

FROM THE BENCH

# Cultural Competence in the Courtroom: *A Judge's Insight*

By Hon. Gail S. Tusan  
& Sharon Obialo



In the wake of the confirmation of Justice Sonia Sotomayor as the first Hispanic and only third female to serve on the U.S. Supreme Court since its founding in 1789, many questions have arisen as to how important cultural sensitivity is in adjudicating justly and fairly. For example, what can a “wise Latina” bring to the bench in terms of cultural background, life experience and global understanding? Are American courts adequately serving their diverse communities? Is justice truly achieved when cultural differences are ignored and misunderstood during legal proceedings?

## A Global Courtroom

Certain fundamental practices followed in courtrooms throughout America may prove problematic for individuals who did not grow up in this country. For example, our longstanding practice of requiring a witness to raise his or her hand while swearing to tell the truth prior to testifying is a Judeo-Christian tradition, which inadvertently may be at odds with certain cultural norms adhered to by foreign-born persons. While it is not unusual for a lawyer to point a finger or shake a fist during an argument or lock eyes with a witness during examination, many cultures find it rude to point at others. In East Asia and certain Muslim countries, lack of eye contact toward an authority figure signifies respect and deference. Thus, a prosecutor’s argument that a defendant’s failure to make eye contact with law enforcement signifies guilt might in truth indicate something very different if the defendant is foreign-born.

The diverse landscape of American culture necessitates an expanded framework of understanding within the legal community. Lawyers, judges and court personnel alike must ensure that we have our global antenna up. We must be tuned in to the increasing cultural nuances underlying today’s court filings. Consider the following excerpt from a custody hearing. The Algerian father<sup>1</sup> is reacting to the American mother’s request that the court permit her to withhold the children’s passports from him because she fears that the father will take the kids back to his native county, without her knowledge:

Mr. Sayad: “OK, but please, your honor, please. Make sure you consider the passport. I’m not a kidnapper, ma’am.”

The Court: “I understand.”

Mr. Sayad: “I’m not a kidnapper.”

The Court: “Sir, I heard you, I did not say you were. Did I suggest you were a kidnapper?”

Mr. Sayad: “No, no. Because of my language, people always treat me like a terrorist.”

The Court: “Have I treated you like a terrorist?”

Mr. Sayad: “No, you treat me nothing but the best. I appreciate that. I really do.”

The Court: “In our court, we do our best to treat everyone equally and with respect.”

The foregoing colloquy highlights the court’s need for sensitivity when interacting with individuals who perceive themselves to be members of targeted religious or ethnic groups. In particular, a judge must not inadvertently reward a parent’s goal of culturally alienating a child from the other parent. Most important, the court itself must work hard to ensure that there is no appearance of personal hostility or cultural bias emanating from the bench.

## Framing the Discussion on Culture

To begin a discussion on cultural competence, it is important to establish definitional clarity. Culture 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, to communicate and to develop their creative potential.”<sup>2</sup> Language, food, customs, religion, clothing and other outward expressions make up a group’s culture, in addition to unspoken values and beliefs. There are four key components involved in cultural competence: (1) awareness of one’s own cultural worldview; (2) attitude towards cultural differences; (3) knowledge of different cultural practices and worldviews; and (4) cross-cultural communication.

Take, for instance, a divorce and child custody case involving an Indian couple who appeared in the Fulton County Superior Court Family Division. The facts exemplify how a judge’s lack of knowledge of certain cultural practices could result in an erroneous conclusion. In this case, the husband testified that his wife was hysterical, claiming that she worshiped blocks of blood and practices voodoo. Casting commonplace Hindu practices in a seemingly negative light was the husband’s tactic to persuade the court that his wife was emotionally unstable and unfit to parent the child. It would, however, be a grave error to rely on him as the authority on the significance of the alleged religious practices of his wife. We must be aware of our own cultural assumptions and stereotypes, and avoid letting these beliefs influence our judgment about others. Additionally, we must educate ourselves about others’ cultural differences and

practices when they surface in cases in order to maximize our preparedness for assessing testimony and facilitating communication. Indeed, this situation shows how cultural competence can be pertinent in rendering fair decisions in the court.

With the changing faces of cities, communities and courtrooms all over the country, we must recognize and strive towards a greater depth of perspective. The Atlanta metropolitan region,<sup>3</sup> for example, has witnessed remarkable changes in its social demographics over the last several years, which directly illustrate this necessary shift in perspective. According to the 2000 census, approximately 11.7 percent of the Atlanta population is foreign-born, with the largest communities hailing (in descending order) from Mexico, India, Vietnam, Korea, China, Jamaica, Colombia, Nigeria, Guatemala and El Salvador.<sup>4</sup> As a result of this growing diversity, courtrooms throughout Georgia may find that they are not as user-friendly as they need to be. Specifically, there is a lack of community education about court processes; language barriers exist for many court users; and divergent religious customs on occasion conflict with court protocol.

## **Lack of Community Education About Court Processes**

Many foreign-born litigants, particularly non-English speakers, have limited access to information about our court system. In many foreign countries, the rule of law and the court systems are more closely associated with corruption than with fairness and justice. Thus, diverse litigants might regard seeking legal relief as futile, particularly if they believe that persons without financial means will

not have influence with the judge.<sup>5</sup> Further, if such individuals do decide to seek legal redress, residual feelings of distrust of the court system can lead parties to falter in providing information in advance, frustrating the goals of discovery and due process.

The goal should be to cultivate greater confidence in our legal system. Targeting certain underserved groups through community outreach by judges and court personnel in order to provide direct communication about court rules, procedures and available resources is the most effective approach to educating and preparing these persons for navigating [the] halls of justice.

## **Language Barriers**

Perhaps some of the greatest handicaps for foreign and minority litigants are the language barriers that they often face in attempting to communicate with court personnel and during a court proceeding. We must practice patience, offer a discerning ear and keep an open mind while interacting with those who have limited English proficiency.

## **Bilingual Documents/Signs**

There are also concrete measures that a court can implement to facilitate greater access for non-English speakers. In many states, , , , the international diversity of our communities necessitates the expansion of bilingual personnel and resources in the court. Bilingual directional signs are underutilized in many of our courthouses even though such tools are critical navigational aids for non-English speakers. Moreover, bilingual written materials and forms are not helpful if the persons for whom they are intended cannot find them. Making one's way through a courthouse is difficult

enough for the average English-speaking person. The added hurdle of language difficulties makes the process of entering the courthouse burdensome and frightening for those who are non-English speakers. Thus, it is important to consider how much more daunting communicating is for someone whose cultural background or nationality is foreign to the court personnel encountered in the search for justice.

To address this issue of community education, the Superior Court of Fulton County has implemented the Court Ambassador Academy. This program trains citizens (of all ethnic backgrounds and ages) interested in volunteering in the court to act as ambassadors and liaisons to their own communities and throughout the courthouse. These volunteers speak a variety of difference languages and have been successful in raising awareness about the county judicial system and its processes.

## **Certified Court Interpreters**

Additionally, the value of having qualified interpreters in the courtroom cannot be overstated. For court interpreters, bilingualism is not sufficient. Many litigants attempt to use family and friends as interpreters for financial reasons, but an interpreter must be certified or, in certain instances, court-registered. Certified interpreters must undergo training and pass examinations that equip them with the skills to “transfer all of the meaning heard from the source language into a target language [without] ... editing, summarizing, adding meaning, or omitting,” in just a few seconds.<sup>6</sup>

It is a common misconception that the court is only required to provide interpreters in criminal cases, yet according to the Supreme Court of Georgia's Uniform Rule for Interpreter

Programs, all non-English speakers must be provided with various resources to secure an appropriate interpreter. If the litigant presents a valid pauper's affidavit, the court is required to provide an interpreter at no cost as long as there is a bona fide need.<sup>7</sup> To be sure, a judicial decision based on an evidentiary hearing involving a non-English speaker that is conducted without a certified or court-registered interpreter is not only subject to legal challenges, it also compromises our deeply rooted principle of providing equal access and fairness to all who appear before us.

### Conflicts Between Religious Practices and Court Protocol

Although the American legal system was established based on Judeo-Christian values, customs and traditions, with the increasing diversity of religions practiced in this country, we must acknowledge that our Constitution protects an individual's religious freedom. Therefore, a rigid adherence to certain historical practices makes a collision of cultures inevitable. At present, various individuals whose traditions espouse divergent practices are increasingly challenged on an explicit level.

To illustrate, consider the tradition among Muslim women of wearing a headscarf or *hijab*. In December 2008, a woman in Douglasville was held in contempt and arrested for refusal to remove her headscarf in the court. In this instance, the tradition of prohibiting head coverings in the courtroom directly conflicted with this woman's religious obligations and beliefs, and the judicial decision to arrest her created a huge uproar from the Muslim community and advocates, such as the Anti-Defamation League, the Council

on American-Islamic Relations and the American Civil Liberties Union. As a result of the press and attention surrounding this incident, in July 2009, the Judicial Council of Georgia made a determination to permit religious attire such as the *hijab* in courtrooms.<sup>8</sup>

The personal decision to appear in court wearing other religious clothing items such as the *burka* (an outer cloth worn in the Islamic tradition, which covers the entire body with the exception of the eyes), however, fuels debate among judges and lawyers as to whether a witness's choice of clothing might violate a party's right to confrontation or whether a trier of fact can assess the credibility of a witness if she is entirely cloaked. While it remains to be determined how these legal issues will be resolved, at present each judge has a responsibility to determine how best to run his or her courtroom in a fair and unbiased manner. In doing so, the judge should proceed thoughtfully in light of the considerations raised in this article.

### Serving as a Gatekeeper to Minimize Cultural Bias and Achieve Fairness

An important part of combating communication challenges is identifying cultural biases and stereotypes, which might be sources of perceived hostility. Often, these biases and assumptions exist at unconscious levels, but they still affect our everyday verbal and non-verbal communication in the workplace. Interestingly, 91 percent of minority attorneys believe that racial bias exists, whereas 54 percent of non-minority attorneys do not believe that such a problem exists.<sup>9</sup> Behavioral psychologists will attest to the power of cultural stereotypes on the human mind – stereotypes that are fueled and reinforced by long-held

beliefs, messages from the media and selective information in our environments.

Awareness and acknowledgement of others' cultural differences as well as our own assumptions are the critical components in ensuring competence and impartiality while interacting with diverse litigants. Jack Glaser, a professor at the Goldman School of Public Policy, has created several strategies for maximizing objectivity.<sup>10</sup>

- Engage in an intentional thought process
- Use specific communication strategies
- Be conscious of diversity and the differences in people
- Increase accountability
- Allow ample time for judgments
- Confront stereotypes
- Renew the drive to be fair and accurate.

For judges, court officials and the legal community at large, following these steps will collectively contribute to making the experience of foreign-born and diverse litigants in the court equitable. And while becoming aware of and countering the latent biases is not an easy task, the evolving nature of our global community demands that our courtrooms become more primed to cultural cues through education and communication.

My tenure as a judge presiding in the Family Division of the Superior Court of Fulton County has provided me with first-hand experience in adjudicating cases where a battle of culture has been at the forefront, and my perspective as an American judge has been enriched by exposure to and

(Continued on page 44)

# From the Bench

(Continued from page 41)

education about cultures different from my own. Regardless of the cultural background of the parties before me, however, my judicial responsibility remains absolute – to listen to and understand both sides of a case, apply the law and make a fair decision in the end.

Reprinted with permission from the *Georgia Bar Journal*, Volume 15, Number 4, December 2009. Copyright State Bar of Georgia. Statements expressed within this article should not be considered endorsements of products or procedures by the State Bar of Georgia.

## Endnotes

1 Name and country of origin have been changed to protect the litigant's privacy.

2 CANADIAN COMMISSION FOR UNESCO, *A Working Definition of "Culture,"* in CULTURES 78-83 (1977).

3 The Atlanta region includes 10 counties: Cherokee, Cobb, Gwinnett, DeKalb, Fulton, Douglas, Fayette, Clayton, Henry and Rockdale counties. Statistics available at <http://www.atlantaregional.com/html/196.aspx>.

4 *2000 Census: Foreign Born by Place of Birth*, available at <http://www.stlantaregional.com/html/196.aspx>. Other large foreign-born populations include individuals from the United Kingdom, Canada and Germany.

5 Interview with Aparna Bhattacharyya, Director of Raksha, Inc. (Aug. 26, 2009).

6 Roxana Cardenas, "You Don't Have to Hear, Just Interpret!" *How Ethnocentrism in the California Courts Impedes Equal Access to the Courts for Spanish Speakers*, 38 CT. REV. 24-31 (2001).

7 GA. SUP. CT. R. APP. A, Uniform Rule for Interpreter Programs.

8 Jim Galloway, *Muslim Headscarves to be Allowed in Georgia Courtrooms*, ATLANTA J.-CONST., July 24, 2009.

9 Ga. Sup. Ct. Comm'n, *Report on Racial and Ethnic Bias in the Court System* (1995), available at [http://www.ncsconline.org/Projects\\_Initiatives/REFI/GA1REB.htm#Culture](http://www.ncsconline.org/Projects_Initiatives/REFI/GA1REB.htm#Culture).

10 Jack Glaser, *The Social Psychology of Intergroup Bias* (2007), available at [http://calswec.berkeley.edu/CalSWEC/2007\\_FE\\_SocialPsychPrejudice.pdf](http://calswec.berkeley.edu/CalSWEC/2007_FE_SocialPsychPrejudice.pdf).



**Hon. Gail S. Tusan** has served on the Superior Court of Fulton County since her appointment in 1995. Currently she is chair of the Access to Justice and Fairness in the Courts Committee, the Council of Superior Court Judges and the Judicial Section of the Atlanta Bar Association. Tusan also serves as a faculty member of the National Judicial College.



**Sharon Obialo** graduated from Duke University in 2008. Post-graduation she spent four months in Berlin, Germany, studying minority and human rights issues, as a fellow with the Humanity in Action Foundation. She currently serves as a judicial intern in the Fulton County Superior Court and will be attending law school in the fall of 2010.

