Jury service for people with disabilities

Courts can make simple, low-cost adjustments to facilitate access to jury service for people with disabilities.

by Kristi Bleyer, Kathryn Shane McCarty, and Erica Wood

Trial by jury is integral to the American judicial system, and jury service is a fundamental privilege and responsibility of citizenship. 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."

Access to jury service, therefore, is critical. Yet many barriers remain for jurors and potential jurors with disabilities. "What irony," remarked the authors of a recent state court report, "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... We have ignored the court-related needs of the elderly and people with disabilities far too long."

Title II of the Americans with Disabilities Act (ADA) prohibits "public entities" (including state courts) from discriminating against individuals on the basis of disability. Title II directly covers state court programs and services, including the random juror selection process, as well as service by those selected. It requires that courts make jury service accessible by making reasonable modifications in policies, practices, and procedures, ensuring the opportunity for effective communications, and by increasing physical access in courthouse facilities.

Courts must open their doors as well as their jury boxes and consider with care how to accommodate a range of impairments while ensuring a fair trial. Judges must make sensitive determinations about each individual's ability to serve, based on a thorough knowledge of accommodations and the nature of the case at hand. They must weigh the competing rights of people with disabilities to serve against the rights of defendants and litigants to a fair and impartial jury trial.

Judges and judicial policy makers should examine specific changes in law, court rules, programs, technology, and court facilities that might strengthen access throughout the juror process—including jury selection, notification, orientation, trial, and deliberations. A new American Bar Association guidebook, Into the Jury Box: A Disability Accommodation Guide for State Courts, offers practical steps on how to ensure that jury service is accessible to people with disabilities.

Statutes and rules
Changes in state laws and court rules referencing juror service should be targeted to five key areas: source lists, nondiscrimination statements, juror qualifications and disqualifications, exemptions and excuses, and mandates for accommodations.

Source lists. Ensuring that people with disabilities are included in source lists is the first step in making jury service accessible. Statutes in 43 states require the use of drivers license or voter registration lists, supplemented with other lists. Thirty-one states use lists of both drivers and voters as sources of jurors. Arkansas, Michigan, Mississippi, Montana, and Rhode Island use the voters list alone, and Connecticut uses only the drivers list.

Such lists, however, often do not include people with disabilities. Drivers license lists discriminate against people who are blind or have severe vision impairments, people with epilepsy, and people who are older and no longer drive. Voter registration lists often do not include people who have difficulty registering.

Judicial policy makers should consider specific inclusion of non-driver identification cardholder lists as a source of potential jurors, as is the practice in 11 states. Another approach is to allow residents to add their names to the master jury list for random selection, as in Maine.

Non-discrimination mandates. Many state jury statutes prohibit juror discrimination on the basis of race, gender, religion, and economic status, but only 12 states mention disability or age in their anti-discrimination statements. In light of the ADA (as well as in concern for fundamental fairness),

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states should list disability and age among their non-discrimination provisions for jurors.

Juror qualifications/disqualifications. In the past, some states statutorily excluded jurors based on specific disabilities, such as loss of hearing or sight. State statutes no longer make such categorical exclusions. Arkansas, the last to do so, amended its statute in March 1994. In fact, 14 states have further clarified that hearing, visual, or physical disabilities alone do not make a person ineligible for jury service. Such explicit wording increases access to jury service for people with disabilities and may be a useful addition to statutes or court rules.

Thirty-eight state laws, however, exclude from jury service people who are incompetent "by reason of physical or mental ability to render satisfactory jury service," leaving much open to judicial interpretation. States should consider striking such vague qualifying language. Any qualifications should be limited to essential juror functions such as the abilities to consider evidence, deliberate, and attend the length of a trial.

Thirty-nine states also exclude people who cannot read, speak, or understand the English language, disqualifying many individuals who use sign language interpreters. A broader phrase would allow service by those able "to communicate" effectively in English.

Exemptions and excuses. In some states, a potential juror who is elderly or has a disability may choose not to serve. Older people (usually over age 65 or 70) may take advantage of such exemptions in 21 states, and people with mental or physical disabilities may do so in Georgia, Tennessee, and Texas. These automatic exemptions, however, reduce the representativeness of the panel. Thus, 29 states have no such group exemptions from jury duty, including exemptions based on disability or age. Individuals who do not feel able to serve still may request an excuse based on undue hardship. States should review any automatic exemptions from jury service based on age or disability and propose legislation to delete them.

Provisions for excuses from jury service tend to be more preferable. An excuse differs from an exemption in that it may be granted on an individual basis by the court. Thirty-two states include provisions for excuses based on undue hardship or extreme inconvenience, 17 allow excuses based on physical or mental infirmity or adverse effect on health, and two provide for excuses based on age.

Standards for excuses for eligible individuals who are summoned for jury service should be based either on continuing hardship or phrased in functional terms, such as impairment of "the ability to receive and evaluate information," rather than relying on broad diagnostic labels. This encourages tailored assessments based on actual ability instead of rigid reliance on medical terms or on age. It asks judges to look beyond stereotypes to what a particular juror is able to do.

Mandated accommodations. Some states have mandated particular accommodations for jurors with disabilities. Fourteen states provide that sign language interpreters be available for jurors with hearing impairments. California, Florida, Kansas, Missouri, and Oregon require computer-aided transcription or assistive listening devices. Alaska, California, Rhode Island, and West Virginia statutes require that readers be provided for people with visual impairments. In California, Oregon, and West Virginia, spokespersons, as well as other communication services, are provided for individuals with speech impairments.

A few states address juror accommodations by court rule. Utah, for example, provides for "reasonable accommodation for any prospective juror with a handicap or disability." Pennsylvania mandates that "upon request, the court shall appoint an interpreter to assist a civil action participant, including a juror, who is deaf." Required accommodations for jurors with disabilities by statute or state court rule will promote uniformity throughout the jurisdiction and clarify juror rights.

Action steps
In addition to state laws and court rules, there is a wide range of specific actions courts can take to enable people with disabilities to participate in the jury process. These include changes in the pretrial, the trial, and

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deliberation stages. Many are simple and low-cost.

A court ADA coordinator can play a key role in reviewing the entire jury process to identify programmatic, technical, and physical changes that could enable people with disabilities to participate. This coordinator can also serve as the point person for specific accommodation requests from jurors with disabilities.

Pretrial phase. In the pretrial phase, it may be necessary for court personnel to make notification and summons forms available in alternative formats such as large print or Braille or to provide assistance in filling out the forms. Also, when a potential juror with a disability requests an accommodation, it is helpful to call the potential juror before the date of expected service to clarify the request and to offer a courthouse orientation ahead of time. Using a videotape format with captioning of juror orientation information will also accommodate the needs of individuals with a wide variety of disabilities, including hearing impairments, cognitive or learning disabilities, and visual impairments.

During voir dire, judges must balance the need for effective competency determinations with the need to prevent stereotypical judgments about the abilities or inabilities of potential jurors with disabilities. Asking all individuals on a panel about their endurance and ability to handle stress, for example, will elicit necessary information without discriminating against those with disabilities. Using private sidebar questions to explore a person's ability to evaluate the particular evidence in the immediate case, such as how a person who is blind assesses witness credibility, will accomplish the same objective while also minimizing embarrassment and invasions of privacy.

Trial accommodations. During the trial, accommodations in the structure of the jury box, communications technology, and trial practices and procedures are necessary. If any jurors in wheelchairs are selected, a jury box with physical barriers may need a ramp installed, the case might have to be reassigned to a courtroom with an accessible jury box, or half the jurors, including those in wheelchairs, could be seated outside of but directly in front of the jury box. It is also an easy practice to reserve jury box seats with the closest distance and best line of sight to the witness stand for jurors with hearing or vision impairments.

Qualified, trained interpreters sometimes are essential for people with hearing loss. Arrangements for sign language interpreters should be made in advance either through the court's interpreter office or the ADA coordinator. In addition, assistive listening devices and systems that amplify sound for people with some hearing impairments—FM, infrared, and electromagnetic loops—can be either permanently installed or temporarily set up in a courtroom. Portable listening equipment can be particularly cost-efficient if shared with other courts or governmental entities. For others with hearing impairments, it might be more effective to hire a court reporter who provides real-time computer-assisted transcription, where testimony and dialogue appears on a computer screen nearly instantaneously.

Other practical trial accommodations include allowing jurors with disabilities to stand instead of sit, if necessary, scheduling breaks on an as-needed basis, permitting service animals and support persons to accompany jurors with disabilities, and reminding lawyers and court personnel to simplify their language and drop unnecessary legalistic terms.

Deliberations. In some instances, an important accommodation is to permit interpreters, real-time reporters, readers, or personal care attendants in the deliberations room. Requiring an oath that they will not participate in deliberations and getting a written statement afterward that they indeed had not participated will help limit fair trial challenges.

When the judge gives the jury instructions, it is helpful to instruct the jurors to speak one at a time during deliberations for the benefit of sign language interpreters or real-time reporters, to have direct eye contact with people with disabilities when speaking to them, and to use sensitivity and patience when dealing with each other, particularly if someone has a disability. Moreover, court personnel should check the deliberations room for physical accessibility as well as for ventilation, acoustics, and lighting.

Outreach and education. Enhancing access to jury service entails educating people with disabilities as well as court personnel about their respective rights and responsibilities. Local disability agencies and groups can help raise awareness of jury service with citizens with disabilities. Such groups can also identify sources of sign language interpreters, real-time reporters, and access experts. Courts also should develop training on juror access for all personnel. Judges, court and jury administrators, bailiffs, information desk staff, and other courthouse employees should all be aware of disability issues and how accommodations can be provided for jurors and potential jurors with disabilities.

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People with disabilities must not be excluded unfairly from the random juror selection process. They are entitled to thoughtful, individual judgments on their ability to serve as jurors 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 all people in our justice system.

In Galloway v. Superior Court of the District of Columbia, concerning the right of a blind man to serve as a juror, the U.S. District Court for the District of Columbia said that "solutions are as limitless as a willing imagination can conceive." Many solutions for jurors with disabilities are low cost yet significant in animating the concept of "equal justice for all." 

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