

Don't Waive or it's Bye Bye

By: Monte E. Hester; Oct 2003

The appearance of a potential language difficulty requires the court to make a record of the defendant's level of English proficiency.

In US v. Si, No. 01-10112 (9th Cir. Jan. 23, 2003), the trial court didn't make a record regarding the defendant's English proficiency or lack thereof. The Ninth Circuit referring to US v. Carrier, 488 F.2d 12, 15 (1st Cir. 1973); 28 USC §1827 (d)(1) indicated that to determine whether a defendant needs an interpreter, a court must consider the complexity of the legal issues, the nature of the trial testimony and defense counsel's language abilities.

In the Si case, there was also an issue of whether the defendant waived his right to an interpreter by failing to use the services of an interpreter that was present in court for his use. The court stated that it will not violate a defendant's right to an interpreter, however if he waived his right to interpreting assistance by not using an available translator, then the district court did not violate Si's statutory or constitutional rights to an interpreter.

The case was referred back to the trial court to take evidence on the issue of waiver.