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Miranda Warnings and Suspects with Limited English Proficiency[1]

What are *Miranda* warnings?
Miranda warnings are read to suspects to inform them of their constitutional rights in the United States. The practice dates back to the 1966 US Supreme Court ruling that suspects in custody should be advised of their rights, including the right to silence and the right to an attorney, before any questioning begins. Once informed, they may relinquish these rights, "provided the waiver is made voluntarily, knowingly, and intelligently" (*Miranda v. Arizona*, 1966, p. 444).

Are suspects with limited English proficiency at a disadvantage in *Miranda* delivery?
Sometimes but not necessarily. In the past decades, law enforcement has modified the delivery of the *Miranda* warnings. Many police departments have recruited officers who speak languages other than English and streamlined procedures: warnings are typically delivered one at a time, with the suspect asked to sign each line indicating their understanding of the individual right. In cases of concern about literacy, suspects may be asked to read the warnings out loud, and in cases of concern about English, detectives familiar with the language in question are called on to translate and answer questions. The delivery is commonly recorded.

Can we create Plain Language wording that would be comprehensible to all?
No. While simplification is important, there is no universal wording comprehensible to all.

Are suspects with limited English more likely to waive their *Miranda* rights?
The question is impossible to answer because (a) some suspects receive their warnings in English and others in translation and (b) there are hundreds of *Miranda* wordings currently in use. Overall, it is estimated that 80% of adult suspects waive their *Miranda* rights and talk to the police. Their reasons include remorse, desire to talk their way out of their predicament, a wish to present 'their side of the story', or intent to cooperate to lessen the charge.

When are applied linguists called on to assist the court?
If defense attorneys file a motion to suppress self-incriminating statements based on irregularities in *Miranda* delivery or inadequate translation, language experts may be asked to testify. Court-certified interpreters help the court decide whether the rights were translated correctly and applied linguists whether defendants had sufficient English proficiency to waive their rights knowingly and intelligently.

What should linguists new to *Miranda* consider when they agree to consult on a case?
Standard proficiency assessments were created for the classroom and the workplace. In forensic contexts, their validity and reliability are compromised: validity because no studies to date link comprehension of *Miranda* rights to particular levels of proficiency; reliability because evaluations are conducted in jail, months or years after the fact. Consequently, some experts may *overestimate* the defendant's proficiency because they had improved their English. Others may *underestimate* it because savvy defendants downplay their skills. To provide relevant testimony, experts need to examine the recordings of the *Miranda* delivery.

Will the judge base their decision on the language expert's advice?
Not necessarily. Judges are aware that not all complaints have equal merit – for defense attorneys non- native English is as good a reason as any to justify a motion or an appeal. Courts typically base their decisions on recordings and the totality of the circumstances.

What are the best practices in delivering *Miranda* rights to speakers with limited English?
When comprehension is a concern, the *Guidelines for communicating rights to non-native speakers of English* (2015) recommend an "in-your-own words" approach. Suspects are invited to explain, in their own words, their understanding of each right. If they are unable to do so, an interpreter should be called and the procedure repeated anew. This approach safeguards due process and makes it harder to overturn legitimate convictions on appeal.

[1] While linguists have many terms to describe the proficiency continuum, law enforcement and courts refer to 'speakers with limited English proficiency' or 'non-native speakers of English'. The adoption of these terms here is not an ideological choice but a pragmatic one.

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Resources for learning more about this topic

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Leo, R. (2008) *Police interrogation and American justice*. Cambridge, MA: Harvard University Press.
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