

International Court of Justice

Avena and Other Mexican Nationals (Mexico v. United States of America)

DECLARATION OF ROSEANN DUEÑAS GONZÁLEZ, PH.D.

I, Roseann Dueñas González, solemnly declare upon my honour and conscience that the following declaration is the truth, and that this declaration is in accordance with my sincere belief:

Academic Credentials and Expertise

1. My name is Dr. Roseann Dueñas González, and I hold a Ph.D. in Linguistics with a Masters Degree in English as a Second Language from the University of Arizona. I have been a professor at the University of Arizona for nearly 30 years. I am currently a Full Professor of English and Director of the National Center for Interpretation Testing, Research and Policy at the University of Arizona (NCITRP). NCITRP is a Center whose mission it is to help private and public agencies create efficient and effective language policies and provide competent language and interpreting services. From 1979 to 2000, I was the primary consultant to the Administrative Office of the United States Courts (AOUSC), District Court Administration Division, on the subject of interpreter testing and interpreter policies and practices. From 1985 to 2000, I was also the Director of the Federal Court Interpreter Certification Project (FCICP) sponsored by the AOUSC. Under the auspices of NCITRP, this project was responsible for certifying all federal court interpreters pursuant to 28 U.S.C. § 1827. As Director, I had the responsibility for designing and implementing the statutory interpreter competency requirements for Public Law 95-539, the federal Court Interpreter's Act of 1978. The FCICP tested interpreters and recommended that the AOUSC certify them for work in all federal courts after passing a rigorous battery of written and oral criterion-referenced performance examinations.

2. My expertise in testing English and testing Spanish is recognized at the national level. As primary consultant to the Administrative Office of the United States Courts from 1979 to 1985, and then Director of the Federal Court Interpreter Certification Project (under contract to the AOUSC) from 1985 to 2000, I oversaw the administration of over 13,000 tests to candidates nationwide, including Hawaii and Puerto Rico, to assess language and interpretation ability to meet the standards required for interpreting in federal court established by an expert panel and a panel of bilingual federal judges, on the basis of their experience and expert knowledge, as well as from my research and the research of other scholars. My dissertation, which contained a linguistic study of courtroom English, became the empirical basis for the Federal Court Interpreter Examination and set the performance standards by which interpreters would be assessed. The title of this study is "The Design and Validation of an Evaluative Procedure to

Diagnose the English Aural-Oral Competency of a Spanish-Speaking Person in the Justice System” (1977). During the 21-year period for which I was responsible for federal court certification either as a consultant to the Administrative Office of the United States Courts or under contract to that office, I was responsible for the articulation and application of the performance standards and criteria used to assess acceptable interpreting ability for Spanish-English, Haitian-Creole-English and Navajo-English interpreters for use in federal courts.

3. I have also been called upon numerous times to evaluate the English proficiency of defendants and their ability to understand Miranda warnings and linguistic competency to answer questions during police interviews. I have testified and written expert reports on this subject for several courts and have been qualified as an expert in this area by these courts. My dissertation (mentioned above) was the beginning of my work in this area.

4. In my capacity as Director of the FCICP from 1985 to 2000, I was called upon to serve on the Federal Court Interpreter Advisory Board from 1986 through 1988 and again in 1991 through 1993. Because of my long association and responsibilities implementing the Court Interpreter’s Act, I was asked to testify in relation to proposed amendments to that Act before the United States Senate. My testimony addressed the competency requirements for interpreters and the need for additional language certification to assure due process for limited and non-English speakers.

5. I am director of the University of Arizona Agnese Haury Institute for Interpretation, where we have trained over 1,000 interpreters over the past 20 years. It is considered the most reputable intensive interpreter educational program in the United States. In this institute, we emphasize the importance of learning regional varieties of Spanish because of the significant communication problems that can ensue when an interpreter does not understand the regional variety of a client. This is a serious problem that professional interpreters can overcome through study.

6. I have written numerous scholarly papers, reports, and books regarding the theory and practice of interpretation of foreign languages, and the need for such services in all areas of public life, so that limited and non-English speakers have the opportunity to understand and to be understood, so that, in turn, they have a fair opportunity in all major societal institutions, such as in the judicial/law enforcement system, education, social services, and medical and emergency services. There is no venue where accommodating the linguistic needs of limited and non-English speakers is more important than in the legal system, including pre-trial custodial detentions and interrogations.

7. Another major area of academic expertise is in court interpreter ethics, policy, and protocol. I am the lead author of *Fundamentals of Court Interpretation: Theory, Policy and Practice*, published in 1991 by the legal publisher, Carolina Academic Press in Durham, North Carolina. This volume is regarded as the definitive work in the field of court interpretation and language policy in judicial settings. One topic in this treatise covers the legal requirements pursuant to the federal interpreting statute – Public Law 95-539, the Court Interpreter’s Act (hereinafter “the Act”). Because of my recognized linguistic expertise in the area of interpreter theory, testing, policy and practice, I have been called upon many times to serve in the capacity

of expert witness to answer questions of policy regarding when interpretation for limited and non-English speakers is required as well as to evaluate and report to courts on the competency of defendants to be Mirandized in English or to be interrogated in English.

Introduction

8. The Government of Mexico has asked me to render an opinion regarding the problems faced by detained Mexican nationals who have limited or non-existent English language skills. Based on my academic research, training, and professional experience, I believe there are two principal impediments faced by these individuals in the criminal justice system in the United States. First, law enforcement officers often fail to provide neutral and qualified interpreters to Mexican nationals during police interrogations. Under such circumstances, limited or non-English speakers cannot communicate effectively and do not fully comprehend their legal rights, increasing the risk that they will falsely confess to a crime that they did not commit. Second, Mexican nationals' ability to understand their legal rights and the complex rules that govern the United States' criminal justice system is greatly impeded by their cultural beliefs. Each of these points is discussed at length below.

Linguistic Characteristics of Mexican Nationals

9. Because many Mexican nationals immigrate to the United States in their adult years, they often remain "Spanish dominant" for many years and may never become fluent in English (Hart-González & Feingold, 1990; Solé, 1990). Often Mexican nationals develop a type of extremely limited English that is largely based on "memorized proficiency." That is, they learn certain words and phrases required for their jobs in order to interact with their employers. From a sociolinguistic perspective, because the vast majority of Mexican nationals hold non-language dependent, manual labor jobs, their English language proficiency is slow to develop. Mexican nationals usually find employment in labor where there are other Mexican nationals or Spanish-speakers. Because of their employment and poor socioeconomic status, Mexican nationals are socially isolated. Therefore, their contact with mainstream English-speaking society and culture is extremely limited.

10. Based on the personal sociolinguistic interviews and proficiency testing I have conducted in the past several years, I have found that Mexican nationals affiliate with other Mexican nationals or Spanish speakers. Very often, because of the long hours that they work, they do not have time to attend adult English classes, or there are no services in the rural areas in which they find employment. Their sociolinguistic profile is predictive of their limited English speaking and comprehension skills. Their entire circle of family and friends are usually Spanish-speaking as well. Because of their lack of fluency in English, they watch Spanish language

television, instead of mainstream English programming. I have also found that most Mexican nationals have no English literacy; therefore, they cannot read English. They also do not usually read Mexican or other Spanish language publications.

Failure to Provide Neutral, Qualified Interpreters During Interrogations

11. The Court Interpreters Act (1978) mandates that all limited and non-English speakers be provided an interpreter for all stages in the judicial process. While this statute guarantees a qualified (very often federally certified) interpreter for court hearings, the law does not mandate that qualified, neutral interpreters be provided during the pre-trial phase of a criminal investigation: namely, during the arrest, detention, and custodial interrogation of a suspect. It is during this pretrial phase of a criminal trial, when interpreters are often not provided to limited and non-English speakers, that Mexican nationals are most vulnerable.

12. This vulnerability stems from several factors. First, in several cases in which I have been an expert witness, Mexican nationals have been interrogated in English even though they did not possess the English skills to either understand questions or answer them. In these cases, interrogating officers either purposefully or unintentionally ignored the linguistic needs of the Spanish-speaking detainees. When I reviewed the transcripts and tape recordings of the custodial interviews, there were obvious signs that the detainee could not speak fluent English, but the agent nonetheless interrogated him in English.

13. For example, in a capital murder case involving a Mexican national in San Diego, the defendant could not spell his name in English without faltering, repeatedly switched into Spanish, stated his address in Spanish, and had tremendously accented pronunciation and halting speech. All of these were indications that the defendant required linguistic assistance and accommodation. Instead, the interrogating officer continued with three interrogations in English. No linguistic assistance (namely an interpreter or a Spanish-speaking agent) was offered or provided, and the defendant was never informed of his rights to seek the assistance of Mexican consular officials. In that case, I concluded that the reading of the "Miranda" rights, described more fully below, was an empty exercise for the defendant, who could not process them linguistically and cognitively. I have repeatedly observed this pattern in cases involving Mexican nationals as well as other foreign born Latinos.

14. The non-English speaker's ability to communicate with law enforcement officers is further impaired by the complex language used by interrogators in their questioning. The language of custodial interrogation is characterized by excessive length, excessively complex questions with multiple embeddings, and frequent leading questions, as well as extremely idiomatic or technical language that is far beyond the vocabulary range of limited English speakers. All of these characteristics make the language of interrogation highly difficult for these limited English speakers to understand.

15. In the courtroom, lawyers are bound by judicial convention that disallows compound questions, leading questions or long statements inserted in the middle of a question or preceding a question. These restrictions do not apply to the police during interrogations. In my study of courtroom language in 1976, I found that the level of complexity of courtroom language required a 14th grade level of understanding in English (González, 1977; González, Vásquez & Mikkelsen, 1991). This has been corroborated by Berk-Seligson (1990) and O'Barr (1981), among others. Therefore, Mexican nationals as well as other limited and non-English speakers are expected to respond to exceedingly complex language in custodial interrogations that surpasses the difficulty of courtroom language, which has been found to be one of the most difficult and inaccessible language registers (speech styles) in English.

16. Another problem that Mexican nationals confront during their pre-trial detention and custodial interrogation is the provision of unqualified interpreters – often police officers. I have assessed the language proficiency of many allegedly Spanish-speaking law enforcement agents, and have found them to have extremely limited Spanish skills. These officers, whether American or American-born Hispanics, often have such limited proficiency in Spanish that they cannot advise a defendant of his legal rights in comprehensible Spanish. Generally, their grammatical control of Spanish is lacking and their vocabulary so limited that they resort to giving their version of Spanish pronunciation to an English word, expecting that the defendant will understand them. I have heard versions of the Miranda warnings that are comical because they are so distant from Spanish. In another capital murder case in San Diego involving a Central American, the police officer said: “Would you succumb to my irrigation?”, instead of, “Will you answer my questions now.”

17. Another serious problem for Mexican nationals is the provision of unqualified police personnel or unqualified interpreters, whose poor speaking skills are exacerbated by their use of a different regional variety of Spanish. Cuban Spanish, for example, belongs to the larger Caribbean variety of Spanish which has much more in common with the Spanish variety spoken in Puerto Rico and the Dominican Republic. However, Cuban Spanish is extremely distant from any of the varieties spoken in Mexico. The differences can be observed not only in the phonology (sound system), but most significantly in the vocabulary. For example, the word “drogas,” literally translates as “drugs” in many parts of the Spanish-speaking world. In Mexico, however, the word “drogas” is slang for “debts.” The Mexican variety of Spanish is known throughout the world for its Mexicanisms, vocabulary used only in Mexico as a result of the incorporation of thousands of Mexican indigenous words. It is a particularly marked regional variety that requires study.

18. The professional interpreter is trained to monitor understanding, and would be able to detect when his or her interpretation is not making sense to the client. However, as noted above, professional interpreters are seldom if ever used in pre-trial interrogations.

Cultural Impediments to Effective Communication During Interrogation

19. Another variable that often prevents Mexican nationals from fully understanding their legal rights is their lack of cultural understanding of the United States justice system, the right to counsel, the provisions against self incrimination contained in the United States Constitution, and the notion that the constitutional rights that are accorded to each individual may be "waived." Understanding is not simply a matter of linguistic knowledge (i.e., lexicon and grammar), but also that of schematic knowledge, or the sum total of all of a person's background experiences and understanding of the world. This knowledge is also referred to as "knowledge of the world," or "common sense," and includes knowledge, assumptions, and inferences that members of a discourse community commonly associate with the understanding of certain utterances in given contexts.

20. For example, mainstream Americans usually share a given linguistic and communicative culture that is the basis of many assumptions; those assumptions are customarily applied to a particular utterance, like the statement "if you cannot afford a lawyer, one will be appointed for you." This statement assumes the listener has cultural knowledge of how the legal system works in the United States. A suspect who has no prior knowledge of this right, and an inadequate level of linguistic proficiency, will find it difficult to understand and invoke the right.

21. The notion that a defendant has "rights" to "remain silent," or "have an attorney present" has cultural resonance for United States nationals, where popular television shows often feature crime-fighting detectives, prosecutors, and defense attorneys. Yet, all of these seemingly easy words are steeped in a deep historical/cultural framework that requires explanation in order to truly grasp the significance of their meaning in the custodial interrogation context. In my experience, many limited and non-English speaking Mexican nationals and other foreign born Spanish speakers have only a dim understanding of their rights in the American justice system – even when they have had other encounters with the law. I have found that Mexican nationals depend on lawyers to speak for them, and lawyers often do not adequately explain the meaning of the judicial process because of their own inability to speak Spanish or their failure to appreciate their clients' level of incomprehension.

22. Because they are often illiterate in English, many Mexican nationals cannot read to familiarize themselves with the American legal system. Because they are members of the lowest socioeconomic class, they have little access to mainstream society and no time or money for education. And as discussed above, my sociolinguistic profiles of Mexican nationals and other foreign born Spanish speakers show that they do not watch American television except, to a limited extent, for sports, cartoons, and action movies because they require very little to no English proficiency to comprehend. Therefore, Mexican nationals in the United States are largely "outsiders" with very little to no linguistic or cultural comprehension of the justice system and that pivotal warning during arrest that protects fundamental constitutional rights, the Miranda Rights.

23. Finally, I have observed a tendency on the part of Mexican nationals to acquiesce to all demands by authority figures and answer all questions put to them even if they do not understand the question. In an effort to be cooperative and even affable, Mexican nationals often

have a tendency to “pretend” that they understand, that they can speak and understand English. Perhaps this is done out of pride, but most often it is because of the cultural conditioning which requires them to speak to authority even if they cannot speak the language.

The Administration of “Miranda” Warnings to Limited English Speakers

24. The “Miranda” warnings are a series of warnings or advisements of a suspect’s legal rights. Under United States law, they must be provided prior to a custodial police interrogation. Specifically, the police must advise a suspect that (1) he has the right to remain silent; (2) any statement can and will be used against him in a court of law; (3) he has a right to have a lawyer present during questioning; and (4) if he cannot afford a lawyer, one will be appointed for him.

25. Several factors generally contribute to a Mexican national’s inability to comprehend the Miranda warnings. First, without the aid of an interpreter, the Miranda warnings are very difficult for limited English speakers to understand. This is compounded by the often poor oral rendering of the Miranda warnings by law enforcement officers, including: (a) excessive speed of delivery by the interrogator, (b) lack of time and deliberate care to ensure that the limited English speaker understood the meaning of the warning through further explanation, and (c) lack of responses by the interrogators to implied or stated requests for restatement.

26. The linguistic complexity of the Miranda warnings has been well-documented in academic research. According to a study conducted by Eugene J. Briere in 1978 regarding the comprehensibility of the Miranda rights, comprehension of at least 50% of the Miranda text requires an 8th grade reading level; 100% comprehension of the Miranda warning requires a 13th grade reading level. Briere's study has been confirmed by sociolinguist Susan Berk-Seligson (1990) and others.

27. Moreover, the typical order in which the Miranda warnings are recited is illogical. Professor Shuy has observed that the Miranda rights lack cohesion, or explicitly expressed logical relationship between their components. For example, it would be clearer to state “You have a right to remain silent because everything you say can be used against you.” If the lack of overt logical relationships is confusing for native English speakers, it is predictable that for someone with limited English proficiency it will only be more so.

28. The confusion engendered by the Miranda warnings is evident during my interviews with Mexican national defendants about their custodial interviews. Invariably, they comment that they believed they had a right to a lawyer LATER, not during custodial interrogation. Indeed, in every case in which I have served as an expert witness that involved Mexican nationals and other foreign born Spanish speakers, the defendant was confused by the temporal ambiguity contained in the warnings.

29. Speed of speech is an important factor in comprehension, especially for a limited

English speaker. Linguistic research has verified that the faster a linguistic utterance is stated or read, the lower the probability that a limited English speaker will comprehend. Conversely, slowing down rate of speech gives second language learners more time to process individual words and grammatical features and thus a better chance for fuller comprehension. In addition to speed, understanding is also a function of linguistic context, including the emotions and assumptions surrounding speech. For example, if one of the speakers assumes limited language proficiency and has the intention to be helpful and supportive, he or she can not only slow down speech, but apply a host of techniques, including regular comprehension checks, repetition, simplified language, and so forth.

30. In average English language conversations, about 160 words are uttered per minute. Yet, in a current capital murder case involving a Mexican national in San Diego (discussed in paragraph 13, above), the officer who administered the Miranda Rights read them to the defendant in English at a speed of 228 words per minute, which represents the high end of conversational speech. This accelerated speech may have been the result of the interrogator's ill-founded assumption that the text and meaning of Miranda Rights are known and their recitation a mere formality. However, even for native speakers, hearing language recited at this speech rate would be difficult or impossible to process. It is safe to say that at that rate of speed, a complex legal statement such as the Miranda Rights could not be understood by someone with limited English skills.

31. Mexican nationals' ability to comprehend the Miranda warnings is further impaired by cultural factors. I have found that the Mexican national's schema (knowledge base) about pre-trial detention and custodial interrogation is based on his knowledge of the Mexican legal and interrogation systems. In my experience, Mexican nationals believe that they will be let go if they talk to interrogators, and feel that they must acquiesce to those in positions of authority. They also have stated that they believe that they are not allowed to make phone calls unless they need family help to pay fines.

32. These assumptions are different from those held by average U.S. educated and proficient English speaking individuals. First, most native speakers understand the protective function of the Miranda rights, and therefore correctly interpret them as warnings. In my experience, however, Mexican nationals and other foreign born Spanish speakers do not understand that the Miranda litany is a warning similar to "Watch your step," or "Wet paint" – only, in this case, "Anything you say can and will be used against you unless you remain silent." Every Mexican national whose linguistic case I have studied, has stated that he believed the contrary to be true: He believed that he could remain silent, but if he did, it would show his lack of cooperation, and it would be worse for him in the end. In the San Diego case referenced above, the Mexican national stated in an interview that he thought the Miranda rights meant the following: "I have a right to remain silent, but I have an obligation to tell the truth." This belief was based on the defendant's experience with and knowledge of the Mexican legal system, in which respect for and cooperation with authorities is expected at all times. Consequently, he felt compelled to answer the police officer's questions.

33. Most important, when the Miranda warnings are given in English, I have found that linguistically impaired Mexican nationals believe that they are just an obligatory preface to the interrogation, like a ritual, but with no particular meaning for them.

34. From a sociolinguistic standpoint, and as a result of my studies of these linguistic issues in several similar cases, I can state unequivocally that without cultural and linguistic assistance, many Mexican nationals are unaware of the critical significance of the Miranda warnings and the rights they aim to protect.

Cultural and Linguistic Impairments Can Lead to False Confessions

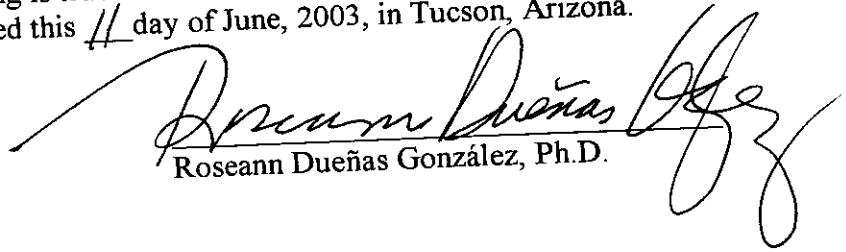
35. The failure of law enforcement officers to provide qualified interpreters during interrogations, combined with the Mexican national's tendency to acquiesce to authority figures, increases the risk that Mexican nationals will falsely confess to crimes they did not commit. These alleged confessions are usually the result of stringing together affirmative responses (yes or nodding) to a list of leading questions. The interrogator narrates in English a series of events that implicate the defendant, then asks a tag question, like "didn't you?," "aren't you?," and "Am I right?" Then the officer writes all of his own words down and calls it a confession. In these cases, officers may casually offer the statement to the non-English speaking Mexican national, who has no understanding at all of the process, to sign.

36. A recent case documented by the Northwestern University Center for Wrongful Convictions is a classic example of this phenomenon. In 1997, Mexican national Omar Aguirre was working in Chicago to send money back to his family in Mexico, when he was arrested on suspicion of murder. He was brought in for questioning and interrogated for three days, struck by police officers and thrown into a corner. He spoke little English and believed the confession he eventually signed, which was in English, was a release for him to go home. After his release, Mr. Aguirre stated, "They were always coming back and asking me" for details about the crime. The lack of an interpreter at the custodial interrogation and his corresponding inability to understand his legal rights resulted in a false confession, a wrongful murder conviction and a 55-year sentence. In December 2002, prosecutors released Mr. Aguirre (and his co-defendant) after charging a key prosecution witness with lying about the men's involvement in the crime.

Conclusion

37. The observations and conclusions related above are based on my expert knowledge, experience and empirical studies I have conducted for the past twenty years.

I certify that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed this 11 day of June, 2003, in Tucson, Arizona.


Roseann Dueñas González, Ph.D.

Sources

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