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Improving the Comprehensibility of a Canadian Police Caution on the Right to Silence

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Abstract Modifications to a Canadian police caution on the right to silence were made in an attempt to increase its comprehensibility. University participants were asked to imagine themselves in an arrest and interrogation situation in which they were either innocent or guilty. It was hypothesized that participants who received the modified caution would score significantly higher on measures of comprehension than those who received the standard caution. Results indicated that comprehension was significantly higher among those that received the modified caution and that those with higher comprehension scores were more likely to exercise their right to silence. These findings suggest that clarifying and standardizing how a detainee's rights are communicated will lead to better comprehension and greater protection against false or coerced confessions.

Keywords Right to silence · Police caution · Comprehension · Legal rights

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Introduction

The Canadian criminal justice system has procedures in place that are intended to protect detainees from possible coercion at the hands of the police (Moore and Gagnier 2008; Paciocco and Stuesser 2008). Some of these safeguards are contained in the Canadian Charter of Rights and Freedoms (1982), however the effectiveness of these protective measures has been called into question (Stuesser 2003) in light of the prevalence of self-incriminating statements that may sometimes lead to false confessions. When a suspect is arrested, police typically recite a standard caution informing them of the right to counsel and the right to remain silent (Moore and Gagnier 2008). It has been suggested, however, that suspects have difficulty understanding their right to silence and its implications (Abramovitch et al. 1993; Eastwood and Snook 2010; Eastwood et al. 2010; Moore and Gagnier 2008). Such incomprehensibility may render the right to silence a hollow safeguard for detainees, leaving them unprotected from the potentially coercive power of the police.

In the United States, the landmark decision in Miranda v. Arizona (1966) established that, in order to preserve the fifth Amendment right against self-incrimination, custodial suspects must be provided protection in the form of the Miranda warning at the outset of an interrogation (Rogers 2008). Under Miranda, the right to silence often reads as follows: "You have the right to remain silent; anything you say can and will be used against you in a court of law". The warning is typically relatively blunt, and clearly indicates that anything the suspect says may be used *against* that person in court. In contrast, the caution on the right to silence in Canada is (a) ambiguous, and (b) not mandated by law. The right to counsel is clearly outlined under *section* 10(b) of the Canadian Charter of Rights and Freedoms, which states that "everyone has the right on

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arrest or detention...to retain and instruct counsel without delay and... to be informed of that right". The right to silence is more equivocal, and is not explicitly stated in the Charter. In R. v. Hebert (1990) it was determined that the right to silence is confirmed when Charter *sections* 7 and 10 (b) are contemplated together. Further, it was implied that when a detainee exercises the right to counsel they have, ipso facto, made an informed choice to enact the right to silence, owing to the fact that an attorney would instruct the suspect to remain silent (R. v Hebert, 1990, ¶ 52–55):

> The detained suspect, potentially at a disadvantage in relation to the informed and sophisticated powers at the disposal of the state, is entitled to rectify the disadvantage by speaking to legal counsel at the outset, so that he is aware of his right not to speak to the police and obtains appropriate advice with respect to the choice he faces. Read together, ss. 7 and 10(b) confirm the right to silence in s. 7 and shed light on its nature. . . . The state is . . . obliged to allow the suspect to make an informed choice about whether or not he will speak to the authorities. To assist in that choice, the suspect is given the right to counsel. [The Charter] seeks to ensure that the suspect is in a position to make an informed choice by giving him the right to counsel. The guarantee of the right to counsel in the Charter suggests that the suspect must have the right to choose whether to speak to the police or not, but it equally suggests that the test for whether that choice has been violated is essentially objective. Was the suspect accorded his or her right to consult counsel?

And at ¶73:

> ... [T]here is nothing in the rule to prohibit the police from questioning the accused in the absence of counsel after the accused has retained counsel. Presumably, counsel will inform the accused of the right to remain silent.

In Toronto, Ontario's provincial capital (and in much of the rest of the province) police usually inform citizens of their right to silence through a standard caution that reads: "You are charged with (name of crime). Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence". Cautions in Canada have been shown to be high in reading complexity (Eastwood et al. 2010) and are more ambiguous than their Miranda counterparts. Whereas the Canadian caution warns that whatever a suspect says *may* be given in evidence, Miranda warnings usually state explicitly that statements made by the accused *will* be used *against* the suspect in court. Canadian suspects could wrongly infer that they have the opportunity to make an exculpatory statement during an interrogation, when in reality "as a general rule, the statements of an accused person made outside court . . . are receivable in evidence against him *but not for him*". (emphasis added; R v. Simpson, 1988, ¶24). In comparison to the explicitness of *Miranda* warnings and their emphasis on the suspect's *right* to remain silent, it is apparent that Canada's caution leaves more room for confusion (Stuesser 2003).

Technically the police have no legal duty to advise of the right to silence in Canada. It is, however, in their interests to do so, and thus some form of caution is routinely delivered. A failure to do so could potentially affect the perceived voluntariness of any subsequent statements, thereby (potentially) jeopardizing their admissibility.

Importance of the Right to Silence

In essence, the right to silence is meant to protect suspects from making an inculpatory statement or confession that could be used against them during a criminal trial. Confessions are considered to be one of the strongest determinants of guilt and "once offered into evidence, it is extremely difficult for defense counsel to overcome the impact a defendant's inculpatory statements might have on a judge or jury" (Oberlander et al. 2003, p. 335). This is disconcerting given that police often employ a variety of physical and psychological tactics in order to obtain a confession. For instance, police may hold a suspect in custody for extended periods of time, and may manipulate the accused by exaggerating evidence, making implicit promises to release the suspect, or to arrange for a more lenient sentence (Oberlander et al. 2003). Inherently, police possess significant power over the accused during the interrogation process. To balance this power differential, suspects are afforded legal rights designed to enable them to protect themselves against possible coercion.

Most importantly, however, the right to silence is meant to provide protection against coerced or false confessions. Sometimes suspects confess to crimes they did not commit in order to escape the physical or psychological distress of the interrogation. It is difficult to comprehend why an innocent person would ever confess to a crime (Henkel et al. 2008), but there is strong evidence to suggest that the psychological pressure of the interrogation situation may be sufficiently powerful to induce false confessions that can lead to wrongful convictions (King and Snook 2009; Moore and Fitzsimmons in press). Indeed, in the last few decades there have been numerous cases in which innocent suspects 'confessed', were convicted, and were later exonerated on the basis of DNA evidence (Drizin and Leo 2004; Kassin 1997; Kassin et al. 2008; Kassin and Gudjonsson 2004). In Canada, Romeo Phillion spent 31 years in prison after

having been wrongfully convicted of murder based on his false confession (*R. v. Phillion*, 2009). The three prime suspects in the Darrelle Exner murder case also provided false confessions and were sentenced to prison before DNA evidence revealed the identity of the true perpetrator (Disclosure 2003, January 28). Kassin (2008) reported that of the more than 200 cases exploring miscarriages of justice by the Innocence Project, 25% involved false confessions. The incidence of coerced false confessions could potentially be reduced if the right to silence were properly understood and asserted by suspects.

Rarely is it in an innocent suspect's best interest to talk to the police (Leo 2008). The interrogation manual used throughout North America instructs officers to interrupt a suspect's denials and make repeated accusations of guilt (Inbau et al. 2004). Officers are trained in such a way that it is difficult, if not impossible, for a suspect to reason with his interrogator. There is little opportunity to 'tell one's side of the story' or 'clear things up'. Once suspects are being subjected to an interrogation, the exercise is guilt presumptive and adversarial. Protestations of innocence are futile.

Factors that Influence Legal Rights Waivers

It may seem surprising, given the coercive nature of the interrogation process, that suspects do not routinely invoke their right to silence. Leo (1996) explored police investigations in the United States through naturalistic observation and found that approximately 78% of the 175 suspects who were read their legal rights waived the right to silence. A recent Canadian study evaluating the administration of the right to silence and right to counsel cautions in 126 investigative interviews found that only 32 interviewees (25.4%) invoked the right-to-silence (Snook et al. 2010). Given the substantial proportion of suspects that choose to waive their right to silence, researchers have begun to explore some of the factors that influence legal rights waivers.

Cognitive Functioning In order to make an informed decision about waiving legal rights it is essential to have at least a basic understanding of what those rights mean and what it means to give them up. Suspects who have limited cognitive abilities may be at risk of misinterpreting and thus, waiving their rights, despite it being against their best interests. For instance, young people may be at a disadvantage given that higher order cognitive skills and decision-making skills continue to develop across childhood and well into adolescence (Peterson-Badali et al. 1999; Scott and Grisso 1997). Youth have also been found to display an increased propensity to comply with authority figures, sometimes at the expense of acting in their own best interest (Grisso et al. 2003). Adolescents may be inclined to waive their legal rights due to the desire to please police officers (Grisso et al. 2003) or the belief that they should never disobey authority (Kassin et al. 2008.) Adolescents are particularly prone to weigh short-term consequences more heavily than long-term consequences (Drizin and Leo 2004; Scott and Grisso 1997), so the desire to escape the coercion of the interrogation situation may heavily influence a young person's decision to talk to the police.

Stress The stress experienced during arrest and interrogation may also impact a suspect's ability to understand and enact their legal rights. Interrogations are designed to promote a sense of isolation, anxiety, and despair, in order to overcome resistance from the suspect and elicit a confession (Kassin 2005; Kassin and McNall 1991; Kassin et al. 2008). The stress that is induced in an interrogation may compromise a suspect's information-processing and decision-making abilities. He or she may jump to premature conclusions and fail to fully consider all available options (Byrnes 2002; Keinan 1987). Abramovitch et al. (1995) argue that the stress experienced in a real life interrogation would likely impede comprehension of legal rights, suggesting that understanding may actually be worse in real life than what it is portrayed to be in the literature.

Language and Culture Given the multi-cultural makeup of Canada's population, aspects of language and culture may pose a threat to caution comprehension. Newcomers to Canada, whose first language is not English, may have difficulty understanding the legal terminology used in the Canadian caution. Cultural differences, including attitudes towards authority and knowledge of the legal system, may also play an important role in caution comprehension. For instance, Kassin and Norwick (2004) indicate that Asian cultures often place great importance on respect for authority. People displaying this attribute may be predisposed from the outset to be deferential and compliant with police.

Delivery of Rights The method by which the caution is delivered may also influence whether legal rights are understood. In Canada, police typically read the caution aloud to suspects. Listening comprehension, however, is often more cognitively demanding than reading comprehension. The ability to process verbal information is limited by the fact that individuals are not able to control the pace of information processing, and must rely solely on short-term memory (Rubin et al. 2000). Eastwood and Snook (2010) found that participants were better able to comprehend a Canadian version of the caution on legal rights when the information was presented sentence by sentence in written format, than when it was presented verbally.

The pitfalls of oral delivery may be exacerbated by the manner in which police recite the caution. The goal of the interrogating officer – to obtain a confession – is in direct opposition with the goal of the right to silence, to protect suspects from making a confession. When police read suspects their rights, they may minimize their importance, present the cautions as a mere formality (DeClue 2007; Leo 1996), present information without ensuring actual understanding (Rogers et al. 2007), or pressure suspects into compliance (Abramovitch et al. 1993). Rather than reading slowly and carefully to ensure understanding, police may deliver the cautions in a rapid and rote fashion, hindering a suspect's cognitive processing (Grisso 1998). In their study evaluating Canadian investigative interviews, Snook and his colleagues (2010) found that of the 25 videos in which the right to silence caution was delivered, the average speed of delivery was 262.6 words per minute (SD 40.6), which is considered to be well above the optimal range for listening comprehension (Carver 1982; Jester and Travers 1966).

Innocence An important predictor of whether or not a suspect will waive the right to silence is the suspect's factual innocence or guilt. Research has shown that participants who play the role of innocent suspects are more likely to waive their right to silence than those who are "guilty" (Kassin and Norwick 2004; Moore and Gagnier 2008). In Kassin and Norwick's study, researchers went to significant lengths to induce innocent and guilty mindsets by having "guilty" participants commit mock thefts. Following the staged crime, participants were apprehended, read their Miranda rights, and given the opportunity to waive or invoke their legal rights. Innocent participants were significantly more likely to waive their right to silence (81%) than guilty ones (36%). Innocent people may have a readily available "social script" that guides actions and decision-making when they perceive themselves to be innocent. For instance, the 'illusion of transparency' suggests that people often overestimate the degree to which others are able to discern their internal state of mind (Gilovich et al. 1998), and the 'belief in a just world' proposes that people get what they deserve and deserve what they get (Lerner and Miller 1978). Innocent suspects may believe that their innocence is more evident to police investigators than it really is (Hartwig et al. 2007), and that their innocence will preclude a conviction.

Comprehensibility of Legal Rights

If suspects do not comprehend the meaning and utility of their legal rights, they are ill-equipped to use them to guard against coercion. In the U.S., the general adult population has been found to have the highest degree of comprehension of Miranda warnings (Grisso 1980). Basic comprehension, however, does not necessarily translate into the ability to implement legal rights. Kassin et al. (2008) reported that many adults and youth who possessed a basic understanding of their legal rights were, nevertheless, unable to grasp the implication of their rights.

To better understand this problem, researchers have begun to explore the comprehensibility of the actual cautions through which these rights are delivered. The exact wording of Miranda warnings in the United States varies from jurisdiction to jurisdiction. Rogers et al. (2007) and Rogers et al. (2008) investigated reading comprehensibility of warnings across the United States and found that reading comprehension for the adult caution varied from a Grade 2.8 to postgraduate level, and from a Grade 2.2 to post-college level for the juvenile caution. Clearly, cautions written at the post-college and postgraduate level would pose problems for a large proportion of suspects, including young persons, those with cognitive deficits, and those with limited education.

Given the complexity and variability of *Miranda* warnings, it is not surprising that research has consistently found that adolescents display significant difficulties understanding them. Researchers have raised particular concern over the deficits in comprehension that are found among youth under the age of 15 years, and youth with cognitive disabilities (Grisso 1980; Kassin et al. 2008; Kassin and Norwick 2004; O'Connell et al. 2005; Ryba et al. 2007). Cooper and Zapf (2008) further found that patients diagnosed with a range of psychiatric disorders displayed impaired comprehension of the Miranda warning compared to a "normal" adult population. Individuals with cognitive impairments have likewise been found to display deficits in comprehending their legal rights (Everington and Fulero 1999; Fulero and Everington 1995; O'Connell et al. 2005). These findings are of special concern given that the above populations are overrepresented in the federal inmate population (Canadian Public Health Association 2004; Steury 1993; Teplin 1984).

Research on the Canadian Caution on the Right to Silence

Eastwood et al. (2010) investigated reading complexity of 44 different police cautions used across Canada (19 unique cautions on the right to silence and 25 unique cautions on the right to legal counsel). They evaluated the reading complexity of each caution based on the minimum acceptable criteria outlined by Rogers et al. (2007) and Rogers et al. (2008). The cautions varied in terms of their complexity, but generally the right to silence was more straightforward than the right to counsel. Nevertheless, only 37% of the right to silence cautions met the basic criteria for readability.

When it comes to comprehension and waivers amongst adolescents, Abramovitch et al. (1995) found that 67% of youth in their sample were able to understand the Canadian caution on the right to silence, however, comprehension decreased by grade with only 33% of Grade 6 participants displaying adequate understanding. This is disconcerting given that Canada's Youth Criminal Justice Act covers children as young as 12 years of age. Abramovitch et al. (1993) further investigated legal rights waivers amongst adolescents and found that the majority of youth who understood their rights refused to sign a waiver, while the majority of those who did not understand their rights signed the waiver, thereby giving up their rights and putting themselves at risk of coercion. Given the wide diversity and complexity of current legal rights cautions, a standardized and simplified caution on the right to silence would likely increase comprehension amongst suspects.

In a more recent Canadian study, Moore and Gagnier (2008) explored two central factors affecting legal rights—comprehension and innocence. In the first part of their study they sought to determine whether changes made to the current right to silence caution used in Toronto ("You are charged with X. Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence") would lead to better comprehension amongst a university sample. Their study was largely driven by the realization that the current caution is linguistically complex. In practice, the caution is read straight through from beginning to end, despite the fact that the second sentence ("Do you wish to say anything in answer to the charge?") is an interrogative. The organization of the caution violates discourse pragmatics that would prompt a pause so that the suspect could answer the question (Moore and Gagnier 2008). The second sentence is also an invitation for the suspect to talk to police, which contradicts the purpose of the caution to inform suspects of their right to remain silent, and worse, the invitation comes *before* the warning. The terminology is, likewise, problematic. For instance, the word "unless" can be difficult for non-native speakers, "obliged" is a low frequency word, and "in evidence" is a legal term that may not be well understood by those unfamiliar with legal jargon (Moore and Gagnier 2008).

In response to these concerns, three different versions of the caution were created with modified wording and organization, in an attempt to increase comprehensibility. The four resulting versions (three modified and one standard) were delivered to undergraduate students who were later tested on how well they understood the right to silence. The second part of the study sought to replicate findings from Kassin and Norwick (2004), in which innocent participants were more likely to waive their right to silence than guilty participants. In Moore and Gagnier's (2008) study, participants were simply instructed to imagine that they were guilty or innocent and report whether they wished to waive or enact their right to silence.

There were no significant differences in comprehensibility between any of the caution versions, but the authors did find that only 43% of their university sample received a perfect score on comprehension, indicating modest overall understanding of the right to silence. Furthermore, 34% of participants indicated that they would waive their right to silence, suggesting that they were not able to understand its implications. Consistent with Kassin and Norwick's (2004) findings, those participants who imagined themselves innocent were more likely to waive their right to silence. Participants reported that they waived their right because they wanted to appear cooperative, they wanted the opportunity to give their side of the story, and, most importantly, many believed that statements they made could be used in their defence (Moore and Gagnier 2008). Despite the fact that the modified cautions did not lead to greater comprehension, the limited understanding and misconceptions exhibited by participants suggested a need to further improve the comprehensibility of Canada's police cautions.

Overview of Research

The current study was designed to build upon Moore and Gagnier's (2008) research on caution comprehension and legal rights waivers. A number of additional changes were made to the caution that went beyond the modifications in the original study. The following modified cautions were used by Moore and Gagnier (2008) (changes italicized):

1) You are charged with X. Do you wish to say anything in answer to the charge? You don't have to say anything unless you wish to do so, but whatever you say may be given in evidence
2) You are charged with X. You don't have to say anything unless you wish to do so, but whatever you say may be given in evidence. Do you wish to say anything in answer to the charge?
3) You are charged with X. You don't have to say anything unless you wish to do so, but whatever you say may be used against you. Do you wish to say anything in answer to the charge?

Modifications in the current study included overall revisions to language, sentence composition and structure, as well as additional information regarding the risks associated with speaking. Comprehension in the current study was assessed using open-ended questions, as well as yes/no questions, word definitions, and sentence definitions, to more thoroughly evaluate comprehension. A secondary goal was to replicate the finding that innocent participants would be more likely than guilty participants to

choose to speak. To explore these two goals, a sample of university students was recruited to represent a population with minimal criminal experience and, thus, limited exposure to the caution on the right to silence. Based on prior research demonstrating modest comprehension of the Canadian caution, it was hypothesized that participants who received the modified version would show significantly greater comprehension than participants who received the standard version. It was also hypothesized that the mere act of imagining oneself innocent would more frequently lead to a decision to speak than would imagining oneself guilty.

Method

Participants

Participants for the current study comprised a sample of 105 university students recruited through undergraduate level psychology courses and the Undergraduate Research Participant Pool at York University (both Keele and Glendon campuses). Students who participated in the study received partial course credit towards their final grade. Gender was not controlled for in the current sample (18% male, 82% female) given that past research has revealed comprehension scores to be consistent across gender (Grisso 1980). Nevertheless, analyses were run exploring whether the decision to waive the right to silence differed by gender, and whether gender was a covariate in total comprehension scores; neither analysis revealed a gender difference. Participants ranged in age from 17 to 44 (M= 20.93, SD=5.24). Fifty-three percent of the sample was White, 10% South-Asian, 8% East-Asian, 8% Black, and 21% was of other racial/ethnic origin. The sample consisted largely of participants with no previous arrest experience (only 7% of the sample had experienced an arrest). Analyses were run excluding the data obtained from those with a prior arrest and the results were in keeping with those of the entire sample.

Materials

All participants signed an informed consent form at the outset. Details were provided regarding the purpose of the study, participation requirements, confidentiality, and the freedom to withdraw at any time. During testing sessions, participants were read one of two scripts instructing them to imagine themselves in an arrest and interrogation situation in which they were either guilty or innocent. Participants were also presented with a short video clip depicting a police officer reading either the standard Toronto caution or the modified caution. In both the standard and modified caution videos, the police officer recites a standard right to counsel caution immediately before reading the right to silence. The right to counsel caution was included to simulate as closely as possible the way in which the cautions are often delivered in real life police interrogations. The two clips were recorded expressly for use in the current study and featured the same Caucasian, male, retired police officer reading the caution in a slow and careful manner. The rate of speech for both the standard and modified cautions was calculated to be 175 words per minute, which is considered to be within the optimal range for listening comprehension (Carver 1982; Jester and Travers 1966).

The modified caution was borne of several changes to the standard caution that were intended to enhance comprehensibility of the right to silence. First, a sentence was included to alert suspects to the fact that they would receive *two* important pieces of information that they needed to understand (i.e., the right to counsel and the right to silence). Learning and memory are aided by categorization (Ericsson and Polson 1988). We wanted to alert the 'suspect' to the existence of the two distinct messages in the hopes of assisting them in recalling the right to counsel and right to silence. From the suspect's perspective, he or she is typically on the receiving end of a seamless stream of instructions and questions from the police. The data from Moore and Gagnier's (2008) study showed that even under ideal conditions of comprehension, some people interpreted the standard caution as an invitation to talk to the police (e.g., "It is saying that you may get a lawyer and if you want to say anything, you can"). Some apparently conflated the right to counsel instruction with the right to silence caution (e.g., ". . . that you can receive counsel if you want, and also you can talk").

Second, an explicit statement of the right to silence was added (i.e., "You have the right to remain silent"), to affirm the suspect's *right* and to deliver the message as clearly and concisely as possible. Given that *Miranda* warnings, which employ a similar statement, have yielded poor comprehension across studies, a brief explanation of the right to silence was added (i.e., "This means that you don't have to say anything if you don't want to").

When delivered verbally as opposed to in written form, complex sentences have been found to have a particularly detrimental effect on working memory (Baddeley 1994). The use of unfamiliar phrases and legal terms may also limit the amount of information that can be cognitively processed, even by the most attentive suspects (Rogers et al. 2008), thus additional changes were made to the organization and terminology of the caution. These included moving the interrogative from the standard caution ("Do you wish to say anything in answer to the charge?") to the end of the paragraph apropos of proper discourse pragmat-

ics and using simplified language to inform suspects that whatever they say can be used *against* them in court (i.e., "If you do say anything, whatever you say can be used against you in court"). Our reasoning was that by restructuring the caution and simplifying its language, the listener would be better able to attend to the information provided. Finally, information was added to inform suspects that their refusal to talk *cannot* be used against them in court. The modified caution is longer than the original, but in our opinion the standard caution sacrifices clarity for brevity. Our intent was to make the modified caution as easy to understand as possible. It reads:

> I am arresting you for breaking and entering. There are two important things you need to know.
> First of all, you have the right to retain and instruct counsel without delay. You have the right to telephone any lawyer you wish. You also have the right to free advice from a legal aid lawyer. If you are charged with an offence, you may apply to the Ontario Legal Aid Plan for assistance. 1-800-265-0451 is a number that will put you in contact with a legal aid duty counsel lawyer for free legal advice RIGHT NOW. Do you understand? Do you wish to call a lawyer now?
> Secondly, you are charged with breaking and entering. You have the right to remain silent. This means that you don't have to say anything if you don't want to. If you do say anything, whatever you say can be used against you in court. If you refuse to say anything, your refusal cannot be used against you in court. Do you want to say anything about the charge?

The Flesch Reading Ease (FRE) and Flesch Kincaid (FK) readability measures were applied to both the standard and modified cautions. These are the most commonly used tools to assess reading comprehensibility and the FK is considered the most reliable measure of grade-equivalent readability (Rogers et al. 2008). The standard caution received a FRE score of 56.1, which is classified as a Readability Level of "fairly difficult," and a FK Grade level of 8.6. The modified caution received a FRE score of 61.3, which is classified as a Readability Level of "standard," and a FK Grade level of 7.5. It is important to note that the FRE score analyzes only sentence length and the number of syllables per word, and the FK score uses the same information to predict the minimal grade level needed to understand the information presented (Paasche-Orlow et al. 2003). The measures do not consider factors such as content and organization. Given that comprehension, and especially verbal comprehension, demands complex mental processes to connect and derive meaning from discrete pieces of information, the readability measures likely provide only a cursory view of the increased comprehensibility of the modified caution (Eastwood et al. 2010). We predicted that the modest gains in readability, combined with the organizational changes, would result in better comprehension amongst participants who received the modified caution as opposed to the standard caution.

Assessment Instruments Two parallel versions of the Questionnaire for Caution Comprehension, one for the standard caution and one for the modified caution, were created for the current study. The questionnaires were derived from Moore and Gagnier's (2008) measure, and from the Test of Charter Competency (Olley 1993). Several non-comprehension based questions were used to gather basic information on demographics, the decision to waive or invoke the right to silence, and participants' impressions of the caution. The first portion of the questionnaire asked participants to indicate whether they wished to waive their right to silence or not and then to explain their reason for doing so. Five likert type rating scales were included to ascertain participants' impressions of the caution (i.e., clarity, complexity, speed, difficulty, and understandability). The final section of the questionnaire pertained to demographic information regarding age, sex, major, year of study, ethnicity, and previous arrest experience.

In order to thoroughly assess comprehension, the questionnaires employed several different forms of questions, including free recall, cued recall, yes/no, and sentence- and word-definition questions, inviting a variety of response styles (see Appendix A). A total of 10 questions from each parallel version of the Questionnaire for Caution Comprehension were used to assess participants' comprehension of the right to silence. A debriefing form was attached to the end of the questionnaire to provide participants with details of the study and an opportunity to offer comments.

Procedure

There were four testing conditions based on the hypothetical mindset of the participant (guilty or innocent) and the version of the caution that the participant received (standard or modified). Participants were tested in small groups of 5 to 20 people. They were instructed verbally by a researcher to imagine themselves in an arrest scenario in which they were either guilty or innocent, and were asked to watch a short clip of a police officer reading either the standard or modified caution. Video clips were presented to groups using a television screen or projector screen, as dictated by the audiovisual materials available at the various testing locations. Following the video, each participant was provided a questionnaire booklet and asked to complete it to the best of their abilities, from beginning to end without going back to change their answers.

Responses to the 10 comprehension questions for each of the parallel versions of the Questionnaire for Caution Comprehension were evaluated on the basis of a standard scoring rubric. Responses to the first question, requiring participants to describe, from memory, the caution they heard, were awarded points based on two central ideas 1) the suspect has the right to remain silent and 2) anything that the suspect says can be used against them in a court of law (resulting in a possible score from 0–2). The five "yes/no" type questions included to evaluate overall understanding of the caution were simply awarded a single point for a correct response (resulting in a score from 0–5 for that section). The two sentence-definition questions included to assess knowledge of key sentences in the caution, were evaluated against a set of criteria outlining examples of 0–2 point responses (resulting in a score from 0–4 for that section). Finally, the two word-definition questions included to assess knowledge of specific words used within the caution were assessed against a set of criteria depicting examples of a 0–1 point response for the first definition, and a 0–2 point response for the second (resulting in a score from 0–3 for that section). Total comprehension scores for each participant were computed by summing an individual's scores on the comprehension questions (yielding a total comprehension score from 0 to 14 for each participant). In order to establish interrater reliability, two independent judges scored comprehension questions from a random sample of 20 questionnaires. Kappa values ranged between .82 and 1.00. The two judges coded the remaining questionnaires independently.

Results

To test the first hypothesis, a 2×2 Analysis of Variance was conducted to determine whether total comprehension scores were influenced by caution version or guilt. An alpha level of .05 was used for all statistical tests. Analyses revealed that there was an overall effect of caution version on total comprehension, whereby participants assigned to the modified caution condition displayed significantly better comprehension (M=10.04, SD=2.12) than those in the standard caution condition (M=8.94, SD=1.85), F(1, 101) =7.50, p<.05, η^2=.09. To better understand why participants in the modified condition scored higher on comprehension than those in the standard condition, participants' performances on each question were compared. The only question to produce a statistically significant difference in comprehension was the free recall question in which participants were required to recite from memory the information they gleaned from the caution they had heard. Participants in the modified condition were better able to recall the two central ideas of the caution: 1) that they did not have to make a statement to police (i.e., their right to silence) χ^2(1, N=105)=16.16, p<.05, V=.39 and 2) that their statement could be used as evidence against them in court χ^2(1, N=105)=8.57, p<.05, V=.29 (see Fig. 1). Participants' impressions regarding the clarity, complexity, speed, difficulty, and understandability of the caution versions (as evaluated by the likert rating scales in the questionnaire) did not differ significantly by caution version t(103)=-1.2, p=.25, d=.24.

Overall, 27.62% of participants chose to waive their right to silence and talk to police. A Chi Square Test of Independence revealed that the decision to waive the right to silence, however, was not influenced by the version of the caution that participants received χ^2(1, N=105)=0.36, p =.55, V=.06. Guilty participants reported having waived their right to silence for various reasons including: to show that they were cooperative or honest (46.2%), to explain their side of the story (23.1%), to convince the police to let them off easy (7.7%), and to fabricate a story that would get them out of the crime (7.7%). Note that two participants (15.4%) in the guilty condition provided no reason for waiving their right to silence. Innocent participants reported having waived their right to silence to try and explain the situation (56.3%), to prove their innocence (25%), to convince the police they were innocent (6.3%), or because they thought their statement could help them in court (12.5%). A t-test was run to determine whether the decision to enact the right to silence was associated with greater comprehension. Those who enacted their right to silence indeed had overall greater comprehension scores (M=9.86, SD=1.92) than those who waived their right to silence (M= 8.52, SD=2.11), t(103)=-3.10, p<.05, d=.61. In contrast to previous studies, results revealed that there was no significant difference between the frequency with which innocent and guilty participants waived the right to silence χ^2(1, N=105)=0.70, p=.40, V=.08.

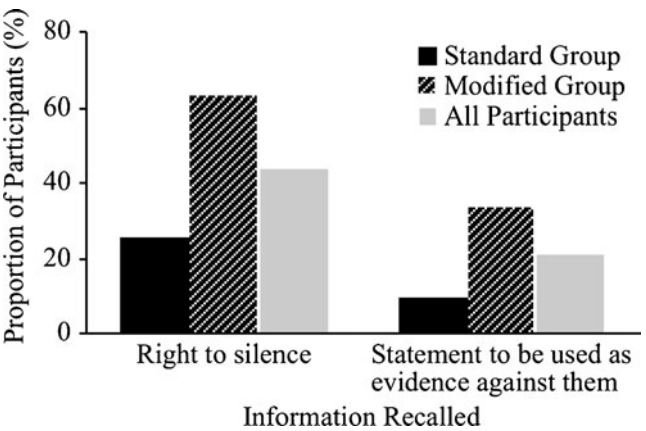

Fig. 1 Proportion of participants who correctly recalled the two prongs of the caution

Discussion

Results supported the first hypothesis. Participants who received the modified caution had higher comprehension scores than those who received the standard caution. Moreover, those with higher comprehension scores were significantly more likely to enact their right to silence. Similar to Abramovitch et al.'s (1993) findings, it appears that when participants are able to understand their rights, they are more willing to assert them. Taken together, these results suggest that changing the wording and structure of the right to silence caution may increase comprehension amongst suspects, potentially reducing the number of waivers during custodial interrogations. A review of response patterns in the data revealed that recalling the caution was difficult for all participants, but those given the modified caution consistently displayed better recall than those given the standard caution. Respondents who received the modified caution were more likely to correctly identify the two central ideas of the right to silence caution (that they did not have to make a statement to police and that their statement could be used as evidence against them in court) from memory, as illustrated in the following examples:

> (The police officer) told me I do not have to talk (and that) my silence could not be held against me, but anything I say can
>
> (The police officer) said I have the right to remain silent and that anything I say could be held in court against me. He said that if you choose not to say anything, the refusal will not be used against you in court.
>
> (The police officer) was saying that...I have the option of either speaking to the officer, or remaining silent. Whatever I say could be used against me in court—my silence will not be used against me.

Based on these results it appears that the modifications rendered the right to silence caution easier to remember.

Another factor that may subvert the protective function of the right to silence caution is the rate at which it is read to suspects. Snook et al. (2010) found that police investigators often read the right to silence at a rate so fast as to preclude comprehension, and that they rarely attempt to verify that suspects understand their rights. This may reflect an inherent dilemma for police when warning suspects of their legal rights. If the police neglect to deliver the caution, the perceived voluntariness of any subsequent statement may be compromised, however without an interrogation, there can be no confession. In a sense, the police have a conflict of interests (Michalyshyn 1990) that may cause them to make efforts (conscious or not) to ensure that the caution, while delivered, is not well understood. In Canada, as in the United States, the wording of the right to counsel and right to silence cautions varies across jurisdictions. Due to this lack of standardization, vital information is sometimes omitted from the cautions and in some jurisdictions, the terminology is extremely complex (Eastwood et al. 2010). Reforms aimed at increasing caution comprehensibility might include the use of a standardized, nation-wide videotaped caution presented to all suspects at the outset of an investigation, accompanied by a written version. In this way, issues of delivery speed, suspect literacy, and the potential that police may omit or paraphrase information, would be minimized.

The second hypothesis was not supported. Contrary to the well-documented notion that innocence puts innocent suspects at risk of waiving the right to silence, in the current study innocent and guilty participants were equally likely to talk to police. Specifically, 15.24% of innocent participants and 12.38% of guilty participants waived the right to silence. This could simply be the product of having used a relatively weak manipulation of guilt. However, it is worth noting that here, comprehension and *not* innocence had a significant effect on the decision to waive or invoke the right to silence. In general, past studies pointing to innocent suspects' propensity to waive the right to silence do not appear to have considered comprehension as a factor contributing to this decision. In Kassin and Norwick's (2004) study, for example, no effort was made to determine whether or not participants understood their legal rights or the implications of waiving them. More research is needed, but perhaps comprehension contributes more to a suspect's decision to waive or invoke the right to silence than was previously suspected.

While the findings of the current study provide valuable information regarding caution comprehension, there are several important limitations to be considered. First, the results are limited in their generalizability given that the sample was relatively small and consisted solely of undergraduate students. Clearly, university students are not representative of the typical population of people being arrested and interrogated by police. Findings indicate that 46% of federal inmates have a Grade 9 level of education or less (Trevethan et al. 1999), suggesting that the education level of people who experience adversarial encounters with police is generally lower than that of a university student. Given the high level of literacy and superior verbal skills found amongst university students, we might expect that the observed effect of caution version on comprehension would be smaller than what we might find in a typical population of suspects. That is, it is likely that the magnitude of the effect of the modifications is inversely correlated with education level. Future research might attempt to determine whether or not the modified caution improves comprehension in a variety of populations,

especially those with less education and those who are more likely to come into contact with the criminal justice system. For instance, youth under the age of 15, a population found to have a limited understanding of their legal rights, may benefit even more from the modifications than the current university sample.

A second limitation of the study was that the stress inherent to real life arrest and interrogation situations was absent. While it was not feasible to induce stress in the current study, it is important to consider its potential impact on comprehension. It may be that the impact of stress is so powerful as to nullify the beneficial effects of the simplifications made to the modified caution, which would narrow the gap in comprehension between the standard and modified conditions. Conversely, perhaps the benefits of simplifying the caution become *more* pronounced in a stressful situation, which would increase the divide between comprehension in the standard and modified conditions. Finally, because each participant was exposed to the right to silence caution in its entirety, it was not possible to isolate the respective parts of it to determine *which* of them contributed to the increase in comprehension. A study that explored the modifications separately would permit more precise recommendations to be made regarding how best to improve it.

The comprehension scores that were obtained from participants who received the modified caution suggest that there is a need for further improvement. Even with a well-educated sample, being tested under optimal conditions, the average total comprehension score for participants who received the modified caution was 72%. Ideally, caution comprehension should be perfect. While it seems clear that the structure and wording of the standard caution are problematic, future research might expand on the present design, using the same modified version of the caution, while manipulating other factors presumed to have a detrimental effect on comprehension, such as rate of speech or manner of delivery. In the United Kingdom, police are legislated under the Police and Criminal Evidence act (1984) to provide suspects with both an oral and written notice of their legal rights, in an attempt to ensure adequate understanding (Home Office 2008). Testing our modified caution in a study similar to Eastwood and Snook's (2010), where the caution was delivered in *print* form, would allow us to investigate the combined effects of modifications and delivery mode. If comprehension were found to increase significantly when presented in written form, the implications would be clear, namely that reforms might include administering a linguistically simpler version of the caution, in oral and written form.

It is sometimes argued that more widespread (and successful) assertion of the right to silence would hamper law enforcement efforts, inasmuch as it would then become more difficult for the police to obtain inculpatory information from guilty suspects. Protecting innocent suspects from the rigours of interrogation thus comes at a cost, namely fewer confessions (and convictions) of the guilty (Cassell 1996). It is beyond the scope of this paper to explore this issue in detail, however Cassell's concerns do not appear to be confirmed by empirical evidence on clearance rates (Feeney 2000). Moreover, assuming that there are nontrivial reasons for arresting a suspect in the first place, failure to obtain a confession would not automatically preclude a successful prosecution. As Justices LeBel, Fish and Abella (in dissent) noted recently in R v Sinclair (2010), the state bears the burden of proof. This responsibility is reflected in the presumption of innocence and the right to silence. A detained suspect is not obliged to participate in an interrogation.[1]

Surely it is wrong, in principle, to recognize a constitutional right only on the condition that it not be exercised very often (Stuart 2010). Such a view recognizes not a right to remain silent but merely a chance to do so. To the extent that an overreliance on confessions may make some police less interested in the pursuit of other evidence, a greater respect for the right to silence could theoretically lead to better and successful prosecutions in some cases.

Despite the limitations of the current study, the findings provide important insight into the role of comprehension in legal rights waivers during arrests and interrogations. Clarifying the wording and structure of the caution may help detainees to understand the right to silence, which may in turn, reduce the choice to speak. To the extent that asserting the right to silence protects innocent suspects from coercive interrogations, it follows that improving the warning would translate into fewer false confessions, and thus, fewer wrongful convictions. Not only does wrongful imprisonment cause harm and suffering to the accused, false confessions also entail the misdirection of resources, diminished public faith in the justice system, and the premature abandonment of an investigation that allows the actual culprit to remain free to commit additional crimes. We suggest that people who dedicate their careers to serving justice have a vested interest in avoiding these outcomes. Results from the present study provide support to the notion that improvements in caution comprehensibility may be the first in a series of positive events that render the right to silence an effective safeguard, as it was intended to be.

[1] There is also the long-standing acceptance in common law that convicting the innocent is a more grievous harm than acquitting the guilty (Blackstone 2009).

Appendix A

Questions Assessing Comprehension

1) **Free Recall Question:** Please describe, in your own words, what you thought the police officer was saying:

2) **Yes-No Questions:** Please answer the following questions about what the police officer was saying in the video. D*o you think that the police officer was saying that...*(check either yes or no).

   a) *you have to talk to the police because if you don't your silence will be used against you in court?* _____ Yes _____ No

   b) *you can decide not to talk to the police, but if you don't talk your silence will be used against you in court?*_____ Yes _____ No

   c) *you can decide to talk to the police, but whatever you say can be used against you in court?* _____ Yes _____ No

   d) *you can decide to talk to the police, and if you do your explanation can help you in court?* _____ Yes _____ No

   e) *you can decide to talk to the police, and if you do they will see that you are cooperative?* _____ Yes _____No

3) **Sentence Definitions:** Please write down, <u>in your own words</u>, the meaning of following sentences:

   (For those that received the *Standard Caution*):
   a) You are not obliged to say anything unless you wish to do so.
   b) Anything you do say may be given in evidence.

   (For those that received the *Modified Caution*):
   a) You don't have to say anything if you don't want to
   b) If you do say anything, whatever you say can be used against you in court.

4) **Word Definitions:** Below are specific words that the officer used in the video that you watched. Please write down the meaning of each word.

   (For those that received the *Standard Caution*):
   a) Obliged
   b)Evidence

   (For those that received the *Modified Caution*):
   a)Right
   b)Against

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