

The Linguistic Functions of ‘Knowingly’ and ‘Intelligently’ in Police Cautions

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Abstract. *This is a report on one of several analyses of a videotaped police interview. This analysis focused on the delivery of the police caution (in the USA, Miranda warnings) which embodies certain constitutional rights. The goals of this paper are (a) to show how a linguistic analysis of the delivery of a police caution might help in determining whether a persons civil rights have been respected when being questioned by the police, and (b) to improve the acceptability of linguistic evidence.*

Keywords: *Police caution, non-native speakers, comprehensibility.*

Introduction

Forensic linguists are likely to have to address comprehensibility issues when working on cases involving communications between law enforcement officers and a suspect or witness. One common issue involves police warnings/ cautions about a person’s right *not* to say anything that might be self-incriminating.

The goal of this paper is to show how a linguistic analysis of the interactions in the delivery of a police caution might help in determining whether a person’s civil rights have been respected when being questioned by the police.

This paper begins with a brief mention of international civil rights, followed by a sampling of research on comprehensibility in regard to the US-based police caution known as the Miranda. The focus of the paper then is narrowed to a specific case in the USA.

As this paper is tied to a specific case the author worked on, in some places 1st person singular pronouns are used for a natural flow of ideas.

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Background

International Perspective

The case in this paper involves the rights under Miranda in the US legal system. However, for the international community of forensic linguists it is appropriate and useful to view these rights in international law: the 1966 International Covenant on Civil and Political Rights (1966). Eades, writing about interpreting needs, reminds us of the international protection of the rights of accused second language speakers in the legal process (2010: 64). Likewise, for this paper, Article 14 of this covenant also reflects other rights of those in detention. Below is the relevant excerpt on Article 14.

International Covenant on Civil and Political Rights, Article 14, Part 3

Tenets on the rights of individuals under criminal charges, including (d)...and to defend himself in person or through legal assistance of his own choosing;

- to be informed, if he does not have legal assistance, of this right; and
- to have legal assistance assigned to him, in any case where the interests of justice so require, and
- without payment by him in any such case if he does not have sufficient means to pay for it...

Many nations have signed this Covenant; however the implementation of these rights varies around the world. For some countries signing the Covenant has been aspirational, setting ideals to work towards. In some cases it might be for political image. Still in others much effort has been applied towards protecting these rights. However, in such countries, legal practitioners may vary in their understanding and perspectives. There may also be political shifts affecting the implementation of the protection. Further details are beyond the scope of this paper. (Also see Universal Declaration of Human Rights)

The basic concepts appear in various forms in national legal documents around the world. For example, in Malaysia the key document is the Malaysian Criminal Procedures Code, Section 13. In the USA the police caution is grounded in the 5th Amendment of the US Constitution.

Police Caution in the USA

The Fifth Amendment in the US Constitution is intended to protect a person against self-incrimination. The amendment declares that 'No person ...shall be compelled in any criminal case to be a witness against himself.' In *Miranda v Arizona*, 1966, the ruling of the US Supreme Court means that before interrogating an individual in the inherently coercive setting of custody, a government agent must warn the individual that

- he has a right to remain silent
- that anything he says may, and will be, used against him in the court
- he has the right to consult with an attorney and this is a continuing right
- that if he is indigent, an attorney will be appointed to represent him

Three necessary conditions apply for a person to waive those rights before an agent proceeds with a police interrogation. A waiver must be done 'voluntarily,' 'knowingly,' and 'intelligently'. However, the Supreme Court did not specify the wording, thus, it varies around the country.

Comprehensibility: ‘Knowingly’ and ‘Intelligently’

‘Knowingly’ and ‘intelligently’ are especially difficult criteria to examine as they are mental conditions. Much has been written about the Miranda in the literature of both the legal community and in the field of reading comprehension. Questions have also been raised by forensic linguists. The literature on Miranda is only sampled here.

Eugene Briere’s (1978) article gave direction for those working in the USA with non-native speakers. He used second language testing and readability formulas to show the difficulty a non-native English speaker might have with Miranda. He also recognized the limitations of readability formula. Shuy (1997: 182–185) explores ten questions about Miranda from a linguistics perspective. Of particular relevance here is his question ‘What does “to understand” mean?’ Included in this question is whether suspects always really understand when they answer ‘yes.’ Shuy calls for ‘better measures of understanding than the feeble, self-reported measure.’ More recently, for forensic linguists in the USA, Solan and Tiersma (2005: 78–79, 81, 87, 90) have pointed to the important work of Grisso (2003) on comprehensibility of Miranda by juveniles and vulnerable adults. Ainsworth (1993) also looks at vulnerable populations and Miranda. Comprehensive research by Rogers and colleagues looks at readability / comprehensibility by native speakers (Rogers *et al.*, 2007, 2011).

Comprehensibility continues to be a concept for which it is difficult to find linguistic evidence. In one case Shuy (1997: 185) compared the language patterns a suspect exhibited during the Miranda with the language the suspect used later during tape recordings between the suspect and his attorney.

Finally, a very thorough legal examination of comprehensibility and cultural/ linguistic issues has been compiled by Floralynn Einesman (2010). This particular article can leave one wondering how likely it would be to get a handle on the cross-cultural / linguistic issues in a way that might be persuasive to a court.

Case Overview

After reviewing the literature, I wondered what more could be done linguistically to try to assess ‘knowingly’ and ‘intelligently’. Then as I began examining video recordings in a Miranda case from California, I was reminded how interactive the procedure is. Importantly, the interviewing agent is also part of that process.

I have chosen to reflect on the process of working on that case on the chance the process might be of use to those new to working with such cases or to those who might want to adapt some strategies in their own legal systems. Also, through this reflection I want to emphasize that even with experience, a linguist may still need to ‘live with’ the evidence. Frequently we need to let ideas float around some before coming to an understanding of what can be done with the language evidence and what the limitations are.

Introduction to Case

Most of the cases I work with involve persons who are non-native English speakers in socio-legal contexts outside of their past life experiences. However, in this particular case the Miranda proceedings were conducted in Spanish by a native Spanish speaking agent. Also, the Miranda rights text was written in Spanish. Unlike my other Miranda-related cases, the suspect’s English proficiency was not at issue. Thus, some aspects of

the case are parallel to that of a native English-speaking agent communicating with a native English-speaking suspect.

Very importantly, however, the socio-legal context was new to him as he had never been in the USA, nor had he ever been arrested. He brought socio-cultural expectations from his own life experiences. The case is summarized in the box below.

Case Summary: US v Mr. C

- Mr. C is a 22-year-old Mexican male, a Spanish monolingual, from a low-income Tijuana barrio. He had had occasional jobs as a dishwasher and DJ-ing, reading lists of songs at a local radio station.
- Mr. C was offered a job across the border in an auto-repair shop: Take this car and meet us at X restaurant to meet your new employer.
- At a border stop, just across the Mexican-US border drugs were found in car. He was arrested for drug trafficking.
- He was processed at a border detention center and Mirandized.
- He was then transferred to a detention center in San Diego where he was Mirandized again and interviewed by a bilingual Homeland Security agent.
- The proceedings were conducted all in Spanish and were video recorded.

Key legal question: How much did he know about the drug trafficking?

Alternatively: Was he unknowingly set up by others?

Language and Relevant Third-party Evidence

As linguists we understand that we cannot get into the head of another person to know exactly what the person is/was thinking. Nevertheless, language can be one window into the mind, if sufficient language evidence is available. Then linguistic tools might be applied.

In this case there was extensive video recording. It covered not only the Miranda process, but also the lead-up to it and closing interactions after the Miranda was delivered. A bilingual transcription of the interview was also available.

After determining that my Spanish comprehension was strong enough to work with the language evidence in the video recording, I considered initial strategies. In this case for acceptable evidence, readability scores of the Miranda parts could be related to the actual delivery of the Miranda. Also, from the field of sociolinguistics Conversation Analysis could probably provide tools for examining the interactions.

I also received additional evidence in the form of a forensic evaluation report by bilingual neuro-psychologist, Dr. Y. This included a test score of the suspect's reading ability in Spanish and evaluation reporting on his cognitive processing abilities. In addition, there was a transcript of his testimony in a court hearing. I did not look at this evidence until after I completed my analyses of the police interview.

Legal and Linguistic Questions

As any researcher, I still had to identify and conceptualize the relevant questions to ask, starting from this legal question: *How likely is it that Mr. C understood his Miranda rights and that he 'knowingly' and 'intelligently' waived them in the interview?* Mr. Cs attorney posed the next question to consider:

Are Mr. C's signatures/ initials on parts of the Miranda statements and his statements of 'sí' (yes) and head nods in response to 'Do you understand?' questions, sufficient evidence of his ability to have 'knowingly' and 'intelligently' waived his rights?

Language is not used in isolation. An understanding of the socio-cultural context would be critical, the police interview. I could draw on tools from sociolinguistics, specifically Conversation Analysis. As I became more familiar with the interactions in the interview, I began asking what other kind of linguistic evidence would I need? What would it look like? Would I be able to see any patterns in the interactions. Where were the breakdowns in communication.

As the interviewing agent dominated the communication, I soon realized that I needed to analyze his contributions to the interactions and not just the minimal responses of Mr. C. After all, wasn't it the interviewing agent's responsibility to assure that the Miranda was effectively delivered? This then led to the following these specific linguistic questions about the interview.

1. *What linguistic evidence is there that the Interviewing Agent made appropriate efforts to check that Mr. C understood his Miranda Rights and the Waiver? (Comprehension Checks)*
2. *What linguistic evidence is there that the Interviewing Agent (April 00) made appropriate efforts to clarify apparent points of confusion/ misunderstanding of the Statements of Rights/Waiver? (Assists)*

Additional questions were also developed for the third party evidence:

3. *How does Dr. Y's forensic psychology report contribute to an understanding of Mr. C's reading ability in terms of comprehending the Miranda?*

Expanding on the reading process, I also asked,

4. *What do reading and psycholinguistic research and practice say about reading processes that is relevant to Mr. C's reading of the Miranda statements?*

For this I looked to work on reading comprehension (reading-aloud, Plain Language/Plain English, and readability testing, and Schema Theory, especially Rumelhart's foundational work (in Carrell and Eisterhold, 1983).

Finally, recognizing that a law enforcement interview/ interrogation of a suspect is inherently stressful, and that this can affect the effectiveness of a person's communications, I asked:

5. *What linguistic evidence is there of potential stressful conditions?*

Only Questions 1–3 are covered in this paper. In the official expert report Questions 4 and 5 were explored and related to the findings for Questions 1–3.

Interview Context

A brief description of the interview context is provided here. The interview took place in a federal detention center in Southern California. In addition to Mr. C, two agents participated in the interview. The Interviewing Agent (Agent) was the Spanish-English bilingual Homeland Security agent. The observing agent appeared to be a monolingual

English speaker and was an agent of the US Immigration and Customs Enforcement Department (ICE). They sat on one side of a table; Mr. C sat across the table from them.

The delivery of the Miranda began after the Agent had asked Mr. C some identifying questions. The Agent handed Mr. C a Spanish copy of the Miranda to read aloud. The Agent would prompt him to begin each Miranda statement by starting to read the first few words or by telling him to go ahead. After each statement, the Agent would check for understanding with the standard comprehension check: *Do you understand?* Mr. C was also then asked to initial each statement indicating he had understood it. The assumption made by the Agent was that being able to read aloud the statements was evidence of comprehension, and that Mr. C's initials confirmed this.

An example is given below. The Spanish used in the example and elsewhere, e.g., in tables in the Appendices, was taken from the bilingual transcripts from the federal case, and checked against the video. It would not have been appropriate to make changes in official records. Also, some language may reflect the idiolect of the bilingual federal agent and the spelling by the official bilingual transcriber. There were a few minor differences between the video and the transcript, but they were not relevant to the analyses reported here.

A reviewer of the manuscript for this paper appropriately raised a possible concern about the possibility that the 'errors' may have affected comprehensibility by the Suspect. It was not possible to determine this. These 'errors' remain in the tables in the Appendices. Any editorial attempts to make corrections could cause problems in the totals in the analyses. 'Errors' are underlined in the example below (but not in the tables).

Agent: Sigue.
 Go ahead.
 Suspect: Usted tiene el derecho de permanecer callado.
 You have the right to remain silent.
 Agent: ?Si entiende eso?
 Do you understand that?
 Agent: Ponga sus iniciales ahí, que entiende ese.
 Put your initials there if you understand that (pointing to the place
 on Mr. C's copy where he should put his initials).

In the two boxes below are the English and Spanish versions of the Miranda used in this case, taken from the transcripts. Readers may wish to guess which Miranda statements (parts) might be the easiest and the most difficult to read with understanding.

Procedures

To try to maintain my objectivity as much as possible, I realized the order in which the analyses were done would be important. I did not want the results from readability scores to subconsciously influence my examination of the interview interactions.

The procedures used are first presented in a summary form, followed by a more detailed description of some steps.

Summary of Steps for the Conversation and Readability Analyses

- Viewed video of interview in Spanish for overview
- Skimmed bilingual transcript once, especially English

English version of Miranda --

1. You have the right to remain silent.
2. Anything you say may be used against you by the Court or in any other proceedings.
3. You have the right to consult with an attorney before you make any statements or answer any questions.
4. You have the right to have an attorney present with you during the interrogation.
5. If you cannot afford an attorney, one will be provided to you before we ask you any questions if you wish.
6. If you decide to answer our questions now, you retain the right to stop the interrogation at any time or to stop the interrogation for purposes of consulting with an attorney.

Waiver Statement: I have been read and explained this statement of my rights, and I have understood these rights completely. I waive them freely and voluntarily without being threatened, intimidated and without promise of compensation.

Spanish Version of Miranda (Spanish edited)

1. Usted tiene derecho a permanecer callado.
2. Cualquier cosa que usted diga puede ser usada en su contra por el tribunal o en cualquier otro procedimiento.
3. Usted tiene derecho a consultar un abogado antes de hacer cualquier declaración o contestar a cualquier pregunta.
4. Usted tiene derecho a tener un abogado presente con usted durante el interrogatorio.
5. Si no puede pagar un abogado se le proporcionará uno antes de que le hagamos cualquier pregunta si usted lo desea
6. Si decide responder a nuestras preguntas ahora, usted retiene el derecho de detener el interrogatorio en cualquier momento o de detener el interrogatorio con el propósito de consultar a un abogado.

Me han leído y explicado esta declaración de mis derechos y he entendido completamente estos derechos. Renuncio a ellos libre y voluntariamente sin ser amenazado, intimidado/a y sin promesa de compensación.

- Viewed interview, making notes of communication breakdowns on Spanish transcript
- Examined communication breakdowns for Agent's functions of Assists & Comprehension Checks & classified them
- Examined responses by Mr. C to the Agent
- Derived Spanish version of Miranda from interview and examined English translation for readability (total and each statement)
- Lined up Comprehension Checks and Assists with Miranda statements

More Detailed Descriptions of Conversation and Readability Analyses

Conversation Analysis tools

First, all communication breakdowns in the interview were marked as the initial locations for beginning the analyses. Then communicative functions (what people do with language) were examined to better understand what the Agent was doing with language in the interview. Comprehension Checks and Assists by the agent were selected as the

functions. They were then identified and counted. Mr. C's responses to these were also noted.

All instances of Comprehensive Checks and Assists were then classified according to form. Only the standard Comprehension Check function was used: 'Do you understand?' There were five types of Reading Assists by the Agent: (1) filling in a missing word, (2) starting to read the statement, (3) completing the statement, (4) responding to a point of confusion, and (5) full re-reading.

Readability formulas

Two readability formulas were applied to the overall Miranda text and to each of the Miranda statements. The Flesch Ease of Reading and Flesch-Kincaid Grade Level were the formulas used. (Microsoft Word tools were used to apply these formulas.) The English translation of the Miranda was used (see *Findings* for an explanation). In addition, the number of words, sentence lengths, and the number of passive sentences were noted for each statement. Passive constructions are considered cognitively more difficult to process than active constructions.

Matching assistance to Miranda

The Comprehension Checks and Assists were then matched to the Miranda statements where they had occurred. As the Miranda statements were already marked with the readability scores and the other data mentioned above, this matching allowed further observations about reading difficulty.

Using third-party evidence

Once all the data had been compiled, reference was then made to the third-party evidence: Mr. C's Spanish first language reading score comes from the bilingual neuropsychologist's report.

Findings

Assistance by the Agent

Findings from the analyses of the interactions between the Homeland Security agent were classified according to Comprehension Checks and Assists. The Homeland Security agent provided limited to minimal assistance to Mr. C. in terms of checking his comprehension and assisting him in his reading of the Miranda. There were 11 Confirmation Checks and 16 Assists. The types of assistance and totals are discussed below. (Also, see Appendices A and B for additional details.)

Not surprising, all 11 of the Comprehension Checks, were very close variations in form of 'Do you understand?' as this is the standard follow-up for each Miranda statement. There was no follow-up to verify comprehension beyond this even when there were indications early on that Mr. C was having problems. The pace of the interview also did not allow Mr. C the conversational space to easily ask for clarifications.

Of the 16 Reading Assists, the most frequent was ‘filling in a missing word’ (9/16). There were also two instances of each type of “partial reading” (starting or completing a statement). There were also two attempts to respond to a specific point of confusion.

Finally, there was one example of the Agent fully re-reading a statement. This appeared after the statement where the greatest assistance was needed: 3 Comprehension Checks and 5 Reading Assists. Perhaps the Agent felt that with all the confusion, he wanted to be sure a fully coherent statement was read aloud and recorded. This occurred with the Continuing Rights statement.

If you decide to answer our questions now, you still retain the right To stop the interrogation at any time or stop the interrogation for the purpose of consulting with your attorney.

Si decide responder a nuestras preguntas ahora, usted retiene el derecho de detener el interrogatorio en cualquier momento o de detener el interrogatorio para el propósito de consultar con su abogado.

This linguistic evidence raised a clear question of Mr. C’s comprehension of this particular right.

Several of the 16 Assists appear to have caused confusion. One of these occurred at the beginning when Mr. C was informed that they were going to read his rights.

Mr. C: *What are my rights?*

Agent: *We’re going to read them!*

It appeared that the Agent assumed that Mr. C needed no background knowledge to understand the text of the Miranda statements. The Agent appeared to believe that if Mr. C would simply read a text aloud, or would listen to the Agent reading parts of it aloud, this would be evidence of comprehension on the part of Mr. C.

Notably, best practices were not applied. The Agent did not give Mr. C the chance to paraphrase each Miranda statement in his own words. This strategy has been recommended as best practice for testing for Miranda comprehension with juveniles and vulnerable adults (Grisso, 2003) and is a standard in some interview. This is also best practice in educational and training to assess comprehension of concepts.

Data from the readability formulas that are presented in the next section raised further questions about Mr. C’s comprehension of his rights, about whether Mr. C ‘knowingly’ and ‘intelligently’ waived his rights.

Readability

Observations about the readability of the Miranda are organized around three topics: (1) readability data, (2) Spanish Miranda, and (3) additional readability issues.

Readability data

As noted earlier, there is no single, standard form of Miranda. Thus, the readability scores for the various parts of this Miranda should not automatically be assumed for all forms of Miranda across the country. The Miranda used in this interview requires at least a 10.5 grade reading level for the overall rights statement and as high as a 17.3 reading grade level for the Waiver. Mr. C had a 5th grade Spanish reading level. The contrast

between Mr. C's reading ability and the reading difficulty of the Miranda is illustrated in the grid below.

[scale=0.70]Img/Image5

In Table 1 below the readability statistics are given for the Miranda. As can be seen the easiest to read is the right to remain silent statement. However, Rogers and his colleagues (2007; 2011) note that even by US citizens, "silence" can be interpreted in various ways in the context of a law enforcement communication. The remaining Miranda statements are all beyond Mr. C's reading level. The Continuing Right statement (6) and the Waiver (7) are similar in terms of being the most difficult. They exhibit similar readability features and scores.

Table 1. Readability Statistics for Miranda

| English Miranda | Number of Sentences | Number of Words | Number of Passive sentences (relatively more complex than Active sentences) | Flesch Ease of Reading (the higher, the easier, with 100 being easiest) | Flesch-Kincaid Grade Level |
|--|----------------------------|------------------------|---|---|-----------------------------------|
| Total Miranda Rights/ Waiver | 7 | 140 | 28% | 54.8 | 10.5 |
| 1.Silence | 1 | 7 | 0 | 90.9 | 2.3 |
| 2.Used Against | 1 | 16 | 100% | 68.9 | 7.6 |
| 3.Consult an attorney | 1 | 18 | 0 | 56.9 | 9.7 |
| 4.During Interrogation | 1 | 14 | 0 | 59.6 | 8.4 |
| 5.Can't Pay for an attorney | 1 | 21 | 100% | 64.6 | 9.4 |
| 6.Continuing Right: Stop to Consult attorney | 1 | 31 | 0 | 38.9 | 15.5* |
| 7.Waiver | 1 | 33 | 0 | 29.7 | 17.3* |

Spanish Miranda

The Miranda rights were given in Spanish and translated for the bilingual transcript. The readability statistics given in Table 1 and discussed here are for the English version. Comparable readability statistics (following the Flesch Ease of Reading and Flesch-Kincaid Grade Level tools) were not available for Spanish. A different tool was considered for the Spanish one but was not used in this analysis. The assumptions about that tool differed from those of the Flesch and-Kincaid formulas, thus, it was felt they could not be appropriately compared.

Also, the Border Patrol agent who first Mirandized Mr. C did so in Spanish. Later in a motion hearing in court he translated the Miranda, on-the-spot, into English. This was acceptable to the court.

Furthermore, when comparing the text data available for both versions in the bilingual transcript, similarities could be seen for number of words, sentences, and Passive Sentences. Both also use a number of more formal, less common vocabulary items. For this case there was not enough time to do a detailed comparison of the Spanish and English form of Miranda beyond that shown in Appendix C.

Nevertheless, some informal observations were made. Mr. C had difficulty simply decoding some of the formal, less common words in Spanish. Thus, it is unlikely then that he clearly understood the actual meaning. Additionally, two Spanish verbs, *deber* (modal) and *conocer* caused confusion. Further discussion of these problems are beyond the scope of this paper.

Additional readability issues

The neuro-psychologist's report provided additional information on Mr. C's reading ability, beyond his Spanish reading scores. He has difficulty comprehending and understanding information because of his low intellectual skills. This could affect his reading comprehension at a meaningful level. Also, apparently Mr. C had little familiarity with the US legal system. This meant that he probably did not have the necessary background knowledge/schema for understanding Miranda at a meaningful level.

Closing Observations

Conclusions

I wish to conclude with my official opinion in the formal expert report on this case:

‘In my professional opinion and to a reasonable degree of certainty, it is highly unlikely that Mr. C clearly understood his Miranda Rights and that he could have knowingly and intelligently waived them.’

This opinion was based on conclusions resulting from linguistically-based analyses of the language evidence combined with readability assessments and other relevant theory and practice from the field of reading. There was also additional confirming information from a forensic psychologist's evaluation.

Readability research has been the main tool for examining comprehension of Miranda, but researchers in this area (including Rogers *et al.*, 2007, 2011) recognize the limitations of readability formulas for this purpose. However, in this case adding analyses of the functions of the agent's delivery of Miranda has been shown to be a very productive strategy for examining the criteria of ‘knowingly’ and ‘intelligently.’ It would be valuable to test it further in other cases where video recordings are available.

If adequate language evidence is available this strategy might also be relevant in cases where English is the medium of communication, involving English first language speaking suspects as well as non-native speakers. It could, of course, also apply in other language combinations.

Post script: What happened to Mr. C.?

As Mr. C could not afford an attorney, his case had been assigned by the court to an attorney. Minimal expenses were allowed for the attorney's work and the hiring of two experts.

Once the judge read the expert reports, he apparently found the reports were strong. As the prosecution could not find a counter-expert for the linguistics report, the judge then suggested both sides settle out of court and not waste more time and money.

Plea bargaining took place. Mr C was charged with a lesser crime, that of lying to a federal agent, apparently a lie of omission. Mr. C had not told the agent the other reason he wanted to go to California besides for work. He wanted to see a certain young lady who had moved there with her family. Love blinds judgment! Mr. C was sentenced to the time he had already served in jail and was on a bus that afternoon, back to Mexico in time for the Christmas holidays.

In closing, I wish to recall the legend of the Cock of Barcelos (*Galo de Barcelos*) in recognition of the location of the 2012 IAFL Conference in Portugal. *Galo de Barcelos* is a beloved national symbol. The legend involves a miraculous intervention by an already-cooked rooster to save the life of a man falsely accused and sentenced to be hanged. The accused proclaimed his innocence, declaring that the rooster on the judge's dinner table would crow. On hearing the rooster crow, the judge set the man free.

While linguists cannot persuade judges with miracles, as in the legend of the *Galo de Barcelos*, sometimes we can persuade them with linguistic analyses.

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Appendix A: Agent's Confirmation Checks During Reading of Miranda Rights/ Waiver

Text references and coding are based on the expert report. The Spanish from the transcript/video are used. Any standardization or 'corrections' of the Spanish might affect the word counts; therefore, 'errors' remain in the tables.

| <i>Wording of Miranda Rights/Waiver</i> | <i>Number of words</i> | <i>Number of Confirmation Checks (CC) & Type</i> | <i>Confirmation Checks</i> |
|--|-------------------------------|---|--|
| Opening: 0. Antes de que hagamos cualquier pregunta usted debe conocer sus derechos. | 11 words | 1 CC (#2) | (p.18:21) Do you understand that? (? <i>Si entiende eso?</i>) |
| 1. Usted tiene derecho de permanecer callado. | 6 words | 1 CC (#2) | (p.19:1) Do you understand that? (? <i>Si entiende eso?</i>) |
| 2. Cualquier cosa que, que usted diga su contra por el tribunal o en cualquier otro procedimiento. | 16 words | 1 CC (#2) | (p.19:10) Do you understand that? (? <i>Si entiende eso?</i>) |
| 3. Usted tiene derecho a consultar algún abogado antes de que haga cualquier declaración o conteste cualquier pregunta. | 17 words | 2 CCs (#2) (#2) | (p.19:18) Do you understand that? (? <i>Si entiende eso?</i>) (p.20:3) Do you understand that? (? <i>Entiende eso?</i>) |
| 4. Usted tiene derecho a tener un abogado presente con usted durante el interrogatorio. | 13 words | 1 CC (#2) | (p.20:18) Do you understand that? (? <i>Si entiende eso?</i>) |
| 5. Si no puede pagar un abogado se le proporcionara uno antes de que le hagamos cualquier pregunta se usted lo desea. | 21 words | 1 CC (#2) | (p.20:29) Do you understand that? (? <i>Si entiende eso?</i>) |

| | | | |
|--|--|---|---|
| <p>**6. Si decide responder a nuestras preguntas ahora, usted retiene el derecho de detener el interrogatorio en cualquier momento o de detener el interrogatorio para el propósito de consultar con su abogado.</p> | 31 words | 3 CCs (#2) (#2) (#2) | <p>(p.21:17) Do you understand that? (?Si entiende eso?)</p> <p>(p.21:33) Do you understand? (?Entiende?)</p> <p>(p.22:7) But do you understand that right? (Pero, ?si entiende ese derecho?)</p> |
| <p>Waiver: 7. Me han leído y explicado esta declaración de mis derechos y entendido completamente estos derechos. Renuncio a ellos libre y voluntariamente sin ser amenazado a mi intimidado. (15+12= 27 words)</p> | 27 words | 1 CC (#2) | <p>(p.23:1) Do you understand that (?Si entiende eso?)</p> |
| <p>Closing Affirming signature page Began reading closing form wording + info on time and date Fue detenido a las once, trein..hor, fecha....</p> | <p>Total words bolded: 142</p> | <p>Total Confirmation Checks 11</p> | |

Appendix B: Agent's Assists During Reading Aloud of Miranda Rights/Waiver

Text references and coding are based on the expert report. The Spanish from the transcript/video are used. Any standardization or 'corrections' of the Spanish might affect the word counts; therefore, 'errors' remain in the tables.

| <i>Wording of Miranda Rights/Waiver</i> | <i>Number of words</i> | <i>Number of reading “assists” and types</i> | <i>Specific Assists & Types</i> #1 By filling in a word #2 By starting to read the statement #3 By completing the statement #4 By clarifying a misunderstanding, responding to confusion expressed #5 By re-reading aloud (completely) |
|--|-------------------------------|---|--|
| Opening: 0. Antes de que hagamos cualquier pregunta usted debe conocer sus derechos. | 11 words | 2 assist (#1) (#4) | p 18:16) “conocer” (p.18:29) Twice Mr. C interrupts Agent’s efforts to check his comprehension and to initial the form. 1) Mr. C , ‘Yes, but they are my rights.’ Agent, having gotten the “yes,” tries to get Mr. C initial, ‘ponga.’ 2) Mr. C still appears confused, ‘What are my rights?’ Agent assists by saying “We’re going to read them now.” (18:29) |
| 1. Usted tiene derecho de permanecer callado. | 6 words | 0 assists | |
| 2. Cualquier cosa que, que usted diga puede ser usada en su contra por el tribunal o en cualquier otro procedimiento. | 20 words | 1 assist (#3) | (p19:8/9) Overlap of final word “procedimiento” |
| 3. Usted tiene derecho a consultar algún abogado antes de que haga cualquier declaración o conteste cualquier pregunta. | 17 words | 3 assists (#1) (#4) (#5) | (p19:12) “Usted tiene derecho..” (p.19:31) when Mr. C said he hadn’t consulted any attorneys, the Agent clarified that Mr. C had that right. (p. 19:35-20:2) Agent re-readings right but with one error/corrects it |

| | | | |
|---|--|---|---|
| 4. Usted tiene derecho a tener un abogado presente con usted durante el interrogatorio. | 13 words | 2 assists (#1) (#3) | (p.20:9) after Seguimos. Otra vez. (beginning another right “Usted tiene..” (p 20:13-14) A tener un abogado presente con usted durante [el interrogatorio [OL w/ C] |
| 5. Si no puede pagar un abogado se le proporcionara uno antes de que le hagamos cualquier pregunta se usted lo desea. | 21 words | 0 assists | |
| 6. Si decide responder a nuestras preguntas ahora, usted retiene el derecho de detener el interrogatorio en cualquier momento o de detener el interrogatorio para el propósito de consultar con su abogado. | 31 words | 5 assists (#1) (#1) (#2) (#1) (#1) | (p20:34) “decide” (p21:2) “responder” (continuing same statement as “decide”) (p21:5) “Usted...” [OL with “usted tiene el derech...” (p21:10) “aun...” [okay.] (p21:25) decide responder... (repeating C’s “decide”) |
| Waiver: 7. Me han leído y explicado esta declaración de mis derechos y entendido completamente estos derechos. Renuncio a ellos libre y voluntariamente sin ser amenazado a mi intimidado. | 27 words | 3 assists (#2) (#1) (#1) | (p22:12) [Okay. Lea ese parrafo:] “Me han...” (p22:21): “intimidado” (p22:39) “inmunidad” |
| Closing Affirming signature page Began reading closing form wording + info on time and date Fue detenido a las once, trein..hor, fecha.... | Total words bolded: 142 | Total Assists: 16 | |

Appendix C: Spanish Readability for Miranda: Text Data Using Microsoft Tools

| Spanish Miranda | Number of Sentences | Number of Words | Number of Passive sentences (relatively more complex than Active sentences) | Flesch Ease of Reading (Not available for Spanish) | Flesch-Kincaid Grade Level (Not available for Spanish) |
|--|----------------------------|------------------------|---|--|--|
| Total Miranda Rights/ Waiver (opening not included here) | 7 | 131 | 37.5% | | |
| 1.Silence | 1 | 6 | 0 | | |
| 2.Used against You | 1 | 16 | 100% | | |
| 3.Consult an attorney | 1 | 17 | 0 | | |
| 4.During interrogation | 1 | 13 | 0 | | |
| 5.Can't pay for an attorney | 1 | 21 | 100% | | |
| 6.Continuing right: Stop to Consult an attorney | 1 | 31 | 0 | | |
| 7.Waiver | 2 | 27(15+12) | 50% | | |