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Bilingual Welfare Notice Not Required - Guerrero v. Carleson, 9 Cal. 3d 808, 512 P.2d 833, 109 Cal. Rptr. 201 (1973)

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Bilingual Welfare Notice Not Required—*Guerrero v. Carleson*, 9 Cal. 3d 808, 512 P.2d 833, 109 Cal. Rptr. 201 (1973).

The Supreme Court of California ruled recently that welfare notices need not be printed in both Spanish and English, even when it is known that the recipient is literate only in Spanish.[1] Apparently overwhelmed by an imaginary potential burden to state government, the majority took a "love it or leave it" attitude with regard to the English language and made what the dissent termed "an unfortunate step backward" in the area of cultural relations.

Plaintiffs were Spanish-speaking welfare recipients. The defendant welfare agency knew plaintiffs were literate only in Spanish and prior to sending the notices in question had communicated orally with plaintiffs only in Spanish. Notices of proposed reduction or termination of benefits sent to plaintiffs were written in English. Allegedly because they were unable to read the notices, the recipients did not request fair hearings within the fifteen-day period provided for by Welfare Department regulations, and benefits were modified or cut off immediately. Plaintiffs applied for a preliminary injunction against the agency. The application was denied, and an appeal was taken to the California Supreme Court. The court affirmed the denial of the injunction, holding that neither due process nor equal protection principles required that notification of proposed reduction or termination of welfare benefits be made in Spanish, even where the agency knew the recipients to be literate in Spanish only.

Was a notice written in English "reasonably calculated" to inform the plaintiffs of the proposed action? Justice Mosk, speaking for the majority, recognized that adequate notice is necessary to satisfy due process requirements, and that notice, in order to be adequate, must be . . . "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[2]

1. Guerrero v. Carleson, 9 Cal. 3d 808, 512 P.2d 833, 109 Cal. Rptr. 201 (1973).

2. *Id.* at 811 n.4, 512 P.2d at 834-35 n.4, 109 Cal. Rptr. at 202-03 n.4.

It was reasonably calculated to inform, and therefore adequate, if the governmental agency could reasonably believe that the recipient would obtain a prompt translation. The majority saw the question of the reasonableness of the belief as the major issue in the case.

Assuming as fact the idea that it was difficult to live in an English-speaking country without speaking English, the court declared it reasonable for the welfare agency to assume that a non-English-speaking person would experience strong incentives to either learn English or rely on bilingual persons to translate for him/her. It was also deemed reasonable to assume that there were numerous sources of language assistance available to the non-English-speaking.[3] The fact that the notices were printed on agency letterhead and therefore " . . . obviously an official communication,"[4] coupled with the fact that welfare payments were crucial to the lives of the plaintiffs, made it fair for the government to assume that the recipients would not ignore the notice.[5]

These assumptions were the " . . . 'practicalities and peculiarities' of the case at bar,"[6] and were taken into consideration, per *Mullane v. Central Hanover Bank and Trust Co.*,[7] in determining whether or not the notice was " . . . reasonably calculated . . . to apprise interested parties of the pendency of the action . . . . "[8] The majority concluded that, in light of these "practicalities and peculiarities," " . . . it is *not unreasonable* for the state to expect that persons such as those in plaintiffs' position will promptly arrange . . . " for translation of the notice.[9]

The reasoning process went like this: Since this is an English-speaking country and it is difficult to live here without a knowledge of English, a non-English-speaking person either learns English or depends on someone to translate. Since welfare payments are crucial to the lives of welfare recipients, official communications from the Welfare Department will not be ignored. Since they were on agency letterhead and personally addressed to the plaintiffs, these notices were obviously official communications. Since official communications will not be ignored and translators are readily available, Spanish-speaking persons will have the notices in question promptly translated upon receipt and thereby become apprised

3. *Id.* at 813, 512 P.2d at 836, 109 Cal. Rptr. at 204.
4. *Id.*
5. *Id.* at 814, 512 P.2d at 836, 109 Cal. Rptr. at 204.
6. *Id.*, 512 P.2d at 837, 109 Cal. Rptr. at 205.
7. 339 U.S. 306, 314-15 (1950).
8. *Id.* at 314.
9. Guerrero v. Carleson, *supra* at 814, 512 P.2d at 837, 109 Cal. Rptr. at 205 (emphasis added).

of the proposed action. Since they are apprised of the action by means of notice written in English, due process does not require that the notice be written in Spanish also. The notice in question thus being constitutionally adequate, there is no class of recipients created who are denied aid without proper notice and opportunity to be heard, and therefore no denial of equal protection.

After thus disposing of the denial of equal protection claim, the majority, nevertheless, discussed *Castro v. State*,[10] where it was held that it was a violation of equal protection concepts to apply an English literacy voting requirement to persons literate only in Spanish. Other persons who could show proper access to sources of political information in their own language, could not be prohibited from voting solely because they were not literate in English.[11] The *Guerrero* majority, without clearly explaining why, stated that a decision to require welfare notices to be printed in Spanish would, like the *Castro* decision, " . . . reach far beyond the present facts,"[12] and necessitate at least the printing of welfare notices in any other language in which a recipient was known to be literate. They foresaw, in fact, that the rule would be extended to " . . . any and all official communications . . . required to satisfy due process of law,"[13] eventually ". . . 'caus[ing] the processes of government to grind to a halt.' "[14] Implicitly, the court was weighing the interests of the plaintiffs in receiving notice of proceedings in their own language against the ominous burden of notification in all foreign languages. When the issue is framed in a manner such that the government's burden would inevitably cause its demise, the individual's interests are obviously outweighed in the balance.

The court cursorily rejected the estoppel argument. They declared only that there was insufficient evidence that a substantial portion of prior communications with plaintiffs was in fact made in Spanish.[15] There is no indication that *any* amount of prior communication in Spanish would have swayed the minds of the ma-

10. 2 Cal. 3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970).
11. *Id.* at 242, 466 P.2d at 258, 85 Cal. Rptr. at 34.
12. Guerrero v. Carleson, *supra* at 815, 512 P.2d at 837, 109 Cal. Rptr. at 205.
13. *Id.*, 512 P.2d at 838, 109 Cal. Rptr. at 206.
14. *Id.* at 816, 512 P.2d at 838, 109 Cal. Rptr. at 206.
15. *Id.* at 817, 512 P.2d at 839, 109 Cal. Rptr. at 207.

jority anyway—the spectre of administrative disaster was much too fearsome.

The majority viewed the government's burden as overwhelming; Justice Tobriner knocked it down to size by stating the issue more narrowly:

> When the administrators *know* the recipients speak Spanish only and when the administrators have *previously orally communicated* with the recipients in Spanish, can the administrators send notices of termination or reduction of benefits in *English*?[16]

Justice Tobriner rejected the view that a holding favorable to the plaintiffs would necessarily be extended to all language groups and government programs. Due process is a dynamic concept, varies with the circumstances, and is determined by balancing the conflicting interests of individual and state. A significant number of California residents are literate only in Spanish and have their interests affected by state action.[17] There was no reason to assume that the weighing process would be the same for all language groups, if only because a lesser number of persons would be affected and the scales tipped in the direction of the government's burden.[18]

How great was the government's burden in this case? Some welfare forms were already printed in Spanish. The agency routinely made note of those fluent only in Spanish and assigned them to bilingual caseworkers. Having previously identified the persons affected and having already made some provision for their linguistic difficulties, the expense and inconvenience of printing one more form in Spanish seemed minimal to Justice Tobriner.[19]

The potential loss to the individual, on the other hand, was considerable. Notice is a fundamental protection and essential to due process.[20] If adequate notice is not received and a hearing therefore not requested, welfare benefits are reduced or lost. Entire families may be left without shelter or basic sustenance. The burden to the government is slight in comparison to such a loss.[21]

After concluding that the current method of notification was unconstitutional under the 14th Amendment,[22] the dissent examined the defense of adequate notice proferred by the government. Adequate notice is that notice " . . . 'reasonably certain to inform'

16. *Id.* at 818, 512 P.2d at 840, 109 Cal. Rptr. at 208.
17. *Id.* at 822, 512 P.2d at 842, 109 Cal. Rptr. at 210.
18. *Id.*, 512 P.2d at 843, 109 Cal. Rptr. at 211.
19. *Id.* at 820, 512 P.2d at 841, 109 Cal. Rptr. at 209.
20. *Id.* at 819, 512 P.2d at 840, 109 Cal. Rptr. at 208.
21. *Id.* at 820-21, 512 P.2d at 841, 109 Cal. Rptr. at 209.
22. *Id.* at 821, 512 P.2d at 841, 109 Cal. Rptr. at 209.

. . . . "[23] But even a reasonable assumption that the recipients would seek prompt translations was a far cry from reasonable certainty that the notice in question would inform the recipients of the pending changes. This method of notification was *not* reasonably certain to inform persons illiterate in English because the recipient may not have recognized the *need* to have it translated.

While not referring to the estoppel issue in those terms, the dissent obviously thought it important in this regard. Justice Tobriner does not say that, because of some prior communication in Spanish, defendants are now estopped from communicating in English, but only that, because of prior dealings in Spanish, plaintiffs may not have considered the English notices important enough to merit translation. In effect, the government is merely denied the assumption that plaintiffs would have the notices promptly translated. Prior communications with the Welfare Department had been, at least in part, through Spanish-speaking caseworkers. Some of the welfare forms were printed in Spanish. The plaintiffs may have been led to believe that important messages would be sent in Spanish. In addition, if translators were available at all, the translation may have come too late to request a hearing. In any case, to place the burden of translation on the recipient, Justice Tobriner declared, was to fail to give notice reasonably calculated to apprise the plaintiffs of their rights,[24] and due process was, therefore, denied.

Justice Mosk, through a series of propositions for which no documentation was cited (apparently in the exercise of judicial notice), reached the conclusion that notification in English was adequate because it was reasonable to assume that the Spanish-speaking would have had it promptly translated.

Several of the assumptions made do not take into account the realities of *barrio* life. In a community where everyone speaks Spanish, there may be little incentive to learn English and few occasions to seek translators. Even assuming that the notice would not be ignored, it is a long jump from that assumption to the fact of quick translation; the welfare recipients may be led to believe that important information will be sent in Spanish. The friend

23. *Id.*, 512 P.2d at 842, 109 Cal. Rptr. at 210.
24. *Id.*

to whom the recipient hands the letter for translation may not read it in time, and the person making the request will not badger the one who agrees to do him the favor. Life in the *barrio* is not one of leisure; there may be crises more immediate than ascertaining the contents of an unintelligible letter. As the dissent points out, adequate notice is not obtained by placing the burden on the individual.

After dismissing the equal protection issue as begging the question, the majority stated that a decision in favor of the plaintiffs here could not be limited to AFDC and the Spanish language.[25] There is no reason given for such a statement, and Justice Tobriner's analysis clearly refutes it. It is suggested that the vision of the majority was obscured by the parade of the horribles. If the balancing process is used in its proper place, the class of persons is narrowed to AFDC recipients whom the agency knows to be literate only in Spanish and with whom it has previously communicated orally in Spanish. It is the burden of informing *this* group that must be placed in the balance against (1) the individual's interest in receiving notification in his own language of welfare proceedings and (2) the threatened loss if such notice is not received. By limiting the decision to the narrower issue formulated in the dissent, the government's burden is lightened to workable dimensions and is, thereby, outweighed by the rights of the individuals involved.

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25. *Id.* at 815, 512 P. at 837, 109 Cal. Rptr. at 205.