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# *“I’m Very Not About the Law Part”: Nonnative Speakers of English and the Miranda Warnings*

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This article presents a case study of a police interrogation of a nonnative speaker (NNS) of English. I show that the high linguistic and conceptual complexity of police cautions, such as the Miranda warnings, complicates understanding of these texts even by NNSs of English with a high level of interactional competence. I argue that the U.S. criminal justice system should accommodate NNSs of English at all proficiency levels by adopting a bilingual standard, that is, by offering the Miranda warnings in English and in a standardized translation into the speaker’s native language. I also argue that common legal terms, concepts, and texts need to find a place in the adult ESL curriculum.

In the past few years, the scope of inquiry in the fields of applied linguistics and TESOL has widened to an unprecedented degree. Until recently, the two fields were predominantly preoccupied with classroom teaching, but they have begun to address a larger array of real-world concerns, many of which have direct implications for the classroom (e.g., Cook & Kasper, 2005; McGroarty, 2003). This article addresses one such real-world issue, namely, the inability of the U.S. legal system to address language issues affecting nonnative speakers (NNSs) of English. This is not a completely novel concern for *TESOL Quarterly*. In 1978, the journal published an article titled “Limited English Speakers and the Miranda Rights” by Eugène Brière that became a classic in the field of forensic linguistics. Brière (1978) analyzed the linguistic complexity of the Miranda warnings and described a set of tests administered to a speaker with limited English skills. The test scores revealed that the speaker did not have sufficient proficiency to understand his Miranda rights. And yet, almost 3 decades later, many NNSs of English, even those with low proficiency, are still read their rights exclusively in English.

The present article takes off from where Brière’s (1978) study ended and pursues three interrelated goals: (a) to show that the Miranda warn-

ings are difficult to understand for speakers at more advanced levels of proficiency than the participant in Brière's (1978) study, (b) to argue that police cautions, such as the Miranda warnings, should be presented both in English and in the native language to NNSs of English, regardless of their proficiency levels, and (c) to motivate designers of adult ESL curricula to incorporate at least one module that introduces common legal terms, concepts, and speech events, such as police cautions. In view of the fact that more and more TESOL professionals are becoming involved in court cases as linguistic experts, I also aim to familiarize the TESOL community with the research and arguments about police cautions in the fields of law and forensic linguistics.

I begin with an overview of studies that consider comprehension of police cautions by NNSs of English. Next, I discuss a case in which I testified as an expert witness with regard to the defendant's ability to understand the Miranda warnings. What makes this case particularly interesting is that the NNS in question had a high level of interactional competence and at the time of her interrogation was a student in a U.S. university. Yet I intend to show that, despite her interactional competence, she was unable to fully understand her Miranda rights and interpreted signing the waiver of rights as a routine procedure for witnesses, an interpretation that was facilitated by the detective in charge of the interrogation. I will end by discussing the implications of this case study for the treatment of NNSs by the U.S. legal system and for ESL curricula.

## **NONNATIVE SPEAKERS OF ENGLISH AND POLICE CAUTIONS**

In Common law countries, such as the United Kingdom, United States, or Australia,<sup>1</sup> police are required to inform suspects of their rights through scripted cautions, whose form and meaning may vary slightly, even within the same jurisdiction. Hollywood movies and TV shows often portray such cautions in the scenes where guns are drawn and a heroic

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<sup>1</sup> Common law derives from English law and is adopted in the United States, the United Kingdom (apart from Scotland), Australia, New Zealand, most of Canada, and former Anglo-American colonies. Common law is case based; that is, court decisions become precedents for future decisions. Most countries have legal systems based on Civil law, which developed out of Roman law. Civil law is code based; that is, legislation is seen as the primary source of law and courts make decisions by drawing analogies from statutory provisions. In criminal cases, the differences between the two systems are expressed in the way investigations, arrests, and trials are conducted. In the Common law system, the state has the burden to prove guilt, which is decided at trial, whereas in the Civil law system, guilt is determined primarily in the pretrial process, and at the trial the accused must disprove that he or she is guilty.

policeman shouts at the wrongdoer: “You are under arrest! You have the right to remain silent!” When presented outside of such context and not preceded by the utterance “you are under arrest,” however, police cautions are not necessarily identified as such and not easily understood by NNSs of English.

Several studies and case reviews carried out in the United Kingdom (Cotterill, 2000), in the United States (Berk-Seligson, 2000; Brière, 1978; Connell & Valladares, 2001; Einesman, 1999; Roy, 1990; Shuy, 1997, 1998; Solan & Tiersma, 2005), and in Australia (Eades, 2003; Gibbons, 1990, 1996, 2001, 2003) show that NNSs of English are at a considerable disadvantage when processing police cautions because of the linguistic and conceptual complexity of these texts and their cultural specificity. These difficulties may be further compounded by the use of untrained interpreters, including police officers and family members (Berk-Seligson, 2000, 2002; Connell & Valladares, 2001; Einesman, 1999, Nakane, in press; Russell, 2000).

The focus of the present article is on the U.S. caution, commonly known as the Miranda warnings or the Miranda rights (for an in-depth discussion of the history of and the issues surrounding the Miranda warnings, see Einesman, 1999; Leo & Thomas, 1998; Shuy, 1997; Solan & Tiersma, 2005). This caution came about as a result of the 1966 Supreme Court ruling in the case of *Miranda v. Arizona* which expanded the Fifth Amendment privilege against self-incrimination from the courtroom to the police station, requiring police officers to inform suspects of their constitutional rights prior to questioning.<sup>2</sup> The warnings do not need to be given in any specific way; the Miranda standard is satisfied as long as the rights are reasonably conveyed. To comprehend the Miranda warnings correctly, individuals being questioned must understand that they are suspects in the police investigation and that they have all of the following rights: (a) the right to remain silent, (b) the right to an attorney, and (c) the right to have an attorney present during questioning. Suspects must also understand that exercising these rights will not lead to harmful consequences, and that waiving the rights may in fact lead to harmful consequences, such as the suspects’ own testimony being used against them in court. In other words, the suspects must understand (d) that anything they say can be used against them in a court of law, and (e) that if they cannot afford an attorney, an attorney will be furnished to them free of charge both prior to and during questioning.

The Supreme Court summarized the waiver requirements in *Moran v. Burbine*: “First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have

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<sup>2</sup> It is important to note that the warnings are read only to suspects, not to witnesses.

been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it” (Solan & Tiersma, 2005, pp. 75–76). If the warnings are not adequately presented, the court may deem that the Miranda rights were not waived voluntarily, knowingly, and intelligently. As a result, the court may suppress the statements made by the suspect as improperly obtained, excluding them from the entire court proceedings.

Overviews of cases where the validity of the waiver was questioned show that in some cases the defendants’ statements were indeed subsequently suppressed. For instance, in *United States v. Short*, the court found the waiver invalid because the defendant, a West German national, had only been in the United States for 3 months before questioning and spoke and understood English poorly (Einesman, 1999). In *United States v. Garibay*, the court found the waiver invalid because of the defendant’s English language difficulties, low IQ, and the fact that he was not advised of his rights in his native language, Spanish, nor provided an interpreter (Einesman, 1999). Roy’s (1990) analysis of a case where the Puerto Rican defendant was denied an interpreter, both during the reading of the Miranda warnings and in court, helped to overturn the conviction on appeal.

The absence of an interpreter is not the only rationale for overturning the waiver; other cases involve a faulty translation (see also Berk-Seligson, 2000, for an overview of cases where the waiver was overturned because law enforcement used incompetent or ad hoc interpreters, including children and relatives). In the case of *People v. Mejía-Mendoza*, the Supreme Court of Colorado found that the translation of the Miranda rights into Spanish was embellished and inaccurate and ruled that the government did not properly advise the defendant of his rights (Connell & Valladares, 2001; Einesman, 1999). In turn, in *United States v. Pham*, a California Superior Court suppressed the testimony of the defendant because the jail nurse who translated his testimony from Vietnamese failed to translate his statements “I want to go back to jail” and “I don’t want to say any more,” which were effectively invocations of his right to silence (Figueroa, 2005).

However, in the majority of the cases where NNSs of English were advised of their rights in their native language, the validity of the waiver has been upheld, despite the suspects’ lack of familiarity with the U.S. criminal justice system. For example, in *People v. Márquez*, the California Supreme Court found the waiver valid, even though the defendant claimed that he could not understand the police officer’s Spanish (Berk-Seligson, 2000). Similarly, in *People v. González*, the Supreme Court of New York ruled that discrepancies in the translation of the Miranda rights did not matter because the detective interpreter managed to convey the substance of the rights (Berk-Seligson, 2000). In *State v. Leu-*

*thavone*, the Supreme Court of Rhode Island ruled that translating the rights into Laotian satisfied the requirement of a voluntary, knowing, and intelligent waiver (Dinh, 1995). And in *United States v. Yunis*, the District of Columbia Circuit Court of Appeals ruled that the defendant's waiver was valid because the rights were read to him in both English and Arabic, and he was also shown a written Arabic translation of the rights and gave both an oral and written waiver (Einesman, 1999).

In several other cases, the waivers were found valid based on the simple fact that the suspect could communicate in English. For instance, in *United States v. Alaoui*, the court found the Miranda waiver valid because the officer "took special care to thoroughly explain" the rights and because the defendant responded in English and did not use an interpreter at trial (Einesman, 1999, p. 11). In *United States v. Bernard S.*, the court found a juvenile defendant's waiver valid because the defendant had studied English through the Grade 7, answered questions in English, and responded in English that he understood the rights. Thus the validity of the waiver was upheld, despite the fact that the Apache-speaking defendant was unable to read or write English and required an interpreter during trial (Einesman, 1999; see also Solan & Tiersma, 2005). Several legal scholars have expressed concern over the lack of standard for what is considered adequate English proficiency for the purposes of understanding the Miranda rights, pointing out inconsistencies in decisions made by various courts (Connell & Valladares, 2001; Einesman, 1999; Roy, 1990; Solan & Tiersma, 2005).

Linguists also take issue with decisions such as the one made in the case of *Bernard S.* and argue that an understanding of the Miranda warnings requires more than a basic level of English proficiency. Brière's (1978) analysis of the language of the Miranda rights reveals that for native speakers of English, the Miranda text has a Grade 8 level of reading difficulty with 50% comprehension and a Grade 13 level of difficulty with 100% aural comprehension. This and other analyses of the linguistic and conceptual complexity of the Miranda warnings (Brière, 1978; Shuy, 1997, 1998) identify the following features of the text that make it difficult for NNSs of English and for English speakers with limited educational background:

- (a) Syntactic complexity, seen in the high number of embedded clauses, that is, clauses introduced by *and*, *but*, *or*, *when*, *if*, *so*, *before*, *to*, and *that*, within a single sentence; commonly, the deeper the embedding, the more likely a NNS of English will either fail to understand the sentence or rely on alternative cues to understand the gist of it (see also Gibbons, 2001). In the case discussed in this article, the Miranda Warning Form required the NNS of English to process six layers of embedding:

1. *If* you cannot afford
  2.                   *to* hire a lawyer,
  3.                                   [then] one will be appointed
  4.   *to* represent you
  5.   *before* any questioning
  6.   *if* you wish one.
- (b) The presence of medium- and low-frequency terms, such as *afford*, *appointed*, and *discontinue*, and legal terms such as *the court of law* and *waiver of rights* (for frequency information, see *Collins COBUILD English Dictionary*, 1995).
- (c) Reliance on the privilege against self-incrimination and the notion of rights specific to the Common law system adopted in the United States.
- (d) Lack of logical progression in the order of decisions that need to be made: remain silent, consider legal representation, and discontinue the interview. As pointed out by forensic linguist Roger Shuy (1998): “clients do not realize that their first action is to be represented by a lawyer before considering their speaking/silence options” (p. 55).

Participation of interpreters does not always alleviate these problems. Forensic linguists and legal scholars identify the following factors that may lead to errors and inaccuracies in the online translation of police cautions: (a) the use of ad hoc interpreters and translators that do not have any professional training in working with legal discourse; (b) cross-linguistic and cross-cultural differences that make an accurate rendering of the cautions very challenging; (c) false cognates, such as the Spanish verb *apuntar* (to point to) that can be erroneously used instead of the correct verb *otorgar* (to appoint); (d) long segments and arbitrary turn boundaries which strain the interpreters’ ability to render accurate translation and may lead to omissions; (e) interference from interpreters’ own understanding of the meaning and legal implications of the cautions; and (f) difficulties in rendering a written text in a face-to-face speech mode (Berk-Seligson, 2000; Connell & Valladares, 2001; Nakane, in press; Russell, 2000).

To sum up, NNSs of English have difficulty understanding the Miranda warnings because of the warnings’ linguistic and conceptual complexity, their use of low-frequency terms, and the lack of logical progression. NNSs’ understanding may also be impeded because they are unfamiliar with the Miranda rights, police procedure, and the U.S. criminal justice system. The use of interpreters or locally created translations is not a viable solution, either. As Berk-Seligson (2000) argues, in translation of the Miranda rights, problems can emerge “even when the interpreter is a highly competent professional and has no conflict of interest

with respect to the person who is being questioned” (p. 232). I will return to this issue at the end of the article to argue for standardized translation of the Miranda warnings.

## PRESENT STUDY

The present case study examines a videotape and a transcript of a police interrogation of a 22-year-old Russian national, Natasha, a suspect in the murder of another Russian national, Marina.<sup>3</sup> As mentioned earlier, two aspects of Natasha’s case distinguish it from the cases just reviewed. The first is Natasha’s high level of interactional competence in English. The second is the fact that although the defendants in the cases mentioned earlier were aware of their status as suspects, Natasha believed that she was being interviewed as a witness in the case.

Natasha was born in 1982 and grew up in Moscow. She began to study English in Grade 2 but, in her own words, for the first few years her “knowledge of the language was pure zero” and she received 3s and 2s (Russian equivalents of Cs and Ds) in her English class. When she was in Grade 8, her parents hired an English tutor who gave her private lessons for two school years, from 1995 to 1997. According to Natasha, she acquired most of her knowledge of English grammar through these lessons. In 1998–1999 Natasha spent a year in the United States as a high school exchange student. In her own words: “I could not understand anybody speaking to me and nobody understood a word of what I was saying. For the first 6 months I had problems separating words in the sentences” (p. 4; page numbers refer to the language-learning history that Natasha wrote at my request). She did not take any ESL classes, and it is not clear whether her school actually had an ESL program. Nevertheless, Natasha’s speaking ability improved during her stay and her verbal SAT score increased from 420 in the fall of 1998 to 480 in the spring of 1999.

On her return to Moscow, Natasha graduated from high school and entered college. Because she did not perform well on her entrance exam in English, she decided to take French in college. In her 3rd year, in the fall of 2002, Natasha transferred to a U.S. university where she majored in finance and management. When she began her university course work, she “experienced extreme difficulties” with English (language-learning history, p. 6). Because she could not understand her professors, she would often attend all three sections of the same course. During her 2 years at the university she spent most of her time with Russian-speaking

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<sup>3</sup> To preserve confidentiality, all names have been changed.

friends and made two trips to Russia, during a winter and a summer break.

On December 30, 2004, Natasha was invited to the police headquarters for an interview with Detective S. The interview was conducted in English, and at no point was Natasha offered the services of an interpreter or translations of the English forms. At the end of the interview, she was charged with first degree murder on the basis of circumstantial evidence and detained in a women's correctional facility.<sup>4</sup> Natasha's lawyers questioned the validity of her waiver of rights and filed a motion to suppress the interview. In September of 2005, I was invited as an expert witness to examine the transcripts and to give a professional opinion as to whether Natasha waived her Miranda rights voluntarily, knowingly, and intelligently. The lawyers selected me for two reasons: my expertise in the field of SLA and the fact that I too was a native speaker of Russian. I placed my findings in an expert witness report and presented them at the suppression hearing. After the hearing, Natasha kindly signed a consent form that allowed me to use the data for this research article.

## DATA ANALYSIS

To analyze Natasha's linguistic proficiency at the time of her police interrogation, I examined the following data: (a) a transcript of a phone conversation between Natasha and Detective S on December 30, 2004 (9 pages); (b) a videotape and a transcript of a 5-hour interrogation of Natasha by Detective S on December 30, 2004 (134 pages); (c) Natasha's university transcripts; (d) Natasha's TOEFL and SAT scores; and (e) a language-learning history written in English by Natasha at my request. In other cases, researchers have also administered English language proficiency tests to the defendants (Brière, 1978; Roy, 1990). In the present case, however, testing Natasha's proficiency directly would have been inappropriate because by the fall of 2005 she had spent almost a year in the all-English-speaking environment of the women's correctional facility, and by that time her English proficiency and understanding of legal terms and concepts would not have been identical to her knowledge in December 2004. Consequently, I had to design my own methodology to proceed with the analysis of her proficiency at that time.

To determine Natasha's linguistic proficiency at the time of the inter-

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<sup>4</sup> The case has been retried, and the outcome of the trial is not yet known; however, Natasha's guilt or innocence are incidental to the purpose of this article because linguistic rights should be accorded to all NNSs of English.



rogation, I examined phonological, morphosyntactic, and lexical properties of Natasha's speech and her conversational strategies, as seen in the videorecording and the transcripts of the phone conversations. I have also analyzed phonological, morphosyntactic, and lexical features of the speech of her interlocutors and their conversational strategies that either facilitated or impeded Natasha's comprehension of questions addressed to her. In addition, I have considered her standardized test scores and university grades.

To analyze Natasha's familiarity with police procedure and her understanding of legal vocabulary, I have examined her questions and comments about legal terms and procedures throughout the interview. To examine whether Russian concepts and cultural frames influenced her performance, I have analyzed language transfer, that is, the influence of Russian on her speech in English.

To analyze how the Miranda Warning Form, a written version of the Miranda warnings, was presented to Natasha and how she signaled her understanding or lack thereof during the interrogation process, I have performed a discourse analysis of the conversational strategies used by Detective S to introduce the form and of the strategies used by Natasha to refer to her Miranda rights. This analysis draws on Leo's (1992) work on deceptive interrogation and on Galasinski's (2000) work on the pragmatics of deception.

My analysis of Natasha's performance also draws on Cummins' (1979, 1984) theoretical framework that differentiates between *basic interpersonal communicative skills* (BICS) and *cognitive academic language proficiency* (CALP) in children with limited English proficiency. BICS, more recently reconceptualized as *interactional competence* (Young, 1999), are used in contexts that support understanding with, for example, verbal and nonverbal cues and instant feedback. CALP is used in context-reduced environments that require higher order thinking skills, such as analysis, synthesis, and evaluation. Eades (2003) underscores the importance of a similar distinction for understanding why defendants, who may appear quite fluent in answering basic biographical questions, are unable to participate in more complex exchanges or, for that matter, process complex legal texts. In accordance with this reasoning, in what follows I adopt the distinction between interactional competence, on the one hand, and linguistic and conceptual competence, on the other, with conceptual competence limited here to a set of legal concepts. EFL learners do not always develop interactional competence before they develop linguistic competence, and some NNSs have high levels of fluency in academic or professional discourses and low levels of interactional competence. The distinction between the two types of competence is not limited to NNSs: Many native speakers may also experience difficulties processing complex texts. What is important for my argument

is the relative independence between the levels of interactional competence and levels of linguistic and conceptual competence necessary to process legal texts and exchanges.

## RESULTS

### Natasha's Linguistic Proficiency

Throughout the interview, Natasha's pronunciation was fully comprehensible to native speakers of English interacting with her.<sup>5</sup> At the same time, she displayed several segmental and suprasegmental features that contributed to the overall perception of a Russian accent, including an absence of the short–long vowel differentiation and of diphthongs, vowel fronting after glides (in words like *worst* and *work*), and Russian intonation patterns. Her listening comprehension was fully adequate and comprehension difficulties observed during the interrogation did not stem from perceptual or parsing difficulties but from gaps in her lexical and morphosyntactic knowledge.

In the area of morphosyntax, Natasha displayed a preference for simple sentence structure; a typical pattern for her is the following: "He doesn't speak English. That's a very easy here. We live in a Russian area" (interrogation transcript,<sup>6</sup> p. 3). Trying to avoid relative clauses, she produced sentences such as "She had like boyfriend very looking like Michael. Looking like him" (p. 20). It is difficult to judge her comprehension of complex sentences because the detectives interacting with her used mostly simple sentence structure, repetition, and paraphrasing.

Natasha also displayed numerous transfer errors that stem from differences between the Russian and English morphosyntactic systems. Among these errors were (a) omission of subject pronouns, which is acceptable in Russian but not in English; for example, in a comment about her parents she said, "Know no English" (interrogation transcript, p. 2); (b) erroneous tense assignment: Because Russian has a single present tense, she substituted present simple for present progressive and stated that her sister "learns English at school" (p. 3) instead of *is studying English*; (c) omission and incorrect assignment of articles because Russian has no articles, for example, "I never had the dog" (p. 14); "there was a police" (p. 31); and "I have a Adidas shoes" (p. 33); (d) omission and incorrect assignment of prepositions, driven by Russian preposition

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<sup>5</sup> Throughout, my analysis addresses exclusively the level of proficiency that Natasha displayed during her interrogation by police on December 30, 2004.

<sup>6</sup> Throughout, page numbers are given based on the official interrogation transcript.

usage, for example, “pays more attention on chemistry” (p. 3); “I went on the taxi” (p. 10); “I was waiting him at his car” (p. 28); “and he just says me” (p. 29). She also exhibited difficulties with negation, seen in statements such as “I’m very not about the law part. I mean it’s not know” (p. 15).

At times, morphosyntactic difficulties interfered with Natasha’s comprehension during the interrogation. For instance, she interpreted a question in simple present referring to her parents’ occupation as a question in present progressive referring to the parents’ activities at this point in the day:

### Extract 1

Detective W: what do your parents do?

Natasha: sleep.

Detective W: no (.) I mean (.) what do they do for a living?

(For transcription conventions, see appendix.)

In the area of the lexicon, Natasha favored high frequency words and exhibited several types of lexical difficulties: (a) word-finding difficulties, for example, “like renting a cassette, like tape or videocassette” (interrogation transcript, p. 12); (b) incorrect uses of words, collocations, and lexical phrases, for example, “she’s targeting to be a . . . she is targeting to be a doctor of medicine” (p. 3; instead of *she wants to become a doctor*); “I was figuring like how to transport myself better” (p. 27); “I knew I had to make a lot of walking” (p. 33); “it was occasionally in his car” (p. 26; meaning *accidentally*).

In some contexts, Natasha was unable to find English equivalents of Russian words and appealed to Russian loan words that her interlocutors could not understand, for example, “there are like Russian kind of events, *slyot*, it’s the, um, people getting together about like, I’m not sure, 3,000 people or something” (interrogation transcript, p. 10); “mobile phone” (p. 42, *mobil’nyi telefon* or *mobil’nik* is a common Russian term for a cell phone). In other contexts, she exhibited forward lexical transfer, using English words in the meanings of their Russian equivalents. For instance, she consistently used the word *company* to mean a specific group of people, “our group,” “our crowd,” “their group,” as would its Russian translation equivalent *kompaniia*, for example, “they were there, it was their company. And then somebody was arranging a party and, uh, they invited that company” (p. 10); “he was really lucky like to get out of that company” (p. 12).

In terms of comprehension, throughout the interview Natasha displayed difficulties understanding medium and low frequency words:

## Extract 2

Detective S: you had the tan coat on?=  
=

Natasha: =what?

Detective S: tan coat?

Natasha: what kind (.) what's tan coat?

## Extract 3

Detective M: I have to take pictures of your injury (.) all right?

Natasha: of what?

Detective M: your injury (.) the bruises [points toward her body]

Natasha: OK.

Natasha's ability to avoid or repair communication breakdowns through clarification questions, paraphrasing, and circumlocution, and her willingness to communicate and to joke in English suggest a high level of BICS or interactional competence. She did not, however, display a similarly high level of academic success, which relies on CALP. In her language learning history, Natasha mentions extreme difficulties she had with academic English in her university studies. This self-perception is borne out by her scores and by her university transcripts. To begin with, her score of 230 out of 300 on the computer-based version of the TOEFL places her at about the 50th percentile among all the TOEFL takers in the year 2001–2002 (Educational Testing Service, 2003). Natasha's verbal SAT scores of 420 and 480 out of 800 are also relatively low (for comparison, mean scores for the majority of the freshmen admitted to her university are between 660 and 760, only 2% have verbal scores below 500). Her grades are also on the low side: At the time of her arrest, Natasha's cumulative grade point average (GPA) was 2.81 on a 4.0 grade point system and her record displays five C grades (with A+ being the highest and F the lowest possible grade). She also had two incomplete grades and a record of withdrawals from four classes due to comprehension difficulties. The A grades she earned came from two classes on Russian literature (where she had a native speaker advantage), a French class and a low-level class on industrial relations. What is particularly notable is that her grade record showed almost no improvement between the fall of 2002 (B, B+, C) and the fall of 2004 (B, B+, C+).

Overall, Natasha's performance reflects a High-Intermediate (also referred to as Intermediate-High) level of proficiency as described in the *American Council of Teachers of Foreign Language Guidelines* (Breiner-Saunders et al., 2000, p. 16). Speakers at this level can handle uncom-

plicated routine tasks, exchange basic information related to school, work, and recreation, and produce discourse at paragraph length, using major time frames. Their performance is marked by errors, hesitation, and first language transfer. Nevertheless, they can generally be understood by native speakers unaccustomed to dealing with nonnative speakers.

The lacunae in Natasha's lexical and morphosyntactic knowledge compromise her ability to process decontextualized information. This ability can, however, be enhanced by familiarity with a particular domain of knowledge. Consequently, the next step in my analysis is to examine Natasha's familiarity with legal terms and concepts, referred to here as *conceptual competence*.

## Natasha's Conceptual Competence

The analysis of the video recording and the transcript of the interrogation shows that Natasha is comfortable using low-frequency and culture-specific terms in domains with which she has had personal experience, such as academics (e.g., *GPA*, *postdoc*), computers (e.g., *computer memory device*), immigration (e.g., *visa*, *immigrants*, *refugees*, *employment authorization*), finance (e.g., *credit card*, *credit history*, *customer service*), and service industry (e.g., *calling plan*, *airport shuttles*). She commented on this selective ability when talking to Detective W: "Especially like in finance kind of field, I mean, I would understand this [a text] perfectly" (interrogation transcript, p. 1).

On the other hand, as mentioned earlier, she displayed a lack of familiarity with several medium- and low-frequency words (e.g., *tan*, *injury*, *drawing*, *hot tub*, *speed dial*). In particular, she had difficulties understanding words and concepts related to the criminal justice system, a domain with which she had not had any experience prior to the interrogation. She acknowledged this lack to Detective S: "I'm very not about the law part. I mean, it's not know" (interrogation transcript, p. 15). Two terms that she did not seem to understand are *detained* and *waiver of rights*. In her language-learning history, Natasha stated that, at the time of the interrogation, she "did not know the meaning of the word 'detained'. I honestly thought that everyone invited to Police Department for questioning is detained for the time of the questioning" (language-learning history, p. 2). Because she thought she understood the term, she did not question its meaning. *Waiver* is another word that is commonly difficult for learners of English, because, according to the *Collins COBUILD English Dictionary* (1995), its usage falls outside of the 75% of the most frequently used spoken and written English words (see also Stygall, 2002). It is possible that Natasha did not question the meaning

of the *waiver of rights* because she was satisfied with her general inference that it had something to do with rights, and, as a witness, she did not see the need for further clarification.

When Natasha finally realized that she was a suspect, she began to ask more questions and exhibited a lack of understanding of terms such as *bail* or *search warrant*:

#### Extract 4

Detective W: so then once the judge (.) uhm (.) they discuss the charges  
(.) the judge sets bail to make sure that you show up for  
court (.) with something like [this

Natasha: [sets what?=  
=

Detective W: =bail is (.) uhm uh (.) you post money,

Natasha: oh.

#### Extract 5

Detective W: this is a copy Natasha of the search warrant that they did  
from (.) uh (.) that's from [[the city]].

Natasha: what (.) what is this?

Detective W: it's a search warrant that was done in [[the city]] on your  
apartment.

Natasha also appeared to be unfamiliar with the term *trial*, nor did she have any knowledge about the timeline between the arrest and the trial:

#### Extract 6

Natasha: so how long does it usually take from this point to the real  
(.) [like,

Detective W: [like a trial?

Natasha: right (.) when I can be defended and,=  
=

Detective W: =it can take a long time (1.5) it can take six months.

Natasha: up to six months or longer?

Detective W: it could take six months or longer (.) I mean (.) it can take  
a long time.

Natasha: why (.) why is the time difference?

In sum, it appears that at the time of the interrogation Natasha had very little knowledge of the U.S. criminal justice system and of legal terminology. In the absence of this domain-specific knowledge, she re-

lied on the partial understanding she derived from the meanings of separate words and from the verbal and nonverbal cues provided by her interlocutors. Let us then examine the cues provided by Detective S to guide her comprehension.

### **Presentation of the Miranda Warning Form by Detective S**

Although other detectives periodically appeared in the room, Detective S was in charge of the interrogation and he was the one questioning Natasha. He applied what is commonly known as the sympathetic approach to interrogation (Berk-Seligson, 2002); namely, he established rapport with Natasha, engaged in social talk, expressed interest in her Russian background and continuously flattered her appearance and intelligence. He also used a number of deception strategies in presenting the Miranda Warning Form and Natasha's role in the interview.

In contemporary police interrogations, physical coercion has been replaced by manipulation, persuasion, and deception, and these are all legitimate interrogation strategies. I will consider the use of these strategies through the lens of Galasinski's (2000) theory of deception, which was developed in the context of American and British politics but which is applicable to police interrogation as well. Galasinski differentiates between three types of *deception*: (a) deception by concealment or omission of information (the police are not obligated to reveal everything they know about the case); (b) deception through explicit misinformation (the police can misrepresent the nature of the evidence they have); and (c) deception through implicit misinformation that contributes to the interlocutor's acquiring or continuing a belief that suits the purposes of the deceiver (the police may imply that they have a strong case against the suspect without stating so). Furthermore, deception is not limited to the discussion of the case against the suspect—it may also be used in the presentation of the Miranda warnings (Leo, 1992). In the present case, all three types of deception outlined by Galasinski (2000) were used to misrepresent (a) the purpose of the questioning and (b) the nature of the Miranda warnings.

The misrepresentation of the nature and purpose of questioning is, according to legal scholar Richard Leo (1992), one of the most fundamental and overlooked deceptive strategies used by the police. The Court in *Miranda* posited that "warnings must be given only to a suspect who is in custody or whose freedom has otherwise been significantly deprived" (Leo, 1992, pp. 66–67). Nevertheless, Detective S appealed to explicit and implicit misinformation to recast the interrogation of a suspect as an interview of a witness.

On December 30, 2004, Detective S called Natasha, whom he had met

previously in the course of the investigation. They chatted for several minutes about her ski trip to the mountains. Then he invited Natasha to come to police headquarters, repeating several times that his goal was to find out more about Natasha's former boyfriend Michael, whose most recent girlfriend Marina was the murder victim in the case:

### **Extract 7**

Detective S: Yeah, I just wanted, there are some things I found out, I guess, um, some things about Michael, um, just some things about, you know, relationship with, you know, as far as just finding out some interesting things about him. Um . . . Kinda wanted to just touch base with you. (telephone conversation transcript, p. 2)

### **Extract 8**

Detective S: [ . . . ] I, I, just because of things that are, I really want to talk to you about Michael. I mean, there are just some things we've been finding out about him and some, some very interesting stuff about him and, you know, stuff that's been going on so I'd really like to talk to you today about it. (p. 4)

### **Extract 9**

Detective S: Like I said, there were just some things that came up about Michael that are pretty interesting. I'd just like to find out a little bit more about him. (p. 5)

Even though Natasha was already a suspect by that point and her house was being searched for evidence, Detective S repeatedly framed their encounter as an informal conversation about Michael. He also signaled the informality of the interview implicitly, through mitigators and colloquialisms, such as "some things," "some stuff," "kinda," "a little bit more," and "touch base."

Detective S also misrepresented and trivialized the Consular Notification form and the Miranda Warning Form. Leo (1992) also identifies this strategy as a common approach, whereby "some investigators very consciously recite the warnings in a trivializing manner so as to maximize the likelihood of eliciting a waiver" (p. 67). Using a perfunctory tone and ritualistic behavior, the investigators effectively convey "that these warnings are little more than a bureaucratic triviality" (Leo, 1992, p. 67). Detective S, however, went beyond common trivialization, misrepresenting the nature of the documents in question, all the while urging Natasha to trust him.



The following transcript segments illustrate the conversational strategies Detective S used to present the documents as a formal procedure rather than as a warning that Natasha is a suspect and must be conscious of her rights. The first exchange took place early in the interrogation, with Detective S speaking in a very friendly tone and maintaining direct eye contact with Natasha:

**Extract 10** (due to production constraints, conversation transcripts do not appear in their original format)

- 1 Detective S: you're from Russia [gestures with both hands toward  
Natasha] (.)
- 2 originally (.) you're here in the United States, [gestures  
with both hands
- 3 toward himself] (.) you're going to school, [once again  
gestures toward
- 4 Natasha with both hands]=
- 5 Natasha: =uh-huh=
- 6 Detective S: =uhm (.) Russia [points away with his left  
hand] has its la:ws (.) and all
- 7 that kind of stuff [dismissive left hand wave] (1.0) and of  
course we
- 8 [points to himself] have all the stuff in here (.)=
- 9 Natasha: [keeps nodding] =OK=
- 10 Detective S: uhm (.) there's some things because of us just sitting and  
talking [makes a
- 11 circular gesture with both hands] (.) that I have to do (.)  
just to (.) I've got
- 12 to read (.) I'm gonna read something to you here and  
then I've got to read
- 13 something else to you just to, =
- 14 Natasha: =[smiles] It's like with a procedure, right?=  
15 Detective S: =[smiles] you got it (.) the procedure (.) perfect.  
[laughs] (.) here (.) let me
- 16 just put this in front of you so you can see it and I can see  
it, [places the
- 17 document on the table so that they both can see it]

Both here and later on, Detective S repeatedly used first person pronouns with modal verbs: "I have to do" (line 11), "I've got to read" (lines 11–12), "I'm gonna read something" (line 12), "I've got to read something else" (lines 12–13). This personalization strategy served to shift attention from Natasha to the detective, making him the agent in this event and framing the documents as something Detective S was obligated to present rather than something that Natasha had to make decisions about. He also used hedging, mitigation, and colloquialisms, referring to important laws and regulations as "all that kind of stuff" (lines

6–7), “some things” (line 10), and “something” (lines 12, 13) to downplay their importance.

To signal her comprehension of this framing, Natasha volunteered the term *procedure*, which Detective S enthusiastically accepted. It is important to note here that the term *procedure* is a partial cognate of the Russian term процедура (*protsedura*) which refers to routine procedure. The Russian word is commonly used to refer to routine procedures and repeated medical treatments, such as regular vitamin shots. This lexical choice suggests that Natasha understands the process of signing the waiver of rights as a formalized procedure and not as an actual decision to be made.

After asking Natasha whether she needs reading glasses, Detective S introduced the first form he has to familiarize her with, Consular Notification:

### Extract 11

- [Both Detective S and Natasha are looking at the document while talking]
- 1 Detective S: because of your nationality (.) we are required to notify  
your country's  
2 consular (.) representatives here in the United States  
that you have been (.)  
3 °well° (.) arrested or detained (.) [waves his left hand in  
a dismissive  
4 manner] °you're just here with us° (.) after your consular  
officials are  
5 notified (.) they may call or visit you. (.) you're not re-  
quired to accept  
6 their assistance but they may be able to help you obtain  
legal counsel and  
7 may contact your family and visit you in (.) in detention  
among other  
8 things (.) we will be notifying your country's consular  
officials as soon as  
9 possible (.) °I'm just reading that to you° [makes another  
dismissive left  
10 hand gesture]  
11 Natasha: OK=  
12 Detective S: =OK?=  
13 Natasha: =I mean (.) is that really necessary?  
14 Detective S: well as far as your consular notification? (.) well (.) just  
like it says  
15 (.) it says actually (.) see this [points to the document]  
(.) mandatory.  
16 [raises both hands with palms up in a gesture that commonly signifies

- 17 helplessness]
- 18 Natasha: like to (.) you want to speak with me (.) you need to do that?
- 19 Detective S: yeah, exactly (.) just for us sitting here talking. =
- 20 Natasha: =OK.=
- 21 Detective S: =so (.) I guess the (.) you know (.) U.S. and all their protections and
- 22 all that kind of stuff.

Here, Detective S read Natasha a document that could potentially arouse her suspicions because the consulate needs to be notified only if she is arrested or detained. To minimize the impact of the document and to avoid alerting her to the fact that she is a suspect, Detective S used several verbal and nonverbal strategies. To begin with, he inserted “well” immediately before the words “arrested or detained” (line 3) and follows on line 4 with an implied parenthetical negation, “You’re just here with us” (which in fact could be consistent with being in custody). He further deemphasized the words “arrested or detained” (line 3) by using a casual tone and a lack of stress, accompanied by a dismissive wave of his hand. After the statement about notifying her country’s officials as soon as possible, Detective S said, “I’m just reading that to you” (line 9), stressing the word *reading* (similar to Extract 10, line 12) and waving his hand to signal that the preceding text has a ritualistic quality that is not to be taken seriously. It is interesting that, whereas in the preceding segments Detective S positioned himself nonverbally as a representative of the United States (e.g., gesturing toward himself when talking about the United States), in this segment he verbally dissociated himself from the “U.S. and all their protections” (line 22). In doing so, he positioned himself as a reasonable adult, somewhat ironic about “all their protections” yet obligated to follow the “mandatory” (line 15) guidelines.

Natasha made two attempts to clarify her status, although she did not ask directly if she was a suspect or a witness. First, she asked whether this document is really necessary if they are just talking (line 13). Detective S offered an evasive answer, stating that the notification is mandatory (lines 14–15), but he did not address Natasha’s status, implying that the document is mandatory for witnesses as well. When Natasha repeated her question (line 18), he asserted that signing the document is necessary “just for us sitting here talking” (line 19). In the absence of independent knowledge about legal procedures, Natasha relied on his answers and his casual tone of voice to infer that the situation was nonthreatening, and she displayed this understanding through her friendly and calm demeanor. Then Detective S introduced the next document, the Miranda Warning Form:

## Extract 12

- 1 Detective S: there's another one I have to do.=  
2 Natasha: =OK [smiles and nods]=  
3 Detective S: =I want to read you that one, (.) OK? [Natasha nods] (.)  
then we'll we'll  
4 get by all of that (.) and then you will sit (.) and I'll have  
my coffee (.) and  
5 you can have some more water (.) what do you think?  
6 Natasha: all right.=  
7 Detective S: = OK [laughs] (.) here let me read this one to you (.)  
uhm, if there's any part of this that you don't under-  
stand let me know=  
8 Natasha: =OK=  
9 Detective S: =OK (.) this is who I work for, [[county]] Police Depart-  
ment (.) and this  
10 says Miranda Warning Form (.) and this is just your name  
(.) and then  
11 there are some numbers I'll fill in [dismissive hand ges-  
ture] [there  
12 Natasha: [you like read  
13 this for everybody (.) not the (.) for foreigners only?  
14 Detective S: this is when we're sitting and talking (.) anybody (.)  
whether [it's  
15 Natasha: [like  
16 Michael signed this?=  
17 Detective S: =to sit and talk at some point (.) Michael signed this (.)  
yes, Georgy, uh,  
18 George [[short segment omitted here, to prevent iden-  
tification]]  
19 Detective S: we do this for [[state]] (.) I mean (.) people in the  
United States too.=  
20 Natasha: =OK, so they do the same thing?  
21 Detective S: yeah. [nods several times]

Here, Detective S once again appealed to personalization strategies to frame the new form as something relevant for him, as well as for the state and for “people in the United States” (line 19), rather than for Natasha. He continued to use a casual and friendly tone, making references to Natasha’s friends and creating rapport. The tone and the rhythm of the delivery, his gestures, and the focus on trivial details (“this is just your name and then there are some numbers I’ll fill in there,” lines 10–11), all served to signal that the form is yet another formality to get through, and then the two can get down to the important business of drinking coffee and water (lines 4–5).

Natasha was clearly unfamiliar with the Miranda warnings, despite the

fact that by the time of the interrogation, she had lived in the United States for 3 years and had a class on the American government system in her first semester of high school. As seen on the videotape, there was not a flicker of recognition on her face at the sound or sight of the word *Miranda*, which should have warned her that she was a suspect. Instead she asked whether this form is read to everyone or foreigners only and whether Michael (a law student) and her other friends had also signed this form. Her questions revealed that she was not familiar with the Miranda warnings, that she did not understand the purpose of the document, and that she did not know who is supposed to sign it, and when they usually sign it.

It was at this point that Detective S committed his most egregious act of deception by explicit misinformation when he stated that “anybody” who sits down to talk to the police signs this form and that all of Natasha’s friends had signed it (lines 14, 17–18). In reality, Michael, who was also a suspect at some point had indeed signed the form, but other friends who were interviewed as witnesses did not have to. During cross-examination at the suppression hearing, Detective S admitted that he had lied about this to Natasha. Together, his explicit statements and mitigation strategies served to create an impression that signing the new form was also a formality. Then Detective S placed the form in front of Natasha and read the text to her, carefully enunciating each word:

### Extract 13

- 1 Detective S: you have the right to remain silent. (.) anything you say  
 can and will be  
 2 used against you in a court of law. (.) you have the right  
 to talk to a lawyer  
 3 and to have him present with you while you are being  
 questioned (.) if you  
 4 cannot afford to hire a lawyer (.) one will be appointed  
 to represent you  
 5 before any questioning if you wish one (.) if at any time  
 during this  
 6 interview you wish to discontinue your statement you  
 have the right to do  
 7 so (.) do you understand each of these rights I have  
 explained to you?  
 8 [Natasha nods] (.) OK, good. (.) having these rights in  
 mind do you wish  
 9 to talk to us now?=  
 10 Natasha: =right (.) of course,=  
 11 Detective S: =OK (.) let me give you [that.  
 12 Natasha: [°how can you be silent if  
 you brought me here

13                                   to talk?°=  
14 Detective S: =let me get you to sign right there on the top line (.)  
  thank you.

Looking closely at Natasha's facial expression during the reading of the document, one could see that the phrase "you have the right to remain silent" (line 1) did not alarm her or conjure any negative associations. Her follow-up question, "How can you be silent if you brought me here to talk?," signaled that she did not understand her right to silence. Although this lack of understanding could have also been displayed by some native speakers of English, in Natasha's case it was particularly acute because she grew up in Russia, a country that traditionally accorded little importance to the notion of individual rights. Detective S ignored the question and the lack of understanding it signaled. Instead of explaining to Natasha that she was in fact entitled to refuse to talk, he displayed concern for the proper filling out of the document.

To sum up, I argue that Detective S misrepresented the nature and the purpose of questioning and the nature and the purpose of the documents signed by Natasha using three discursive strategies: personalization, hedging/mitigation, and explicit misrepresentation or lying. In doing so, he appealed to three types of deception outlined by Galasinski (2000): (a) deception by concealment or omission of information (Natasha was not told that she was being questioned as a suspect); (b) deception through explicit misinformation (statements that all who come to the police station to talk have to sign the Miranda Warning Form and that all of Natasha's friends did so); and (c) deception through implicit misinformation that contributes to the interlocutor's acquiring or continuing a belief that suits the purposes of the deceiver (trivialization, minimization, and misrepresentation of the Miranda Warning Form as a harmless routine procedure).

## **Natasha's Understanding of Her Rights**

Because Natasha did not know much about the U.S. criminal justice system or the legal terminology, she was very susceptible to Detective S's misrepresentation of the interview and the documents shown to her. Natasha did not understand that she was a suspect and not a witness until an hour and a half into the interrogation, when she asked Detective S directly: "So you mean I killed the persons?" (interrogation transcript, p. 55), "So you're saying I'm involved? You're saying I killed somebody? That's what you are saying?" (p. 57). If Natasha had been able to identify the Miranda Warning Form for what it was, she would have asked these questions immediately. Furthermore, if, as the prosecution argued, she

understood the rights presented to her earlier and chose to speak regardless, this would have been the time to invoke her rights and to discontinue the interview. Instead, she proceeded with the conversation for several more minutes and only then began making attempts to invoke her rights, which Detective S either ignored or purposefully misinterpreted:

#### Extract 14

Natasha: I really don't like this=

Detective S: =it's, it's because people feel that way, OK? (.) about people that are (.) that were close to them (.) OK?

In Extract 14, Natasha's utterance responded to a series of statements made by Detective S that implicated her in the murder of Marina. Her use of the present tense suggests that she resents these implications. Detective S reframed her discomfort as one with Michael's having a new girlfriend, rather than one with his interrogation.

A little later, Natasha again communicated her discomfort:

#### Extract 15

Detective S: you needed to do something to protect yourself (.) you needed to do something to defend yourself (.) you needed [to

Natasha: [it seems like I need to defend myself [ . . . ] [laughs]=

Detective S: =well (.) against this person (.) against this (.) against Marina (.) is that what happened? (.) did she actually do something to you? (.) did she hit you first? [did she

Natasha: [I don't know (.) I don't know the girl.

Once again, Natasha's use of the present tense suggests that she is talking about the need to defend herself at the moment, against the accusations made by Detective S. Detective S however reframed her comment as related to Natasha's interaction with the murder victim.

Eventually, 3 hours into the interrogation Natasha asked if they could stop talking:

#### Extract 16

1 Natasha: can I ask you a question?=  
2 Detective S: =please.=

3 Natasha: =like I'm really tired (.) is it possible to like stop it at this point?

- 4 Detective S: to do (.) you want a couple of (.) do you want me to step  
out for a couple  
5 of moments and [you  
6 Natasha: [for today=  
7 Detective S: =you want (1.0) a couple of moments? (.) you want the  
rest of the day?  
8 what would you like?  
9 Natasha: the rest of the day.=  
10 Detective S: =the rest of the day? OK.  
11 Natasha: can I go home?  
12 Detective S: I (.) let me walk out and we'll (.) we'll work something  
out for you.

It was clear that Natasha did not understand that she had the right to silence; instead she asked for permission to stop talking (line 3). Detective S took advantage of her inability to invoke her rights unambiguously and pretended that he did not understand her intent, asking if he should just step out for a couple of minutes (lines 4–5). When she clearly stated “for today” (line 6), he repeated in a more irritated tone “You want a couple of moments? You want the rest of the day? What would you like?” (lines 7–8) in an intent to discourage her from stopping, and he eventually continued the interrogation (notably, the court ruled to suppress the transcript from this point forward).

Natasha was also unclear about her right to an attorney. It may be relevant to point out that in Russia it is not customary to have an attorney present during the interrogation. Instead, she kept repeating: “I do need to help myself. I want to help myself but I don’t know how. I don’t know how at this point” (p. 97). Eventually, she remembered reading about attorneys in the Miranda Warning Form and realized that this information was relevant to her present situation. She did not however have a full understanding of the right and asked another clarification question:

### Extract 17

- Natasha: I have a question (.) like you remember those rights in the papers?  
Detective S: yes.  
Natasha: so (.) I mean (.) at this point I need a lawyer I guess?=  
Detective S: =that’s entirely up to you, Natasha.

Just as he ignored her initial attempts to invoke her right to silence, Detective S ignored Natasha’s indirect invocation of her right to an attorney because she worded it as a question. Rather, he treated it as a genuine question and stated that the responsibility for this decision was hers. Natasha then repeatedly asked for permission to make a phone call



to her father in Russia because she needed his help to find and hire a lawyer. Detective S ignored her requests and continued to intimidate and badger her into talking to him:

### Extract 18

- 1 Natasha: [visibly upset] so (.) can I ask my father if I (.) if I can afford a lawyer (.)
- 2 and if I cannot what (.) how much is a lawyer? like how [much . . .
- 3 Detective S: [I have no idea
- 4 [in an assertive tone of voice] (.) let me ask you [this
- 5 Natasha: [I don't like all this
- 6 Detective S: [a lawyer for after
- 7 today or for right now today while we're talking?=
- 8 Natasha: =like it should be the same person, right?=
- 9 Detective S: =do you want (.) do you want to keep talking with me right now?=
- 10 Natasha: =I do want to keep talking with you=
- 11 Detective S: =OK=
- 12 Natasha: =but the little things that I say (.) like with this paper and (.) I mean I
- 13 could (1.0) throw it away or something (.) right? (.) but it's mostly natural
- 14 way of things like (.) and you are trying to say that because of this [paper
- 15 Detective S: [in an emphatic assertive manner] [ I have
- 16 to ask you this (.) I have to ask you this (.) do you want to keep
- 17 talking with me right now?=
- 18 Natasha: =I mean=
- 19 Detective S: =do you [want
- 20 Natasha: [I feel like unprotected talking with you. I'm telling you
- 21 the truth.
- 22 Detective S: You feel like you're protected?=
- 23 Natasha: =I'm not protected=
- 24 Detective S: =Not protected? [faking surprise]
- 25 Natasha: [crying] not protected (.) unprotected (.) like I'm (.) I'm telling you the
- 26 truth (.) the whole truth (.) I told you (.) I went I tried (.) like I walked
- 27 around the apartment (.) I (.) I mean (.) but I never inside (.) I'm telling
- 28 you (.) and you are like not listening to me (.) you're trying to push me if
- 29 I'm like (.) I didn't go inside.
- 30 Detective S: what did you do when you left that day?

Throughout this conversation, Natasha tried to communicate to the best of her ability that she felt unprotected in this interrogation (lines 20, 23, 25) and that she wanted an attorney (lines 1, 2, 8). Her questions show that she did not understand that she can simply request an attorney and that one will be provided to her free of charge. Rather, she said she hoped that her father can hire an attorney for her (line 1).

According to U.S. law, if an individual undergoing custodial interrogation requests an attorney or invokes his or her right to silence, the interrogation must cease until an attorney is present. It is important to note, however, that the suspect must unambiguously request counsel during the interrogation, and this rule clearly disadvantages NNSs of English who may not know how to communicate an unequivocal request (Einesman, 1999; Shuy, 1997). Einesman (1999) cites several cases where NNSs' questions such as "Do you think I need a lawyer?" and "I can't afford a lawyer but is there any way I can get one?" were not found to be unambiguous requests for counsel. Detective S took advantage of the fact that Natasha's invocations were ambiguous and, despite her repeated statements about feeling unprotected, proceeded with the interrogation (line 30). As indicated earlier, however, the court suppressed the transcript from an earlier point where Natasha asked if it was possible for them to stop (Extract 16).

Natasha represents an outstanding example of an intelligent, well-educated NNS of English whose proficiency is sufficient to maintain social conversations and minimal academic performance but not to process complex texts in an unfamiliar domain. Her interactional competence hindered rather than helped in the interrogation process because it led her to rely on verbal and nonverbal cues provided by Detective S. Unaware that police officers are permitted to deceive suspects during the interrogation, Natasha assumed that Detective S was telling the truth and that the information he provided was correct. Consequently, she viewed herself as a witness and the Miranda Warning Form as a routine form signed by all witnesses. As seen in her questions about the right to silence and the right to an attorney later in the interrogation, she did not fully understand her rights when the Miranda Warning Form was presented to her. Yet she did not ask any questions about them because Detective S led her to think of the form as a trivial and routine procedure. I also did not see any evidence that Natasha understood what it meant to waive her rights when she signed the waiver of rights. Consequently, based on my analysis of the data provided to me, I concluded that, in my professional opinion, Natasha did not sign the Miranda Warning Form "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it" (Einesman, 1999, p. 11) and thus did not waive her rights voluntarily, knowingly, and intelligently.

## CONCLUSION

As Einesman (1999) rightly points out, the Court that decided *Miranda v. Arizona* in 1966 could not foresee how profoundly the demographic composition of the United States would change in the coming years. Yet the decision coincided in time with a major change in U.S. immigration policy, the 1965 Immigration and Nationality Act that eliminated previous national origin quotas and opened the country once again to immigrants from all over the world. This and subsequent immigration legislation led to a major influx of immigrants and refugees into the country. By 2000, 18% of the total population aged 5 and over, or 47 million people, reported that they spoke a language other than English at home, up from 11% in 1980 and 14% in 1990. California had the largest percentage of NNSs of English (39%), followed by New Mexico (37%), Texas (31%), New York (28%), Hawaii (27%), Arizona (26%), and New Jersey (26%) (United States Census Bureau, 2000).

These demographic changes are not unique to the United States—they are happening in other English-speaking countries, in particular the United Kingdom and Australia. To ensure linguistic rights of NNSs of English, Australian authorities have recently begun cooperating with local linguists. Thus, translations of police cautions have been tape-recorded in 15 indigenous languages (Mildren, 1999). And in New South Wales, public critiques of police interview procedures have led the local police to revise their procedures and cautions in consultation with their most outspoken public critic, forensic linguist John Gibbons (see Gibbons, 2001, 2003).

It is my hope that the U.S. legal system will follow suit in ensuring the linguistic rights of NNSs of English. To do so, we need to move away from debating what constitutes sufficient English proficiency to understand the *Miranda* rights. Rather, NNSs of English at all levels of proficiency should have the information presented to them in English and in their native language in one of three formats: (a) standardized written translations of the *Miranda* warnings, created on either the federal or state level by committees consisting of certified court interpreters, forensic linguists, and legal experts; (b) tape recordings of the same translated texts (for suspects with low levels of literacy); or (c) oral translations by certified court interpreters in cases where written or tape-recorded translations are temporarily unavailable. Solan and Tiersma (2005) further argue that these translations should not be literal, rather they should “convey the content in a way that is understandable to speakers of the language in question” (p. 84).

Meanwhile, the ESL establishment can do its part to ensure that NNSs of English are not penalized for their lack of language proficiency or understanding of the U.S. legal system and incorporate modules that

familiarize the learners with the Common law system, introduce basic legal terms and concepts, and offer hands-on practice with common legal forms, such as the Miranda Warning Form. Invited speakers from the legal and law enforcement communities could talk about individual rights in the police interview process, interactional norms that accompany a routine traffic stop, a witness interview, or interrogation of a suspect, permissibility and limits on deception in police interviews, and ways in which one could get legal aid. Useful materials for such courses can be found in textbooks created for teaching legal English (e.g., Lee, Hall & Hurley, 1999). Students' understanding can also be enhanced through discussions of examples from popular fiction and the media, including films, such as *Twelve Angry Men*, and television shows, such as *Boston Legal*, that illustrate the functioning of the jury system or the presumption of innocence. Finally, just as they talk about cross-cultural differences in cuisine or holiday celebrations, students should be encouraged to research and reflect on differences between the Common law system adopted in the United States and the one adopted in their native country. In this way, the module could become an intrinsic part of a larger discussion of the rights guaranteed by the U.S. constitution to U.S. citizens as well as to those who find themselves, however temporarily, on American soil.

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## APPENDIX

### Transcription Conventions

- (.) short pause, less than 1 second
- (2.0) timed long pause (in the example, two second pause)
- = utterances latched onto the preceding or following turn
- [ simultaneous or overlapping speech
- good emphasis
- goo:d vowel lengthening
- good? rising intonation, as in a question
- good, rising intonation, suggesting intention to continue speaking
- good. falling (utterance final) intonation, full stop
- °good° change in voice used to mark parenthetical comments
- [ . . . ] inaudible or incomprehensible word or utterance
- [laughter] transcriber's description (e.g., laughter, smiling, nodding, gestures, etc.)
- [[county]] words taken out of the transcription to prevent identification of the case