

Below is an NCAD (NC Association of the Deaf - ncadeaf.org) information sheet on SB293 sent to me by their president. Kim Batson

From: lknelson2@msn.com
To: kmccbat@aol.com
Sent: 7/19/2009 11:26:40 P.M. Eastern Daylight Time
Subj: RE: SB293 with attachment

Many thanks for your support. I am enclosing NCAD attachment for your information.

Linda Nelson
NCAD President

ACTION ALERT

Last Friday NCAD got information regarding deaf jurors debated in the legislature. We were dumbfounded when some legislators said deaf people cannot serve as jurors because they cannot hear. Even one legislator said who would pay for interpreters? When NCAD read the unofficial transcripts showing their alarming comments, some legislators obviously need lots of education to learn about ADA, interpreters, and deaf people who can be jurors in courtrooms. NAD was asked to help NCAD share its responses to the issue on deaf jurors so NAD responses were posted below. Rosaline Crawford, the NAD lawyer has been great sending NCAD her responses for NAD. After you will finish reading them, you are encouraged to send a letter to your home legislator to support the amendment (SB293) by Rep. Rick Glazier, a Fayetteville Democrat who is in support of qualified interpreters for deaf jurors.

Deaf Jurors debated (News and Observer – Under The Dome)

http://projects.newsobserver.com/tags/sb293_09

A bill that would have provided a procedure for judges to deal with deaf jurors led to a debate in the House over whether those who cannot hear should sit on a jury.

The bill would guarantee an interpreter for hearing impaired jurors.

But some House members questioned whether such a juror could properly appreciate the nuance of testimony.

“This is one example of taking political correctness too far”, said Rep. Ronnie Sutton, a Pembroke Democrat. “We can’t have quadriplegics running track, nor do we need to have deaf persons serving on juries.”

Rep. Rick Glazier, a Fayetteville Democrat, said hearing impaired jurors have already served in North Carolina trials. Several states have similar laws providing for interpreters in those cases, he said. The bill still allows lawyers or judges to reject a hearing impaired. Juror.

“ A hearing impaired juror who has the capacity to participate fairly and impartially ought to be allowed,” Glazier said.

Reps. Ruth Samuelson, a Charlotte Republican and Deborah Ross, a Raleigh Democrat, pointed out the deaf people may pick up on subtleties that others miss because they are using different senses. And Ross, said, just because a person can hear doesn’t mean would they would be a good juror.

“There may be plenty of people who can hear but don’t listen, “ Ross said.

Opponents to the bill sought to send it to its death in a committee. Glazier successfully avoided that by having the bill delayed until July 21.

NAD Responses:

Apparently, current juror qualifications in NC include the ability to hear. Maybe it hasn’t been enforced, but it is on the books. A bill was introduced in the state Senate to permit an electronic copy of the juror list (apparently not a controversial issue), and also to eliminate the juror qualification of the ability to hear. The bill was amended to also require the provision of a qualified interpreter for a deaf juror. That is good for deaf jurors who sign; not good for jurors who don’t. But that’s not the issue.

The bill passed the state Senate and moved to the House. In the House, the bill passed the first reading, was referred to and reported out favorably from two committees, and came up for a vote on a second reading on July 16.

Unexpected and incredible opposition to the bill was raised by several legislators in the House. Some also spoke out in favor of the bill. The session in the House was recorded (unofficial transcript) and is available online at the

<http://voterradio.com/legislature/archive/2009/index.php>

House Daily Session – Thu, July 16, 2009 Excerpts from Unofficial Transcript – SB293 – “Juror Qualifications/Electronic Juror List”

Representative Rick Glazier

(<http://www.ncleg.net/gascritps/members/viewMember.pl?sChamber=House&nUserID=317>)

Appears to have sponsored/championed the bill in the House. He was the one responding to questions asked by other legislators during the debate on July 16. He named several states that have laws that permit deaf people to serve on juries. He might be the one to contact to see what response from the community might be needed to change the minds of the legislators who opposed the bill.

When I listened to the recording of the session in the House on July 16. I heard legislators express concerns about the physical facilities of a jury box not being able to accommodate an interpreter (there being only 13 seats typically in a jury box for the jurors and alternate). I heard concerns about the ability of an interpreter to interpret fast enough or to interrupt specialized vocabulary. I heard concerns about the ability of a deaf juror to catch nuances and inflections of speech. I heard concerns about a deaf juror's ability to participate in jury deliberations when jurors engage in multiple side conversations simultaneously. These concerns are unfounded. Both the ADA law and the North Carolina bill require "qualified" interpreters, which is specifically defined in the ADA as one who can, expressively and receptively, interpret accurately, effectively, and impartially, using any necessary specialized vocabulary. Sure, modifications may be necessary. For example, people may have to slow down a little or take turns talking one at a time. Such modifications would probably benefit everyone. They may even help ensure that justice is served.

Listening to some of these concerns, I could only think about what if the deaf person was a defendant, instead of a juror. Isn't there an expectation that justice will be served in that case with an interpreter ensuring access to the court proceedings and effective communications? Why then would anyone think that justice would not be served when the deaf person is a juror? What if the deaf person was the defense lawyer or prosecutor? Or the judge? In every case we expect justice to be served.

I also heard that in North Carolina deaf people have been jurors and courts have provided interpreter services. Seems there was some question about whether the law has been followed. (For your information, Tommy Donnelly of Raleigh, NC was the foreman for the jury and did very well according to NCAD)

In any event, the North Carolina law – as it is today – requiring jurors to have the ability to hear – is discriminatory on its face. It may be, in legal jargon, a "per se" violation of the Rehabilitation Act and the ADA. It should have been changed decades ago.

Rosaline Crawford, Director

NAD Law and Advocacy Center

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NCAD's Responses

NCAD was shocked when we read some legislators' alarming comments regarding the deaf jurors. Their comments were very offensive and did not show respect for deaf jurors and their equal rights as US

citizens/taxpayers. These legislators knew nothing about the ADA and the interpreters. What is more, North Carolina has a law requiring interpreters to have licenses for their jobs. Again, these legislators seemingly forgot that they voted for the law on interpreter licenses. Rep. Ronnie Sutton was very clueless when he asked about deaf people's capabilities to serve as a juror. Obviously, these legislators need to be educated regarding this bill. We are grateful that Rep. Rick Glazier fought to keep the bill alive and succeeded in postponing the second reading until Tuesday, July 21 so the legislators will be given some time to learn about ADA, Deaf Rights, and Accommodations such as qualified interpreters.

NCAD plans to send letters to the House members to let them know that we are disappointed that the bill was yet passed due to some House members questions on jurors' qualifications to serve on a jury. NCAD will fight all way to support Rep. Rick Glazier's amendment (SB293) to the bill to provide qualified interpreters for deaf jurors.

You are encouraged to read (below) to get an idea of what some legislators said about deaf jurors.

North Carolina Legislators Oppose Deaf Jurors

On Thursday, July 16, 2009, North Carolina legislators debated whether to permit deaf people to serve on a jury. Caution – some of the statements made during that debate are alarming. Excerpts from the debate are followed by commentary. If you want the right of citizenship to serve on a jury, and you live in North Carolina, ask your representative to read this article.

Excerpts from Unofficial Transcript –

SB293 – “Juror Qualifications/Electronic Juror List”

<http://voterradio.com/legislature/archive/2009/index.php>

[House Daily Session - Thu, July 16, 2009](#)

Representative [Rick Glazier](#) introduced the bill that would permit deaf people to serve on a jury and require the provision of qualified interpreters. The bill was passed by the state Senate and was sent to the state House. The House Judiciary Committee and Ways and Means Committee both unanimously reported out favorably on the bill. Representative Glazier also said, “The administrative office of the courts has no opposition to the bill and has not asked for any additional money.”

Representative [N. Leo Daughtry](#) opposed the bill and said:

Ladies and gentleman, the way the law is now, it says that you can serve on the jury if you can hear and understand the English language. Pretty well knocks out the blind and the deaf. And one of the reasons for that is the idea of a juror being able to look at the demeanor of the witness. . . . And I don't see how, practically, our courtrooms are going to be able to handle an

additional interpreter and I don't see how we can pay for it. I just think that this is a bill that means well, but I don't see how it can work in a fair way with the way our facilities are now.

Representative [Ronnie Sutton](#) opposed the bill and said:

Ladies and gentlemen, this is a well-intended, good-sounding bill, but let's put it in real-world terms. A deaf person sitting on a jury is going to miss a vast majority of what takes place in a jury trial. The interpreter cannot interpret quick enough to describe the inflection of a witness's voice and things of that nature. You know it just seems to me that this is really an example of taking political correctness too far. . . . If this is the case, why not blind people serving on juries? Why not quadriplegics serving on juries from their bed. You know, it's just, that just shows you, in my opinion, the absurdity of having a deaf person on a jury. You know we don't have quadriplegics running track. Nor do we need to have deaf persons serving on juries. . . . But if you think about this realistically, folks, as an attorney, I'm never going to let a deaf person serve on a jury. It's not going to happen. And no other responsible attorney, do I think, would allow that. But you only have so many preemptory challenges [to dismiss a potential juror without having to give a reason]. So you may have cases where you're going to be, have a person's life or their safety or something like that depending upon a deaf person sitting there who depends upon somebody interpreting what's happening in the courtroom. And I just think this is going too far and I think we need to stop this before it gets out of hand.

Representative [Bill Faison](#) opposed the bill and said:

This bill puts you in a terrible situation if you're trying to represent and help people. If you're in a courtroom, either someone's freedom or their property is at issue. . . . But if we were to pass this bill, and I am sitting in a courtroom and a person who is hearing challenged goes into that box, I cannot, in the effective representation of my client, allow that person to continue to sit for the deliberation because they cannot physically, fully participate in the process, with or without an interpreter. Sometimes in the cases I do there are some medical terms. I've got to make sure people understand those. I will never know if that translator got it right or not. . . . And, for that reason, you would force me, if we pass this, you would force me into a position of having to use a preemptory challenge. I've only got eight of them. . . . And to put a person in the box that's going to force me to burn one of those, straight out, for no other reason other than the fact that they cannot participate fully and meaningfully in the trial process. And that I cannot know whether the communication with them and from them is clear and correct, is not a fair thing to do to the litigants of this state, who are having to go into a courtroom to try to have their property rights or their freedom evaluated.

Representative [Bill Faison](#) then made a motion to re-refer the bill back to the Ways and Means committee.

Representative [Rick Glazier](#) opposed returning the bill to committee. He said:

First, I've spoken with the ADA interpreter coordinator. There have already been trials in this state where we have used interpreters and where they have been allowed by courts. Secondly, this is the law in a number of states that have enacted similar provisions since 1987. . . . I think that a deaf, or a hearing impaired juror, who has the capacity to participate fairly and impartially ought to be allowed. It's what's being requested. There is really no legitimate reason whatsoever to re-refer this bill.

Representative [Paul Stam](#) spoke in favor of returning the bill to committee. He said:

I thought this was the law anyway because there was a similar bill in 1989 . . . and I spoke against it. . . . My reasons are the same as Representative Sutton and Faison. The purpose of a trial is not to satisfy the needs of the jurors. . . . The purpose of a trial is to do justice. . . . Justice is about having 12 people hear and understand what goes on and making a decision.

Representative [R. Phillip Haire](#) spoke in favor of returning the bill to committee. He said:

. . . as an attorney . . . I agree with all that's been said. I don't really see how this can work. And, one thing I think about is, the interpreter. Does the interpreter understand the words that are being said? And if you say something, you know, words have different meanings as well. And, if the interpreter hears what he or she thinks is one word and interprets another one to the person, it's entirely, it's entirely different. And so, you know, I think the perils are much greater than the feel-goodness in this bill.

Representative [Verla Insko](#) asked questions about the bill, but did not say whether she would vote to return the bill back to committee, or not.

Representative [Ruth Samuelson](#) opposed returning the bill to committee. She said:

. . . I've had a number of hearing-impaired friends and have worked with the sensory impaired. And I'll tell you, they may not hear that inflection, but they'll see it. And they'll see things that all of the rest of us will miss. . . . because we think we hear, we think we see, we think we understand. And as for the interpreters, the interpreters are highly trained and oftentimes their vocabulary is way above the rest of us because they have to learn not only to do it in English but to do it in sign language.

Representative [Ronnie Sutton](#) asked whether "presently in North Carolina, there are deaf people serving on juries?" Representative [Rick Glazier](#) responded that he believes "hearing impaired people have served on juries and where they've need interpretive services to assist, judges have ordered those interpretive services." Representative [Ronnie Sutton](#) said, "They were in violation of the law."

A representative [unidentified male] spoke for a second time in favor of returning the bill to committee and said:

. . . I just don't believe . . . that deaf people are serving on juries in the state of North Carolina. Now, some with hearing loss, no problem. Some with hearing aids, no problem. But I don't

know, I've never heard of a deaf person serving on a jury in North Carolina. And, if they did, in my interpretation, they were violating the law by doing so. And I would think that we would keep it that way.

Representative [Wm. C. "Bill" McGee](#) spoke in favor of returning the bill to committee and said:

. . . you don't have the same courtroom discipline in the jury room. The jurors could have three or four conversations going on among themselves while discussing the case. . . . And I think that a juror who can't hear, having an interpreter there, having to depend on the interpreter, might miss a critical conversation.

Representative [Deborah K. Ross](#) opposed returning the bill to committee. She said:

. . . there may be perceptions that are brought to a trial that haven't been brought to the trial before that actually benefit the finding of truth in the case. And there are plenty of people who can hear but who don't listen. And somebody who can't hear pays a lot more attention to try to find out what's really going on. It very well may make all the other jurors pay closer attention and not talk over each other in the jury room and go one at a time and have a better deliberative process if there's somebody who is hearing impaired in the jury room. . . . So why would we give up an opportunity to let all of our citizens exercise their rights of citizenship in a way that will do nothing to hurt the system, but might enhance it. I ask people to think beyond their own experiences here for ways that this might be a positive thing, not just for the citizens who might now get to serve, but for the whole process.

Representative [Grey Mills](#) spoke in favor of returning the bill to committee and said:

Folks, there's a lot of stuff going on when you go to trial. Much will be lost in translation, be it tone of voice or sarcasm from the witness stand, to things flying around in the jury deliberation room . . .

Representative [Nick Mackey](#) spoke in favor of returning the bill to committee and said:

The things that go on in a courtroom during the course of a trial would require that the members of the jury be able to make their independent judgment in order to give . . . the full benefit of their deliberations.

Representative [Johnathan Rhyne, Jr.](#) spoke in favor of returning the bill to committee and said:

I would just suggest to the members that the debate we've had today argues for sending the bill back to committee. We've spent the last two days talking about corporal punishment and the role of a jury in the ultimate decision of life and death. And what we want to make sure is that when decisions like that are made, decisions depriving people of their liberty and their property, that those decisions are being made based on the facts and the proof given in the courtroom. And wherever you fall on this particular issue, clearly, this bill needs some more work.

Representative [Pat McElraft](#) asked questions about the bill, but did not say whether she would vote to return the bill back to committee, or not.

Representative [Rick Glazier](#) made a motion to postpone the matter until Tuesday, July 21st. A vote was taken [64 in favor and 54 opposed] and the bill was moved to next Tuesday, July 21st.

Commentary (Sample Letter to House members)

The Americans with Disabilities Act (ADA) and the North Carolina bill (SB 293) require “qualified interpreters” when necessary to ensure equal opportunity and effective communication with deaf jurors. The term “qualified interpreter” is specifically defined in the ADA regulations as one who can, expressively and receptively, interpret accurately, effectively, and impartially, using any necessary specialized vocabulary. In addition to qualified interpreters or other accommodations to ensure equal opportunity and effective communication, modifications may also be necessary. For example, people may have to take turns talking one at a time. Such modifications would probably benefit everyone. They may even help ensure that justice is served.

When people express concerns about justice being served when a deaf person serves on a jury, imagine the concerns this raises for the deaf person who is a defendant, a plaintiff, or a witness. Isn't there an expectation that the provision of qualified interpreter services or other accommodations ensures access to the court proceedings and effective communication in those cases? Isn't there an expectation that justice will be served in every case? Why then is it conscionable to think that justice would not be served when the deaf person is a juror? What if the deaf person was the defense lawyer or prosecutor? Or the judge? In every case we expect justice to be served, including cases where a deaf person is a juror.

Here's some information for North Carolina legislators:

See the U.S. Department of Justice Technical Assistance Manual for ADA Title II – <http://www.ada.gov/taman2.html> – which provides the following:

Because of the importance of effective communication in State and local court proceedings, special attention must be given to the communications needs of individuals with disabilities involved in such proceedings. Qualified interpreters will usually be necessary to ensure effective communication with parties, jurors, and witnesses who have hearing impairments and use sign language. For individuals with hearing impairments who do not use sign language, other types of auxiliary aids or services, such as assistive listening devices or computer-assisted transcription services, which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays, may be required.

See the National Association of the Deaf Advocacy Statement: Communication Access in State and Local Courts (2008): <http://www.nad.org/issues/justice/courts/communication-access-state-and-local-courts>

See the U.S. Department of Justice settlement in a Houston case that includes deaf and hard of hearing jurors in the list of court participants entitled to interpreters or other accommodations.

<http://www.ada.gov/houston.htm>

See the federal court policy about deaf and hard of hearing jurors at

<http://www.nad.org/issues/justice/courts/communication-access-federal-courts>.

In addition, virtually every court that has heard a case involving the issue of whether individuals with a sensory disability, including individuals who are deaf or hard of hearing, are qualified to serve on a jury have determined that such individuals are so qualified.

On Tuesday, July 21st, 2009, vote in favor of SB 293.

ACTION ALERT

Take Action – Call Your North Carolina State Representative Now! Tell Them to Vote YES for Senate Bill 293: Juror Qualifications/Electronic Juror List

<http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S293v2.pdf>

Background

Under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, a juror cannot be excluded from service simply because he or she is deaf.

Senate Bill 293: Juror Qualifications/Electronic Juror List changes our existing law to permit people who are deaf to serve as juror.

This legislation also specifies that if a person who is deaf is selected as a juror that the court will appoint a qualified interpreter to interpret the proceedings to the deaf person.

Senate Bill 293 will bring our state into compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

Tell Them:

To vote YES for Senate Bill 293: Juror Qualifications/Electronic Juror List.

This legislation will bring North Carolina law into compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

Currently in the United States there are approximately 100 deaf practicing attorneys and three seated deaf US judges.

How to find your Representative:

http://www.ncleg.net/GIS/Representation/Who_Represents_Me/Who_Represents_Me.html

Or call 919-733-7928

Your Responses

Your efforts to send your responses to Rep. Rick Glazier, Rep. Ruth Samuelson, Rep Ronnie Sutton, Rep. Deborah K. Ross, and the other House members would be greatly appreciated. You were great about sending responses regarding schools for the deaf to your home legislators. It made a huge impact on the legislature when the decision to keep schools for the deaf and school for the blind open with \$1.5 million budget cuts was made. However, the decision is not final yet until the state budget becomes final. Your responses made a big **DIFFERENCE** to change the legislators' minds. Now you are encouraged to send your responses to let your home House members know that you are in support of Rep. Rick Glazier's amendment to provide qualified interpreters for deaf jurors. It will make a big **DIFFERENCE** again. **Let them know that you are in support of SB 293.**

NCAD will keep you posted on new developments on the bill. Many thanks in advance for your support to fight for Deaf People's equal rights as jurors.

NCAD President and the NCAD Board