

POLICE STORIES: WORKING WITH PEOPLE WITH LOW LITERACY

Identifying when literacy is an issue

Things aren't always as they seem

There's a built-in assumption that if they can speak to you in English, they can actually read English. But that's not always the case.

You could be speaking to someone who's very well spoken, and with great knowledge, but has really got a problem with putting it down in writing.

Watch for body language

How do we know when somebody who is illiterate does understand? I think you need to look at their facial expressions. Hopefully, you know how to read a person.

I think it is their body language too. It might seem like they are trying to hide something, when really they're trying to understand what's happening. We need to get them to come forward with their questions – then we can be sure they understand what their options are.

Sometimes you can pick it up in their body language, when you're showing them something and they're just staring at the piece of paper blankly. "Where do I sign my name?" It's something that you have to be looking for, because if you're just processing, you can pass it by very quickly.

Other tell-tale signs

Quite often, I take a complaint from somebody talking in circles, and I don't understand exactly what they're saying. The more you ask them, "What exactly are you telling me?" the more I can see them becoming frustrated or flustered, because they can't clearly communicate what they are trying to tell me.

I think people with low rates of literacy just can't say what they want to say. They spend a lot of time talking around the issue, to sort of make themselves confident, or just to come up with something they think you're looking for.

I've had people who say, "Can you write this for me? I can't read or write." Some people are very up front about their literacy problem, but some will try to hide it. When you ask them to review the statement, they go through it in two seconds and say, "Oh yeah, that's good."

You have to make eye contact with the individual – just watch each time you ask something. Do you have to repeat it? Eventually you start to realize that communication is breaking down.

I'll give the statement back and say, "Can you read it over? Can you read it out to me? It's what you've just told me. I wrote it as you told me." Even if they remember what they said, if they can't read the words exactly, that's an indicator.

What do you look for? Well, for example, “My handwriting is too messy. If I write, nobody will be able to read it.” Maybe his handwriting is messy, but it may be an indication that he can’t write at all. I’d like a list of cues to look for so we know what we’ll have to spend more time on.

Look for signs like staring, or when you say, “I want you to read this,” and they look at you with terror in their eyes and say, “No, I don’t have to read that.” Or when you get to the part where you see they are trying to sign something, but they’re just scribbling their name.

Consequences of illiteracy – for the individual

Some people are pleading guilty to crimes that they say they didn’t commit. These people need your help. They are suffering, and they are scared to tell you.

A guy will go before a judge, “Well, you know, I’m not guilty, but I’ll plead guilty anyhow, just to get it over with. Maybe if I understood exactly what’s being said of me, maybe I am guilty.” And I’ve seen both sides of that.

It’s not uncommon to take somebody out of the courtroom after the hearing and hear them say, “What happened?” I’ve had many times where a young person (or their parents) has stopped me coming out of court to ask me what just happened – they had no idea. “What did I plead guilty to?”

Often an accused has a voice but the victim has nobody to speak for them, or to assist them through the court process. “I don’t know what just happened there. Why is this happening to me? Now I am being victimized again.” Coming out at the other end of the hearing not feeling cheated would help them.

I think back to so many times when I have read somebody their rights, and they’ve said, “What does that mean?” I explain that it means, “Call a lawyer. That’s what duty counsel is.”

There’s a lot of small print, like the big paragraph saying that you will be charged if you don’t show up. That’s what scares them. For the most part, they understand the basics. “Ok, this is what I’m charged with, and this is when I have to go to court, and I have to stay away from Joe.” But when you see this document that’s got a blurb this big, and thirteen-letter words, and “thou shall be dealt with according to the law,” that scares them. You don’t need all that, two lines would do – you don’t show up, you will be charged with this.

Getting people to show up with an appearance notice can be very tricky. We are required, at least, to ensure that people understand their release conditions, and sometimes there is a breakdown where we think they understand, but they don’t.

I’ve dealt with a few people when I was on the streets who have said, “I talked to a neighbour first and asked them what should I do, because I didn’t understand, I didn’t know.” Also a lot of times, they’re upset because they don’t understand the questions that we ask (because we can ask questions in a certain way to get a certain type of answer).

I think it's partly that they feel embarrassed. They don't want people to know that they can't understand what's happening, and they're embarrassed and frustrated.

If you don't really take the time to explain it, and the person doesn't understand, as an officer you are liable. It's your responsibility.

Consequences of illiteracy – for the legal system

Sometimes people don't understand exactly why they're there [at court], or what's happening to them. If they have a form in their hand with a court date, maybe they haven't sought counsel because they don't understand what it says on the back. So they come ill-prepared, and court time is wasted because of that.

When young people come into court, they really don't understand what is happening. Say they've been remanded from the weekend, and they are coming in to have a bail hearing, or a show-cause, and they are released on conditions. There is duty counsel representing them that day, but he's telling them, "Look, you've got to go fill out the documents for legal aid in order to get legal aid." Then, they show up for the next court appearance and say, "Well, somebody was representing me here the last time." They didn't go to legal aid because they don't want to say that they don't know how to fill out the papers. Then the judge has to explain, "The counselor only represented you that morning. You have to go to legal aid and fill out the papers."

In the courts, it can be confusing even for some officers to follow what's going on. By the time you throw in a language barrier and literacy issue, no wonder no one is following the law.

I saw a co-worker write up his interpretation of what the person was saying. When it went to a trial, the person's testimony was so different from what the court was going to read in the statement. The way the statement was written was so far off what you heard when the person was speaking; you knew it wasn't his statement. If I get a case where somebody says they can't write or their writing isn't good enough, I say "OK, you are going to have to come with me and we will videotape it."

Flaws in the system: what changes are needed

It's not a user-friendly system. It is lawyer-designed, lawyer-supported and lawyer-run. It's terrifying. We need the justice system to start thinking like a business in interacting with the people.

Documents need to be simplified

The whole British common law – the rights of counsel, the right to remain to silent – is in archaic, judicially based language that does not translate well at the common level of speaking in our communities, especially with members of ethnic groups. So we try to put traditional legal language into more common parlance. It has to be broken down to the lowest common denominator.

One thing we need to work on particularly is the breathalyzer test. Right now we've got a run-on sentence that's more like a whole paragraph. It's absurd to try to recite it and it's absurd to expect

anyone to listen to it, let alone to a drunk. But look at the Ontario model – it's two lines and it says the same thing. That's the way we should be going.

I'll be standing at the counter listening to a clerk read something to a young person that I know cannot read or write, sometimes can't even spell their own name. And their parent is standing there, and they cannot read or write either. They are expected to comply with the conditions set by the judge, and carry that piece of paper with them, but they have no idea what it says.

The last two years I worked in the courts, I noticed a lot of breaches of conditions. They would say, "I didn't have any contact with that person." "No, but you were drinking." "I wasn't in a drinking establishment," but it says in that undertaking to abstain from alcohol. The problem was the understanding of what the wording meant on those documents. They might have keyed into the no contact part, but the rest of it was using words that they didn't understand.

We need to break it down so they understand and are aware of what they are facing or what we are investigating, why we are interacting with them, and what their options are.

Officers need more awareness and sensitivity

Most police officers are aware of what they need to do, but some of us communicate better than others. As police, we need to communicate in layman's terms.

Say a victim doesn't want to provide a statement because of a literacy issue. We need to break down those barriers, let them know there's help there. Again, you have to get down to their level of understanding. We need training on how to communicate with various folks who have literacy issues.

Police officers know that some people claim not to speak English, just to make our lives more difficult. But it may not be someone playing games – the person may have a legitimate literacy issue. We need sensitivity. Is there a legitimate issue?

We need more effective tools

Literacy is more of a deep-rooted social issue. We've taken to community policing all over the country. I think that's one part of it, to help reduce the crime. As a police force, because we care about our community enough, we can say, "We can help you." The main thing is finding out what's the best way to do that.

Literacy is a very important issue in policing. As a cop in an interview room, I would struggle over what words I could use. How could I articulate clearly to make certain this person understands the right to counsel and to remain silent, and understands that anything they say could and would be used as evidence against them. What steps can I take? It has been left to the police themselves to come up with the answers to those questions, and I don't know if it's being done effectively.

If you're doing an interrogation, you may spend hours in a room with the person before you figure out that they're illiterate. We need a way to identify people with low literacy early enough in an

investigation so we know what we're dealing with going in. You need that information up front, so you can plan how you're going to approach the person to get useful information from them.

A test for literacy would be valuable, not necessarily as a tool for us to do the job better, but for us to better inform the Crown. Then they can prepare how to question a witness who has a literacy issue. Many times in court, you look at the witness on the stand and you can see that they have absolutely no idea what the Crown is doing, or what the defence is doing, for that matter. When the legalese language gets above their level of understanding, witnesses just don't know what people are talking about.

It would help if somewhere in the report there were a checkbox for "Literacy is an issue," so it would be flagged in the Crown brief as an identified issue. Because if someone is sitting on the stand, and they are not literate, the Crown would know not to ask, "Here look at this. Is this the document that you had?" or "Read this. Is this what was said?" This would prevent the witness from improperly identifying a document, and avoid appeals later on. We do it for language, why not do it for literacy?

Junior officers need support

Senior officers certainly have an obligation, because every police agency has a very junior workforce right now, and they are bombarded with information on all kinds of issues – fetal alcohol, ADD, literacy, you name it. We need to be clear about what we expect from junior officers in terms of how they take all of these things into consideration, and how they respond to warning signs they see during an interview or interrogation. And we need to let them know that we're aware of these issues ourselves – we appreciate the challenges that these issues create.

I think patrol supervisors have some responsibility too. The supervisor has to keep reminding the patrol officers, especially since it's such a junior workforce. Junior officers used to have field trainers with fifteen years' experience to kind of take care of them. Now they're out there with one- or two-year members learning as they go. It's up to the supervisor to remind those guys, saying "Look, you have to spend an extra five minutes making sure the person understands the situation and what you're saying."

Other ideas

I've never seen a probationary term yet that said you are required to finish grade 12 or to attain a certain level of literacy. We place conditions on students that they attend class, and that's a start. But you want to recognize and enforce probationary terms that are actually doing something to reduce the risk of recidivism.

From a front-line perspective, when people need your help and there's a language barrier, it's a problem when we don't have access to an officer who speaks that language. We also have problems with people who do speak the language and who want to help – maybe a witness, another family member, or a neighbour. That gets a little tricky for us when it comes to the competence and neutrality of these people in court, or even their culpability.

At a collision reporting centre, I came into contact with a lot of literacy-challenged people. They had to fill in their own accident-report forms because we send them to the collision reporting centres, and we are removed from that process. They have to describe the collision to the officer, and to write down their version of events. This is a complicated system even for an English speaker. I can't imagine what it would be like for someone who has literacy challenges. Often, the only people who are in that office who might help them are people for whom English is a second (or a third or fourth) language, so they are not getting any assistance whatsoever. So I have major concerns for those people.

Suggestions from the front lines

Practical how-to suggestions

With youth, you have to explain in ordinary language, and make sure they do understand. Then you have to relate to the court that they understand. For example, the person may not understand terms like indirectly, abstaining from consuming, and third party.

"I just want to make sure that I explain myself well to you ... and what does *duty counsel* mean? Well, it means a lawyer." Then I always say, "When can you call a lawyer?" They answer, "When we're done." "No," I'll say, "you can call a lawyer right now, and I'll take you to a room that's private." I have them explain everything back to me. Especially with youth, but even with an adult.

I get them to explain it back to me in their own words.

You have to read it all back to them. It takes a long time, but you have to do it.

When people ask me about taking statements from young offenders, I always tell them it's an eight-page statement, and it's torture. I've walked through that form with dozens of policemen who didn't understand it themselves! So I always tell them go through every line with the person, and have a highlighter and a pen with you. Write little notes beside the words that you think the person might not understand, and describe that word. Go through every one of those pages; by the time you're finished, it should be all green and orange and yellow. No statement should ever come to my desk with just yes and no boxes checked on it, because the form means nothing to these kids.

Most often, I say something like, "You don't have to say a word, and it's best you don't." Or, "You have a right to call a lawyer, right now." There might be people out there who don't know what *counsel* means, who would just let it zip by.

I think the question should be, "Do you understand what I have just said to you?" And reaffirm and go over. That's the direction that you have to go.

I remember making arrests way back when... I would read from my book and I would break down almost every sentence to the lowest common denominator to make sure the person understood. Whether it was a businessman I had in for a fraud or some youth on the street, I always broke it down so they understood, and I made notes about that.

It's more important to make sure that they understand, even if you have to change the words you use, than it is to be quoting something exactly. You can always do both, because we have our rules and procedures. But explain it in more plain language as well.

The tool you need the most is common sense and empathy. Don't make a person who's lacking in aptitude feel stupid, because then they'll clam up.

A lot of times they don't want to sign an *undertaking* because they think they are signing a confession. It all comes back to taking your time, explaining it, putting it in layman's terms. Don't be so quick to get them processed and out the door so you can move on to the next one. You have to take the time to explain to them in layman's terms that it's not an admission of guilt.

With some people, when we have to take their statement, we write it down for them, and then say, "Is that correct?" If they say yes, you hand the written statement to them, for them to sign. You can always tell if the person has low literacy skills by the way they sign their name. People with low literacy sign like a small child – they have no skills. But they never say, "I'm illiterate" or "I don't write." They say, "I don't like to write – can you write it for me?"

My approach is to "ask back." When you ask someone if they understand what you've told them, sometimes you just get a gut feeling that they don't, even though they say yes. So then I say, "Would you say it back to me in your own words?" If they can't, then I go through it with them again.

Sometimes a family member asks questions for another family member, on their behalf I guess the best spot for this is at the coffee shop, where you'll get people coming up to you and asking questions. They may not call the police, but once they get to trust you, they'll ask you about things. People will feel their way around.

We deal with a lot of people who come from oral cultures. We're used to telling stories as a sequence of events, but they tell the story in their own way, which to us seems disorganized. I've had experience with people who are all over the place. It takes a lot more energy, effort and patience to get the information out. That's why when I ask them for their statement, I preface it with "Can you begin from the beginning?" I say that in advance, so I set it up for them where I want them to begin.

Last week, a mother called and wanted me to talk to her son, who had skipped school that day. His father was stabbed and died a couple of months ago, so there were all kinds of family issues going on. He's got two brothers and his own child on the way, and he's going through a rough time. I was really busy – I had all kinds of paperwork to do. I went and spent half an hour with him. We had a chat about the importance of staying in school. At the end of the day, when I had all my paperwork done, I realized there's no file for that, but it was probably the best police work I did that day.

Other suggestions

In our Education Services unit, I'm a DARE officer and a resource officer at the elementary level. It's huge for us at that level to get the children interested in reading and writing. We stress the importance of that, so we don't have those problems down the road.

Particularly in domestic situations, I come across new Canadians, where the gentleman comes from a different culture and doesn't understand our laws or what is happening to him. So we'll use other officers, or multi-language services, to translate. We have to rely on that to know whether we're being understood Then I have to let the judge know exactly what steps we took to make this person understand, otherwise their rights are going to be infringed and we are going to lose the case.

When a witness has low literacy, you might dismiss what that person has to say. In a recent example, we had a homicide in Vancouver and 200 witnesses. Say you talk to one person and they go around and around in circles. You know you have 199 other people to deal with, so you're going to dismiss that person. So yes, it affects what you do.

How to persuade other officers that literacy is an important issue in their work

The huge issue is making certain that officers truly accept the need to make sure the accused understands. As long as I do it respectfully, I've never seen anything wrong with asking if they are comfortable speaking, reading, and writing English.

A police officer now can be sued. At the preliminary stage, charter arguments get the case tossed out. You see officers who are too quick. They don't take the time... If you're too quick, then even if you get everything else together, your whole case is lost over a charter issue and understanding.

Don't say, "This is what you should do." Don't sell it as a procedure, coming down from above. It's not going to work if it doesn't work on the ground level. Tell the benefits: it helps police officers themselves when they take better statements.

This has to be something that is practical, that isn't going to be a great burden on your daily existence. It has to be something that officers see some value in, and that didn't just come down from above. This really has to be sold, because the officer on the road who goes from one radio call to the next will think, "I'm a police officer and now I have to worry about people's literacy?"

We have our in-service training. This would be a perfect thing, just for the awareness. Because until I sat down here, I never gave it any thought. Just to give people something to think about would be a step in the right direction.

We are doing this because we want to get these numbers down, because we can save time and effort in the long run, instead of retracing our steps over and over again. People need to understand about the investment, how much is this going to cost, how much is this going to save. You invest in literacy, and then you might have (fewer) shootings in the city in 20 years.

A case from the media

A man accepted a plea bargain even though he was innocent. He was charged with second-degree murder in the death of his 5-week-old son. The coroner said the infant died of shaken baby syndrome.

The father, a recent immigrant, who didn't speak English well. About this time, his wife was diagnosed with a brain tumor. His life was falling apart.

The father maintained his innocence, but pleaded guilty to criminal negligence causing death and was jailed for 90 days. "I would not be surprised if he signed a deal out of expediency because of the stress he was under," his lawyer later told a public inquiry.

He accepted the man's deal, after ensuring the father was informed of his options. He said the man could have faced a 10-year sentence if found guilty of second-degree murder.

The coroner was later discredited and was found to have erred in this case, and it's possible the child died of natural causes.

What training is needed?

I think organizations like the police colleges need to buy into the need for literacy awareness training and start teaching it at a very early stage in their training. It takes a long time for us to change as an organization, and many current officers don't really understand what being aware of literacy issues is all about. And the training needs to be relevant and credible, or it won't be well regarded.

I think officers need this kind of training early on in their careers, when they're first learning to be a police officer. They need to know this stuff right away, because new recruits are out there, having a lot of day-to-day contact with people all the time.

If you want to teach the members – especially the young members – about literacy and how important it is to criminality, you need a bunch of really good court cases that show how illiteracy can affect a case.

I think training is the best way to raise awareness about this issue – a video would be useful. And it should focus on the practical issues rather than the theory. The theories about illiteracy are interesting, but police officers tend to be very big on the hard "here's what you should do." And we need something in an electronic format so when you need that resource in an interview, or when you're on the side of the roadway at three o'clock in the morning, it's right there on the laptop.

It would be great for the video to include officers who have actual experience of a major case where illiteracy was a factor. Have credible people – senior officers who have a high enough profile that everybody being trained will at least recognize their name – talk about a case where illiteracy was a factor in the investigation or the outcome. That's a lot better than using something made up, or having them reading from a case study, or something like that.