

# FORUM

---

Under the title, "The Deaf Individual in a Legal Setting," Michael Chatoff's article "Legal Interpreting: Some Issues," (JRD, 9:3: 22-24, January 1976) appeared in the *New York Supplement*, August 24, 1976, with the addition of a model bill. We are publishing that portion of Mr. Chatoff's work which is supplemental to his original article. It follows:

The following is a model bill to provide interpreters in criminal and civil proceedings in United States District Courts for hearing impaired defendants, parties, and witnesses. Much of the bill is derived from S. 565, a proposed Bilingual Courts Act, passed by the U.S. Senate on July 14, 1975.

## DEAF INDIVIDUALS AND THE LAW

### Interpreters for the Hearing Impaired Act

#### PROCEEDINGS INVOLVING HEARING IMPAIRED INDIVIDUALS

Sec. 2. (a) Chapter 119 of Title 28, United States Code, is amended by adding at the end thereof the following new section:

##### § 1827. Proceedings involving the hearing impaired

(a)(1) In any criminal action, whenever the judge determines, on his own motion or on the motion of a party to the proceedings, that (A) the defendant, because of hearing impairment, does not speak or understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of such proceedings, testimony may be presented by any person who because of hearing impairment does not speak or understand the English language, the court in all further proceedings in that action, including arraignment, hearings, and trial, shall order that (1) the proceedings be conveyed to that party or witness in a language or other mode of communication that he understands and (2) the testimony of that party or witness be interpreted into English for the court by an interpreter in accordance with the provisions of subsection (b) of this section.

(2) In any civil action, whenever the judge determines on his own motion or on the motion of a party to the proceedings, that (A) a party, because of hearing impairment, does not speak or understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of the proceedings, testimony may be presented by any person who because of hearing impairment does not speak or understand the English language, in all further proceedings in that action, including hearings and trial, the court shall order that (1) the proceedings be conveyed to that party or witness in a language or other mode of communication that he understands and (2) the testimony of that

## FORUM

---

party or witness be interpreted into English for the court by an interpreter in accordance with the provisions of subsection (b) of this section.

(3) In any criminal or civil action, the judge, on his own motion or on the motion of a party to the proceedings, may order all or any part of the testimony of the hearing impaired individual and the interpretation thereof to be electronically recorded (visually) for use in verification of the official transcript of the proceedings.

(4) The defendant in any criminal action, or a party in any civil action, who is entitled to an interpretation under this section, may waive the interpretation in whole or in part; the waiver must be expressly made by the defendant or party upon the record and approved by his attorney (if he be a defendant) and by the judge. An interpreter shall be used to explain the nature and effect of the waiver to the hearing impaired defendant or party.

(5) The term "judge" as used in this section shall include a United States magistrate, a hearing examiner, and a referee in bankruptcy.

(b)(1) The district court in each judicial district shall maintain on file in the office of the clerk of the court a list of all persons in that district who have been certified as interpreters for the hearing impaired by the Director of the Administrative Office of the United States Courts under section 604(a)(12) of this title.

(2) In any action where the services of an interpreter are required to be utilized under this section, the court shall obtain the services of a certified interpreter from within that judicial district, except that, where there are no certified interpreters in that judicial district, the court, with the assistance of the Administrative Office of the United States Courts, shall determine the availability of and utilize the services of certified interpreters from a nearby district. When no certified interpreter is available from a nearby district, the court shall obtain the services of an otherwise competent interpreter. If the interpreter appointed by the court is unable to communicate effectively with the defendant, party, or witness, as the case may be, the court shall dismiss such interpreter and appoint another interpreter.

(c) The analysis of chapter 118 of title 28, United States Code, is amended by adding at the end thereof the following new item:

§ 1827. Proceedings involving the hearing impaired

### FACILITIES AND PERSONNEL FOR PROCEEDINGS INVOLVING THE HEARING IMPAIRED

Sec. 3. Section 604(a) of title 28, United States Code, is amended—

- (1) by redesignating paragraph (12) as paragraph (13); and
- (2) by inserting immediately below paragraph (11) the following new paragraph:

## FORUM

---

(12) Under section 1827 of this title, (A) prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in proceedings involving the hearing impaired and in so doing shall consider the education, training, and experience of those persons; (B) maintain an updated list of all interpreters certified by him, and report annually on the frequency of requests for, and the use and effectiveness of interpreters in proceedings involving the hearing impaired; (C) provide, or make readily available to each district court, appropriate equipment and facilities for the interpretation of proceedings involving the hearing impaired; (D) prescribe, from time to time, a schedule of reasonable fees for services rendered by such interpreters and in those districts where the Director considers it advisable based on the need for interpreters for the hearing impaired, authorize the employment by the court of such certified full-time or part-time interpreters; and (E) pay out of moneys appropriated to the judiciary for the conduct of proceedings involving the hearing impaired the amount of interpreters' fees or costs of recording which may accrue in a particular proceeding, unless the court, in its discretion, directs that all or part of those fees or costs incurred in a civil proceeding in which the interpreter is utilized pursuant to section 1827(a)(2) of this title be apportioned between the parties or allowed as costs in the action.

### APPROPRIATIONS

Sec. 4. There are hereby authorized to be appropriated to the Federal judiciary such sums as may be necessary to carry out the amendments made by this Act.

### EFFECTIVE DATE

Sec. 5. The amendments made by this Act shall take effect on October 1, 197 .

Rules 28 of the Federal Rules of Criminal Procedure, 43(f) of the Federal Rules of Civil Procedure, and 604 of the Federal Rules of Evidence should be amended to conform to the provisions of the Interpreters for the Hearing Impaired Act.