J. INDIVIDUAL EMPLOYMENT RIGHTS, Vol. 4(4) 303-317, 1995-96

THE *HASSAN* CASE: AN ANALYSIS OF THE ISSUE OF ACCENT DISCRIMINATION IN AMERICAN HIGHER EDUCATION

DAVID C. WYLD
Southeastern Louisiana University, Hammond

ABSTRACT

This article addresses the often-hidden accent discrimination issue in higher education. The article begins with an examination of the concept of just what an accent is. Next, the scope of Title VII's protection against discrimination due to national origin is analyzed. The rationale for equating accent and national origin discrimination under Title VII's umbrella is laid out. Then, court rulings in cases of alleged accent discrimination both within and outside of higher education are examined. This sets the stage for an analysis of the decision in *Hassan v. Auburn University* (1993), which offers important insights into the scope of administrative prerogative to deal with the language and accent issue in higher education. A concluding discussion of the ramifications of the *Hassan* court's ruling for higher education in a changing era is then offered.

America's colleges and universities enjoy a competitive advantage versus the rest of the world. Around the globe, the quality of American higher education is regarded as unequaled. Higher education institutions in the United States thus stand in a unique position. They have the ability to attract the best and the brightest from countries all over the planet to come to the United States for their academic pursuits—both as students and professors.

What is at the core of America's magnetism to attract the best scholars worldwide? Former Harvard University President Derek Bok answered quite clearly that the answer lay in the common currency of the English language. He wrote:

doi: 10.2190/Q1KB-8WVE-86FA-TTVQ
http://baywood.com

> At present, and in the foreseeable future, English will be the lingua franca of the scientific and scholarly community, and most of the best young scientists and scholars around the globe will speak it. While German universities will be restricted to hiring faculty from the German-speaking world and the Japanese will have to recruit from their own country, our institutions will be able to search for talent everywhere. Because they [America's colleges and universities] still offer a highly attractive setting both for graduate study and for a scholarly career, they have a unique ability to attract talent from all parts of the globe [1, p. 160].

While English may indeed be the "lingua franca" of academia, individuals within academe necessarily enunciate it in their own, unique manner. In fact, everyone speaks with an accent that can be identified by a trained linguist [2]. The accent each of us has then is, in effect, a basic reflection of our individuality. As Mari Matsuda observed:

> Your accent carries the story of who you are—who first held you and talked to you when you were a child, where you have lived, your age, the schools you attended, the languages you know, your ethnicity, whom you admire, your loyalties, your profession, your class position: traces of your life and identity are woven into your pronunciation, your phrasing, your choice of words [3, p. 1329].

Yet, when people commonly think of an accent, the concept is generally thought to refer to speech that is somehow simply "different from some unstated norm of nonaccented speech" [4, p. 1326]. Norman Sklarewitz ruminated on the complexity of the matter of accent in the unique setting of the college classroom, observing: "Students have complained about the accents of some Asian teachers. At the same time, an instructor with a European accent may be considered perfectly acceptable, even prestigious" [5, p. 25]. Thus, the issues for higher education administrators in hiring, retaining, and promoting foreign-born professors and instructors when the accent of the individual is a factor are both quite complex and of paramount importance.

The understandability and clarity of professors' speech—foreign and domestic-born alike—is an issue much talked about and discussed in the hallways of academia by faculty and students. Yet, as evidenced by the lack of published articles on this subject, this is an issue that has largely been "verboten" and considered "off-limits" in scholarly journals regarding higher education.

This article addresses the often-hidden accent discrimination issue in higher education. We begin with an examination of the scope of Title VII of the Civil Rights Act of 1964's protection against discrimination due to national origin—and accent. Specifically, we examine court rulings in cases of alleged accent discrimination. Finally, we look at the recent case of *Hassan v. Auburn University* [6]. It is believed that the *Hassan* case offers important insights into the scope of

administrative prerogative to deal with the language and accent issue in higher education. After reviewing the facts of and decisions in the *Hassan* case, a concluding discussion is presented to examine the ramifications of the *Hassan* court's ruling for higher education in a changing era.

TITLE VII AND "ACCENT" DISCRIMINATION

Title VII of the Civil Rights Act of 1964 prohibited discrimination in employment on the basis of race, color, sex, religion, and national origin [7]. What was meant by a person's national origin was not even defined in the original 1964 law. However, the term was interpreted by the Supreme Court in the 1973 case of *Espinoza v. Farah Manufacturing Co.* to mean the country from which a person or his/her ancestors came [8]. As the United States is a nation comprised almost entirely of persons who are either descendants of immigrants or immigrants themselves, virtually *all* Americans are potentially encompassed within the protection from discrimination based on national origin [9]. Yet, as one legal commentator pointed out, the inherent expansiveness of the *Espinoza* national origin definition failed to account for the "shades of grey" that exist between persons of similar national origin backgrounds [10]. Thus, there was a great need to refine just what was meant by the phrase "national origin" under Title VII.

Language, Accent, and National Origin

Title VII protection has been further extended "beyond the immediate characteristics which identify a particular national origin group" to factors *associated with a person's national origin*, including "religion and religious practices, ethnic stereotypes, membership in associations, and dietary habits" [11, pp. 675-676]. As national origin was itself seen as an expansive concept, the protection afforded individuals under the category of "linguistic characteristics" was wide as well.

The Equal Employment Opportunity Commission (EEOC) clearly proscribed discrimination on the basis of a person's accent [12, p. 455]. National origin discrimination was defined by the EEOC in 1987 to encompass:

> Denial of equal employment opportunity because of an individual's, or his or her ancestor's place of origin; or because an individual has the physical, cultural, or *linguistic* characteristics of a national origin group [emphasis added] [12, p. 455].

A person's language was thus regarded as a proxy for national origin, and as such, afforded protection under Title VII. This was proper, according to the scholarly position that "language is inherently indivisible from national origin" [13, p. 97]. As such, the EEOC's position of equating a person's primary language with his or

her cultural identity clearly was based on such scholarly linkage between language and cultural identity [14].

Mari Matsuda observed that accent discrimination takes place when a person is "in effect, told, 'We don't like the way you speak English' " and an adverse employment action (i.e., termination, demotion, reassignment) is taken on that basis [5, p. 28]. Cases of alleged accent discrimination have, in fact, occurred most frequently in America's colleges and universities.

Yet, accent discrimination cases are unlike any other in the realm of employment discrimination law. The crux of whether or not an individual has been successful in pursuing an accent discrimination claim has generally depend not on his/her own qualifications. Rather, if the employer can prove the individual's accent had (or would have) "a demonstrably detrimental effect on job performance," the organization would have a legitimate, nondiscriminatory reason for taking an employment action against the individual—thereby being absolved legally of the employment discrimination charge [15, p. 98]. This stands in stark contrast to cases of alleged racial, sexual, or even other forms of national origin discrimination, where an adverse employment action based on the prohibited grounds would be considered discriminatory *per se*. In fact, in all types of Title VII discrimination cases *other than alleged accent discrimination*, there need not be any consideration of how the person's trait affects his/her job performance [4].

Prior Court Decisions Regarding Alleged Accent Discrimination

In judging whether or not an employer's actions are discriminatory or justified in a Title VII case, the law is quite clear at its basis [16]: if an employer fires, demotes, or refuses to hire a person simply because of a prohibited basis—in this case being his or her national origin—this is unquestionably, on its face, an illegal act of discrimination [17]. The burden is thus shifted to the employer to prove it had a legitimate, nondiscriminatory reason for taking the action in spite of it being facially discriminatory [18].

In the case of accent discrimination, the employer would be asserting that the individual's accent was so severe as to impede his/her ability to successfully perform the job. The onus is on the organization to prove that the intelligibility of a person's speech would be a "business necessity." The so-called "business necessity" test was established in 1971 by the Supreme Court in *Griggs v. Duke Power Co.* [19]. It requires an employer to demonstrate a very good rationale for a facially neutral rule, policy, or practice that, in practice, causes a disparate impact in that it serves to discriminate against a protected class of employees [20]. The business necessity must be in place either because it is essential to effective job performance or because it serves to promote the safety of the employee and others on the job [21]. According to the Supreme Court in *Dothard v. Rawlinson*,

a business necessity must be so integral to the goals of the employer that without the practice, the "essence of the business" would be undermined [22]. Thus, the hurdle established by the Supreme Court for an employer to justify a clarity of speech requirement and thus successfully employ a business necessity defense is an extremely high one.

The focal points in all accent discrimination cases are then the clarity of the employee or applicant's speech and the nature of his/her position [23]. The almost universal defense employed by organizations against charges of alleged accent discrimination is that the accent of the individual made them almost "incomprehensible" and thus greatly affected their job performance [3, p. 1329]. As will be shown, courts have generally followed this business necessity defense algorithm in deciding cases of alleged accent discrimination, both in wider applications and in university settings in particular.

Prior Accent Discrimination Rulings

There have been a number of accent discrimination cases that have occurred outside the higher education setting. What is evident from the legal record is that courts have based their decisions on whether or not the individual's accent did indeed impede the person's ability to perform the job in question.

In several cases, federal courts have found that employers violated Title VII in employment actions ostensibly based on employees' accents. In both *Berke v. Ohio Dept. of Public Welfare* [24] and *Loiseau v. Dept. of Human Resources* [25], two welfare workers were found to have been illegally denied promotions. In these very similar cases, agency administrators failed to promote the two women due to fears that their heavy accents (Berke, Polish; Loiseau, West Indian) would prohibit them from succeeding in higher level positions. This was in spite of the fact that both women had received good performance evaluations in their prior positions. A school board was found to have committed national origin discrimination when it terminated a school librarian in the case of *Mandhare v. LaFargue* [26]. Ms. Mandhare had a pronounced Indian accent that impaired her ability to communicate with the students at the elementary school where she was employed. However, the court determined the school district had acted prejudiciously in not renewing her contract. This was due to the fact that the job description for her particular position in the school library did not require her to perform tasks in which excellent oral communication skills would be required (i.e., story-telling, library instruction and tours, etc.) [26]. Likewise, in a university case involving a noninstructional employee, the court found the University of Oklahoma had violated Title VII by demoting and later terminating a Filipino-American dental technician [27]. The court found administrators in the university's College of Dentistry had acted against the plaintiff (Carino) in large part due to both his national origin and his "noticeable accent." This was in spite of the fact that in his lab position, Carino's oral communication skills were not

instrumental to effective job performance due to the technical nature of his work [27].

There are cases outside the realm of education where the "level" of an employee's accent and the nature of the position in question combined to allow the business necessity defense of the employer to succeed.

In the case of *Duong Nhat Tran v. City of Houston*, the plaintiff, Mr. Tran, was a Vietnamese immigrant who was employed by the City of Houston and applied for an energy conservation inspector position. He was not chosen for the promotion, even though the city conceded he possessed the necessary education and experience for the inspector position [28]. The city justified its decision based on the fact that inspectors were required to be in constant contact with building contractors and building managers to develop written energy conservation plans. As such, the job description for the position required the applicant to possess "the ability to communicate effectively, both orally and in writing" [28, at 471]. During the Vietnam War, Mr. Tran had served as an interpreter for U.S. forces. This was his only "formal" English training. The *Tran* court found that his wartime experience "misled him (Tran) to believe that his English is better than it is in reality" [28, at 472]. In the end, the *Tran* court judged Tran's rejection was "not because he was Vietnamese but because his English was inadequate for the job requirements" [28, at 472].

In like fashion, the case of *Fragante v. City and County of Honolulu* was decided in favor of the employer [29]. A Filipino immigrant, Manual Fragante, was an applicant for a clerk position in the City of Honolulu's motor vehicle registration office. The particular job Fragante applied for required extensive public contact, dealing with up to three hundred clients a day. Administrators of the motor vehicle office felt Fragante's oral communication skills were inadequate for the job due to his strong Filipino accent, which was so severe as to make him difficult to understand in person and especially so in telephone conversations [29]. In upholding the initial decision in favor of the employing agency, the Ninth Circuit Court of Appeals set forth a standard test for the application of the business necessity test in cases of accent discrimination. The judges wrote:

> An adverse employment decision may be predicated upon an individual's accent when—but only when—it interferes materially with job performance. There is nothing improper about an employer making an *honest* assessment of the oral communication skills of a candidate for a job when such skills are reasonably related to job performance (emphasis in the original) [29, at 596-597].

Prior to the *Hassan* case, there were at least three cases in which instructional personnel had alleged accent-based discrimination in higher education. In each case, (*Gideon v. Riverside Community College* [30], *Kureshy v. City University of New York* [31], and *Hou v. Commonwealth of Pennsylvania* [32]), the court ruled

in favor of the institution. All three cases involved cases where the severity of the instructor's accent appeared to affect their classroom effectiveness. In the *Gideon* case, in which the plaintiff felt her denial of full-time employment as a nursing instructor was due to her Indian origin, the court found "English language communication skills to be an important factor in considering an applicant's potential efficacy as an instructor" [30, at 910]. The *Kureshy* case involved an Indian who was employed as an associate professor of geology at Staten Island Community College. After reviewing his record (which included student petitions of protest due to the difficulty they experienced understanding him), the court found Kureshy was "at best a competent teacher and a prolific writer" [31, at 1265]. The *Hou* court provided an important perspective on the linkage between accent and teaching ability. In finding for the defendant, Slippery Rock State University, the court observed:

> The issue of accent in a foreign-born person of another race is a concededly delicate subject when it becomes part of peer or student evaluations, since many people are prejudiced against those with accents. In the present case, however, we find that comments about Dr. Hou's accent, when made, were directed toward the legitimate issue of his teaching effectiveness. Teaching effectiveness . . . is an elusive concept. . . . Teaching effectiveness does, however, include the ability to communicate the content of a discipline, a quality which should be carefully evaluated at any college or university [32, at 519].

HASSAN v. AUBURN UNIVERSITY

The Facts

Dr. Hassan, an Egyptian national, had been hired by the Auburn University School of Business as a visiting professor during the 1990-91 academic year. Hassan taught in the operations management (OM) area of the department of management [6].

During that same academic year, Auburn was conducting a search for a new, permanent faculty position. While the position was to be an addition to the OM faculty, it was clear the management department had a strategic goal in mind with this hire. The department head, Dr. Charles A. Snyder, testified the department wished to establish a move toward management of technology (MOT). Considered a subdiscipline of OM, MOT is concerned with "the entire life cycle of a product or service, including design, from concept through prototype, engineering, research and development, production, final finished goods delivery, and marketing to the consumer" [6, at 1383].

The search process followed a common course. At the outset, the department of management hoped to hire a "senior" applicant (a person who was likely already a full professor at another university) as opposed to a "junior" candidate (a person

who was currently an assistant or associate professor or an instructor). The desire for a senior candidate was spurred by Auburns' desire to find an individual who could provide "leadership" to the existing OM faculty. In December 1990, the OM search committee extended offers to two senior applicants (both of whom had MOT expertise). Subsequently, both refused Auburn's offers. After their leading candidates' refusal, Auburn's department of management turned its focus to the junior applicants for the position [6, at 1383].

The OM search committee had selected four applicants for final review, all of whom had experience in the MOT area. At this point in early March 1991, Professor Hassan has not yet applied for the position. However, on March 6, the OM faculty head and search committee chair, Dr. Amitava Mitra, recommended to Dr. Snyder, the department head, that Hassan be allowed to apply for the position, even though he lacked the required MOT experience. Hassan was permitted to do so, turning in his application on March 8, 1991, which was the same day the search committee was scheduled to meet to decide which three junior candidates to invite for campus interviews. Hassan and two of the four outside junior applicants were scheduled for interviews over the next ten days [6, at 1383].

On March 18, 1991, the entire faculty of Auburn's School of Business gathered to vote on the three finalists for the OM position. The discussion of the business faculty that day revealed an important philosophical difference existed between key members of the faculty. Dr. Mitra, who had spearheaded the search committee's consideration of Hassan for the position, voiced his disagreement with Dr. Snyder over what the exact nature of the position should be. Dr. Mitra felt the move to the MOT area was less of a necessity than simply finding someone to teach the core courses in the OM curriculum. If the focus of the position were on OM basics, Hassan was, in Mitra's opinion, "clearly the most qualified person to fill the position" [6, at 1384]. Despite Dr. Mitra's argument for Hassan, the faculty's preference was for Vic Uzumeri, who was a Canadian national of Turkish descent. The plaintiff, Hassan, finished second, well ahead of the other outside finalist, William Bacon, who was an American citizen [6, at 1384].

What was the rationale for the business faculty's preference for Dr. Uzumeri over Dr. Hassan? Uzumeri unquestionably possessed the necessary expertise in MOT, where Hassan had none. Uzumeri had published articles and written his dissertation in this specialized area. Uzumeri also expressed an interest in working with the Walters Center for the Management of Technology at Auburn, which was specifically established "to provide training and conduct research in the MOT area" [6, at 1384]. Conversely, during his year as a visiting professor, Hassan testified he "was not even aware of the function or purpose . . . and never worked with the Walters Center" during the 1990-91 academic year he spent at Auburn [6, at 1384]. Although he had published fewer articles and had fewer years of teaching experience than Hassan, Uzumeri was judged as having had more industrial work experience than Hassan [6, at 1384].

The issue of Hassan's oral communication skills and his pronounced accent came up in the faculty's discussion of his teaching abilities. One of the faculty members stated: "I understand the students don't understand him (Hassan)" [6, at 1384]. Dr. Mitra, who had stated that Hassan was the best qualified person for the position, conceded "there was some faculty concern about the plaintiff's (Hassan's) ability to communicate" [6, at 1384]. The objective evidence tended to support the faculty's and students' concerns over the intelligibility of Professor Hassan's speech in the classroom. Even though as a visiting professor he was required to conduct student evaluations in all of his courses, Hassan did so in only three of his eight classes. In the class sections where he gave the students the opportunity to evaluate him, Hassan was rated below the departmental average. Hassan scored particularly unsatisfactory on the question that asked students to rate the instructor's "ability to speak audibly and clearly." On a scale of one (poor) to five (excellent), Hassan was rated 2.4, 2.9, and 2.1 in the three classes in which he did perform the student evaluations [6, at 1384].

What weight did the teaching ability/accent issue play in the faculty's final vote? It is impossible to know exactly. However, the testimony of faculty members showed they "didn't spend a lot of time on it" during the March 18th meeting [6, at 1384]. Based on the faculty vote, Uzumeri—not Hassan—was extended an offer of employment, which he accepted. Hassan was instead offered a conditional position for the 1991-92 academic year, provided the second full-time faculty position would be fully funded by the university. As it turned out, the funding was not secured, and thus, Hassan's employment with Auburn University ended at the conclusion of the 1990-91 academic year [6, at 1384]. Hassan met with Dr. Snyder to inquire as to exactly why the offer for the funded position went to Uzumeri rather than himself. Dr. Snyder maintained the results of the faculty vote and the discussion that preceded it were confidential. However, Dr. Snyder did reveal to Hassan that he personally felt Hassan's "accent and student evaluations led some faculty members to be concerned about his ability to communicate to students" [6, at 1385].

The Decision

Dr. Hassan had difficulty establishing a *prima facie* case of employment discrimination against Auburn University. To prove a case of Title VII discrimination, it is necessary for a plaintiff to prove four points:

> (1) that he or she is a member of a protected class; (2) that he or she applied for and was qualified for a job which the employer was seeking applicants; (3) that despite his or her qualifications, he or she was rejected; and (4) that after this rejection, the position remained open or was filled by a person not within the protected class [33].

The court had little difficulty with the first three elements. Hassan, as an Egyptian national, was in a protected class due to his national origin, and indeed, he was a bona fide applicant for the position. Auburn maintained that Hassan was not qualified for the position eventually taken by Uzumeri, due to Hassan's lack of MOT qualifications. The court found the fact that Hassan was invited to apply and was eventually offered a funding-contingent position to be evidence he was indeed qualified for the position [6].

However, the final building block of a *prima facie* case—that the position either went unfilled or was filled by someone not considered in a protected class—was problematic to the *Hassan* court. Uzumeri, also a foreign national, was offered and accepted the position in question. Did this preclude Hassan from pursuing his discrimination claim? The *Hassan* court observed:

> Arguably, an employer could display a discriminatory bias against certain groups of foreign nationals while holding no such bias against other groups of foreign nationals. The mere fact that the successful applicant is within the protected group of foreign nationals, therefore, does not preclude plaintiff (Hassan) from establishing his *prima facie* case, although plaintiff concedes that the fact that the job went to a foreign national is 'strong evidence' of an absence of discriminatory intent [6, at 1385].

With Hassan having proven his *prima facie* case of national origin discrimination, it was up to the defendant, Auburn University, to prove it acted based on a "business necessity"—that it had a legitimate, nondiscriminatory reason for not selecting him for the position.

Auburn expressed two reasons for its selection of Uzumeri over Hassan. The first centered around the credentials each possessed. The university had specifically set out to hire a faculty member who could bring knowledge of the MOT specialty field to the business school. In fact, Hassan disagreed with Auburn's definition of MOT, believing he indeed was qualified for the position to teach and perform research in the MOT field. However, the *Hassan* court found Auburn was within its legal rights to establish and define the qualifications as the institution saw it. The *Hassan* court wrote:

> Even if the faculty were wrong in its preference for MOT qualifications and wrong in its interpretation of proper MOT qualifications, there is absolutely no evidence that the alleged mistakes were prompted by a discriminatory motive [6, at 1387].

It decided this based on the legal precedent recently established in *Brown v. American Honda Motor Co.* [34]. The court in *Brown* ruled an employment decision can be made based on "a good reason, a bad reason, a reason based on

erroneous facts, or for no reason at all, so long as it is not a discriminatory reason" [34, at 951].

The second rationale behind Auburn's stated preference of Uzumeri over Hassan was indeed the accent issue. Both Hassan and Auburn saw the earlier *Fragante* decision as supporting their case. The plaintiff, Hassan, conjectured that the rationale employed by the *Fragante* court would allow consideration of an employee or applicant's accent "*only* if the accent is so heavy as to make a candidate completely unqualified for the position"—a position the *Hassan* court found "completely baseless" [6, at 1386]. Rather, the court concurred with the defendant's (Auburn's) perspective on the *Fragante* precedent. In agreement with *Gideon*, the court found it was entirely reasonable for a higher education institution to consider an applicant's ability to convey information in the classroom as an integral function of the instructional role. Thus, the *Hassan* court determined that an applicant whose communication skills are diminished by an accent can have his conversant abilities judged as a legitimate, nondiscriminatory factor in the employment decision-making process [6].

Based on both of these legitimate, nondiscriminatory reasons, the court found Auburn University was completely within its legal rights to hire Uzumeri over Hassan. As such, Hassan's claim of national origin discrimination based on his accent was dismissed [6].

In the concluding section of the article, we examine the implications of the decision in *Hassan v. Auburn University* for higher education.

DISCUSSION

Taylor Cox stated that the central managerial challenge in leading any multicultural organization is to maximize the significant benefits of diversity while minimizing the potential negative consequences that can occur during the transformation of the organization [35]. Universities are not alone in facing the paradox that enrichment from cultural differences also poses difficulties based on uncommon languages. Indeed, because of the clash of cultures inherent in a multicultural organization, Cox noted that the most profound challenges for managers and administrators in *all* organizations striving for diversity center around communication difficulties [35].

The converging trends of the globalization of the economy and the internationalization of the instructional ranks of America's colleges and universities have the potential to produce both great rewards and great risks. College administrators should view cases such as *Hassan v. Auburn University* and other academic accent-discrimination cases both as precursors of the challenges that lie ahead in administering the multicultural university of the twenty-first century, as well as an artifact and holdover from decades past.

In the near term, reinforced by the *Hassan* ruling, universities will likely continue to experience unique treatment under employment discrimination law.

The *Hou* court noted there had been a "general lack of success of women and minorities in Title VII actions against academic institutions" [32, at 519]. It attributed the plaintiffs' futility to the following rationale:

> The trend in many courts has been to exercise minimal scrutiny of college and university employment practices, due, in large part, to the subjective factors on which many academic employment decisions are based . . . Concomitant to this trend, we note the danger that judicial abnegation may nullify the congressional policy articulated in the 1972 amendments which included academic institutions within the reach of Title VII. Such cases require courts to achieve a delicate balance between proper rigorous scrutiny of an improper intervention into academic administration [32, at 519].

While being granted deference that may or may not be warranted under the law, university administrators must, in the long term, address a fundamental question. This centers on whether the quality of higher education a student receives and the ability of foreign-born professors to acculturate and succeed in the university are mutually exclusive goals. Mullin cautioned that court rulings allowing universities to hire "the best" professors could in fact serve as open invitations for rampant national origin discrimination—due to the fact that "best is a relative term" [23, p. 589]. As an alternative, Beatrice Nguyen urged universities to follow the lead of the University of California (UC) at Berkeley, which has sought to quantify the assessment of an instructor's English language abilities. This institution has adopted the Test of Spoken English (developed and administered by the Educational Testing Service) as a requirement for all incoming graduate teaching assistants [4]. As of September 1994, seventeen of the fifty states have instituted mandates that their public colleges and universities certify (whether through objective or subjective means) that their teaching assistants have the necessary English language skills for classroom instruction [36]. It is noteworthy, however, that even UC-Berkeley has not instituted this objective testing requirement on regular faculty or applicants for faculty positions [4].

Yet, adding such a requirement may indeed help institutions eliminate subjectivity in the hiring and promotion of foreign-born professors. Nguyen, in fact, surmised that some of the prior cases of accent discrimination in higher education might have been decided differently if such an objective test had been in place [4]. Certainly, a by-product of using such objective tests of oral intelligibility would be to help alleviate student and parental concerns over the clarity (not necessarily quality) of college classroom instruction.

Universities must also be concerned about the unintended effects court rulings against foreign-born professors, combined with steps universities might take toward hiring and promotion objectivity, may have far beyond our borders. It would be counterproductive for the university's mission and the national interest

if the net effect of all this is to discourage the "best and the brightest" of foreign nations initially to come to study in the United States and secondly, to stay and pursue a career in higher education.

What next? To date, all of the cases involving allegations of national origin discrimination based on language skills in higher education have centered around the *oral* communication skills of professors or instructors. However, there is precedent that the issue of the language skills of foreign-born professors may extend beyond the classroom. In the 1989 case of *Shieh v. Lyng*, a Chinese-American research chemist was demoted by the U.S. Department of Agriculture [37]. The court found his demotion not to be discriminatory. This was due to the fact that Mr. Shieh's *written* English language skills were so poor as to hinder him from being able to write readable manuscripts and to publish the results of his research work [37].

It is conceivable the *Shieh* standard could be applied to professors in higher education. Certainly, a paucity of published works by a professor leads to a lack of tenure attainment in most colleges and universities. As such, the *Shieh* decision would seem to close the door on the ability of professors to allege national origin discrimination in cases where they were denied employment, tenure, or promotion due to a lack of publications.

In the end, because America is becoming an increasingly multicultural society, the very notion of an "accent" may be changing. As the ethnic makeup of society is evolving, the "norm" of speech in an "American accent" may be fading away. Our abilities to comprehend English spoken by speakers with various native tongues and our tolerance levels may indeed grow over time. Thus, while more accents will inevitably be heard, the issue of accent discrimination may be one that will fade over time.

* * *

David C. Wyld is an Assistant Professor of Management at Southeastern Louisiana University in Hammond, Louisiana. He has been very active in research on many contemporary social, legal, and ethical issues facing management. He has authored over forty articles which have been published in peer-reviewed journals. He has also presented over sixty papers at professional conferences, garnering two best paper awards for these efforts.

ENDNOTES

1. D. Bok, *The Cost of Talent: How Executives and Professionals Are Paid and How It Affects America*, The Free Press, New York, 1993.
2. W. Bright, Language and Culture, in *International Encyclopedia of the Social Sciences*, D. L. Sills (ed.), The Macmillan Company & The Free Press, New York, 1968.

3. M. J. Matsuda, Voices of America: Accent, Anti-Discrimination Law, and a Jurisprudence for the Last Reconstruction, *Yale Law Journal, 100*, pp. 1329-1407, 1991.
4. B. Bich-Dao Nguyen, Accent Discrimination and the Test of Spoken English: A Call for an Objective Assessment of the Comprehensibility of Nonnative Speakers, *California Law Review, 81*, pp. 1325-1361, 1993.
5. N. Sklarewitz, American Firms Lash Out at Foreign Tongues, *Business & Society Review, 83*, pp. 24-28, 1992.
6. *Hassan v. Auburn University*, 64 FEP Cases 1381 (M.D. Ala. 1993).
7. 42 U.S.C. 2000.
8. *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973).
9. J. Cherian, National Origin Discrimination Affecting Civilian Employees Overseas, *Labor Law Journal, 39*:7, pp. 387-393, 1990.
10. S. M. Cutler, A Trait-Based Approach to National Origin Claims Under Title VII, *Yale Law Journal, 94*, pp. 1164-1181, 1985.
11. J. W. Aniol, Language Discrimination Under Title VII: The Silent Right of National Origin Discrimination, *The John Marshall Law Review, 15*, pp. 667-691, 1982.
12. Equal Employment Opportunity Commission (1987). *EEOC Enforcement Guidelines on National Origin Discrimination. Commerce Clearing House (CCH) Employment Practices Guide*, Washington, D.C.
13. L. J. Ramos, English First Legislation: Potential National Origin Discrimination, *Chicano Law Review, 11*, pp. 77-99, 1991.
14. A. M. Ugalde, No Se Habla Espanol: English-Only Rules in the Workplace, *University of Miami Law Review, 44*, pp. 1209-1241, 1990.
15. E. Matusewitch, Labor Relations: Language Rules Can Violate Title VII, *Personnel Journal, 69*:10, pp. 98-102, 1990.
16. J. Elane, Employment Discrimination—Business Necessity and BFOQ Exceptions Extended to Unmarried, Pregnant Youth Service Workers Serving as Role Models, *Chambers v. Omaha Girls Club, Inc.*, 834 F.2d 697 (8th Cir. 1987). *UALR Law Journal, 11*, pp. 417-434, 1989.
17. R. B. Siegel, Employment Equality Under the Pregnancy Discrimination Act of 1978, *The Yale Law Journal, 94*, pp. 929-956, 1985.
18. E. M. Clarke, Pregnancy in the Workplace: Special versus Equal Treatment, *Annual Survey of American Law*, pp. 705-735, 1988.
19. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).
20. A. Cava, Pregnancy and the 'Role Model Rule', *Business & Economic Review, 36*:4, pp. 24-26, 1990.
21. *Hawkins v. Anheuser-Busch, Inc.* 697 F.2d 810 (8th Cir. 1983).
22. *Dothard v. Rawlinson*, 433 U.S. 321 (1977).
23. M. E. Mullin, Title VII: Help or Hindrance to the Accent Plaintiff, *Western State University Law Review, 19*, pp. 561-590, 1992.
24. *Berke v. Ohio Dept. of Public Welfare*, 30 FEP Cases 387 (S.D. Ohio 1978), 30 FEP Cases 395 (S.D. Ohio 1978), *affirmed*, 628 F.2d 980 (6th Cir. 1980).
25. *Loiseau v. Dept. of Human Resources*, 39 FEP Cases 289 (D.C. Oreg. 1983).
26. *Mandhare v. LaFarque*, 37 FEP Cases 1611 (E.D. La. 1985).
27. *Carino v. University of Oklahoma*, 25 FEP Cases 1332 (W.D. Okla. 1982), *affirmed*, 36 FEP Cases 826 (10th Cir. 1984).

28. *Duong Nhat Tran v. City of Houston*, 35 FEP Cases 471 (S.D. Tex. 1983).
29. *Fragante v. City and County of Honolulu*, 888 F.2d 591 (9th Cir. 1989), *cert denied*, 494 U.S. 1081 (1990).
30. *Gideon v. Riverside Community College*, 43 FEP Cases 910 (C.D. Cal 1985), *affirmed*, 800 F.2d. 1145 (9th Cir. 1986).
31. *Kureshy v. City University of New York*, 31 FEP Cases 1264 (E.D.N.Y. 1983).
32. *Hou v. Commonwealth of Pennsylvania*, 33 FEP Cases 513 (W.D. Pa 1983).
33. *Welborn v. Reynolds Metals*, 810 F.2d 1026, 1028 (11th Cir. 1987); and *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973).
34. *Brown v. American Honda Motor Co*, 939 F.2d 946, 951 (11th Cir. 1991), *cert. denied*, 112 S.Ct. 935 (1992).
35. T. Cox, Jr. (1991). "The Multicultural Organization." *Academy of Management Executive*, 5(2):34-47.
36. "9 Issues Affecting Higher Education: A Roll Call of the States" (1994). *The Chronicle of Higher Education*. 40(1)(September 1, 1994): 12.
37. *Shieh v. Lyng*, 50 FEP Cases 1353 (E.D. Pa. 1989).

Direct reprint requests to:

David C. Wyld
Assistant Professor of Management
Southeastern Louisiana University
Department of Management
Box 350
Hammond, LA 70402-0350