A MATTER OF COMPETENCE: LAWYERS, COURTS, AND FAILING TO TRANSLATE LINGUISTIC AND CULTURAL DIFFERENCES

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I. INTRODUCTION

"I don't have any sympathy for you" were some of the last words Annie Ling heard from the Spalding County trial judge before he sentenced her to ten years in prison and five years of probation for child cruelty.[1] Although Annie heard the words, whether she understood them was unlikely.[2] A Mandarin speaker from Malaysia, Annie did not have an interpreter at trial.[3] Nor did she understand that in place of going to trial, she could have accepted a plea bargain to serve a one-year prison term.[4] At trial, Annie's lawyer attempted to negate the intent element of Annie's crime by explaining that punishing her children stemmed from a "set [of] values informed by her cultural background" rather than from cruel intentions.[5] Moreover her lawyer failed to give Annie an opportunity to

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[1] Brief of Appellant at 8, Ling v. State, 702 S.E.2d 881 (Ga. 2010) (No. S10G0460) [hereinafter Brief of Appellant].

[2] *Id.* at 2.

[3] *Id.* at 3.

[4] *Id.*

[5] *Id.* at 7

testify in her defense with the assistance of an interpreter.[6]

Granted, plenty of criminal defendants—English speaking, acculturated American defendants included—are not given an opportunity to testify in their own defense at trial.[7] In many instances this is a strategic choice, and falls within a defendant's Fifth Amendment right against self-incrimination.[8] That said, because her lawyer's defense strategy was to depict Annie as a mother who did not have cruel intentions toward her children, letting Annie personally appear may have swayed the jury's decision in her favor by allowing them to assess her credibility for themselves.[9] However, counsel kept Annie off the witness stand because he was concerned that having her testify with the assistance of an interpreter would "make the trial 'take a lot longer' and make the jury 'impatient.'"[10] More importantly, the decision to not have an interpreter at trial was counsel's, not Annie's.[11]

Accordingly, Annie filed for a new trial, arguing her constitutional right to be present at her own trial was violated and that her lawyer's "unilateral failure" to secure an interpreter constituted ineffective assistance of counsel.[12] Without explaining, the trial court denied her motion for a new trial, and the Georgia Court of Appeals affirmed.[13] Later in November, the Georgia Supreme Court vacated the trial court's decision, holding that without an interpreter, "one who cannot communicate effectively in English may be effectively incompetent to proceed in a criminal matter and rendered effectively absent at trial."[14] On remand, the trial court was ordered to apply the competency standard

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[6] *Id.*

[7] *See* Sherry F. Colb, *The Costs of Testifying in One's Own Defense: An Empirical Study Highlights the Problem, but What to Do About It?*, FINDLAW.COM (Jan. 7, 2009), http://writ.news.findlaw.com/colb/20090107.html.

[8] *Id.*

[9] Jurors may draw adverse inferences from a defendant's failure to testify in his or her own defense. *See, e.g.*, Colb, *supra* note 7 ("Despite the defendant's right not to take the stand (and the judge's available instruction telling the jury not to draw negative inferences against the defendant for the exercise of that right), jurors nonetheless know that a defendant could testify if she wanted to, and this knowledge inevitably makes the jury wonder why the defendant has chosen not to take the stand") (emphasis in original).

[10] Brief of Appellant, *supra* note 1, at 6 (quoting hearing on motion for new trial).

[11] *Id.*

[12] *Id.* at 2.

[13] Ling v. State, 702 S.E.2d 881, 882 (Ga. 2010).

[14] *Id.*

adopted by the U.S. Supreme Court in *Drope v. Missouri*.[15]

Drope involved the issue of whether petitioner, a husband who was indicted for raping his wife, was mentally competent to stand trial following his attempted suicide.[16] The Court reasoned that "[i]t has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial."[17]

Whether or not a defendant is mentally competent to stand trial is determined by whether he or she "has sufficient present ability to consult with [his or her] lawyer with a reasonable degree of rational understanding—and whether [he or she] has a rational as well as factual understanding of the proceedings against [him or her]."[18] The Court held sufficient doubt existed as to the husband's competence at trial following his suicide attempt and that the trial should have been suspended until a psychiatric evaluation determined whether he was competent to continue the proceedings.[19]

As with Annie's case, other courts facing the issue of whether a limited English proficiency ("LEP") defendant is competent to stand trial adopt the so-called *Drope* standard to determine whether an LEP person speaks and understands English "well enough 'to understand the nature and object of the proceedings against [him or her], to consult with counsel, and to assist in preparing [his or her] defense.'"[20] More troubling, however, is how such analyses equate limited English proficiency with mental incompetency.[21]

In Annie's case, the Georgia Supreme Court raised sua sponte that "[w]hile Ling did not expressly couch her arguments below in terms of the right not to be tried while incompetent, that issue is interrelated with her right to be present."[22] The Court thus equates LEP persons' inability to

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[15] *Id.*; Drope v. Missouri, 420 U.S. 162 (1975).

[16] *Drope*, 420 U.S. at 162–63.

[17] *Id.* at 171.

[18] *Id.* at 172 (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

[19] *Id.*

[20] *See, e.g.*, *Ling*, 702 S.E.2d at 883 (quoting *Drope*, 420 U.S. at 171).

[21] *See id.* (using the same standard for LEP and mentally incompetent persons demonstrates that lawyers and judges do not understand the challenge for LEP persons is not a lack of mental capacity, but rather a linguistic barrier).

[22] *Id.* at 883.

receive an interpreter's help with those "no more competent to proceed . . . due to mental incapacity."[23]

Annie's case illustrates the difficulties LEP people and cultural minorities face when confronted with the American justice system. Not only are these litigants unable to understand the nature of the proceedings against them, but their lawyers and the judges and jurors they appear before are also often unsympathetic and ill equipped to understand the unique issues LEP and cultural minorities face.[24]

This Note argues that the application of the *Drope* mental competency standard by courts confronted with a linguistically and culturally different litigant is misguided because it fails to account for the systemic reasons why LEP people and cultural minorities face difficulties at trial. This Note further argues that the burden ultimately falls on lawyers who represent LEP persons and cultural minorities to make linguistic and cultural differences known to the court and to the jury. It is no coincidence that cases on appeal for interpreter issues and failure to present mitigating cultural evidence are filed in conjunction with ineffective assistance of counsel claims.[25] Thus cultural awareness is not merely about ensuring fair representation of LEP and cultural minority litigants, it is also a matter of professional responsibility.

Part I provides an overview of the unique issues linguistic and cultural differences present in American courts. Part II examines LEP persons' need for, and right to, court interpreters. This right is impeded due to a shortage of court interpreters, languishing proposed legislation, and the disqualification of bilingual jurors. Accordingly, applying the *Drope* standard to LEP litigants—focusing on the incompetency of the individual LEP litigant to understand his or her proceedings—is misguided.[26] Part III discusses the role of cultural information as mitigating evidence and the ways in which attorneys and courts often overlook its importance. Part IV highlights the issue of cultural awareness as a professional responsibility and examines what the medical and legal professions have done to address the issue.

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[23] *Id.*

[24] *See id.* (equating LEP persons to mentally incompetent people).

[25] *See* Brief of Appellant, *supra* note 1, at 2.

[26] *See* discussion, *infra* Part II.

II. OVERVIEW

A. LINGUISTIC MISUNDERSTANDING

The conventional understanding of interpretation is that it is a mathematical, formulaic process, whereby a word in one language has an "exact, corresponding word in another."[27] According to this understanding, the process of interpretation is a simple matter of "decoding, or transliteration."[28] However, language involves "ambiguous processes not susceptible of mathematical solution."[29] While court interpreters are mandated to give the most accurate translation without "embellishing, omitting, or editing," interpretation inevitably changes the meaning of a speaker's words.[30] In a report written by Elda Ellis, a certified court interpreter, she writes "verbatim renditions should be avoided, as they tend to distort the real meaning [of the interpretation]."[31]

Two types of ambiguity are common in interpreting: lexical ambiguity and structural ambiguity.[32] Lexical ambiguity arises where a single word has multiple meanings.[33] For example, the word *post* can refer to the verb (to post or mail) or it can refer to "a piece of wood."[34] Lexical "gaps" can also arise where certain words in one language may not have an exact equivalent in English, rendering it "impossible in certain circumstances for an interpreter to convey the precise language of the witness to the court, jury, or defendant."[35] Structural ambiguity arises

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[27] Muneer I. Ahmad, Interpreting Communities: Lawyering Across Language Difference, 54 UCLA L. REV. 999, 1031 (2007).

[28] *See id.*

[29] *Id.*

[30] CAL. R. CT. 2.890(b); Joshua Karton, *Lost in Translation: International Criminal Tribunals and the Legal Implications of Interpreted Testimony*, 41 VAND. J. TRANSNAT'L L. 1, 3 (2008) (describing the act of interpretation as changing the meaning of the speaker's words).

[31] Elda Yazmin Ellis, *Simplifying the Updated Ethics Code Required for California Court Interpreters*, DAILY J. 1, 1 (2010), www.eyelegallanguagesolutions.com/The_Daily_Journal.pdf.

[32] Chunyu Kit & Tak Ming Wong, *Comparative Evaluation of Online Machine Translation Systems with Legal Texts*, 100 LAW LIBR. J. 299, 303 (2008) [hereinafter Comparative Evaluation].

[33] *Id.*

[34] *Id.*

[35] Richard W. Cole & Laura Maslow-Armand, *The Role of Counsel and the Courts in Addressing Foreign Language and Cultural Barriers at Different Stages of a Criminal Proceeding*, 19 W. NEW ENG. L. REV. 193, 195 (1997) (quoting State v. Casipe, 686 P.2d 28, 33 (Haw. Ct. App. 1984)) [hereinafter Role of Counsel].

where sentences have more than one possible structure.[36] For example, in the sentence "Jack was told that Mubarak stepped down yesterday," it is unclear whether Jack heard the news yesterday, or if Mubarak resigned yesterday; even the phrase "stepped down" is ambiguous. Acts of translation are thus "inevitably a screen placed between the [litigant or] witness and the jury, affecting the jury's ability to assess credibility from demeanor, inflection of voice, nuances of language, and details of testimony."[37]

B. CULTURAL MISUNDERSTANDING

Cultural difference is another screen that affects the jury's ability to assess the credibility of litigants and witnesses. Take, for example, the seemingly subtle but potentially profound issue of what eye contact signifies in different cultures. In North America, people "tend to communicate assertively and look at one another."[38] However in many Asian countries direct eye contact is "considered rude."[39] At the other end of the spectrum, "in Brazil, eye contact often is so intense that many Americans consider it rude."[40]

These differences can affect how a litigant or a witness is perceived by the court. In *Morales v. Artuz*, the issue before the Second Circuit was whether a witness's refusal to remove her sunglasses while on the witness stand implicated the defendant's Confrontation Clause rights.[41] While the court ultimately concluded that sunglasses did little to hamper the defendant's right to be confronted, the court noted that whether a person's eyes are seen has been "explicitly mentioned as of value in assessing credibility."[42]

Cultural differences can similarly affect how juries perceive witnesses. Drawing from forensic psychology, studies have shown that

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[36] Comparative Evaluation, *supra* note 32, at 303.

[37] *Role of Counsel*, *supra* note 35, at 195 n.6.

[38] JULIA T. WOOD, INTERPERSONAL COMMUNICATION: EVERYDAY ENCOUNTERS 21 (2010).

[39] *Id.*

[40] *Id.* at 128.

[41] Morales v. Artuz, 281 F.3d 55, 56 (2d Cir. 2002) ("The Confrontation Clause assures the defendant the presence of witnesses 'upon whom . . . [the defendant] can look while being tried.'" (quoting Coy v. Iowa, 487 U.S. 1012, 1017 (1988)).

[42] *Id.* at 60.

people who avoid eye contact are perceived to be less credible.[43] One such study involved showing one group of participants testimony given by witnesses on behalf of a criminal defendant. The witnesses were either presented as looking toward the target of their communication, or slightly downward. The other group of study participants only heard an audio recording of the testimony. The results showed that the study's participants thought the witnesses who averted their gaze were less credible and were more likely to be found guilty than those looking toward the target of their communication and those who were only heard on tape.[44]

The eye contact example demonstrates how cultural beliefs can shape both how a person is perceived and how they are likely to behave. Culture, as defined by the Canadian Commission for United Nations Educational, Scientific and Cultural Organization ("UNESCO"), is "a dynamic value system of learned elements, with assumptions, conventions, beliefs and rules permitting members of a group to relate to each other and to the world."[45] This is not to say that culture is deterministic of human behavior, but rather that "cultural imperatives predispose individuals to react to phenomena."[46]

Situating a litigant's background and motivations in terms of his or her culture is "essential to properly gauge such fundamental issues as culpability and magnitude of punishment deserved."[47] Culture factors into criminal proceedings in three main ways: (1) as a cultural defense in the guilt phase of the trial; (2) as a part of the processes of presenting well-established defenses like provocation, self-defense, or insanity; and (3) as mitigating evidence presented during sentencing.[48] Culture is also introduced in civil proceedings that involve family law, tort actions, civil rights litigation, and zoning.[49] Culture can also be raised in the context of statutory exemptions, such as allowing the slaughter of live animals per

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[43] *See* Tess M.S. Neal & Stanley L. Brodsky, *Expert Witness Credibility As A Function of Eye Contact Behavior and Gender*, 35 CRIM. JUST. AND BEHAV. 1515, 1516 (2008).

[44] *See id.*

[45] Allison D. Renteln & Rene Valladares, *The Importance of Culture for the Justice System*, 92 JUDICATURE 194–95 (2009) [hereinafter Importance of Culture].

[46] *Id.*

[47] *Id.* at 194.

[48] *Id.* at 195.

[49] *Id.*

Sharia law in Islam, despite statutory animal welfare provisions.[50]

State v. Mak[51] illustrates the use of culture as mitigating evidence during the sentencing phase of a criminal trial. Mr. Mak, a Chinese immigrant, was convicted and sentenced to death for the murder of thirteen people at a gambling club in Seattle's Chinatown.[52] The Ninth Circuit affirmed the reversal of Mr. Mak's death sentence, finding that his lawyers failed to introduce mitigating evidence, including expert testimony that his apparent emotionless state during trial "did not necessarily indicate disinterest or coldness, but was consistent with cultural expectations of Chinese males."[53] The case illustrates the difficulty immigrants can face adapting their behavior to accepted Western norms when confronted with the American justice system.

Like the issue of linguistic indifference, while it is tempting here to make an argument that cultural minorities should learn to assimilate to American cultural norms, these people are sometimes unaware that their conduct may be illegal.[54] Although it is well established that ignorance of the law does not excuse criminal behavior, expecting cultural minorities to know that their customs are illegal "may be unfair."[55] Additionally, states have "an affirmative duty to ensure that individuals enjoy cultural rights" under international human rights law, which would also counter the assimilation argument.[56]

Furthermore, even when people are made aware that a specific custom or behavior is illegal, discontinuing the behavior may be easier said than done.[57] Take for example the practice in Southeast Asia of healing colds and physical maladies through coining—a type of massage using a coin with a serrated edge that causes bruising. Southeast Asian parents often make their children undergo coining for ailments, despite being told by authorities that the custom could be considered child abuse in the United States, because "they may well feel compelled to use a folk

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[50] *Id.*

[51] 718 P.2d 407 (Wash. 1986).

[52] *Id.* at 413.

[53] Mak v. Blodgett, 970 F.2d 614, 618 n.5 (9th Cir. 1992); *see also Role of Counsel*, *supra* note 35, at 226.

[54] *See Importance of Culture*, *supra* note 45, at 195.

[55] *Id.*

[56] *Id.*

[57] *Id.*

remedy they believe is highly effective."[58]

C. WHEN LANGUAGE DIFFERENCE AND CULTURE INTERSECT

"Communication is a fundamental social process."[59] Different cultures have different patterns of communication.[60] Communication patterns for a particular culture stem from the originating region's philosophical roots and value systems.[61] Confucian philosophical principles in China, Japan, and Korea are reflected in the way people from these regions communicate.[62] According to Confucian philosophy, the "main function of communication" is to "initiate, develop, and maintain social relationships," and thus "there is a strong emphasis on the kind of communication that promotes such relationships."[63]

Indirect communication promotes social relationships but may not be understood by people outside the linguistic community.[64] Indirect communication "helps to prevent the embarrassment of rejection by the other person or disagreement among partners, leaving the relationship and the face of each party intact[,]"[65] and is a "pervasive and often deliberate" mode of speaking in East Asian cultures.[66] While communication patterns in American English also contain indirect speech, the level of indirectness is often greater in East Asian cultures because of their emphasis on "defending face."[67] For example, in America one might say, "the door is open" to tell someone to shut the door. In Japan, however, it is common for people to omit references to the door altogether and instead say "[i]t is somewhat cold today."[68] Without reference to context and culture, when

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[58] *Id.*

[59] June Ock Yum, *The Impact of Confucianism on Interpersonal Relationships and Communication Patterns in East Asia*, 55 COMM. MONOGRAPHS 374, 384 [hereinafter *Impact of Confucianism*].

[60] *Id.* at 374.

[61] *Id.*

[62] *See id.* Although there are differences in communication patterns among these countries, because of the pervasive and strong influence of Confucian philosophy in China, Japan, and Korea, I refer to them here as having similar value systems.

[63] *Impact of Confucianism*, *supra* note 59, at 381.

[64] *See id.* at 383.

[65] *Id.*

[66] *Id.* at 384.

[67] *See id.* at 383.

[68] *Id.* at 384.

an indirect statement by an East Asian is interpreted in English, the resulting translation may appear evasive and unassertive, especially when contrasted with the direct communication norm in America, where cooperative conversation entails avoiding "obscurity of expression and ambiguity."[69]

Granted, people who speak fluent American accented English may also face cultural misunderstanding in the courtroom.[70] If, for example, a minority litigant spoke English, but still subscribed to a cultural mode of communication that emphasized indirect speech, a jury may nonetheless find that their testimony is vague and indirect. Jurors may assume that because the litigant speaks English fluently, he or she is culturally integrated into American society and subscribes to a direct American mode of communication. This is why it is important for lawyers who represent LEP and cultural minority litigants to both understand when these issues arise and to make them explicit when necessary to prevent diminishing the force of an LEP litigant's testimony.

Because testimony has to be translated when LEP litigants are represented, language difference becomes a barrier to the jury's ability to assess the witness's credibility from their demeanor. Cultural differences in communication patterns fortify this barrier, making it difficult for jurors to relate to LEP and cultural minority litigants. As a Senior Staff Attorney for the Asian Pacific American Legal Center, Yungsuhn Park represents Asian LEP immigrants in civil rights cases. In her experience, the ability of jurors to empathize with her LEP clients can be affected by the use of interpreters because of the resulting delay in the jurors' ability to understand her clients' testimony due to the increased duration of the proceedings.[71] A juror's inability to fully understand her clients is also

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[69] *Id.*

[70] Whether or not a person speaks with a heavy accent is often used as a proxy by others to determine if the speaker understands English. *See, e.g.*, United States v. Mahmood, 415 F. Supp. 2d 13, 15 (D. Mass. 2006) (criticizing FBI agents failure to ask defendant if he would prefer to speak to them via an interpreter despite his "obvious foreign accent"). However, a strong foreign accent "does not necessarily entail a reduction of comprehensibility." DAVID MICHAEL SINGLETON & LISA RYAN, LANGUAGE ACQUISITION: THE AGE FACTOR 87 (2d ed. 2004). In fact, "accent may be the least important aspect of [second language] proficiency." *Id.* Whether or not someone speaks with an accent has more to do with the age at which they learn English, rather than how proficient they are in the language. *See, e.g.*, ALENE MOYER, AGE, ACCENT, AND EXPERIENCE IN SECOND LANGUAGE ACQUISITION 17 (2004) ("[The] common consensus" is that "foreign accent is widely cited as an intractable feature of late SLA [Second Language Acquisition]").

[71] Telephone Interview with Yungsuhn Park, Senior Staff Attorney, Asian Pacific Am.

compounded by cultural difference. For example, an American juror may not understand that an Asian immigrant plaintiff who has suffered an injury may be less likely to vocally complain about his or her suffering. The juror might erroneously consider the lack of complaints to be a measure of the extent of the plaintiff's injury.[72] Furthermore, the juror may not know that an Asian immigrant plaintiff's seemingly indirect manner of testifying may actually be quite forceful and critical when understood from his or her cultural and linguistic perspective. Unless these differences are made known to judges and jurors, LEP persons risk being under compensated due to different communication patterns and cultural behavior that may be widely accepted and understood in their own communities. This is why Ms. Park is more than just a lawyer for her clients. In order to represent them effectively, she must also act as their "cultural ambassador."[73]

III. LINGUISTIC DIFFERENCE: ACCOMMODATING LEP PERSONS

A. THE NEED

1. The Demand

Linguistic minorities comprise a rapidly growing segment of the national population. According to a 2010 U.S. Census Bureau Report analyzing information from the 2007 American Community Survey, of the 281 million people aged 5 and up, 55.4 million, or 20%, spoke a language other than English at home.[74] This figure represents a 140% increase from 23 million in 1980.[75] In California, the proportion of people who speak a language other than English at home is higher: approximately four out of ten people speak another language at home.[76]

Legal Ctr. (Apr. 21, 2012).

[72] *Id.*

[73] *Id.*

[74] U.S. CENSUS BUREAU, LANGUAGE USE IN THE UNITED STATES 2007, 3 (April 2010), http://www.census.gov/ prod/2010pubs/acs-12.pdf.

[75] *Id.* at 6.

[76] INST. FOR SOC. RESEARCH, CAL. STATE UNIV., 2010 LANGUAGE NEED AND INTERPRETER USE IN CALIFORNIA SUPERIOR COURTS xvi (May 2010), *available at* http://www.courts.ca.gov/documents/language-interpreterneed-10.pdf (last visited Mar. 12, 2012).

Correspondingly, courtrooms across the country are seeing an increased need for interpretive services. In California, state courts provided over a million service days of spoken language interpretation from 2004 to 2008.[77] During these four years, the total number of service days for mandated proceedings grew 13.6%.[78] Spanish interpretive services were by far the highest in demand, at an average of 167,744 service days per year, followed by Vietnamese with 6968 days, Korean with 3687 days, and Mandarin with 3143 days.[79] Other languages such as Russian, Armenian, Cantonese, Punjabi, and Farsi each averaged between 1000 and 3000 service days per year.[80]

States with court interpreter programs usually require certified interpreter candidates to sit for a standardized language exam. Certification in California is available in fifteen languages, including American sign language. The other languages designated for certification are Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese.[81] The testing process is rigorous—most candidates fail either the written or the oral exam on the first attempt.[82]

However, not all states have certification programs. For example, in Alaska, where there is no certification program, but a "continuing lack of clear procedures for identifying needs and using appropriate interpreters."[83] Rather than develop their own system of certification, the state's courts have partnered with the Language Interpreter Center, a multi-agency collaboration established by a non-profit organization called the Alaska Immigration Court System.[84]

The Federal Court system classifies interpreters into three

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[77] A service day is measured by an interpreter's completion of an assignment in one or more court proceedings, including full, half-day, and night sessions. See id. at xv.

[78] *Id.* at 23.

[79] *Id.* at 22.

[80] *See id.*

[81] *General Court Interpreters FAQs*, CAL. COURTS, http://www.courts.ca.gov/2683.htm (last visited Mar. 28, 2011).

[82] Shaw-Chin Chiu, *Court Interpreter Testing Process*, CAL. COURTS 1 (June 29, 2010), http://www.courts.ca.gov/documents/testingprocess-script.pdf.

[83] Phyllis Morrow, *Interpreting and Translating in Alaska's Legal System: Further Discussion*, ALASKA JUST. FORUM (Fall 2000), http://justice.uaa.alaska.edu/forum/17/3fall2000/b_interp.html.

[84] *The Language Interpreter Center and Interpretation in Alaska*, ALASKA JUST. FORUM (Winter 2010), http://justice.uaa.alaska.edu/forum/26/4winter2010/f_legalinterp.html.

categories: (1) Certified Interpreters, (2) Professionally Qualified Interpreters, and (3) Language-Skilled/Ad Hoc Interpreters.[85] Certified Interpreters are persons who successfully complete the Administrative Office's certification examination. While the Administrative Office once offered certification programs in three languages—Spanish, Navajo, and Haitian Creole—the certification programs for Navajo and Haitian Creole are no longer provided.[86] To become a Certified Interpreter in Spanish, candidates must take both a written and an oral exam.[87] Passing the written exam is a prerequisite to taking the oral exam.[88] In the oral exam, candidates are expected to "accurately perform simultaneous as well as consecutive interpretation and sight translations as encountered in federal courts."[89]

If interpretation in a language other than Spanish, Navajo, and Haitian Creole is needed, the party in need of the interpreter is instructed to contact the local federal courts to "determine if that court has a need for the language of expertise."[90] The local court then decides "on a case-by-case basis whether the prospective interpreter is either professionally qualified or language skilled."[91] Professionally Qualified Interpreters have either passed the State Department conference or seminar interpreter test, passed the interpreter test of the United Nations, or are members with good standing in either the Association Internationale des Interprètes de Conferénce or the American Association of Language Specialists.[92]

Language-Skilled/Ad Hoc Interpreters are able to demonstrate "to the satisfaction of the court the ability to interpret court proceedings from English to a designated language and from that language into English."[93]

Despite the growing demand for interpretive services, many court systems face a shortage of qualified interpreters. The problem is especially acute in rural areas. In 2008, Iowa had only eight certified, and around

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[85] *Interpreter Categories*, U.S. COURTS, http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx (last visited Mar. 28, 2011).

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

fifty non-certified court interpreters.[94]

Metropolitan areas, such as New York, Los Angeles, and San Francisco, have larger populations of interpreters.[95] But even in California, the demand for interpreters outnumbers supply. According to the Superior Court of Stanislaus County's website, every county in California is suffering from a shortage of certified and registered interpreters.[96] This shortage affects the ability to "provide meaningful access to justice for all court users."[97]

Delays to proceedings often result from the inability to locate a certified translator, especially for cases that take place in rural counties or involve less frequently spoken languages.[98] In Huntsville, Alabama, Tereso Salinas, a Mexican national who speaks Chatino, has been held without trial in the county jail since July 2008 on charges of child rape.[99] The court, the prosecution, and the defense have all been unable to find him an interpreter.[100] Mr. Salinas, who speaks no English and little Spanish, is hardly able to communicate with his own lawyer.[101]

As in the federal system, where certified or professionally qualified interpreters are unavailable, in several states, unofficial or uncertified interpreters are often used to meet the need for translation services.[102] Courts hire uncertified interpreters not only out of necessity, but also

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[94] Dolly A. Butz, *Big Demand Keeps Sioux City Court Interpreter Busy*, GLOBE GAZETTE (Feb. 9, 2009, 12:00 AM), http://globegazette.com/news/local/big-demand-keeps-sioux-city-court-interpreter-busy/article_030acab8-ec7a-5ff5-a1e1-e24ba9d1a64a.html.

[95] Seung Min Kim, *Shortages of Court Reporters Intensifies*, AM. OBSERVER (Apr. 19, 2009), http://inews6.americanobserver.net/articles/shortages-court-reporters-intensifies.

[96] *Court Interpreter*, SUPERIOR COURT OF CAL. CNTY. OF STANISLAUS (Mar. 2, 2011, 8:50 AM), http://www.stanct.org/Content.aspx?page=court_interpreters_overview_of_services.

[97] AB 663, 2009–2010 Leg., Reg. Sess. (Cal. 2009) (as amended June 15, 2009), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0651-0700/ab_663_bill_20090615_amended_sen_v96.pdf.

[98] *See, e.g.*, Thadeus Greenson, *Dearth of Interpreters Increases Costs, Delays; Humboldt County Court Regularly Brings in Translators from Out of the Area*, TIMES-STANDARD, Feb. 5, 2011.

[99] Brian Lawson, *Rape Case Cannot Move Forward Due to Lack of Chatino Interpreter*, THE HUNTSVILLE TIMES (Jan. 25, 2011, 7:45 AM), http://blog.al.com/breaking/2011/01/rape_case_cannot_move_forward.html.

[100] *Id.*

[101] *Id.*

[102] Lynn W. Davis et al., *The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation*, 7 HARV. LATINO L. REV. 1, 15 (Spring 2004).

because they are cheaper.[103]

2. Disqualifying Bilingual Jurors

Given the systemic shortage of court interpreters, one might think that bilingual people would be welcome to serve on juries where their linguistic and cultural knowledge can be put to use. In fact, the opposite is true: prospective jurors can be disqualified for knowing the non-English language that will be used in a court proceeding.[104]

In *Hernandez v. New York*, the U.S. Supreme Court held in a plurality opinion that a prosecutor's preemptory challenge of Spanish-speaking venire persons was race-neutral.[105] The prosecutor moved to strike two bilingual Latino jurors because he was "uncertain that they would be able to listen and follow the interpreter."[106] Explaining his reasoning, the prosecutor stated at trial that "there was a great deal of uncertainty as to whether [the venire persons] could accept the interpreter as the final arbiter of what was said by each of the witnesses, especially where there were going to be Spanish-speaking witnesses."[107] Judging from the venire person's responses to the prosecutor's question of whether they would accept the interpreter's version of the witness testimony the prosecutor felt that in a case where an interpreter would be relied on to translate the testimony of the main witnesses, these venire persons "would have an undue impact upon the jury."[108]

In his brief, the prosecutor cited the following exchange from *United States v. Perez* to showcase the issues that arise when bilingual jurors refuse to accept the court interpreter's official translation.

DOROTHY KIM (JUROR NO. 8): Your Honor, is it proper to ask the

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[103] Maité Jullian, *Shortage of Court Interpreters Worsening in U.S.*, USA TODAY (Nov. 19, 2008, 4:09 PM), http://www.usatoday.com/news/nation/2008-11-18-court-interpreters_N.htm. In the federal system, for example, in 2010, the Administrative Office of U.S. Courts reported that federal certified interpreters receive $388 per day while non-certified interpreters receive $187. United States Courts, *Current Fees for Contract Interpreters*, USCOURTS.GOV (Feb. 1, 2010), http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/ContractInterpretersFees.aspx.

[104] *See* Hernandez v. New York, 500 U.S. 352 (1991).

[105] *Id.* at 372.

[106] *Id.*

[107] *Id.*

[108] *Id.* at 357. The potential jurors "each looked away from [the prosecutor] and said with some hesitancy that they would try . . . to follow the interpreter." *Id.* at 356.

> interpreter a question? I'm uncertain about the word La Vado [*sic*]. You say that is a bar.
>
> THE COURT: The Court cannot permit jurors to ask questions directly. If you want to phrase your question to me-
>
> DOROTHY KIM: I understood it to be a restroom. I could better believe they would meet in a restroom rather than a public bar if he is undercover.
>
> THE COURT: These are matters for you to consider. If you have any misunderstanding of what the witness testified to, tell the Court now what you didn't understand and we'll place the-
>
> DOROTHY KIM: I understand the word La Vado [*sic*]-I thought it meant restroom. She translates it as bar.
>
> MS. IANZITI: In the first place, the jurors are not to listen to the Spanish but to the English. I am a certified court interpreter.
>
> DOROTHY KIM: You're an idiot.[109]

After further questioning, the witness stated that the conversation in question did not happen in the restroom.[110] The juror "later explained that she had said 'it's an idiom' rather than 'you're an idiot,'" but she was ultimately dismissed from the jury.[111]

In *Hernandez*, the Court held that the prosecutor's reasoning did not implicate race because he simply "divided potential jurors into two classes: those whose conduct during voir dire would persuade him they might have difficulty in accepting the translator's rendition of Spanish-language testimony and those potential jurors who gave no such reason for doubt."[112] Both groups could contain both Latinos and non-Latinos.[113] Acknowledging that this policy could disproportionately impact Latinos, the Court ultimately concluded that a disproportionate impact would not make the prosecutor's actions a "*per se* violation of the Equal Protection Clause."[114] The decision reinforces the idea that jurors should "base their deliberations on a common, official record of courtroom proceedings and not on their independent knowledge, linguistic or otherwise."[115]

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[109] *Id.* at 360 n.3 (citing United States v. Perez, 658 F.2d 654, 662 (9th Cir. 1981)).

[110] *Id.*

[111] *Id.*

[112] *Id.* at 361.

[113] *Id.*

[114] *Id.*

[115] Linda Greenhouse, *High Court Upholds Exclusion of Bilingual Jurors*, N.Y. TIMES

3. Interpreter Legislation

While states have proposed legislation to address the shortage of qualified interpreters, little has actually gone into effect.[116] New York Senate Bill S5406 and Assembly Bill 4432, introduced in 2009, proposed standards and guidelines outlining the qualifications for official court interpreters.[117] The bills would add two new sections to establish the "explicit standards and functions of court interpreters."[118] Both bills have been referred to the judiciary with no further action.[119] Similarly, California Assembly Bill 663 attempts to address the need for interpreters by establishing a Judicial Council working group to ascertain best practices regarding the provision of interpreters in court proceedings.[120] The bill was sent from the Senate Committee without further action as of November 30, 2010.[121]

Congress has also yet to act in addressing the shortage of court interpreters. In 2009, Senator Herb Kohl sponsored the State Court Interpreter Grant Program Act, which would allocate $15 million per year over the course of five years to fund state court certification programs.[122] In addition to increasing the number of interpreters for use in court proceedings, the bill would help bolster interpretation services in law enforcement, national emergency preparedness and response, immigration proceedings, and human trafficking investigations.[123] This bill has yet to

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(May 29, 1991), http://query.nytimes.com/gst/fullpage.html?res=9D0CE5DF143BF93AA15756C0A967958260&pagewanted=all.

[116] *See infra* notes 117–24 and accompanying text.

[117] S. 5406, 2009–2010 Leg., Reg. Session (N.Y. 2009), *available at* http://open.nysenate.gov/legislation/api/1.0/html/bills/S5406-2009; A. 4432, 2009–2010 Leg., Reg. Session (N.Y. 2009), *available at* http://open.nysenate.gov/legislation/bill/A4432-2009.

[118] N.Y.S. 5406; N.Y.A. 4432.

[119] N.Y.S. 5406; N.Y.A. 4432.

[120] A.B. 663, 2009–2010 Leg., Reg. Sess. (Cal. 2009) (as amended July 15, 2009), *available at* http://www/leginfo.ca.gov/pub/0910/bill/asm/ab_06510700/ab_663_bill_20090615_amended_sen_v96.pdf.

[121] *Complete Bill History of AB 663*,WWW.LEGINFO.CA.GOV, http://www/leginfo.ca.gov/pub/0910/bill/asm/ab_06510700/ab_663_bill_20101130_history.html (last visited Jan. 25, 2012).

[122] *Kohl Introduces Bill to Establish State Court Interpreters Grant Program*, SENATE.GOV (July 6, 2009), http://kohl.senate.gov/newsroom/pressrelease.cfm?customel_dataPageID_1464=2921.

[123] Peggy Williams, *Court Interpreter Legislation Proposed by Sen. Herb Kohl*, MADISON POL. BUZZ EXAMINER (July 11, 2009), http://www.examiner.com/political-buzz-in-

be put to a vote.[124]

B. THE RIGHT

"Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy."[125] Title VI of the 1964 Civil Rights Act guarantees the following: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[126] While the Act does not explicitly address discrimination on the basis of limited English proficiency, in 2000, President Clinton issued Executive Order 13166, where accessibility of LEP persons to federally funded programs and activities is included under the prohibition against discrimination on the basis of national origin.[127] Arguably, the Executive Order's inclusion of LEP persons under the discrimination on the basis of national origin category is under-inclusive, as LEP persons can also be citizens of the United States.[128]

In 1978, Congress enacted the Court Interpreters Act, which establishes guidelines for the appointment of interpreters and specifies how the federal certification process is administered.[129] Under the Act, the presiding judge has the discretion to determine whether or not an interpreter is needed.[130] The defendant or witness is entitled to an interpreter if he or she:

> (A) speaks only or primarily a language other than the English language; or
>
> (B) suffers from a hearing impairment (whether or not suffering also

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madison/court-interpreter-legislation-proposed-by-sen-herb-kohl.

[124] *S. 1329: State Court Interpreter Grant Program Act*, GOVTRACK.US, http://www.govtrack.us/congress/bill.xpd?bill=s111-1329 (last visited Jan. 25, 2012).

[125] Negron v. New York, 434 F.2d 386, 390 (2d Cir. 1970).

[126] 42 U.S.C. § 2000(d) (2006).

[127] Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

[128] *See Negron*, 434 F.2d at 387 (showing that man with LEP was also citizen of U.S. because he was a native of Puerto Rico).

[129] 28 U.S.C. § 1827(d)(1) (2006).

[130] *Id.*

> from a speech impairment) so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.[131]

A case interpreting the Act notes, however, that it "was not 'enacted to create new constitutional rights for defendants or expand existing constitutional safeguards.'"[132] While the Supreme Court "has yet to recognize [a constitutional] right to a court-appointed interpreter," appellate and district courts have held that the right to an interpreter in criminal trials has been established via the Due Process Clause of the Fourteenth Amendment and the Confrontation Clause and right to effective assistance of counsel in the Sixth Amendment.[133]

However, it is not clear whether an LEP person has a constitutional right to an interpreter in a civil proceeding.[134] *Jara v. Municipal Court*, a California Supreme Court case, is often cited for the proposition that there is no due process right to a court interpreter in a civil proceeding.[135] In *Jara*, an indigent civil defendant who was sued for damages caused by a car accident filed a writ of mandamus to compel the appointment of a court interpreter.[136] In refusing to recognize the civil defendant's right to a court interpreter, the court relied on reasoning that pointed to other sources for language assistance, such as "members of his family, friends or neighbors born or schooled here may provide aid" and "private organizations" that "also exist to aid immigrants."[137] The court also relied

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[131] *Id.*

[132] United States v. Johnson, 248 F.3d 655, 661 (7th Cir. 2001) (quoting United States v. Joshi, 896 F.2d 1303, 1309 (11th Cir. 1990)).

[133] *Id.* at 663–65. In California, the guarantee of an interpreter in a criminal proceeding is written into the state constitution. The Californian Constitution makes explicit that "[a] person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings." CAL. CONST. art. I, § 14. In *People v. Aguilar*, the California Supreme Court explained that a defendant's right to "understand the instructions and rulings of the judge, the questions and objections of defense counsel and the prosecution, as well as the testimony of the witnesses," was a "continuous one." People v. Aguilar, 677 P.2d 1198, 1201 (Cal. 1984). The court emphasized that when an interpreter is appointed for criminal proceedings, the interpreter "must be provided to aid the accused during the whole course of the proceeding[.]" *Id.*

[134] Charles M. Grabau & Llewellyn Joseph Gibbons, *Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation*, 30 NEW ENG. L. REV. 227, 262 (Winter 1996) [hereinafter *Protecting the Rights*].

[135] *Id.*

[136] Jara v. Municipal Court, 578 P.2d 94, 94–95 (Cal. 1978).

[137] *Id.* at 95.

on the fact that "courtroom proceedings, of course, are controlled by counsel" to conclude that "the absence of an interpreter for his client to explain court proceedings as they occur has not been shown to constitute a substantial burden."[138]

Negron v. New York, decided in 1970, was the first federal case to hold that the lack of adequate interpretation "rendered the trial constitutionally infirm."[139] In *Negron*, the defendant was a twenty-three year old who hailed from Arecibo, Puerto Rico.[140] Mr. Negron had made it only to sixth-grade in Puerto Rico and neither spoke nor understood any English.[141] Because his court appointed lawyer spoke no Spanish, Mr. Negron could not communicate with him.[142] Communication between them, as well as between Mr. Negron, the court, and the witnesses called to trial, was made possible via an interpreter whose assistance was "spasmodic and irregular."[143]

Counsel and Mr. Negron conferred for only twenty minutes via an interpreter prior to trial.[144] During the trial Negron's own testimony and that of two of the State's Spanish-speaking witnesses, were translated simultaneously by an interpreter who was retained by the prosecution.[145] The other twelve witnesses who testified against Mr. Negron did so in English.[146] This English testimony was not translated simultaneously but "merely summarized" by the interpreter in ten to twenty minutes during recess.[147] The Second Circuit noted that to Mr. Negron, "most of the trial must have been a babble of voices."[148]

The court concluded that Mr. Negron's trial "lacked the basic and fundamental fairness required by the [D]ue [P]rocess [C]lause of the Fourteenth Amendment."[149] With regards to the Sixth Amendment, the court focused on the summaries of the witness testimony provided by the

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[138] *Id.*

[139] Negron v. New York, 434 F.2d 386, 387 (2d Cir. 1970).

[140] *Id.* at 387–88.

[141] *Id.* at 388.

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.* at 389.

interpreter, which "could not do service as a means by which Negron could understand the precise nature of the testimony against him."[150] Thus Mr. Negron was not "informed of the nature and cause of the accusation[s]" against him.[151] Furthermore, his inability to respond to the specific testimony against him given by the English-speaking witnesses also severely limited the ability of his lawyer to conduct effective cross-examination.[152] The court continued, "[A]s a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded."[153]

In addition to limited interpretation of a court proceeding, a criminal defendant's Sixth Amendment rights can also be implicated by ineffective and incompetent interpreting.[154] In *People v. Starling*, it was obvious to the court that the interpreter "was not fully, completely or accurately translating the questions and answers."[155] The central question, according to the court, was whether defendant's testimony, via the interpreter, was "understandable, comprehensible, intelligible."[156] Concluding that the testimony was none of those things, the court held that there was evidence in the record of an abuse of discretion in the selection of the interpreter, which thereby resulted in the denial of the defendant's Sixth Amendment right under the Confrontation Clause.[157]

More recently, in Annie's case (*Ling v. State*[158]), the Georgia Supreme Court affirmed that the right of the defendant to be present "'at all stages of the trial where his absence might frustrate the fairness of the proceedings' is guaranteed by the Sixth Amendment and the [D]ue [P]rocess [C]lause of the Fourteenth Amendment to the United States Constitution."[159]

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[150] *Id.*

[151] U.S. CONST. amend. VI; *see Negron*, 434 F.2d at 390.

[152] *Negron*, 434 F.2d at 386.

[153] *Id.* at 390.

[154] *Role of Counsel*, *supra* note 35, at 221.

[155] People v. Starling, 315 N.E.2d 163, 168 (Ill. App. 1974).

[156] *Id.* at 167.

[157] *Id.* at 168.

[158] *See supra* Part I.

[159] Ling v. State, 702 S.E.2d 881, 883 (Ga. 2010).

C. THE *DROPE* STANDARD

On appeal, without more, minor errors or general disagreements regarding a foreign language interpretation are not sufficient to disqualify an interpreter.[160] When due process and Sixth Amendment rights are implicated by a lack of adequate interpreter services however, courts have looked to the U.S. Supreme Court's unanimous opinion in *Drope v. Missouri* for guidance.[161] In addition to Annie's case,[162] other cases, such as *Gonzalez v. Phillips* from the Eastern District of Michigan and *State v. Lopes* from the Louisiana Supreme Court, engage in a similar analysis.[163]

In *Gonzalez*, petitioner, originally from Cuba, was convicted for conspiracy to deliver cocaine.[164] Petitioner "only attended school until age sixteen and due to his Cuban upbringing, seem[ed] to have little grasp of the English language."[165] Petitioner's counsel failed to request an interpreter for him at trial.[166] As such, when petitioner attended the evidentiary hearing, he did not understand that he was attending his own trial.[167] Analogizing to *Drope*, the Court explained that it saw "little difference between trying a mentally, incompetent defendant and trying a defendant who cannot understand the proceedings against him because he does not understand the language."[168] Although physically present, because Gonzalez had no opportunity to defend himself, his presence was essentially "simply a facade masking a constitutional violation."[169]

In *Lopes*, the Louisiana Supreme Court explained that the state's mental competency provisions for criminal defendants implicated the "same barriers" as LEP defendants facing criminal charges.[170] These challenges include understanding the charges, communicating with counsel, confronting and cross-examining witnesses, and exercising the

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[160] *Protecting the Rights*, *supra* note 134, at 276.

[161] *See, e.g.*, *Ling v. State*, 702 S.E.2d at 883. *See also* discussion *supra* Part I (discussing facts in *Drope* and application in *Ling v. State*).

[162] *Id.*

[163] *Ling*, 702 S.E.2d at 883.

[164] Gonzalez v. Phillips, 195 F. Supp. 2d 893, 894–95 (E.D. Mich. 2001).

[165] *Id.* at 897.

[166] *Id.*

[167] *Id.* at 903.

[168] *Id.*

[169] *Id.*

[170] State v. Lopes, 805 So. 2d 124, 128 (La. 2001).

constitutional right to testify.[171]

Analogizing LEP persons' inability to comprehend the proceedings against them to the inability of mentally incompetent individuals to be present at their own trial is arguably a useful and necessary move by the court, given that American courts are "wedded to precedent."[172] Making the comparison to mental incompetence situates the failure to secure a court interpreter within an existing and established body of Sixth Amendment jurisprudence.

However, while the LEP defendant and the mentally incompetent defendant may face similar difficulties at trial, the issues are distinct. The latter faces difficulties due to a lack of normal functioning in the defendant's mental or psychological state, which renders them "absent."[173] The LEP defendant, however, possesses the requisite mental and psychological ability for "presence," but is unequipped to comprehend the proceeding because of a failure external to himself or herself—the failure to provide adequate interpretation.[174]

Therefore, although the *Drope* standard vindicates the Sixth Amendment rights of LEP persons, the problem with its application is that this analysis makes incompetency to stand trial a personal deficiency that inheres in the defendant, rather than a systemic deficiency of the government, court system, and defense lawyers to address the issue of linguistic differences. Unlike mental incompetency, which can be caused by a host of factors, treatable and untreatable, there is an obvious cure for the LEP person's inability to comprehend his or her own court proceedings: provide interpretation services so that LEP defendants can meaningfully understand as they navigate the legal system.

Were this issue considered in isolation, without regard to history, it may not seem so problematic. Unfortunately American history is rife with examples in which immigrants have been excluded and marginalized from full participation in the legal system.[175] Language difference, in addition to

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[171] *Id.*

[172] *See* Darrell Hutchinson, *"Gay Rights" For "Gay Whites"?: Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358, 1385 (2000) (discussing how equal protection jurisprudence adopts a comparative approach) ("[S]ocial groups seeking heightened judicial scrutiny of their equal protection claims must show how they are 'like' racial groups . . . and other protected classes[.]").

[173] *See supra* Part I, notes 15–18 and accompanying text.

[174] *See supra* Part I.

[175] Here, I use the word immigrants to include both LEP persons and cultural minorities.

supposedly inherent cultural differences, has been a basis for justifying exclusion. In 1854, the California Supreme Court in *People v. Hall* found that Chinese people "and all other peoples not white" were prohibited from testifying as witnesses against whites.[176] In justifying its holding, the court explained that Section 394 of the Civil Practice Act provided that "[n]o Indian or Negro shall be allowed to testify as a witness in any action in which a white person is a party," including Chinese people, because the term Indian, "from the time of Columbus to the present day, has been used to designate, not alone the North American Indian, but the whole of the Mongolian race."[177] In justifying why giving Chinese people the ability to testify against whites was troublesome, the court stated:

> The anomalous spectacle of a distinct people, living in our community, recognizing no laws of this State except through necessity, bringing with them their prejudices and national feuds, in which they indulge in open violation of law; *whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference*, is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administering the affairs of our Government.[178]

Thus the court's concern was twofold: the peril embodied in the ability of a non-white to infringe on the liberties of a true (white) citizen, and the political participation of non-whites in American governance. More than 150 years later, while the formal exclusionary measures against certain groups of immigrants have been lifted, remnants of the concerns raised by *People v. Hall* are still prevalent in today's nativistic anti-immigrant rhetoric.[179] For example, conservative newspaper *Human Events* published an article in 2006 entitled *Will English Survive Immigrant Flood?*, in which the author wrote that America was headed "toward a cultural catastrophe" due to "[c]hronic non-enforcement of our

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[176] People v. Hall, 4 Cal. 399, 399 (1854).

[177] *Id.* at 402.

[178] *Id.* at 404–05 (emphasis added).

[179] *See, e.g.*, Jennifer Ludden, *Barriers Abound for Immigrants Learning English*, NAT'L PUB. RADIO (Sept. 11, 2007), http://www.npr.org/templates/story/story.php?storyId=14330106 ("[I]mmigrants' English skills are often part of the U.S. debate over foreign workers[.]") [hereinafter *Barriers Abound*].

immigration laws together with a multicultural ideology that seeks to make it easier for immigrants—and their children and grandchildren—to retain their native cultures."[180] The danger is that these immigrants would "strip this nation of a unifying, common language."[181]

It may be easy to make the assimilation argument, that LEP persons should just learn to speak English, however for many LEP immigrants, finding the time and access to affordable English language instruction is a challenge. In several instances, it is not a lack of desire or capability that gets in the way. Rather, issues like lack of transportation, childcare, and waiting lists at community learning centers or government funded entities pose obstacles to willing students.[182]

Curing the issue of language difference, however, is contingent both on the availability of funding for interpretive services, as well as awareness on the part of lawyers, judges, and jurors that the issue of language difference can profoundly affect a LEP person's ability to vindicate him or herself in court.[183]

IV. CULTURAL EVIDENCE

The 1994 report on the Oregon Supreme Court Task Force on Racial and Ethnic Issues in the Judicial System called for "'cultural interpreters,' 'cultural advocates' or 'ombudspersons'" to address the unique issues minorities face when confronted with the legal system.[184] Professor William Chin envisions these ombudspersons' relationship with minority defendants to be analogous to consular officials dealing with foreign nationals.[185] Both the ombudsperson and the consular officials are "needed to help a defendant unfamiliar with American culture navigate the labyrinth of the American criminal justice system, and both are 'fundamental to the fair administration of our justice system.'"[186] What Professor Chin imagines as the cultural ombudsman arguably already

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[180] *Will English Survive Immigrant Flood? Forty-Two Percent of Californians Don't Speak English at Home*, HUMAN EVENTS (Aug. 21, 2006), http://www.humanevents.com/article.php?id=16572.

[181] *Id.*

[182] *Barriers Abound*, *supra* note 179.

[183] William Y. Chin, *Multiple Cultures, One Criminal Justice System: The Need for a "Cultural Ombudsman" in the Courtroom*, 53 DRAKE L. REV. 651, 653 (2005).

[184] *Id.*

[185] *Id.* at 654.

[186] *Id.* at 654–55.

exists, but in two separate persons: counsel representing the minority and the cultural expert witness. However, because counsel often, if not always, dictates who is brought in to testify at trial, it is imperative that lawyers for LEP and minority defendants be aware of the importance that cultural evidence can play.

At a basic level, counsel litigating in both state and federal court must be aware of the potential for cultural evidence to "counteract the injustice of applying the dominant culture's legal standards to defendants from other cultures."[187] In criminal law, the use of the cultural defense demonstrates the "tension between . . . the criminal law's attempt to set limits on lawful behavior and the sometimes conflicting needs of diverse minority groups to express their cultural identities through practices that may embody values diverging from values of the mainstream."[188]

However, cultural evidence is not always beneficial. On the one hand, it makes the judge and jury aware of the explicit cultural forces at work in the case. This enables the trier of fact to make a more fully considered decision of all factors in the case.

On the other hand, cultural evidence has the tendency to essentialize groups and behavior, which could lead to harmful stereotypes.

Furthermore, spurious testimony with regards to certain cultural traditions may be offered to escape or mitigate punishment. The infamous example of Adelaide Abankwah, also known as Regina Danson, illustrates this concern.[189] In a case that received much attention from the public, including support from then First Lady Hillary Clinton, Julia Roberts, and Gloria Steinem, Danson, a young woman hailing from Ghana who arrived on a stolen passport under the name of Adelaide Abankwah, fabricated a tale of persecution back in her home village where she was to inherit the title of her tribe's "queen mother."[190]

During Danson's asylum proceedings, she testified that she would be expected to undergo female circumcision if she were deported because

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[187] Holly Maguigan, Cultural Evidence and Male Violence: Are Feminists and Multiculturalist Reformers on a Collision Course in Criminal Courts?, 70 N.Y.U. L. REV. 36, 36 (1995).

[188] Daina C. Chiu, *Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism*, 82 CAL. L. REV. 1053, 1054 (1994).

[189] Importance of Culture, supra note 45, at 196.

[190] William Branigin & Douglas Farah, *Asylum Seeker Is Imposter, INS Says*, WASH. POST (Dec. 20, 2000), http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A13252-2000Dec15.

she had violated the custom that the queen mother was to remain a virgin until she "took office."[191] She also testified that she would face punishment in the event that she relinquished her title as queen mother.[192] Pointing out that Ghana banned female genital mutilation in 1994, the immigration judge denied Danson's asylum claim on the basis that her fear was not reasonable.[193] The judge also noted that there was "some question as to the applicant's identity."[194]

The Board of Immigration Appeals affirmed the decision, but after much publicity from the public figures mentioned above as well as various women's rights groups, in July 1999, the Second Circuit reversed the Board of Immigration Appeals.[195] The court thought that the Board had been "too exacting both in the quantity and quality of evidence that it required" and glossed over the question of who Danson really was.[196] The Immigration and Naturalization Service ("INS"), however, was not so convinced. Launching a "rare investigation" into Danson's background, the INS managed to locate "overwhelming evidence of fraud" after three months of investigation.[197] Among the evidence were interviews and statements from Danson's real parents and statements from the tribal leaders of her village and school that refuted much of the claims she gave during her hearings. The real Adelaide Abankwah, the daughter of a well-to-do businessman, had her passport stolen a few years earlier in the process of trying to get it renewed, and was in the United States, living in fear of deportation.[198]

While this story demonstrates some of the problems that can arise when courts accept cultural testimony, there are ways that courts can avoid such frauds on the court. The court, for instance, can ask questions that clarify whether the litigant belongs to the ethnic group to which the tradition or custom is attributed, whether the ethnic group in fact has the tradition or custom claimed, and whether the litigant was influenced by the tradition at the time of the conduct at issue.[199]

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[191] *Id.*

[192] *Id.*

[193] *Id.*

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] Branigin & Farah, *supra* note 190.

[198] *Id.*

[199] Importance of Culture, *supra* note 45, at 196.

A. CULTURAL EVIDENCE AS MITIGATING EVIDENCE

While cultural evidence can play an important role at all stages of a trial, from the plea bargaining phase to the use of cultural defenses to determine culpability, this section only discusses cultural evidence with respect to the sentencing phase, which is when cultural evidence faces less stringent evidentiary requirements.[200] The Federal Sentencing Reform Act, for example, "prohibits limitations on the information a sentencing court may examine relating to the convicted defendant's 'background, character and conduct.'"[201] Additionally, evidence that might otherwise be considered inadmissible by the court is admissible during sentencing.[202] Under Sentencing Guideline 6A1.3(a), such evidence is admissible "provided that the information has sufficient indicia of reliability to support its probable accuracy."[203] Although the guidelines are not mandatory, they do play an advisory role—judges in both federal and state court systems consult them for guidance.[204]

Furthermore, in certain criminal proceedings in which there is little doubt as to the defendant's culpability, it is at the sentencing stage of trial where there is room for discretion. This is especially pertinent in capital cases because under the Eighth Amendment there may be an issue of whether the punishment rises to the level of "cruel and unusual" if mitigating evidence is not given due consideration.[205] Counsel's awareness of the role cultural difference can play is therefore imperative.[206] As the

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[200] ALISON DUNDES RENTELN, THE CULTURAL DEFENSE 46 (2004).

[201] Margaret A. Berger, *Rethinking the Applicability of Evidentiary Rules at Sentencing*, 5 Fed. Sent. R. 96, 96 (Fall 1992).

[202] *Id.*

[203] *Id.*

[204] Georgia, for example, where *Ling v. State* was heard, does not have its own state sentencing guidelines. Rather, the amount of prison time a defendant is to serve is "determined by the interaction between the General Assembly's laws and the Parole Board's policies." Timothy S. Carr, *"Truth in Sentencing" in Georgia*, GA. DEP'T OF CORR. (May 14, 2008), www.dcor.state.ga.us/Research/Standing/Truth_in_sentencing.pdf.

[205] *See* RENTELN, *supra* note 200, at 42 (2004) ("[Because] 'death is different,' Eighth Amendment jurisprudence requires that mitigating factors be considered[.]").

[206] Interestingly, arguments regarding cultural "sameness" or assimilation have also been accepted by courts to reduce sentences, especially (and perhaps not surprisingly) in cases involving unauthorized re-entry back into the United States of undocumented individuals. *See, e.g.*, Brian L. Porto, *Downward Departure Under United States Sentencing Guidelines Based on "Cultural Assimilation,"* 6 A.L.R. Fed. 2d 317 (2005) (discussing *United States v. Arroyo Mojica*) ("[Ninth Circuit accepted cultural assimilation as a] proper ground for downward departure where it speaks to a defendant's offense or character, as it may where the defendant is

Washington District Court stated in *Mak v. Blodgett*:

> [T]he sentencing hearing is defense counsel's chance to show the jury that the defendant, despite the crime, is worth saving as a human being . . . . To fail to present important mitigating evidence in the penalty phase—if there is no risk in doing so—can be as devastating as a failure to present proof of innocence in the guilt phase.[207]

Even if introducing mitigating evidence does not ultimately result in a "downward departure" in sentencing, attempting to introduce mitigating cultural evidence is part of defense counsel's role as an effective advocate. Defense lawyers "should alert the court to cultural background differences that might explain surprising, unusual, or incomprehensible behavior or demeanor on the part of the defendant."[208]

Failure to introduce such evidence can, and often has, resulted in appeals brought by defendants on the basis of ineffective assistance of counsel.[209] Not only is the appeals process costly and time consuming, filing ineffective assistance of counsel claims compromises counsel's professional reputation, and exposes him or her to civil liability.[210]

V. CULTURAL AWARENESS: EDUCATING LAWYERS AND JUDGES

Commentators have proposed various solutions to the issue of a lack of competent interpreters and cultural ombudspersons. To handle shortages, interpreter-enabled video conferencing systems may enable interpreters to "dial-in" remotely to participate in court proceedings, thus overcoming geographical barriers to interpreter assistance.[211] With regards to ensuring competent and accurate language interpretation, some commentators have proposed taking audio and/or visual recordings of

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charged with illegal reentry, and the defendant's unusual cultural ties to the United States.").

[207] Mak v. Blodgett, 754 F. Supp. 1490, 1500 (W.D. Wash. Jan. 8, 1991).

[208] *The Role of Counsel*, *supra* note 35, at 226.

[209] However, there are instances where mitigating evidence is not introduced by counsel as a tactical matter. For example, counsel may fear that introducing mitigating evidence will invite potentially damaging rebuttal evidence. *See* Mak v. Blodgett, 970 F.2d 614, 618 (9th Cir. 1992).

[210] *See* David M. Siegal, *The Role of Trial Counsel in Ineffective Assistance of Counsel Claims: Three Questions to Keep in Mind*, CHAMPION (Feb. 2009), http://www.nacdl.org/Champion.aspx?id=1635.

[211] *See, e.g.*, Ferenc Sárközy and Géza Haidegger, *Solutions for an Interpreter-Enabled Multimedia Conferencing System*, ERCIM NEWS (July 2005), http://www.ercim.eu/publication/Ercim_News/enw62/sarkozy.html.

interpretations to allow for future reference in the event that the accuracy of an interpretation is called into question.[212]

However, not all courts have the resources to undertake technology upgrades. Furthermore, technology-based solutions are not as helpful to address the issue of cultural difference. Beyond calls for assimilation (i.e., learn the ways of our land), which places the burden of overcoming linguistic and cultural differences on the LEP and cultural minority litigant, lawyers, courts, and jurors can play a vital role in ensuring that cultural differences do not undermine LEP and cultural minorities' rights. In order to prepare these persons to recognize and address linguistic and cultural differences, this section proposes that the basic task of increasing awareness of these issues among the legal profession as a matter of professional responsibility is the most wide-reaching and cost-effective way to address the issues outlined above.

A. LEARNING FROM THE MEDICAL PROFESSION

The medical profession already considers the need for cultural and linguistic awareness. State legislatures, medical schools, and research centers have responded to increased cultural and linguistic diversity by implementing programs for "cultural competence" training.[213] *Cultural competence* as it pertains to medical professionals is defined by the California State legislature as "a set of integrated attitudes, knowledge, and skills that enable a physician and surgeon to care effectively for patients from diverse cultures, groups, and communities."[214]

Recognizing that when "sociocultural differences between the patient and the provider are not appreciated, explored, understood, or communicated in the medical encounter, the result is patient dissatisfaction, poor adherence, poor outcomes, and racial and ethnic disparities in health care," the California legislature enacted the Cultural and Linguistic Competency of Physicians Act in 2003.[215] The Act

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[212] Annabel R. Chang, *Lost in Interpretation: The Problem of Plea Bargains and Court Interpretation for Non-English-Speaking Defendants*, 86 WASH. U. L. REV. 445, 470 (2008).

[213] *See, e.g.*, AB 1195 Assembly Bill—Bill Analysis, LEGINFO, http://leginfo.public.ca.gov/pub/05-06/bill/asm/ab_1151-1200/ab_1195_cfa_20050826_130435_sen_floor.html.

[214] *Id.*

[215] AB 801, Leg., Gen. Sess. (Cal. 2003–2004), *available at* http://www.leginfo.ca.gov/pub/0304/bill/asm/ab_08010850/ab_801_bill_20030925_chaptered.html.

amended the Business and Professions Code to establish a voluntary cultural and linguistic physician competency program operated by local medical societies of the California Medical Association and monitored by the Division of Licensing.[216] The program would provide foreign language instruction as well as classes on cultural practices and beliefs that impact health care.[217] Two years later, in 2005, California further amended the Business and Professions Code via Assembly Bill 1195 to require that by July 1, 2006, all Continuing Medical Education ("CME") courses had to contain curriculum with cultural and linguistic competency training.[218]

Practically speaking, this means that courses must cover at least one, or a combination of, the following:

> Cultural competency through applying linguistic skills, using cultural information to establish therapeutic relationship, or using pertinent cultural data in diagnosis and treatment.
>
> Linguistic competency, which refers to providing direct communications in the patient's primary language.
>
> A review or explanation of relevant federal and state/regulations regarding linguistic access.[219]

Legislative initiatives to provide cultural competency training have also targeted medical schools, where basic medical training takes place. For instance, New Jersey's Bryant Law, also enacted in 2005, requires medical students to complete cultural competency training in order to receive a diploma from a state college of medicine.[220]

The use of narratives is one way that cultural competency has been introduced to the medical classroom. Anne Fadiman's prize winning book, *The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures*, a story that details the clash between a Merced hospital and a Laos family over the care of their epileptic child,[221] is often assigned in medical schools across the

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[216] *Id.*

[217] AB 1195 Assembly Bill—Bill Analysis, LEGINFO, ftp://leginfo.public.ca.gov/pub/05-06/bill/asm/ab_1151-1200/ab_1195_cfa_20050826_130435_sen_floor.html.

[218] *Id.*

[219] AB 1195 Cultural and Linguistic Competency, CEDARS-SINAI, http://www.cedars-sinai.edu/Medical-Professionals/Education-Programs/Continuing-Medical-Education/AB-1195-Cultural-and-Linguistic-Competency.aspx (last visited Apr. 1, 2011).

[220] S.144, Leg., Reg. Sess. (N.J. 2005) (enacted), *available at* http://www.njleg.state.nj.us/2004/Bills/PL05/53_.HTM (last visited Apr. 1, 2011).

[221] ANNE FADIMAN, THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD,

country. Research centers are also devising ways to enhance cultural competence programs. Georgetown University's National Center for Cultural Competence ("NCCC") was established to "increase the capacity of health care and mental health care programs to design, implement, and evaluate culturally and linguistically competent service delivery systems to address growing diversity, persistent disparities, and to promote health and mental health equity."[222] Arguably, the phrase *cultural competence* is somewhat misleading because attending a seminar lasting a few hours may not necessarily equip professionals to deftly navigate cultural nuances. Rather, what seminars of this nature can do is make people aware of the potential issues that cultural differences raise.

B. "ELIMINATION OF BIAS"

At a fundamental level, many of the systemic barriers to LEP and cultural minorities' access to justice stem from the legal profession's failure to address the issue of diversity. This failure not only affects relationships between lawyers, but also the way in which lawyers interact with clients.

In California, for example, unlike the Business and Professions Code for medical professionals, the Business and Professions Code for lawyers has no comparable call for cultural awareness.[223] Neither do the Rules of Professional Conduct.[224] Rather, the issue of linguistic and cultural difference is handled via an attempt to integrate "Elimination of Bias" training into Continuing Legal Education ("CLE") requirements.[225] Arguably, the responsibility to account for linguistic and cultural differences is captured by the rules governing the lawyer's duty of

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HER AMERICAN DOCTORS, AND THE COLLISION OF TWO CULTURES (Farrar, Strauss and Giroux, 1997).

[222] *National Center for Cultural Competence*, Georgetown Univ., http://nccc.georgetown.edu/.

[223] *See* Bus. & Professions Code §§ 6060-6069, *available at* http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=06001-07000&file=6060-6069.

[224] *See generally* MODEL RULES OF PROF'L CONDUCT (2010), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html (a search of the subject matter index reveals that treatment of racial, linguistic, or cultural differences are not addressed).

[225] *See* Tim Baran, *Diversity in the Legal Profession: CLE Rules (and ABA) Lacking*, BARNACLE (Dec. 1, 2010), http://www.barancle.com/2010/12/diversity-legal-profession-cle-rules-aba/ [hereinafter *Diversity in the Legal Profession*].

competence to his or her client.[226] However, without explicitly framing these issues as a matter of professional responsibility, they are easily overlooked.

Within the legal profession, CLE courses addressing cultural differences are often called "Elimination of Bias in the Profession."[227] This phraseology is also somewhat problematic, as it assumes that biases are conscious and capable of being rooted out and extinguished. Studies conducted for Project Implicit at Harvard University suggest that many of our attitudes about different ethnic groups are implicit and hidden from conscious awareness.[228] Whatever this type of training is ultimately called, the legal profession is not doing enough of it, as demonstrated by the numerous examples in this Note.

Compared to other professions, the legal profession is "less racially diverse than most other professions, and racial diversity has slowed considerably since 1995."[229] In 2004, reporting that "at least twenty-two state task forces have found bias in the legal profession to be a serious problem," the ABA's Standing Committee on Continuing Legal Education and Commission on Racial and Ethnic Diversity in the Profession recommended amending the Model Rule for Minimum Continuing Education to include language requiring lawyers to complete "programs related to racial and ethnic diversity and the elimination of bias in the profession."[230]

The proposed amendment to the Model Rule has only had limited effect, as only ten state bars currently require lawyers to complete CLE programs about diversity.[231] California is one of the ten states that require attorneys to complete CLE diversity training; California rule 2.72(A)(2) requires "at least one hour dealing with elimination of bias in the legal

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[226] *See, e.g.*, MODEL RULES OF PROF'L CONDUCT 1.4 (governing communication, and the duty to reasonably consult one's client and keep them reasonably informed). Failure to provide for adequate interpretation during the representation would thus violate this rule.

[227] *See* CAL. RULES, *infra* note 232 and accompanying text. *See also* text accompanying note 234 (discussing *Greenberg v. State Bar*).

[228] *Project Implicit FAQs—Questions 17 & 19*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/demo/background/faqs.html#faq21 (last visited Apr. 10, 2012).

[229] *Diversity in the Legal Profession*, *supra* note 225.

[230] AM. BAR ASS'N, STANDING COMM. ON CONTINUING LEGAL EDUC., COMM'N ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, REPORT TO THE HOUSE OF DELEGATES (Feb. 2004).

[231] *Diversity in the Legal Profession*, *supra* note 225.

profession by reason of but not limited to sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation."[232] However, rule 2.72(B) essentially weakens the requirement by indicating that this requirement "may be a component of an approved educational activity that deals with another topic."[233]

Not all California lawyers have been amenable to these requirements. In *Greenberg v. State Bar*, the California Court of Appeals decided a case where plaintiffs took issue with the requirements in place at the time that lawyers attend compulsory training in the prevention of "substance abuse" and "emotional distress," and the "elimination of bias."[234] In particular, plaintiffs contended that the requirements of the Minimum Continuing Legal Education ("MCLE") program "violated their First Amendment rights not to be subjected to compulsory governmental reeducation programs and partisan political propaganda in favor of a 'political and ideological agenda'" that plaintiffs did not believe in.[235] Petitioning for writ, plaintiff-appellants made their distaste for the CLE requirements clear: "[F]or the Bar to require the membership to participate in this by providing a kind of dumbshow validation of some political and moral commitment clearly implicates the right of freedom of association."[236]

The plaintiffs' attitudes in *Greenberg* are telling. Their views suggest that CLE seminars may not be the most appropriate forum for raising awareness. Arguably, many lawyers may not find themselves dealing with LEP and cultural minorities, especially if they chose to pursue private corporate practice, where clients are often sophisticated and speak English. However, in today's international economy, it is highly probable that even at large law firms, lawyers will encounter people from different cultures. Foreign Corrupt Practices Act work, for example, is often handled by top corporate firms like Skadden Arps or Debevoise and Plimpton, and often involves attorney interaction with employees of overseas companies.[237] In other words, public interest and government

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[232] CAL. RULES OF THE STATE BAR, Title 2, Div. 4, Chapter 1 Rule 2.72(B).

[233] *Id.*

[234] Greenberg v. State Bar, 78 Cal. App. 4th 39, 41 (2000).

[235] *Id.*

[236] Petition for Writ of Certiorari at 11, Greenberg v. State Bar, 92 Cal. Rptr. 2d 493 (Cal. Ct. App. 2000) (No. 99-2030).

[237] *See, e.g., Anti-Bribery and FCPA Compliance and Defense*, SKADDEN, http://skaddenpractices.skadden.com/fcpa/ ("Skadden's international reach extends to London,

lawyers are not the only lawyers who would benefit from cultural awareness training.

Rather than framing elimination of bias as an issue that should be addressed as part of a lawyer's continuing education, the focus should instead be on the role that cultural awareness plays in being a professionally responsible member of the bar. The consequences for not adequately addressing issues of linguistic and cultural difference in the court system are severe not only for minority litigants, but counsel as well. In the interest of avoiding reputational harm and civil liability, counsel should strive to ensure LEP clients are provided with adequate interpretive services, and should provide effective representation of cultural minority defendants by introducing mitigating cultural evidence where it helps explain behavioral differences to the court.

VI. CONCLUSION

Lawyers, judges, and jurors who lack awareness of how linguistic and cultural differences influence court proceedings place LEP and cultural minorities in peril. From inflammatory nativist rhetoric to court opinions, the responsibility to translate linguistic and cultural differences often falls on the LEP or minority litigant. This overlooks the many ways in which the legal system itself fails to adequately accommodate such differences. This Note is a call for greater cultural awareness, not only to ensure the protection of LEP and minority litigants' rights, but also to ensure that the legal profession is competent and prepared to respond to issues of linguistic and cultural differences.

Paris, Frankfurt, Munich, Vienna, Tokyo, Singapore, Hong Kong and Beijing, providing experienced resources in jurisdictions where questioned business conduct is frequently being investigated. Having this cadre of international lawyers, who are versed in the local laws and can speak the local language, permits Skadden to apply the necessary resources to address FCPA issues as they arise and provides enormous cost benefits to our clients.").