The Right to Understand Your Rights: A Linguistic Look at the Miranda Warnings

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Abstract
Miranda v. Arizona (1966) decided that police interrogation without notifying suspects of their rights violated the Fifth Amendment. That Supreme Court decision outlined the specific rights that suspects must be made aware of, but it did not specify any particular language or phrases that must be used. In *Dickerson v. United States* (2000), the Supreme Court upheld the *Miranda* decision and further specified that as long as the rights were conveyed, no "specific or dogmatic language was necessary when delivering the warnings.

Research on the effectiveness of the Miranda Rights decision has shown that "most English speaking adults probably understand the warnings" (Solan 2005). In a study asking participants to paraphrase the warnings, 69% of participants scored either seven or eight out of eight points and 75% of participants understood most of the critical vocabulary words. However, some important words, such as "consult" and "right," were understood by fewer than 50% of participants (Grisso 1980).

In their book on the intersection of criminal justice and language, Lawrence Solan and Peter Tiersma propose rewriting the Miranda warnings according to "Plain English" principles to address this problem (2005). Their suggestion is based on research in jury instruction field showing that switching to Plain English does improve comprehension (Charrow and Charrow 1979; Elwork, Sales, Alfini1982; Randall 2014). The question is, how much will this help?

The present study seeks to answer the question of whether reducing linguistic complexity by phrasing the Miranda warnings in Plain English will increase comprehension. To do this, subjects were tested on their understanding of the Miranda rights, without reading the rights before being tested or after reading one of two versions of the rights. Of the two versions of the Miranda rights, used in South Carolina, was more linguistically complicated than the other, proposed by Solan and Tiersma in their 2005 book.

1 Introduction

1.1 Literature Review

The Miranda warnings were established in 1966 by *Miranda v. Arizona.* The case determined that police could not interrogate suspects without notifying them of their rights and that doing so would violate the Fifth Amendment. Since 1966, the Supreme Court has made multiple decisions reinforcing and clarifying which rights the Miranda Warnings must convey. A critical requirement, of course, is that they be understood by everyone who hears them.

Though a survey of Miranda warnings in use throughout the United States show that some Miranda warnings require a college reading level, the average Miranda warning is written at a 6th to 8th grade level (Vernon, Raifman, and Greenberg 1996) which matches the average reading level of Americans, 7th grade. Most people, then, should therefore be able to understand the Miranda warnings fairly well (Solan and Tiersma 2005).

Thomas Grisso tested this hypothesis in a study testing 260 adults. On a paraphrasing test worth eight points, 69% of participants scored seven or eight points. While some critical vocabulary words were understood by over 75% of participants, fewer than 50% of participants understood other critical vocabulary words such as "consult" and "right" (Grisso 1980) Though these results have been understood to say that "most English-speaking adults probably understand the warnings" (Solan and Tiersma 2005), looked at the other way, a good 20-30% of adults did not understand the meaning well enough to paraphrase it.

There is other research that shows significant problems with understanding. A study by Richard Rogers, et. al. (2013) shows that Miranda miscomprehension is high among the Houston jury pool.

Other research shows some that groups are more likely to miscomprehend the Miranda warnings than others. For example, suspects with low intelligence or mental problems are less likely than the general population to understand the Miranda warnings (Solan and Tiersma 2005). Using Grisso's instruments, Furelo and Everington compared Miranda comprehension levels of mentally retarded people with various amounts of contact with the criminal justice system. The two different groups scored an average of 2.24 and 4.60 on the eight point paraphrase test (Oberlander and Goldstein 2001). More recent research by Morgan Cloud (2002) confirms that mentally retarded people do not sufficiently understand the Miranda warnings.

Juvenile suspects are read their rights in the same way that adults are and research shows, that they, too, that are less likely than adults to understand the Miranda warnings (Solan and Tiersma 2005). In the same study that looked at the 260 adults, Grisso tested the understanding of two groups of juveniles: mentally retarded juveniles and those with IQs over 100. While 16 year olds with IQs above 100 scored similarly to average adults, Grisso's study found that only 30% of juveniles sufficiently understood the right to counsel and overall, children under 15 years of age are unlikely to understand their legal rights sufficiently (Grisso 1980). In a study, Naomi Goldstein confirmed that young age and poor Miranda comprehension attribute to the likelihood of false confessions.

Though the comprehension of Miranda rights has been studied from a psychological or law perspective that discusses the reading levels of various versions of the instructions, none have looked at the linguistic causes of miscomprehension. Linguistic testing of the Miranda warnings is warranted, especially considering the success of linguistically-based Plain English principles in revising jury instructions in the recent years (Charrow & Charrow 1979).

1.2 The Plain English Jury Instruction Movement and Linguistic Factors

Like Miranda warnings, jury instructions are legal passages that are read aloud to lay listeners who have no expertise with legal terminology. And much research, beginning with Charrow & Charrow's (1979) classic study, has shown that jury instructions are too difficult for the average juror to understand (Elwork, Sales, and Alfini 1982; Saxton 1998).To address this problem, California, among other states, has rewritten their instructions based on the principles of Plain English. More recently, Massachusetts has begun to consider the possibility of rewriting their jury instructions (Randall 2014).

In rewriting instructions, the goal is to overcome the writing style of the legal professions, which has been characterized as "(1) wordy, (2) unclear, (3) pompous, and (4) dull" (Melinkoff 1963). The Plain English movement seeks to eliminate these four qualities and a "linguistic look" at the syntax and semantics of legal writing can guide rewriting to coincide with evidence about the factors that help or

hinder comprehension. Randall identifies several of these factors based on research in psycholinguistics and reading.

One factor that increases processing load is the presence of negatives. These can be overt negatives, such as *not* and negative affixes like *un-* or *in-* (Watson 1959), or inherent negatives such as *against* (Just and Clark 1973). Another factor is the use of nominals, nouns that express actions usually expressed by verbs such as *questioning* in (1a) whichare harder to process than their underlying verbs, *question* (Klare 1976) as is clear when you compare (1a) with (1b).. The difference is that forming a nominal from a verb requires eliminating the verb's participants (or arguments). It is unclear who is doing the questioning and who is being questioned.

(1a) I have the right to have a lawyer here during [X's] questioning [of Y].
(1b) I have the right to have a lawyer while [X] questions [Y].

Passive verbs have been shown to be more challenging to process than their active counterparts (Gough 1966; Slobin 1966; Olson and Filby 1972; Ferreira 2003). Like nominals, passive verbs omit an argument (the agent), but they also reverse the standard subject-verb-object word order, as shown in (2).

(2a) any statement I make can and will be used against me
(2b) x can and will use any statement against me

In (2a), the object (*any statement that I make*) appears before the verb (*use*), replacing the subject in the position that it normally occupies. We have no idea *who* can and will use the evidence.

Embedded clauses and relative clauses can also affect sentence processing. Embedded structures, especially when they are multiply embedded, challenge the parser. Left branching embedded structures are more difficult to parse than right branching structures. Subject relative clauses are more difficult to parse than object-relative clauses (Chomsky and Miller 1963).

Lexical choices could affect clarity and comprehension Randall (2014) also suggests that low-frequency words and phrases might be more challenging to understanding than high-frequency synonyms. Words that are undefined, especially words with special legal meanings that differ from their everyday meanings, can also challenge comprehension.

As linguists and lawyers, Solan and Tiersma (2005) proposed a set of warnings written with linguistic Plain English and legal principles in mind. Shown below are a set of warnings used by South Carolina and the set rewritten by Solan and Tiersma. Each linguistic factor discussed above is highlighted below in a different color, with negatives in red, passives in green, nominalizations in orange, and embedded phrases in yellow.

Warnings from the South Carolina Waiver Form

That I have the right [to remain silent] and I do not have [to answer any questions or make any statements at all]; that any statement [I make] can and will be used against me in a court or courts of law for the offense or offenses concerning [which the following statement is hereinafter made]; that I have the right [to consult with a lawyer of my own choice] before or at anytime during any questioning or statements [I make]; that [if I cannot afford [to hire a lawyer]] I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements [that I make],

without cost or expense to me; that I can stop [answering any questions or making any statements at any time [that I choose],] and call for the presence of a lawyer [to advise me] [before continuing any more questioning or making any more statements, [whether or not I have already answered some questions or made some statements.]]

Warnings Proposed by Solan and Tiersma (2005)

1. I have the right [to remain silent.] I do not have to answer any questions or make any statements.
2. If I decide [to speak to the police], anything [I say]- [whether or not it is recorded]- can be used against me in a court of law.
3. I have the right [to have a lawyer here during questioning]. All I have to do is say, "I want a lawyer." [If I do not know [where to find a lawyer]] the police will get a lawyer for me. [If I cannot afford [to pay]], the lawyer will be provided free of charge.
4. As soon as I tell the police [that I want a lawyer], they will not ask me any more questions until [I have talked with the lawyer].

2 Experimental Design

The goal of this study was to test a more linguistically complex version of the Miranda warnings (South Carolina's) with the less linguistically complex version, proposed by Solan & Tiersma (2005). In order to do so, two instructions were selected to be tested against each other and against a baseline "no-instruction" condition.

Version 1 (SC Version)

That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

Version 2 (ST Version)

1. I have the right to remain silent. I do not have to answer any questions or make any statements.
2. If I decide to speak to the police, anything I say- whether or not it is recorded- can be used against me in a court of law.
3. I have the right to have a lawyer here during questioning. All I have to do is say, "I want a lawyer." If I do not know where to find a lawyer the police will get a lawyer for me. If I cannot afford to pay, the lawyer will be provided free of charge.

4. As soon as I tell the police that I want a lawyer, they will not ask me any more questions until I have talked with the lawyer.

2.1 Participants

The participants for this study were college students in Massachusetts, Ohio, and New York. Participants were never eliminated because anyone can be arrested in the United States.

2.2 Materials

Two versions of the Miranda Warnings were used in testing their comprehensibility. The first version, referred to as the SC version, was excerpted from the South Carolina voluntary statement form. No changes were made to this version. The second version, referred to as the ST version, was presented by Solan and Tiersma in *Speaking of Crime* (2005). Solan and Tiersma wrote their warnings based on plain English principles and Miranda comprehensibility research but their version of the warnings has never been used in context (2005). Slight changes were made to the warnings put forth by Solan and Tiersma. Second person was changed to first person to reflect the usage of the first and second person in the South Carolina version of instructions.

2.3 Procedure

Participants were randomly assigned to one of three test conditions and participated in a survey through Google Forms. The first group read the SC warnings. The second group read the ST warnings. The third group did not read any version of the warnings. After reading the warning, Participants were asked to answer eight true or false questions about the warnings and fill out a short demographic questionnaire.

2.4 Hypotheses

The main hypotheses of this study is given in (3):

(3) (a) Participants will comprehend the ST warnings better than the SC warnings, as shown by correctness.

(b) Participants will perform better after reading either version of the warnings than after not reading anything.

(c) Miranda warnings with fewer inhibiting linguistic factors will be understood better than those with more, based on rates of occurrences and rates of comprehension.

3 Results and Discussion

Hypothesis (3a) states that subjects will perform better on the ST warnings than on the SC warnings. Figure 1 confirms this, showing the average scores on each of the three conditions.

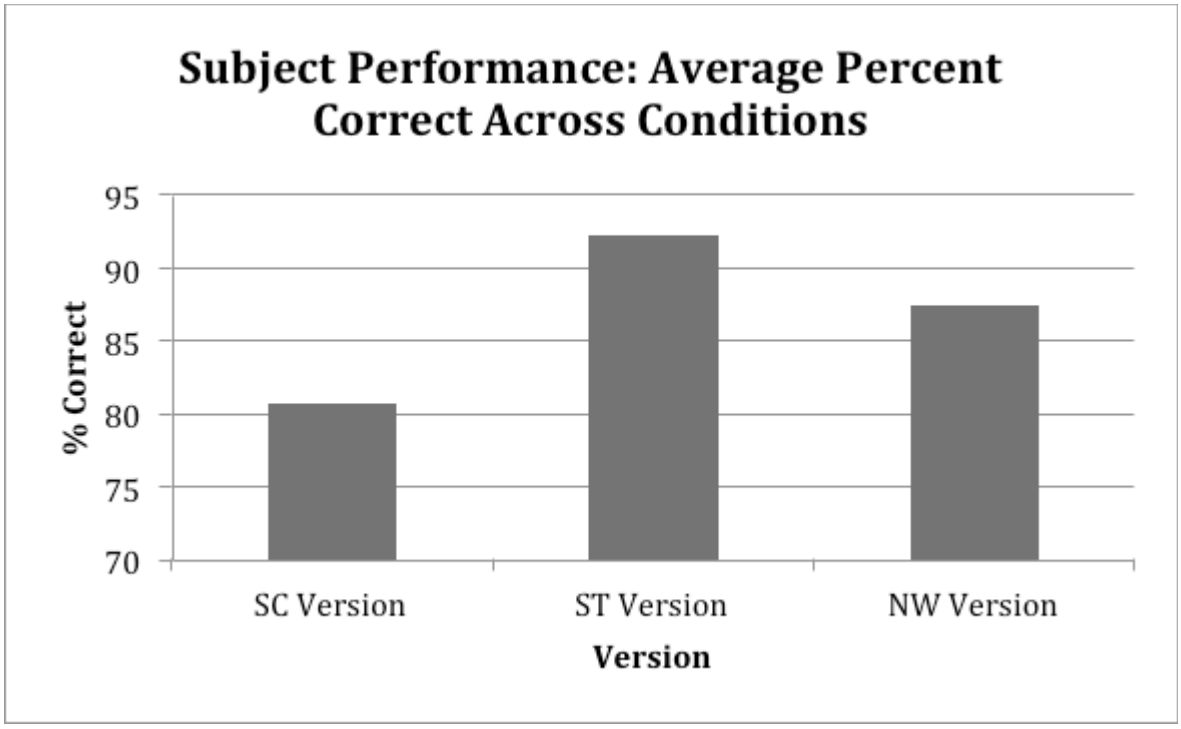

Figure 1

The group that read the SC warnings answered an average of 80.7% of questions correctly. The group that read the ST warnings answered an average of 92.3% of questions correctly. This 11.6% difference was shown to be statistically significant, as analyzed using an independent samples t test ($t=2.10$, $p<.05$). On average, the subjects performed better on the ST instructions than on the SC instructions confirming hypothesis 3a.

The data suggested that reading the ST warnings did improve comprehension over the baseline, (93.3% vs. 87.5%), in support of hypothesis (3b). The difference did not reach significance for the sample size tested. The SC warnings had the opposite effect, lowering comprehension (again, not significantly). What these results do show is that providing suspects with well-written warnings will improve their knowledge of their rights, and providing them with poorly-written warnings will certainly not. Since by law suspects have to be made aware of their rights, Miranda warnings should be written with linguistic complexity in mind.

Hypothesis 3c was also shown to be true. A look at the five factors discussed in section 1.2 shows that linguistic complexity may play a part in the comprehension of the instructions. Figure 2 shows the rate of each of these factors as number of occurrences per 100 words.

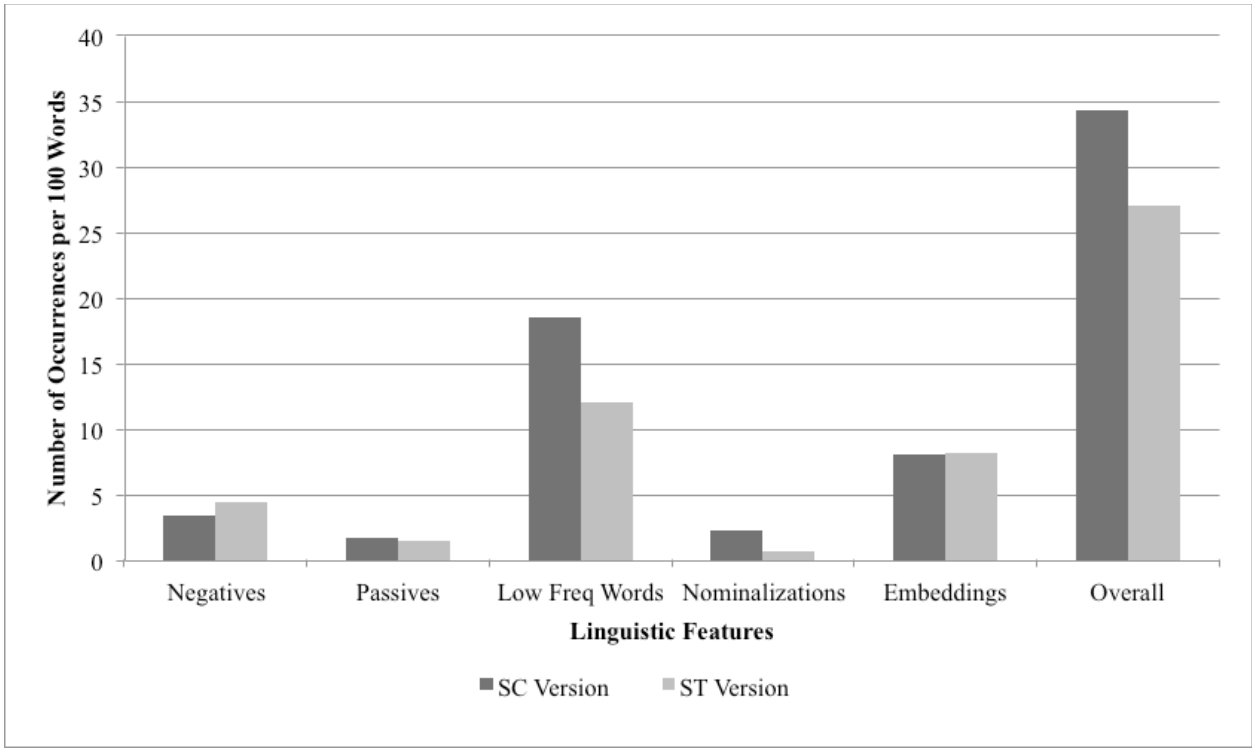

Figure 2

The overall total of problematic linguistic factors in the ST version (27.1 per 100 words) is less than the overall total linguistic features in the SC version (34.3 per 100 words). A more detailed analysis of the linguistic factors would have to be run for each factor individually to know which ones affect comprehension the most. However, from the data shown in figures 1 and 2, it the ST-SC difference is reflected in their relative linguistic complexity Simplifying the linguistic challenges of the Miranda warnings will improve how well suspects understand them..

Limitations of this study and questions for future research

It should be noted that the participants in this study were relatively educated and homogeneous. They were all college students, most of whom speak English as their native language. Thus, the results of this study are showing a ceiling effect, with an average score across all three conditions 86.8% and none of the subjects scoring below 50%. However, Solan and Tiersma identified four groups to be particularly susceptible to Miranda miscomprehension: low-intelligence suspects, juvenile suspects, suspects who are not native English speakers, and deaf suspects (2005). This study doesn't address any of these groups nor is it a representative sample of the population of people who actually get read their rights. It is likely that results on that pool of subjects would show lower comprehension, Further studies into Miranda comprehension and linguistic complexity should make more of an effort to investigate comprehension by of these groups. The results will provide evidence for how we can improve justice for all people who need it.

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