

Into the Jury Box: A Disability Accommodation Guide for State Courts
1994

Kristi Bleyer [FNal], Kathryn Shane McCarty [FNbl], Erica Wood [FNcl]
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ACKNOWLEDGEMENTS

The American Bar Association would like to thank the members of the project advisory committee for their invaluable contributions to this project: Brenda Battat, Self Help for Hard of Hearing People; Virginia Baldau, U.S. Department of Justice; J. Kent Batty, Third Judicial Circuit of Michigan; David Bell, Arlington County District Court; Juanita Blankenship, Los Angeles County Courts; Honorable Richard S. Brown, Wisconsin Court of Appeals; Marc Charmatz, National Association of the Deaf Legal Defense Fund; Donald Galloway; Honorable Janice Gradwohl, University of Nebraska; Deborah Greenblatt, Carolina Legal Assistance Mental Disability Law Project; Lise Hamlin, Self Help for Hard of Hearing People; Oral Miller, American Council of the Blind; G. Thomas Munsterman, National Center for State Courts; Karen Sargeant, Montgomery County Legal Aid Bureau; Howard Schwartz, Kansas Judicial Center; Gregg Vanderheiden, Trace Research and Development Center; and Chang-Ming Yeh, National Center for State Courts.

In addition, the following individuals volunteered their time to review the guide and provided valuable comments that improved the final product: Honorable Thomas H. Barland, Thomas Berliner, Linda Crawford, Olivia Grant, Pam Holmes, Gail Kaplan, Susan Molloy, Larry Polansky, M. Kay Runyon, and Robert Zastany.

Special thanks also to John Parry, Commission on Mental and Physical Disability Law, and Nancy Coleman, Commission on Legal Problems of the Elderly, for their editorial review and staff support, and to law clerks Merrilee Hagaman and Donna Barteel for their research assistance.

Mark S. Vavala created the front cover artwork, and Catherine Messina produced the illustrations in this guide. Hellmuth, Obata & Kassabaum, Inc. supplied the courtroom diagram and photographs. HYR Graphics designed the layout and completed the desktop publishing.

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Chapter I: Introduction

What irony where a...juror is incapable of serving because of a courtroom that could not accommodate a wheelchair, a walker, or other equipment used by a person with a disability.... [W]e have ignored the court-related needs of the elderly and people with disabilities far too long. Access: Final Report of the Wisconsin Supreme Court Interdisciplinary Committee on the Court-Related Needs of the Elderly and People with Disabilities, pp. 2-3 (1994).

"Equal justice for all" now includes persons with disabilities. With the passage of the Americans with Disabilities Act of 1990 (ADA), state courts are beginning to "open their courthouse doors" to provide better access to persons with disabilities. As the symbols of justice and equality, courts should take the lead in implementing the provisions of the Americans with Disabilities Act, so that all citizens, regardless of disability, have equal access to the judicial system.

Trial by jury is integral to the American judicial system, and jury service is a fundamental privilege and responsibility of citizenship. Access to jury service, therefore, is critical. Yet many barriers remain for jurors and potential jurors with disabilities. This guide seeks to help courts overcome these barriers and to enhance juror access.

The guide builds on the foundation established in the American Bar Association's earlier publication, *Opening the Courthouse Door: An ADA Access Guide for State Courts*. This new guide focuses on each step of jury service and offers concrete suggestions on how to modify current practices to strengthen accessibility. It demonstrates inventive - often simple and low-cost - means of ensuring equal access to our jury system.

The guide presents action steps and access ideas regarding:

- notification and summons;
- orientation and voir dire;
- courtroom accommodations (e.g., physical facilities, interpreters, technology and others); and
- jury deliberations.

The ideas presented are illustrative and are intended to stimulate resourceful thinking by court personnel. The project advisory committee, court personnel, and reviewers were instrumental in suggesting practical solutions, often based on actual experience. Some of the guide's suggestions are simply good jury management

practices designed to meet the needs of all persons, including those with disabilities. Others target specific disability populations.

The guide also briefly describes the range of disabilities and their implications for jury service. These include physical, visual, hearing, communication, cognitive, and mental impairments. In addition, the guide recommends community resources, educational resources, and disability and technology organizations with useful information.

Finally, although the guide was written to assist judges and court personnel in the selection and accommodation of petit jurors in state courts, it applies to grand jurors as well.

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Chapter II: Background Information: Setting the Stage

A. THE ADA FRAMEWORK

Changing Demographics

While statistics vary, the number and percentage of individuals with disabilities is substantial:

- The U.S. Census Bureau's first comprehensive survey of people with disabilities found that 49 million Americans had a disability in 1991-92. (Census Bureau press release, Jan. 28, 1994.)
- More than 20 percent of noninstitutionalized U.S. residents over age 15 have a physical functional limitation. Some 7.5 percent (13.5 million) of Americans are severely limited in their ability to see, hear, speak, lift or carry, walk, use stairs, get around, or get in and out of bed. (National Institute on Disability and Rehabilitation Research, 1992.)

In addition, America is aging. While there are now some 31 million persons 65 years and older in the nation, by 2030 there will be about 66 million, representing over 21 percent of the population; and the number of "old old", age 85+, is soaring. U.S. Senate Special Committee on Aging, 1991. Although the later years of life can be productive and satisfying, some people as they age experience chronic, disabling conditions.

Overview of the Americans with Disabilities Act

On July 26, 1990, the President signed into law the Americans with Disabilities Act (ADA), the nation's most comprehensive, far-reaching civil rights law for people with disabilities. In creating the Act, Congress envisioned a society that is more inclusive, more diverse, more accommodating, and more equitable.

The ADA, 42 U.S.C. § 12101 et seq., protects qualified individuals with disabilities from discrimination on the basis of disability. It broadly aims to provide equal opportunities in employment, state and local government services and programs, places of public accommodation, public and private transportation, and telecommunications.

Applicability to State Court Jury Systems

Title II of the ADA requires that individuals with disabilities be given equal

opportunity in access to state and local government services, programs, and facilities. Title II states:

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. [42 U.S.C. § 12132](#).

Title II directly covers state court programs and services, including jury service. The following questions and answers aim to give judges, court managers, and jury service administrators a basic understanding of how Title II affects state jury service for persons with disabilities.

Who is protected under the ADA?

A "person with a disability" is protected under the ADA. "Disability" is defined in three ways, [42 U.S.C. § 12102](#):

- A physical or mental impairment that substantially limits one or more major life activities-including caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working (e.g., paraplegia, deafness, or a respiratory disorder that makes exertion painful).
- "A record of such impairment," including a history of an impairment but which is in recovery, or misclassification as having an impairment (e.g., receiving mental health treatment in the past, a recovered alcoholic, or a cancer survivor).
- Being "regarded as having such an impairment" (e.g., a disfigurement causing others to view an individual as having an impairment, or being perceived as having AIDS).

What is "discrimination in access"?

The Title II guarantee of equal access to state and local government services, programs, and facilities encompasses three major kinds of action by covered entities such as state courts: making reasonable modifications in policies, practices and procedures; ensuring the opportunity for effective communications; and making physical facilities accessible.

What are "reasonable modifications" in jury policies, practices, and procedures?

Under Title II, public entities such as state courts must modify their policies, practices, and procedures to avoid discrimination unless the modification would fundamentally alter the nature of its services, programs, or activities. [28 C.F.R. § 35.130\(b\)\(7\)](#).

What is "effective communication" for jurors with disabilities?

To provide equal access to its services under Title II, a court must ensure that its communications with individuals with disabilities are as effective as commu-

nications with others, and must make available appropriate auxiliary aids and services where necessary. Examples of auxiliary aids are described at pp. 31-34 of this guide. The type of auxiliary aid or service necessary will vary with the needs of each individual juror. Under Title II, courts must give "primary consideration" to the choice expressed by the individual. 28 C.F.R. § 35.160 to -.164.

How can courthouse facilities be made accessible for jurors?

New courthouse buildings must meet technical standards for accessible design. These standards are set out in Section 11 of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). [59 Fed. Reg. 31676](#) (June 20, 1994). See pp. 29, 36 of this guide describing specific requirements for jury boxes and jury deliberation rooms. When a courthouse is altered, the altered portions must comply with the ADAAG standards as well as state and local building codes.

Extensive retrofitting of existing court facilities is not required if programs can be made accessible in other ways. This flexible approach toward alternative means of achieving access is called "program accessibility." The focus is on the availability of the program as a whole rather than on barrier removal. Courts and other public entities must take actions to enable individuals with disabilities to participate in the most integrated setting unless doing so would cause a fundamental alteration of the program or an "undue financial or administrative burden."

How would jurors file and seek to resolve ADA complaints?

A juror may file an ADA complaint with the U.S. Department of Justice. Upon finding merit in the complaint, the Department will investigate and attempt informal resolution; and if this is unsuccessful, will initiate negotiations to secure compliance. This may result in a voluntary agreement enforceable by the U.S. Attorney General. Individuals also may file lawsuits. This guide shows actions courts can take to help prevent such complaints and lawsuits from arising. [42 U.S.C. § 12133](#).

Mandate for Making Jury Service Accessible

The mandate for making jury service accessible goes far beyond the ADA, deriving from prior federal law, constitutional law, and updated societal norms.

First, the mandate is based on existing federal law. Section 504 of the Rehabilitation Act of 1973, [29 U.S.C. § 794](#), predecessor to the ADA, prohibits discrimination on the basis of disability in "any program or activity receiving federal financial assistance," including the many state court facilities built or renovated with federal funds or operating federally funded programs. Thus, for over 20 years, accessibility of certain state courts - and thus accessibility for jurors - has been a requirement of federal law. The ADA extends this mandate, eliminating the federal funding nexus.

The principle of juror access also is rooted in constitutional law. Generally, courts must balance the right of defendants and litigants to a fair and impartial jury trial with the competing right of individuals to serve as jurors. Furthermore, the right to a fair trial includes the right that a jury be drawn from a representative cross-section of the community, which arguably should include people with disabilities. In weighing these rights, a trial court's determination of juror competency must be based on an individual's ability to evaluate the evidence in a particular case. For example, in a case where much of the testimony is oral, a juror with a vision impairment may be able to judge witness credibility through voice intonation and other means and may not need to see facial expressions and body language to render a fair verdict. Creative use of juror accommodations can serve the needs of the juror while ensuring a fair trial.

Another reason to make jury service accessible to people with disabilities is to change societal fears and stereotypes. Persons with disabilities often are subjected to false judgments about their abilities to think, maintain personal independence, and function in society. Stereotyping involves generalizing from an impairment to the whole person. Thus, in a court setting, an attorney or judge might see only a person's impairment, neglecting his or her actual ability to reach a fair verdict. Women and racial minorities were still being excluded from jury service as late as the 1970s because of paternalistic values and jury commissioner procedures. Through the 1980s the same prejudices affected people with disabilities. Courts tended to focus solely on the disability for exclusion purposes. Now, attention should be directed to every potential juror's ability to serve, and, if a juror has a disability that requires accommodation, to providing the necessary accommodation.

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Chapter II: Background Information: Setting the Stage

B. MAXIMIZING ACCESS BY STATE LAW

To comply with the Americans with Disabilities Act and to broaden juror access, judges and judicial policymakers should examine national jury standards, state statutes and court rules, and state caselaw. The matrix of all of these, set against ADA requirements, will highlight necessary court rules, legislative action, and revisions in procedure.

National Jury Standards

The American Bar Association's Standards Relating to Juror Use and Management were approved by the ABA in 1983. The ABA Commentary accompanying the standards was revised in 1993 and reflects an awareness of disability needs and the requirements of the ADA. The ABA Commentary, for instance, stresses the need to consider accommodations before removing a potential juror with a disability for cause. (Commentary to Standard 8, p. 74.) The Commentary also recognizes that grounds for excusing juror participation should be phrased in functional terms identifying what jurors can or cannot do instead of relying on medical labels.

Reference to the ABA Standards and Commentary may be helpful in bolstering state legislative initiatives or recommending changes to court rules. Fourteen states have developed, adopted, and implemented jury standards based on the ABA Standards. In addition, the ABA's Committee on Jury Standards has found four states that have not formally adopted the ABA Standards to be in substantial compliance with the Standards, and many others are using the Standards as a basis for examining their jury systems.

State Statutes and Court Rules

In evaluating state jury statutes and court rules for disability access, judicial policymakers should examine five components that address jury selection: source lists, non-discrimination mandates, qualifications/disqualifications, exemptions and excuses, and accommodations. The charts in Appendix A show state-by-state provisions relating to disability and age for each of these components. Specific ways of strengthening state law, court rules, and practice regarding juror selection, as well as addressing ADA compliance, are profiled on pp. 19-37.

Source Lists

The initial step in identifying potential jurors is formulating a source list from which jury panels are drawn. Statutes in 43 states require use of driver's license and/or voter registration lists, supplemented with other lists. Thirty-one states identify both drivers and voters lists as sources of drawing jurors; six states use the voters list alone, and one state uses only the drivers list. A total of 11 states expressly include identification card holders, which consists of people who do not or cannot have a driver's license.

Driver's license lists discriminate against persons who are blind, have severe vision impairments or epilepsy, and who are older and no longer drive. Voter registration lists often do not include persons who cannot easily get out to register. The recent National Voter Registration Act, also called the "Motor-Voter Law," Pub. L. No. 103-31 (1993), should make it easier for some persons with disabilities to register to vote, and if they do register, this will help get them on juror source lists. Statutory approaches to broaden access are listed at p. 20. Nevertheless, jury selection is random and there is no guarantee that any particular individual will be called to serve.

Non-discrimination Mandates

Many state jury statutes expressly prohibit juror discrimination on the basis of race, gender, religion, and economic status, but only 12 states expressly mention disability and/or age in their anti-discrimination statements. The ABA Standards cover age and "any other factor that discriminates against a cognizable group." (ABA Standard 1.) Clearly, in light of the Americans with Disabilities Act (as well as growing awareness of age and disability discrimination), states should list disability and age in juror non-discrimination provisions.

Juror Qualifications/Disqualifications

The privilege and responsibility of jury service should be extended to the broadest possible segment of the population. The ABA Standards recommend that "[a]ll persons should be eligible for jury service," except minors, non-citizens, non-residents of the jurisdiction, convicted felons whose civil rights have not been restored, and those who "are not able to communicate in the English language." (ABA Standard 4.)

Thirty-eight states exclude people who are incompetent "by reason of physical or mental ability to render satisfactory jury service," leaving much open to judicial interpretation. Thirty-nine states also exclude jurors who are unable to read, speak and/or understand the English language; and twelve prohibit service by persons of unsound mind, or who are insane or adjudicated incompetent.

States no longer statutorily exclude jurors based on specific disabilities. Arkansas was the last, disqualifying jurors whose "senses of seeing or hearing are substantially impaired." Ark. Code § 16-31-102. In early 1994, the Arkansas Attorney General conceded that with regard to hearing impairments its statute viol-

ated the ADA. An Arkansas judicial decision is pending in *Quinn v. Bogard* concerning what accommodations the state's courts must provide to deaf jurors. The Arkansas legislature recently passed a new law specifying that "no person shall be disqualified solely on the basis of loss of hearing or sight in any degree." Act 4 (Mar. 4, 1994). This brings to fourteen the number of states providing affirmatively that hearing, visual or physical disabilities alone do not make a person ineligible for jury service.

Ways states might avoid vague or discriminatory eligibility criteria for jury service are suggested at p. 20.

Exemptions and Excuses

In some states, a potential juror who is elderly or has a disability may choose not to serve. Older persons (usually over age 65 or 70) have exemptions in 19 states, and persons with mental or physical disabilities in three states.

The ABA Standards, however, recommend the elimination of all automatic exemptions, on the grounds that group exemptions reduce the representativeness of the panel. (ABA Standard 6(a).) Twenty-six states do not have any group exemptions from jury duty, including exemptions based on disability or age. Persons who do not feel able to serve still may request an excuse based on undue hardship.

An excuse differs from an exemption in that it may be granted on an individual basis by the court. Thirty-two state laws include provisions for excuses based on undue hardship or extreme inconvenience; seventeen allow excuses based on physical or mental infirmity or adverse effect on health; and two provide for excuses based on age.

The ABA Standards recommend that eligible persons who are summoned may be excused either because of "continuing hardship" or if "[t]heir ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors." (ABA Standard 6(b).) This standard "is phrased in functional terms rather than broad diagnostic labels, since it is the effect of the disability rather than its cause which is significant." (ABA Standards Commentary, p. 52.) The concept of individualized functional determinations follows current trends in disability law. It encourages tailored assessments based on actual ability instead of rigid reliance on medical terms, or on age. It asks judges to look beyond stereotypes toward what a particular juror can do. See p. 20 for suggestions regarding state law.

Mandated Accommodations

As shown in Appendix A-2, some states have identified juror accommodations so important to ensuring equal participation that they are mandated by statute. Fourteen state laws provide for sign language interpreters for persons with hearing impairments; three require computer-aided transcription or assistive listening

devices. Five states provide for readers for persons with visual impairments; and three list spokespersons for those with speech impairments, and other communication services. A few states address juror accommodations by court rule, with Utah, for instance, providing for "reasonable accommodation for any prospective juror with a handicap or disability," Utah Code of Jud. Admin., Rule 4-404(6)(B); and Pennsylvania mandating that "upon request, the court shall appoint an interpreter to assist a civil action participant, including a juror, who is deaf," Pa. R. Jud. Admin. 1903.

Mandating accommodations by statute or state court rule will aim toward uniformity throughout the jurisdiction and clarify juror rights. See p. 21.

Caselaw

Caselaw concerning jurors with disabilities can be an important contribution to legislative or judicial change. In preparing this guide, 64 relevant decisions from many states, covering a broad array of disabilities, were reviewed. These cases are profiled at Appendix B. While a few of the decisions were based on ADA or constitutional challenges, most involved interpretations of state law. The majority were brought not by jurors with disabilities, but by defendants alleging abridgment of their right to a fair trial.

The courts' stance in these cases evolved over time. In earlier cases, courts tended to assume disability more easily; in later cases, they lean toward more individualized assessments of disability and the need to consider accommodations.

In many of the cases, the statutory language at issue was vague, providing, for instance, that a juror must be able to "render satisfactory jury service." This gives the trial judge wide leeway. The cases are unanimous in granting the judge vast discretion, citing the U.S. Supreme Court holding that "the trial judge is invested with wide discretion in determining the competency of jurors, and will not be interfered with except for an abuse of discretion." *Lias v. United States*, 284 U.S. 584 (1931).

Central to the judicial determination on juror competency are case-by-case factual considerations. The judge must take into account the particular impairment of the prospective juror (see pp. 14-18 on specific disabilities and implications for jury service), as well as the evidentiary requirements of the case at hand.

Assessment of Witness Credibility

In early cases, loss of sight or hearing was considered fatal to a juror's ability to assess witness credibility. For example, a state supreme court concluded that "no one who cannot see the expression of faces nor observe deportment and demeanor can justly weight testimony." *Rhodes v. State*, 27 N.E. 866 (1891). Even as late as 1978, a federal court noted that a deaf juror could not "follow the intonation pattern," and that therefore her ability to assess witness credibility

"would be somewhat limited." *Eckstein v. Kirby*, 452 F. Supp. 1235 (E.D. Ark. 1978).

Recent cases, however, argue that judgments about credibility stem from multiple impressions of different kinds. In *New York v. Caldwell*, concerning a blind juror, the court observed that "[i]n her everyday life, Ms. B has to make judgment and credibility determinations without relying on visual clues and there is simply no reason to believe that she was incapable of using these same skills in this case." 603 N.Y.S.2d 713 (N.Y. City Crim. Ct. 1993).

Similarly, in *DeLong v. Brumbaugh*, the court noted that persons who are deaf "can and do make credibility determinations on a daily basis by use of signed interpreters, lip reading, observing facial and bodily expressions, context, consistency and personal demeanor of the speaker." 703 F. Supp. 399 (W.D. Pa. 1989). In *United States v. Dempsey*, the court recognized that a deaf juror was able to evaluate the demeanor of witnesses because the interpreter and the witness were in the same line of vision, and that even hearing jurors might have to look away from witnesses momentarily to take notes. 830 F.2d 1084 (10th Cir. 1987).

Finally, several cases and commentators emphasize that other senses may compensate for the one lost. See *Guthrie v. State*, 194 P.2d 895 (Okla. Ct. Crim. App. 1948). "Gestures of astonishment, approval, or revulsion all have their auditory correlates ... even a smile may be heard." (Kaiser 1984).

Assessment of Physical Evidence

Physical evidence might involve identification of the defendant or other parties, sketches, samples of handwriting, diagrams, documents, fingerprints, photographs, and items introduced as trial exhibits. While some cases have emphasized the inability of a blind juror to evaluate physical evidence, see *Lewinson v. Crews*, 282 N.Y.S.2d 83 (N.Y. Ct. App. 1968), recent courts have tended to look to the particular evidence and its importance to the case.

In *Galloway v. Superior Court of the District of Columbia*, 816 F. Supp. 12 (D.D.C. 1993), the court stated that under the ADA, visual impairment may not be a per se disqualification, but that a blind person may be excluded from a particular case if it involves a significant amount of visual evidence. In *New York v. Caldwell*, 603 N.Y.S.2d 713 (City Crim. Ct. 1993), the court observed that almost every case will have some amount of physical evidence, and that this should not necessarily disqualify a vision-impaired or blind juror. Rather, "the question is whether the court could accommodate the juror by visually describing the evidence or by any other means, and whether the evidence is so crucial that the juror's inability to see it denied the defendant a fair trial."

Accuracy of Sign Language Interpreters

Our legal system places great weight on the exact words witnesses speak at tri-

al. Some courts have questioned the accuracy of sign language interpreters in the court context. See *Eckstein v. Kirby*, [452 F. Supp. 1235](#) (E.D. Ark. 1978). But recent cases have rejected this view and suggested ways in which an interpreter's accuracy could be assured (such as using two interpreters, videotaping the proceedings, checking the interpreter's qualifications, and administering an oath, as described at pp. 32-33 of this guide). See *United States v. Dempsey*, [830 F.2d 1084](#) (10th Cir. 1987). In upholding the use of interpreters, the court in *New York v. Guzman*, [555 N.E.2d 259](#) (N.Y. Ct. App. 1990), suggested that any mistakes in the interpreter's transmissions would be no more frequent or significant than those from distracted or inattentive jurors.

Interpreter Interference with Deliberations

In *Eckstein*, the court found that an interpreter in the deliberation room would violate the secrecy of the jury room, and thus the defendant's constitutional right to a fair trial. The court in *Dempsey* - and later in *Guzman* - disagreed, relying on the court interpreter's certification and oath. In *Dempsey*, the court noted that sign language interpreters are sufficiently common in society today that their neutral role is widely recognized, and moreover, that an interpreter who interferes in deliberations risks losing certification.

Hearing of Material Testimony

Cases on jurors who are not deaf but hard of hearing generally turn on the defendant's constitutional right to a fair trial. The holding in *Commonwealth v. Brown* is most often cited by other courts: "While a juror is not disqualified per se [because of loss of hearing] ... where the deafness is of such a degree that the juror may not have heard material testimony, the juror must be disqualified...." [332 A.2d 828](#) (Pa. Super. Ct. 1974).

Courts make judgments about a juror's hearing based on responses during or after voir dire, and have broad discretion to make a determination of competency.

Mental Capacity to Function as a Juror

Jurors must be able to understand the issues at trial and to deliberate satisfactorily. They must be able to make a fair judgment on the merits. There are two distinct issues within this category of mental capacity: (1) There are individuals with low intelligence or mental retardation who may or may not have the mental capacity to determine fairness without bias or undue influence; and (2) in other cases, persons with mental or psychiatric disabilities might not have the ability to deliberate impartially because of their current mental condition or their medication.

Some court cases have focused on whether a particular mental impairment affected the capacity to function as a juror in the trial at hand. For example, low intelligence may prevent a juror from understanding the issues or the role of a juror.

See *Gardner v. Texas*, 730 S.W.2d 675 (Tex. Cr. App. Ct. 1987) and *Burton v. Texas*, 805 S.W.2d 564 (Tex. Ct. App. 1991). Nervousness may impede the ability to serve. See *Pennsylvania v. Gibbons*, 549 A.2d 1269 (Pa. Super. Ct. 1988).

But courts have held that mental conditions do not automatically disqualify a juror. Strong evidence of mental disability must be presented, and it must be contemporaneous to the time of jury duty. See *Church v. Capital Freight Lines*, 296 P.2d 563 (Cal. Ct. App. 1956). For instance, in *Baker v. Keller*, 237 N.E.2d 629 (Ohio Com. Pleas Ct. 1968), a history of manic depressive episodes and treatment that did not affect present judgment did not disqualify a juror.

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Chapter II: Background Information: Setting the Stage

C. UNDERSTANDING THE RANGE OF DISABILITIES

As people with disabilities are called to jury service, court personnel must be ready to accommodate a wide range of disabilities. This section highlights the diversity of impairments and the resulting functional limitations as they might affect jury service. Many of these functional limitations can easily be overcome with accommodations, as identified in the guide's action step (see Chapter III, pp. 19-37). For more detailed information, contact the disability organizations listed in Appendix D.

Physical Disabilities and Chronic Medical Conditions

Characteristics

Birth defects, accidents, or chronic neurological conditions (such as epilepsy, cerebral palsy, environmental and chemical sensitivity, and multiple sclerosis) can cause physical disabilities that substantially limit one or more major life activities. These include manipulatory impairments, mobility or motor disabilities, and lack of stamina or endurance. In addition, elderly persons often experience chronic physical conditions, such as strokes, rheumatoid arthritis, or diabetes, that can cause physical limitations or impair endurance.

Implications for Jury Service

Physical disabilities may in some cases restrict a person's ability to be a juror, but generally do not. Often it is the courthouse facility that imposes an obstacle to serving as a juror, such as with the following actions connected with jury service:

- climbing stairs to an upper floor courtroom;
- opening heavy doors and turning doorknobs;
- using the telephone, restroom, or drinking fountains; and
- getting into and out of the jury box.

In other cases, physical limitations may pose difficulties to participating as a juror, including:

- waiting or sitting for long periods;
- receiving or evaluating a type of evidence, such as written or oral; and
- handling and paging through documents.

Jurors can be excused from serving if the individual requests and/or a court representative (judge or administrator) determines that the potential juror's stamina is so limited by a physical or medical condition that the individual is unable to participate.

Hearing and Communication Impairments

Characteristics

Many people have hearing problems due to birth defects, illness, chemical or physical trauma, noise, heredity, or aging. The problems range from mild to profound hearing loss to deafness. Hearing loss is particularly common in older people due to presbycusis. Many people with hearing problems are helped with a combination of hearing aids, assistive devices, and communication strategies.

Speech and language disorders often inhibit effective communication. Speech disorders caused by birth defects, brain dysfunction, illness, accidents, hearing impairments or other conditions include:

- voice disorders - defects in pitch, volume, voice quality;
- articulation disorders - omission, distortion, substitution or addition of sounds; and
- fluency disorders - interruptions in flow, rate, and/or rhythm of speech, including stuttering.

Implications for Jury Service

In the past, without the assistance of technology or sign language interpreters, hearing limitations affected the ability of many to participate in court processes, such as:

- asking for and receiving information about the judicial process, schedules, juror instructions;
- hearing announcements, such as whether the individual was selected to serve on the jury or emergency warning systems, i.e. fire alarm;
- using telephones to determine whether a number had been drawn for juror service on a particular day; and
- understanding and participating in the voir dire process, the trial itself (witness testimony), and the jury's deliberations.

Speech and language disorders may also present problems related to:

- asking for and understanding directions;
- understanding juror instructions, juror summons or other forms;
- communicating with court personnel or other jurors;
- reading and comprehending written court instructions or other documents; and
- conducting telephone conversations with court personnel.

Vision Impairments

Characteristics

Vision impairments range from mild to moderate losses in vision (between 20/70 and 20/200 visual acuity) to blindness. Other impairments such as tunnel vision, night blindness, and color blindness also affect an individual's ability to see.

Implications for Jury Service

Jurors with vision impairments may have difficulty:

- seeing signs in the courthouse and courtroom;
- viewing the physical evidence of the trial; and
- reading or completing juror summonses, voir dire questionnaires, or other court documents.

Cognitive, Learning and Developmental Disabilities

Characteristics

Mental retardation, which can be caused by head injuries, chromosomal abnormalities (such as Down Syndrome), viruses, or inadequate nutrition or health care, is the most prominent developmental disability. Persons with mental retardation have significantly decreased general intellectual functioning and limitations in living skills. There is significant range in the degree of mental retardation, from "mild" classifications with I.Q. scores between 50 and 75 to severe and profound conditions with much lower I.Q. scores. Other developmental disabilities include cerebral palsy, epilepsy, and autism.

Cognitive disabilities include impairments of the memory and thinking, such as dementias, as well as neuro-biological dysfunctions, such as dyslexia, attention deficit disorder, and other learning disabilities.

Implications for Jury Service

Jurors with mental retardation may experience difficulties in:

- understanding juror instructions, procedures, or forms;
- expressing their needs and information to court personnel, attorneys, or others;
- understanding rapid speech or complicated sentences used during the trial;
- using memory and judgment; and
- comprehending legal implications and rules of law used to make juror decisions.

Jurors with cognitive or learning disabilities may have difficulties in:

- using reading, writing, or mathematical abilities;
- reasoning and/or remembering; and
- maintaining a sense of time or direction.

Psychiatric and Mental Disabilities

Characteristics

The three major mental illnesses are schizophrenia, severe depression, and bipolar disorder (also known as manic-depressive illness). Symptoms of these conditions may include disordered or distracted thinking, hallucinations, and mood or emotional disturbance. Many psychiatric conditions can be treated effectively with medication, however.

Implications for Jury Service

In the jury service process, persons with mental illness may experience difficulties in:

- maintaining concentration over time, particularly during long trials or deliberations;
- maintaining stamina during long waiting periods;
- screening out external stimuli, particularly in crowded waiting rooms or courtrooms;
- managing time pressure and deadlines;
- orienting themselves in unfamiliar surroundings, such as a courtroom or jury deliberation room;
- making decisions under time pressure or stress, such as in the jury room;
- activities affected by psychotropic medications, such as low manual dexterity due to tremors, an inability to sit still for long periods of time, excessive thirst, and frequent need to use restroom facilities; and
- functioning in uncomfortable temperatures and humidity levels.

Many of the functional limitations described above can be addressed by modifying current jury management practices to strengthen access. The next chapter outlines specific steps that courts can take to foster full participation by persons with disabilities in the jury system.

FN[FNa1]. Commission on Mental and Physical Disability Law

FN[FNb1]. Commission on Mental and Physical Disability Law

FN[FNc1]. Commission on Legal Problems of the Elderly

END OF DOCUMENT

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1994

Kristi Bleyer [FN^a1], Kathryn Shane McCarty [FN^b1], Erica Wood [FN^c1]
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Chapter III: Action Steps: Juror Selection, Accommodations, Outreach and
Education

This section is the heart of the guide. It highlights specific actions courts can take to enable persons with disabilities to participate in the jury process. These include changes in law, court rules, court programs, technology, and the court facility. The actions concern jury selection, notification, orientation, the trial, deliberations, linkage with the disability community, judicial education, and public outreach.

Action steps are summarized in the court checklist at pp. 41-44.

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Chapter III: Action Steps: Juror Selection, Accommodations, Outreach and
Education

A. SELECTING JURORS: STRENGTHENING STATE STATUTES AND COURT RULES

State laws and court rules have advanced in recent years to invite greater involvement by potential jurors with disabilities. Further initiatives, however, will ensure that the jury system is open to all, regardless of impairment. A number of explicit steps will bolster the ADA mandate of inclusiveness.

Source Lists

- Make the source list "as inclusive of the adult population" as possible, ABA Standard 2, using voters, drivers, and a variety of other lists (e.g., tax, utility, telephone directories, social service recipients). Another possible list could be the ADA paratransit eligibility list, required as of January 1997, available from local public or private transit providers.

- Include holders of identification cards issued through the motor vehicle, sheriff's or other departments.

- Allow state residents to have their names added to the master jury list for random selection if they are not already listed on any of the lists used by the state.

Qualifications/Disqualifications

- Strike qualifying language that requires "physical and mental ability to render satisfactory jury service." Limit qualifications to essential juror functions. For instance, the abilities to comprehend the functions of a juror, to understand the issues, and to deliberate are pertinent juror qualifications. A prospective juror who cannot assess or understand specific evidence even with an accommodation still may be removed for cause in a particular case when essential for a fair trial.

- Delete words that require jurors to hear, write, read or understand English, as this may disqualify persons who use sign language interpreters, particularly for American Sign Language. A broader phrase would allow service by those able "to communicate" effectively in English. (ABA Standard 4.)

- Include an express statement that prospective jurors may not automatically be excluded from jury service based on hearing, vision, or physical impairments alone.

Exemptions and Excuses

- Review any automatic exemptions from jury service based on age or disability, and propose legislation to delete these; and
- Phrase statutory grounds for excuses in functional terms, such as the ability to consider the evidence in a particular case and the physical ability to sit the projected length of the trial.

Mandatory Accommodations

- Consider statutory language to require appropriate accommodations for each juror's disability, or include such a provision by court rule. Be sure that the statute or rule addresses a variety of accommodations, as no one accommodation is appropriate for all persons even with the same disability.

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FN[FNb1]. Commission on Mental and Physical Disability Law

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Chapter III: Action Steps: Juror Selection, Accommodations, Outreach and Education

B. ACCOMMODATING JURORS THROUGHOUT THE PROCESS

To enhance access for persons with disabilities throughout the judicial process, each court should designate an ADA coordinator or "access ombudsperson." See *Opening the Courthouse Door and Survey of Access to New York State Courts for Individuals with Disabilities* (1994). A court ADA coordinator could play a broad role, working closely with any state and/or local jurisdiction's ADA coordinator, as well as with any jury service administrator.

The court's ADA coordinator should review the entire jury process - including the pretrial phase, the trial, and deliberations - to identify statutory, programmatic, technical, and physical changes that could be made to enable persons with disabilities to participate. The review should include input from the disability community, including technical experts and lay persons experienced with access issues, to aid in realistic planning for accommodations that will work, and in identifying resources for help. Once the accommodations are in place, the coordinator should target outreach to the public highlighting access enhancements and showing how persons with disabilities can serve. Finally, the coordinator can serve as point person for accommodation requests from jurors with disabilities.

Pretrial Phase

Court personnel should review policies and practices to ensure that all aspects of managing prospective jurors - including notices, summonses, court-connected transportation, juror orientation, and the voir dire process - are in compliance with the ADA and state statutes. It may be necessary to revise court procedures, make forms available in alternative formats, provide accessible parking, and offer sign language interpreters or assistive listening devices as pretrial accommodations.

Encouraging Participation

Courts should take steps to ensure that persons with disabilities are included within the jury pool, recognize the importance of serving on juries, and know their rights to accommodations and that the public recognizes and expects their participation.

- Begin outreach efforts to people with disabilities through state or local

disability organizations and ask for their suggestions. See pp. 38-39. Provide these organizations and networks with specific information about accessible jury service. For example, inform them about the registration process, whether this means obtaining a non-driver's identification card or registering to vote. Highlight the name and telephone/text telephone numbers of court personnel who handle accommodation requests.

- Produce public service announcements (PSA) on jury service. Include individuals with disabilities in the videotaped PSA and mention the availability of accommodations. Invite advocates and organizations that serve individuals with disabilities to participate actively in National Jury Week in October.
- Consider sponsoring a mock jury exercise to better inform individuals about jury service responsibilities.
- Include information about jury service and access to jury service on your public access channel on cable television. Explain that jury service is a random process with no guarantee that any particular individual will be called to serve.
- Keep records of the number of jurors with disabilities who serve and the accommodations requested and provided. Review source lists to determine whether persons with disabilities are likely to be included.

Notification and Summons

Court administrators should review their juror questionnaire, notification, and summons procedures in light of ADA requirements, and should make any necessary revisions in the forms.

Courts basically use two methods for qualifying and summoning jurors: a "two-step" process with a standard questionnaire by mail, followed with a summons; or a "one-step" process that combines the qualifications questionnaire and summons into a single form. The ABA Jury Standards recommend combining the two forms into a single step to avoid duplication of work, to use the most current information, to increase the percentage of eligible persons responding, and to "relieve some of the uncertainty and confusion felt by prospective jurors as a result of the interval between qualification and summoning." (ABA Standard 11(a).) It is unclear which method would be best for persons with disabilities. A one-step process may be simpler and more readily understood, yet a two-step process might provide court personnel with additional time to schedule interpreters, install assistive listening devices, assign a staff person to assist a juror with a mobility impairment, or arrange other types of accommodations. However, a one-step process with sufficient time between summons issuance and the prospective juror reporting to the court might accomplish the same result.

- Review the summons and notifications forms for any language suggesting that a disability is grounds for an excuse or might prevent someone from serving as a juror. Consider revising or deleting such language in light of state law and the ADA.
- Recognize that some potential jurors may need assistance in completing their summons form, and explore ways to provide this assistance.

- Include the name and telephone and text telephone (TT) numbers of the court's ADA coordinator or the jury service administrator on the summons, so that requests for equal access and accommodations can be handled through a central office. If the court does not have a TT, include the state "relay" number established under the ADA. Train staff to use a TT (which is also referred to as a text typewriter (TTY) or a telecommunication device for the deaf (TDD)) and explain to them how a relay call works.

Text Telephone (TT)

- Include a statement of accommodation on court summonses and/or questionnaires. See boxes below and Appendix F for examples. Clarity and brevity are key. Be sure that the language about accommodations is positive. Phrase it in terms of the ADA and accommodations for people with disabilities specifically, rather than a broad, open-ended statement about accommodations generally, which could cover situations unrelated to disability.

Sample accommodations statement language:

Access to jury service is available to all qualified individuals with disabilities as required by the Americans with Disabilities Act (P.L. 101- 336, [42 U.S.C. §12101](#) et seq.). If you have a disability and are need an accommodation, please call (list phone, text telephone, and state relay numbers) or write to:

Name _____

Court _____

Address _____

Please call or write no later than 7 days prior to your reporting date. Provide your telephone or text telephone number so that we can follow up with you directly.

If you have a physical or mental disability that affects your ability to serve on a jury and you would like an accommodation (e.g., sign language interpreter, wheelchair access, Brailled jury instructions), please list your request:

Return to the Office of the Court Administrator or Clerk of the Court no later than 7 days prior to reporting for jury duty. If you have any questions, please call _____ (list telephone, text telephone, and state relay numbers).

- Record needed accommodations in a tickler file or an electronic database so that accommodations will be ready for use on the date of expected service. Alert the court information desk when to expect a juror needing an accommodation.

- If requests for accommodation are made, call the potential juror to clarify the request and then to discuss what accommodations the court can make. Invite the juror to visit the court before the service date to ensure that he or she is familiar with the court's layout and that the requested accommodation will work.

- Review print type and size to help citizens with visual impairments. To produce large print, use a sans-serif typeface in at least 16-point type. Avoid all-capital letters and italic type.

- Use carbon paper for form copies (as opposed to carbonless copy paper) because it is less toxic to sensitive skin.
- Ensure that all information about jury service, including notification, questionnaires, formal summons, and jury orientation materials, is available upon request in alternative formats. Explore audiotape, computer diskette, large print, and Braille formats.
- Use plain language in the notification and summons and any other forms. Forms should be "phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems." (ABA Standard 11(a)(ii).)

Transportation to Court

Accessible jury service is closely linked to a potential juror's ability to get to the courthouse. Court personnel should provide potential jurors with as much notice as possible, so that people can arrange for their own transportation. In addition, under the ADA if the court reimburses jurors for their parking or transit costs, then the court also must reimburse accessible transportation for jurors with disabilities.

- Send a clear, simple map with the summons that shows accessible transit routes and accessible parking spaces. Also indicate on the map where accessible routes into the court building are located.
- Explore accessible transportation options within the jurisdiction. Begin by contacting the local transit agency, human service transportation providers, agency on aging, and independent living centers. Consider contracting with one of these local resources to provide accessible transportation to the courthouse.
- Familiarize court staff with the local "paratransit plan" required by the ADA, meaning demand-responsive transportation service for individuals with disabilities who are unable to use fixed route transportation systems. Paratransit service must be comparable to the system's fixed-route services in terms of four criteria: service area, response time, fares, and days and hours of service. Many paratransit services regularly require individuals to make their requests days or even weeks in advance. This will change in 1997 when full compliance with the ADA is required, but until then, advance notice is often required when using accessible paratransit services.
- If there are inadequate accessible transportation options within the local community, consider assigning bailiffs or sheriff deputies to pick up jurors and transport them to the courthouse. If the court offers a shuttle trip from the parking lot to the courthouse, check whether the vehicle includes a lift to ensure that anyone using a wheelchair or scooter can be transported.
- Be sure that curb ramps around the courthouse are included in the local jurisdiction's ADA plan.
- Request the designation of accessible parking spaces and verify that there are an adequate number of them. Be sure that the spaces are located close to the accessible building entrance or the elevator.

Access Throughout the Courthouse

Anyone coming into a courthouse should be able to navigate freely from the parking lot or public transit station through the entrance and to each space or element within the building. Action steps to eliminate physical barriers to the court facility are detailed extensively in *Opening the Courthouse Door*. Key among these are:

- Create an accessible entrance using a ground-level public entrance (with signs indicating its location), or install a lift or ramp.
- Widen any doorways narrower than 32 inches, install lighter doors, consider installing two-way swinging doors, reduce door pressure, or explore power-assisted door openers. Attach adapters to round door knobs to make lever handles. (Review the ADA Accessibility Guidelines for doors.)
- Use a non-slip floor/ground pavement covering or a wide rubberized track in all common areas to guide persons who are blind, and to provide a safe path of travel for all.
- Have the telephone company lower or adapt pay telephones. Provide a public text telephone along with regular public pay telephones.
- Add cup dispensers by drinking fountains, and be sure that there is sufficient space for a wheelchair in front of the fountains.
- Upgrade lighting wattage and fixtures. Consider visual alarm systems.
- Provide information on a map of the courthouse interior indicating where accessible features are located, such as ramps, restrooms, and text telephones.

In addition to architectural considerations, court personnel should attend to indoor air quality issues, ventilation, furniture, and maintenance with the objective of using less toxic substances.

Orientation

Once summoned, potential jurors with disabilities need to receive information about the selection process and jury service. The information should be in a format understandable by any juror, including those with mental or cognitive disabilities. Use simple, concise language. Provide written and oral information in alternative formats.

- Make all court forms and materials easily comprehensible and simple. Revise printed informational materials and forms to improve readability. Under the requirements of the ADA, the court must offer enlarged print, audiotape and/or Braille versions of all court materials. Be sure that individuals are aware that these alternative format exist. Alternatively, provide a court staffperson to serve as a reader for all printed information and forms.
- Make juror handbooks available in alternative formats, such as Braille, computer disk, or audiotape. If handbooks are distributed in advance, a juror should be given the opportunity to select which format is preferable. Revise handbooks to include specific information on accommodations and to show participation by jurors with disabilities.
- When providing materials and forms, avoid carbonless paper.
- Consider using a videotape format with captioning to orient all new jurors.

This will accommodate the needs of individuals with a wide variety of disabilities, including those with hearing impairments, cognitive or learning disabilities, and people with visual impairments.

Open-captioned Videotape

- Have both a visual and aural method of calling juror numbers. This could be accomplished simply by holding up a large written number or name while announcing the number or name aloud. Alternatively, a visual display board could show the numbers called. Another option is to have the court clerk personally notify individuals who cannot recognize when their name or number is being called.

- Explore ways to reduce waiting times in a juror assembly room as much as possible and to make the time more bearable. Seek to minimize stress, noise and overcrowding, to which those with some mental disabilities may be more sensitive. Consider:

- allowing personal assistants in the assembly room;
- permitting personal cassette players and headphones to reduce stress level;
- distributing beepers to allow people to walk off stress outside of waiting room and then return when beeped;
- providing reading materials, such as newspapers and magazines or talking books, to occupy the waiting time; and
- providing a quiet room in which individuals can work or relax to reduce stress.

Voir Dire

During the juror examination (or "voir dire") period, judges must balance the need for effective competency determinations with the need to prevent stereotypical judgments about the ability or inability of a potential juror. The judge also must conduct the questioning in a way that does not discriminate against individuals with disabilities.

- Include in the judge's opening statement to the panel of potential jurors that accommodations often are made for people's disabilities.
- Treat all of the potential jurors equally. Ask the entire panel, for example, about their endurance, ability to handle stress, and ability to evaluate the evidence. (Questions might include: Is there any reason you couldn't give your full attention to this case? Can you evaluate the evidence and give a verdict based solely on the evidence? Can you think of anything that would affect your ability to serve as a juror? Do you know of any reason why you could not make a factual determination in this case? It is expected that the trial of this case will last two to three weeks - does that schedule present any undue burden to you?)
- If a question about an individual's competency as a juror arises, use private sidebar questions to explore the person's ability to receive and evaluate the particular evidence that will be presented in the immediate case. This will minimize stress, invasion of privacy, and embarrassment. Tailor the questions

both to the specific disability and the specific evidence. (For instance: Are you able to hear soft voices across a room? Have you ever used an assistive listening device? Given your vision loss, how would you evaluate a witness's credibility? This case involves photographs of an accident - how would you assess the pictorial evidence in this case?)

- Consider open-ended questions to evaluate the competency of persons with possible cognitive disabilities. (For example: Tell me what being a juror means to you. Tell me how you can be fair to both sides. Tell me about any experience you have had with courts before.) Use simple language and avoid unnecessary abstract concepts.

- Encourage and provide opportunities for panel members to ask for accommodations if necessary. For example, mention that they can ask for private sidebars with the judge.

- Consider using the "struck jury system" for peremptory strikes, in which peremptories are exercised after voir dire examination of all panel members is completed and then counsel alternately strike names from the list of panel members until the number of challenges is exhausted. (ABA Standard 9.) Such a system shortens the voir dire process, minimizes embarrassment for struck jurors, and focuses on "affirmative choice of the final jurors rather than on the disqualifications of individuals along the way." (ABA Standards Commentary, p. 83.)

- Instruct the jury panel that no one should feel embarrassed or inadequate if struck.

Trial

Court personnel also should focus on accommodating a juror's particular impairment during the trial process. This could entail eliminating physical barriers to courthouse areas frequented by jurors, enhancing communications technology so that the juror can follow the trial, or modifying trial practices, procedures, and services.

Accessibility of Jury Box

- Ensure that the path of travel through the courtroom to the jury box is accessible.

- Ramp, lower, or physically modify jury boxes so that they are wheelchair-accessible (in accordance with ADAAG § 11.2.1(2)). See Appendix E and Figure 1 on p. 30. Where it is not possible to

Figure 1

restructure a jury box, if a juror in a wheelchair is selected, assign that case to a courtroom with an accessible jury box. Alternatively, seat half the jurors, including those using wheelchairs directly outside the box, and seat the other half in the front row of the jury box. Ensure that the jurors outside the box have a clear view of witnesses, parties, the judge, attorneys, and evidence areas.

- Ensure that there is sufficient personal and maneuvering space in the box. Permit different placement of seats if necessary. Individuals who use wheelchairs should be able to access the jury box without assistance and maneuver independently.
- Reserve seats with closest distance and best line of sight to the witness stand for jurors with hearing or vision impairments. Provide adequate lighting so that people who read lips can see clearly the witnesses, judge, and attorneys when they speak.
- Provide built-in communication accessibility, such as electrical outlets, microphones, headphones, and/or a loop system. Wiring is inexpensive if a P.A. system already exists, and the ready availability decreases the stigma of needing such a technological accommodation.

Interpreters

Qualified, trained interpreters sometimes are essential to effective communication with persons who have hearing or vision loss. However, the challenge is finding an appropriate interpreter who can translate the English language effectively for persons with hearing loss or read written documents for persons with vision loss or learning disabilities.

For persons who are deaf, there are three main types of interpretation: 1) American Sign Language, 2) Signed English, and 3) oral interpreting. American Sign Language (ASL) is regarded as a separate language from English because ASL's grammatical structure is distinctly different. In ASL, the sentences often begin with the time element, followed by the object, the subject, and then the verb. Negation, prepositions, and adjectives often complete sentences. This requires the ASL interpreter to follow the complete sentence and its meaning before translating it. Furthermore, ASL uses facial expressions and body language to punctuate the meaning of the thought.

Signed English, on the other hand, is the almost verbatim translation of the English language into signs and the use of a manual alphabet to fingerspell words for which there is no sign. Signed English is not interchangeable with ASL.

The third type of interpretation is oral interpreting, where the person with hearing loss reads lips, body language, and gestures to determine the spoken message.

The National Registry of Certified Interpreters and Transliterators is comprised of interpreters who have achieved a minimum standard of competence within one or more of 18 categories of certification, of which four areas of certification address interpreting in legal settings. For more information about interpreter certification, call the Registry of Interpreters for the Deaf, Inc. at (301) 608-0050 (V/TTY).

Sources of Interpreters

- Encourage revision of state law or court rules (if necessary) to provide affirmatively for sign language or oral interpreters for deaf jurors, or readers for jurors with vision impairments, who need such an accommodation, at the court's expense.

- Check with the Registry of Interpreters for the Deaf, the state agency for the deaf, social services agencies, community colleges where sign language is taught, etc., to develop a list of available qualified interpreters in your area.

- Make arrangements for interpreters in advance either through the court's interpreter office or the court's ADA coordinator.

- Negotiate a contract with an interpreter service or individual interpreters to be available to appear in court upon notice. Because of the concentration necessary for simultaneous interpretations, it is common practice to have interpreters work in teams of two so that they can switch off and rest without interrupting proceedings.

- Consider arrangements for sharing interpreters with other courts or with state or local agencies.

- Do not use relatives as interpreters unless they are qualified. In considering the use of relatives as interpreters, be aware that emotional involvement could interfere with a clear, unbiased message.

Qualifications of Interpreters

- Have the judge qualify interpreters for the record as competent to interpret court proceedings.

- Develop a practice of having the judge meet with the interpreter before trial to discuss the interpreter's role and positioning in the courtroom. Be sure that the interpreter does not block any line of sight, but is located so the juror also can see the witnesses's faces.

- Explain to other jurors the interpreter's role and common courtesies that they should follow when communicating with the juror using the interpreter, such as looking at the juror rather than the interpreter when speaking to the juror.

Oaths for Interpreters

- Administer an oath to a juror's interpreter before the trial, to bind the interpreter to a code of ethics and to ensure confidentiality. See Appendix F for Code of Ethics of The Registry of Interpreters for the Deaf.

Sample oath: Do you swear that you will accurately translate from the English language into the sign language understood by the juror, who is deaf, and from that language as used by the juror into the English language, and that during the deliberations of the jury, while present in the jury room, your communications with that juror and the other jurors will be limited to translating for the deaf juror what the other jurors say and for the others what the deaf juror says, so that you will not otherwise participate yourself in the jury's deliberations, and that you will keep secret all that you hear in the jury room unless ordered differently by the court or unless authorized by the deaf juror after the trial is

finished to disclose anything he or she said during the deliberations. *New York v. Green*, 561 N.Y.S.2d 130 (N.Y. County Ct. 1990).

Technology

- Use assistive listening devices and systems that amplify sound for persons with some hearing impairments - FM, infrared, and electromagnetic loop. See ADAAG Table A2 in Appendix E. Portable equipment can be set up in a courtroom where needed with very little advance notice. Provide receivers and have on hand a variety of "coupling" attachments, such as headsets and neck loops.

- Share portable sound enhancement systems and assistive listening devices with other courts or governmental entities.

- Explore with court reporters their ability to provide real-time computer-assisted transcription, where the court reporter's symbols are translated into English on a computer screen nearly instantaneously. This method is particularly effective for persons who were deafened later in life and have a high degree of literacy. See Appendix D to locate the National Court Reporters Association for names of certified real-time reporters in a particular locality and for more information on real-time technology.

- Allow communication boards or other portable communication aids for jurors with speech or language impairments. Allow augmentative communication aids whenever the communication is independent (e.g., another person is not required to create the message).

Communication Aid

- Allow use of a "Phonic Ear" for some persons with learning disabilities. This device extinguishes extraneous noise and keys the listener into the speaker. See Appendix D.

- Make written evidence available in Braille, large print, or digital form or read it onto audiotape for jurors with vision impairments or learning disabilities.

- Caption any video evidence.

- Permit the use of a reading tube or vacuum-equipped box by jurors sensitive to fumes from printed materials.

- Permit a juror with a visual impairment to use a magnifier for any printed or pictorial evidence.

Magnification Equipment

Programmatic Changes

- Schedule breaks on an as-needed basis, and permit jurors to stand and stretch during bench conferences and other natural breaks in the evidence.

- Allow a juror to stand instead of sit.

- Consider allowing notetaking or recording devices.

- Permit court personnel to describe physical evidence to a juror with a visu-

al impairment. Consider making the description a part of the record.

- Offer the assistance of court staff to a juror who needs help in handling documents or evidence.
- Modify sidebar procedures so that judge and counsel move into chambers instead of moving the jury into the deliberation room.
- Allow service animals to accompany a person with a disability.
- Allow a support person for a juror with a mental disability to be seated in the front row of spectator seating, within sight of the juror.
- Provide an opportunity for clarification of information requested (e.g., a structured period during a recess).
- Remind lawyers to simplify their language and drop unnecessary legalistic terms. When legal terminology is used, the concepts should be explained to all jurors to ensure comprehension. For example, if the judge announces that "the voir dire process for jury selection is about to commence," this would probably intimidate many individuals. However, if the process is explained in simple terms, all jurors will benefit.
- Before the trial begins, suggest that a juror raise his or her hand if at any time he or she cannot hear or see. The judge then should speak privately with the individual to determine the best accommodation.

Jury Deliberations

"The deliberations of the jury are the culmination of the entire jury selection and trial process." (ABA Standards Commentary, p. 178.) The judge's instructions, the jury deliberation facilities, and the deliberation procedure itself all should maximize the participation of jurors with disabilities.

Jury Instructions

Jury instructions are the way in which the judge tells the jury about its role and about the legal basis for arriving at the verdict. Jurors often are unfamiliar with the legal system, and may not understand pattern instructions with difficult legal or technical terminology. Courts should strive for instructions that are "readily understood" by all jurors, ABA Standard 16(c)(iii) and Report of the New York Jury Project to the Chief Judge (March 1994); that may be communicated in alternative formats; and that clarify, when necessary, how a certain accommodation for a juror with a disability will work during deliberations.

- Review pattern jury instructions for clarity and simplicity. Be sure that pattern instructions use language understandable to lay persons. Call upon communications experts to assist.
- Provide the instructions in writing as well as orally, so jurors can review them. If possible, make a large-type, computer disk, audiotape, or Braille version available to jurors with vision loss or learning disabilities. Alternatively, permit another juror or court employee to read the instructions to the juror with the disability.
- Ensure that the instructions clarify the neutral, non-participatory role of

sign language or oral interpreters, real-time reporters, readers or personal assistants.

- Consider instructions that direct jurors to speak one at a time during deliberations for the benefit of interpreters or real-time reporters, to have direct eye contact with persons with disabilities when speaking to them, and to describe evidence or read documents to jurors with visual impairments. Also instruct jurors to use sensitivity and patience when dealing with each other, particularly if someone has a disability.

Deliberation Facilities

The deliberation room should be secure and comfortable for all, and fully accessible to jurors with disabilities. The Americans with Disabilities Act Accessibility Guidelines (ADAAG) directly address assembly and deliberation facilities, providing that: the deliberation area must be on an accessible route; and amenities such as refreshment areas, fixed seating and tables, drinking fountains, and restrooms must comply with ADAAG standards. Since most of the deliberation room furniture will be movable, not fixed, an appendix note recommends "providing appropriate maneuvering clearances in the room and choosing furniture that would allow appropriate knee clearance under tables." ADAAG § 11.3 (June 20, 1994). See Appendix E.

To comply with the ADAAG standards and to meet the needs of jurors with disabilities in the deliberation room, courts should:

- Work with the county or local jurisdiction to make jury deliberation rooms and restrooms accessible.
- Consider moving deliberations to an alternative site if necessary, while maintaining the security and dignity of the deliberations process. For example, deliberating in an available courtroom might allow more space for a person with a disability who cannot tolerate small, closed rooms.
- Check cooling, ventilation, acoustics and lighting of deliberation rooms. Lighting should be sufficient but not extreme, not flickering lights (no less than 20 mhz), and the room should not be filled with glare.
- Install electrical outlets for three-pronged plugs for computers for real-time transcription, or for assistive note-taking devices if this is allowed.
- Use an accessibility checklist before contracting with hotels and restaurants for jury sequestration or meals. Contract only with accessible facilities. Call on community disability resources to help. Ensure that jurors with disabilities are not segregated in housing, transportation, dining or other activities.
- Make arrangements for attending to the special dietary needs of people with certain medical conditions, such as diabetes.

Deliberations Procedures

Courts should take steps to enhance the deliberations process for persons with disabilities:

- Permit interpreters, real-time reporters, readers or personal assistants in the deliberation room. Require an oath that they will not participate in the deliberations. Consider getting a written statement from them after the deliberations to help foreclose fair trial challenges.

- Consider use of portable assistive listening devices that could be moved from the courtroom to the deliberation room. Infrared devices are secure within the walls of the room, providing maximum confidentiality. Share costs for these devices with other governmental entities.

- Provide real-time transcription equipment for deliberations when necessary. Share cost with other court or government entities. Remember the print-outs from the real-time transcription can be used as the court transcript, if a court recorder is used to produce the real-time transcription.

- Permit frequent breaks. This will help jurors with certain physical, mental, or cognitive disabilities, as well as real-time reporters and interpreters.

FN[FNa1]. Commission on Mental and Physical Disability Law

FN[FNb1]. Commission on Mental and Physical Disability Law

FN[FNc1]. Commission on Legal Problems of the Elderly

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1994

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Chapter III: Action Steps: Juror Selection, Accommodations, Outreach and
Education

C. ENSURING OUTREACH AND EDUCATION

Linking with the Disability Network

The guide's action steps can best be accomplished in collaboration with community resources. For state courts, the key to maximizing juror access will be developing working relationships with the disability network. State/local disability resources, as well as ways courts can coordinate, are more fully described in *Opening the Courthouse Door*, pp. 43-50.

Briefly, through the Developmental Disabilities Assistance and Bill of Rights Act and other related federal legislation, each state has a federally-funded "protection and advocacy agency" to protect the rights of - and to serve as an advocate for - individuals with disabilities. In addition, many governors have established a commission on disability, and some localities have an office to assist person with disabilities. Some organizations may have a disability-specific focus - vision, hearing, mental retardation, or environmental sensitivity.

Finally, under the Americans with Disabilities Act, state and local governments with 50 or more employees must designate an "ADA coordinator." All states now have technology assistance programs funded under the National Institute on Disability and Rehabilitation Research (NIDRR) with funds from the Technology-related Assistance for Individuals with Disabilities Act of 1988. These centers are designed to bring assistive technology to people with disabilities to remove some of the barriers keeping them from participating in life activities. The national number for these centers is (800) 949-4ADA.

Court administrators and jury service administrators should identify these key state/local contacts and work with them to enhance access throughout the court process. Specifically, collaboration with these community networks can address jury accessibility in critical ways:

- Create a task force on juror access to identify needed changes, develop possible solutions, and raise awareness of the issue. Alternatively, work with any existing court access task force to achieve the same goals. See Final Report of the Wisconsin Supreme Court Interdisciplinary Committee; Survey of Access to New York State Courts.

- Use disability agencies and groups to help identify sign language interpreters, real-time reporters, access experts, sources of transportation for jurors with disabilities, non-chemical cleaning supplies, and other resources. The organizations also can assist with identification of accessibility modifications.
- Joint with disability groups to develop juror accessibility objectives. The groups can support needed revisions in state law, as well as funding for facility changes and technology.
- Work with the disability network in designing training for judges and court staff. Disability groups also can help in planning outreach and education for persons with disabilities (and the general public) concerning jury service.

Education and Training

A key element of providing accessible jury service is effective training for judges, attorneys, and court personnel. Without regular training, court personnel increase their potential for mishaps and error, often through ignorance, not malice.

Because the Americans with Disabilities Act is a civil rights statute, it has an impact on state law and court rules, policies, and practices. This makes compliance an ongoing mandate which may require fundamental change in the behavior and attitudes of court personnel.

Training for Court Personnel

Court administrators, bailiffs, jury administrators, information desk person, secretarial staff, and other courthouse employees all should be offered training which includes at least three topics: disability awareness, the provisions of the Americans with Disabilities Act (ADA), and the ADA's implications for jury service as embodied in court policies and procedures, court rules and state statutes. This training should be ongoing and conducted at least once a year in order to update information and include new personnel.

- Consider sponsoring a four- to eight-hour seminar on ADA requirements and implications for accessible jury service.
- Consider training staff on disability awareness and ways to provide accommodations that are not patronizing.

Training for Judges

As the administrator of justice, the judiciary is the linchpin of nondiscriminatory court access and jury service. In both their leadership role in court administration and their judicial discretion when seating the jury, judges need to understand fully the implications of their jury selection and access decisions.

Training is key to increased understanding and effective compliance. Thus, state judicial education offices should:

- Consider adding a specific section on juror accessibility to any judicial

training module on the ADA or on disability issues.

- Consider adding specific sections on the ADA and on disability awareness to any judicial module on juror use and management.

- Add information on juror access and accommodations, as well as selection of jurors with disabilities, to judicial benchbooks. Include sample voir dire questions, pattern jury instructions regarding the role of an interpreter or support person in deliberation, an interpreters' oath, and a list of disability-specific accommodations. Use this guide as a starting point.

FN[FNa1]. Commission on Mental and Physical Disability Law

FN[FNb1]. Commission on Mental and Physical Disability Law

FN[FNc1]. Commission on Legal Problems of the Elderly

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Chapter III: Action Steps: Juror Selection, Accommodations, Outreach and
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D. CONCLUSION

The U.S. Supreme Court has observed that "for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process." Powers v. Ohio, 111 S. Ct. 1366, 1369 (1991). People with disabilities should share this honor and privilege equally with other citizens. Courts must open their doors and their jury boxes - and consider with care how to accommodate a range of impairments while ensuring a fair trial.

Persons with disabilities must not unfairly be excluded from the random juror selection process. They are entitled to sensitive, individual judgments on their ability to serve as a juror in particular cases. Judges and court personnel must be aware of accommodations that can enable juror participation. Juror facilities also must be accessible, and judicial practices and procedures must not unjustly inhibit jury service.

These dictates are required by the Americans with Disabilities Act. Beyond that, such actions will signal the judiciary's willingness to include persons with disabilities to our justice system. This guide can be a beginning. Its major action steps are capsulized in the following fifty-question court checklist.

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Chapter III: Action Steps: Juror Selection, Accommodations, Outreach and
Education

FIFTY QUESTIONS: A COURT CHECKLIST ON ACCOMMODATING JURORS WITH DISABILITIES

Action Item	Yes	No	Action Required	Target Date	Cost
1. Does the court keep data on the number of persons with a disability who have served as a juror?					
2. Has the court recently reviewed the juror source list for inclusivity?					
3. Does the source list include holders of non-drivers identification cards?					
4. Has the court engaged in outreach to disability groups about jury service and ideas for juror access?					
5. Does state law regarding juror qualifications clarify that persons with hearing, vision or physical impairments may not automatically be excluded?					
6. Are state laws/court rules regarding excuses phrased in functional terms (i.e., able to receive and evaluate					

Into Jury Box: Disability Guide for St. Cts. Checklist

evidence in case at hand)?

7. Are the questionnaire, notification, and summons forms in large, clean print and free of "legalese"?
-
8. Are the questionnaire, notification, and summons forms free of language suggesting that disability automatically is a ground for excuse?
-
9. Do the questionnaire, notification, and summons forms include a statement of accommodations and name, telephone and text telephone numbers to call?
-
10. Does the court invite potential jurors with a disability to visit before the service date?
-
11. Are accommodation requests recorded in a tickler file and ready on the service date?
-
12. Does the court send a simple map with the summons showing accessible transit routes, accessible parking and accessible entrances to the courthouse?
-
13. Do court personnel know how to make referrals to the local ADA paratransit service?
-
14. If there is a lack of accessible public transportation, has the court considered transporting potential jurors with disabilities to courthouse?
-

Into Jury Box: Disability Guide for St. Cts. Checklist

15. Are there adequate accessible parking spaces near the courthouse entrance?

16. Does the courthouse have an accessible ground level public entrance, or an entrance with a ramp or lift?

17. Are entrance doors wider than 32" and sufficiently easy to open?

18. Has the court reviewed its building indoor air quality?

19. Have some public telephones, drinking fountains, and restrooms been modified for wheelchair access?

20. Is there an interior facility map showing accessible features?

21. Is the juror handbook available in Braille, computer disk, large print, and audiotape?

22. Is the juror orientation video captioned?

23. Is there both a visual and aural method of calling juror names or numbers?

24. Is waiting time, noise, overcrowding and stress in the juror assembly room reduced as much as possible?

25. Does the judge's opening statement to potential jurors include a statement about accommodations

for disabilities?

26. Has the judge developed any pattern
voir dire ques-
tions to help determine if
disabilities will interfere
with jury service?

27. Does the judge treat potential jurors
with disabilities
with sensitivity - asking the same
questions of all
panel members or holding private
sidebar conferences?

28. Are at least some jury boxes
wheelchair-accessible?

29. Are jurors with vision or hearing
impairments seated
with the closest distance and best
line of sight to the
witness stand?

30. Does the jury box have three-pronged
electrical outlets
for assistive listening devices?

31. Does the court have a list of
available qualified sign
language interpreters in the area;
and/or a standing
arrangement with an interpreter
service?

32. Does the judge qualify sign language
interpreters for
the record and administer an oath
before trial?

33. Does the judge meet with the
interpreter before trial?

34. Has the court purchased or arranged to
use an assistive

Into Jury Box: Disability Guide for St. Cts. Checklist

listening device or system to amplify sound? A portable system to move from courtroom to deliberation room?

35. Has the court explored, purchased or arranged to use or share real-time transcription technology?

36. Does the court have a list of certified real-time reporters in the area?

37. Can the court make written evidence available in Braille, large print, audiotape or computer disk formats?

38. Does the judge schedule breaks in trial on an as-needed basis, and permit stretch breaks during bench conferences?

39. Does the court allow support persons or service animals to accompany a juror with a disability during trial?

40. Are the judge's instructions in clear and simple language, and given both orally and in writing?

41. Are jury instructions available in Braille, audiotape, computer disk or large-print; or if not immediately available, is another juror or court staffperson permitted to read the instructions to a juror with a vision impairment?

Into Jury Box: Disability Guide for St. Cts. Checklist

42. Does the court permit interpreters,
real-time reporters,
readers or personal assistants in the
deliberation room?

43. Do jury instructions clarify the
neutral role of the
interpreter?

44. Does the judge get a written statement
from the
interpreter after deliberations to
foreclose fair
trial challenges?

45. Are jury deliberation rooms and
restrooms accessible?
Will some be accessible over a period
of time?

46. Does the deliberation room have
three-pronged
electrical outlets for assistive
listening devices?

47. Does the court contract only with
accessible hotels
and dining facilities for jury
sequestration?

48. Have the judges received training on
the ADA, disability
awareness, and juror access?

49. Do the judges' benchbooks include
information on
juror access and accommodations?

50. Have court personnel received training
on the ADA,
disability awareness, and juror
access?

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APPENDIX A-1: JUROR SELECTION: STATE STATUTES AND RULES PERTAINING TO DISABILITY
AND AGE [FN1]

[Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) a three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data displaying the character positions.]


```
*****
***** This is piece 1. -- It begins at character 1 of table line 1. *****
*****
```

State	Source Lists	Non-Discrimination Provisions
Alabama	<p>All registered voters, persons holding drivers licenses and registered motor vehicles; and other lists such as utility customers, property tax lists.</p> <p>Ala. Code § 12-16-57.</p>	<p>Disability and age not listed.</p> <p>Ala. Code § 12-16-56.</p>
Alaska	<p>All persons who filed for permanent fund income with Alaska address; all persons who volunteer for</p>	

jury duty; and
if necessary
drivers license
list.

Alaska Stat. §
09.20.050(b).

Arizona Voter
 registration
 list, drivers

 license list,
 and other
 lists
 as determined by
 state
 supreme court.
 Ariz. Rev. Stat.
 Ann.
 § 21-301(B).

Arkansas Registered
 voters

 Ark. Code §
 16-31-101,

 § 16-32-103.

California	Sources inclusive of a rep- resentative cross section of the population, including the list of registered voters, drivers license list (includ- ing holders of identification card) and other lists such as customer	Disability and age not listed. Cal. Code Civ. Pro. § 204. All qualified persons have equal opportunity to be considered.
------------	---	--

mailing lists,

telephone directories, or utility lists. Cal. Civ. Pro. § 191.

Cal. Code Civ. Pro. § 197.

Colorado	Voter registration, supplemented with licensed driver lists and other lists. Colo. Rev. Stat. Ann. §§ 13-71-102(4) & 107.	Disability and age not listed. Physically impaired persons shall be paired with persons who are not disabled. Such pairing shall not be required where the court finds that such pairing is not feasible. Colo. Rev. Stat. Ann. § 13-71-104.
----------	---	--

Connecticut	Licensed drivers.
	Conn. Gen. Stat. Ann. § 51-217(b).

Delaware	Voter registration lists can be supplemented with other sources.	Disability and age not listed. 10 Del. Code Ann. § 4502. 10 Del. Code Ann. §§ 4503(5) & 4507.
----------	---	---

District of Columbia	Voters and names from other lists. D.C. Code §	Age and physical disability included. D.C. Code § 11-1903
-----------------------------	---	---

11-1905.

Florida

Drivers license
and identi-

fication card
holders or

by affidavit.

Fla. Stat. Ann.
§ 40.011.

Georgia Registered
 voters list,
 which

 may be
 supplemented
 by
 other sources so
 as to as-
 sure a fairly
 representative

 cross section of
 the intelli-
 gent and upright
 citizens.
 Ga. Code Ann. §
 15-12-40.

Hawaii Voter Physical handicap.
 registration
 lists, sup-

 plemented by Haw. Code Ann.
 other lists § 612-2.
 such as of
 taxpayers and
 drivers
 licenses.
 Haw. Code Ann. §
 612-11.

Idaho Voter Disability and age

registration not
 list, sup-

 plemented with listed.
 other lists
 such as of Idaho Code § 2-203.
 utility
 customers,
 property
 taxpayers,
 motor
 vehicle
 registrations,
 and
 drivers
 licenses.

 Idaho Code §
 2-206.

Illinois Lists of
 registered
 voters, li-

 censed drivers,
 state identi-

 fication card
 holders, and

 state disabled
 person iden-
 tification card
 holders.
 705 Ill.
 Compiled
 Stats. §§
 305/1, 310/2.

Indiana	Voter registration lists, sup- plemented with lists of util- ity customers, property tax- payers, income tax returns, motor vehicle registrations, city directories, telephone directories, and drivers licenses. Ind. Code Ann. § 33-4-5.5-8.	Disability and age not listed. Ind. Code Ann. § 33-4-5.5-2.
---------	--	---

Iowa	Voter registration and mo- tor vehicle operators lists; other comprehensive lists, such as of public utility customers, may also be used. Iowa Code § 607A.22.	Age and physical disability listed. Iowa Code § 607A.2.
------	---	---

Kansas	Voter registration, drivers license, or enumeration or census lists, plus state non-drivers identification card holders lists may also be used. Kan. Stat. Ann. § 43-162.	Disability and age not listed. Kan. Stat. Ann. § 43-156. Age; any other factor that discriminates against a cognizable group in the country. Kan. S. Ct. Stds on Jury
--------	--	--

Ct. Use & Manage-

ment, Std. 1.

Kentucky Drivers license
 and voter

 registration
 lists.
 Ky. Rev. Stat.
 Ann. §
 29A.040; Admin.
 Proc. of
 the Ct. of
 Justice, pt.
 II, § 2.

Louisiana Voter Disability and age
 registration
 lists with

other not listed.
information.

La. Rev. Stat. § La. S. Ct. Rule XXV,
15.113. § 1.
(Orleans Parish)

Maine Licensed Age and physical
drivers,
persons

issued an ID disability included.
card and any

person who Maine Stat. tit. 14,
notifies the § 1202-A.
clerk of the
court and re-

quests to be
part on the
source list.
Those lists
may
be supplemented.
Maine Stat. tit.
14, § 1202-A.

Maryland

Voter
registration
lists or

from other
sources as one
necessary to
assure random

selection of a
fair cross
sec-
tion of the
citizens of

the state.

Md. Code. Ann. §
8-202(2).

Massachusetts List of
 registered
 voters

 and list of city
 residents.
Mass. Ann. Laws
 Ch.
 234 § 4.

Michigan Qualified
 electors.

 Mich. Comp. Laws
 Ann.
 § 600.1304.

Minnesota Voter Age and disability
 registration
 and drivers

 license lists not included.
 which may be

 supplemented by Minn. Stat. § 593.7.

other
regularly
maintained
lists.
Minn. Stat. §
593.2.

Mississippi Registered Age and disability
voters.

Miss. Code Ann. not included.
§ 13-5-8.

Miss. Code Ann.
§ 13-5-2.

Missouri One or more Age and disability
public
records.

Mo. Stat. Ann. § not listed.
494.410.

Mo. Stat. Ann. §
494.400.

Montana Registered
electors Mont.
Code Ann.

§ 3-15-301.

Nebraska Registered Age and disability
electors and

licensed motor not listed.
vehicle

operators. Neb. Rev. Stat. §
25-

Neb. Rev. Stat. 1601.03(4).

§ 25-1628.

Nevada

Qualified
electors,

whether
registered or
not.

Nev. Rev. Stat.
§ 6.045.

At the judge's
request, lists
of motor vehicle
owners

and licensed
drivers.

Nev. Rev. Stat.
§§

482.171,
483.225.

New Hampshire	Drivers license and Depart- ment of Safety identifica- tion card holders. N.H. Rev. Stat. Ann. § 500-A:1.	Age and disability not listed. N.H. Rev. Stat. Ann. § 500-A:4.
---------------	---	--

New Jersey	A merger of the following lists: registered voters, li- censed drivers, state in- come tax filers, and home- stead rebate filers. N.J. Stat. § 2B:20-2 (effective 1/1/95).	Age and disability not listed. N.J. Stat. § 10:1-8.
------------	--	---

New Mexico	A merger of registered voter and drivers license lists. N.M. Stat. Ann. § 38-5-3.	
------------	---	--

New York	Voter registration lists and other lists such as lists of utility subscribers, licensed drivers, motor vehicle own- ers, state and local tax- payers, persons applying for or receiving aid to de- pendent children, medical assistance, home relief, or state unemployment bene- fits, and persons who have volunteered to serve as jurors. N.Y. Jud. Law § 506.	Age and disability not listed. N.Y. Civ. Rights Law § 13.
----------	--	--

North Carolina	Registered voter and licensed drivers
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lists.
N.C. Gen. Stat.
§ 9-2.

North Dakota	Voters list, supplemented	Physical disability listed.
--------------	------------------------------	--------------------------------

with other lists such as of utility customers, property taxpayers, motor vehicle registrations, and drivers licenses. N.D. Cent. Code § 27- 09.1-04.	N.D. Cent. Code § 27-09.1-02.
--	----------------------------------

Ohio	Registered electors and li-	Age and disability not
------	-----------------------------------	---------------------------

censed drivers. listed.

Ohio Rev. Code	Ohio Rev. Code Ann.
Ann. §	
2313.06.	§ 2313.47.

Oklahoma

Drivers license
or identifi-

cation license
holders.

Okla. Stat. tit.
38, § 18.

Oregon

List of electors Age; any other
and drivers factor

licenses. that discriminates

Or. Rev. Stat. § against a cognizable
10.215.

group.

Or. Rev. Stat. §

10.030(1).

Pennsylvania	Voter registration lists,	Age and disability
	which may be supplemented with other lists such as local directories,	not listed.
		42 Pa. Cons. Stat. § 4501(3).

taxpayer lists,
 government
 program
 participant
 lists,
 and school
 census lists,
 and anyone who
 makes
 application.
 42 Pa. Cons.
 Stat. § 4521.

 Rhode Island Registered Disability included.
 voters.

R.I. Gen. Laws § R.I. Gen. Laws §
 9-9-14.1. 9-9-2.

South Carolina Licensed
drivers,
identifi-

cation
cardholders,
regis-
tered voters.

S.C. Code Ann. §

14-7-130.

South Dakota	Voter registration lists, supplemented by drivers license lists. S.D. Codified Laws Ann. § 16-13-4.1.	Disability and age not listed. S.D. Codified Laws Ann. § 16-13-10.2.
--------------	---	---

Tennessee Tax records,
 lists of
 licensed

 drivers, and
 other
 available
 and reliable
 sources, but

 voter
 registration
 records
 cannot be the
 sole or
 primary source.

Tenn. Code Ann.
 § 22-2-302.

Texas Registered Age and disability
 voters, not
 licensed

 drivers, and included.
 personal iden-

 tification card Tex. Const. art. XVI
 holders. § 19.

 Tex. Gov't Code
 Ann.
 § 62.001.

Utah	Licensed drivers and	Disability and age listed.
	registered voters.	Utah Code Ann.
	Code of Jud. Admin.,	§ 78-46-3.
	Rule 4-404(2).	

Vermont May use: the
 latest census

 enumeration, the
 latest

 published city,
 town or
 village
 telephone or
 other
 directory,
 lists
 records,
 election
 records,
 drivers
 license records,
 and any
 other general
 source
 of names.

Vt. S. Ct. Rules
 Applicable
 to Jury
 Selection,
 Rule 3.

Virginia Lists of
 registered
 voters

 and, where
 feasible, the
 drivers license

list, city or
 county
 directories,
 tele-
 phone books, and
 per-
 sonal property
 tax rolls.
 Va. Code Ann. §
 8.01-345.

Washington	Registered voters and li-	Disability and age
	censed drivers and ID card holders.	not listed. Wash. Rev. Code
	Wash. Rev. Code §§ 2.36.010(8), 2.36.055.	§ 2.36.080(3).

West Virginia The master list Disability included.
 must be

 compiled from at W. Va. Code §
 least 2 52-1-2.

 of the following
 lists: pre-
 vious year's
 state personal
 income tax
 returns;
 regis-
 tered voters;
 drivers li-
 cense lists.

 W. Va. Code §
 52-1-5.

Wisconsin	Department of Transporta-	Physical condition in-
	tion's list of licensed mo-	cluded.
	tor vehicle operators and identification card holders, or a master list consisting	Wis. Stat. § 756.02(3).
	of the department of	

trans-
portation list
plus voter
reg-

and municipal
directories,
utility company
lists, lists
of real property
tax payers,
lists of high
school gradu-
ates age 18 and
older, or
lists of persons
on general
relief or aid to
families
with dependent
children.

Wis. Stat. §
756.03(2)(a).

Wyoming

Voter lists.

Age and disability

Wyo. Stat. §
18-3-

not listed.

402(XIX); §
7-11-101.

Wyo. Stat. § 1-11-

101(b).

May be expanded
by in-
cluding other
source(s)
of names in
addition to
voter lists.

Wyo Stat. §
1-11-106.

1 . . . + . . . 10 . . . + . . . 20 . . . + . . . 30 . . . + . . . 40 . . . + . . . 50 . . . +

 ***** This is piece 2. -- It begins at character 56 of table line 1. *****

Qualifications/Disqualifications, Challenges For Cause	Excuses	Exemptions
Qualifications: ----- Capable by reason of physical and mental ability to render satisfactory jury service, and not afflicted with permanent disease or physical weakness. Must be able to read, speak, understand and follow instructions in English. Ala. Code § 12-16-60. Challenges for cause: ----- Unsound mind. Ala. Code § 12-16-150.	Undue hardship, ex- treme incon- venience. Disability and age not listed. Ala. Code § 12-16-63.	No qualified juror is exempt. Ala. Code § 12-16-62.
Qualifications: ----- Of sound mind; in possession of natural facilities; able to speak or read English.	Health, a permanent physical or mental dis- ability or other hard- ship expected	

Alaska Stat. § 09.20.010(a). to last
 more than
 two years.
 Alaska Stat.
 §
 09.20.030.

Not disqualified solely because of
 loss of hearing or sight in any
 degree
 or mobility impairment.
 Alaska Stat. § 09.20.010(b)

Qualifications: Undue
 hardship.
 Ariz.

 Is not currently adjudicated Rev. Stat.
 mentally Ann. § 21-
 incompetent or insane. 202.
 Ariz. Rev. Stat. Ann. § 21-201(4).

Disqualifications: State of
 health
 reason-

 Unable to speak or understand ably
 English; requires
 absence.
 unable to read or write English, Ark. Code §
 but court 16-31-103.
 may waive when otherwise capable of
 performing the duties of jurors;
 lacking
 in sound judgment or reasonable
 infor-
 mation or are not of good behavior;
 unable by reason of a physical or
 men-
 tal disability to render

satisfactory jury
 service; except that no person
 shall be
 disqualified solely on the basis of
 loss
 of hearing or sight in any degree.
 Ark. Code § 16-31-102(a).
 Challenges for cause:

 Nothing...shall limit a court's
 discretion
 and obligation to strike jurors for
 cause
 for any reason other than solely
 because
 of sight or hearing impairment.
 Ark. Code § 16-31-102(c).
 Unsoundness of mind, or defect in
 faculties of mind or organs of body
 as
 renders incapable of performing
 duties.
 Ark. Code § 16-33-304. (criminal)

All persons are eligible and qualified	Physical or mental dis-	No class or category
except:	ability or	automatical-
Persons who are not possessed of suffi-	impairmen-	ly
cient knowledge of the English language,	t, not	excluded
but no person deemed incompetent	affecting	except as
solely because of the loss of sight or hear-	competence	provided
ing in any degree or other	as	
disability which	a juror,	by law.
	that would	
	ex-	
	pose the	Cal. Rules
	potential	of Ct.,
	juror	App.,
	to undue	Div. I, §
	risk of	4.5(b)(1).
	mental	
	or physical	
	harm.	
	Verifi-	

impedes a person's ability to communi-	cation
	required
	except
cate or which impairs or interferes with	for age 70
	or older.

the persons mobility; persons who are	Cal. Rules
	of Ct.,
	App.,
subject of conservatorship.	Div. I, §
	4.5(d)(5)
	& (7).

Cal. Code Civ. Pro. § 203.

Challenges for cause:

A loss of hearing or the existence of any other incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to rights of challenging party.

Cal. Code Civ. Pro. § 228(b)

Disqualifications:	Undue
	hardship.

Inability to speak, read or understand	Jury
	Selection
	&
English; inability by reason of physical	Service Rule
or mental disability to render satisfac-	9.
tory jury service (guideline is inability to	
perform a sedentary job requiring close	
attention for 3 days, 6 hours per day,	

with short breaks).

Colo. Rev. Stat. Ann. § 13-71-105.

 Disqualifications:

70 years of
 age or
 older

 If found by a judge of superior
 court to
 exhibit any quality that will
 impair capac-
 ity to serve, except that no person
 shall
 be disqualified on basis of
 deafness or
 hearing impairment (also in Super.
 Ct.
 Rules § 303A); not able to speak or
 un-
 derstand English; incapable by
 reason of
 physical or mental disability of
 render-
 ing satisfactory jury service.
 Conn. Gen. Stat. Ann. § 51-217(e).

and chooses
 not to
 perform.

Conn. Gen.
 Stat. Ann.
 § 51-217(c).

 Disqualifications:

Undue
 hardship.

 Incapable by reason of mental or
 physi-
 cal disability of rendering
 satisfactory
 jury service; unable to speak, read
 and
 understand English.
 10 Del. Code Ann. § 4509.

10 Del. Code
 Ann.
 § 4511.

 Disqualifications:

Service may
 be
 deferred

 Incapable by reason of physical or

on a showing
 of undue

mental infirmity of rendering
satisfac-
tory jury service; must be able to
speak
read and understand English.
D.C. Code § 11-1906.

hardship or
temporary
physical or
mental
disability.
D.C. Code §§
11-1908
& 1109.

Challenges for Cause:

Physically Over age 70.
infirm,
except

Unsound mind or bodily defect that
ren-

that no-one Fla. Stat.
shall be Ann.

ders one incapable of performing
the
duties of a juror, except that, in
a civil

cused from § 40.013(8).
service on
a civil
trial jury
solely on

action, deafness or hearing
impairment

the basis
that he is
deaf

shall not be the sole basis of a
challenge
for cause of an individual juror.

or hearing--
impaired,
unless cons-
ideration
of

Fla. Stat. Ann. § 913.03(2).

the evidence
to be pre-
sented
requires
auditory

When the nature of any civil action
re-
quires a knowledge of reading,
writing,
and arithmetic, or any of them, to
enable

discriminat-
ion or the
timely prog-
ression of
the trial
will be
consid-

a juror to understand the evidence
to be

erably
affected
thereby.

offered, the fact that any

Fla. Stat.

prospective juror does not possess the qualifications is a ground of challenge for cause. Fla. Ct. Rule of Civ. Pro. 1.431(c).

Ann. § 40.013(5).
 Hardship, extreme inconvenience. Fla. Stat. Ann. § 40.013(6).

Challenges for Cause:

Permanent mental or

Mental illness or mental retardation; intoxication.

physical disability; over age 70.

Ga. Code Ann. § 15-12-163(b).

Ga. Code Ann. §15-12-1.

Disqualifications:

Serious personal hardship-

Unable to read, speak, and understand the English language; incapable by reason of physical or mental disability of rendering satisfactory jury service. Haw. Code Ann. § 612-4.

ship, or other good cause. Haw. Code Ann. § 612-7.

Disqualifications:

Undue Over age 70.
hardship;
ex-

Unable to read, speak, and
understand
the English language; incapable, by
rea-

treme incon- Idaho Code
venience. § 2-209(2)(-
Idaho Code § 2-212. e).

son of physical or mental
disability, of

rendering satisfactory jury
service.

No automatic
excuses.

Idaho Code § 2-209(2).

Idaho Ct.
Rule
62(a).

Qualifications:

Undue
hardship
on ac-

Able to understand the English
language,
whether in spoken written form or
inter-
preted into sign language.

count of
physical
health.
705 Ill.
Compiled
Stats.
§ 305/10.2.

705 Ill. Compiled Stats. §
305/2(3).

Challenges for Cause:

Physical impairment, considering
the
juror's ability to perceive and
appreciate
the evidence.

725 Ill. Compiled Stats. §
5/115-4(d);

735 Ill. Compiled Stats. §
2-1105.1; Ill.

S. Ct. Rule 434(c).

Disqualifications:

Over age 65.

Unable to read, speak, and
understand
the English language; incapable of
ren-
dering satisfactory jury service
due to
physical or mental disability; has
an
appointed guardian because of men-

Ind. Code
Ann.
§ 33-4-5-7(-
a).

tal incapacity.

Ind. Code Ann. §§ 33-4-5-7(b);
33-4-5.5-11.

Qualifications:

Hardship;
inconven-

Able to understand the English
language
in a written, spoken, or manually
signed

ience; in
the
interest
of justice.

mode; able to receive and evaluate
in-
formation such that the person is
capa-
ble of rendering satisfactory jury
service.
Iowa Code § 607A.4.

Iowa Code §
607A.6.

Challenges for Cause:

 Physical or mental defects
 rendering
 the person incapable of performing
 the duties of a juror.
 Iowa Ct. Rules of Civ. Pro., Rule
 187(f).

Unsoundness of mind, or such
 defects
 in the faculties of the mind or
 organs of
 the body as render the juror
 incapable
 of performing the duties of a
 juror.
 Iowa Ct. Rules of Crim. Pro., Rule
 17-5.

 Disqualifications:

Physically
 or
 mentally

 Unable to read, write, and
 understand
 the English language; under
 adjudication
 of incompetency.

infirm as to
 be unequal
 to the task
 of
 ordinary
 jury duty;
 extraordi-
 nary

Kan. Stat. Ann. § 43-158; Kan. S.
 Ct,

or
 compelling
 personal
 hardship.

Std. on Jury Ct. Use and
 Management,
 Std. 4.

Kan Stat.
 Ann. §
 43-159.

The ability
 to receive
 and
 evaluate in-
 formation

is
 so impaired
 that the
 per-
 son is
 unable to
 perform
 the duties
 of a
 juror;
 jury
 service
 would be
 an ex-
 traordinary
 or
 compelling
 personal
 hardship.
 Kan. S. Ct.
 Stds on
 Jury
 Ct. Use

 Disqualifications:

Undue hardship or ex- No automatic exemption- s.

 Unable to speak and understand the English language; incapable, by reason of physical or mental disability, of rendering effective jury service.

treme inconvenience. Ky. Rev. Stat. Ann. § 29A.090.
 Ky. Rev. Stat. Ann. § 29A.100.

Ky. Rev. Stat. Ann. § 29A.080; Admin. Proc. of the Ct. of Justice, pt. II, § 8.

 Qualifications:

Undue hardship or ex- Over age 70.

Able to read, write, and speak the

treme incon-
venience.

La. S. Ct.
Rule XXV,
§ 2.

English language and be possessed
of

La. Rev.
Stat.
§ 13:3044.C.

sufficient knowledge of the English
lan-

guage; not be under interdiction or
in-

capable of serving as a juror
because of

a mental or physical infirmity,
provided

that no person shall be deemed
incom-

petent solely because of the loss
of

hearing in any degree.

La. Code Crim. Pro. art. 401(A).

Same in civil cases as for
criminal.

La. Rev. Stat. § 13:3041.

Challenges for cause:

A loss of hearing or the existence
of any

other incapacity which renders the
per-

son incapable of performing the
duties

of a juror in the particular action
with-

out prejudice to the substantial
rights

of the challenging party; where
reason-

able doubt exists as to the
prospective

juror's competency.

La. Code Crim. Proc. art. 401(B).

Disqualified:

Undue
hardship;
inca-

 Unable to read, speak and
 understand

the English language.

Maine Stat. tit. 14, § 1211.

pable of
 rendering
 satis-
 factory jury
 service by
 reason of
 physical
 or
 mental disa-
 bility.
 Maine Stat.
 tit. 14,

 § 1213(2).

 Disqualification:

Undue
 hardship

 Unable to read, write or understand
 the

English language with a degree of
 profi-

ciency sufficient to fill out
 satisfactorily

provision.

 Md. Code
 Ann. §
 8-210.

the juror qualification form;
 unable to

speak the English language or
 compre-

hend spoken English; incapable, by
 rea-

son of physical or mental
 infirmity, of ren-

dering satisfactory jury service;
 may be

required to submit a doctor's
 certificate

Unable to
 render
 jury
 service or
 that his
 serv-
 ice would be
 likely to
 dis-
 rupt the pr-
 oceedings.
 Md. Code
 Ann.
 § 8-210(b)(-
 3).

as to the nature of the infirmity.

Md. Code Ann. § 8-207(b).

Qualifications:

Undue
hardship.

Age 70 yrs
or older.

All those qualified to vote (not just registered voters), except: No person shall be disqualified because such person is blind or ... is physically handicapped.

Mass. Ann. Laws Ch. 234 § 1.A.

Mass. Ann. Laws Ch. 234 § 1.

Mass. Ann. Laws 234 Ch. § 4.

Disqualifications:

Not able to speak and understand the English language; incapable by reason of a physical or mental disability of rendering satisfactory juror service.

Mass. Ann. Laws Ch. 234 A § 4.

Qualifications:

More than 70 yrs old.

Conversant with the English language; physically and mentally able to carry out the functions of a juror.

Mich. Comp. Laws Ann. § 600.1307.

Mich. Comp. Laws Ann. § 600.-1307(a).

Disqualifications:

All automatic excuses

Not able to communicate in the

or exemptions are

English language.

eliminated.

Minn. Stat. § 593.4

Minn. Stat.
§ 593.6.

Qualifications:

Undue
hardship.

Over age 65.

Able to read and write; not a
common
gambler or habitual drunkard.
Miss. Code Ann. § 13-5-1.

Miss. Code
Ann. § 13-
5-23.

Miss. Code
Ann. § 13-
5-25.

Qualifications:

Extreme
hardship.

Unable to read, speak and
understand
the English language; incapable of
per-
forming the duties of a juror
because of
mental or physical illness or
infirmity.
Mo. Stat. Ann. 494.425.

Mo. Stat.
Ann.
§ 494.430.

Undue
hardship.
Mont. Code
Ann. § 3-
15-313.

Qualifications:

Undue
hardship;
ex-

Over age 65.

Able to read, speak, and understand

the English language.

treme incon-
venience;

public
necessity.

Neb. Rev.
Stat. §
25-
1601(3).

Neb. Rev. Stat. § 25-1601(1)

Neb. Rev.
Stat. §
25-
1601(2).

Disqualifications:

Incapable, by reason of physical or
men-
tal disability, of rendering
satisfactory
jury service.

Neb. Rev. Stat. § 25-1601(1).

Challenges for Cause:

Is a habitual drunkard.

Neb. Rev. Stat. § 29-2006.

Qualifications:

Temporary: Over age 65.
sickness

Has sufficient knowledge of the
English
language; is not rendered incapable
by
reason of physical or mental
infirmity.

or physical
disabilit-
y;
undue
hardship
or ex-
treme incon-
venience.

Nev. Rev.
Stat. §
6.020(2).

Nev. Rev. Stat. § 6.010.

Permanent:
incapable,

by reason of
a perma-
nent
physical
or mental
disability,
of
rendering
satisfactory
service as
a juror.
Nev. Rev.

	Stat. § 6.030.	

Disqualifications:	Undue hardship; ex-	Over age 70.

Mentally or physically unfit to act as a juror.	treme incon- venience; any other cause that the court deems appropriate. N.H. Rev. Stat. Ann. § 500-A:11.	N.H. Rev. Stat. Ann. § 500-A:9.
N.H. Rev. Stat. Ann. § 500-A:10.		

Qualifications:	Over age 75; severe	

Able to read and understand the Eng-	hardship due to cir-	
lish language; not have any mental or physical disability which will prevent the person from properly serving as a juror.	cumstances not likely to change, including a medical inability to serve.	
N.J. Stat. § 2B:20-1.	N.J. Stat. § 2B:20-10.	

Disqualifications:	Any excuse, upon satis-	

Incapable because of physical or mental illness or infirmity to render jury service.	factory evidence. N.M. Stat. Ann. § 38-5-2.	

N.M. Stat. Ann. § 38-5-1.

Physical or
mental
illness.
N.M. Stat.
Ann. §
38-5-11.

Qualifications:

Health;
undue
hard-

Age 70 or
older.

Not have a mental or physical
condition,
or combination thereof, which
causes

ship or
extreme
inconvenien-
ce.

N.Y. Jud.
Law § 512.

the person to be incapable of
perform-
ing in a reasonable manner the
duties
of a juror; intelligent; able to
read and
write the English language with a
de-
gree of proficiency sufficient to
fill out

N.Y. Jud.
Law § 517.

satisfactorily the juror
qualification form,
and able to speak the English
language

in an understandable manner.

N.Y. Jud. Law § 510.

Qualifications:

Physically and mentally competent;

can hear and understand the

English language.

N.C. Gen. Stat. § 9-3.

Challenges for Cause:

Incapable by reason of mental or
physi-
cal infirmity of rendering jury
service.

N.C. Gen. Stat. § 15A-1212.

Disqualifications:

Undue No exemptio-
hardship; ns.
ex-

Unable with reasonable accommoda-
tion to communicate and understand

treme incon- N.D. Cent.
venience. Code § 27-
N.D. Cent. 09.1-10.
Code § 27-

the English language; incapable, by 09.1-11.

reason of physical or mental
disability
and with reasonable accommodation,
of rendering satisfactory jury
service.

N.D. Cent. Code § 27-09.1-08.

Challenges for Cause:

Unsoundness of mind or such defect
in the faculties of the mind or
organs of
the body as renders the juror
incapable
of performing the duties of a
juror.

N.D. Cent. Code § 29-17-34.

Challenges for Cause:

Interests of
the
public,

 Is a chronic alcoholic or drug depend- or of the juror, will be ent person; knowledge of English is materially injured; in- injured; sufficient to permit him to physically understand the facts and law in the case; unable to serve otherwise unsuitable for any other cause to Ohio Rev. Code Ann. § 2945.16. as a juror. Ohio Rev. Code Ann. § 2945.25; Ohio R. Crim. Pro. 24.

 Qualifications: Substantial Over age 70. hardship.

 Of sound mind and discretion. Okla. Stat. tit. 38, § 28. Okla. Stat. tit. 38, § 28.
 Okla. Stat. tit. 38, § 28.

Challenges for Cause:

 A want of knowledge of the English lan- guage as used in the courts; unsound- ness of mind, or such defect in the fac- ulties of the mind or organs of the body as renders him incapable of performing the duties of a juror. Okla. Stat. tit. 22, § 658.

 Eligibility: Undue hardship or ex- tremely inconvenient

 A person who is blind, hearing or speech

impaired or physically disabled shall not be ineligible to act as a juror or be excluded from a jury list or jury service on

the basis of blindness, hearing or speech

impairment or physical disability alone.

Or. Rev. Stat. § 10.030(3).

Challenges for Cause:

The existence of a mental or physical

defect which satisfies the court that the challenged person is incapable of performing the duties in the particular action without prejudice to the substantial rights of the challenging party.

Or. R. Civ. Pro. 57 D.(1)(b).

Disqualifications:

Unable to read, write, speak and understand the English language; incapable, by reason of mental or physical

to the person. The court may also, on its own motion, excuse a juror whose presence on the jury would substantially impair the progress of the action or prejudice the parties.

Or. Rev. Stat. § 10.050.

Undue hardship or extreme inconvenience. 42 Pa. Cons. Stat. § 4503.

infirmity,
to render efficient jury service.

42 Pa. Cons. Stat. § 4502.

Qualifications:

Mental or
physical
dis-

Able to understand and participate
in
the court proceedings; physically
and

ability;
illness.
R.I. Gen.
Laws §
9-10-9.

mentally capable to performing in a
reasonable manner the duties of a
juror.

A handicapped person shall not be
in-
eligible to serve as a juror solely
on the
basis of his or her handicap, and
if that
person meets the qualifications
require-
ments, with reasonable
accommodations
if necessary, he or she shall be
deemed
a qualified juror.

R.I. Gen. Laws §§ 9-9-1.1(a), (d).

Disqualifications:

Lawfully adjudicated to be "non
compos
mentis" (insane).

R.I. Gen. Laws §§ 9-9-1.1(b).
 Nothing in this section shall
 prevent the
 court from disqualifying a
 prospective
 juror because he or she lacks a
 faculty
 or has a handicap which will
 prevent the
 potential juror from being a
 competent
 juror in a particular case.
 R.I. Gen. Laws § 9-9-1.1(e).

Disqualifications:	Good and sufficient	Over age 65.
--------------------	------------------------	--------------

Unable to read, write, speak, or under-	cause.	S.C. Code Ann.
stand the English language; incapable	S.C. Code Ann.	§ 14-7-840.
by reason of mental or physical infirmi-	§ 14-7-860.	
ties to render efficient jury service. Le-		
gal blindness does not disqualify an		
otherwise qualified juror. S.C. Code Ann. § 14-7-810.		

Qualifications:

Of sound mind; able to read, write,
 a
 nd understand the English language.
 May not be excluded on the basis of

 a visual or hearing impairment.
 S.D. Codified Laws. Ann. §
 16-13-10.
 Challenge for Cause: (civil)

 Does not understand the English language as used in the courts.
 S.D. Codified Laws Ann. § 15-14-6.

Disqualifications:	When the state of his	Over age 65; disabled

Persons of unsound mind and habitual drunkards; persons not in full possession of the senses of hearing or seeing if the court determines that the person cannot provide adequate service as a juror on such jury. Tenn. Code Ann. § 22-1-102.	health requires his absence; undue hardship. Tenn. Code Ann. § 22-1-104.	by bodily infirmity; not in full possession of the senses of hearing or seeing. Tenn. Code Ann. § 22-1-103.

Qualifications:	Any reasonable excuse.	Over age 65; permanent

Of sound mind; able to read and write. Tex. Gov't Code Ann. § 62.102.	Tex. Gov't Code Ann. § 62.110.	exemption also available for over age 65. Tex. Gov't Code Ann. § § 62.106, 62.108.

Disqualifications:		

A legally blind person cannot be disqualified as a juror in a civil case unless the court finds that his blindness renders	Physical or mental impairment; inability	

him unfit to serve as a juror in that particular case.

Tex. Gov't Code Ann. § 62.104. A deaf person is not disqualified unless the court finds that his deafness renders him unfit to serve as a juror in that particular case.

Tex. Gov't Code Ann. § 62.1041. Challenges for Cause:

Insane; defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service, or legally blind and the court is not satisfied that he is fit for jury service in that particular case.
Tex. Crim. Pro. Code art. 35.16.

to comprehend English. Tex. Gov't Code. Ann. § 62.109.

Qualifications:

Because of a physical or

No competent juror is

Able to read, speak and understand the English language.

mental disability rendering the person incapable

exempt from service.

Code of Jud. Admin.,

Utah Code Ann. § 78-46-7(1).

of jury service; undue hardship; extreme

Rule 4-404(-6)(A). No

qualified prospective

Challenges for Cause:	in- convenience.	juror is exempt.

Any mental or physical infirmity which renders one incapable of performing the duties of a juror. Utah Rules of Crim. Pro., Rule 18(e).	Utah Code Ann. § 78-46-15.	Utah Code Ann. § 78-46-14.

Qualifications:	Undue hardship.	Over age 70.

Able to read, write, understand and speak the English language; capable, by reason of mental or physical condition, to render satisfactory jury service. Vt. Stat. Ann. tit. 4, § 962(a) and Vt. S. Ct. Rules Applicable to Jury Selection, Rule 25.	Vt. Stat. Ann. tit 4, § 962(b) and Vt. S. Ct. Rules Applicable to Jury Selection, Rule 28.	Vt. S. Ct. Rules Applica- ble to Jury Selection, Rule 27.

Disqualifications:	Over age 70.

Persons adjudicated mentally incompe-	Va. Code Ann.

tent; persons under a disability, including a "mentally retarded" or "mentally

§ 8.01-341.-
1.

ill" person, a drug addict or an alcoholic, a person of advanced age or impaired health, and any person determined to be incapable of taking proper care of his person, or incapable of properly handling and managing his estate, or otherwise unable to defend his property or legal rights either because of age or temporary or permanent impairment, whether physical, mental, or both. Va. Code Ann. § 8.01-338. No person shall be deemed incompetent to serve on any jury because of blindness or partial blindness. Va. Code Ann. § 8.01-337.

Disqualifications:

Undue hardship; ex-

Not able to communicate in the English language. Wash. Rev. Code § 2.36.070.

treme inconvenience. Wash. Rev. Code § 2.36.100(1).

Challenges for Cause:

By reason of any physi-

Unsoundness of mind, or such defect

cal or

in the faculties of the mind, or organs of the body, as renders him or her incapable of performing the duties of a juror in any action.

Wash. Rev. Code § 4.44.160.
Existence of a defect in the functions or organs of the body which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the party challenging.

Wash. Rev. Code § 4.44.170.

mental defect;
judge shall excuse.

Disqualifications:

Undue hardship;
ex- Age 65 or older

Unable to read, speak and understand

teme inconvenience.
W. Va. Code § 52-1-8(c).

the English language (the requirement of speaking and understanding the English language is met by the ability to com-

W. Va. Code § 52-1-11.

municate in American Sign Language

or signed English); incapable, by reason of substantial physical or mental

disability, of rendering
 satisfactory jury
 service. A person who is physically
 dis-
 abled and can render competent
 serv-
 ice with reasonable accommodation
 is
 not ineligible to act as a juror
 and can-
 not be dismissed on the basis of
 disabil-
 ity alone, but the judge may
 disqualify
 a disabled juror if the judge finds
 that
 the nature of potential evidence in
 the case, including but not limited
 to
 the type or volume of exhibits or
 the
 disabled juror's ability to
 evaluate a
 witness or witnesses, unduly
 inhibits
 his or her ability to evaluate the
 poten-
 tial evidence.
 W. Va. Code § 52-1-8(b)(2) and (3).

 Qualifications:

Undue [Same as for
 hardship, Excuses.]
 in-

 Possessed of natural faculties; not
 infirm; able to read and understand
 the English language.
 Wis. Stat. § 756.01(1).

cluding
 undue
 hard-
 ship caused
 by the ag-
 ing process;
 extreme
 inconveni-
 ce or
 seri-
 ous obstruc-

Disqualifications:

tion or
de-
lay in the
fair and
im-

only if the judge finds that the
person
clearly cannot fulfill the
responsibilities
of a juror. The judge shall not
consider
the structural, physical or
architectural
limitations or barriers of a
building, court-
room, jury box or other facility in
mak-
ing such a finding.

of justice.
Wis. Stat. §
756.02(2).

Wis. Stat. § 756.01(2).

Qualifications:

When health
requires

Over age 72.

In possession of his natural
faculties, of
ordinary intelligence and without
mental
or physical infirmity preventing
satisfac-
tory jury service. Possessed of
sufficient
knowledge of the English language.

absence.
Wyo. Stat.
§§
1-11-103

Wyo. Stat.
§§
1-11-104.

Wyo. Stat. § 1-11-101(a).

56.....+. . .70.....+. . .80.....+. . .90.....+. . .0.....+. . .10.....+. . .2

FN[FNa1]. Commission on Mental and Physical Disability Law

FN[FNb1]. Commission on Mental and Physical Disability Law

FN[FNc1]. Commission on Legal Problems of the Elderly

FN[FNa1]. Current as of September 1994. Note: This chart relates only to disability and age related provisions.

END OF DOCUMENT

Into the Jury Box: A Disability Accommodation Guide for State Courts
1994

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APPENDIX A-2: JUROR ACCOMMODATION PROVISIONS: STATE STATUTES AND RULES [FNdl]

Alaska:

Court shall provide and pay cost of services of interpreter or reader when necessary. Alaska Stat. § 09.20.010(c).

California:

If a party does not cause removal by challenge of a juror who is blind, deaf, hearing impaired, visually impaired or speech impaired, and requires auxiliary services, the party must: (1) stipulate to presence of a service provider in jury room during deliberations; and (2) prepare and deliver to the court proposed jury instructions to the service provider. "Service provider" includes but is not limited to a sign language interpreter, oral interpreter, deaf-blind interpreter, reader or speech interpreter. The court must appoint a service provider whose services are needed by a juror with a disability to facilitate communication or participation. Interpreters must be qualified as defined in § 754(f) of the Evidence Code. Attendants shall be compensated in the same manner as provided in § 754 of the Evidence Code. Cal. Code Civ. Pro. § 224.

Provision of assistive listening system or computer aided transcription system for hearing-impaired participants (includes jurors) in court proceedings, upon request. Jury deliberation rooms must be equipped as well if the participant with a hearing impairment is a juror. The individual must give the court five days advance notice. Each county must have at least one portable assistive listening system for use by its courts. Cal. Civ. Code § 54.8.

In any civil or criminal action where a party is deaf or hearing impaired (and not able to participate through an assistive listening system or computer-aided transcription equipment), the proceedings must be interpreted in a language the individual understands, by a qualified interpreter appointed by the court. Cal. Evid. Code § 754(b). [NOTE: THIS SECTION DOES NOT SPECIFICALLY MENTION JURORS, BUT IS REFERENCED IN CAL. CODE CIV. PRO. § 224, ABOVE.]

Colorado:

Court may permit a translator to assist a deaf juror during a trial after determining the competency of the translator. Court must instruct the translator in the presence of the jury to refrain from participating and must permit the trans-

lator to be present during deliberations. A verdict reached in the presence of a translator is valid. Colo. Rev. Stat. Ann. § 13-71-137.

Connecticut:

If any juror is deaf or hearing impaired, the juror must have the assistance of a qualified interpreter present throughout the proceeding and when the jury assembles for deliberation. The interpreter is to be provided by the commission on the deaf. Conn. Gen. Stat. Ann. § 51-245(d). Judges of the superior court shall make rules concerning qualification of interpreters for the deaf and hearing impaired. § 51-245(a).

At the request of a deaf or hearing impaired juror or the court, an interpreter provided by the Commission on the Deaf and Hearing Impaired and qualified under Gen. Stat. § 17-137k(a) (transferred to § 46a-33) shall assist the juror during the juror orientation program and all subsequent proceedings, and when the jury assembles for deliberation. Conn. Super. Ct. Rules § 303A.

Florida:

A court-appointed interpreter, or other auxiliary aid as appropriate, for a juror who is deaf. Fla. Stat. Ann. § 90.6063(2).

Deaf interpreter may be present during deliberations after swearing to refrain from personal interjection and to uphold the secrecy of the proceeding. Fla. Stat. Ann. § 905.17(3).

Interpreter shall not disclose the nature or substance of deliberations. Fla. Stat. Ann. § 905.24.

Illinois:

Court-appointed interpreters for deaf parties, jurors, or witnesses. The interpreter may accompany a deaf juror during deliberations, and shall be paid a reasonable fee out of general county funds. 735 Ill. Compiled Stats. § 5/8- 1402.

An interpreter may accompany a juror who is deaf or hard of hearing throughout deliberations. 705 Ill. Compiled Stats. § 315/1.

Kansas:

The court shall provide a qualified interpreter for any litigant, juror, or witness who is deaf or hard of hearing. If preferred by the person with the hearing impairment, other modes of communication, such as notetakers, open captioning equipment, assistive listening devices, or other technology, may be used in place of an interpreter. Kan. Stat. Ann. §§ 75-4351 to 4354 (new law, 1993).

Louisiana:

Court-provided interpreters for deaf or hard of hearing jurors or venirepersons. La. Code Crim. Proc. art. 401.1.

Missouri:

A designated responsible authority shall provide deaf parties, jurors, and witnesses with auxiliary aids and services, based on each person's expressed needs, to interpret court proceedings and individuals communications. Auxiliary aids and services include, but are not limited to: qualified interpreters, notetakers, transcription services, written materials, assistive listening devices or systems, closed caption decoders, open and closed captioning, videotext displays, or other effective methods of making aurally delivered materials available to persons with hearing loss. Mo. Stat. Ann. §§ 476.750, 476.753.

New Mexico:

Whenever any deaf person is requesting or receiving services from ... any political subdivision of the state or municipality, an interpreter may be appointed to interpret or translate the actions of any personnel providing the services and to assist the deaf person in communicating with the personnel. N.M. Stat. Ann. § 38-9-5.

North Dakota:

"Reasonable accommodation" is a factor in determining whether a prospective juror is disqualified. N.D. Cent. Code § 27-09.1-08.

Oregon:

The court shall appoint a qualified interpreter or provide an appropriate assistive communication device for a juror who has a hearing or speech impairment. Or. Rev. Stat. § 10.115.

Pennsylvania:

Upon request, the court shall appoint an interpreter to assist a civil action participant, including a juror, who is deaf. Pa. R. Jud. Admin. 1903.

Rhode Island:

The court shall provide and pay for qualified interpreters for hearing impaired jurors and readers for visually impaired jurors. R.I. Gen. Laws § 9- 9-1.2.

"Reasonable accommodations" is a factor in determining the qualifications of a prospective juror who has a handicap. See R.I. Gen. Laws § 9-9-1.1(d).

Texas:

Jurors who are deaf are entitled to have the proceedings interpreted by a court-

appointed interpreter, Tex. Civ. Prac. & Rem. § 21.002; Interpreter's qualifications, § 21.003; Interpreter's position in court, § 21.004; Interpreter's oath, § 21.005; Fees and Expenses, § 21.006; Recording testimony, § 21.007; Interpreter's privilege, § 21.008; Presence during deliberations, § 21.009.

Utah:

The court shall attempt to make reasonable accommodation for any prospective juror with a handicap or disability. Code of Jud. Admin., Rule 4-404(6)(B).

West Virginia:

Includes, but is not limited to, certified interpreters for the hearing impaired, spokespersons for the speech impaired and readers for the visually impaired. The communication facilitator must take an oath not to deliberate on his or her own behalf, but will only act to communicate for and to the juror with the disability. W. Va. Code § 52-1-8(e)(1), (2).

FN[FNa1]. Commission on Mental and Physical Disability Law

FN[FNb1]. Commission on Mental and Physical Disability Law

FN[FNc1]. Commission on Legal Problems of the Elderly

FN[FNd1]. Current as of August 1994

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Into the Jury Box: A Disability Accommodation Guide for State Courts
1994

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APPENDIX B: SUMMARIES OF CASELAW ON JURORS WITH DISABILITIES

The more than sixty cases summarized below concern jurors or potential jurors who were hard of hearing, deaf, had vision loss, were blind, or had physical or cognitive impairments. The profiles span cases from the mid-nineteenth century through early 1994, arranged by disability and chronologically. They include a number of landmark cases presenting Americans with Disabilities Act or constitutional challenges, as well as several key Department of Justice ADA settlements. The vast majority of juror cases, however, are based on interpretations of state law.

It is important to note that most of the cases were brought not by jurors with disabilities but by defendants alleging abridgment of the right to a fair trial by jury. The implementation of the ADA may shift the focus of cases more toward the accessibility of jury service and accommodations for individual jurors, while ensuring a fair trial.

Selected Case Summaries: Mental Disabilities

Church v. Capital Freight Lines, 296 P.2d 563 (Cal. Ct. App. 1956).

A jury foreman who was declared mentally ill and committed to a mental hospital 13 days after the trial verdict was mentally competent at the time of the trial. Although a doctor concluded that the juror's mental illness could not have developed in less than three or four weeks, there was no evidence that the juror's conduct during the trial was out of the ordinary, and his wife testified that he did not start acting strangely until a few days after the trial had ended. The motion for mistrial had thus been properly denied.

Illinois v. Kurth, 216 N.E.2d 154 (Ill. Sup. Ct. 1966).

A juror had a fear of confinement stemming from childhood when her father periodically locked her in the attic. The judge questioned the juror about her fears, and told her that he would cooperate during trial by bringing the lawyers into chambers whenever there was something to be heard outside the presence of the jury so that the juror would have to spend as little time as possible in the small jury room. The juror told the judge that she did not think that lengthy deliberations in the jury room would be a problem for her. The court granted a new trial because counsel had been denied the opportunity to question the juror.

Baker v. Keller, [237 N.E.2d 629](#) (Ohio Com. Pleas Ct. 1968).

A juror who had a history of manic-depressive episodes and treatment decided a workers' compensation case. A new trial was not warranted because the juror had not evidenced any psychotic or abnormal behavior at the time of the trial. He otherwise had all the qualifications of an elector (the basis for a jury source list). The juror had not been untruthful on voir dire, but simply had not been asked if he had ever been hospitalized for mental illness.

United States v. Dioguardi, [492 F.2d 70](#) (2d Cir. 1974).

A juror sending a post-trial letter to the defendant, in which the juror claimed to have clairvoyant powers, and was not sufficient evidence upon which to grant a new trial or to inquire into her competency. Only clear evidence of a juror's incompetence to understand issues and to deliberate, such as proof of an incompetency adjudication closely contemporaneous to jury service, would justify such post-verdict actions. The juror had shown no signs of mental instability during voir dire and had been alert and responsive during the trial and deliberation.

New York v. Sullivan, [369 N.Y.S.2d 744](#) (N.Y. App. Div. 1975).

A psychiatrist concluded that a juror who had hallucinations during the trial was nevertheless competent to make a judgment on the merits of a case. The evidence was insufficient to warrant reversal of the judgment and a new trial. A dissenting judge thought that because the juror had heard voices in the past, too, the defendant should have at least been allowed to have his own psychiatrist examine the juror and to cross examine the court-appointed psychiatrist.

Von Byrd v. Texas, [569 S.W.2d 883](#) (Tex. Cr. App. Ct. 1978).

A trial court judge did not abuse his discretion by excluding from a jury a woman who had previously been adjudged insane and committed to a mental hospital. Prior judgments of insanity are not conclusive as to a juror's mental condition and ability to qualify as a juror at the time of trial, but there was recent evidence that she was "unstable."

South Carolina v. Skipper, [328 S.E.2d 58](#) (S.C. Sup. Ct. 1985).

A trial judge acted properly in excusing for cause a juror who was nervous because of her awareness of the defendant's prior convictions. The juror appeared to be in a stupor, her speech was slurred, her eyes fluttered, and she had difficulty answering questions. The juror's mother also advised the judge that the juror had serious medical problems. The judge had therefore concluded that the juror was not competent.

Gardner v. Texas, [730 S.W.2d 675](#) (Tex. Crim. App. Ct. 1987).

A trial court did not abuse its discretion in sustaining the prosecution's chal-

lenge for cause of a juror with low intelligence. The exclusion did not violate the defendant's right to a jury representing a fair cross section of the community. The juror had a mental defect because she was unable to comprehend what her duties as a juror would be, and was thus unfit for jury service.

Massachusetts v. Callahan, [519 N.E.2d 245](#) (Mass. Sup. Jud. Ct. 1988).

A juror notification form: defined juror mental disability differently from the mental defect defense, disqualified persons with mental disabilities from jury duty, and allowed Christian Science practitioners to verify a person's physical or mental disability. The court held that the form did not prejudice jurors against the mental defect defense.

Pennsylvania v. Gibbons, [549 A.2d 1296](#) (Pa. Super. Ct. 1988).

A court did not abuse its discretion in excusing a juror who said that she was too nervous to sit on a jury. The judge had excused the juror as a precautionary measure, stating that the juror could not function as a competent juror.

Burton v. Texas, [805 S.W.2d 564](#) (Tex. Ct. App. 1991).

A trial court properly excluded a juror with low intelligence. Low intelligence is not necessarily a ground for challenge, but this juror was confused and was unable to comprehend the legal issues and the function of a juror.

Utah v. Archuleta, [850 P.2d 1232](#) (Utah Sup. Ct. 1993).

A juror was dismissed for cause because a mental infirmity rendered her incapable of performing the duties of a juror. She had been taking medication for depression, and the court found that her depression could affect her composure during the trial and her ability to deliberate. The case was a capital murder one with circumstances which could be very depressing and which might exacerbate the juror's condition.

Selected Case Summaries: Blind or Visual Impairments

Rhodes v. State, [27 N.E. 866](#) (Ind. Sup. Ct. 1891).

In a criminal case charging that defendant feloniously induced an abortion, a juror whose eyesight was so defective that he could "not see the face of the defendant ... or the expression of the faces of the witnesses testifying, nor observe their deportment or demeanor" was incompetent. "No one who cannot see the expression of faces nor observe deportment and demeanor can justly weigh testimony". In addition, articles of evidence were placed before the jury, but were not seen by the juror.

Guthrie v. State, [87 Okla. Crim. 112, 194 P.2d 895](#) (Ct. Crim. App. 1948).

In this case, the defendant was a blind man charged with murder. The court found that the right of a person to be tried by a jury of his peers does not mean that a blind man is entitled to be tried by a jury of twelve blind men. The court noted that in fact the Oklahoma statute prevented a blind person from sitting on a jury. (Defendant was, however, entitled to instructions that the jury should place themselves in his situation, and view the circumstances as they reasonably appeared to a blind man.)

Lewinson v. Crews, [282 N.Y.S.2d 83](#), [28 A.D. 2d 111](#) (N.Y. Ct. App. 1968).

In May 1965, the County Clerk of Kings County summoned Edward Lewinson, a professor with advanced educational degrees, who had been totally blind since birth. The Clerk rejected him as a juror on the ground of his blindness. The New York Judiciary Law provided that to serve as a juror, one must "be in the possession of his natural faculties" and "be able to read and write the English language understandably." The court held that a blind person could not be said to be in possession of his natural faculties within the statute and was disqualified for jury duty. The court noted that a blind person could not effectively evaluate physical evidence nor assess the credibility of a witness. A dissent argued that "natural faculties" meant intellectual capacity to serve.

Jackanin v. Carey, [476 F. Supp. 420](#) (E.D.N.Y. 1979).

Plaintiff Jackanin, who was blind, was disqualified from serving as a juror. He challenged the constitutionality of the New York State Judiciary Law on the grounds that it deprived him of equal protection of the laws and infringed his privileges and immunities under the Fourteenth Amendment to the United States Constitution. Since an appeal from Lewinson v. Crews was dismissed by the U.S. Supreme Court for lack of a substantial federal question ([393 U.S. 13](#)), the District Court held that this determination required a dismissal in the instant case.

Jones v. New York City Transit Authority, [126 Misc. 2d 585](#), [483 N.Y.S.2d 623](#) (City Civ. Ct. 1984).

This was a personal injury action in which a blind person was excluded from jury service. The New York State Judiciary Law provided that a person qualifies for jury service if such person does not "have a mental or physical condition or combination thereof, which causes the person to be incapable of performing in a reasonable manner the duties of a juror." The court held that the statute was intended to eliminate the predetermination that individuals with physical disabilities are incapable of serving as jurors. But the court said the statute did not prevent a determination that an impairment would preclude serving as a juror in a particular case. In this case, a challenge for cause based solely on blindness was proper, since the personal injury action involved substantial physical evidence.

Commonwealth v. Susi, [394 Mass. 784](#), [477 N.E.2d 995](#) (Sup. Ct. 1985).

This was the trial of an armed robbery indictment, in which identification of the defendant as the robber was the primary issue. The trial judge had denied a challenge for cause of a juror who was blind. Defendant contended that this was an abuse of judicial discretion because the case involved eyewitness identification. Defendant claimed that because of this he was forced to use a peremptory challenge, and that this caused him to accept a juror he otherwise would have challenged. The court held that there was error, and that the defendant need not show actual prejudice. The court noted that the statute created a presumption of competency for jury service by persons with physical disabilities, but this "must then be evaluated on a case-by-case basis." The court stated that a trial judge should remove a juror when a defendant's right to a fair trial would be threatened.

Galloway v. Superior Court of the District of Columbia, [816 F. Supp. 12](#) (D.D.C. 1993).

Plaintiff Donald Galloway was barred from serving as a juror in the D.C. Superior Court because he is blind. The Superior Court's policy of excluding blind persons was based on a statute stating that "an individual shall not be qualified to serve as a juror ... if determined to be incapable by reason of physical or mental infirmity of rendering satisfactory jury service ..." D.C. Code Section 11-1901 (1989). The District Court found that the policy of categorically excluding blind persons is a violation of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Civil Rights Act of 1871. The Court stated that "the honor and privilege of jury duty may not be abridged simply because an individual is blind." The Court observed that while visual impairment may not be a per se disqualification, a blind person may be excluded from a particular case if it involves a significant amount of visual evidence - "the decision as to whether he should be empaneled in any particular case should be left to the Judge, the attorney and the voir dire process."

New York v. Caldwell, [603 N.Y.S.2d 713](#) (City Crim. Ct. 1993).

This decision supplemented an oral ruling permitting a juror with a visual impairment to continue serving on the jury. On the second day of trial, the juror disclosed that she had a detached retina in one eye and had limited vision in her other eye. She said she could see "only the outline of the witnesses' faces" and could not read standard size print. The court found that the vision impairment "did not render her automatically unqualified for the jury and that the court had an obligation to 'reasonably accommodate' her pursuant to the Americans with Disabilities Act." The decision noted that as a government entity, the court is required pursuant to Section 202 of the ADA to make all of its services, programs and activities available to qualified individuals with disabilities. The decision cited the Galloway holding that the automatic exclusion of a person with a visual disability from jury duty would violate both the ADA and Section 504 of the Rehabilitation of 1973. The court found that with only minimal accommodations, the

juror could follow the evidence in the case, and her participation would not deny the defendant due process. The court distinguished the instant case from Jones and Susi in that little physical evidence was involved.

Selected Case Summaries: Age-Related

North Carolina v. Oliver, [274 S.E.2d 183](#) (N.C. Sup. Ct. 1981).

Convicted felon contested the trial court's denial of his challenge for cause. The juror was 65, had a history of heart trouble, took daily blood pressure medication, and had to use nitroglycerin pills if she experienced pain or became upset. In response to questions, she said that she thought her health would allow her to sit for one day but was unsure about beyond that, except that she felt a trial lasting more than a week would be too strenuous. The trial court observed that jury work was not strenuous, that people with heart conditions often serve on a jury, and that both counsel agreed that the trial would not last more than a week. Because the woman was fully questioned about her health, there was no abuse of discretion. (The woman was ultimately removed from the panel on peremptory challenge.)

Colley v. Alabama, [436 So. 2d 11](#) (Ala. Ct. Crim. App. 1983).

Convicted capital felon challenged exclusion of prospective jurors, claiming that the jury commission had abused its discretion in disqualifying them based on age. The court found that the jury commission had properly exercised its discretion. It had not deleted anyone from the jury list simply because that person was over a certain age. Instead, the commission had reviewed information about a juror's health, checked with the juror's personal physician where possible, and then disqualified those that were physically infirm. Ala. Code § 12-16-60 permits disqualification where "physical weakness" renders a person unable to serve on a jury.

Selected Case Summaries: Deafness

Eckstein v. Kirby, [452 F. Supp. 1235](#) (E.D. Ark. 1978).

A federal court held that the Arkansas statute disqualifying persons with substantial hearing impairments for jury service, Ark. Stat. Ann. § 39-102(f), did not violate equal protection principles. The disqualification was rationally related to the legitimate state interest of guaranteeing a fair trial for defendants, particularly criminal defendants. Although Ms. Eckstein, who was totally deaf since birth, could communicate with the assistance of a sign language interpreter, the court nevertheless found that she might not be able to give a litigant a fair trial because of her hearing disability. The court noted that hearing was even more important than sight to effective jury service because most trial evidence consists of oral testimony. The court also found that allowing a sign language interpreter into the deliberation room would violate the concept of trial by

jury by invading the jury's secrecy and expectation of privacy.

Maryland Comm'n on the Hearing Impaired, 70 Op. Att'y Gen. 124 (1985).

The attorney general (AG) was asked what rights a person with a hearing impairment has with regard to jury service. State law, Md. Code Ann. § 8-207(b)(3), disqualifies jurors who are unable to speak the English language or comprehend spoken English. The AG concluded that administrative practice and certain statutory construction principles indicated that § 8-207(b)(3) did not disqualify a juror with a hearing impairment who requests an interpreter, legislative clarification was highly desirable because the point was sufficiently in doubt. Deaf jurors were serving in Maryland courts, but it was unclear whether communication only through American Sign Language (ASL) (as opposed to signed English, lip reading, or finger spelling) disqualified some deaf jurors. ASL is a language separate from English, with its own grammar and syntax, but is unlike a foreign language for jury purposes because people who use ASL are more likely to know the community and its values and standards. Regulations under § 504 of the Rehabilitation Act specify that a qualified interpreter is an appropriate auxiliary aid or reasonable accommodation.

Missouri v. Spivey, 700 S.W.2d 812 (Mo. Sup. Ct. 1985).

A convicted defendant, who was deaf, challenged the state law disqualifying persons "unable to read, write, speak and understand the English language" from jury service. Mo. Rev. Stat. § 494.020(2). He argued that the statute excluded deaf persons from the jury pool, thereby denying him his constitutional right to trial by a jury composed of a representational cross section of the community. The supreme court found no constitutional violation. Even if the automatic exclusion of deaf persons was established, deafness exists in all segments of the community and does not have an identifiable group of attitudes or ideas unrepresented by other aspects of the community, such that jurors would be biased against persons who are deaf. The court noted problems inherent when persons who are deaf sit on juries, such as lack of fairness if all the trial proceedings or deliberations are not fully communicated to the deaf juror, and inflection and intonation lost through interpretation.

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

The court held that use of an interpreter at trial was acceptable to accommodate a juror's deafness. The trial judge had moved the juror in the jury box and repositioned the interpreter so that the juror could better see both the interpreter and the witness. The particular juror, who was elected foreperson, needed other people's speech interpreted, but she could also read lips and was able to speak for herself. The juror was qualified under the federal Jury Selection and Service Act of 1968, 28 U.S.C. § 1865(b)(4), because she could "render satisfactory jury service." Her overall ability to perceive and evaluate evidence was not so im-

paired, but was comparable to many jurors' limitations. Her inability to evaluate a witness's demeanor while looking at the interpreter was comparable to the jurors taking notes, which may have diverted them at times from testimony. As a check on the interpreter's accuracy, either another interpreter could be present or the proceedings could be videotaped. The court also ruled that the interpreter's oath protected against the interpreter invading jury secrecy, chilling deliberations, or participating in deliberations.

Arizona v. Marcham, [770 P.2d 356](#) (Ariz. Ct. App. 1988).

A convicted defendant challenged a trial court's decision permitting a deaf juror who communicated through a sign language interpreter to serve on his jury. He argued that the juror was unqualified because sign language was a wholly separate language from English. However, the state statute on being an elector, which was the prerequisite for being a juror, had been amended to delete the requirement of reading and writing English. Furthermore, at no point during voir dire did the defendant object to the juror or request to discuss her ability to understand the proceedings. The judge had already questioned the juror about her two prior experiences as a juror, and had asked her how her deafness affected her ability to serve as a juror. The juror had responded that if the interpreter stood behind the witness, there was no hindrance. The juror was therefore qualified.

DeLong v. BrumBaugh, [703 F. Supp. 399](#) (W.D. Pa. 1989).

A Pennsylvania court violated § 504 of the Rehabilitation Act when it excluded a juror from the array simply because she was deaf. The juror was not disqualified from jury service under 42 Pa. Cons. Stat. Ann. § 4502(1) because she could communicate in English through a sign language interpreter. She was also not disqualified under § 4502(2) because she could render efficient jury service with the assistance of an interpreter. The trial court had not given her an opportunity to prove her communication abilities, however. Under § 504, such an unreasonable exclusion was discriminatory, and the cost of providing the juror with an interpreter would not have placed an undue burden on the court.

New York v. Guzman, [555 N.E.2d 259](#) (N.Y. Ct. App. 1990).

New York's highest court held that a prospective juror's deafness did not render him "incapable of performing in a reasonable manner the duties of a juror," N.Y. Jud. Law § 510[3], and was therefore not disqualified from jury service. A defendant had challenged the juror for cause, but the trial court had rejected the challenge as unfounded. The juror was able to speak, read, and write English, and to read lips, and was assisted by a court interpreter through signed English. (The court did not make any determination whether use of a nonliteral sign language such as ASL would meet the English-speaking requirement for jurors under § 510[5].) The juror could understand and evaluate evidence and could communicate effectively. Any mistakes in the interpreter's transmissions would be no more

frequent or significant than for distracted or inattentive hearing jurors, and discrepancies could be resolved during deliberations or through reference to the transcript. The juror could also use visual clues to assess witness credibility. The interpreter's oath protected the jury from outside influence, inhibited deliberations, or invasion of secrecy.

New York v. Green, [561 N.Y.S.2d 130](#) (N.Y. County Ct. 1990).

Extending *Batson v. Kentucky*, [476 U.S. 79](#) (1986), the court disallowed a peremptory challenge to a juror solely because she was deaf. Finding that persons with disabilities in general and persons with hearing impairments in particular may constitute a suspect classification, the court ruled that the peremptory challenge based solely on the disability did not have a rational basis. Citing *Guzman*, the court observed that deafness does not even support a challenge for cause. The court further observed that, although the law was not yet effective, §202 of the ADA would prohibit an exclusion from jury service based solely on deafness, especially as in this case where a sign language interpreter would accommodate the disability.

United States v. Utah State Admin. Office of the Courts, No. 204-77-6 (DOJ, Oct. 6, 1993).

The Utah court system disqualified or otherwise excused from jury duty individuals who were deaf or hard of hearing unless they provided their own interpreting services, in violation of Title II of the ADA. To settle a DOJ complaint against it, the court system developed a written policy requiring trial courts to provide a qualified interpreter in any proceedings involving a prospective juror who is deaf or hard of hearing when necessary to ensure that person an equal opportunity to serve as a juror. The court system also agreed to conduct at least four regional training seminar in the state addressing the practical application of the ADA and the court's agreement regarding interpreters.

United States v. Judiciary of the Sixth Judicial Circuit of Florida, No. 204-7M-21 (DOJ, Nov. 1, 1993).

A complaint arose when the Florida court did not provide a qualified interpreter for a criminal defendant who was deaf. DOJ determined that the court's inaction violated Title II of the ADA. In a measure of voluntary compliance with the ADA, the court agreed that "[w]hen provision of interpreting services is required to ensure effective participation by an individual who is deaf or hard of hearing, [it] will, upon reasonable notice, secure the services of qualified interpreter(s)." The agreement specifically requires the Utah court agency to establish a written policy on the provision of interpreters for juror's who are deaf or hard of hearing. The court agreed to put its policy in writing, provide it to the public upon request, and inform and instruct all its employees to comply with the policy. The court also agreed to publish notices in a newspaper about its new in-

interpreter policy.

Selected Case Summaries: Hard of Hearing

Lindsey v. Tennessee, [189 Tenn. 355](#), [225 S.W.2d 533](#) (Sup. Ct. 1949).

In this appeal from a conviction of murder, defendant requested a new trial because one of the jurors stated he did not hear all of defendant's testimony. The court cited the general rule that objections based on disqualification of jurors must be made before the verdict - "Unless challenge is made upon the voir dire examination of the juror it comes too late on motion for a new trial, unless actual prejudice or bias is shown..." The court stated that trial judges are given wide discretion in determining the qualification of jurors, and their discretion is not subject to review except where it has been abused. In this case, the trial judge gave careful consideration to the juror's alleged inability to hear, gave him a seat in the jury box nearest the witness chair and cautioned the defendant to speak loud, yet the juror made no complaint during the trial.

Lyda v. United States, [321 F.2d 788](#) (9th Cir. 1963).

In this appeal from a conviction of armed bank robbery, appellant asserted that he was denied his Constitutional right to a trial by jury because one of the jurors was hard of hearing. The court cited *Lias v. United States*, [284 U.S. 584](#), and other cases holding that "the trial judge is invested with wide discretion in determining the competency of jurors, and will not be interfered with except for an abuse of discretion." The court found there was no sufficient showing of incompetency to establish an abuse of judicial discretion.

Roberts v. Maryland, [241 A.2d 903](#) (Ct. Spec. App. 1968).

In this appeal from a conviction of assault and battery, the court held that the trial judge did not err in permitting a slightly deaf juror to serve. The court stated that a party who knows or should have known through voir dire that a juror is deaf waives the right to object by waiting until after the verdict. The court cited Lindsey. Before opening remarks the judge asked the jurors if any had difficulty with hearing. When two responded, it was agreed they should notify the judge if they could not hear any of the testimony, so he could have it repeated.

City of Kotzebue v. Ipalook, [462 P.2d 75](#) (Alaska Sup. Ct. 1969).

This was an appeal from a civil suit instituted by a resident against the City of Kotzebue because he was shot by a policeman. The City as appellant claims the trial court erred in failing to sustain its challenge for cause against a juror whose hearing was impaired. The Alaska Code provides that a juror must be "in possession of his natural faculties." The trial court said the juror was "just shy," and upon overruling a later objection said, "She states that she's heard everything that's been said." The Supreme Court found no abuse of the trial

court's discretion, especially since the City did not exhaust its peremptory challenges.

Bell v. O'Connor Transport Ltd., [489 P.2d 439](#) (Idaho Sup. Ct. 1971).

This was an appeal from a damage action for personal injuries suffered in a car-truck collision. Appellant claims the trial court erred in improperly excusing a juror with a hearing difficulty. The court found that the trial judge's action was within his discretion, and that appellant showed no prejudice as a result of the exclusion.

Louisiana v. Willis, [262 La. 636](#), [264 So. 2d 590](#) (Sup. Ct. 1972).

In this appeal from a conviction of aggravated criminal damage to property, appellant takes exception to the trial court's determination that two jurors who were hard of hearing were not so impaired as to be incapable of serving. The court affirmed the conviction, stating that "it is within the sound discretion of the trial court to determine the competency of a juror," and only when the exercise of discretion is "arbitrary or unreasonable, to the prejudicial injury of the defendant" should the court set aside a verdict.

Commonwealth v. Brown, [231 Pa. Super. 431](#), [332 A.2d 828](#) (Super. Ct. 1974).

This was an appeal from convictions related to robbery. At the conclusion of the trial the jury was polled, and one juror demonstrated difficulty in hearing. Upon questioning, his answers on whether he heard the testimony were inconclusive. Citing the Pennsylvania Constitution and the Sixth Amendment of the U.S. Constitution applied to the states through the due process clause of the Fourteenth Amendment, the court reversed and remanded the case for a new trial. The court stated that "while a juror is not disqualified per se because of his deafness ... where the deafness is of such a degree that the juror may not have heard material testimony, the juror must be disqualified...." The court stated that the record substantiated the juror's difficulty in hearing, and that neither the judge nor the defense counsel were aware of the problem until the polling.

Chappell, Hornsby & Twine v. Texas, [519 S.W.2d 453](#) (Tex. Ct. Crim. App. 1975).

This was an appeal from a conviction of murder. One of the appellants claims he was forced to accept a juror with a hearing defect in one ear. The record showed, however, that his hearing in the other ear was excellent, and that he heard and understood all the questions directed to him by the parties, and thus was not unfit for jury service.

Redman v. Texas, [533 S.W.2d 29](#) (Tex. Ct. Crim. App. 1976).

In this appeal from a conviction for the sale of marijuana, appellant contends that the trial court erred in not striking a hard of hearing venireman from the

panel for cause. The venireman had difficulty with his hearing aid, but the trial court overruled a challenge for cause. However, appellant did not peremptorily strike the juror, but the State did strike the juror. The court stated that appellant must show he was forced to accept an objectionable juror, and that no harm was shown.

Holder v. Oklahoma, [556 P.2d 1049](#) (Okla. Ct. Crim. App. 1976).

In this appeal from a conviction for injury of minor child, appellant claimed she did not receive a fair trial because one of the jurors had a hearing impairment. The court found that the trial court did not abuse its discretion in determining that the juror was qualified, and that there was "no definitive showing ... that the juror was disqualified by reason of an infirmity amounting to a disability." The voir dire record showed the juror answered every question put to him without difficulty in hearing.

State v. Berberian, [374 A.2d 778](#) (R.I. Sup. Ct. 1977).

The accused who had been convicted of reckless driving sought habeas corpus based on his assertion that his incarceration would be unlawful because the participation of a partially deaf juror denied him a fair trial under the Sixth Amendment of the U.S. Constitution and under the Rhode Island Constitution. During a poll of the jury, it appeared that one of the jurors had a hearing impairment, and the trial judge then questioned the juror to determine whether his hearing was so defective that he could not fully understand the proceedings, but concluded the juror's hearing was sufficient. The state Supreme Court found petitioner was not negligent in failing to discover and raise the problem prior to the verdict. The Court then found that, based on the evidence, the trial judge had abused his discretion, and granted the petition for habeas corpus. During the questioning, the juror said he had difficulty in hearing, and many of his answers were not responsive. He particularly had trouble hearing when the speakers were not facing him. A dissent evaluated the evidence differently, pointing out that the juror was nervous and under stress during the questioning, but had stated that at the trial the attorneys and witnesses spoke loud enough for him to hear.

California v. Neely, [95 Cal. App. 3d 1011](#), [157 Cal. Rptr. 531](#) (Ct. App. 1979).

In this appeal from a conviction of murder and robbery, appellant claims reversible error in the trial court's denial of his motion for a new trial on the ground that a juror had concealed the fact that he was hard of hearing to an extent which made him incapable of performing jury duties. The court found that there was not concealment, and that the trial court had "properly made [a finding of competency] from its own observation". The trial court noted that during the hearing on the motion for a new trial, the juror "was able to hear virtually every question that's been presented."

McGee v. Alaska, [614 P.2d 800](#) (Alaska Sup. Ct. 1980).

In this appeal from convictions for assault with a dangerous weapon and malicious destruction of property, appellant contended that the trial court abused its discretion in refusing to excuse a juror who was challenged for cause on the basis of a hearing impairment. The court found no abuse of the trial court's discretion as to challenges for cause. Moreover, appellant later used a peremptory challenge to excuse the juror, but did not exhaust his peremptory challenges. The court noted that the trial judge had questioned the juror as to the extent of his problem, and the juror stated that up to that point he had no trouble in hearing the proceedings. The trial judge decided to select two alternates in case the juror had difficulty in hearing.

Commonwealth v. Wilborne, [382 Mass. 241](#), [415 N.E.2d 192](#) (Sup. Ct. 1981).

In this case affirming a judgment of murder, the court found that an allegation that one of the jurors was hard of hearing was the result of a misunderstanding, and that no juror had a hearing impairment sufficient to warrant a new trial. After the trial, an alternate juror had alleged that one of the jurors had a hearing impairment. Then, during an extensive voir dire, all of the jurors were questioned, using a tape recorder so there would be no chance of lip-reading. The trial judge concluded there was no significant hearing impairment, and the court accepted this factual finding.

Missouri v. Hurst, [612 S.W.2d 846](#) (Mo. Ct. App. 1981).

In this appeal from a conviction of rape, appellant claimed that the trial court erred in denying a mistrial because one of the jurors informed the court during deliberations that he had not heard a substantial part of the victim's testimony. The court affirmed the judgment, noting that defendant did not object to the disqualification of a juror because of an alleged hearing defect, and that such disqualification must be raised before the juror is sworn in. Furthermore, the record did not show whether the juror who had the alleged hearing defect was the same juror who claimed during deliberation that he had not heard testimony.

Pennsylvania v. Greiner, [309 Pa. Super. 291](#), [455 A.2d 164](#) (Super. Ct. 1983).

In this appeal from a judgment of sentence for possession of marijuana and criminal conspiracy, the dispositive issue was whether a new trial was required because a hard of hearing juror did not hear some of the testimony. The court found that constitutional fair trial considerations mandated a new trial. The court relied on *Brown*, stating that this case was stronger since here the juror acknowledged without reservation that he had not heard some testimony. While the failure to hear was discovered much sooner in the trial in the instant case than in *Brown*, the trial judge's attempts to cure the problem (by moving the juror and instructing him to indicate when he couldn't hear) were not sufficient, since at that point a fair trial already had been denied. The court distinguished the case from *Roberts* in that the judge's instruction to indicate any difficulty in hearing

occurred before any testimony had been given in Roberts, but during the redirect of the first witness here. The court distinguished the case from Holder, in which the competency determination of a hearing impaired juror was left to the discretion of the trial judge, in that here the juror admitted forthrightly that he had not heard some of the testimony. (A concurring opinion pointed out that an immediate re-enactment of cross-examination so that a juror could hear would lose the impact of the original dialogue.)

Pennsylvania v. Golson, [310 Pa. Super. 532, 456 A.2d 1063](#) (Super. Ct. 1983).

In this appeal from a conviction of robbery and criminal conspiracy, appellant alleged that counsel was ineffective in failing to demand a mistrial upon discovery that a juror had not heard some of the testimony presented. The court agreed, relying on Brown and Greiner. The court noted that fundamental to the right to an impartial jury is that participating jurors be competent and qualified, and that while deafness per se does not disqualify a juror, failure to hear material testimony does. Here the juror clearly indicated she had not heard everything.

North Carolina v. King, [311 N.C. 603, 320 S.E.2d 1](#) (Sup. Ct. 1984).

In this appeal from a verdict of guilty of murder, appellant argued that the trial judge erred in not excusing a juror who was hearing impaired, but who was later excused on a peremptory challenge. The court found there was no abuse of trial judge's discretion, since the trial judge had questioned the juror, concluded his hearing was not so impaired as to prevent him from serving, and stated he could raise his hand during trial if he did not understand. While there was no abuse of discretion, the court observed that generally, "it is the better practice for trial judges freely to excuse any juror who has a genuine hearing impairment which in the juror's opinion would hamper his or her ability to perform...."

Missouri v. Parry, [684 S.W.2d 441](#) (Mo. Ct. App. 1984).

In this case the appellant claimed that the trial court erred in failing to strike a juror who indicated he had a hearing problem. The court affirmed the judgment, noting that the trial judge has wide discretion concerning the qualification of jurors, which should not be disturbed except where there is a showing of abuse. Here the judge determined that if the juror was seated in the front row, he would have no problem hearing, and no objection was made to this solution.

Government of the Virgin Islands v. Nicholas, [759 F.2d 1073](#) (3d Cir. 1985).

On appeal, the court granted a petition for habeas corpus in order to ensure defendant a fair trial. The court stated that the record indicated that one of the jurors "had a hearing impairment sufficient to deny the petitioner's right to a fair, impartial trial and a unanimous verdict." The court said that the juror's own statement that he was unable to hear all of the testimony could not be considered persuasive "since he may not necessarily be aware of what he could not

hear," but nonetheless the deafness "may have adversely affected his ability to decide." The court relied on *Brown and Eckstein v. Kirby*, and also observed that "federal authorities ...implicitly support the proposition that a juror's inability to comprehend testimony, whether due to mental or physical infirmity, may render the juror incompetent...."

Weaver v. Mississippi, [497 So. 2d 1089](#) (Miss. Sup. Ct. 1986).

In this appeal from a conviction of arson, defendant challenges the fairness of his trial for a number of reasons, including that on the third day of trial it became apparent that an 87-year-old juror had a hearing impairment. The court found no error in the trial judge's denial of a motion for a new trial. The court concluded that the judge had not abused his discretion, as there was no reason to believe the juror had missed any of the testimony or failed to comprehend the issues involved.

Broadus and Dunville v. Indiana, [487 N.E.2d 1298](#) (Ind. Sup. Ct. 1986).

In this appeal from a conviction of armed robbery, appellant alleged that the trial judge erred in failing to excuse for cause a juror who had a hearing impairment. The record showed that during voir dire the juror indicated he had no difficulty hearing when sitting in the jury box, but only when sitting further from the bench. Thus, the court held that the trial judge had good reason to allow the juror to remain.

Kansas v. Miller, [11 Kan. App. 2d 410](#), [722 P.2d 1131](#) (Ct. App. 1986).

In this appeal from a conviction of incest, appellant contends the trial court erred in not granting him a mistrial upon learning of a juror's hearing difficulties. The difficulties were discovered toward the end of the first day of trial, when the juror advised the court she had not heard the testimony of the two children witnesses, nor the questions of the counsels. The juror was moved to the front row, but the trial judge said he believed the juror was "overstating" her inability to hear. The court held that the trial judge abused his discretion in determining the qualification of the juror, since the juror's statement that she could not hear was a factual matter that should control over the judge's opinion on her ability to hear.

Missouri v. O'Neal, [718 S.W.2d 498](#) (Mo. Sup. Ct. 1986).

In this appeal from a conviction of murder, appellant contends that the trial court erred in failing to strike for cause a venireperson with a hearing problem. The court stated it is well settled that the trial judge has broad discretion in ruling on challenges for cause. The court found no abuse of discretion, since the judge questioned the venireperson and was satisfied he could serve.

Ronning v. Arkansas, [295 Ark. 228](#), [748 S.W.2d 633](#) (Sup. Ct. 1989).

In this appeal from a conviction of murder, appellant contends the trial judge erred in failing to grant a mistrial because one of the jurors expressed difficulty in hearing. The court found no abuse of the trial courts' broad discretion as to the qualification of jurors. While the juror acknowledged "some skips," he still maintained he had heard all of the testimony.

Louisiana v. Freeman, [539 So. 2d 739](#) (La. Ct. App. 1989).

In this appeal from a conviction of burglary, appellant contends the trial judge erred in denying a challenge for cause of a prospective juror who advised the court she had a hearing impairment. Citing the Louisiana Code, the court stated that a loss of hearing in and of itself will not disqualify a person from serving on a jury, but that a prospective juror may be challenged for cause, and that the trial judge is vested with broad discretion in determining juror competence. Here there was no abuse of the trial judge's discretion, because he listened to and questioned the prospective juror about her hearing. (He asked her three times with increasing volume if she was able to understand.)

McKinney v. Alabama, [567 So. 2d 870](#) (Ala. Ct. Crim. App. 1990).

Appellant was tried for robbery, but a mistrial was declared because one of the jurors did not hear and/or did not understand the evidence. This is an appeal from the second trial, affirming the judgment of the trial court. Citing Lindsey, the court found that the trial judge did not abuse his discretion by declaring a mistrial under the facts of the case. Upon a polling of the jury, the juror repeatedly was unable to respond to the judges questions, even though he spoke loudly and instructed her carefully.

Colorado v. Trevine, [826 P.2d 399](#) (Colo. Ct. App. 1991).

On this appeal after a jury verdict of guilty of theft, dependent contends the trial judge erred in denying his motion for a mistrial. One of the jurors had not worn her hearing aid on the second day of trial, and was thus unable to hear all of the testimony of a key witness. The court reversed the judgment and remanded the case for a new trial. Citing Brown, the court found that appellant had been denied a fair trial since the juror "may not have heard material testimony ... rendering [the verdict] as meaningless." The court noted that the juror "cannot be aware of what she cannot hear. Thus, the juror here could not participate in meaningful discussion during the deliberative stage of the trial nor decide the case intelligently. The effect ... was tantamount to the juror not being in attendance for more than one third of the trial, thus denying the defendant the right to a jury of twelve."

Selected Case Summaries: Physical Disabilities

Villarreal v. Texas, [576 S.W.2d 51](#) (Tex. Crim. App. Ct. 1978).

A trial court did not abuse its discretion in granting a challenge for cause to a venire member taking medication for high blood pressure and for nervousness. She was excluded because her bodily disease rendered her unfit for jury service. She believed that her physical condition would interfere with her duties as a juror and her ability to sit through a long trial.

Wisconsin v. Coble, [301 N.W.2d 221](#) (Wis. Sup. Ct. 1981).

A trial court's selection process allowing the jury commissioners to exempt, exclude, or disqualify a person from jury service on the ground of infirmity because of a physical condition did not comport with statutory requirements. The statute, Wis. Stat. §§ 756.01 and 756.02, expressly placed that selection responsibility on the judge. The law reflects the legislature's intent to extend the opportunity and duty of jury service to persons with physical disabilities. The court was ordered to revise its selection process, but the illegal procedure was not so harmful as to require reversal of the defendant's conviction.

Hill v. Shelby County, [599 F. Supp. 303](#) (N.D. Ala. 1984).

A 68-year-old woman with a lung condition which prevented her from climbing steps did not have a cause of action under § 1983 against a courthouse without an elevator to the second floor courtrooms for jury service. The county was not equipped to accommodate jurors with severe physical disabilities, and the court routinely excused such persons from jury service.

Illinois v. Washington, [459 N.E.2d 1029](#) (Ill. App. Ct. 1984).

A potential juror with high blood pressure under stress was challenged for cause, but the trial court had refused to excuse him. Upon questioning, the man had stated that he had not had an attack for 2 years and was not presently on medication. Because the judge thoroughly questioned the man about his mental state, his presence on the jury did not deprive the defendant of a fair trial.

Parsley v. Texas, [709 S.W.2d 746](#) (Tex. Ct. App. 1986).

A trial court acted within its discretion in excusing a juror with a physical or nerve defect from jury service. The potential juror had cried a lot and had stated that she was not physically able to serve because she could not handle the pressure. She was therefore unfit for service.

Morgan v. City of Albuquerque, No. 93-2037 (10th Cir. May 25, 1994).

The Tenth Circuit held that a New Mexico federal court did not err in allowing a city to strike two jurors on the basis of their association with individuals with disabilities. The defendant had a physical disability - the loss of her left arm, shoulder blade, and collarbone - that was unrelated to her civil rights action against the city. During voir dire questioning, the district court asked poten-

tial jurors if any of them or their family members had physical disabilities. One potential juror responded that her father was missing three fingers from his right hand; another stated that she was a teacher of children with disabilities. The city peremptorily struck these two potential jurors. Defense counsel challenged those strikes, and the city responded that the only basis for the strikes was those individuals' association with persons with disabilities. The district court allowed the strikes, and a jury delivered a verdict in favor of the city. The appeals court rejected the defendant's argument that using peremptory challenges to strike potential jurors who had associations with persons with physical disabilities violated the Americans with Disabilities Act (ADA), [42 U.S.C. § 12101](#) et seq. Even if the ADA barred the use of peremptory challenges to remove jurors with physical disabilities, "there would be no grounds for an extension of such protection to persons who have some association with persons with disabilities - the ADA is intended only to remove discrimination against physically disabled persons themselves."

FN[FNa1]. Commission on Mental and Physical Disability Law

FN[FNb1]. Commission on Mental and Physical Disability Law

FN[FNc1]. Commission on Legal Problems of the Elderly

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1994

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APPENDIX D: ORGANIZATIONAL AND TECHNOLOGY RESOURCES

Government Agencies

Administration on Aging

330 Independence Ave., SW, Suite 4760, Washington, DC 20201, (202) 619-0556.

Administers funds and programs under the Older Americans Act, including transportation and legal assistance programs.

Architectural and Transportation

Barriers Compliance Board

1331 F Street, NW, Suite 1000, Washington, DC 20004, (800) USA-ABLE (voice and TT).

Provides technical assistance on architectural, transportation, and communications accessibility issues. Issues specific guidelines under the ADA.

Civil Rights Division, Public Access Section, U.S. Department of Justice

P.O. Box 66738, Washington, DC 20035-6738, (800) 514-0301 (voice), (800) 514-0383 (TDD).

Addresses regulations, technical assistance, and enforcement for Titles II (public services) and III (public accommodations) of the ADA.

Equal Employment Opportunity Commission

1801 L Street, NW, Washington, DC 20507, (800) 669-EEOC (voice), (800) 800-3302 (TDD).

Addresses regulations, technical assistance, and enforcement for Title I (employment) of the ADA.

National Institute on Disability and Rehabilitation Research, U.S.

Department of Education

400 Maryland Avenue, SW, Washington, DC 20202-2572, (202) 732-1134 (voice),

(202) 732-5079 (TDD).

Administers the principal federal disability research programs and ADA technical assistance centers. To reach one of the ten regional Disability and Business Technical Assistance Centers (DBTACs), call (800) 949-4ADA (voice and TTY).

Disability Organizations

Cross-Disability

AIDS Action Council

1875 Connecticut Avenue, N.W., Suite 700, Washington, D.C. 20009, (202) 986-1300 (voice).

Provides information and services to individuals with AIDS and HIV infection.

American Bar Association, Commission on Mental and Physical Disability Law

1800 M Street, NW, Washington, DC 20036, (202) 331-2240 (voice), (202) 331- 3884 (TDD).

Produces the bimonthly journal, Mental and Physical Disability Law Reporter; conducts projects and provides technical assistance on the ADA, involuntary civil commitment, guardianship, estate and health planning, AIDS/HIV, and the court-related needs of people with disabilities; and performs legal research for a fee.

Disability Rights Education and Defense Fund

2212 Sixth Street, Berkeley, CA 94710, (510) 644-2555 (voice), (510) 644- 2629 (TDD), (800) 466-4232 (voice and TDD).

Provides training and technical assistance for people with disabilities and their representatives; state and local government units; business and trade associations; and public policy advocacy and litigation.

Disabled American Veterans

807 Maine Avenue, SW, Washington, DC 20024, (202) 554-3501.

Advises veterans of their rights, and employers of their obligations under the Rehabilitation Act, the ADA, and other legislation that governs the employment and training of Vietnam era veterans with disabilities. Provides information on removing architectural barriers, providing reasonable accommodations, and locating assistive devices. Makes referrals to providers of qualified readers, interpreters, and personal assistants. Has local chapters.

Job Accommodation Network

Into Jury Box: Disability Guide for St. Cts. App. D

918 Chestnut Ridge Road, Suite 1, P.O.Box 6080, Morgantown, West Virginia 26506-6080, (1-800) 526-7234 (voice and TDD) or (800) ADA-WORK (voice and TDD)

Provides free telephone consultation on reasonable accommodations that can be provided by employers. Sends free packets of information on their services, with examples of accommodations.

National Association of Protection and Advocacy Systems

900 Second Street, NE, Suite 211, Washington, DC 20002, (202) 408-9514 (voice), (202) 408-9521 (TDD).

Represents federally funded protection and advocacy agencies and provides materials on the ADA to state programs. Can provide lists of state protection and advocacy agencies.

National Council on Independent Living

2111 Wilson Boulevard, Suite 405, Arlington, VA 22201, (703) 525-3406 (voice and TDD).

Represents community-based independent living centers. Will provide referral information on services offered by centers, and will locate the center closest to you.

National Leadership Council on AIDS

1730 M Street, NW, Suite 905, Washington, DC 20036, (202) 429-0930.

Provides information on AIDS and HIV infection and helps identify accommodations in the workplace.

National Organization on Disability

910 16th Street, NW, Suite 600, Washington, DC 20006, (202) 293-5960 (voice), (202) 293-5968 (TDD).

Mobilizes, supports, and involves citizens and groups in working partnerships at local, state, and national levels. Publishes list of liaisons employed by state organizations on disability. Has information hotline (800-248-2253).

World Institute on Disability

510 16th Street, Suite 100, Oakland, CA 94612, (415) 763-4100 (voice and TDD).

Cross-disability research, training, and policy development center.

Physical Disabilities

National Easter Seal Society

70 East Lake Street, Chicago, IL 60601, (312) 726-6200 (voice), (312) 726- 4258 (TDD).

Through local affiliates, provides technical assistance and referral to employers and individuals with disabilities. Project Action (National Easter Seal Society, 1350 New York Avenue, NW, Suite 711, Washington, DC 20005, (202) 347-3066 (voice) and (202) 347-7385 (TDD)) seeks to encourage and promote accessible transportation for persons with disabilities and assist with ADA implementation.

National Rehabilitation Association

1910 Association Drive, Suite 205, Reston, VA 22091, (703) 715-9090 (voice), (703) 715-9209 (TDD).

Facilitates communication among professionals working with persons with disabilities. Publishes guidelines on accessibility. Has local chapters.

Paralyzed Veterans of America

801 18th Street, NW, Washington, DC 20006, (202) 871-1300 (voice), (202) 416-7622 (TDD).

Provides on-site assessments and recommendations for removing or avoiding physical barriers. Has local chapters.

Hearing and Communication Impairments

American Speech-Language-Hearing Association

10801 Rockville Pike, Rockville, MD 20852, (301) 897-5700 (voice and TDD), (800) 638-8522 (consumer hotline, voice and TDD).

Provides information and technical assistance on overcoming communications barriers. Can help with communication problems, interpreters, assistive devices, hearing aids, and job modifications.

Association for Late-Deafened Adults

P.O. Box 641763, Chicago, IL 60664, (708) 445-0860 (TT only).

Provides self-help support groups, outreach, consultation, advocacy, and communication enhancement through electronic captioning.

The Caption Center

125 Western Avenue, Boston, MA 02134, (617) 492-9225 (voice and TDD).

Provides closed captioning for videos, including training, safety, instructional, and educational films. Maintains a consumer information service for overcoming communications barriers in the workplace.

National Association of the Deaf

814 Thayer Avenue, Silver Spring, MD 20910-4500, (301) 587-1788 (voice), (301) 587-1789 (TDD).

Offers basic information and referral on deafness and accommodations for people who are deaf. Has chapters in all 50 states.

National Captioning Institute

5203 Leesburg Pike, Suite 1500, Falls Church, VA 22041, (703) 998-2400 (voice and TDD).

Develops closed-captioning decoders and captions videos; conducts research on closed captioning and new technologies for hearing-impaired persons.

National Center for Law and Deafness

800 Florida Avenue, NE, Washington, DC 20003, (202) 651-5373 (voice and TDD).

Provides legal education on current and upcoming federal and state laws affecting individuals who are deaf or hard of hearing. Offers to individuals who are deaf or hard of hearing advice, technical assistance, and representation in solving legal problems. Provides information and publications on issues affecting individuals who are deaf or hard of hearing, including the ADA, employment, interpreters, and TDDs.

National Court Reporters Association

8224 Old Courthouse Road, Vienna, VA 22182-3808, (703) 556-6272 (voice), (703) 556-6289 (TDD).

Supports the concept of a Total Access Courtroom (TAC), with computers enabling reporters to provide an instant translation of their notes into English. Can provide a list of certified real-time transcription court reporters and information on real-time technology.

National Information Center on Deafness, Gallaudet University,

800 Florida Avenue, NE, Washington, DC 20002, (202) 651-5051 (voice), (202) 651-5052 (TDD).

Provides publications on workplace accommodations for people who are deaf; has list of manufacturers and up-to-date information on topics related to deafness and hearing loss; is developing updated ADA materials on the employment of individuals

who are deaf; and provides information on how to obtain the services of a qualified interpreter.

PUSH Literacy Action Now (PLAN)

1332 G Street, SE, Washington, DC 20003, (202) 547-8903.

Provides information and assistance in designing forms and communication techniques.

Registry of Interpreters for the Deaf

8719 Colesville Road, Suite 310, Silver Spring, MD 20910-3919, (301) 608- 0050 (voice and TDD).

Prepares and distributes national registry of certified interpreters of American Sign Language and transliterators of English. Has local chapters.

Self Help for Hard of Hearing People, Inc.

7910 Woodmont Avenue, Bethesda, MD 20814, (301) 657-2249 (voice and TDD).

Information and referral for consumers and professionals. Maintains an Assistive Devices Demonstration Center, featuring phone adaptations, visual alerts, TDDs, and sound enhancement systems. Has local chapters and many publications.

Telecommunications for the Deaf, Inc.

8719 Colesville Road, Suite 300, Silver Spring, MD 20910, (301) 589-3786 (voice), (301) 589-3006 (TDD).

Publishes and sells a nationwide (TDD) directory that includes information on visually based accommodations for deaf and hearing impaired people, such as alarms, decoders, and TDDs. Sells decoders and a videotape on how to use TDDs.

VITAC

312 Boulevard of the Allies, Pittsburgh, PA 15222, (412) 261-1458 (voice), (412) 232-6344 (TT).

Provides captioning and real-time transcription services.

Vision Impairments

American Council of the Blind

1115 15th Street, NW, Suite 720, Washington, DC 20005, (202) 467-5081, (800) 424-8666 (Monday-Friday, 3:00-5:30 p.m. EST only).

Provides advocacy, education and information sharing. Maintains special in-

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terest affiliates for blind professionals, e.g., American Blind Lawyers Association. Has local affiliates.

American Foundation for the Blind

15 West 16th Street, New York, NY 10011, (212) 620-2000 (voice), (212) 620- 2158 (TDD).

Offers information on assistive technology; and lists jobs held by blind persons indicating how adaptations were made in various employment situations.

American Printing House for the Blind

1839 Frankfort Avenue, Louisville, KY 40206-0085, (502) 895-2405.

One of several Braille publishers in the United States. Also distributes materials in large print and audio recordings. Distributes instructional aids, education computer software, and textbooks for children.

National Braille Association

1290 University Avenue, Rochester, NY 14607, (716) 473-0900.

Transcribes manuals and other career-related materials for blind and visually impaired employees. Maintains collection of Brailled technical and vocational information.

National Braille Press

88 St. Stephen St., Boston, MA 02114, (617) 266-6160.

Does large scale production of Braille materials. Maintains list of individual Braille transcription services.

National Federation of the Blind

1800 Johnson Street, Baltimore, MD 21230, (301) 659-9314.

Provides technical assistance, technology center, publications, aids and devices. Has local chapters.

National Library Service for the Blind and Physically Handicapped, Library of Congress

1291 Taylor Street, NW, Washington, DC 20542, (202) 287-5100.

Provides Braille and recorded materials to the public through network of libraries, service centers, and lending agencies. Also provides technical assistance.

Recording for the Blind

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20 Roszel Road, Princeton, NJ 08540, (609) 452-0606, ext. 225.

Converts texts into audiocassettes or onto computer disks.

Cognitive Impairments

Alzheimer's Disease and Related Disorders Association, Inc.

919 N. Michigan Avenue, Chicago, IL 60611, (312) 335-8700 (voice), (312) 335-8882 (TDD), (800) 272-3900.

Voluntary organization dedicated to providing support and assistance to Alzheimer's patients and their families. Conducts research. Has over 1600 support groups and 215 local chapters nationwide.

Judge David L. Bazelon Center for Mental Health Law

1101 15th Street, NW, Suite 1212, Washington, DC 20005, (202) 467-5730 (voice), (202) 467-4232 (TDD).

Advocates for persons with mental disabilities through litigation, legislative and administrative advocacy on the federal and state levels, technical assistance, information, referrals, training, and publications. Does not provide legal representation for individual clients.

Epilepsy Foundation of America

4351 Garden City Drive, Landover, MD 20785, (301) 459-3700 (voice and TTD).

Sponsors research and serves as an advocate for individuals with epilepsy. Conducts a myriad of programs and services, including employment training programs.

Learning Disabilities Association of America

4156 Library Road, Pittsburgh, PA 15234, (412) 341-1515.

Provides information to employers, educators and the general public about learning disabilities.

Muscular Dystrophy Association

810 Seventh Avenue, New York, NY 10019, (212) 586-0808 (voice).

Through its local affiliates, provides services and information to its members. Supports international research on neuromuscular disease.

National Multiple Sclerosis Society

205 East 42nd Street, New York, NY 10017, (212) 986-3240 (voice).

Provides services for individuals with MS and their families, provides information about MS, and supports research.

National Alliance for the Mentally III

2101 Wilson Blvd., Suite 302, Arlington, VA 22201, (703) 524-7600.

Represents primarily families of persons with mental illness. Has local affiliates.

National Association of State Mental Health Program Directors

66 Canal Center Plaza, Suite 302, Alexandria, VA 22314, (703) 739-9333.

Comprises state government agencies that administer public programs for persons with mental illnesses in the 55 states and territories.

National Mental Health Association

1021 Prince Street, Alexandria, VA 22314, (703) 684-7722.

Citizen's volunteer advocacy organization concerned with all aspects of mental health and mental illness.

The Arc (formerly Association for Retarded Citizens)

500 East Border Street, Suite 300, Arlington, TX 76010, (817) 261-6003 (voice), (817) 277-0553 (TDD).

Provides technical assistance on mental retardation. Has state affiliates and local chapters.

United Cerebral Palsy Associations, Inc.

1522 K Street, N.W., Suite 1112, Washington, D.C. 20005, (202) 842-1266 (voice and TDD).

Through local affiliates, assists with workplace accommodations and assistive technologies. Produces printed materials and videos on ADA accessibility and workplace accommodations.

Specific Disabilities

For a more detailed list of organizations with expertise in specific disabilities, contact the ABA Commission on Mental and Physical Disability Law, 1800 M Street, NW, Washington, DC 20036, (202) 331-2240 (voice), (202) 331-3884 (TDD), (202) 331-2220 (FAX).

National Aging Resources

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American Association of Retired Persons

601 E Street, N.W., Washington, D.C. 20049, (202) 434-2277.

Includes more than 33 million members throughout the nation, with 4,000 local chapters, a member of community councils, 2500 retired teachers association units, and 600 field service districts.

American Bar Association Commission on Legal Problems of the Elderly

1800 M Street, N.W., Washington, DC 20036, (202) 331-2297.

A 15-member interdisciplinary group created by the ABA to examine law-related issues affecting the elderly. Contact the Commission for a more extensive list of aging organizations, as well as law and aging resources.

American Society on Aging

833 Market Street, Suite 511, San Francisco, CA 94103, (415) 974-9600.

Multi-disciplinary coalition of over 10,000 professionals working with or on behalf of older people. Provides educational programs, activities, publications and products for professionals in aging.

National Association of State Units on Aging

2033 K Street, NW, Suite 304, Washington, D.C. 20006, (202) 785-0707.

Membership organization and informational clearinghouse for the state units on aging under the Older Americans Act.

National Council of Senior Citizens

1331 F Street, NW, Washington, D.C. 20004-1171, (202) 347-8800.

Includes more than five million members and associates, state councils in most states, and 5000 senior clubs.

Technology Resources

ABLEDATA

8455 Colesville Road, Suite 935, Silver Spring, MD 20910-3319, (800) 227- 0216 (voice and TDD), BBS: (301) 589-3563.

An extensive database of assistive technologies.

Audex

713 N. Fourth Street, Longview, TX 75601, (800) 237-0716.

Manufactures assistive listening systems.

Crestwood Company

6625 N. Sidney Place, Milwaukee, WI 53209-3259, (414) 352-5678.

Produces communication aids for children and adults.

Duartek, Inc.

11150 Main Street, Suite 105, Fairfax, VA 22030, (703) 352-2285 (voice), (703) 352-2286 (TTY).

Provides consulting and technical services on innovative uses of technology for making places and situations accessible to people with hearing impairments.

LS&S Group

P.O. Box 673, Northbrook, IL 60065, (708) 498-9777.

Sells products for people with vision impairments.

National Center for Accessible Media

WGBH Boston, 125 Western Avenue, Boston, MA 02134, (617) 492-9258 (voice), (617) 782-2155 (TDD).

National Rehabilitation Information Center

8455 Colesville Road, Suite 935, Silver Spring, MD 20910-3319, (301) 588-9284 or (800) 346-2742 (voice and TT).

Operates a library and information center on disability and rehabilitation. Also maintains ABLEDATA database on assistive devices.

National Information Center on Deafness, Gallaudet University

800 Florida Avenue NE, Washington, D.C. 20002, (800) 672-6720 (voice and TDD).

Provides information on deafness and hearing loss.

Phonic Ear, Inc.

3880 Cypress Drive, Petaluma, CA 94954-7600, (800) 227-0735, (707) 769-1110.

Provides products and services on assistive communications technologies for people with auditory, speech, and learning disorders.

Rehabilitation Engineering Society of North America (RESNA)

1101 Connecticut Avenue, NW, Suite 700, Washington, DC 20036-4303, (202) 857-1199.

Disseminates information on assistive technologies. Also oversees Technical Assistance projects in many states.

Technical Aids and Assistance for the Disabled

1950 W. Roosevelt Road, Chicago, IL 60608, (800) 346-2959.

TeleSensory

455 N. Bernardo Avenue, P.O. Box 7455, Mountain View, CA 94039-7455, (415) 960-0920.

Manufactures and distributes a wide variety of products for people with vision impairments.

Trace Research and Development Center

S-151 Waisman Center, 1500 Highland Avenue, Madison, WI 53705, (608) 262- 6966 (voice), (608) 263-5408 (TDD).

Develops assistive technologies for persons with disabilities.

Ultratec, Inc.

450 Science Drive, Madison, WI 53711, (800) 482-2424 (voice and TTY).

Sells assistive technology products for people with hearing impairments.

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