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## The Miranda Warnings and the Deaf Suspect

McCay Vernon, Ph.D., Lawrence J. Raifman, J.D., Ph.D., and Sheldon F. Greenberg, Ph.D.

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**Administration of the Miranda Warnings to deaf suspects poses many legal issues. If police officers, judges, attorneys and psychologists are unaware of these, evidence obtained as a consequence of deaf suspects waiving their Miranda Rights may be inadmissible in court. These issues include the importance of videotaping the police interview, the use of sign language interpreters, the determination of the deaf defendant's reading level and communication capacity, the limitations of lipreading, and other psycholinguistic factors. Recommendations are offered to aid in determining whether a deaf suspect is capable of understanding the Miranda Warnings and how these warnings should be administered.**

A citizen who is suspected of a crime is entitled to a Miranda Warning under the Fifth Amendment's privilege against self incrimination (*Miranda v. Arizona*, 1966). Despite this intended protection, as many as 30% or more of deaf citizens with educational deficits are not properly informed of their privilege against self incrimination and their right to an attorney (Anon, 1991-1992; Vernon & Coley, 1978).

The term *deaf* as used in this article refers to those persons who lost their hearing prior to attaining the age of eighteen years. Prelingually deaf persons are those persons whose hearing was lost prior to their acquisition of language, usually prior to the age of three years old. The data cited refer to studies done primarily with this prelingually deaf population.

Prelingually deaf persons have not heard the English language spoken (Anon, 1991-1992; Vernon, 1968). This creates a lack of spoken English language competence, and produces a subtle, though highly significant, cognitive deficit which often causes others to stigmatize them as being mentally retarded. Yet, that is the functional consequence for deaf persons when they are given Miranda Warnings. No one would be expected to receive the Miranda Waiver in a language foreign and noncomprehensible. Deaf persons have severe difficulties with English language, as English is not their native language. This is not attributable to

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McCay Vernon, Ph.D., is the Psychologist for the Deaf Unit, Springfield Hospital Center and Professor Emeritus, Western Maryland College. Lawrence J. Raifman, J.D., Ph.D., is the Director of Forensic Services at Springfield Hospital Center and Assistant Professor at Johns Hopkins University, Department of Psychology. Sheldon F. Greenberg, Ph.D., is Assistant Dean for Continuing Studies, Johns Hopkins University. Address reprint requests and correspondence to Dr. Vernon, 37 Ridge Road, Westminster, Maryland 21157, USA.

intellectual retardation; in fact, deaf persons have a normally distributed IQ (Vernon, 1968).

In actuality, the cognitive deficit causes a lack of basic social and vocational competencies, diminished knowledge about universal aspects of life, such as property, titles, licenses, and appropriate social rules of etiquette. More importantly, when involved with the judicial system, prelingually deaf persons are at a great disadvantage. They are likely to have little appreciation of legal procedures and legal vocabulary. This deficit may be regarded as a linguistic processing, not an intellectual or psychiatric deficit. Postlingually deaf persons are at less of a disadvantage than are prelingually deaf, though they nevertheless face similar obstacles.

The initial research drawing attention to prelingually and postlingually deaf defendants' incapacity to exercise the Miranda Waiver was reported nearly two decades ago (Vernon & Coley, 1978). Dubow & Geer (1992, pp. 16-19) note that, in the seventeen years following publication of this research, it has been widely cited in court decisions involving deaf defendants, several times playing a major role in capital murder cases.

### **ADMINISTERING MIRANDA WARNINGS TO DEAF SUSPECTS**

The Fifth and Sixth Amendments to the Constitution entitle defendants charged with crimes the right to have a lawyer present while they are asked any questions about the alleged offense. The U.S. Supreme Court, in its *Miranda* opinion, stated that these rights were necessary due to the sophisticated coercive approach police took to criminal interviews. The Court took judicial notice that police manuals instructed interviewers to highlight the isolation and unfamiliar surroundings, to display an air of confidence in the suspect's guilt, to maintain interest in confirming certain details, and to posit the defendant's guilt as fact. Further, the Court acknowledged that police officers were instructed to minimize to the defendant the moral seriousness of the offense and to cast blame on the victim or on society. "These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already, namely that he is guilty," (*Miranda v. Arizona*, 1966, p.450). The Court referred to the interrogation atmosphere of the criminal interviews as carrying "its own badge of intimidation" (p. 457). To be sure, this is not physical intimidation, but it is equally destructive of human dignity. In its opinion, the *Miranda* Court held the modern practice of in-custody interrogation is psychologically oriented, "directed to subjugate the individual to the will of the examiner" (p.457). The *Miranda* Warnings are intended to "level the playing field" for suspects who face police interviews.

Police interrogators have three procedural choices when administering the *Miranda* Warnings to an individual who is deaf. The *Miranda* Warnings may be given (1) in written form, (2) *via* lipreading, or (3) in sign language. Of the three options, only the use of sign language is appropriate though it is vulnerable to problems. While geographic and regional differences do occur in the exact wording of the *Miranda* Warnings, the reading level of their content is measured to be at the

sixth to eighth grade level (Vernon & Coley, 1978). Based on these data, 60% of deaf individuals do not read well enough to comprehend the Miranda Warnings (Anon, 1992). Thus, if Miranda Warnings were presented in written form to read, a deaf defendant would not be able to comprehend its meaning. For deaf suspects at an eighth grade reading level or higher, the presentation of the Miranda Warnings in printed form is acceptable. Many illiterate suspects who are unable to read English at a sixth grade level but are able to hear can understand the Miranda Warnings by having them administered and explained orally in English or in the suspect's native language. This option will not work with deaf defendants. Thus, it is not a good policy to present the Miranda Waiver text and rely upon most deaf suspects to read and comprehend it.

Often, police interrogators not familiar with deaf suspects will administer the Miranda Warnings through lipreading. Lipreading, technically known as speechreading, is extremely difficult. Of the 42 phonemes that make up the sounds of the English language, half either look just like some other sound as formed on the lips or else are invisible (Davis & Hardick, 1981, pp. 59-60).

Unfortunately, the average deaf lipreader comprehends only about 5% of what is spoken, even when conditions such as lighting and distance from the speaker are ideal and both parties are facing each other (Vernon & Andrews, 1990, pp. 101-103). The world's best lipreaders understand only about 25% of what is said orally (Lowell, 1957-1958, p. 195; Vernon & Andrews, 1990, pp. 101-103). Based on these data, lipreading is not a satisfactory way to give the Miranda Warnings to deaf suspects.

Sign language is the best method to administer the Miranda Warnings to deaf suspects. However, it presents difficulties. The form of signs used by most deaf people in the U.S. and Canada is American Sign Language (ASL). For years ASL was a repressed language, forbidden in most schools for deaf children. It still has no recognized written form. Furthermore, most deaf people learn it from schoolmates when they are young children; it is not formally taught in schools for the deaf. There are no signs for many of the terms used in legal, academic, scientific, and other communications contained in the Miranda Warnings. There are some signs that approximate the English words, but there are no *exact* synonyms for legal terms which are in general use. There are ASL signs known to a select few deaf people who are in legal, academic, or scientific fields, but these signs are unfamiliar to the overwhelming majority of deaf people.

For deaf people who are fluent in English as well as ASL, vocabulary limitations of ASL are no problem because words for which there are no signs can be fingerspelled using the manual alphabet. Unfortunately, a person who is functionally illiterate or has a low reading level, is not benefited by fingerspelling complex words. For example, legal terms such as the word "rights" which appears in most forms of the Miranda Warnings has no sign understood by most deaf people. If fingerspelled to an illiterate or undereducated deaf person it will not be understood. As Dubow and Greer (1992) point out:

Mary Furey, an educator, observed that the standard advice of rights form poses serious questions for the average deaf person. A great number of deaf adults would find the language of this [Miranda] warning strange and incomprehensible because of the many idioms used in it. True, each word in and of itself is simple, but when two or more are put together in a special sense, they can be totally

unintelligible to a deaf individual because many deaf adults give each word narrow or literal meaning. . . . The idiom "can be used against" would also be difficult to understand. Even the word "rights" could be perplexing.

Infinitives, verbs used in the passive voice, gerunds, and other verbals such as. . . "without a lawyer present," etc., would not be readily comprehended by the deaf adult. The meaning of "if" at the beginning of a clause usually is not understood.

I find that. . . the warning itself. . . as presently written, would be difficult for the usual deaf adult to read with understanding and indeed could be misunderstood or not comprehended at all. (p. 177)

Another problem posed by ASL is that its distinctive grammar, organization, and focus are different from English. Whereas English language is based on sounds and structures that are easy to speak and understand auditorially, ASL developed a syntax, organization, and vocabulary that is highly visible and easily formed on the hands (Vernon, 1987). For example, such basic terms of English as the articles "the," "a," "an," and the verb "to be" do not exist in ASL, nor do certain perfect tenses. For example, hypotheticals and conditionals such as "if you were going," or "suppose it happened," are more difficult in ASL. Certain events as functions of time sequences are harder to express in ASL than in English language, such as "yesterday, she reported she was not home last Tuesday." By contrast, varying degrees of affect, such as anger, are far more vivid in ASL. These differences are reflected in a deaf defendant's problem comprehending the Miranda Warnings. Far more is involved than merely reading level or the lack of understanding of English: It has more to do with a deaf suspect's capacity to translate the fundamental differences between ASL and English (Dubow & Geer, 1992, pp. 176-178; Vernon, 1987).

The problem is documented by the research reported by Vernon and Coley (1978). They selected a version of the Miranda Warnings. The National Association of the Deaf (NAD) took Veron and Coley's warning, put it into sign language, and used a NAD expert to do the interpreting. The final version was put on film with a deaf man signing. When this signed form of the Miranda Warnings was presented to deaf graduate students at Western Maryland College, their interpretation of its meaning revealed that they did not grasp its contents.

This problem is of such magnitude that the Police Executive Research Forum, an organization of the largest city, county and state police departments in the United States, commissioned a video, "Miranda and the Deaf Suspect," for the benefit of police officers in the U.S. and Canada. In essence, it advised against attempting to give Miranda Warnings to deaf suspects unless it is first established that they are reading at grade level 8.0 or better (Anon, 1992).

### **The Legal Consequences of Nonadmissible Miranda Waivers**

The failure to adequately provide the Miranda Warnings can be the difference between being found guilty or not guilty, between conviction for a major crime or reduction of the charges (see *Maryland v. Barker*, 1977). The use of ASL interpreters in order to obtain a Miranda Waiver does not insulate interrogators

from defense attorney efforts to exclude from trial a deaf defendant's statement to police. For example, the following newspaper article characterized the gravity of the matter in a case in which ASL was employed to obtain a Miranda Waiver:

American Sign Language, the native language of Gary Goehring, who has confessed to strangling a classmate, has no simple equivalent for 'right,' as in 'the right to remain silent'. That might help save him about fifteen years in prison. To the great consternation of the family of Melinda Neumann, [the victim] who was killed last February, a flawed sign language translation of the Miranda warning in Anoka County recently got Goehring's six hour confession thrown out of court. ("What is Lost in Translation," 1993, p. A1)

In the Goehring case, the first degree murder charge was reduced to second degree murder, causing Cheryl Wold, the victim's aunt to conclude, "He's getting off on a technicality" (p. A1).

Goehring was a 19-year-old deaf youth with a history of behavior problems in school. One evening, while giving a young deaf woman he knew from school a ride home, he attempted to rape her. When she resisted and threatened to tell the police, he beat and strangled her to death. Later, he confessed to the police that he had done it because he was afraid she would tell on him.

When a video tape of the administration of the Miranda Warnings was analyzed, it was determined that the interpreter had used "Pidgin Sign," that is, a hybrid form of sign language that relies substantially upon the use of signs in English word order. Because the suspect understood ASL and did not have the English competence to grasp the meaning of the interpreter's signs in English syntax, the damaging evidence in the confession was thrown out. County Attorney Bob M. A. Johnson who defended Goehring noted that the case, though tragic, can serve as a learning experience ("There can be Some Good," 1993).

Other examples indicate that while the frequency of such cases is low, evidentiary challenges are frequent and the consequences are of major significance. In capital murder cases, the failure to properly administer the Miranda Warnings to a deaf defendant can determine life or death. For example, an Oregon deaf man confessed to beating a deaf woman to death with a hammer while she was in bed. He was set free by the court in 1981 after successfully challenging the sign language translation of the Miranda Warnings administered to him before he confessed to the woman's murder (*Oregon v. Mason*, 1980).

A California case also underscores the importance of establishing procedural safeguards during the administration of the Miranda Waiver interview with a deaf defendant (*People v. Smith*, 1995). Mr. Smith was suspected of involvement in the shooting death of Mr. Powell. At the time of Smith's interview, the police relied upon a sign language interpreter, Mr. Fernandez. The interview was audiotaped and videotaped. A transcript of the interview reveals the following exchange:

Detective Fisk: "Keeping these rights in mind, do you wish to talk to me about this?"

Smith (through Fernandez): "I don't really. I prefer to go to court and see what happens. In this case. In the case? What I mean . . . [i]f you sue me, or not sue me, but to have a . . . a lawyer, because."

Fisk: "Do I understand him correctly in that he doesn't want to explain to us what happened?"

Smith (through Fernandez): "Oh. Oh, I get it. OK, yeah, I'll go ahead and talk." (p. 1188).

Smith then informed police that another man present at the scene of the alleged offense shot the victim. Fisk refused to accept the explanation and indicated he knew Smith was the shooter. Smith then admitted that he had shot Powell, also a deaf man, twice in the leg, but that it was "Vincent" who made the fatal shot to Powell's head and killed him. In court hearings, Smith communicated with his attorney by signing to a relay interpreter, who was also deaf. The relay interpreter signed to an ASL interpreter who then verbally spoke to Smith's attorney. The court hearing, which raised issues of the administration of Miranda rights waiver to Smith, lasted for seven days. The Judge ruled Smith's statement to police was admissible at trial. Smith accepted a plea bargain to second degree murder, based in part on his statements to the police. He received a sentence of fifteen years to life.

On appeal, the appellate court reversed the lower court ruling, and rejected Smith's confession. The appellate court held Smith had *unequivocally* invoked his right to counsel; there was no justification for further questioning. Police should have put an immediate end to the interview. The police contention that their error in continuing the interview was made in good faith was rejected. The Court of Appeals reiterated the principal that the exclusionary rule is designed to deter police misconduct, citing *United States v. Leon* (1984), and concluded that the "good faith" exception is not applicable to a defendant's Fifth Amendment right to remain silent. The court drew a distinction between the Fourth Amendment rights against searches and seizures that deters police misconduct and Fifth Amendment rights against self incrimination that maintain the integrity of the judicial system (*Escobedo v. Illinois*, 1964). Thus, the court held that it was immaterial whether or not Fisk was acting in good faith when he pursued the matter further. The Smith case demonstrated that even with the benefit of American Sign Language and relay interpreters, cases are susceptible to judicial reversal.

In cases involving a prelingually deaf defendant who experiences a secondary disorder of linguistic and cognitive deficits (referred to in the literature on deafness by the diagnosis of "Primitive Personality"), the problems of evidentiary inadmissibility increases (Vernon & Andrews, 1990, pp. 137-138). The following case illustrates the problem.

The Defendant, Mr. Barker, a 23-year-old, deaf man with a reading grade level of 2.8 and a performance IQ of 115, was in a bar around closing time drinking with some deaf friends. An intoxicated hearing woman who knew no sign language became fascinated with him. When the bar closed she followed Mr. Barker to his car and sat next to him on the front seat of the car. He drove some distance and stopped the car. The woman became sexually aggressive. Mr. Barker was unable to achieve an erection. This made him feel humiliated and angry and he wanted to stop. The woman, feeling frustrated, rejected and infuriated, kicked him in the groin in retaliation. Mr. Barker responded to this attack with a rage that led to his beating the woman to death. Later he stripped her clothes off and stuffed her nude body in a well.

He signed a written form of the Miranda Warnings, confessed, and led police to the body, the woman's clothes, and to other incriminating evidence. The

prosecutor, sensing Mr. Barker may not have understood the written form, had the detectives return and repeat the Miranda Warnings to Barker, this time with a sign language interpreter.

Mr. Barker, like many deaf people who lost their hearing before age three, lacked enough English to know the concepts contained in the Miranda Warnings even when they were finger-spelled to him. Many terms in the Warnings have no equivalent signs that can be understood by the average deaf person. Thus, the court decided that Barker had not been given his rights even when they were signed to him by an interpreter. Hence, all evidence obtained from him thereafter was thrown out. As a result, he was freed of the murder charge (*Maryland v. Barker*, 1977).

These cases as well as others cited by Gardiner (1985) are vivid examples of the importance of properly handling the Miranda Warnings with deaf defendants. Deaf people are entitled to the same justice as those who hear.

## **ACHIEVING AN ADMISSABLE MIRANDA WAIVER WITH A DEAF DEFENDANT**

Police, attorneys, and forensic mental health professionals who conduct interviews of deaf suspects can benefit from the specialized knowledge and training related to deaf communication and be cognizant of the pitfalls associated with such activities. Effective use of interpreters, rehabilitation specialists, and other consulting professionals who work with deaf persons can help assure successful communication of the Miranda Warnings to a deaf defendant (see Figure 1). Essential to the communicative process are linguistic, psychological, interpreting and translation factors.

### **Psycholinguistic and Psychological Factors**

Many deaf people, especially those characterized as Primitive Personalities, will sign documents such as Miranda Warnings, Search and Seizure Permits, leases, purchase agreements, loans, and so on that they do not understand (Myers, 1968). Other groups, such as uneducated people, those who are mentally retarded, and some foreign-speaking immigrants do likewise. In the case of deaf suspects, the reasons for this are special and distinct, and the prevalence of the problem is greater.

In general, people who cannot read or who read very poorly are accustomed to signing papers they do not understand. This is especially true of deaf people (Myers, 1968). Hence, when a police officer or detective puts a Miranda Warning document in front of a deaf person and points to where the individual should sign, the deaf person will sign often without comprehending the contents or intent of the form.

Further, the deaf person will behave much as a hearing person does when talking to a non-English-speaking person in a foreign country. Rather than appear stupid and continually ask the speaker to repeat or explain, the deaf person tends to smile, nod his/her head, and, in general, acquiesce. Thus, when the police officer says to the deaf person to whom s/he has shown or read the Miranda Warnings, "Do you understand?" the deaf individual inevitably nods, "Yes."

I, \_\_\_\_\_ have been advised of my Constitutional Rights by \_\_\_\_\_ who has identified himself as a Law Enforcement Officer. I understand that:

1. You have the right to remain silent. Do you understand this?
2. Anything you say can and will be used against you in Court. Do you understand this?
3. You are not being promised anything to talk to us and no threats are or will be made against you. Do you understand this?
4. You have the right to talk to a lawyer and have him present now or at any time during any questioning. If you proceed to answer any questions without a lawyer the questioning will stop if you should change your mind and request the presence of a lawyer. Do you understand this?
5. If you cannot afford a lawyer, one will be furnished, without charge, before any questioning, if you so desire. Do you understand this?
6. Do you understand each of the rights I have explained to you?
7. Understanding each of these rights, are you willing to talk to us without a lawyer?

I have elected of my own free will without any force, threats, or promises to answer verbally all questions asked.

Signed \_\_\_\_\_

Witnessed \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_ Place \_\_\_\_\_

Figure 1. Miranda Warnings of Rights: Version Used in Maryland

Deaf people are put in a uniquely disadvantageous position when taken into custody by a police officer. Because they cannot hear what is being said, they often lack full understanding of what is going on. This fact causes fear, even among those who are innocent of the offense. There have been cases, such as in the Goehring case discussed previously (see, "What is Lost in a Translation," 1993), in which deaf suspects were so desperately afraid that they signed confessions to homicides in hopes they would then be released to go home. There are also deaf people who will fight with law enforcement officials and do whatever they can to resist arrest. Conversely, deaf people often perceive the police officer as an authority figure of great power and control. They are anxious to accommodate such a person in order to minimize the time in interrogation. When the officer places a printed Miranda form in front of the deaf suspect or has an interpreter sign the warnings, the deaf person will initial and sign that s/he understands.

Another factor has to do with the relationship between the deaf person and the interpreter. When a deaf person facing police interrogation sees another person who understands and can use sign language, this individual (the interpreter) tends to become the focus of trust. This is especially true if the interpreter is a CODA (Child of Deaf Adults). Then it is almost as if he or she is communicating with another deaf person. The interpreter, rather than the police officer, is often perceived as the interviewer. Thus, if an interpreter is associated with the interview process, the deaf suspect is likely to sign any document jointly presented by the police officer and the interpreter (Harry, 1986). The circumstance is analogous to that found in the traditional doctor-patient relationship, known in the forensic community as the "white coat phenomenon." In this circumstance, a suspect facing a criminal interview at a police station may be referred to a police



psychologist for "support." The suspect may incorrectly conclude that the interview with the psychologist is protected as confidential when it is not.

Finally, a response that affects the criminal interview concerns the deaf person's tendency to give neutral, non-directive responses as a means of coping with the problems posed by lipreading or poor interpreters. This is especially true of brighter deaf individuals who believe if they can smile, nod, say "hmmmm," and in other ways give enough noncommittal responses, the person talking or an ineffective interpreter will repeat himself often enough that the message can be grasped. Some deaf people become so expert at this that their responses bear remarkable similarity to those of Rogerian psychotherapists and classical psychoanalysts. Hearing people who are struggling to understand the sign language of deaf people often use this same coping procedure.

Clearly police officers in the position of interviewers will benefit by sensitivity to psychology of deafness as described above. Consideration of these factors by attorneys acting on behalf of deaf defendants is essential to the administration of justice. Careful scrutiny of Miranda Warning procedures by attorneys and, ultimately, court judges act as a quality assurance that deaf defendants' interrogation is consistent with constitutional safeguards.

### **Interpreting and Translation Factors**

Police officers, lawyers, and mental health professionals who take a sign language course often do so because someone in their own family is deaf or has severe hearing impairment. These efforts to improve their skills enable them to have at least some basic communication with deaf persons they encounter in their work. This is commendable. However, a course or two in sign language in no way prepares someone to interpret in a crime-related interview. Police officers, unaware of the complexities of interpreting ASL, will often turn to a fellow officer who knows some sign language as an interpreter. Unless the officer doing the interpreting is fully qualified, evidence gained subsequent to the interview should not be admissible in court. Similarly, it is inappropriate to use family members to interpret the Miranda Warnings or to conduct a criminal interview. Rarely are they sufficiently competent signers to do forensic interpreting and, in most cases, they have an obvious bias.

Ideally, the person used by the police should be certified as a legal interpreter. The next best alternative is to engage a person certified to have comprehensive interpreting skills. If fully certified interpreters are not available, it is important to obtain the services of someone else whose competency will be recognized by the court. Specifically, the police officer should ask the interpreter frankly if he or she is able to understand the deaf suspect. Then the interpreter should provide examples to support the response. In addition, the police officer should inquire of the suspect if he or she is satisfied with the interpreter.

The police officer should assume that there may be problems associated with the interpreting because it is a complex task. In this way, he or she can focus on avoiding mistakes such as the unconditional acceptance of the "deaf nod." Finally, the police officer should videotape the entire interview session, and explain to the interpreter that the tape may be used in court. It is essential that the interviewer makes an independent assessment as to the extent to which good communication

occurs between the interpreter and the deaf person. If he or she perceives the communication is inadequate, the procedure should be stopped. The problem is that it is common for a police officer to assume if an interpreter is making a lot of hand motions and facial expressions and there is a lot of smiling and/or head nodding taking place, the communication is effective. This can be a false assumption. It is extremely difficult, essentially impossible, for the officer to know if the interpreter is effective unless the officer knows sign language. It is only through extensive questioning, persistent inquiry of the interpreter, and close observation of visual clues that the officer can get at least an idea of the effectiveness of the interpretation.

A second critical consideration is the deaf suspect who depends on ASL and who lacks adequate competence in English to understand signs used in English syntactical order. With such suspects, the interpreter must use ASL. However, many interpreters are not fluent in ASL. Furthermore, to use ASL with maximum effectiveness, it is not possible to simultaneously speak and sign (Kluwin, 1983; Stewart, 1990). Therefore, when the police officer asks a question, the ASL interpreter will often communicate it in sign language without speaking. This leaves the police officer unaware of what is transpiring. When the interpreter has finished presenting the question in ASL, he or she then repeats it orally. This delays the suspect's opportunity to respond, making answers more calculated and less spontaneous.

Despite the problem of simultaneously speaking and signing ASL, most interpreters will try to vocalize at the same time they are signing because police officers prefer this and feel far more confident their questions and the suspect's answers are being interpreted correctly. However, even the best efforts to do this tend to fall somewhat short. This is critical because it usually means that the ASL form is short-changed and the deaf suspect gets inadequate information. This problem can be minimized through effective videotaping, which is discussed later.

A third issue is the relationship between the interpreter and the police interviewer. When trying to determine whether a deaf suspect has understood a question, the most common error made is to ask, "Do you understand?" With deaf persons, especially those with educational and communicative limitations, it is almost reflexive for them to say "Yes," regardless of whether there was understanding. This enables the deaf person to meet the police officer's needs, escape feeling inadequate or stupid, and avoid saying, "I do not understand," a response which tends to exasperate hearing people. Instead of being asked, "Do you understand?" the deaf person should be asked, "Restate the question in your own words," or "Explain what the question means," or "Give an example."

A fourth consideration involves providing the interpreter a "warm up" or "evaluation" period. This usually requires 20 to 40 minutes of time (though it may be less for bright, educated suspects) in which the interpreter assesses the deaf suspect's signing skills, English language competence, general store of information, and knowledge of specific signs for words and phrases in the Miranda Warnings. This is a critical stage in the Mirandizing process. It will both enable the interpreter to convey to the police interviewer whether the interpreter feels capable of conveying the concepts of the Miranda Warnings to the suspect and whether the suspect is linguistically and intellectually capable of understanding them.

A final factor is that interpreters are paid for their services by the police. It is natural that they want to please their employers. In some large cities, the police

department may be a significant source of business for an interpreter. This conflict may cause some subtle and not so subtle pressure on the interpreter. The police officer's desire to solve the crime, combined with the pressure to perform for the employer may cause the interpreter to seek the desired response. This could result in the deaf suspect signing a Miranda Waiver he or she did not fully understand.

Like other professionals, interpreters want to appear competent and successful. There are times when an interpreter may pretend to understand what the deaf suspect says or go through the motions of presenting the Miranda Warnings even though the suspect cannot understand what is being signed. The police are rarely aware of the complex linguistic and conceptual issues in being deaf and in interpreting between ASL and English. The interpreter is therefore in the position of either going into lengthy explanations of these issues and their effect upon proper Mirandizing, or just doing the best interpreting that can be done under what are often impossible conditions. An interpreter who demands a 30 minute warm-up period, or insists on not speaking and signing simultaneously, may be less likely to be re-hired because the procedures take more time.

As was indicated earlier, sign language is an extremely difficult language to master. It has its own unique syntax and vocabulary just as do Latin, Greek, Russian, and so on. There are also regional, ethnic, and idiosyncratic variations. Deaf defendants who have little grasp of formal English language structure present an unusual challenge for interpreters. In some cases, the interpreter is unable to adequately understand what is being signed. It is appropriate for police to then rely on the support of a deaf person who is familiar with the form and level of sign language used by the defendant. These are called *relay interpreters*. Their function is to take the difficult-to-understand signs of the defendant and "relay" them to the interpreter in more conventional sign language. These relay interpreters also rephrase the sign language of the interpreter into a form the defendant can understand.

In difficult and challenging communication situations, relay interpreters are useful. A relay interpreter makes communication possible by visually painting a picture. In creating the environment, relay interpreters break down language into discrete, identifying physical environmental cues so that a deaf defendant can relate a blow-by-blow description of what happened, what he viewed, how he thought about it, and his personal responses. The use of relay interpreters may enable the police interview to occur with deaf defendants who suffer from additional educational, intellectual, or psychiatric deficits, where it would otherwise be impossible. Although practical, this practice presents some evidentiary concerns because it places two linguistic intermediaries between the police officer and the deaf suspect.

Another alternative to relay interpreters is the use of oral interpreters. Oral interpreters are people who are easy for deaf people not literate in ASL to lipread. Oral interpreters are able to recognize a deaf suspect's language limitations so that they can rephrase what a police interviewer says in ways that can be better understood. Oral interpreting does not provide the full understanding possible through sign language interpreting, but it can help with a deaf individual who does not sign. It is the opinion of the authors that oral interpreting should not be used by police administering the Miranda Warnings. The risk of providing incomplete or misinterpreted information—even by a skilled oral interpreter—is too great and could easily be challenged in court.

In summary, good ASL interpreters, especially children of deaf parents, and those who have special certification applicable to courtroom proceedings offer specialized expertise critical to the process of interviewing deaf suspects. Properly employed, interpreters and relay interpreters are an essential element in communicating with deaf suspects during initial and follow-up interviews. These communicators provide professional expertise with regard to deafness and deaf culture that is recognized by the courts. Such expertise can be pivotal both in solving crimes and in presenting cases for prosecution. Failure to involve these experts often results in evidentiary problems.

### **Use of Other Professionals**

Deaf persons accused of crimes often require that police and prosecutors involve other mental health and legal professionals. For example, it may be necessary to have a psychologist experienced with deaf clients give standardized reading, vocabulary, and intelligence tests. The deaf person's educational attainment and capacity—such as reading level, English language vocabulary, sign language competence, and knowledge of legal terminology—are important factors in determining whether or not the deaf person can be given the Miranda Warnings, search and seizure consents, agreements to take polygraph examinations, plea bargains, and so on. In other cases, neuropsychologists and/or neurologists are helpful in differentiating the nature and implications of the defendant's organic impairments, including the cause of the suspect's deafness, his or her psychological functioning, and so on. Mental health professionals also have expertise in assessing a deaf defendant with regard to malingering deficits and dysfunctional behavior in an attempt to avoid the consequences of standing trial.

### **Recording the Miranda Warnings Involving Deaf Individuals**

In order to have a valid record of police interviews, defendant statements to police, confessions, and the administration of the Miranda rights waiver, it is essential that police interviews with a deaf suspect be videotaped. When videotaping, every person involved in communicating through ASL should be depicted from the waist up to slightly above the top of the head and at a wide angle to include arms and hands even when extended. In this way, the full signs can be captured and a complete record of what was said (signed) is available. Videotaping is to sign language what audiotaping is to speech.

Police sometimes have interpreters voice (speak) what they are signing and voice what the deaf person signs in return. This is done to capture the procedure on audiotape rather than videotape. This is an unacceptable practice to employ with a deaf suspect who uses sign language (Dubow & Geer, 1992). An audiotape contains only what the interpreter claims was said (signed) which is hearsay and thus not admissible evidence in court. Furthermore, it may be fundamentally different from the communication which actually occurred (Dubow & Geer, 1992).

## GUIDELINES NECESSARY TO ACHIEVE EVIDENTIARY ADMISSIBLE MIRANDA RIGHTS WAIVERS

From a purely legal perspective, it is always best to have deaf suspects engage attorneys and have them present for all proceedings. This is particularly important in serious and in "open and shut" cases. In the latter, the evidence is so overwhelming a confession is unnecessary, thus the problems of Mirandizing the deaf suspect can be avoided.

If the questioning of the suspect is to proceed without a lawyer present, the first step a police officer should take is to obtain the services of a qualified sign language interpreter. Second, the officer should have the interpreter conduct an informal assessment of the deaf individual's sign language communication skills, speech, reading, and written English. An estimate of reading and writing competence can be obtained by giving the deaf person a short article from the newspaper or other reading material and having him or her write answers to a few questions about what was read. Such questions should not involve "true" or "false" or "yes" or "no" answers, but responses requiring complete sentences.

If, after assessing the skills of the deaf person, it is evident he or she cannot communicate well in sign language and/or has great difficulty with reading and writing, the Miranda Warnings should not be administered and the individual's lawyer should be present for any further interviewing. Figure 2 is provided to assist in making an independent evaluation of the interpreting process.

## SUMMARY AND CONCLUSIONS

Deaf citizens are entitled to the same legal rights as hearing people. These include protection under Miranda, that is, the requirement that they be informed about their rights (Gardiner, 1985). For a deaf person who is a suspect in a crime, it is imperative that the Warnings be given in the proper way. Linguistics factors, psychological variables, interpreting problems, and imperfect recording procedures compromise or prevent deaf suspects from exerting their Miranda rights. While the issues and procedures are discussed primarily in terms of the Miranda Warnings, they have general application to a wide range of legal processes involving deaf persons (Vernon & Raifman, 1995).

Professionals who work with deaf suspects and defendants should possess specific knowledge and competence in communication practices in order to insure deaf defendants rights and admissibility of their statements to police. Guidelines for proper administration of Miranda waivers should be carefully followed. The Constitutional rights of defendants, the victim, and community at large are best served by effective Miranda Waiver procedures. The consequence to the criminal justice process for failure to achieve effective Miranda Waiver is the exclusion of evidence at trial. Police officers and prosecutors are obligated to practice effective procedures. Defense attorneys and Court Judges should be cognizant of these procedures review police practices and protect the administration of justice system.

1. Determine that the Defendant is deaf or too hearing impaired to understand normal speech when not facing the speaker.
2. Obtain services of appropriately licensed and certified interpreter.
3. Obtain and set up video equipment.
4. Allow Defendant opportunity to meet with and communicate with interpreter, usually for 20 to 40 minutes, in order that the interpreter may assess the suspect's sign language skills, understanding of basic legal terms (see #6 below), and get an estimate of the suspect's educational level. This interaction should be videotaped.
5. Assess interpreter's feedback from the meeting including:
  - a) The interpreter's opinion on the deaf suspect's level of competence in sign language, especially as it relates to the individual's capacity to fully understand the Miranda Warnings. If there is doubt about this, do not administer the Mirandas.
  - b) Determine from the interpreter how many of the legal terms the suspect could define. If this figure is less than 90% of the key terms and phrases in the Miranda Warning, do not interrogate the subject.
  - c) Get the interpreter's estimate of the educational level of the suspect. Remember that "grade in school" is an inadequate measure of educational achievement. For example, there are many deaf youths with high school diplomas who, when given standardized reading tests, are found to be at second or third grade level. Consider administering the Darnell Test.
  - d) See if the interpreter feels competent to interpret the Miranda Waiver to the suspect and to interpret the interrogation to follow, realizing that the entire process will be videotaped and subject to viewing and examination in court and by the defense attorney. If not, postpone the procedure until a more capable interpreter can be found.
6. Ask the suspect if he/she is satisfied with the interpreter. Have the suspect answer in writing or in sign language the following questions. If this is done in sign language using an interpreter, it must be videotaped.
  - a) Have the suspect define the following terms: law enforcement officer, constitutional rights, remain silent, used against you, lawyer, afford a lawyer, court.
  - b) If you are charged with a crime and get a lawyer, what does the lawyer do for you?
  - c) What does a Judge do in court?
  - d) What does it mean, "You have the right to remain silent?"
  - e) You have the right to have a lawyer here now. Do you want a lawyer now? Why?
  - f) Have the suspect read the Miranda Warnings and/or sign them to him/her. Then ask the suspect to explain what they mean in his/her own words (written) or in sign language.
  - g) If you answer the policeman's questions, what will happen now? What will happen later in court?
7. If the suspect makes any reference to terminating the interview, do not continue "Mirandizing" or interrogation.
8. If the defendant seems to be using "the deaf nod" (agreeing to things he/she does not understand), the Mirandizing and/or interrogation should stop. Similarly, if the suspect seems to be deferring unduly to authority ("the White Coat Phenomenon"), i.e., agreeing to almost anything in order to please the police officer, the procedure should cease. For example, ask the defendant whether he/she thinks he/she would be more comfortable to take off his/her socks, wear a coat in the interrogation room, have a bright light flashed in his/her face, etc. He should be able to say "no" to these undesirable options.
9. Determine whether coercion issues are present, such as is the defendant telling you what you want to hear on the assumption this will end the interview and give him/her freedom.
10. Finally, the defendant should be able to identify the roles and responsibilities of the interpreter and police psychologist if there is one.

**\*CAUTION:** Thirty percent or more of suspects who became deaf before age 3 years lack the English and/or sign language competence to understand the Miranda Waiver. It should not be administered to these suspects because the evidence obtained thereafter through interrogation will be thrown out of court.

Figure 2. The Vernon-Raifman Miranda Waiver Guidelines for Deaf or Hearing Impaired Defendants\*

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