

Do You Understand These Rights?

The protection against inadvertent self-incrimination requires that individuals be made aware of their rights and understand them. The use of Miranda warnings goes a long way to ensuring this happens. But what about those who are not proficient in English or who are deaf?

Although nearly all police departments are equipped with Miranda warning cards with English on one side and Spanish on the other, variations in dialect or sloppy recitation of the text can cause a lack of clarity. Further complicating matters, according to the U.S. Census Bureau, there are over 300 languages spoken in this country.

In its July 2013 ruling of *United States v. Botello-Rosales*, the 9th U.S. Circuit Court of Appeals reversed the conviction of a Spanish-speaking defendant in a marijuana case after finding that the detective's translation of the Miranda warning "failed to reasonably convey his rights." The detective used "libre" to mean "free," or without cost, which is not a correct translation. Instead, "libre" translates to "free" as in being able to do something, implying counsel was contingent on the lawyer's availability.

There are several types of language services that police departments may use including interpretation services via telephone, bilingual staff (either from within the department or borrowed from other agencies or jurisdictions), adopting standardized translated documents, or professional translators/interpreters, and trained community volunteers.

Provisions in the Rehabilitation Act of 1973 require police departments which receive any federal funding to provide qualified interpreters for communication with hearing impaired persons who rely on sign language. The vast majority, about 90%, of those born deaf can only read at or below a 5th grade level. So effectively reading and completely understanding Miranda is unlikely. In serious matters, especially when a person's freedom is at stake, it is vitally important to communicate as clearly as possible.

Whether an issue of language or communication with the deaf or hearing impaired, recording the Miranda warning process preserves evidence of whether or not the constitutional rights of the individual were conveyed well and understood. This documentation can then be used in any legal challenge that might arise. The bottom line is that clear communication and understanding of our constitutional procedural due process rights are key for both law enforcement and defendants.

Look for examples of communication barriers in news reports in print or online. How might an efficient exchange of information change this situation?

For additional civic education resources available from the NYS Bar Association's Law, Youth and Citizenship Program go to their website at www.nysba.org/lychome.

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MIRANDA
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