

INFORMAL OPINION

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Communicating Miranda Rights to Non-native Speakers Of English

Suspects' interview rights, referred to as *Miranda*' rights in the United States and as police cautions in Australia, England and Wales, are country-specific interpretations of the rights embodied in the 1966 International Covenant on Civil & Political Rights, signed by the majority of the world's countries. The purpose of the requirement to communicate these rights/cautions to suspects is to ensure that those in criminal proceedings know their fundamental rights under the law. Yet even native speakers of English do not always understand the rights delivered to them. Their ability to understand is affected by level of education, cognitive abilities, the context and manner of communication of the rights, and the wording used to express individual rights. The problems are even greater among speakers with limited English proficiency (LEP).

Research shows that LEP speakers who can hold a conversation in English may still experience difficulties understanding the delivery of rights. These difficulties come from several sources. The first source is English spoken at fast conversational rates, which LEP speakers may be unable to follow.

The second source is vocabulary: LEP speakers are often unfamiliar with legal terms, such as *waiver*, *evidence*, or *matter*. In the case of the term *right*, they may know only common everyday meanings (*correct* or the opposite of *left*), while the homophone *to waive* may be misinterpreted as *to wave* (a gesture).

The third source of difficulty is grammar: LEP speakers may be unable to process complex sentences in speech or in writing, such as "*If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.*" Nevertheless, when asked directly if they understand their rights, they may answer "yes" and agree to sign the *Miranda* form out of fear or deference to authority.

Defense attorneys representing LEP clients should consider four questions: How were the rights delivered? Did the client know "enough English" to under-

stand the delivery? How was the client's understanding determined at the time? Was an interpreter required?

The practices that should be followed in communication of rights to LEP speakers and determining understanding and the need for an interpreter are outlined in the *Guidelines for Communicating Rights to Non-native Speakers of English in Australia, England and Wales, and the USA*. The international Communication of Rights Group (CoRG) released the *Guidelines* in November 2015.² The group includes 21 linguists, psychologists, lawyers, and interpreters.

Drawing on linguistic and psychological research, as well as on their collective experience of working with specific cases, CoRG has set out seven recommendations.

Recommendations for wording include (1) development of standardized wording in plain English and (2) development of standardized translations in other languages. Practices that should be followed in delivery are as follows: (3) inform suspects about access to an interpreter at the beginning of the interview; (4) present each right individually; (5) do not determine understanding using yes or no questions; (6) adopt an in-your-own-words requirement; and (7) video-record the interview.

The key recommendation is an adoption of the *in-your-own-words* requirement, whereby suspects are required to explain each right in their own words. Members of CoRG see this restatement as a better way of determining understanding than direct questions, such as "Do you understand?" If the requirement causes difficulties for the suspect, the interview should be terminated until law enforcement officers bring in a professional interpreter who has expertise in legal interpreting.

The 2,000-word *Guidelines* provide defense attorneys with a useful checklist of practices that should be followed in communication of rights. The document also includes an Appendix of research on comprehension of rights by non-native speakers of English.

Since their release in November 2015, the *Guidelines* have been endorsed by Executive Boards of four leading professional associations in linguistics: the American Association for Applied Linguistics (AAAL), the Linguistic Society of America (LSA), the International Linguistics Association (ILA),



and the International Research Foundation for English Language Education (TIRF). CoRG hopes that the *Guidelines* will result in moves to better protect the rights of non-native speakers of English and to afford them equal treatment in the law.

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Notes

1. *Miranda v. Arizona*, 384 U.S. 436 (1966).

2. The *Guidelines* are available on the AAAL website (<http://www.aaal.org/?page=CommunicationRights>). ■

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