

The Role of Forensic Linguistics in Criminal Cases

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Topics

- ▶ What is Forensic Linguistics?
- ▶ Applications of Forensic Linguistics: Examples
- ▶ Language Proficiency Issues
 - ▶ Interpreter Issues
 - ▶ Miranda and other rights waivers
 - ▶ Language Assessments
- ▶ Questions and Answers

What is Forensic Linguistics?

The analysis of linguistic patterns to provide information and evidence in legal contexts.

Linguistics is a social science with a broad scope of research underlying the forensic analyses.

- ▶ International Association of Forensic Linguists
- ▶ International Journal of Forensic Linguistics
- ▶ Research funded by NSF, DARPA, others
- ▶ Many universities have Forensic Linguistic specialties

Forensic Linguistic Questions

▶ Authorship / identity issues

- ▶ Who wrote or said this?
- ▶ Were 2 written / spoken texts by the same person?

▶ Meaning / intention issues

- ▶ Was that communication an admission? A threat? A lie?
- ▶ Did the speaker / writer intend to agree? Give consent?
- ▶ Did this communication constitute contract or agreement?
- ▶ Was this “hate speech”

▶ Nonnative speaker comprehension issues

- ▶ Did this non-native speaker understand their rights?
- ▶ Should this person have had an interpreter?
- ▶ Could this person have said or written this given their level of English?

Examples of Forensic Linguistic Applications

Grammar / Syntax

- ▶ The underlying structure of a text
- ▶ Nonnative speaker issues:
 - ▶ Did this non-native speaker understand a complex communication?
 - ▶ Could this person have said or written this given their level of English?

Grammar / Syntax Example:

Analysis of a written police report about an encounter with nonnative speaker accused of a crime:

.... and when I asked him whose car it was, he said “I’ve never seen that car before.”



Handy fact: Use of quotation marks is a claim about exact words used!

Grammar Analysis

Exact words:

“. . . he said, “I’ve never seen that car before.”

Grammatical construction:

Pronoun	Auxiliary	Negative	Past Participle
I	HAVE	NEVER	SEE + N

Complex Grammar:

- Use of past participle: have seen
- Use of irregular verb: see / saw / seen
- Negative between divided verb: have + never + seen
- Use of contraction: I have => I’ve

Grammar Analysis

- ▶ Examine other speech samples from the accused
 - ▶ Search for past participle
- ▶ Give topics / contexts that might require this construction
 - ▶ Is the past participle used correctly?

Conclusion: The accused could not have produced the utterance in quotations.

So, what else in the report might be inaccurate?

Lexicon: Words / idioms

- ▶ Non-native speaker comprehension of difficult or infrequently used words
- ▶ Dialect / colloquial expressions
 - ▶ I-5 -OR- the I-5
- ▶ Word meaning: Was a certain word intended as a threat / slur?

Lexical Example: Baboon

Did an insult rise to the level of a racial slur or “hate speech”?

South African case

The word “baboon” was used by a white South African police officer as an insult to a black South African suspect.

The recipient of the insult took it as a racial slur.

The speaker argued that it was such a commonly used insult that it was not meant literally.

Baboon, cont.

Linguistic Analysis: What is the commonly used and understood meaning of this term in S.A.?

- ▶ Searches of large corpora of speech data to see the range of meanings in context
- ▶ Surveys of multiple subjects to ask about their understanding of the insult

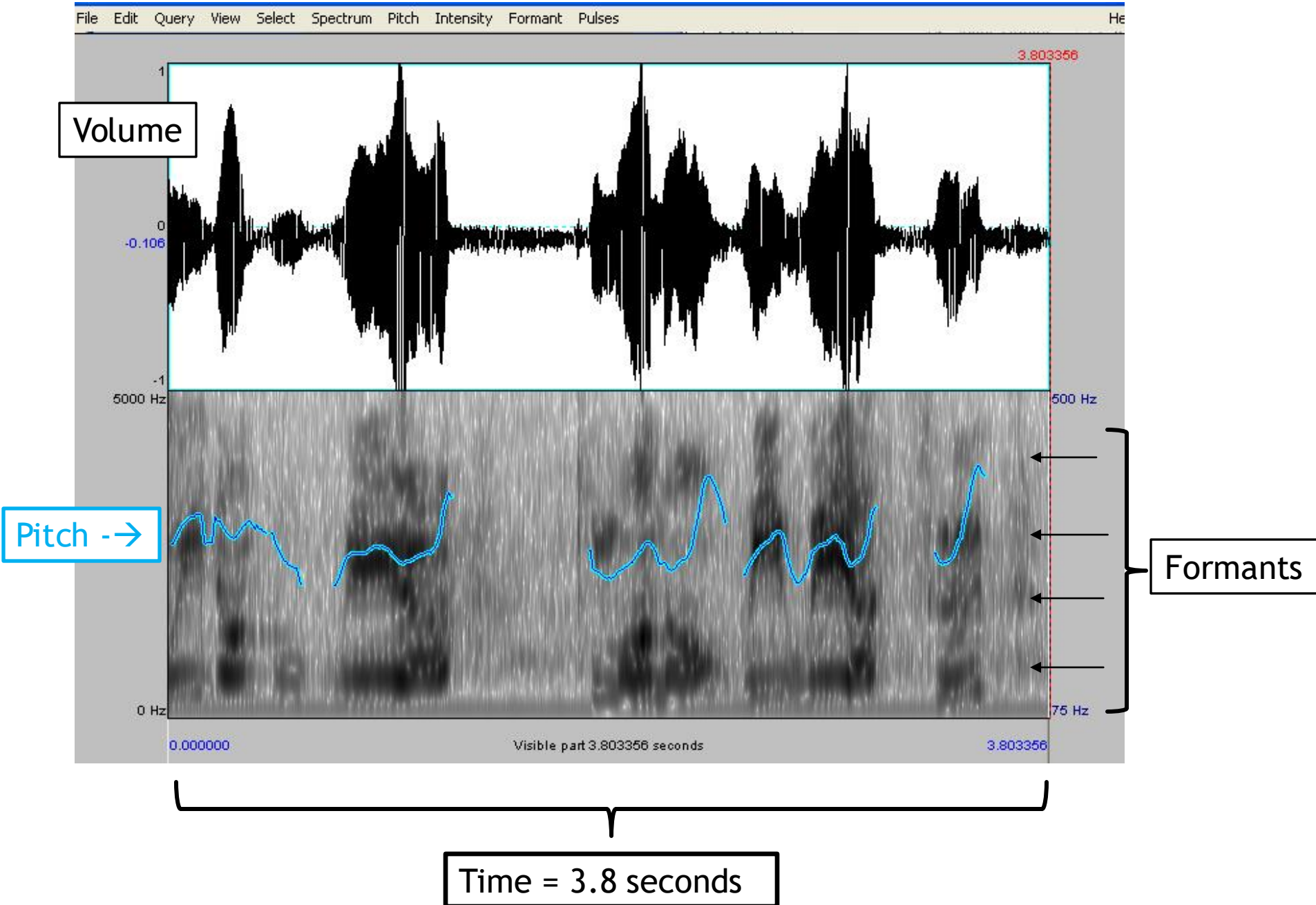
Phonology / Phonetics -

The sound system of speech

- ▶ Speaker identification
 - ▶ Is Person X the same speaker as the one on this voicemail / other recording?
- ▶ Foreign Accent
 - ▶ Could Person Y have uttered this phrase given their non-native pronunciation?
- ▶ Voice recognition
 - ▶ Is this witness's memory of hearing a person's voice accurate?

Includes Prosody: pitch, loudness, timing, etc.

Spectrograph



Example: Intonation / Stress Analysis

Recorded police encounter:

Officer: (reading Miranda Rights)
if you cannot afford to hire a lawyer one will be
appointed to represent you before any questioning if you
wish

Suspect: If I get a lawyer, I need to pay?

Officer: Are you saying, do you have to pay to get a lawyer?

Suspect: Yes

Officer: Uh, you could get a public defender
but as far as now do you want to keep talking to us and
giving me a statement?

Handy fact: English uses stress / intonation on key words to show a contrast!

Officer's exact words again:

“. . . you could get a **PUBLIC DEFENDER**, but as far as **NOW** do you want to keep talking to us . . .”

Analysis:

“PUBLIC DEFENDER” and **“NOW”** set up contrasts:

Implied meaning: . . . you could get a **PUBLIC DEFENDER** [→ but not a **LAWYER!**], but as far as **NOW** [you cannot do that until **“LATER”**]

[Note also: “Public Defender” is not necessarily a commonly known term to non-lawyers]

Sociolinguistics:

Language in social contexts

- ▶ Is communication / meaning / intention affected by the social group or culture?

 Recall the Baboon example: Is a certain insult “hate speech” (varies by culture)

Example: Ways of showing politeness

Diana Eades - Australian forensic linguist*

Analyses of socio-linguistic behavior of Aboriginal Australians in courtrooms / interrogations:

- ▶ How is politeness shown or expressed culture by culture, especially in legal settings?
- ▶ What are indicators of truthfulness?
- ▶ Can a mismatch in social expectations for communication lead to a negative legal result?

*DIANA EADES, *Aboriginal ways of using English*. Canberra: Aboriginal Studies Press, 2013

Australian studies, cont.

In Aboriginal Australian culture, truth telling / politeness is shown or expressed:

- ▶ Eye contact: lowering the gaze, NOT making eye contact;
- ▶ Length of utterance: Answering in short / one-word phrases
- ▶ Prosody / Tone of voice: Speaking quietly with little pitch contrast
- ▶ Body Language: somber facial expression; “low” affect; lack of gestures, looking down.

Australian studies, cont.

In Anglo-Australian culture, truthfulness and politeness are shown or expressed by:

- ▶ Direct eye contact
- ▶ Speaking in complete sentences
- ▶ Speaking up, emphasizing the main points
- ▶ Nodding to show understanding

Conclusion: the aboriginal defendants are not judged as credible under the “anglo” standard and get convicted more often

Discourse Analysis: the broader organization of language

- ▶ Sequencing of ideas / responses
- ▶ Turn taking in an interview or dialogue
- ▶ Narrative structure

Narrative Organization: 911 call

Was a 911 call faked to point at an innocent person in a murder case?

- ▶ A convicted person was exonerated based (in part) on research of how 911 calls are typically organized.

(Example used with permission of Lorna Fadden, Simon Fraser University.)

Analysis: Structure of 911 calls

- ▶ Caller typically identifies the problem in the first few words.
 - ▶ *My mom's not breathing!*
 - ▶ *There's a shooter the bridge!*
 - ▶ *We need an ambulance!*
- ▶ 911 operator then asks questions on specific details (location, names, condition of injured parties).
- ▶ The rest of the call is questions / answers

911 Research, cont.

Research on truthful v. deceptive narratives shows:

- ▶ Truthful accounts typically devote very little of the narrative to the introduction because the speaker takes it for granted that they were there.
- ▶ Deceptive accounts Tend to have unusually long introductions with proportionally shorter descriptions of the incident because the speaker is justifying the fact that they were there.

Text of the 911 call

(Caller identifies self)

I just came home for lunch, down Pine Street. I got on Trask Avenue and as I stopped at the corner of Trask and 125th, there was a man in a blue Bronco with silver over the wheels, and he had a rifle aimed over the edge of the bridge over the expressway. When he saw me, he got in his vehicle and tore out down 125th.

- Narrator starts with several background details
- The “emergency” is quite far into the narrative

Conclusion: a narrative analysis and other evidence convinced the court to exonerate a convicted person in the shooting incident.

Language Proficiency of Limited English Speakers

Language Proficiency Questions

Can a nonnative speaker communicate / understand well enough to:

- ▶ Testify without an interpreter?
- ▶ Knowingly waive Miranda / other rights?
- ▶ Consent freely to a search?
 - ▶ Other consents
- ▶ Understand certain questioning?
- ▶ Make a confession / admission / etc.?
- ▶ Others . . .

A Few Facts about Language Proficiency

- ▶ Language proficiency is not constant, depending on:
 - ▶ Social setting, formality
 - ▶ Purpose or type of language use
 - ▶ Subject matter
 - ▶ Fatigue, illness, stress, etc.
- ▶ Comprehension usually exceeds production
- ▶ Verbal communication usually exceeds literacy
- ▶ “Social competence” may not reflect knowledge of complex grammar and vocabulary
- ▶ People often feign comprehension
 - ▶ A common strategy to keep the conversation going
 - ▶ As a politeness strategy / to save face

Interpreter Case: *U.S. v Febus et al*, 218 F.3d 784, 792-793 (7th Cir. 2000).

Q: Okay. If you're sentenced within the appropriate guideline range, as I understand this agreement, you are expressly giving up your right to appeal your sentence and you're also giving up your right to contest your sentence under any post-conviction proceeding, is that true?

A: Yes, sir.

Q: Okay. Do you understand what all that means?

A: Yes. (Tr. 24.)

.....

Q: Do you fully understand the terms of this plea agreement that we went over?

A: Yes, sir.

Q: No doubt about it?

A: No doubt about it, sir. (Tr. 25-26.)

Interpreter case, cont.

Should the judge have appointed an interpreter for Defendant?

Holding: No, no abuse of discretion

“Morales's clear and responsive answers throughout the colloquy demonstrate that he comprehended the proceedings, communicated effectively with his counsel, and knowingly and voluntarily waived his right to appeal his sentence.”

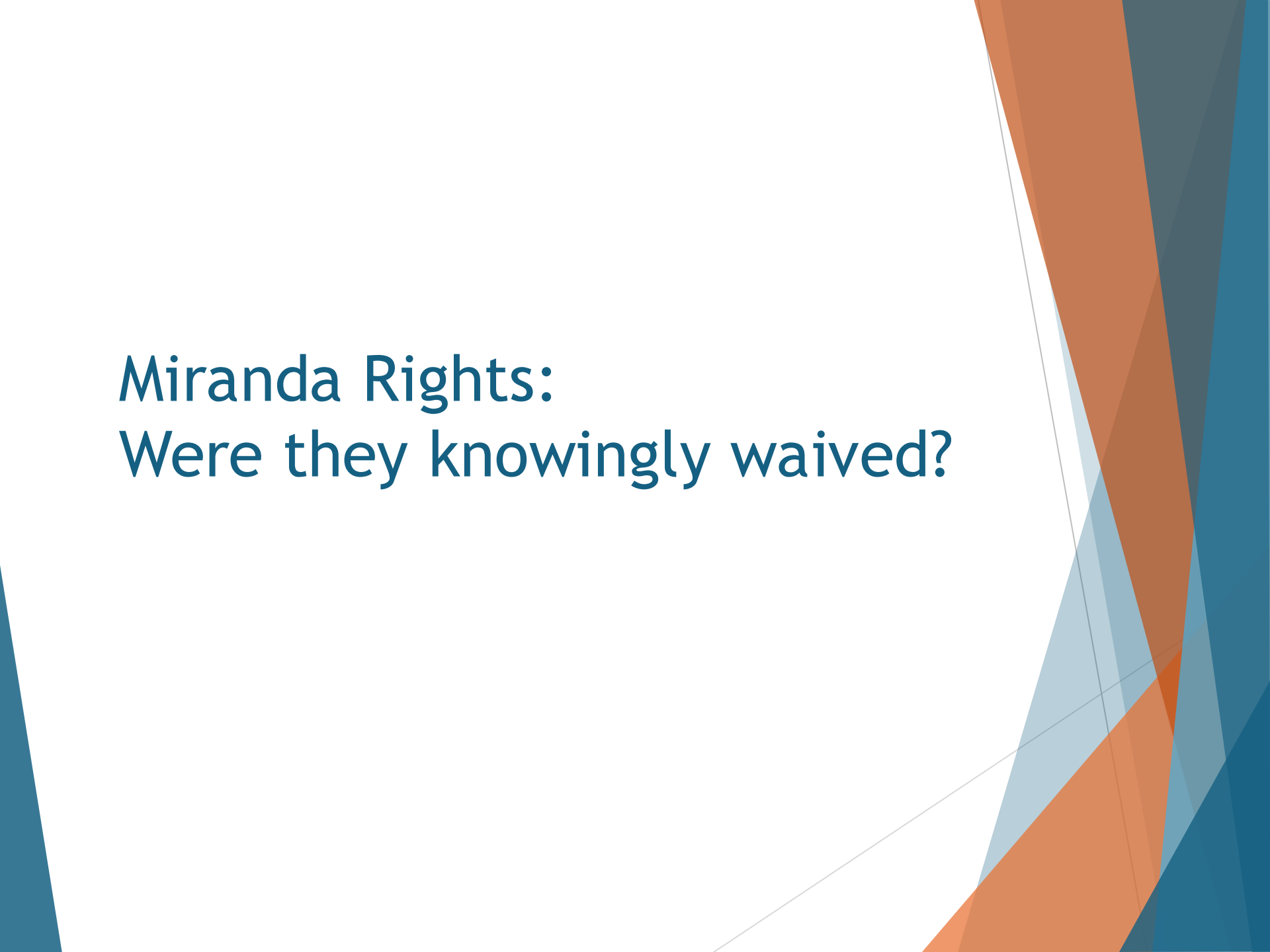
Linguistic analysis of Frebus

Despite well-timed “fluent” responses, this transcript does not show high proficiency:

- ▶ The defendant creates no original language
- ▶ Utterances contain stock words or phrases of agreement
 - ▶ “Yes” or “Yes Sir”
 - ▶ “No” or “No sir”
- ▶ Defendant repeats directly from the judge’s words:
 - ▶ “No doubt about it?” -- “No doubt about it.”
 - ▶ “You understand?” - “I understand.”



The defendant may be trying to save face and be agreeable by saying yes and repeating the questioner’s speech.



Miranda Rights:
Were they knowingly waived?

Miranda: Delivery and framing of rights

- ▶ Too complex grammatically / lexically for a nonnative speaker?
- ▶ Too fast for a nonnative speaker?
- ▶ Delivered in a monotone?
- ▶ Framed to minimize the importance?
- ▶ Framed in an intimidating way?

Remember this?

“Well, you could get a PUBLIC DEFENDER, but as for NOW....”

Complex Syntax of Miranda Rights

Complex embedding of clauses / phrases (6 levels!)

If you cannot afford
 to hire a lawyer
 then one will be appointed
 to represent you
 before any questioning
 if you wish one.

Difficult Lexicon of Miranda, cont.

Medium and low-frequency vocabulary:

- ▶ Waiver of rights
- ▶ Afford an attorney
- ▶ Appointed for you
- ▶ Discontinue your statement
- ▶ To have a lawyer present

Analysis of Miranda delivery

Interview in progress..... Detective reads Miranda...

D: So, do you understand each of these rights I have explained to you?

N: (nods)

D: OK, good. Having these rights in mind do you wish to talk to us now?

N: Right. Of course.

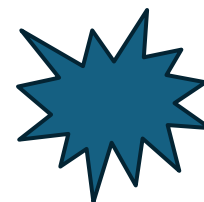
D: OK, let me give you that- (hands clipboard)

N: How can you be silent if you brought me here to talk?

D: Let me get you to sign right there on the top line.

N: (signs)

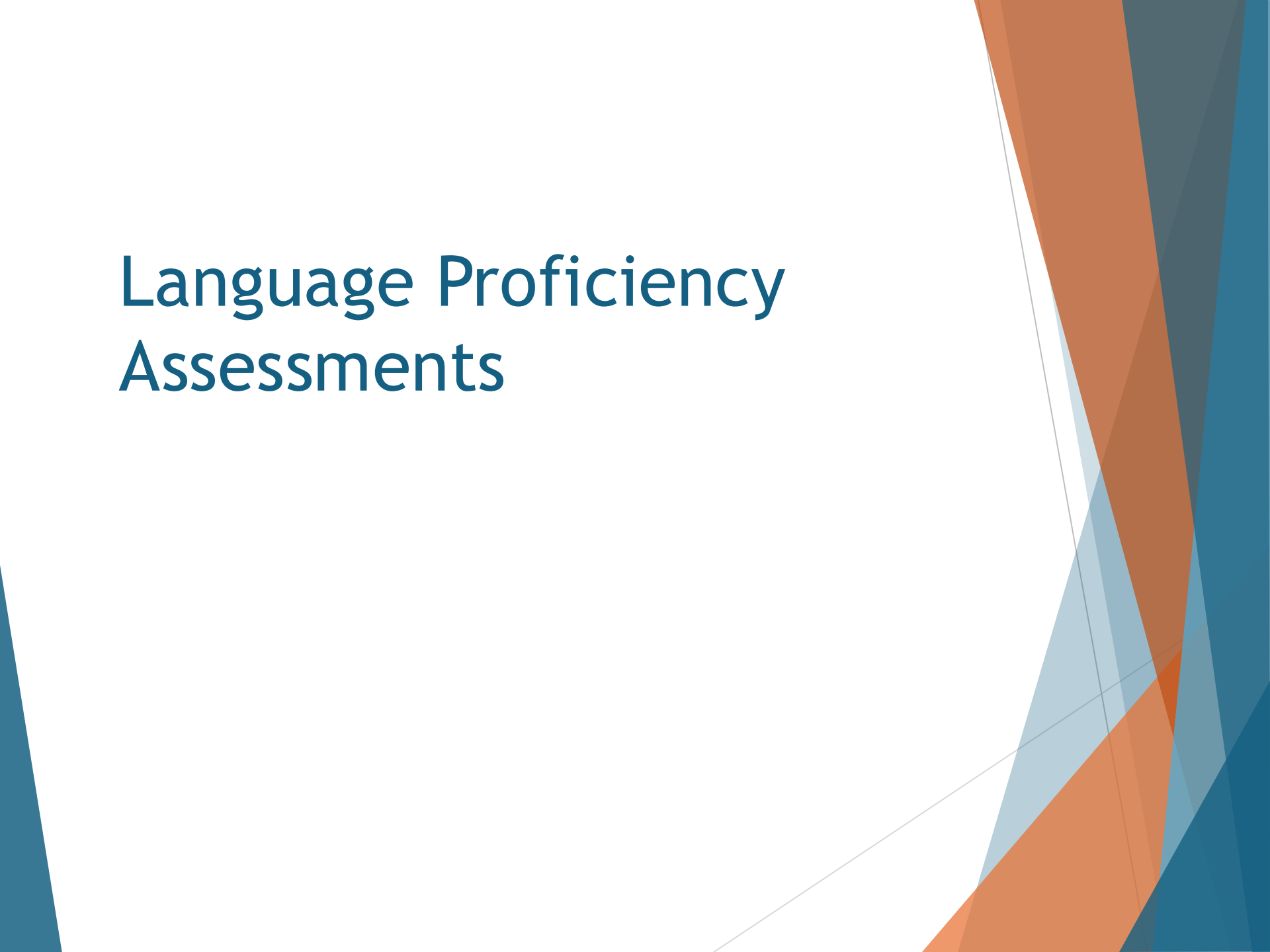
D: Thank you.*



HUH?!

**Aneta Pavlenko (2005). "I'm very not about the law part": Nonnative speakers of English and the Miranda Warnings. TESOL Quarterly, 42 (1), 1-30.*

Language Proficiency Assessments



Standardized Language Testing

- ▶ Problems with standardized tests (TOEFL, IELTS, etc.)
 - ▶ Usually for academic purposes
 - ▶ Not appropriate for nonliterate people or those with lower educational level
 - ▶ May require computer literacy.
- ▶ Language Testing Research - every SINGLE research article on those who want to succeed on a test!
 - ▶ For entrance to a university
 - ▶ To pass out of an ESL requirement
 - ▶ To qualify for a job



However - what if the speaker's goal is to show low-proficiency?

Malingering?

A suspect's incentive might be to deny knowledge of English

How to know if someone failed a language test on purpose?



Faking a low level of language proficiency?

Fact: Language is rule-governed

- ▶ L2 is acquired in a systematic way with regular patterns that become automatic
- ▶ It is difficult to overcome “automaticity” of the L2 patterns acquired
- ▶ If we try to simplify, the complex structures will “slip” in
- ▶ This is especially true in long segments of speech

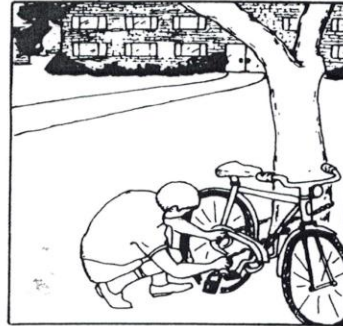
A fluent speaker cannot easily “fake” a low level or proficiency in fast, extended discourse

Ann's case study: Could a person “fake” a Low Proficiency?

- ▶ 3 bilingual subjects, high proficiency of English.
- ▶ Each reviewed a series of pictures to tell a story:
 - ▶ The first telling: use regular English
 - ▶ The second telling: same story but with a “fake” low level of English
- ▶ Both stories were recorded and the language was analyzed in detail.

Part V: Picture description

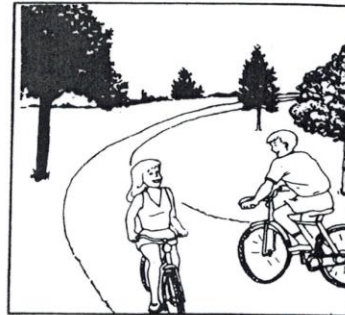
Instructions: Describe the series of pictures to tell a story. Begin with the words, "One day last month . . ."



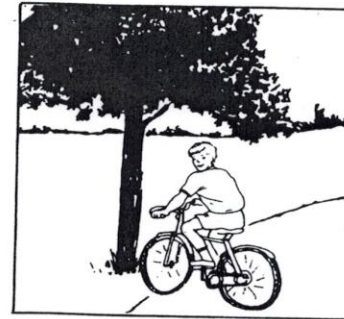
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Results:

- ▶ Person A: Refused to do the task -
“I am not a fake!”
- ▶ Person B: The proficiency was exactly the same both times
- ▶ Person C: Tried to fake a low level, but the more complex structure seeped through

Complex Structures slipped into the “Faked” Low Level

- ▶ The person- the man is not paying attention
- ▶ They seem to- smile to each other, or at least make- some sort of eye contact
- ▶ After that they are, like boyfriend-girlfriend.

Conclusion: THEY COULDN'T FAKE A LOW LEVEL!!

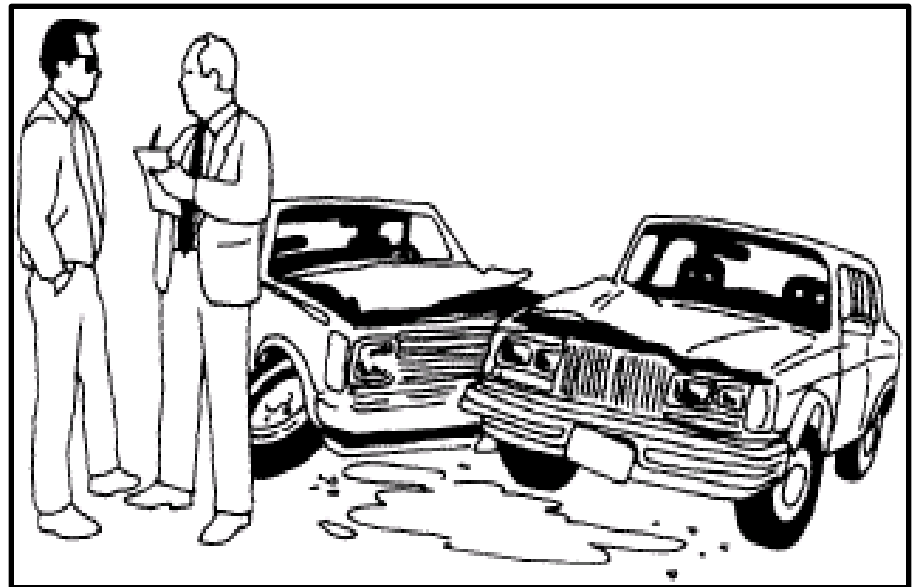
English Proficiency Assessments: Individually Targeted Approach

- ▶ Create the assessment for the individual
- ▶ Take level of literacy into account
- ▶ Include a variety of language tasks
 - ▶ story-telling,
 - ▶ conversation,
 - ▶ listening comprehension,
 - ▶ description . . . etc.
- ▶ Use props, pictures, role play, to keep the level of interest up
- ▶ Fast pace
- ▶ Use subject matter and vocabulary from the case, interspersed with other content

Example: Picture Descriptions in DUI case



What is happening here?



What are the men doing?

Sample analysis

A: What is happening here?

H: Is police. (long pause)

A: And then?

H: Fire? (long pause) The car is fire.

A: OK.

H: The car is broken.

A: Mm hmm.

H: The car is broken. (long pause)

A: And what are the men doing? (long pause)

H: Write paper?

A: OK.

H: Is freeway.

Result of the assessment?

Low level of English proficiency: This person could not likely have understood the complex structure of Miranda --

- ▶ Short 2-4 word utterances

- ▶ Simple grammar structure:

IS + NOUN or ADJECTIVE (“IS FIRE”)

- ▶ Unconjugated / untensed verbs:

“WRITE PAPER”

- ▶ Lack of fluency

- ▶ Long pauses

- ▶ Need for prompting (“... AND THEN...?”)

- ▶ Repeated phrases (“is broken... is broken...”)

Take-aways from this presentation

- ▶ If your case involves language issues, you may want to consider a forensic linguistic expert
- ▶ Many areas of linguistics - not just vocabulary and grammar
- ▶ Language proficiency assessment of nonnative speakers may be helpful in the legal context
- ▶ Mainstream assumptions about nonnative language acquisition may be wrong
 - ▶ Faking a low level is not so easy
 - ▶ Quick “fluent” answers may not mean true comprehension
- ▶ Minute details embedded in interaction may provide answers to legal questions



Thank you!

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