Blind as Jurors*, 17 NEW ENG. L. REV. 119 (1981).

11. Deaf people have served in several states including: Alabama, *see* Padden & Padden, *Mileposts*, Gallaudet Alumni Newsletter, Sept.-Oct. 1988, at 3, col. 2; Pennsylvania, *see* Interview with Allan Hammel, in Pittsburgh, Pa. (Mar. 5, 1987); New Jersey and New York, *see* Telephone interview with Susan Ciavolino, Certified Legal Interpreter in New Jersey (Feb. 16, 1987); Kansas, *see* Anton, *Deaf Juror Cuts Barriers in Kansas Court*, Kansas City Star, Dec. 22, 1985, *reprinted in* Silent News, Mar. 1986, at 4; Wisconsin, *see Juror Uses Interpreter to Follow Proceedings*, Wisconsin State Journal, Apr. 9, 1985; Connecticut, *see* Interview with Mr. Ashby Allen, in Cambridge, Mass. (Aug. 8, 1988); California, Colorado, Florida, Illinois, Maryland, Oregon, Texas, and Washington, *see* People v. Guzman, 125 Misc. 2d 457, 464 n.21, 478 N.Y.S.2d 455, 461 n.21 (Sup. Ct. 1984); *see also* Hon. Benjamin Glass, *Does a Deaf Person Have a Constitutional Right to Serve as a Juror?* (on file with the National Center for Law and the Deaf); and Massachusetts and Michigan, *see* Glass, *supra*.

the IRS, served as foreperson of a federal criminal jury in Colorado.[12] When the defendant appealed to the Tenth Circuit in *United States v. Dempsey*,[13] that court held that Ms. Hoffman's service did not violate the defendant's constitutional rights.[14] Although the Tenth Circuit did not purport to overrule *Eckstein*,[15] the *Dempsey* court explicitly rejected every concern expressed in *Eckstein*, thereby repudiating the conventional wisdom about deaf people and jury service.[16]

The presence of deaf people with interpreters in the courtroom is nothing new because courts routinely use interpreters for deaf witnesses and parties to facilitate communication within the trial setting.[17] Furthermore, the existence

12. *See* United States v. Dempsey, 830 F.2d 1084 (10th Cir. 1987).

13. *Id.* The defendant's attorney tried to challenge Ms. Hoffman for cause because he claimed she failed to meet the requirements of the Jury Selection and Service Act of 1968, 28 U.S.C. §§ 1861-77 (1982) (requiring knowledge of English and satisfactory physical and mental condition). He also claimed the presence of Ms. Hoffman's interpreter in the jury room would violate the defendant's sixth and fourteenth amendment rights to a fair trial. The trial judge rejected this argument, and because the defense attorney had exhausted his peremptory challenges, Ms. Hoffman was able to serve. The defendant's attorney then appealed Ms. Hoffman's service. *Dempsey*, 830 F.2d at 1086-87. The court of appeals upheld the trial court ruling along lines discussed *infra* in the text accompanying notes 153-258.

14. *Dempsey*, 830 F.2d at 1092.

15. The court stated:

> Second, an important social policy argues against automatically foreclosing members of an important segment of our society from jury duty simply because they must take an interpreter into the jury room. Several states have supported this policy by specific legislation permitting deaf jurors to serve. A decision by this court that they must be excluded because of the interpreter's presence in the jury room, if deemed persuasive by other courts, would doom that legislation on the shoals of the federal constitution. The issue before us is not whether a statute might constitutionally exclude the deaf as jurors, as was upheld in *Eckstein v. Kirby*, 452 F. Supp. 1235 (E.D. Ark. 1978), but whether it *must* exclude them.

Dempsey, 830 F.2d at 1091 (emphasis in original).

16. *Id.* at 1087-92.

17. "[U]se of an interpreter at trial [is] an acceptable means to accommodate [a] hearing loss. The propriety of using interpreters for both deaf defendants and deaf witnesses is well settled." *Id.* at 1088; *see, e.g.*, State v. Anonymous, 6 Conn. Cir. Ct. 470, 276 A.2d 452 (1971) (deaf defendant with the use of an interpreter was held to be aware of the proceedings); Hines v. State, 243 So. 2d 434 (Fla. Dist. Ct. App. 1971) (testimony of deaf witness which was received through an interpreter was properly admitted at trial); Jakubiec v. Hasty, 337 Mich. 205, 209, 59 N.W.2d 385, 387 (1953) (a deaf plaintiff was examined as a witness through an interpreter); Hughes v. State, 665 S.W.2d 582, 583-84 (Tex. Ct. App. 1984); TEX. CRIM. PROC. CODE ANN. art. 38.31 (Vernon Supp. 1982) (provides for appointment of a qualified interpreter for deaf defendant or witness).

The general rule was stated most explicitly in State v. Galloway, 304 N.C. 485, 284 S.E.2d 509 (1981). In *Galloway*, the defendant in a rape trial moved to strike the testimony of his victim because she was deaf and had testified through an interpreter. The defendant argued that under these circumstances the testimony was not understandable. Although the witness in *Galloway* communicated in American Sign Language rather than signed English, *see infra* text accompanying notes 153-65, and although the interpreter and witness appeared to face language barriers, *see infra* text accompanying notes 188-90, the court rejected this argument, holding:

> deaf and mute [sic] persons are not incompetent as witnesses merely because they are deaf and mute [sic] if they are able to communicate the facts by a method which their infirmity leaves available to them and are of sufficient mental capacity to observe the matters as to which they will testify and to appreciate the obligation of an oath.

of deaf attorneys, both signing and oral, indicates that deaf people can have sufficient mastery of English to function in a legal setting.[18] Thus, given the valuable service deaf people have already provided as jurors and their equally successful participation in the legal system in other contexts, one would expect that *Dempsey* will mark a change in the conventional wisdom about deaf jurors, just as *Carter* did for African-Americans and *Taylor* did for women.[19]

This Article seeks to show that the views expressed in *Dempsey*, and similar cases,[20] reflect the reality of deaf jury service and that the views expressed in *Eckstein* are not acceptable. In addition to the cases themselves, the Article draws on the experiences of deaf jurors and the knowledge of several experts in the field of deafness.

Many, though not all, of the examples of deaf jury service discussed in this Article come from Pennsylvania. Over the last two years, Pennsylvania has become a focal point in the battle for deaf jury service.[21] The Pennsylvania experience presents examples of both hand-signing and lip-reading deaf jurors, and shows how deaf people can gain access to jury service through lawsuits,[22] mediation,[23] and public education.[24] Perhaps most important, through interviews with both deaf and hearing jurors involved in the actual

---

Galloway, 304 N.C. at 493, 284 S.E.2d at 514-15.

18. For example, a deaf attorney, Sheila Conlon Mentkowski, formerly of The National Center for Law and the Deaf and currently of NorCal Center for Law and the Deaf, aided in the preparation of Ms. JoAnn DeLong's case, discussed *infra* in text accompanying notes 25-27, to be allowed to serve as a juror. Ms. Mentkowski estimates there are twenty-five deaf attorneys nationwide. Shapiro, *Deaf Hastings Student Overcomes Obstacles*, The Recorder, Mar. 24, 1989, at 1, 9. Another deaf attorney, Bonnie Tucker, works for an influential firm in Phoenix, Arizona. Tucker & Levinson, *Will You Settle for Silver at the End of the Rainbow*, Our Kids Magazine — Alexander Graham Bell Association for the Deaf, Winter 1987, at 1, 2. Other examples include Michael Schwartz, an attorney in the Appeals Bureau of the Manhattan District Attorney's office, who argues cases with the aid of a signing interpreter, and Michael Chatoff, who has argued before the United States Supreme Court. People v. Guzman, 125 Misc. 2d 457, 462 n.14, 473 N.Y.S.2d 455, 460 n.14 (Sup. Ct. 1984).

19. *See supra* text accompanying notes 5-6. This would not be to say that deaf people *must* be seated when they appear in a pool of jurors. They can be excluded for cause just as hearing people can be, but the cause must be something more than deafness. A deaf person may be excluded because she does not understand English or lacks the necessary intelligence just as a hearing person may be. She may be excluded because she knows the parties, cannot be impartial, or lacks integrity just as a hearing person may be. The search for cause, however, cannot stop at deafness, nor without special circumstance can deafness be a factor in the exclusion of a deaf juror. Once signing or lip-reading competence is established, the evaluation of deaf jurors, like that of their hearing counterparts, must focus on the potential juror's intelligence, integrity, and unbiased view of others.

20. *See, e.g.*, DeLong v. Brumbaugh, 703 F. Supp. 399 (W.D. Pa. 1989); People v. Guzman, 125 Misc. 2d 457, 473 N.Y.S.2d 455 (Sup. Ct. 1984).

21. *Deaf Woman Sues Over Jury*, N.Y. Times, Feb. 15, 1987, at A1; Carroll, *Can Justice Be Deaf, Too?*, NEWSWEEK, Mar. 2, 1987, at 69.

22. Ms. JoAnn DeLong, *see supra* notes 18 & 20 and accompanying text; *infra* notes 25-27 and accompanying text, was eventually recalled for jury service in response to her lawsuit.

23. Ms. Marcia Finisdore resolved a deaf juror dispute in Delaware County, Pa. through mediation. *See infra* text accompanying notes 52-58.

24. The University of Pittsburgh's mock trial with a deaf juror, *see infra* text accompanying notes 28-41, generated television and newspaper attention and was well-attended by mem-

cases, and through videotapes of a mock trial's deliberation, the Pennsylvania experience helps shed light on what the deaf juror can take from the trial into the deliberation room. In order to put the following discussion in context, the Pennsylvania experience will initially be reviewed.

I.
THE PENNSYLVANIA DEAF JUROR EXPERIENCE

The Pennsylvania experience began October 7, 1986, when Ms. JoAnn DeLong was excluded from jury service in Blair County, Pennsylvania because she was deaf.[25] That exclusion resulted in a lawsuit, which Ms. DeLong won on January 12, 1989[26] under the Federal Rehabilitation Act of 1973.[27] Her original exclusion brought attention to jury service by other deaf Pennsylvanians and prompted the decision to stage a mock trial using a deaf juror at the University of Pittsburgh School of Law. Review of actual jury service begins with that mock trial.

A. The Courtemanche Experimental Jury

On February 9, 1987, Ms. Candace Courtemanche, a transitional student at Pittsburgh's Center on Deafness,[28] was empaneled as a member of an experimental jury at the University of Pittsburgh.[29] The jury viewed a seven-hour civil trial in which a tenant sued his landlord for injuries the tenant had suffered when he slipped on a stairway and the stairs' guard-railing gave way. The case included six witnesses, medical testimony, and several physical exhibits. Judge Benjamin Kaplan of the Allegheny Court of Common Pleas presided, and the case was tried by the four law student finalists in the law school's mock trial competition.[30]

The Courtemanche jury is particularly valuable among the examples of Pennsylvania juries because the jury deliberations could be videotaped since the proceeding was only experimental. Viewers of the videotape will find the deliberations to be particularly orderly.[31] Consistent with Judge Kaplan's instructions, the jurors took turns speaking, no one attempted to speak with Ms. Courtemanche's interpreter, and the interpreter did not inject himself into the deliberation.

---

bers of both the deaf and legal communities. *See Students Address Experimental Jury*, University of Pittsburgh School of Law Notes, Spring 1987, at 4-5 [hereinafter *Students*].

25. Civil Jury Orientation, Sidebar concerning prospective juror JoAnn DeLong (Ct. Common Pleas, Oct. 7, 1986) [hereinafter Sidebar].

26. DeLong v. Brumbaugh, 703 F. Supp. 399 (W.D. Pa. 1989).

27. 29 U.S.C. § 794 (1982 & Supp. III 1985).

28. Ms. Courtemanche is now working on a bachelor's degree from the National Technical Institute for the Deaf, Rochester, New York.

29. *Students*, *supra* note 24, at 4-5.

30. *Id.*

31. The videotape of the trial and deliberations, Courtemanche Trial Video, Feb. 9-10, 1987 [hereinafter Trial Video], is available through the author at the Widener University School of Law, Harrisburg Campus, and is on file at N.Y.U. REV. L. & SOC. CHANGE.

Two aspects of Ms. Courtemanche's participation in the deliberations merit particular attention. First, the tenant's attorney had introduced into evidence two photographs, one of the whole railing and one of a well-rusted piece cut from the railing, photographs which the tenant claimed were taken the same day. The landlord's attorney tried to show that the picture of the rusted piece had been taken many months after the accident and that, therefore, the rusting had occurred after the accident. Although the attorneys had not raised the point at trial, Ms. Courtemanche was the first juror to note that the whole railing picture was in black-and-white while the piece of railing picture was in color. Hence, the pictures necessarily were taken with different rolls of film. After she made this point, one of the other jurors wanted to review the pictures, suggesting that the point had aroused his curiosity.[32]

It is not unusual for a deaf juror to notice something missed by her hearing colleagues. In a similar experiment done at McGeorge School of Law,[33] as well as in the Hammel deliberations,[34] and in an actual case in Chicago,[35] deaf jurors raised points missed by the rest of the jury. However, one must be careful not to place undue significance on this occurrence. Many support the jury system by arguing that the collective recall of the group "is certain to be superior to the average recall of the individual juror."[36] Thus, we expect each juror to bring something different into the deliberation. The fact that deaf jurors have done this does not so much support a claim that the deaf juror will bring to the trial some keener sense that she has developed to compensate for her hearing loss, as it indicates that deaf jurors, like hearing jurors, will contribute to the collective recall of the group.

Second, Ms. Courtemanche was the only juror to address the exact nature of the tenant's injury. The nature of the tenant's back injury was relevant to the issue of damages, and each party called a doctor who testified to a different view of that injury. This left the jury to evaluate the extent of the tenant's injuries. When the jurors addressed this question, the hearing jurors focused on the credibility of the doctors. However, when Ms. Courtemanche contributed to this discussion, she focused on the doctors' discussion of the nature of the injuries.[37]

Although three of Ms. Courtemanche's fellow jurors indicated that before the trial they had had reservations about the ability of deaf people to serve as

---

32. *Id.*

33. Note, *Jury Selection: The Courts, the Constitution, and the Deaf,* 11 PAC. L.J. 967, 990-92 (1980).

34. *See infra* text accompanying notes 42-51.

35. The judge in the Chicago case indicated that the rest of the jury found their deaf colleague "an invaluable asset in the deliberative process" because "[s]he was able to recall testimony verbatim." People v. Guzman, 125 Misc. 2d 457, 464 n.22, 478 N.Y.S.2d 455, 461 n.22 (Sup. Ct. 1984).

36. H. KALVEN & H. ZEISEL, THE AMERICAN JURY 151 (1971) [hereinafter THE AMERICAN JURY].

37. *See* Trial Video, *supra* note 31. For a more complete discussion of demeanor and the deaf juror, *see infra* text accompanying notes 218-38.

jurors,[38] after the trial all five hearing jurors indicated that they felt Ms. Courtemanche had contributed much to the process and that deaf people should be allowed to serve as jurors. Three jurors indicated in particular that they felt the deliberations were more orderly and courteous than they might have been had the jury not had to consider the needs of the deaf juror and interpreter.[39] One juror had come into the proceeding believing that Ms. Courtemanche would be penalized because she could not pick up voice cues, but after the trial, the juror noted that some of the hearing jurors had disregarded those cues and that those jurors who weighed the cues heavily could bring them to the attention of other jurors during deliberation.[40]

For Ms. Courtemanche's part, she said she was nervous when she entered the proceeding both because it was her first attempt at jury service and because it was the first opportunity for a deaf person to serve in Pennsylvania. Although she felt the experience was challenging and required intense concentration, she thought her experience showed that deaf people could serve as jurors.[41]

B. The Hammel Jury

The week before the Courtemanche experimental jury convened, Allen Hammel served as a juror in an actual criminal trial in the Court of Common Pleas of Blair County, Pennsylvania.[42] This was the same county in which Judge Brumbaugh had excluded JoAnn DeLong three months earlier.[43]

Of Mr. Hammel's eleven fellow jurors, only one had had any previous exposure to deaf people.[44] Despite this, all were apparently without reserve in their praise of Mr. Hammel's performance.[45] All agreed that neither Hammel nor his interpreter had presented any problems during the trial nor had they interfered with the other jurors' ability to perceive the evidence.[46] All felt that during the deliberations their thoughts were accurately communicated to Mr. Hammel and his were accurately communicated to them.[47] One juror noticed

38. Interviews with experimental jurors, attorneys, and presiding Judge Benjamin Kaplan in Pittsburgh, Pa. (Feb. 10, 1987) [hereinafter Experimental Juror].

39. *Id.* (Jurors Jacaszek, Beck, and Zanic).

40. *Id.* (Juror Kubit).

41. *Id.* (Juror Courtemanche).

42. DeLong v. Brumbaugh, 703 F. Supp. 399, 404 (W.D. Pa. 1989); Gibb, *Deaf Man's Jury Duty Aids Woman's Cause*, Pittsburgh Post-Gazette, Feb. 9, 1987, at 1, col. 3.

43. Gibb, *supra* note 42, at 1.

44. Juror Deborah Myers had spent one summer learning sign language from a deaf girl. Seven of the eleven hearing jurors on Mr. Hammel's panel were deposed in conjunction with Ms. DeLong's case. Copies of Juror Questionnaires on file at N.Y.U. REV. L. & SOC. CHANGE [hereinafter Hammel Juror Questionnaires]. Four were not available on the day of depositions, but indications were that their impressions of Mr. Hammel's service were consistent with the impressions of the other seven hearing jurors.

45. *Id.*

46. *Id.*; *see also DeLong*, 703 F. Supp. at 404 ("Five jurors . . . have testified that the presence of the deaf juror and the interpreter was neither disruptive nor inefficient.").

47. Hammel Juror Questionnaires, *supra* note 44.

early in the deliberation that the interpreter could not properly interpret when more than one person was speaking, but this problem ended when the juror brought it to the attention of the other jurors.[48] All hearing jurors indicated that Mr. Hammel had performed extremely well and four indicated that he had raised points many of the other jurors had missed.[49] One juror, Mr. Charles P. Alessi, who had "questioned Allen's abilities during the trial" was, during deliberation, "amazed at Allen's ability to bring up circumstances, etc., that [Mr. Alessi] had neglected to perceive."[50] Mr. Alessi concluded, "[m]y attitude toward the hearing-impaired is definitely changed due to this experience."[51]

C. *The Finisdore Jury*

In May of 1987, Ms. Marcia Finisdore became the first deaf resident of Delaware County, Pennsylvania to serve on a jury.[52] In March of that year, Ms. Finisdore, a particularly effective advocate for the rights of deaf people, had learned that Delaware County had excluded Mr. Gordon Hutchinson from jury service because he was deaf.[53] Ms. Finisdore scheduled a meeting with Common Pleas Judge Robert A. Wright of Delaware County. After the meeting, which Judge Wright described as "one of the most interesting and informative that I have ever been involved in,"[54] Delaware County officials changed their policy on deaf jurors.[55] Mr. Hutchinson was summoned for service on May 4 but was challenged and excluded because of his profession.[56] Ms. Finisdore, however, was "ironically" summoned on May 5,[57] and was seated on a criminal jury.[58]

Unlike Ms. Courtemanche and Mr. Hammel, who used signing interpreters, Ms. Finisdore used an interpreter who mouthed the testimony to her because she reads lips very well.[59] Ms. Finisdore's fellow jurors did not find her interpreter distracting,[60] and Ms. Finisdore said that after the first five minutes, the interpreter "became a court 'fixture'."[61] Ms. Finisdore did not find

48. *Id.* The jury in the Chicago case, *see supra* note 35, similarly recognized and resolved this problem. People v. Guzman, 125 Misc. 2d 457, 464 n.22, 478 N.Y.S.2d 455, 461 n.22 (Sup. Ct. 1984).

49. Hammel Juror Questionnaires, *supra* note 44; *see also* Gibb, *supra* note 42, at 1.

50. Hammel Juror Questionnaires, *supra* note 44.

51. *Id.*

52. Holtzman, *A Place in Court*, Philadelphia Enquirer, July 18, 1987, at B1, col. 1.

53. Letter from Ms. Marcia Finisdore to Mr. Robert Lape (May 11, 1987) (discussing Ms. Finisdore's jury service) [hereinafter Lape Letter].

54. Letter from the Honorable Robert A. Wright to Ms. Marcia Finisdore (Mar. 20, 1987).

55. *Id.*

56. Lape Letter, *supra* note 53.

57. *Id.*

58. Holtzman, *supra* note 52.

59. Lape Letter, *supra* note 53; *see also* Holtzman, *supra* note 52.

60. Lape Letter, *supra* note 53.

61. *Id.*

jury duty to be "a difficult 'hearing' situation"[62] because of the logical structure and pauses of the trial and because she found it "easy to concentrate on the proceedings."[63]

D. The Yeager Jury

On December 7, 1987, Ms. Ann L. Yeager became the first deaf juror in Perry County, Pennsylvania.[64] Like Mr. Hammel and Ms. Finisdore, Ms. Yeager served in a criminal proceeding.[65] She was aided by a signing interpreter. Ms. Yeager was able to serve throughout the trial although she did not get a chance to deliberate because the defendant changed his plea just before deliberation.[66]

County court officials "were not at all skeptical about having Mrs. Yeager on the jury," and, after the trial, Judge Keith Quigley, before whom she served, said that he would take other deaf jurors.[67] As Judge Quigley put it, "We all have a handicap in some form."[68]

Ms. Yeager said she believed that the other jurors respected her.[69] All were friendly toward her, and she was included as one of the group.[70]

II.
LEGAL PRECEDENT AND THE DEAF JUROR

A. Equal Protection Versus Section 504

This Article places the debate over jury service by people who are deaf in the legal context of the fourteenth amendment's equal protection clause. While the issue could be analyzed under section 504 of the Rehabilitation Act of 1973,[71] that provision is limited in scope to any "program or activity" that receives federal funds.[72] The Supreme Court has not addressed the process by which the "program or activity" must receive funds to qualify. But, even if the funding requirement were interpreted as broadly as it has been, satisfying the requirement could be a time-consuming and costly hurdle for the plaintiff,

---

62. *Id.*
63. *Id.*
64. Good, *Justice Can Be Deaf, County Woman Juror Proves*, Perry County Times, Jan. 14, 1988, at 1, col. 1.
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.* at 3.
70. *Id.* at 3. Ms. Yeager's perceptions are consistent with those of Ms. Wendy Hoffman, the deaf juror in *United States v. Dempsey*, who was elected jury forewoman by her fellow jurors. *See Deaf Juror Beats Sound Barrier as Forewoman in Federal Case*, Silent News, Apr. 1986, at 7 [hereinafter *Forewoman*].
71. 29 U.S.C. § 794 (1982 & Supp. III 1985). This approach was taken successfully in DeLong v. Brumbaugh, 703 F. Supp. 399 (W.D. Pa. 1989).
72. The funding requirement was interpreted broadly in Arline v. School Board of Nassau County, 772 F.2d 759, 763 (11th Cir. 1985), *aff'd on other grounds*, 480 U.S. 273 (1987); *see also* Greater Los Angeles Council on Deafness v. Zolin, 812 F.2d 1103 (9th Cir. 1987).

and possibly an insurmountable one. In fact, if *DeLong* were brought today, Ms. DeLong would probably not be able to meet the funding requirement.[73] The equal protection argument extends to all state juries irrespective of funding sources.[74]

Under both an equal protection action and a section 504 action, a deaf juror would have to prove that she was capable of serving on a jury; otherwise, her presence on the jury would violate the sixth amendment right of the defendant in a criminal case or the seventh amendment rights of the parties in a federal civil case.[75] Since section 504 cannot be applied in a manner that would violate the Constitution, in a section 504 action, the deaf juror must prove her ability to serve just as she would have to in the equal protection context.[76]

B. Recognition that Equal Protection Applies to Jury Service

In *Carter v. Jury Commission of Greene County*,[77] the United States Supreme Court recognized that the equal protection clause of the fourteenth amendment forbids the exclusion of qualified groups from jury service. The Court said, "Whether jury service be deemed a right, a privilege, or a duty, the state may no more extend it to some citizens and deny it to others on racial grounds than it may invidiously discriminate in the offering and withholding of the elective franchise."[78] In resolving *Carter*, the Court focused on the "brand of inferiority" that exclusion from jury service creates:

> The exclusion of Negroes from jury service . . . is "practically a brand upon them . . . , an assertion of their inferiority . . . ." That kind of discrimination contravenes the very idea of a jury — "a body truly representative of the community," composed of "the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds."[79]

---

73. Ms. DeLong was only able to show receipt of federal funds by the Blair County Court system through 1987. *DeLong*, 703 F. Supp. at 404; *see also Zolin*, 812 F.2d at 1111. *But see* Bachman v. Amer. Soc'y of Clinical Pathologists, 577 F. Supp. 1257, 1260-64 (D.N.J. 1983).

74. The fifth amendment's due process clause has been interpreted to include an equal protection component; therefore, federal juries are also subject to equal protection challenge. *See, e.g.*, Bolling v. Sharpe, 347 U.S. 497 (1954); Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975).

75. *See* United States v. Dempsey, 830 F.2d 1084, 1089 (10th Cir. 1987); *see also* Eckstein v. Kirby, 452 F. Supp. 1235 (E.D. Ark. 1978).

76. One potential advantage may exist for a section 504 action over an equal protection action: it may be easier to argue under section 504 that the state should pay for a deaf juror's interpreter. *DeLong*, 703 F. Supp. at 405; *see also Zolin*, 812 F.2d at 1107 (9th Circuit refuses to examine whether section 504 requires the defendants to provide sign language interpreters for jurors serving in the Superior Courts). That issue, however, is beyond the scope of this Article and is best left to another time.

77. 396 U.S. 320 (1970).

78. *Id.* at 330.

79. *Id.* (citations omitted).

Carter stands for the proposition that "there is no jurisdictional or procedural bar to an attack upon systemic jury discrimination by way of a civil suit . . . ."[80] One would expect that such groups would seek jury service for reasons similar to those held by the plaintiffs in *Carter*: to accept their responsibility as citizens and, therefore, assert their equality and shed their image of inferiority. Not surprisingly, jury service offers an opportunity for the deaf community to demonstrate to hearing people not normally exposed to deaf people that deaf people can think, communicate, and interact with hearing people.[81] Yet, the Court does not, in *Carter*, make similarity in purpose enough to bring a group within the protection of the equal protection clause.[82] When a group seeks to accept the responsibility of jury service, it must be prepared to show that the state has no lawful basis for excluding the group. The degree to which a court will reflect on the lawfulness of the basis used for exclusion depends on the legal status of the group.[83] Therefore, to determine whether the equal protection clause guarantees deaf people the same opportunity to jury service that the clause guarantees African-Americans, one must first look to the legal status of deaf people and then to the basis of the state claims for excluding them.

C. *The Structure of Equal Protection Analysis*

Historically, equal protection analysis has for the most part considered two components: the powerlessness of the class affected by the legislation and the legislature's basis for passing the legislation.[84] Until recently, the Supreme Court would apply a soft "rational basis" test when considering legislation passed to affect classes[85] which could protect themselves in the political process and thus were not "suspect,"[86] "quasi-suspect,"[87] or approaching quasi-

80. *Id.*; *see also* Rose v. Mitchell, 443 U.S. 545, 559 (1979) (racial discrimination in the selection of a grand jury is valid grounds for setting aside a criminal conviction).

81. *See Students*, *supra* note 24, at 4-5; Gibb, *supra* note 42, at 1, col. 2.

82. 396 U.S. at 332 (court recognized that state may set valid standards for jury selection, thereby excluding certain individuals from service).

83. *See* City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985) (Court refused to grant suspect class status to people with mental retardation).

84. For a discussion of the history of the Supreme Court's equal protection analysis, see Note, *Rational Basis with Bite: Intermediate Scrutiny by Any Other Name*, 62 IND. L.J. 779 (1987). Beyond class and basis, a court applying equal protection analysis will also consider whether a "fundamental right" is affected by the legislation. *Id.* at 782-83. If a fundamental right is affected, the court will review the basis of the legislation with "strict scrutiny." *Id.* Thus, even if deaf people were not a suspect class, "strict scrutiny" would still apply to the case if jury service were found to be a fundamental right. In *Eckstein*, however, the court held that jury service is not a fundamental right. Eckstein v. Kirby, 452 F. Supp. 1235, 1241 (E.D. Ark. 1978). For a discussion of jury service as a fundamental right, see Van Dyke, *Jury Service Is a Fundamental Right*, 2 HASTINGS CONST. L.Q. 27 (1975).

85. Note, *supra* note 84, at 783-84.

86. Korematsu v. United States, 323 U.S. 214, 216 (1944) (legislation curtailing the rights of racial minorities is immediately suspect).

87. Michael M. v. Superior Court, 450 U.S. 464 (1981) (some level of heightened scrutiny applied to gender classifications).

suspect.[88] This rational basis test was soft because, while applying it, the Court almost always would uphold the statute.[89] Meanwhile, when it used the more exacting levels of scrutiny which it paired with the three types of suspect classes, the Court would be more likely to invalidate the statute.[90]

Were it necessary to the resolution of our issue to establish the precise mechanism the Court would use to introduce heightened scrutiny into a review of legislation affecting deaf people, and hence whether the deaf community constitutes even a quasi-suspect class, judicial precedent would provide little guidance. In *City of Cleburne v. Cleburne Living Center, Inc.*,[91] the Supreme Court chose not to recognize people with mental retardation as a quasi-suspect or suspect class. But while the Supreme Court has tended to view all people facing physical and mental challenges as uniformly "disabled,"[92] differences in the way people with mental retardation and deaf people function in society and in the way these groups have been treated and perceived historically prevent one from saying that because people with mental retardation do not constitute a quasi-suspect class, groups who face other challenges also cannot constitute such a class.

Furthermore, the criteria used to decide that people with mental retardation are not a quasi-suspect class conflict with criteria the Court used in *Frontiero v. Richardson*,[93] an earlier suspect class case which the Court in *Cleburne* endorsed. In *Cleburne*, the Court held that people with mental retardation are not a suspect class because they are not "all cut from the same pattern," and their individual differences require deference to legislators to facilitate flexibility.[94] In *Frontiero*, however, the Court saw a need for suspect protection precisely because gender-based legislation relegated the entire class of females to inferior status without regard to different capabilities of individual members.[95] Thus, while ability differences within the class helped women gain protected status, it hindered people with mental retardation from gaining similar recognition.

The Court in *Cleburne* held that suspect class status also did not apply because protective legislation, such as the Federal Rehabilitation Act, indicated that "lawmakers have been addressing [people with mental retardation's] difficulties in a manner that belies a continuing antipathy or prejudice."[96] But in *Frontiero*, the Court relied on similar legislation to support suspect class status: "Thus, Congress itself has concluded that classifications based upon sex are inherently invidious, and this conclusion of a coequal

88. Plyler v. Doe, 457 U.S. 202 (1982) (children of illegal aliens were a class approaching quasi-suspect).

89. Note, *supra* note 84, at 783-84.

90. *Id.* at 784-85.

91. 473 U.S. 432 (1985).

92. *See id.* at 446.

93. 411 U.S. 677 (1973) (plurality opinion).

94. 473 U.S. at 442.

95. 411 U.S. at 687 (plurality opinion).

96. *Id.* at 443.

branch of Government is not without significance to the question presently under consideration."[97] Despite these contradictions, the Court in *Cleburne* indicated that women remain a specially protected class.[98] Given this tension, it is difficult to predict what the Court will look for in future suspect class cases.

Two lower court cases prior to *Cleburne* held, in the context of jury service, that the deaf community does not constitute a class at all because "we doubt that deaf persons have a community of attitudes or ideas. The misfortune of deafness, rather, exists in all segments of the community."[99] The Court in *Cleburne*, however, did not indicate that people with mental retardation could not be a class because people of any race or gender could have mental retardation. Rather, there the Court considered those with mental retardation as a class of people but chose not to recognize that class as being suspect. Furthermore, the suggestion that there is no deaf "community of attitudes or ideas" is inaccurate.[100]

---

97. 411 U.S. at 687-88 (plurality opinion).

98. 473 U.S. at 440-41.

99. State v. Spivey, 700 S.W.2d 812, 814 (Mo. 1985) (en banc) (discussing the existence of a deaf class as a cognizable class); *see also* Eckstein v. Kirby, 452 F. Supp. 1235, 1240 (E.D. Ark. 1978) (discussing the existence of a deaf class as a suspect class).

100. Deaf people have their own recognized language, American Sign Language, which they often hesitate to share with hearing signers, often switching to Signed English at the appearance of a hearing person. For a discussion of the importance of their language to the culture and community of deaf people, see Padden, *The Deaf Community and the Culture of Deaf People*, in SIGN LANGUAGE AND THE DEAF COMMUNITY 89, 95-101 (C. Baker & R. Battison eds. 1980). Deaf people have their own churches, schools,

> local chapters of national or state organizations of and for the deaf; local social clubs with their own halls, religious groups, athletic teams and leagues, recreational groups, private groups meeting at the members' homes in rotation, and private social gatherings. Between these social events, the average deaf adult usually has most of his weekends filled up, not to say anything of week nights!

L. JACOBS, A DEAF ADULT SPEAKS OUT 71-72 (1974).

The existence of deaf culture is also reflected in a unique "deaf expression" in the arts. People who are deaf have their own theater, the National Theatre for the Deaf, which employs deaf actors and production crew members, and includes within its production schedule plays by deaf playwrights. *Id.* at 95. Regional theater companies for the deaf are also active. Dance companies also exist, such as the Pittsburgh groups, "Beautiful Hands" and "Break Through". Deaf values are expressed through art, literature, and television programming, which is largely produced through Gallaudet University. Padden, *supra*, at 97-98. The literature of deaf culture provides particularly clear evidence that deaf people feel they have a culture and that they are proud of it. "In much the same way that Americans support and propagate the 'American Dream,' these success stories [about finding a place in deaf culture] reinforce the strong belief and pride Deaf people have in their way of life: that it is good and right to be Deaf." *Id.* at 98; *see also* Fant, *Drama and Poetry in Sign Language: A Personal Reminiscence*, in SIGN LANGUAGE AND THE DEAF COMMUNITY 193 (C. Baker & R. Battison eds. 1980).

Finally, to help protect the interests of the deaf community in legal settings, there is a National Center for Law and the Deaf, located at 800 Florida Ave., N.E., Washington, D.C. 20002.

All of this is not to say that there are not disagreements within the deaf community, but the same could be said of any minority group. People within the deaf community have ongoing internal debates about how to educate their children and how to relate to the hearing world. Within the deaf community, some feel that speech should be stressed in school while others feel

Whether the Court might grant deaf people status as a suspect class is not determinative, however, because the exclusion of deaf jurors should be found unconstitutional even under a rational basis analysis. In the last seven years, the Supreme Court has begun to use a form of rational basis review which allows a court to review legislation with a heightened scrutiny similar to that used in quasi-suspect classification cases.[101] Thus, survival of the legislation is much less certain when a court applies this new form of rational basis test. This new form of rational basis is relevant to the deaf juror's situation because it has been applied in cases involving classes which were traditionally unable to defend themselves but which were not recognized by the Court as suspect at some level.[102] Thus, even if deaf people were not found to constitute one of the suspect classes, under the new rational basis analysis their status in society might still require a court to review their exclusion from jury service with heightened scrutiny.

This last conclusion indicates that for equal protection purposes, paradoxically, a class can be treated like a suspect class without being called a suspect class, and that paradox is in fact reality.[103] This may further indicate that the Court has grown tired of its multi-tiered approach to suspect classification and equal protection and may now intend to simplify the law through an all encompassing review by a single standard called "rational basis." Perhaps the Court has recognized the last suspect class. Such speculation, however, is beyond the scope of this Article. For this Article, it is enough to know that the line between class examination and scrutiny of legislative purpose has been blurred,[104] and that questions of patterns of prejudice which traditionally fit within suspect class analysis can now be raised in the rational basis scrutiny of legislation. Thus, regardless of whether they are called a suspect class, because deaf people have suffered through a history of discrimination, attempts to exclude them from jury service must be reviewed, one way or the other, with heightened scrutiny.

The various standards the Court may apply in evaluating a pattern of discrimination are reflected in the Supreme Court's review of legislation affecting people with mental retardation. In *Cleburne*, the Supreme Court chose

---

signing skills are most important. Still others advocate a compromise between the two. L. JACOBS, *supra*, at 18-29, 30-45. Deaf people also differ on the degree to which the deaf should assimilate into the hearing world, *id.* at 29; the way they present themselves, Padden, *supra*, at 96-97; and the degree to which hearing people can assimilate into the deaf world, *id.* at 101. Such debates mirror similar debates in other minority groups. Similar examples include the debates between followers of W.E.B. DuBois and of Booker T. Washington in the early Twentieth Century and between various African-American leaders of the sixties on the direction that African-American Society should take. *See* A. DAVIS & S. SAUNDERS, CAVALCADE: NEGRO AMERICAN WRITING FROM 1760 TO THE PRESENT 121-22, 367-68 (1971).

101. Note, *supra* note 84, at 787-800.

102. *See* City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985) (applying heightened scrutiny to legislation affecting people with mental retardation, even though they are not a suspect class).

103. Note, *supra* note 84, at 801.

104. *Cleburne*, 473 U.S. at 456 (Marshall, J., dissenting).

not to recognize people with mental retardation as a suspect class; yet in deciding that the City of Cleburne had no rational basis for a zoning ordinance that required a special use permit for homes for people with mental retardation, the Court recognized that people with mental retardation historically have faced "prejudice" and "discrimination."[105] Perhaps more to the point was Justice Stevens's concurring opinion, joined by Chief Justice Burger. The votes of Stevens and Burger were essential to the majority, and in their concurrence the two indicated a belief that a separate step for suspect classification review was unnecessary in equal protection analysis. Their concurring opinion maintained that this is so because the rational basis test requires one to consider whether the affected class has "been subjected to a 'tradition of disfavor' by our laws" and whether some characteristic of the disadvantaged class "justifies the disparate treatment."[106] Within the rational basis context, the concurrence agreed with the court of appeals decision under review that "through ignorance and prejudice the mentally retarded 'have been subjected to a history of unfair and often grotesque mistreatment.' "[107] That judicial notice becomes particularly significant when coupled with similar statements in the dissent of Justice Marshall, joined by Justices Blackmun and Brennan.[108] Between these two opinions, five justices in *Cleburne* indicated that people with mental retardation have been victimized by severe prejudice in this country and that one cannot ignore that prejudice while reviewing legislation that affects people with mental retardation. Thus, even though people with mental retardation may not constitute a suspect class, a majority of the Court believed that legislation which affected the group must be supported by reasons sufficient to rise above the spectre of "unfair and often grotesque mistreatment."[109] A similar analysis should be applied to discrimination against deaf people.

D. Equal Protection Analysis and the Deaf Juror

1. A History of Discrimination: The Tint on the Rational Basis Looking Glass

Consistent with the Court's view in *Cleburne* that a history of unfair discrimination affects the equal protection review of legislation,[110] the task is now to consider whether deaf people, like people with mental retardation, have experienced such a history. The evidence seems clear that they have.

Early Greek, Roman, and Hebrew law all reflected a belief that people who were deaf were inferior both legally and intellectually.[111] During the Middle Ages, the Christian Church went so far as to believe that deaf people

105. 473 U.S. at 446, 450.
106. *Id.* at 452-53 (Stevens, J., concurring).
107. *Id.* at 454 (citing 726 F.2d 191, 197 (5th Cir. 1984)).
108. *Id.* at 461-64 (Marshall, J., dissenting).
109. *Id.* at 454.
110. *See supra* text accompanying notes 106-09.
111. P. HIGGINS, OUTSIDERS IN A HEARING WORLD 24-25 (1980).

could not achieve immortality.[112] Closer to home, nineteenth century American law restricted the rights of deaf people to vote, form contracts, and travel.[113] Education of the deaf in the United States did not begin until more than 200 years after it began in Europe.[114]

During the twentieth century, irrational restrictions on deaf people have continued. For example, until recently deaf children in oral schools were punished to discourage them from relying on sign language.[115] In addition, although research indicates that deaf people may have a lower driving accident rate than does the general public,[116] traditionally they have had trouble obtaining a driver's license or insurance.[117] Even today deaf people remain "unemployed, underemployed, and likely to be passed over for promotion,"[118] and their right to be heard through an interpreter is often ignored or abused. Deaf people have requested and been denied interpreters for welfare appointment hearings,[119] and deaf parolees in Western Pennsylvania routinely must meet with their parole officers without interpreters.[120] In some parts of Pennsylvania people who are deaf "receive" state guaranteed mental health services from non-signing counselors who do not secure interpreters.[121] In one particularly insensitive case, a department of youth services refused to supply deaf parents with an interpreter during a child abuse investigation because the department claimed that the couple's child, who was hearing, could interpret. It was this child who had reported the parents to the department for allegedly abusing her.[122]

Courts have recognized this pattern of discrimination. For example, in *People v. Guzman*,[123] while finding that allowing a deaf person to serve as a juror did not violate a defendant's sixth amendment rights, the Supreme Court of New York County spoke to this unequal treatment:

---

112. *Id.* at 25.

113. *Id.*

114. *Id.*

115. *Id.* at 65.

116. *Id.* at 26-27.

117. *Id.* at 26. Furthermore, their inability to get life insurance at a reasonable rate was the driving force behind the formation of the insurance company for deaf people, the National Fraternal Society of the Deaf, which continues to thrive today. L. JACOBS, *supra* note 100, at 76.

118. P. HIGGINS, *supra* note 111, at 27. Although in the course of writing this piece, the author spoke with three deaf attorneys, two deaf Ph.D.s, a deaf college teacher, and a deaf engineer and learned of a deaf judge and a deaf doctor, "[e]ven educators of the deaf have promoted the idea that the deaf should be satisfied with trade skills and not aspire to higher education." *Id.*

119. Letter from Dr. Rita Gesue, Executive Director of Pittsburgh Hearing, Speech and Deaf Services, to Mr. Randy Lee (June 6, 1989) (discussing government provision of interpreters).

120. *Id.*

121. Letter from Dr. Paul Loera, Director of Mental Health Services for Pittsburgh Center on Deafness, to Mr. Randy Lee (June 6, 1989) (discussing deaf education and mental health) [hereinafter Loera Letter].

122. *Id.*

123. 125 Misc. 2d 457, 478 N.Y.S.2d 455 (Sup. Ct. 1984).

> Historically, the deaf have been viewed and treated as a distinct group separate from and inferior to the rest of society. This is exemplified in the treatment of the deaf with respect to all aspects of their life from education through the imposition of legal disabilities.
>
> From biblical times, when the deaf were considered to be possessed by evil spirits, to the present, the deaf have been viewed as intellectually slower than hearing persons. At Common Law the deaf were considered to be *propter defectum* (incompetent on account of or for some defect). Disqualifications for age and feeblemindedness also belonged to this class. The anachronistic misperception that the deaf are intellectually slower has been repudiated scientifically. That repudiation notwithstanding, nearly every newspaper story about Mr. Naiman [a prospective deaf juror] called him "deaf and dumb." This cannot be excused as "just an expression" any more than "Hymie" or "Nigger" can be so excused. Since "dumb" cannot mean speechless — Mr. Naiman is extremely verbal and communicates well — there is only one thing it can mean.[124]

Some laws in America aimed at deaf people traditionally have had "charitable" aims.[125] Yet, even these must be approached cautiously. In *Frontiero v. Richardson*,[126] the Supreme Court noted a similar pattern in the historical treatment of women: "Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage."[127] As one might expect, just as charitable paternalism had negative effects on women, it also has had them on the deaf population: "Whether denied legal rights, paternalistically cared for so as not to be taken advantage of, or guarded against lest they become a burden, the deaf were treated as incompetent. Of course, such treatment no doubt led some deaf people to become incompetent. A self-fulfilling prophecy was at work."[128]

A clear indication that paternalism with respect to deaf people has been misguided is the use of the phrases "deaf and dumb" and "deaf and mute."[129] Paternalism can succeed only when one is sensitive to the needs and views of those the person is trying to protect. If the general public were in fact sensitive to the needs and views of the deaf community, it would realize not only that the terms "deaf and dumb" and "deaf and mute" are inaccurate because deaf people are not necessarily stupid or speechless, but also that those terms are as inflammatory to a deaf person as "nigger" is to an African-American.

The events that took place at Gallaudet University in March, 1988, could

---

124. 125 Misc. 2d at 468, 478 N.Y.S.2d at 463-64.
125. P. HIGGINS, *supra* note 111, at 25, 26.
126. 411 U.S. 677 (1973).
127. *Id.* at 684 (plurality opinion).
128. P. HIGGINS, *supra* note 111, at 25.
129. *See supra* text accompanying note 124.

indicate that the deaf community is strong enough to defend itself against any discrimination, but that argument would not fully reflect what happened at Gallaudet. In March, 1988, the Deaf Community protested the appointment to the presidency of Gallaudet, the nation's leading deaf academic institution,[130] of a person lacking a background in deafness, deaf education, or sign language.[131] In response to student-led protests, both the newly-appointed president of that institution and the chairman of the board of directors resigned and were replaced by deaf people.[132] One must note here, however, that what happened and was remedied at Gallaudet happens but is not remedied in schools for deaf children all over the country.[133] At one school for deaf children recently, two consecutive school principals had no experience in deafness nor in sign language, and neither principal bothered to fill this void. One was quoted as saying he "had too much paperwork to work on the language."[134]

Gallaudet University is probably the center for deaf culture, education, and political action in America. It is a world in which hearing people are the disadvantaged minority who must struggle with the language and work to conform. The strength of deaf people at Gallaudet, however, does not reflect their strength in the hearing world. In fact, it is a statement about how much strength hearing people have over deaf people that the hearing world would even try to place as president of Gallaudet a person with no background in deafness.

The point here is not that hearing people cannot contribute to deaf culture nor that hearing people cannot lead deaf schools. In fact, Gallaudet, the first school for the deaf in the United States, was founded by a hearing person, Thomas Hopkins Gallaudet,[135] whose memory remains an important part of deaf history.[136] Gallaudet College has had many hearing presidents who inspired student admiration rather than student protest.[137] Rather, the point is that the deaf community is so much at the mercy of an often insensitive hearing world that deaf schools, a foundation of deaf culture, often find themselves at the mercy of imposed and alien leaders who are prone to conform deaf culture to the priorities or needs of the leader rather than vice versa.

Keeping this pattern of discrimination in mind, this Article now consid-

---

130. D. MOORES, EDUCATING THE DEAF: PSYCHOLOGY, PRINCIPLES, AND PRACTICES 53 (1978).

131. M. Sinclair & C. Sanchez, *Gallaudet U. Selects First Deaf President*, Washington Post, Mar. 14, 1988, at A1, col. 1.

132. *Victory for Deaf Power*, TIME, Mar. 28, 1988, at 31; *see also A Cry from the Deaf Is Heard in Washington*, U.S. NEWS & WORLD REPORT, Mar. 21, 1988, at 9.

133. There are now, at most, two deaf superintendents of deaf schools in the United States. Walker, *Aristotle Was Wrong*, PARADE, Apr. 23, 1989, at 5.

134. Loera Letter, *supra* note 121. For additional examples of the extent and influence of hearing perspectives on the education of deaf people, see L. JACOBS, *supra* note 100, at 17-45.

135. D. MOORES, *supra* note 130, at 55.

136. *Id.* at 57.

137. For an example, see *id.* at 68-70 (discussion of Edward Miner Gallaudet, Gallaudet's first president and a person who was hearing).

ers the state's reasons for excluding deaf people from jury service. In reviewing those reasons, one must appreciate that as historically people have been wrong about what the deaf can do in other areas, they may well be wrong about what they can do here.

2. *Potential Bases for Excluding Deaf Jurors*

Any interest a state would have in excluding a deaf juror would arise out of four issues which courts have considered when deciding whether a deaf person aided by an interpreter can serve as a juror:

1) Whether sign languages can provide an accurate transliteration of spoken English;[138]

2) Whether the presence of an interpreter would slow down the proceeding;[139]

3) Whether deaf people can assess the credibility of witnesses;[140] and

4) Whether the presence of an interpreter in the deliberation room would inhibit the jury's discussion of the case.[141]

Courts have raised these issues while interpreting either a state or federal statute requiring that a juror not be incapable, by reason of mental or physical infirmity, to render satisfactory jury service,[142] or the sixth and fourteenth amendments' guarantees of a criminal trial by jury.[143] In either context, discussions of these issues have come down to whether the deaf juror can function in a manner consistent with constitutional requirements that jurors be fair.[144]

Although deaf people have served in a number of jurisdictions,[145] only five court opinions have discussed these four issues in the context of jury service. In three of these cases, *United States v. Dempsey*,[146] *People v. Guzman*,[147] and *State v. Spivey*,[148] the courts considered these issues in the context of sixth amendment and statutory concerns raised by a party. In one case, *Eckstein v. Kirby*,[149] the court was presented with these issues by a prospective deaf juror asserting his equal protection rights, and, in *DeLong v. Brumbaugh*,[150] as noted above,[151] the issues arose in the context of a potential deaf juror asserting rights under the Federal Rehabilitation Act. In *Dempsey*, *DeLong* and

138. Eckstein v. Kirby, 452 F. Supp. 1235, 1242 (E.D. Ark. 1978).
139. *Id.*
140. *Id.* at 1243.
141. *Id.* at 1244.
142. 28 U.S.C. § 1865(b)(4) (1987).
143. United States v. Dempsey, 830 F.2d 1084, 1087 (10th Cir. 1987).
144. *Id.*
145. *See supra* note 11.
146. 830 F.2d 1084 (10th Cir. 1987).
147. 125 Misc. 2d 457, 478 N.Y.S.2d 455 (Sup. Ct. 1984).
148. 700 S.W.2d 812 (Mo. 1985) (en banc).
149. 452 F. Supp. 1235 (E.D. Ark. 1978).
150. 703 F. Supp. 399 (W.D. Pa. 1989).
151. *See supra* note 71.

Guzman, the courts found deaf people could serve; but in *Spivey* and *Eckstein*, the courts found that they could not, with the court in *Spivey* relying on *Eckstein* to so find.[152]

a. Signed English and Spoken English

The legal system places a premium on jurors receiving not only the meaning but the exact words spoken by people at trial.[153] While often meaning alone is sufficient, we can all imagine cases which would turn on whether someone had said a couple of "magic words."

Fulfilling this need are forms of sign language called "Signed English," which can parallel the English language exactly through a combination of signs, fingerspelling, and markers.[154] Signed English, therefore, can provide the deaf juror with the necessary exact representation of the English language spoken at trial.[155]

In spite of this, the court in *Eckstein* referred to "the limited vocabulary available through manual sign language"[156] and also indicated that "technical" or "complex medical" testimony could not be interpreted.[157] These views were rejected in *Dempsey*,[158] *DeLong*,[159] and *Guzman*,[160] each of which pointed out that courts use sign language and interpreters in other contexts. Furthermore, the court in *Guzman* explicitly rejected both concerns noted in *Eckstein*, stating that through signed English "the exact words in English are transmitted from the speaker through the signer to the listener,"[161] and that "deaf persons are as capable as anyone else of understanding legal jargon or any other technical jargon used by expert witnesses[;] the deaf are found in many highly technical professions including medicine, engineering, and the law."[162]

In the trials involving signing interpreters in Pennsylvania, the interpreters have all used Signed English.[163] In the case involving Ms. Finisdore, who lip reads and used a speech interpreter who mouthed the words being spoken at trial rather than signing them, the representation was also word-for-

152. 700 S.W.2d at 814.

153. "Nearly every state requires that its jurors be . . . able to understand English." Carter v. Jury Commission of Greene County, 396 U.S. 320, 333 (1970).

154. L. RIEKEHOF, THE JOY OF SIGNING 11 (1980); *see also* Statement of Expert Witness Karen Walkney, DeLong v. Brumbaugh, 703 F. Supp. 399 (W.D. Pa. 1989) (No. 87-0369) [hereinafter Walkney Statement].

155. Walkney Statement, *supra* note 154.

156. 452 F. Supp. at 1242.

157. *Id.*

158. 830 F.2d at 1088.

159. 703 F. Supp. at 404-05.

160. 125 Misc. 2d at 462, 465, 478 N.Y.S.2d at 460, 462.

161. *Id.* at 458, 478 N.Y.S.2d at 457.

162. *Id.* at 462, 478 N.Y.S.2d at 460.

163. Interview with Ms. Candace Courtemanche, in Pittsburgh, Pa. (Feb. 10, 1987); interview with Mr. Stan Swope, interpreter for Allen Hammel, in Pittsburgh, Pa. (Mar. 5, 1987); Good, *supra* note 64, at 3.

word.[164] Despite the sign-for-word structure of Signed English, use of the language presents some problems not mentioned in the opinions but certainly nothing that has proven to be insurmountable. First, some hand signs may suggest more than one word. The signs for "behavior" and "demeanor", for example, are very similar. However, because in total communication the word corresponding to the sign would be mouthed simultaneously, the deaf juror would have little chance to confuse them.[165]

Second, deaf people may not understand some idioms.[166] The court in *DeLong*, however, felt that an interpreter would place these idioms in context so the deaf person would understand them.[167] Furthermore, to the extent this is a problem, it is also a problem with hearing jurors. Its consideration is reminiscent of the use of and the assumption underlying the phrase "deaf and dumb": although no one tests the vocabulary nor the knowledge of idioms of either hearing or deaf prospective jurors, people assume that all hearing people beyond a certain education level have adequate knowledge of English but that all deaf people, regardless of how extensive their education, have inadequate knowledge. Such an assumption must be rejected, however, because one cannot seriously argue that the high school degree of a hearing person indicates greater mastery of English than the M.D., Ph.D., or J.D. of a deaf person.

A third potential problem is language differences between the interpreter and the potential deaf juror. Just as in spoken English where the meanings of words may vary from community to community,[168] the signs for words may vary slightly from one deaf community to the next.[169] In the cases in Pennsylvania, this never appeared as a problem because the jurors were all served by interpreters whom they had used before and with whom they were comfortable.[170] In situations where this is not possible, before agreeing to work together, the interpreter and the potential juror would communicate with one another and determine language skills, levels, and backgrounds. If the two could not communicate at an appropriate level, the interpreter is bound by the Code of Ethics of the Registry of Interpreters for the Deaf to refuse the

164. Lape Letter, *supra* note 53.

165. Walkney Statement, *supra* note 154; *DeLong*, 703 F. Supp. at 403.

166. Interview with Ms. Diana Saunders, President, Allegheny County Chapter of the Registry of Interpreters for the Deaf, in Edgewood, Pa. (Aug. 26, 1988) [hereinafter Saunders].

167. 703 F. Supp. at 403. Ms. Saunders, plaintiff's expert at trial, suggested that to resolve the problem, she could insert a clarification of an idiom which she felt a client might not understand. For example, for "out the window" she could sign "out the window finished." Saunders, *supra* note 166.

The problem is not that great since idioms are seldom the critical element in trial, and, to the extent an idiom were crucial, one would expect counsel would get it clarified for hearing and deaf jurors alike. Furthermore, if a deaf juror did not understand an idiom, during deliberations she could ask fellow jurors what they thought it meant. Such a discussion would guarantee the understanding not only of the deaf juror but the hearing jurors as well.

168. In Boston, for example, a "milkshake" has no ice cream, but in Pittsburgh a "milkshake" has ice cream.

169. The sign for "restaurant" in Philadelphia means "candy" in Pittsburgh.

170. Lape Letter, *supra* note 53; Good, *supra* note 64.

assignment.[171]

Pennsylvania's experience has provided two particularly strong supports for the position expressed in *Dempsey* and *Guzman*. First, in the mock trial in which Ms. Candace Courtemanche served, Ms. Courtemanche's performance reinforced the *Guzman* court's claim that deaf people were "as capable as anyone else of understanding technical jargon"[172] because her approach to the medical testimony was particularly sharp. There, as noted earlier,[173] the nature of the plaintiff's back injury was relevant to the issue of damages, and each party called a doctor who testified to a different view of that injury. This difference required the jury to evaluate the credibility of the doctors' testimony. When the jurors addressed this question, the hearing jurors focused on the demeanor of the doctors. However, when Ms. Courtemanche contributed to this discussion, she focused on the substance of the medical testimony.[174]

The second support came from Dr. Harry Bornstein, an expert witness called to testify in the JoAnn DeLong case.[175] Dr. Bornstein is a noted scholar on manually coded languages who has developed a form of signed, or manually-coded, English.[176] Dr. Bornstein testified that forms of signed English could give a deaf person an accurate representation of the English spoken at trial.[177] The conclusion that necessarily follows from this testimony is that use of signed English should not be a reason to exclude a deaf juror, and Dr. Bornstein, in fact, testified that Ms. DeLong's exclusion "could not be justified on the basis of her impairment."[178]

Outside of Pennsylvania, the most impressive example of the accuracy of signed English, and also of what some deaf people can do with it, is an Illinois jury in which a deaf woman proved to be "an invaluable asset in the deliberative process" because of her ability "to recall testimony verbatim."[179]

---

171. "Service Providers shall accept assignments using discretion with regard to skill, setting, and the consumers involved." CODE OF ETHICS OF THE REGISTRY OF INTERPRETERS FOR THE DEAF, prov. 4.

In *Eckstein*, the court suggested that such a meeting could cause delay. Eckstein v. Kirby, 452 F. Supp. 1235, 1242 (E.D. Ark. 1978). Ms. Saunders, however, pointed out that such a meeting would take only fifteen minutes and could take place before the day of jury selection. Saunders, *supra* note 166.

172. People v. Guzman, 125 Misc. 2d 457, 462, 478 N.Y.S.2d 455, 460 (Sup. Ct. 1984).

173. *See supra* text accompanying note 37.

174. Trial Video, *supra* note 31.

175. Testimony of Dr. Harry Bornstein, DeLong v. Brumbaugh, 703 F. Supp. 399 (W.D. Pa. 1989) (No. 87-369) [hereinafter Bornstein Testimony].

176. *Id.*

177. *Id.*

178. *Id.* When Dr. Bornstein concluded in his testimony that deaf people could serve as jurors, he based his conclusion about jury service on his knowledge of California's experience in the area and also on his extensive work in deafness. *Id.* Dr. Bornstein currently resides in California where the right of deaf people to serve on juries is guaranteed by statute. *See* CAL. CIV. PROC. CODE §§ 198, 205 (West 1982 & Supp. 1988). *But see* CAL. CIV. PROC. CODE § 607 (West 1982 & Supp. 1988) (allowing for exclusion of deaf people if special equities of the case so require).

179. People v. Guzman, 125 Misc. 2d 457, 464 n.22, 478 N.Y.S.2d 455, 461 n.22 (Sup. Ct. 1984).

b. Delays and Other Interpreter Inconveniences

The court in *Eckstein* noted three possible sources of delay which could result from use of an interpreter:

1) Delay because a remark would be "relayed to [the juror] through the interpreter,"[180]

2) Delay to find a second interpreter should the first one prove to be inappropriate,[181] and

3) Delay from other "unforeseen contingencies."[182]

The courts in *Dempsey*, *DeLong*, and *Guzman*, however, all dismissed any such concerns, noting that "the propriety of using interpreters for both deaf defendants and deaf witnesses is well settled."[183] The court in *Guzman* also noted that one deaf member of the Manhattan District Attorney's office regularly argues, aided by an interpreter, before the Appellate Division of the Supreme Court of New York.[184] While that may not be trial work, deaf students do participate in New York's high school mock trial competition and apparently have not slowed down the tournament, although they have managed to derail some of the opposition.[185]

The interpreters in the Pennsylvania trials have not slowed down the proceedings. The attorneys in Ms. Courtemanche's trial indicated that they had done nothing differently because of the interpreter,[186] and Judge Kaplan indicated to Mr. Tom McMullen, Ms. Courtemanche's interpreter, that the breaks Judge Kaplan allowed the interpreter were the same ones he would have provided the court reporter.[187] One reason that interpreting for the deaf juror does not slow down the proceeding is that it is silent and, therefore, can occur while the speaker is still talking. A second reason is that one need not consciously slow down her speech to accommodate an interpreter any more than one would have to do so for a court reporter. It is fair to say, however, that interpreters are not saddened when someone who speaks very quickly gives way to a more moderately paced speaker. The same can be said, however, for court reporters.

Pennsylvania's experience has also not included delays to replace inappropriate interpreters. Delays have not arisen here for two reasons. First, as the interpreter noted in *Eckstein*,[188] certified interpreters are bound by their code of ethics not to accept an assignment that they do not have the skill to

180. Eckstein v. Kirby, 452 F. Supp. 1235, 1242 (E.D. Ark. 1978).

181. *Id.*

182. *Id.*

183. United States v. Dempsey, 830 F.2d 1084, 1088 (10th Cir. 1987); *see also* DeLong v. Brumbaugh, 703 F. Supp. 399, 405 (W.D. Pa. 1989); *Guzman*, 125 Misc. 2d at 465, 478 N.Y.S.2d at 462.

184. *Guzman*, 125 Misc. 2d at 462 n.14, 478 N.Y.S.2d at 460 n.14.

185. *Deaf Mosaic: Michael Schwartz* (Gallaudet University television production, tape No. 305, 1987-1988 season) (copies available through Gallaudet University).

186. Experimental Juror, *supra* note 38, (Juror Courtemanche).

187. Trial Video, *supra* note 31.

188. Eckstein v. Kirby, 452 F. Supp. 1235, 1242 (E.D. Ark. 1978).

fulfill; when an interpreter does show up on the day of trial, she does so well-equipped for the job. Second, as noted earlier,[189] there is so much interaction between a local deaf community and the local professional interpreters that both the deaf person and the interpreter know one another beforehand and are comfortable with one another's ability to communicate. Even when this is not the case, however, accommodations can be made easily. In JoAnn DeLong's equal protection suit against Judge Brumbaugh, the federal court sat so far from Ms. DeLong's home that she and the court interpreter for the trial, Ms. Twyla Lightower, had not previously worked together. To compensate for this, the two met before trial to check language skills and, thus, avoid any delays at trial.[190] Ms. Lightower has indicated that two people can know if there will be a language problem within fifteen minutes of meeting.[191]

National experience in this area has paralleled that of Pennsylvania. In discussions of their experiences with deaf jurors, judges in California,[192] Colorado,[193] Kansas,[194] Texas,[195] and Washington[196] have all indicated that delay was not a problem.

Although not mentioned in *Eckstein*, another potential problem which might create delay is courtroom distraction created by the interpreter. This, however, has not surfaced as a problem. In the mock trial involving Ms. Courtemanche, neither the judge, the jurors, nor the attorneys found the interpreter to be a distraction,[197] and Ms. Finisdore left her trial with the impression that this was true of her case as well.[198] In addition, interpreters for the deaf do not seem to present a danger of distraction when they serve deaf witnesses and defendants. The Tenth Circuit in *Dempsey* explained that people are now accustomed to seeing interpreters for the deaf,[199] and, to the extent this is true, it would explain why interpreters have been no more a distraction in previous trials than the court stenographer. If, however, interpreters for the deaf remain a novelty and, therefore, a distraction, the solution is not to continue to hide interpreters and deaf people but to excuse those hearing people who cannot accept their presence. Certainly the courts would not excuse an African-American juror because whites on the jury were distracted by an African-American sitting with them.

---

189. *See supra* text accompanying notes 170-71.
190. Interview with Ms. Twyla Lightower, in Pittsburgh, Pa. (Oct. 14, 1988).
191. *Id.*
192. People v. Guzman, 125 Misc. 2d 457, 464 n.21(1), 478 N.Y.S.2d 455, 461 n.21(1) (Sup. Ct. 1984).
193. *Forewoman*, *supra* note 70.
194. *Deaf Juror Cuts Barriers in Kansas Court*, Silent News, Mar. 1986, at 4.
195. *Guzman*, 125 Misc. 2d at 464 n.21(5), 478 N.Y.S.2d at 461 n.21(5).
196. *Id.* at 464 n.21(7), 478 N.Y.S.2d at 461 n.21(7).
197. Experimental Juror, *supra* note 38 (Juror Courtemanche).
198. Lape Letter, *supra* note 53.
199. United States v. Dempsey, 830 F.2d 1084, 1091 (10th Cir. 1987).

c. *Credibility Assessment and Deaf Jurors*

In *Eckstein*, the court noted that a juror cannot analyze evidence if she cannot perceive it,[200] and then indicated that of all the ways one might be unable to perceive, deafness would be the most damaging for a juror because "most evidence consists of oral testimony . . . and the function of a juror will largely be that of assessing the credibility of witnesses and analyzing testimony."[201] The court said that when Ms. Eckstein had reported for jury duty, the court had observed that she "had to keep her eyes constantly on the interpreter and could not watch the facial expressions of the attorney asking questions, hear their voice inflections, and follow their intonation pattern."[202] The

200. Eckstein v. Kirby, 452 F. Supp. 1235, 1243 (E.D. Ark. 1978).

201. *Id.* In dismissing the deaf juror, Ms. Eckstein, the court relied primarily on a New York case in which the court held that blind people could not serve as jurors. Lewinson v. Crews, 28 A.D.2d 111, 282 N.Y.S.2d 83 (1967), *aff'd*, 21 N.Y.2d 898, 236 N.E.2d 853, 289 N.Y.S.2d 619, *remittitur amended*, 21 N.Y.2d 1004, 238 N.E.2d 326, 290 N.Y.S.2d 924, *appeal dismissed*, 393 U.S. 13 (1968). The Eckstein court analogized deafness to blindness and found that "[t]he sense of hearing is, indeed, perhaps even more important to effective service as a juror than the sense of sight." 452 F. Supp. at 1243.

The New York Supreme Court, however, did not accept the same analogy, and, as noted earlier, allowed the service of deaf jurors in People v. Guzman, 125 Misc. 2d 457, 478 N.Y.S.2d 455 (Sup. Ct. 1984). Furthermore, in the same year as the court decided *Guzman*, the Civil Court for the City and County of New York read *Lewinson* to exclude blind people from jury service only when the case involved "a significant portion" of physical evidence. Jones v. New York City Transit Auth., 126 Misc. 2d 585, 588-89, 483 N.Y.S.2d 623, 627 (Civ. Ct. 1984). The court explicitly rejected the argument that blindness diminished a person's ability to determine witness credibility because she could not see a witness. *Id.* at 589, 483 N.Y.S.2d at 627. The court noted that "body movements and voice intonations are only two examples of how an individual proceeds to formulate attitudes on veracity." *Id.* The court also indicated that even if blindness did limit that ability, the limitation would be overcome through the sharing during deliberations. *Id.* Under this view of *Lewinson*, deaf jurors would be able to serve more frequently than blind jurors, because deaf people can see physical evidence and can draw on comparable means to determine credibility.

Ironically, the *Eckstein* court also relied on a Pennsylvania case, Commonwealth v. Brown, 231 Pa. Super. 431, 332 A.2d 828 (1974), the same case on which Judge Brumbaugh relied in excluding Ms. DeLong from jury service. Sidebar, *supra* note 25. *Brown*, however, offers little to help resolve the issue of whether the Constitution guarantees to deaf people the right to serve as jurors when aided by an interpreter. In fact, *Brown* involved a hearing-impaired juror who did not acknowledge his hearing-impairment to the court nor seek the aid of an interpreter. The court learned of the impairment only when the jury was polled after it rendered its verdict and the hearing-impaired juror responded "not-guilty" although the jury had found "guilty." 231 Pa. Super. at 433-35, 332 A.2d at 830. Later, when the juror was questioned, he admitted that he had not heard all the testimony. *Id.* at 434 n.2, 332 A.2d at 830 n.2.

In deciding that the presence of this juror violated the criminal defendant's sixth amendment right to an impartial jury, the court said "[w]hile a juror is not disqualified per se because of his deafness, where the deafness is of such degree as to indicate that the juror may not have heard material testimony, the juror must be disqualified." *Id.* at 436, 332 A.2d at 831. For the *Brown* court, it was not the deafness of the juror but the missing of material testimony that violated the defendant's right. Thus, even under *Brown*, if a deaf juror aided by an interpreter would not miss material testimony, she would be allowed to serve.

For additional criticism of *Eckstein*, see Note, *Jury Selection: The Courts, the Constitution, and the Deaf*, 11 PAC. L.J. 967 (1980); Note, *Due Process: The Deaf and Blind as Jurors*, 17 NEW ENG. L. REV. 119 (1981).

202. *Eckstein*, 452 F. Supp. at 1242.

court believed, therefore, that her ability to assess the credibility of witnesses "would be somewhat limited."[203]

Consistent with their findings on the first two issues, the *Dempsey*, *DeLong* and *Guzman* courts found that deaf people could evaluate witness credibility. The court in *DeLong* indicated that contrary to the determination below, deaf people "can and do make credibility determinations on a daily basis by use of signed interpretations, lip reading, observing facial and bodily expressions, context, consistency and personal demeanor of the speaker, and other observable factors."[204] The court in *Dempsey* noted that the juror in that case was able to evaluate the demeanor of witnesses because her interpreter and the witnesses were in the same line of vision, enabling Ms. Hoffman to see both.[205] The court acknowledged that even though the interpreter was next to the witness, Ms. Hoffman still would not be able to evaluate the witnesses continuously. The court, however, pointed out that even hearing jurors might have to look away to take notes.[206] The *Guzman* court noted further that through facial expressions and movements, qualified interpreters can transmit "such things as pauses, modulations of voice, and the speed of the declarant's speech."[207] The court questioned whether the average witness has more "subtle nuances in their vocal inflections" and whether such subtle nuances are reliable or even mean the same thing to all hearing jurors.[208] The *Guzman* court also pointed to the success deaf jurors had enjoyed in other jurisdictions,[209] and both courts noted that even hearing jurors have limits on their abilities to assimilate or evaluate testimony and evidence.[210] As the court in *Dempsey* pointed out, the Constitution does not entitle the defendant to perfect jurors, only fair ones.[211] The *Guzman* court further elaborated by saying that the system requires more than one juror because we are all prone to miss things and it is only through the deliberative process that those gaps are filled:

> We cannot, in reality, be sure of what any juror has seen, heard, understood, or interpreted. We live in an imperfect world and the jury system is our imperfect attempt to deal with that world. The best we can do is to try to find twelve citizens, imperfect as they are, to listen, observe, consider, discuss and reach the best verdict, the fairest verdict they know how, given their imperfections. That is the most we can ask, and to my unending surprise, by whatever route they travel, juries by and large arrive at substantial justice. There is

203. *Id.*
204. DeLong v. Brumbaugh, 703 F. Supp. 399, 403 (W.D. Pa. 1989).
205. United States v. Dempsey, 830 F.2d 1084, 1088 (10th Cir. 1987).
206. *Id.*
207. People v. Guzman, 125 Misc. 2d 457, 466, 478 N.Y.S.2d 455, 462 (Sup. Ct. 1984).
208. *Id.*
209. *Id.* at 464, 478 N.Y.S.2d at 461.
210. *Dempsey*, 830 F.2d at 1088; *Guzman*, 125 Misc. 2d at 466, 478 N.Y.S.2d at 462.
211. *Dempsey*, 830 F.2d at 1088.

> no reason to believe, from the experience in other jurisdictions and from listening to and observing Alex Naiman, as I have, that Mr. Naiman would not do as fine a job or better than many of the hearing jurors.[212]

To determine whether the *Eckstein* or *Dempsey-DeLong-Guzman* position better reflects the reality of credibility assessment by deaf people, this Article will consider what aspects of voice intonation an interpreter can transmit and how demeanor factors into credibility assessment.

1) *Voice Intonation and Interpreters*

The Interpreters' Code of Ethics provides that "Interpreters/Transliterators shall render the message faithfully, always conveying the content and spirit of the speaker."[213] For interpreters, the word "spirit" carries with it the requirement to communicate the mood, intonation, and nature of the speech.

Hearing people who have never seen sign language may find it difficult to understand how someone can communicate the volume or emotion of the voice without sound. Yet many experiences within the hearing world indicate this is possible. During silent movies, although there is no sound, the audience "hears" the voices, through facial expression and size of gestures, down to the snarling laugh of the villain. Audiences experience the same phenomenon watching a mime, such as Red Skelton or Marcel Marceau, or watching a ballet. The ability to capture the qualities of a voice through the face and body is something everyone has to some degree. The traffic cop who scowls and waves more emphatically could not be "heard" more clearly even if the car windows were actually open. It is as much the raised eyebrows and stare that make "You're really going to marry him?" a question as it is anything in the voice. Similarly, interpreters use their manner of sign and facial expressions to communicate "spirit," or voice intonation.[214]

Although everyone can convey the voice through the body and face, the interpreter should be perceived more as the actor, mime, or dancer: someone who has trained and invested considerable time in developing a skill. Many colleges, such as Western Maryland College, Union County College in New Jersey, and Mount Aloysius Junior College and the Community College of Allegheny County in Pennsylvania have interpreter training programs. Organizations such as the Registry of Interpreters for the Deaf (RID) test and certify interpreters, and local organizations sponsor additional programs and seminars for interpreters already working.[215] Interpreters in the field often

---

212. *Guzman*, 125 Misc. 2d at 466, 478 N.Y.S.2d at 462.

213. CODE OF ETHICS, REGISTRY OF INTERPRETERS FOR THE DEAF [RID], prov. 2.

214. Gesue, *Letter to the Editor*, Pittsburgh Post-Gazette, Mar. 16, 1987, at 8, col. 4.

215. The Allegheny County Chapter of RID, for example, sponsored a workshop on legal interpretation for deaf people on May 1, 1988, that attracted interpreters from Pennsylvania, West Virginia, and Ohio. The workshop received additional support from the West Virginia U.S. Attorney's Office, the Allegheny County Court System, the University of Pittsburgh

have considerable experience, a fact reflected in the provision by Pittsburgh Hearing, Speech and Deaf Services of an average of over 500 hours of interpreter service every month.[216]

It is not enough, however, that interpreters can communicate voice intonation through their manner of signing and facial expressions; they must also be able to do so accurately and without bias. Dr. Rita Gesue, formerly Director of Interpreting Services and currently Executive Director of Pittsburgh Hearing, Speech and Deaf Services, has had years of experience both as an interpreter and as an observer and director of interpreters. Dr. Gesue argues very emphatically that interpreters can accurately transmit the "spirit" of the message and are bound as professionals to do so. In particular, she notes that they are not "filters" of information.[217]

2) *The Deaf Juror and Demeanor*

Regardless of whether an interpreter can accurately transmit voice intonation, experiences of deaf jurors and experiences within the deaf community indicate that deaf people can still evaluate the credibility of hearing people. In fact, it is naive to suggest that a hearing person can tell any lie she chooses to a deaf person and the deaf person is helpless to spot the deception.

In the experimental trial at the University of Pittsburgh, Ms. Courtemanche was required to determine whether the tenant, in accordance with his assertions, had photographed the rusty piece of railing when he initially photographed the railing as a whole or whether he had left the piece outside to weather for several months before photographing it.[218] Assuming that Ms. Courtemanche could not rely on her interpreter for the tenant's voice intonation, she could still base her opinion on other factors which had a bearing on his credibility when he testified to the timing of the photography.[219]

Ms. Courtemanche noticed that the pictures were shot from different roles of film, one color and one black-and-white; that indicated the possibility of a timing lag. The landlord's attorney pointed out that the backgrounds of the pictures had signs of different seasons: although both pictures were supposed to have been taken in winter, the railing appeared to be resting on autumn leaves in the picture of the cut piece of railing. The evidence indicated that the tenant had been less than honest about things in the past and certainly could have been motivated by self-interest at trial. Finally, Ms. Courtemanche could see the witness even if she could not hear him,[220] and his

---

School of Law, and the Pittsburgh law firm of Mansmann, Cindrich & Titus. Interview with Ms. Diane Gallagher, Workshop Coordinator, in Pittsburgh, Pa. (Apr. 30, 1988).

216. Gesue, *supra* note 214.

217. *Id.*

218. *See supra* text accompanying note 32.

219. Trial Video, *supra* note 31.

220. Ms. Courtemanche's interpreter stood behind the witness so both were in the same line of vision. Concentrating on the interpreter, however, can still preempt seeing the witness in the juror's peripheral field. However, both Ms. Courtemanche and Ms. Finisdore have said that

appearance provided additional data.[221]

No one knows exactly how jurors weigh different indicators of credibility, nor does anyone know how accurate any indicator really is.[222] Still, it would appear that armed with the information she had, Ms. Courtemanche could contribute as much to a group decision about the credibility of the tenant as could the hearing jurors, some of whom had disregarded the tenant's voice intonation anyway and others of whom were willing to explain its significance to her.[223]

Ms. Hoffman, the deaf juror in *Dempsey*, had a similar experience evaluating credibility. Although Ms. Hoffman watched the defendant testify while watching her interpreter and drew some conclusions from that,[224] it was a piece of physical evidence that was most telling. Ms. Hoffman said, "I enjoy watching people, seeing what makes them tick. But for most of the defendant's testimony, no, I didn't believe a bit of it. The guy had 70 TVs in his basement. Really."[225]

Although access to the mechanics of such deliberations in the real trials involving deaf jurors is limited, additional evidence that deaf people can evaluate the credibility of hearing people can be drawn from everyday life. As principal of the Western Pennsylvania School for the Deaf, Dr. Harold Mowl must evaluate the credibility of "witnesses" both as an administrator and as a disciplinarian. Although Dr. Mowl is deaf, he still draws on eight different areas in deciding the credibility questions that confront him three to five times everyday.[226] Dr. Mowl considers:

1) The content of the story he is told,
2) The age of the person telling the story,
3) The people who will back up the story,
4) The level of certainty expressed by the words used in the story,
5) Any supporting physical evidence,
6) The person's motive for telling the story,
7) The person's appearance as she testifies, and
8) The person's reputation in the school.[227]

Not surprisingly, many of the factors used by Dr. Mowl are factors which the Kalven and Zeisel study of jurors indicated that jurors used to evaluate

---

there were enough pauses between questions and answers and during testimony so that they could view witnesses sufficiently to evaluate demeanor. *Students*, *supra* note 24, at 5; Lape Letter, *supra* note 53.

221. *See infra* text accompanying notes 224-27. *But cf. infra* text accompanying notes 229-38.

222. THE AMERICAN JURY, *supra* note 36, at 169.

223. Experimental Juror, *supra* note 38 (Juror Kubit).

224. *Forewoman*, *supra* note 70, at 7.

225. *Id.*

226. Interview with Dr. Harold Mowl, in Edgewood, Pa. (Mar. 4, 1988).

227. *Id.*

credibility.[228]

All this aside, it is ironic that the issue of demeanor evaluation should be a stumbling block to a deaf person trying to serve on a jury. Studies have yet to show that the average hearing person can read voice intonation or even personal appearance as an accurate indicator of truthfulness.[229] Studies, in fact, indicate that often such "evidence" clouds the real issue. For example, attractive women are less credible victim-witnesses in rape trials,[230] and generally a witness' likability weighs heavily in her believability.[231] Even more troubling, some studies go so far as to show that people will ignore more reliable factual or physical evidence in favor of these demeanor indicators.[232] Under the circumstances, one might expect that the legal system would welcome the occasional juror who focused exclusively on hard evidence. Certainly, Ms. Courtemanche should not be criticized because she believed the landlord's medical witness based on what he said but failed to realize he had a somewhat whiny, nasal voice not at all as pleasant as the voice of the tenant's expert.[233]

Even if demeanor could be read correctly and even if deaf jurors cannot obtain it through their interpreters and through occasional glances, demeanor is often not natural in trial settings. To appeal to jurors, attorneys and witnesses alter their voice and speech patterns,[234] comments about their attitudes toward the injury,[235] their wardrobes,[236] and even their physical appearances.[237] At a rather sophisticated level, "defense attorneys often coach their clients on how to dress and act before the jury. The coaching sometimes involves a videotaped rehearsal, which gives defendants an opportunity to see themselves as the jury might."[238] If attorneys and witnesses consciously change their demeanor to effect a particular impression within the jury, the evidence can hardly be so reliable that we must exclude all jurors who ignore it or cannot perceive it.

---

228. THE AMERICAN JURY, *supra* note 36, at 169-70, 175, 178.

229. In fact, the issue of credibility assessment itself is a mystery: "There is today almost no real knowledge about how credibility judgments are formed, and a moment's introspection is sufficient to remind us how mysterious must be this process whereby we believe one person, suspect a second, and disbelieve a third." THE AMERICAN JURY, *supra* note 36, at 169.

230. M. GREENBERG & B. RUBACK, SOCIAL PSYCHOLOGY OF THE CRIMINAL JUSTICE SYSTEM 156 (1982) [hereinafter SOCIAL PSYCHOLOGY].

231. *Id.* at 153.

232. Dresser, *The Impact of Evidence on Decision Making*, in CONCEPTS IN COMMUNICATION 159, 160-61 (1973).

233. Trial Video, *supra* note 31.

234. Fontes & Bundens, *Persuasion During the Trial Process*, in PERSUASION: NEW DIRECTIONS IN THEORY & RESEARCH 249, 259-60 (1980).

235. *See* Habush, *Maximizing Damages Through Trial Techniques*, 16 TRIAL L.Q. 5, 10 (1984) (discussing desirable client testimony).

236. Malloy, *For Lawyers: How to Dress Up Your Case and Win Judges and Juries*, in DRESS FOR SUCCESS 192-93 (1976).

237. Adney, *Winning Through Effective Client Appearance*, 15 TRIAL L.Q. 51 (1983).

238. SOCIAL PSYCHOLOGY, *supra* note 230, at 159.

d. An Interpreter in the Deliberation Room

On the final issue, the court in *Eckstein* found that an interpreter in the jury deliberation room would violate the secrecy of the jury room and, thus, a criminal defendant's right to trial by jury under the sixth and fourteenth amendments.[239] The court noted that secrecy must be preserved to guarantee "a vigorous and candid discussion of the issues,"[240] and that courts were so protective of that secrecy that they excluded alternate jurors not allowed to vote.[241]

In rejecting this view of the requirements of secrecy and its effect on constitutional rights, the *Guzman* court followed the lead of the Seventh Circuit[242] and viewed the privacy question as "whether the presence of the stranger was the kind of intrusion upon the jury's privacy 'that will tend to stifle the jury's debate [and therefore] endanger . . . the defendant's right to trial by jury.' "[243] The court distinguished the interpreter from the official figures traditionally excluded from the deliberation room: bailiffs, judges, and counsel.[244] The court pointed out that the judge will instruct the other jurors that they are to treat the interpreter only as a mechanical transmitter, and the interpreter will be instructed to respect her Code of Ethics and act accordingly.[245]

In reaching the same conclusion as the court did in *Guzman*, the court in *Dempsey* divided the discussion into three concerns:

> (1) Whether the presence of an interpreter would increase the likelihood of post-trial revelations of the jury deliberations or enhance challenges to the verdict;
> (2) Whether the interpreter's presence would inhibit the jury's deliberations; and
> (3) Whether the interpreter might unlawfully participate in the jury deliberations.[246]

In deciding that the presence of an interpreter would not increase the likelihood of post-trial revelations, the court began by acknowledging the importance of secrecy,[247] although admitting that secrecy is not required by law.[248] Within this context, the court found that an interpreter would be less likely to reveal the confidences of the jury room than a juror would be.[249] To

239. Eckstein v. Kirby, 452 F. Supp. 1235, 1244 (E.D. Ark. 1978).
240. *Id.*
241. *Id.*
242. Johnson v. Duckworth, 650 F.2d 122 (7th Cir. 1981).
243. People v. Guzman, 125 Misc. 2d 457, 472, 478 N.Y.S.2d 455, 466 (Sup. Ct. 1984) (citing *Duckworth*, 650 F.2d at 125).
244. *Id.* at 472-73, 473 n.53, 478 N.Y.S.2d at 466-67, 466 n.53.
245. *Id.*
246. United States v. Dempsey, 830 F.2d 1084, 1089 (10th Cir. 1987).
247. *Id.*
248. *Id.*
249. *Id.* at 1090.

the extent that secrecy remains a concern for a trial judge, the Tenth Circuit recommended that the interpreter take an oath of secrecy.[250]

The court gave two reasons for deciding that the interpreter's presence in the jury room would not inhibit deliberations. First, the court noted that signing interpreters are sufficiently commonplace in our society that people recognize them as extensions of the people they serve rather than as independent agents.[251] This distinguished interpreters from legal figures or alternate jurors who, other courts had indicated, could not be in the jury room because the jurors would anticipate participation or evaluation from those figures.[252] Second, the court noted that "an important social policy argues against automatically foreclosing members of an important segment of our society from jury duty simply because they must take an interpreter into the jury room."[253] The court was sensitive to any holding which might undermine state statutes allowing for jury service by deaf people.[254]

Finally, the court decided that absent evidence from the hearing jurors or Ms. Hoffman that the interpreter, Ms. Bertha Kondrodis, had improperly participated in the deliberations or improperly interpreted, it would not speculate that she had done so.[255] Ms. Kondrodis "swore an oath to interpret correctly under penalties of perjury," was admonished by the judge not to express her own views during deliberation, and told the court after deliberations that she had taken "no part in deliberations other than to translate."[256] Having no reason to doubt the effectiveness of these precautions, the court accepted the propriety of the interpreter's participation in deliberations and affirmed the trial court's decision to seat Ms. Hoffman.[257] The court in *DeLong* accepted the reasoning of the *Dempsey* court on this issue.[258]

The practical experience of deaf juror service supports the *Guzman-DeLong-Dempsey* position. As the court noted in *Guzman*:

> In those jurisdictions where deaf people have served as jurors, interpreters accompanied the jurors into the jury room, and it is my understanding that there has never been a breach of confidentiality, nor

250. *Id.* The first provision of the CODE OF ETHICS FOR THE REGISTRY OF INTERPRETERS FOR THE DEAF already requires this confidentiality: "1. Interpreter/Transliterators shall keep all assignments related information strictly confidential." If an interpreter violated this or any provision of the Code of Ethics, she could lose her certification and, thus, her career as an interpreter. Therefore, an interpreter has more to lose by inappropriate behavior in the deliberation room than any other juror does.

251. *Dempsey*, 830 F.2d at 1091.

252. *Id.* at 1090-91.

253. *Id.* at 1091.

254. *Id.*

255. *Id.* at 1091-92.

256. *Id.* at 1091. The third provision of the CODE OF ETHICS FOR THE REGISTRY OF INTERPRETERS FOR THE DEAF, requires that interpreters not participate in their work as independent agents: "3. Interpreters/Transliterators shall not counsel, advise, or interject personal opinions."

257. *Dempsey*, 830 F.2d at 1092.

258. DeLong v. Brumbaugh, 703 F. Supp. 399, 405 (W.D. Pa. 1989).

> problems with the signer or lip reader breaching the oath of non-involvement, nor any problem with respect to the panel not being able effectively to deliberate because of the deaf person.[259]

In the four years since *Guzman*, this record of scrupulous conduct apparently has continued. When one considers the visibility of trials with deaf jurors and the likelihood that an interpreter acting inappropriately in the deliberation room could lose her certification and thus end her career, one would expect the pattern to continue.

CONCLUSION

Even without the skepticism which routinely accompanies a review of legislation affecting deaf people, the practical experience of service by deaf jurors without fail indicates that no rational basis exists for their exclusion.

This is true based on what an interpreter is capable of transmitting, what a deaf juror would need to receive to effectively fulfill the role of juror, and also, on the precautions a court can take to guarantee the interests of the parties. As the courts have argued in *Guzman*, *DeLong*, and *Dempsey*, deaf people, while as imperfect as anyone else, are still capable of being constitutionally fair jurors.[260]

In 1970, states were still excluding women from jury service because paternalistic values indicated women needed protection from the callousness of trial.[261] In 1970, the United States Supreme Court had to review the procedures of jury commissioners whose conventional wisdom consistently left them unable to find African-Americans with the intelligence and moral character to be jurors.[262] Today, the same prejudices dictate that deaf people cannot serve as jurors, yet there is no reason to believe that this conventional wisdom is more true with deaf people than it was with women and African-Americans.

This Article has shown that the exclusion of deaf people from jury service is based on misperceptions about deaf culture, language, and the deaf community.[263] Furthermore, distinctions need to be made between situations involving deaf people with interpreters and situations involving deaf people without interpreters.[264] On these aspects of deaf life, conventional wisdom has left society looking as naive as it appeared with African-Americans and women.

---

259. People v. Guzman, 125 Misc. 2d 457, 473-74, 478 N.Y.S.2d 455, 467 (Sup. Ct. 1984).

260. *See supra* text accompanying notes 204-12.

261. Mayfield v. Arkansas, 249 Ark. 203, 458 S.W.2d 725 (1970). In Bailey v. State, 215 Ark. 53, 219 S.W.2d 424 (1949), the Arkansas Supreme Court had held that jury commissioners could, in their discretion, exclude women from jury pools to protect them from "consideration of indecent conduct, the use of filthy and loathsome words, references to intimate sex relationships, and other elements that would prove humiliating, embarrassing and degrading to a lady." 219 S.W.2d at 428.

262. Carter v. Jury Commissioner of Greene County, 396 U.S. 320 (1970).

263. *See supra* text accompanying notes 99-100, 110-37.

264. *See supra* note 200.

If conventional wisdom has betrayed the attempt to understand deaf culture, deaf language, deaf community, those who interpret for the deaf, and the nomenclature appropriate to deaf people, can conventional wisdom be relied upon in considering what a deaf juror could accomplish?

This Article has explored the issue of deaf juror service beyond conventional wisdom, and there it has found only support for the deaf juror. The judges who have presided over trials with deaf jurors, the other jurors who have deliberated with deaf jurors, the interpreters who have served deaf people, and the deaf jurors who have served, have reported that deaf people can serve as jurors. Given such universal support, it is perhaps time that those who are hearing begin to listen.

Certainly the legal system finds ways to listen to deaf people when it needs to hear them and the system must operate in spite of any impairments: as witnesses whose testimony is critical or when they are parties to an action. The only question that remains is this: when the issue ceases to be one of our convenience and becomes one of their equality, are we the ones who become deaf?

APPENDIX I

Facilitating the Use of Interpreters in the Courtroom

All things considered, both interpreter and law practitioner face a novel experience when they must work together. Five steps, however, can be taken to guarantee that the relationship proceeds smoothly.

First, Judge Kaplan suggested, after the mock trial at the University of Pittsburgh, that before trial the interpreter meet with the judge to discuss her role and positioning in the courtroom.[265] Judge Quigley had a similar meeting in the Perry County trial.[266] Such an informal meeting gives both the judge and the interpreter a better understanding of the other's professional needs. The attorneys for the parties might benefit from such a meeting as well. Their attendance might help resolve interpreter positioning issues before trial. While interpreters are the experts on where they need to be to interpret most effectively, they are trained to be inconspicuous, and many assume from this that they should not move around the courtroom. Normally, this is true, and the best places for a signing interpreter are standing next to the witness stand or sitting in front of the juror in line with the witness. A speech interpreter is also best placed in front of the juror. However, occasionally when a diagram is used away from the witness stand, the signing interpreter may be more useful standing by the diagram. At this meeting, the lawyers and judge can anticipate these needs and discuss them with the interpreter. Furthermore, such a meeting is an opportunity for everyone to establish cues to indicate when information such as bench conferences should not be communicated to the juror.

Second, the judge must qualify the interpreter for the record. The court must be certain that the interpreter is capable of receiving the words spoken in court and transmitting them to the deaf juror in a way the juror will understand them. The qualifying questions guarantee that the interpreter can serve the interests of the court. Interpreters also have an interest in this process because it increases the visibility of the level of professionalism which interpreting has taken on. APPENDIX II includes questions the judge may ask to qualify an interpreter.[267]

Third, the judge should administer an oath to the interpreter before trial.[268] This oath parallels duties which bind the interpreter under her code

---

265. Experimental Juror, *supra* note 38 (Judge Kaplan).

266. Good, *supra* note 64, at 1, 3.

267. For an example of the qualification of an interpreter for a deaf juror, see Examination of and Oath to Interpreter, Pennsylvania v. Miller (Ct. of Common Pleas of Blair County, Pa., Jan. 28, 1987) (C.A. No. 642 of 1986).

268. The oath administered in Blair County was as follows:

> Do you solemnly swear and promise that you will as an interpreter qualified to interpret by sign language for deaf persons faithfully and accurately interpret for the use and benefit of juror, Allen Hammel, every spoken word which passes during the course of this trial which properly should be made known to the juror, including any spoken word which may occur during the course of jury deliberation, and that you

of ethics. Thus, the requirements of the oath are not unfamiliar to the interpreter.

Fourth, the judge should charge the jury on their relationship with the interpreter. This charge should tell jurors that during deliberation they are not to discuss the case with the interpreter but only to use the interpreter to speak with the deaf juror and also during deliberation they should speak one at a time to ease the burden on the interpreter.[269]

Fifth, after the deliberation, the judge may want to get a statement from the interpreter that the interpreter acted appropriately during deliberation. Under *Dempsey*, this testimony by the interpreter would help to foreclose a challenge on appeal that the interpreter's presence in the deliberation room in a criminal case violated the defendant's sixth amendment right.[270]

---

will in no way supplant or add to or supplement any of the wording and language used during the course of the trial and/or deliberation?

Id. at 3.

269. At the University of Pittsburgh mock trial, Judge Kaplan gave the following instructions:

> The jurors are instructed that they are not to discuss the case with the interpreter but to use the interpreter only as a means to communicate with the juror who is hearing-impaired. The interpreter has been trained to refuse to answer you if you try to talk with him. While deliberating, you should try to talk one at a time. In the long run, this will help both the hearing jurors and the hearing-impaired juror to follow the discussion more fully.

Trial Video, *supra* note 31.

270. United States v. Dempsey, 830 F.2d 1084, 1092 (10th Cir. 1987).

APPENDIX II

Qualifying the Interpreter[271]

Sample Questions[272]

1. State your full name and address.
2. Where are you presently employed as an interpreter?
3. How long have you known Signed English?
4. Can you communicate fluently in Signed English?
5. Where did you learn sign languages?[273]
6. What is your educational background in sign languages?
7. Have you met the juror ——?
8. Were you able to communicate in Signed English?
9. How could you tell you were communicating?
10. In your judgment, is the juror —— fluent in Signed English? What led to this determination?
11. How long did it take you to determine the juror ——'s language skills?
12. Are you certified as an interpreter?[274] By whom? What is your certification?
13. Please explain the certification process.
14. Are you active in any professional organizations? What are their names? Could you explain the nature of each?
15. How many times have you interpreted in court? In what contexts have you interpreted in court?
16. What formal training do you have in legal interpreting?
17. What did you learn from this training?
18. Will you provide the juror —— with a literal interpretation of the proceedings and the other jurors and court a literal interpretation of the statements of juror ——?
19. How would you inform the court of any errors in your interpretation?
20. What problems do you anticipate in interpreting in court?[275]
21. What can the court do to help you resolve these problems?

---

271. Adapted from a handout prepared by A. Witter-Merithew & J. Hartman for the Legal Interpreters Workshop, William Mitchell School of Law, 1981 (revised Jan. 1986) (copy on file with N.Y.U. REV. L. & SOC. CHANGE).

272. An interpreter could be satisfactorily qualified without being asked every question on the list. The list identifies qualifications necessary for interpreters, demonstrating as well that there are different combinations of qualifications that make a good interpreter.

273. Some of the best interpreters are adults who grew up as the hearing children of deaf parents.

274. While an interpreter could be qualified without being certified, the fact of certification can guarantee appropriate skills.

275. Questions 20-21 would be more appropriately handled in a pretrial conference.