

KIM McCAHAN BATSON

*152 Ridge Trail
Chapel Hill, NC 27516*

*(H) 919-240-5666
(C) 919-265-9820*

kmccbat@aol.com

Compelling reasons to vote for SB293 on Tuesday, 7/21/09.

SUMMARY VERSION

Are the deaf too dumb to serve on juries?

That's what some lawmakers seemed to be saying as I listened to the House debate SB293 last Thursday (7/16/09). After sailing unanimously through two committees and the Senate, "Juror Qualifications/Electronic Juror List" met vigorous resistance in the House. Opposing legislators, mainly trial attorneys, raised concerns that deserve to be addressed. As I prepare to enter Meredith College's Paralegal Program, the points of law interest me. As a civil rights proponent, the misconceptions and lack of knowledge sadden me.

Contrary to the belief expressed by most bill opponents, sign language interpreters can convey nuances in spoken language. Hearing impaired individuals are actually better than hearing persons at picking up non-verbal cues (which comprise more than 50% of language understanding). Google "[deaf juror, Georgia](#)" for a true account of a jury experience that included a hearing impaired individual. Moreover, many states allow hearing impaired jurors. Rulings in multiple State and FEDERAL jurisdictions have prohibited the exclusion of jurors based on hearing impairment. North Carolina is an ADA lawsuit waiting to happen.

Contrary to most interpretations of NC law, Mecklenburg County allows and makes provisions for hearing impaired jurors – it's in their [jury handbook](#). A [document](#) prepared by the NC Administrative Office of the Courts for the Wake County PD's office asserts that NC law already allows deaf jurors, and that some have indeed served.

It appears to me that SB293 will simply bring NC law into compliance with Federal Law, codifying and clarifying what is already in practice. It will ensure that qualified hearing impaired individuals are allowed to serve as jurors and are provided with a qualified interpreter.

Please support the passage of SB293. To do otherwise is discriminatory, illegal under the ADA, and simply wrong.

Respectfully Submitted,
Kim M. Batson
Long version available upon request.

LONG VERSION:

Dear Lawmakers:

Are the deaf too dumb to serve on juries?

In a nutshell, that's what I heard state legislators say from the House floor last Thursday (7/16/09) in opposition to SB293. After sailing unanimously through two committees and the Senate, it is not surprising that the unexpected opposition shocked supporters. As the aunt of a hearing impaired young man, the mother of a son who has benefited from Exceptional Children services, and the wife of an EC teacher, I was riveted by the discourse. Moreover, I was in attendance that day as the chaperone for another category that has historically struggled for civil rights protection – children from a predominantly African American summer camp program.

I was in the House chamber accompanying children from [Pine Knolls Learning Center](#) in Chapel Hill. We had just come from meeting with [Senator Ellie Kinnaird](#), who graciously asked everyone's name and shook each hand. She took us onto the Senate floor, briefly explained what happens there, and told us that every person in the room could become a State Senator – or more. We slipped into the House proceedings for a few minutes, but I refused to leave until the conclusion of debate and voting on SB293: Juror Qualifications/Electronic Juror List.

I outline below compelling reasons why I believe SB293 should be approved at its second reading on Tuesday, July 21, and, in due course, become state law. While I will start the Paralegal Program at Meredith College this fall, I have no legal training, so please excuse any deficiencies in form.

Major objections as I heard them are:

1. The hearing impaired would not be able to understand every important detail of a case because they cannot hear nuances in tone of witness testimony.
2. Concerns over the accuracy of translations from court interpreters.
3. Inability to take part in jury deliberations.
4. Cost of interpreters.
5. Disbelief at the assertion that hearing impaired individuals have already served on NC juries and the insinuation that, if they have done so, the law was violated.
6. Paraphrased quote: “We are taking political correctness too far. What's next – blind jurors?”

Here are the facts:

1. The hearing impaired would not be able to understand every important detail of a case because they could not hear nuances in tone of witness testimony.

Response: (1) Interpreters can convey nuances; (2) Hearing impaired individuals are actually better at picking up non-verbal cues (which comprise more than 50% of language understanding) than hearing persons.

- http://www.4hearingloss.com/archives/2007/12/interpreters_fo.html They (*interpreters*) use not only their hands, but full facial expressions and body language to convey the language's nuances.
- <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/22/DD6M16KBQN.DTL#ixzz0LfJSuf8L> When you're on jury duty, they tell you your job is to evaluate the credibility of the witness. They want you to look for their behavior, their affect. A deaf juror can't hear the vocal inflection, so if the witness is hesitant or evasive I have to reflect that so the deaf person can get that, too. So I'm interpreting and the juror is also watching the (witness') body language or facial expression, because that's

something they're especially sensitive to. That's part of their language - to use those channels.

2. Concerns over the accuracy/impartiality of translations from court interpreters.

Response: The NC courts already use sign language interpreters for court proceedings. If they are qualified to translate for victims, defendants, plaintiffs, and witnesses, they are also qualified to translate for jurors.

- http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/faq_becominginterpreter.doc *Interpreting Services supports the North Carolina Judicial Branch goal of ensuring that people who are hard-of-hearing or cannot speak English will have equal access to the courts.*

3. Inability of hearing impaired jurors to take part in jury deliberations or potential to impede the process. One lawmaker contended that when he served on a jury, multiple conversations would occur at one time and a deaf person couldn't keep up.

Response: Jurors should talk one at a time, giving each other a chance to speak and listen. Real world examples show that the presence of a deaf person and their interpreter encourages this, thus actually enhancing the deliberation process.

- <http://www.disaboom.com/Blogs/deafmom/archive/2008/03/17/deaf-jurors-absolutely.aspx> *One of the jurors asked the judge for permission to speak and shared that having the interpreters actually helped the decision process as everyone was asked to take turns speaking so that the interpreter could convey each person's contribution without overlapping voices. The juror was a seasoned one, having participated in several other trials; he noted that the discussion process was more civilized, because the jurors didn't cut each other off in mid-conversation.*
- http://www.4hearingloss.com/archives/2007/12/interpreters_fo.html *At times deliberations can get heated and the interpreters have to remind the other jurors to speak one at a time. "A lot of people don't take turns talking," VonFeldt said. "So it's very much a challenge." Both said the interpretation doesn't seem to bog down deliberations.*
- <http://www.nytimes.com/1989/01/22/nyregion/follow-up-on-the-news-deaf-people-as-court-jurors.html> *Judge Ziegler noted that five jurors "testified that the presence of the deaf juror and the interpreter was neither disruptive nor inefficient."*

Major point for 1 – 3: Hearing Impaired individuals ALREADY SERVE ON JURIES IN MULTIPLE UNITED STATES JURISDICTIONS. The attached spreadsheet identifies 19 states that do not bar hearing impaired jurors, as well as Federal citations. Unable to find one source that simply lists law by states, I stopped searching at 19. I'm sure there are many, many more, given that Federal law supports the rights of hearing impaired individuals to sit on juries.

A REPORT PREPARED FOR THE WAKE COUNTY PD'S OFFICE CONTENDS THAT CURRENT NC LAW DOES NOT PROHIBIT THE SERVICE OF HEARING IMPAIRED JURORS:

<http://www.sog.unc.edu/faculty/smithjess/200710conference/Beal.pdf>

- *Jurors: A person who cannot "hear and understand the English language" is subject to challenge for cause. G.S. 9-3. Being subject to challenge for cause would seem to differ from a per se, automatic exclusion. That is, arguably deaf persons are not prohibited from serving on a jury. In any event, applying the ADA, deaf people have served on North Carolina juries.*

I do not believe that there is (or should be) any court or U.S. DOJ ruling to the effect that the ADA has a per se requirement such that a deaf juror can never be excluded on the basis of deafness. However, it seems clear that ADA rejects the general argument (or presumption or bias) that the function of a jury requires that testimony be "heard" (literally) in every case. It seems that the ADA requires a particular basis, specific to the facts or nature of the case at hand, to justify excusing a juror on the basis of deafness (for cause -- there is debate about the use of peremptory challenges).

4. Disbelief at the assertion that hearing impaired individuals have already served on NC juries and the insinuation that, if they have done so, the law was violated.

Response: I can't provide specific proof that deaf jurors have served, but Mecklenburg County apparently doesn't know that the hearing impaired are not supposed to serve as jurors. Here's a section from the 26th Judicial District of North Carolina Juror Handbook, Mecklenburg County.

<http://www.nccourts.org/County/Mecklenburg/Documents/jurorhandbook.pdf>

- Pg. 4: *In addition, you must be able to understand the English language. (Notice it does not say "hear" the English language.)*
- Pg. 14: *If needed, an interpreter is present in the courtroom to assist a non-English speaking party or witness. An ASL interpreter, caption note taker, etc. may be provided for deaf or **hearing impaired jurors.***

Again, no specifics, but another assertion that the deaf have already served in NC:

- Pg. 4 <http://www.sog.unc.edu/faculty/smithjess/200710conference/Beal.pdf> *In any event, applying the ADA, deaf people have served on North Carolina juries.*

5. Cost of interpreters.

Response

- What about the costs of not allowing the hearing impaired to serve, both in terms of morality (denying of civil rights) and litigation (violating the Federal Americans with Disabilities Act – ADA)?
- If North Carolinians can't use expense as a reason to violate NC law, then NC can't use expense as an excuse to violate Federal Law.

6. Paraphrased quote from the debate: "We are taking political correctness too far. What's next – blind jurors?"

Response: Already happening in some places. Curiosity question: Should jurors be more "qualified" than judges? The late Judge Fred Hedrick had been blind since age 13.

SUMMARY RESPONSE: IT'S ALREADY FEDERAL LAW!!

- **Department of Justice Agreement affirming rights of people with disabilities**

to serve on juries. <http://www.usdoj.gov/opa/pr/1997/February97/061cr.htm>
Under Title II of the ADA, public entities, including courts, are prohibited from discriminating against qualified individuals on the basis of their disabilities. **State courts** are required to ensure that persons who are deaf or hard of hearing have an equal opportunity to benefit from the courts' programs and services, including participation as **jurors**, parties, witnesses, and spectators.

- **From the website of the National Association for the Deaf**

<http://www.nad.org/issues/justice/courts/communication-access-state-and-local-courts>

The ADA Requires State and Local Courts to Ensure Effective Communication

The right to effective communication between state and local government entities and people who are deaf is based on a federal law, Part A of Title II of the Americans with Disabilities Act (ADA).³ 42 U.S.C. §§ 12131-12134. The U.S. Department of Justice has issued regulations to enforce the ADA. 28 C.F.R. Part 35, 56 Fed. Reg. 35694 (July 26, 1991) (U.S. Department of Justice Final Rule: Nondiscrimination on the Basis of Disability in State and Local Government Services).

Who is Covered?

*The ADA protects individuals with a disability, including people who are deaf, who participate in court activities, including litigants, witnesses, **jurors** . . .*

Still not convinced? Here's a real life account of a hearing impaired juror:

http://www.ajc.com/metro/content/metro/northfulton/stories/2008/03/14/juror_0315.html

It appears to me that SB293 will simply bring NC law into compliance with Federal Law and in conformance with actual practice and interpretations of North Carolina's largest counties. Multiple federal and state jurisdictions have prohibited the exclusion of jurors based on hearing impairment. Why waste the time, energy, and money on a potential legal wrangle over a hearing impaired person's right to serve on a jury? There appears to be sufficient case law that they do, indeed, have that right.

Codifying and clarifying what is already in practice in North Carolina ensures that qualified hearing impaired individuals are allowed to serve as jurors and are provided with a qualified interpreter.

Please support the passage of SB293. To do otherwise is discriminatory, illegal under the ADA, and simply wrong.

Respectfully Submitted,
Kim M. Batson

You may not realize that despite ADA, hearing impaired North Carolinians are legally barred from serving on juries. I believe this is wrong. If this issue matters to you, please read my research below. Agree with me or disagree after reading this, contact your State Representative and let him or her know your thoughts. Also, pass this on as you see fit. The 2nd reading is Tuesday, 7/21. This issue is not splitting along party lines. Kim Batson

Contacts: State officials

<http://capwiz.com/edreform/home/>

NC General Assembly & other elected officials

<http://www.ncleg.net/GIS/RandR07/Representation.html>

Text version

Compelling reasons to vote for SB293 on Tuesday, 7/21/09.

Are the deaf too dumb to serve on juries?

That's what some lawmakers seemed to be saying as I listened to the House debate SB293 last Thursday (7/16/09).

After sailing unanimously through two committees and the Senate, "Juror Qualifications/Electronic Juror List" met vigorous resistance in the House. Opposing legislators, mainly trial attorneys, raised concerns that deserve to be addressed. As I prepare to enter Meredith College's Paralegal Program, the points of law interest me. As a civil rights proponent, the misconceptions and lack of knowledge sadden me.

Contrary to the belief expressed by most bill opponents, sign language interpreters can convey nuances in spoken language. Hearing impaired individuals are actually better than hearing persons at picking up non-verbal cues (which comprise more than 50% of language understanding). Google "deaf juror, Georgia" for a true account of a jury experience that included a hearing impaired individual.

Moreover, many states allow hearing impaired jurors. Rulings in multiple State and FEDERAL jurisdictions have prohibited the exclusion of jurors based on hearing impairment. North Carolina is an ADA lawsuit waiting to happen.

Contrary to most interpretations of NC law, Mecklenburg County allows and makes provisions for hearing impaired jurors – it's in their jury handbook. A document prepared by the NC Administrative Office of the Courts for the Wake County PD's office asserts that NC law already allows deaf jurors, and that some have indeed served.

It appears to me that SB293 will simply bring NC law into compliance with Federal Law, codifying and clarifying what is already in practice. It will ensure that qualified hearing impaired individuals are allowed to serve as jurors and are provided with a qualified interpreter.

Please support the passage of SB293. To do otherwise is discriminatory, illegal under the ADA, and simply wrong.

Respectfully Submitted,

Kim M. Batson

Chapel Hill

Long version with hyperlinks available upon request.