

Feigned incompetence: The pitfalls of evaluating *Miranda* comprehension in non-native speakers of English

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Abstract. *In 1966 the US Supreme Court ruled that custodial suspects should be advised of their rights, including the right to silence and the right to an attorney, before questioning begins. If they waive their rights and the defense can prove that they did not do so voluntarily, knowingly, and intelligently, their confession may be excluded from the evidence. Judges consider many factors in their decisions on motions to suppress, including expert testimony. In this paper, I discuss a case where two experts evaluated language proficiency of the same suspect and arrived at radically different conclusions regarding her ability to understand the warnings. I will show why one assessment was superior to the other, but the true significance of the case is in showing that a dialogic approach to delivery of the rights can reduce linguistic guesswork and help safeguard the integrity of the investigation and due process.*

Keywords: *Miranda warnings, non-native speakers of English, evaluation of Miranda comprehension, feigned proficiency, intentional underperformance.*

Resumo. *Em 1966, o Supremo Tribunal dos EUA decretou que os suspeitos sob custódia tinham de ser aconselhados sobre os seus direitos, incluindo o direito ao silêncio e a um advogado, antes de iniciar o interrogatório. Se eles dispensarem os seus direitos e a defesa conseguir provar que essa dispensa não foi voluntária, consciente e feita de forma inteligível, a sua confissão pode ser excluída como prova. Na sua decisão para excluir a prova, os juízes ponderaram diversos fatores, incluindo o testemunho pericial. Neste artigo, discuto um caso no qual dois peritos avaliaram a competência linguística da mesma suspeita e chegaram a conclusões radicalmente opostas relativamente à sua capacidade de compreender as advertências. Como revelo, uma das avaliações apresenta uma qualidade superior à outra, mas a verdadeira relevância do caso reside na sua capacidade de mostrar que uma abordagem dialógica na garantia dos direitos permite reduzir as conjecturas linguísticas e ajudar a salvaguardar a integridade da investigação e processual.*

Palavras-chave: *Advertências de Miranda, falantes não-nativos de inglês, avaliação da compreensibilidade da Miranda, competência simulada, fraco desempenho intencional.*

Introduction

In March 2016, Joseph and Iryn Meyers of Steuben County, NY, were charged with murder, arson, conspiracy and insurance fraud.¹ Following their arrest, Joseph invoked his right to silence. His wife Iryn, a 37-year old native of the Philippines, talked to the police in the presence of her public defense attorney but without an interpreter. Seven months later, a new defense attorney hired a consultant to test Iryn Meyers' English and filed a motion to suppress her self-incriminating statements due to insufficient language skills. The DA office retained their own language expert and in February 2017 the two experts faced each other in open court.

The matter at the heart of the pretrial hearing was the constitutional privilege against self-incrimination, the Fifth Amendment. In 1966, the US Supreme Court ruled that suspects in custody should be advised of their rights, including the right to silence and the right to an attorney, before questioning begins. Once informed, they can relinquish their rights, "provided the waiver is made voluntarily, knowingly, and intelligently" (*Miranda v. Arizona*, 1966: 444), that is "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it" (*Moran v. Burbine*, 1986: 421). If the prosecution fails to establish that the defendant waived their rights voluntarily, knowingly, and intelligently, their self-incriminating statements will be suppressed. The hearing, therefore, had two related aims: (a) to determine whether Iryn Meyers had sufficient English skills to understand the rights delivered during custodial interrogation; (b) to decide whether she needed an interpreter to participate in the court proceedings. The latter task seemed straightforward, but how could the court decide on Iryn's comprehension during the interviews that took place nearly a year ago?

Evaluation of *Miranda* comprehension in non-native speakers of English

In one of the most linguistically sophisticated opinions on the issue, Judge Jerome Tao of the Nevada Court of Appeals acknowledged that:

Questions relating to the admissibility of a confession rendered by a non-native English speaker during a custodial police interrogation are ones that the courts of this state are encountering with increasing frequency. During a single shift, a police officer in Nevada may encounter a variety of different languages and dialects, and court-certified interpreters may not always be readily available to assist the officer whenever an interrogation is necessary. At the same time, there appears to be a dearth of published precedent from the Nevada Supreme Court to guide trial courts and police officers in handling such interrogations (*Gonzales v. State*, 2015).

The challenges are not unique to Nevada. The *Miranda* decision offered no guidance on how to secure understanding of rights by people like Ernesto Miranda, 'an indigent Mexican' with limited English skills. Half a century later, delivery of the warnings to people who speak limited English is still a challenge for law enforcement, and the failure to understand the rights is commonly raised in pretrial hearings and post-conviction appeals. To decide whether a speaker of English as a second language (L2) waived his or her *Miranda* rights knowingly (i.e. with an understanding of the nature of the right),

intelligently (i.e. with a full awareness of the consequences of the decision to abandon it) and voluntarily (i.e. as a product of a free choice), judges examine the totality of the circumstances.

The starting point is usually the six-prong test outlined by the Ninth Circuit court in the *United States v. Garibay* (1998) which considers the following: (1) whether the defendant signed a written waiver; (2) whether the defendant was advised of the rights in his or her native tongue; (3) whether the defendant appeared to understand their rights; (4) whether the defendant was assisted by an interpreter; (5) whether the rights were explained individually and repeatedly; and (6) whether the defendant had prior experience with the criminal justice system. Yet “questions relating to the admissibility of confessions by non-native English speakers are far too complex and fact-specific to pigeonhole into any single legal test, even one with six elements,” argues Judge Tao (*Gonzales v. State*, 2015). To make an informed decision, judges scrutinize recordings of custodial interrogations, which are becoming fairly commonplace in the USA (between 2003 and 2017, the number of states that mandate recording of custodial interrogations increased from 2 to 25, while other states implemented statewide recording without a legal requirement, cf. Bang *et al.* 2018). Courts also consider the defendant’s age, mental health, intelligence, education, literacy, length of residence and employment history in the United States, and the testimony of police officers regarding their communication with the defendant.

To support their arguments, prosecution and defense may add the testimony of friends, work colleagues and expert witnesses. The most common experts in language hearings are court-certified interpreters familiar with the defendant’s native language and law enforcement practices in their country of origin. If the defendant is a juvenile or a person with developmental disabilities, cognitive deficits, or mental health problems, the parties may bring in psychologists. Psychologists have long argued that members of vulnerable populations may sign documents whose content and consequences they do not understand out of fear, deference to authority, compliance, or mistaken belief that silence equals guilt (Goldstein and Goldstein 2010; Leo 2008; Winningham *et al.* 2018). To evaluate *Miranda* competency of vulnerable persons, they may use the *Miranda Rights Comprehension Instruments* (MRCI), developed by Grisso (1998) and revised by Goldstein and associates (2012), or assessment tools and procedures developed by Rogers and associates (Rogers and Drogin 2019). Unfortunately, the usefulness of these assessments with L2 speakers is limited because they are normed with native, i.e. first language (L1), speakers of English and presuppose a certain level of English ability.

The evaluation of non-native English speakers is usually carried out by linguists familiar with assessment of *L2 proficiency*, a concept that encompasses an overall level of ability and ability to use speaking or listening skills in different tasks (Ellis 2008). To evaluate these abilities, linguists have a choice of standardized tests, such as TOEFL/iBT, IELTS, and CaMLA, and global assessment instruments, such as the SPEAK test and the Oral Proficiency Interview of the American Council on the Teaching of Foreign Languages (ACTFL) (2012). The assessment follows standard steps: (a) elicitation of adequate language samples (test answers, essays, oral interviews); (b) analysis of the samples according to established standards and rubrics, and (c) evaluation of the results with the focus on functional abilities and inferences about past performance (Eggington and Cox 2013; English 2021).

The accuracy of the expert's conclusions depends on: (a) the adequacy of the sample; (b) the validity and reliability of the instrument; (c) a match between the instrument and the purpose of assessment. Unfortunately, in the case of *Miranda* comprehension, there is no match. Unlike the MRCI that assess *Miranda* comprehension directly, L2 proficiency assessments were created for different purposes and the mismatch compromises both validity and reliability of the assessment.

Validity is undermined by the inferential nature of the process and the fact that there are no empirical studies linking *Miranda* comprehension to specific levels of L2 proficiency. In the only empirical study to date, Pavlenko and associates (2019) asked L1 (n=41) and advanced L2 (n=59) speakers of English, all of them university students, to listen to and paraphrase fairly standard warnings. The findings revealed that the right to an attorney was correctly paraphrased by 100% of L1 speakers and only 51% of L2 speakers. The other rights were more challenging, as seen in the paraphrases of the free access to an attorney (98% correct vs. 7% correct), the right to silence (95% vs 24%), the right to have an attorney present during questioning (88% vs. 10%) and the right to exercise these rights at any time (98% vs. 20%). More disconcertingly, some advanced L2 speakers constructed alternative interpretations (e.g., 'the right to have a lawyer present' was interpreted as 'the right to have a lawyer in prison') and still rated themselves high on comprehension. These findings remind us that listening comprehension is not just a bottom-up process of matching sound to meaning – it is also a top-down process, in which L2 learners make inferences, using their background knowledge (Ellis 2008). They also show that speakers with low L2 proficiency are unlikely to understand their rights unassisted, and that even advanced L2 proficiency does not guarantee comprehension of the *Miranda* warnings.

The fact that the purpose of L2 proficiency assessments is to infer past performance also compromises reliability. The first threat to reliability is the time gap between the time of the interrogation and the time of assessment, conducted months and sometimes years after the fact. The reason is simple: protracted stay in English-speaking correctional facilities may improve L2 speakers' skills and by the time of the evaluation, their proficiency and mastery of legal terminology may be higher than at the time they first heard their rights.

The second threat to reliability is intentional underperformance. Standard proficiency assessment is based on the assumption that test-takers are committed to doing their best. This assumption is commonly borne out in immigration, workplace and citizenship testing but in *Miranda*-related assessments it does not hold: if the defendant is deemed to have sufficient proficiency to understand their rights, their self-incriminating statements may be used against them in court. As a consequence, some may downplay their English skills or pretend they don't speak English at all (English 2021). What this means is that forensic linguists, similar to mental health experts, should always consider the possibility of underperformance.

To increase validity and reliability of forensic assessment, English (2021) recommends using two sets of language samples: (a) data from in-person assessment and (b) recordings and/or transcripts of police interviews (for published analyses of police interviews as L2 proficiency data, see Dumas 2020; Pavlenko 2008). The case of Iryn Meyers, where two linguists examined her English proficiency using different methods and then

testified in open court, offers a useful comparison of the pros and cons of different approaches.

Assessment of Iryn Meyers' English proficiency by Expert A

Expert A, hired by the defense attorney to evaluate Iryn Meyers' English skills, had extensive experience in foreign language proficiency assessment in the USA and abroad but no prior experience with *Miranda*-related assessments. To evaluate Mrs. Meyers' proficiency, Expert A chose the Interagency Language Roundtable (ILR) scale, used by the federal government for grading language proficiency of Foreign Service agents.² The ILR scale is divided into six levels, from Level 0 No Proficiency to Level 5 Functionally Native Proficiency. In the opinion of Expert A, to follow court proceedings, Mrs. Meyers needed ILR Level 3 General Professional Proficiency, which encompassed the following skills:

- (a) the ability to speak the language with sufficient structural accuracy and vocabulary to participate in most conversations on practical, social and professional topics;
- (b) the ability to discuss particular interests and special fields of competence;
- (c) the ability to understand the essentials of all speech, including technical discussions within a special field.

The assessment was conducted by Expert A in jail and described in the report entitled "Language Assessment for Mrs. Meyers." To determine whether Iryn Meyers could understand basic queries and use basic tenses, such as Simple Past and Past Progressive, Expert A began his evaluation with small talk about her background. To assess her familiarity with Present, Present Progressive, Simple Past and Past Perfect tense, he asked 12 prepared questions about her native Philippines. To evaluate her vocabulary and fluency, he asked her to describe 9 photographs, ranging from landscapes and cityscapes of the Philippines to the country's president, an approach consistent with methods typically used in face-to-face assessment (Dumas 2020; English 2021).

Iryn Meyers did not respond to most questions, such as how long she had been incarcerated, how many languages there were in the Philippines, or if there were any places she would recommend to a prospective visitor. She also failed to identify the map of the Philippines and did not name its capital or her hometown. An inquiry about local food elicited minimal replies: *rice*, *fish*. Asked about the weather and the rainy season, she nodded and moved her thumb and index finger together. When Expert A asked *a little?* she echoed *a little*. Asked about her best friend, she responded *Say it again*. Expert A then rephrased the question: *Did you play with anyone growing up in the Philippines?* Her response was: *You mean go to work?* Asked whether a picture of a church represented an office building, she replied *Yes, office*. Shown the picture of the president of the Philippines, she did not respond. Asked whether it was her brother, she said *yes*. Asked to name letters, she used C for S and failed to name O.

These responses led Expert A to conclude that Iryn Meyers could understand infinitives and follow simple imperatives, such as *sit* or *give*, but did not understand complex sentences or Past and Future tenses. Her speaking skills, in his view, were limited to minimal replies in Simple Present, albeit in "good American accent." Her inability to name all letters, to recognize the map and the president of the Philippines and to name

the country's capital, led Expert A to surmise that Mrs. Meyers had limited deductive reasoning and little formal education.

To complete his assessment, Expert A interviewed the correctional facility officer present at the evaluation. The officer opined that Mrs. Meyers was usually more "talkative" and mentioned the fact that she wrote and received letters from her American husband. Asked to show her mail, she returned with two letters: one in her native language and one in English. Perusing the English letter, Expert A noticed complex constructions, such as *voluntary statements freely given*. He then asked if she wrote this letter. She said that the letter was written by her cellmate: *Neely write*. Based on the complexity of the language, Expert A concluded that the letter "would have been impossible for Mrs. Meyers to have written" (Report by Expert A, 11/7/2016). The report ended with the following conclusion:

Mrs. Meyers is a 0+ language learner: It is my professional opinion that Mrs. Meyers is neither able to comprehend legal jargon nor able to express her opinions and desires beyond the most basic of terms. Mrs. Meyers is well below the ILR3 required to understand the proceedings. She will require an interpreter. (Report by Expert A, 11/7/2016).

The corollary of this conclusion was the defense argument that Iryn Meyers, a native speaker of Cebuano, did not have sufficient English proficiency to understand the *Miranda* warnings and to waive her right to silence knowingly and intelligently.

Assessment of Iryn Meyers' English proficiency by Expert B

Expert B, retained by the DA's office, also had extensive experience with proficiency assessment: as Director of the International Teaching Assistant (ITA) program at her university, she supervised administration of SPEAK tests and the training of test raters. More pertinently, she conducted research on comprehension of *Miranda* warnings by non-native speakers of English, taught a forensic linguistics course and carried out previous assessments of *Miranda*-related proficiency. After reviewing the findings of Expert A, Expert B asked the DA's office to ask Iryn Meyers to fill out a Language Learning Questionnaire on her own, without the time pressures of an in-person interview. Once again, Mrs. Meyers provided minimal answers, e.g.:

Question 2. What languages did you use in your childhood, before you went to school? What did you speak at home?

Written answer: *Im not home Im in Bath jail, I am Pilipino.*

Question 4. What languages did you use with your friends outside of school?

Written answer: *Mama, Papa, sisters, brothers, kids.*

Question 8. Do you regularly speak any other languages besides English and if so, when and with whom?

Written answer: *What do you mean*

These answers were consistent with the findings of Expert A but inconsistent with the totality of the circumstances: Iryn Meyers attended college in the Philippines, met her future husband on-line, corresponded with him in English via e-mail, had lived in the US for nearly a decade, worked as a nursing aide, passed a civil service test in English and conversed without an interpreter with her husband, friends, work colleagues, defense attorneys, insurance agents and police investigators. Treating her underperformance as

intentional, Expert B decided to forego in-person assessment. To evaluate Iryn Meyers' proficiency at the time of the interrogation, she applied a previously developed methodology (Pavlenko 2008) to the following data set:

- (a) Steuben County *Miranda* warnings form;
- (b) two audio-recorded police interviews of Iryn Meyers, conducted on March 21 and March 30, 2016, and one video-recorded interview preceding a polygraph test conducted on April 5, 2016 (a total of 15 hrs), complete with transcripts;
- (c) an audio-recorded interview with an insurance investigator on March 4, 2016 (3 hrs), complete with a transcript;
- (d) Iryn Meyers' answers on the written civil service test taken on February 6, 2015.

This data set has several advantages over language samples obtained through face-to-face assessments, the greatest of which is the match between the purpose of assessment and performance context, i.e. police interviews. The validity and reliability of the assessment are further enhanced by (a) a much greater amount of language evidence (18 hrs vs. 10-30 minutes); (b) the diversity of the settings (insurance interview, police interview, polygraph test, civil service test); (c) the presence of several interlocutors, some of them unfamiliar to Iryn Meyers; and (d) a variety of topics and tasks, which included argumentation, narration, direction-giving, map reading and following written instructions.

Analysis of the Steuben County *Miranda* warnings form

To establish proper benchmarks, Expert B began with an analysis of the linguistic complexity of the warnings. The Steuben County *Miranda* warnings form reads as follows:

I have the right to remain silent, and I do not have to make any statement if I don't want to.

If I give up that right, anything I do say can and will be used against me in a court of law.

I have the right to have a lawyer present before making any statement or at any time during this statement.

If I should decide I do want a lawyer and I cannot afford to hire one, a lawyer will be appointed for me free of charge and I may have that lawyer present before making any statement.

I also understand that I have the right to stop at any time during this statement and remain silent and have a lawyer present.

I fully understand these rights, and at this time I agree to give up my rights and make the following statement.

The Flesch-Kincaid readability formula assesses these warnings as 67.3 Plain English on the scale from 0 Professional to 100 Very easy to read, and their grade level as 9.8.³ This is not surprising, in light of the fact that these six sentences contain 145 words and 35 clauses. Each sentence has an independent clause, such as *I have the right*, or *I fully understand*, and at least four embedded clauses, among them conditional clauses (e.g., *if I give up that right*), infinitive clauses (e.g., *to remain silent*), a subjunctive clause (*If I should decide*), prepositional phrases (e.g., *before making any statement*), and clauses introduced

by *and* (e.g., *and I do not have*) and *that* (e.g., *that I have the right*). To understand them, the listener/reader needs to get to the last clause while keeping in mind the preceding ones. The deepest level of embedding, nine layers, is observed in sentence four:

If I should decide
 I do want a lawyer
 and I cannot afford
 to hire one,
 a lawyer will be appointed
 for me
 free of charge
 and I may have that lawyer present
 before making any statement.

The understanding is further complicated by passives (e.g., *a lawyer will be appointed*), impersonal constructions (e.g., *anything I do say*), and low-frequency terms, such as *afford*. The length and complexity are challenging for all but are particularly detrimental for reading and listening comprehension of L2 English speakers (Pavlenko *et al.* 2019). On the positive side, comprehension is facilitated through (a) the visual arrangement of the written form, where individual statements are separated by spaces (in custodial interrogation, literate suspects are often given the text to follow while it is read by the officer and Iryn Meyers was asked to read and sign the written waiver); (b) replacement of the second-person pronoun *you*, common in *Miranda* warnings, with the first person *I*, which makes the warnings more immediate and relevant; (c) replacement of *attorney* with the higher-frequency term *lawyer*, and, most notably and commendably, (d) substitution of the abstruse collocation *waive rights* with a straightforward sentence *At this time I agree to give up my rights*.

To understand these warnings presented orally and in writing, an L2 speaker of English requires at least an Intermediate High level of proficiency (American Council on the Teaching of Foreign Languages (ACTFL) 2012). If the warnings are presented only orally, newcomers unaccustomed to spoken English and unfamiliar with the criminal justice system may fail to understand them even if their overall L2 proficiency is evaluated as advanced (Pavlenko *et al.* 2019). At the same time, proficiency is not an immutable entity that determines understanding. Comprehension is a joint discursive accomplishment, whereby investigators may complicate understanding by reciting the rights too quickly and/or trivializing them (e.g., Pavlenko 2008) or facilitate it by presenting the rights orally and in writing and by scaffolding understanding with comprehension checks, repetition, reformulation, explanation, and elaboration (e.g., Dumas 2020).

Analysis of Iryn Meyers' English proficiency at the time of the interviews

The aim of the analysis was to match Mrs. Meyers' performance with the rubrics of a global assessment instrument, the *ACTFL Proficiency Guidelines*, developed in the 1980s, in response to dissatisfaction with the ILR scale. A federally-funded project, the guidelines have undergone four decades of extensive testing, elaboration and revision, and are widely used in federal programs, such as Peace Corps, and foreign language education.⁴ The latest version, the *ACTFL Proficiency Guidelines* (2012), distinguishes between five levels of proficiency – Novice, Intermediate, Advanced, Superior and Distinguished –

with the first three subdivided into Low, Mid and Advanced. To find a match, Expert B listened to the recordings several times, making partial transcripts and taking notes, with the focus on linguistic issues pertinent to comprehension of *Miranda* warnings and participation in court proceedings:

- (a) **functional ability**, i.e. ability to effectively perform communicative tasks crucial for participation in court proceedings, such as narration, description and argumentation;
- (b) **syntactic complexity**, i.e. complexity of the grammar produced and understood by Iryn Meyers, with particular attention to tense and aspect, embedded clauses, and passive and impersonal constructions, common in court proceedings and the waiver form;
- (c) **lexical diversity**, i.e. diversity of the vocabulary produced (active) and understood (receptive) by Iryn Meyers, with particular attention to clarification requests and ability to infer meanings and to appropriate legal terms and use them in contextually appropriate ways;
- (a) **fluency**, i.e. ability to produce uninterrupted fluid speech at a reasonable pace; and disfluency, i.e. instances of miscommunication, requests for linguistic assistance, extended silences and monosyllabic replies to questions requiring extended answers, all of which may be indicative of insufficient language proficiency and the lack of comprehension;
- (b) **conversational strategies**, i.e. ability to take active part in the conversation, evident in clarification requests, comprehension checks, circumlocution, and other strategies used to manage conversations, signal confusion and clarify misunderstandings;
- (c) **listening comprehension**, i.e. ability to follow conversation at a normal speech rate, comprehend facts presented in oral discourse, make inferences, and to reuse, appropriately, words and phrases used by the interlocutors;
- (d) **reading**, i.e. ability to follow written instructions, understand narrative and descriptive texts and respond to questions.

Then, Expert B matched her linguistic findings to the ACTFL rubrics until she found the most conservative match in each case (in a choice between Low and Mid-Intermediate, for instance, a conservative assessment favors Low Intermediate proficiency).

Iryn Meyers' speaking proficiency

To evaluate speaking proficiency, crucial for participation in court proceedings, Expert B assessed Iryn Meyers' performance on five rubrics, starting with Rubric 1 Functional ability. Recorded interviews showed that Mrs. Meyers communicated in a clear participatory manner and offered coherent and vivid narratives of her life in the Philippines and her struggles upon arrival in the USA, detailed descriptions of the trips made to the house of the victim and clear rationales for her life choices, such as changing jobs. Communicative tasks she performed included argumentation, narration, description, direction-giving and reading of maps and plans. As seen in Table 1, she had sufficient linguistic resources to express assumptions, certainty, concern, opinions, sarcasm and hypotheses involving other people's actions and states of mind.

	Examples from the interviews on 3/4/16, 3/21/16, 3/30/16, 4/5/16
Communicative tasks	
Argumentation	I didn't see him lighting the torch so I cannot really assume that he put the thing on fire, do you know what I mean?
Description	He is standing in front of the sink... You see the maple tree, right? The sink is facing in the same direction
Narration	When we got the vehicle, so we park his, he park his truck in the house, in Joe's house, and then he went in my car because he said: "Let's go to David's house",,, and then we get to David's house... he said to me "Go get your stuff!"
Expressive functions	
Assumption	so I am assuming he light the house on fire but I didn't see it
Certainty	I am pretty sure that he did it... I am confident that he did it
Concern	I was worried about [him] hurting me
Opinion	Why do you go, in my own personal opinion, why do you go to someone's house with a torch in your hand? What is your plan?
Sarcasm	My underwear just walked into your drawer then?
State of mind	But I cannot imagine that you guys didn't see the video

Table 1. Iryn Meyers' functional abilities.

This performance was evaluated as consistent with the Mid-Advanced speaking level:

Speakers at the Advanced Mid-sublevel are able to handle with ease and confidence a large number of communicative tasks. They participate actively in most informal and some formal exchanges on a variety of concrete topics relating to work, school, home, and leisure activities, as well as topics relating to events of current, public, and personal interest or individual relevance. (American Council on the Teaching of Foreign Languages (ACTFL) 2012: 6)

In terms of syntactic complexity, Mrs. Meyers displayed mastery of all major time frames necessary for coherent narration and description. Her understanding of the nuances of tense and aspect is evident in such restatements as *I am trying...I am not trying, I did try my best, I tried my best...* (Interview 21 March 2016, 54:54) and *I would love to cooperate, I've been cooperating.* (Interview 21 March 2016, 1:50:20). As seen in Table 2, her narratives displayed skillful uses of prepositions, coordination, subordination, direct and indirect speech, passives and imperatives, and her arguments show mastery of conditionals, hypotheticals, impersonal constructions, negation, rhetorical questions, inversion and modality, including verbs that serve to express possibility, probability, necessity, permission and obligation. At times, she omitted verbal inflection (e.g., *pick up* instead of *picked up*) and substituted irregular past tense with present tense (e.g., *light* instead of *lit*). This pattern of residual errors, known as *fossilization*, is common in L2 speakers and is not a direct marker of proficiency (cf. Ellis 2008; Han 2004).

	Examples from the interviews on 3/4/16, 3/21/16, 3/30/16, 4/5/16
Tense and aspect	
Simple Present	My husband has big dreams, that's all I know
Present Progressive	I am trying to think I am just guessing, he is standing at the sink No, no, no, I am lying
Present Perfect	It's been in my car for a month I've been married to the fucking bastard for ten years
Present Perfect Progressive	I've been thinking about it I've been cooperating [...] has been stealing money from him I've been telling the truth
Simple Past	<i>Regular verbs</i> : asked, carried, charged, closed, co-signed, deducted, denied, dislodged, followed, hopped, looked, occupied, opened, parked, surrendered, stopped, texted, tried, unloaded, walked <i>Irregular verbs</i> : ate, bought, came, drove, got, had, left, said, saw, told, took, was, went, woke up
Past Progressive	I was driving; I was staying; I was waiting; we were hoping <i>Past plans</i> : He was just gonna pocket the money
Habitual past	I used to work at the school as a janitor
Future with auxiliary verbs 'will' and 'going to'	This is the third statement I am gonna make, I'll lay down my cards I am gonna miss my lunch again! I am gonna burn this house down We are gonna be in deep shit
Future Progressive	I'll be staying at Joe's house
Syntactic structures	
Conditionals and hypotheticals	If you burn the house down, where are you gonna live? If I pass the polygraph, can you make me a good deal? If he cannot get up, if he can't escape, then he is gonna burn When I get out of jail, will I be able to work or am I gonna be a welfare recipient?
Embedded clauses	I was hoping and praying that he would burn the house down so that I could renovate the house. I don't want his lawyer to know that I am giving a statement.
Indirect speech	So I said I'll be staying at Joe's house for probably um five days
Inversion	I said: "Holy shit, what did I get myself into?"
Impersonal constructions	Whoever you talked to, they are lying
Modal constructions	I would love to cooperate Joe said we should burn down David's house
Negation	I've never used it before I am not protecting him, I am not protecting me either
Passive constructions	He was hospitalized
Rhetorical questions	How in the hell did I carry a torch?

Table 2. Iryn Meyers' mastery of English syntax and tense and aspect system.

On Rubric 2, Syntactic complexity, this performance was evaluated as Mid-Advanced:

Advanced Mid speakers demonstrate the ability to narrate and describe in the major time frames of past, present, and future by providing a full account, with good control of aspect. Narration and description tend to be combined and interwoven to relate relevant and supporting facts in connected, paragraph-length discourse. (American Council on the Teaching of Foreign Languages (ACTFL) 2012: 6)

Vocabulary-wise, Iryn Meyers favored high-frequency generic terms but a close analysis of the recordings revealed that she had an impressive active lexicon, which included low-frequency words and financial and legal terms used in contextually appropriate ways.

	Examples from the interviews on 3/4/16, 3/21/16, 3/30/16, 4/5/16
Phrasal verbs	burn down, clean up, cover up, get in, get out, get up, hook up, kick in, pick up, pay off, roll up, roll down, screw up, turn around, wake up, walk in <i>Example of use in context:</i> Because we were gonna cover up
Low-frequency verbs	accomplish, blame, charge, confront, co-sign, cooperate, deduct, deny, dislodge, interrupt, hoard, occupy, pinpoint, pound, quote, renovate, smash, snuggle, surrender, steal, transfer, unload <i>Example of use in context:</i> But how can you pinpoint that he did it?
Low-frequency adjectives and adverbs	blurry, confident, confused, cooperative, doubtful, filthy, flammable, foggy, intimidating, isolated, livable, mentally challenged, odd, trashed <i>Example of use in context:</i> I am a battered wife.
Financial terms	assessment, bank account, beneficiary, bill, charge, check, claim, collateral, contract, co-sign, credit card, deductible, deny, donate, down payment, estate, financially, homeowner's policy, life insurance, loan, mortgage, paycheck, prepaid, property, purchase, renter's policy, taxes, welfare <i>Example of use in context:</i> They don't have a renter's policy but they have a homeowner's policy.
Legal terms	adultery, alibi, argument, arson, assault, attack, attorney, bail, birth certificate, bruise, charge, contract, cooperate, evidence, felony, fraud, green card, healthcare proxy, incident, jury, lie detector, misdemeanor, polygraph, probation, proper burial, recipient, represent, search warrant, statement, surrender, trespassing, trial, vehicle, witness <i>Examples of use in context:</i> He should plead guilty That's his cover story for an alibi Are you gonna bail me out?

Table 3. Iryn Meyers' active lexicon.

On Rubric 4, Lexical diversity and fluency, this lexicon was evaluated as Mid-Advanced:

Their vocabulary is fairly extensive although primarily generic in nature, except in the case of a particular area of specialization or interest. (American Council on the Teaching of Foreign Languages (ACTFL) 2012: 6)

This evaluation, however, may have been too conservative because Iryn's performance also displayed features characteristic of Advanced High level, such as attention to shades of meaning and lexical precision, seen in such statements as *We didn't really plan it, we just talked about it* (Interview 30 March 2016, 15:00) or *I think it's a recliner, but don't quote me on that... it's a long one, so better couch, right?* (Interview 21 March 2016, 22:00).

Faced with accusations and unexpected questions common in police interviews, Iryn Meyers used a wide variety of conversational strategies, some of which bordered on aggressive, e.g., *Do I have to repeat it again?!* (Interview 21 March 2016, 5:40:06), *Can you just ask me questions instead of staring?* (Interview 30 March 2016, 1:16:53), *Are you confused? Would you like me to make it clear?* (Interview 30 March 2016, 20:43), *You really screwed up* (Interview 30 March 2016, 1:42:00). She also refused to answer some questions, e.g., *I just don't wanna talk about it* (Interview 30 March 2016, 3:40).

	Examples from the interviews on 3/4/16, 3/21/16, 3/30/16, 4/5/16
Acknowledgment	So, yup, thanks for reminding me.
Assertion	I am telling the truth right now as you can see, I am trying. I am very very cooperative.
Circumlocution	and the one tote it's in my... what do you call that? You know that back that opens in your car to put groceries in? ... trunk!
Comprehension checks	In my own opinion, I think he was downstairs because where are you gonna get cobwebs, you know what I mean?
Confirmation checks	Colostomy is like like the poop, right? To make sure, the kitchen it's kind of like foggy... What's foggy, it's kind of like smoke, right?
Conversation management	Can we start now? So, what's your question? So, where are we now? Why are we having this conversation? Can I interrupt you for a moment?
Differentiation	It smelled like wood, it didn't smell like gas. That window is not really isolated.
Emphasis	I wasn't in the house, I was hearing the conversation, I was in my car...
Mitigation	I think it's a recliner, but don't quote me on that...
Requests	I'm gonna need a map. Can you just remind me? So can you help me get out here?
Self-correction	We had pig roast, oh pot roast.

Table 4. Iryn Meyers' conversational strategies.

On Rubric 3, Dealing with linguistic challenges and unexpected turns of events, and Rubric 5, Conversational strategies, Iryn Meyers was situated between Mid-Advanced and Superior levels. To remain conservative, Expert B assessed her as Mid-Advanced:

Advanced Mid speakers can handle successfully and with relative ease the linguistic challenges presented by a complication or unexpected turn of events that occurs within the context of a routine situation or communicative task with which they are otherwise familiar. Communicative strategies such as circumlocution or rephrasing are often employed for this purpose. The speech of Advanced Mid speakers performing Advanced-level tasks is marked by substantial flow. (American Council on the Teaching of Foreign Languages (ACTFL) 2012: 6)

Together, the evaluations on individual rubrics placed Iryn Meyers' speaking proficiency at the level described by ACTFL as Mid-Advanced:

Advanced Mid speakers contribute to conversations on a variety of familiar topics, dealt with concretely, with much accuracy, clarity and precision, and they convey their intended message without misrepresentation or confusion. They are readily understood by native speakers unaccustomed to dealing with non-natives. When called on to perform functions or handle topics associated with the Superior level, the quality and/or quantity of their speech will generally decline. (ACTFL Proficiency Guidelines, 2012: 6)

Iryn Meyers' listening proficiency

The recordings showed that Iryn Meyers was comfortable with formal and colloquial speech at normal conversational rates. The legal terms used by her defense attorney and police investigators included *alibi*, *arson*, *bail*, *consent*, *discovery process*, *felony murder*, *grand jury*, *plea bargain*, *polygraph*, *prosecutor*, and *indictment*. The only time she asked for a clarification was as follows: *What is defendant?* (Interview 21 March 2016, 4:57:45). On several occasions, she interrupted investigators or finished their sentences for them, e.g.:

Investigator: *How did it come how did it come that you...*

Iryn Meyers: ... *purchased* (Interview 3/4/16, 1:13:37)

	Examples from the interviews on 3/4/16, 3/21/16, 3/30/16, 4/5/16
Abstract questions with embedded clauses	<i>Investigator:</i> You know how serious this is, I don't know if you get the concept of this. <i>Iryn Meyers:</i> I did get the concept. <i>Investigator:</i> Did you withhold any information from us the last time that we talked? <i>Iryn:</i> I did not tell you about Joe telling me that David wouldn't wake up
Colloquial questions	<i>Investigator:</i> Did Joe have money troubles? <i>Iryn Meyers:</i> If we are talking about financially....
Financial questions	<i>Investigator:</i> How many loans do you have over \$ 1,000? <i>Iryn:</i> I don't have loans, I have an overdraft! <i>Investigator:</i> It's my understanding and you can tell me if this is true, the property on New Galen Road, did you own that property? <i>Iryn:</i> I owned that property but I give him life use of the property.
Legal questions	<i>Investigator:</i> Do you know what the consequences are of murder? <i>Iryn:</i> You go in jail. <i>Investigator:</i> How long? <i>Iryn:</i> Thirty five years.

Table 5. Types of questions to which Iryn Meyers responded promptly and accurately.

The complexity of the questions Iryn Meyers responded to promptly and accurately is not surprising: L2 speakers commonly understand structures more complex than the ones they produce. This performance placed Iryn's listening proficiency at the Superior level:

At the Superior level, listeners are able to understand speech in a standard dialect on a wide range of familiar and less familiar topics. They can follow linguistically complex extended discourse such as that found in academic and professional settings, lectures, speeches and reports. Comprehension is no longer limited to the listener's familiarity with subject matter, but also comes from a command of the language that is supported by a broad vocabulary, an understanding of more complex structures and linguistic experience within the target culture. (American Council on the Teaching of Foreign Languages (ACTFL) 2012: 16)

Iryn Meyers' reading proficiency

To evaluate Iryn Meyers' reading proficiency, Expert B analyzed her answers on the civil service exam for nursing aides in facilities for mentally disabled patients. The cover page

shows that Iryn started at 8:20 AM and finished at 9:39 AM, which makes for 1hr 19 min, half the time allocated for the test (2.5 hrs). The analysis of the questions answered correctly (78%) showed that Iryn could follow written instructions, process paragraph-long texts, use basic arithmetic, understand time schedules and supply inventories, figure out mileage and balance bank accounts. She also demonstrated an ability to judge the factual nature of individual statements, keep track of people and actions, and respond to hypotheticals, such as *What should you do?*

An analysis of the lexical content of correctly answered questions revealed understanding of medical, emotional and professional vocabulary, including low-frequency terms, compound nouns and adjectives, such as *abuse, agitated, assistance, criminal behavior, daydreaming, depressed, disappointed, disturbance, dizzy, emotionally-disturbed, excitedly, legally old enough, mentally confused, mental retardation, privacy, privileges, range of motion exercises, refusal, resident, recreation, sexual intercourse, supervisor, transfer, and violent*. The fact that she passed the test by answering 78% of the questions correctly in half the allocated time suggests reading proficiency consistent with 10th grade and Mid-Advanced level on the ACTFL scales:

At the Advanced Mid sublevel, readers are able to understand conventional narrative and descriptive texts, such as expanded descriptions of persons, places, and things and narrations about past, present, and future events. These texts reflect the standard linguistic conventions of the written form of the language in such a way that readers can predict what they are going to read. Readers understand the main ideas, facts, and many supporting details. Comprehension derives not only from situational and subject-matter knowledge but also from knowledge of the language itself. Readers at this level may derive some meaning from texts that are structurally and/or conceptually more complex. (American Council on the Teaching of Foreign Languages (ACTFL) 2012: 22)

Iryn Meyers' understanding of the *Miranda* warnings

While the analysis of Iryn Meyers' proficiency suggested that she should have been able to understand the Steuben County *Miranda* warnings, Expert B didn't have to rely on inferences. The recordings of the three police interviews captured the delivery of the warnings. The first interview began with the investigators announcing that they would now read Iryn her rights, to which she responded: *I know my rights* (Interview March 21, 2016, 1:22:00). The fact that the interview was conducted in the presence of her defense attorney suggests that she did indeed know – and exercise – her right to an attorney. When investigators asked her about the consequences of murder, she responded *You go in jail* (Interview March 21, 2016, 1:38:00).

In the second interview, on March 30, 2016, Iryn was asked to read each *Miranda* statement out loud and to initial each one. She also had a long discussion with the investigators on the merits of private attorneys vs public defenders. In the third interview, on April 5, 2016, she was advised of her rights once again prior to the polygraph test. Since she had already been advised and was assigned an attorney, it would have been tempting for the investigators to treat the *Miranda* warnings as a formality on this occasion. Instead, the investigator (I) re-tested her comprehension by making Iryn Meyers (M) restate the rights in her own words.

Transcript 1

01 I: I gotta go through a couple more things here:↑
02 that I have to get out of the way↑
03 and we can talk freely OK? ((open gesture with both
hands)) so (.)
04 M: ((nods))
05 I: ((Starts filling out the paperwork)) This is the
Miranda warnings again but I do it a little different
when we are in this type of setting (.) OK?
06 I'm ask you/I'm gonna ask you some questions
((enunciates very precisely)) (.)
07 whatever you tell me I'm gonna write it down (.) OK?
08 So the time now is gonna be: (.) twelve oh one pm
((writes down))
09 ((stops writing, turns to M)) When can you have an
attorney?
10 M: When?
11 I: When can you have an attorney?
12 M: When I needed it↓
13 I: When you need it?
14 M: Yeah::
15 I: When I needed it?
16 So basically you can have an attorney any time that
you want one (.) any time you want an attorney ((open
gesture with both hands)) =
17 M: = oh no when I get in trouble↑
18 I: So when can you have an attorney?
19 What would be your answer to that question?
20 M: When you get in trouble?

- 21 I: Well (.) I would say (.) I'd say any time you want one
- 22 M: Oh ((laughs)) any time if you want one↑
- 23 I: So: when can you have an attorney?
- 24 M: Any time if you want one! ((laughs))
- 25 Thank you for helping me! ((giggles))
- 26 See: I am not that good↑
- 27 I'm not a good liar either↑
- 28 I: Can you have an attorney any time that you want one including right now?
- 29 M: Right now? Yes↓
- 30 I: Can you use my telephone (.) free of charge (.) to call an attorney?
- 31 M: Yes↓ ((nods))
- 32 I: What will happen if you want an attorney but you can't afford one?
- 33 M: The state will offer it to you↓
- 34 I: The state will appoint one?
- 35 M: Aw: yes↑ ((nods enthusiastically))
- 36 I: I'll put "The state will offer it to you"↓ ((writes down))
- 37 I: Do you have to answer even one of my questions or say anything to me at all?
- 38 M: No↓
- 39 I: If you start to answer my questions and then decide that you wanna stop can you stop any time that you want?
- 40 M: I don't know? ((looks at the investigator))

- 41 Yes ((giggles)) (.) are you OK?
- 42 I: Yeah: you don't ... you don't have to talk to me if you don't you do not have to talk to me at all OK?
- 43 This is completely voluntary
- 44 Do you understand that if I am called into court to testify about what both you and I say that I will be placed under oath and I will tell the truth?
- 45 M: Yes↓
- 46 I: Would you want me to tell the truth or would you want me to lie?
- 47 M: I want you to tell the truth↓
- 48 Lying does not help you↓
- 49 I: Do you understand that I will tell the complete truth regardless of whether it helps/helps or hurts the police or helps or hurts you? ((points to her)) Yes?
- 50 M: Yes↓
- 51 I: Now that you know all of your rights do you wish to continue with this polygraph?
- 52 M: Yes ((nods))
- 53 I: What I need you to do is to look down through that to make sure that's what we talked about
- 54 what I wrote down is what you told me
- 55 put your initials at the bottom if you agree with the front page and then read the back of it ((gives her the pad with the document and a pen))
- 56 M: ((takes the pad, looks at it)) So: how long you are doing this one?
- 57 I: What's that?
- 58 M: How long you've been doing this one?
- 59 I: This? Some many years↓
- 60 M: So, if I have a felony charge↑ =
- 61 I: = Hold on (.) hold on
(.) let's get this out of the way first ((both laugh))

- 41 Yes ((giggles)) (.) are you OK?
- 42 I: Yeah: you don't ... you don't have to talk to me if you
 don't you do not have to talk to me at all OK?
- 43 This is completely voluntary
- 44 Do you understand that if I am called into court to
 testify about what both you and I say that I will be
 placed under oath and I will tell the truth?
- 45 M: Yes↓
- 46 I: Would you want me to tell the truth or would you want
 me to lie?
- 47 M: I want you to tell the truth↓
- 48 Lying does not help you↓
- 49 I: Do you understand that I will tell the complete truth
 regardless of whether it helps/helps or hurts the
 police or helps or hurts you? ((points to her)) Yes?
- 50 M: Yes↓
- 51 I: Now that you know all of your rights do you wish to
 continue with this polygraph?
- 52 M: Yes ((nods))
- 53 I: What I need you to do is to look down through that to
 make sure that's what we talked about
- 54 what I wrote down is what you told me
- 55 put your initials at the bottom if you agree with the
 front page and then read the back of it ((gives her
 the pad with the document and a pen))
- 56 M: ((takes the pad, looks at it)) So: how long you are
 doing this one?
- 57 I: What's that?
- 58 M: How long you've been doing this one?

In her analysis of the interaction, Expert B examined the delivery of the warnings by the investigator and understanding of individual rights by Iryn Meyers. She found the delivery to be consistent with an active dialogic approach, advocated by proponents

of police reform (e.g., Domanico *et al.* 2012; Ferguson 2012) and the recommendations outlined in the *Guidelines for communicating rights to non-native speakers of English in Australia, England and Wales, and the USA* (Communication of Rights Group 2015). To ensure Iryn Meyers understood her rights and the consequences of waiving them, the investigator asked comprehension questions (lines 9-11, 18, 23, 28, 30, 32, 37, 39, 44, 46, 49) and when she displayed hesitation or incomplete understanding (lines 12, 40), he rephrased statements and offered further explanations and clarifications (lines 16, 21, 34, 42-44).

The analysis of Iryn's restatements showed that she understood her right to an attorney (lines 12, 17, 20, 22, 24), the right to have an attorney present at the interrogation (lines 24, 29, 31), the right to have an attorney provided for free (lines 33, 35) and the right to silence (line 38). When she displayed hesitation regarding her right to stop talking at any time (line 40), the investigator provided further explanations (lines 42-44), emphasizing the negative consequences of her decision that could potentially *hurt* her (line 44) (as seen in Table 1, *hurt* was a verb she used appropriately in context). Then, he gave Iryn the statements he wrote down and asked her to read them and, if she agreed, to initial the bottom of the page. To give Iryn sufficient time to process the information, he temporarily left the room.

Together, the analyses of the delivery of the *Miranda* warnings and of Iryn's speaking, listening and reading skills led Expert B to conclude, with a reasonable degree of certainty, that Iryn Meyers waived her *Miranda* right to silence knowingly and intelligently (the determination of voluntariness is up to the judge and beyond the scope of L2 proficiency assessments).

Discussion and conclusions

At the pretrial hearing in February 2017, the judge determined that Mrs. Meyers had sufficient English proficiency to understand her rights and did not require an interpreter to follow court proceedings. In August 2017, after three hours of deliberations, the jury found Iryn Meyers guilty of murder in the second degree, two counts of arson, conspiracy, insurance fraud, and a false written statement made to the New York State Police. Tried separately, Joseph and Iryn Meyers received identical sentences – 23 years to life in state prison.

Yet, the case did not end there. Following her conviction, Iryn filed an appeal *pro se*, i.e. representing herself. One of her complaints involved ineffective counsel who didn't challenge the voluntariness of her statements on the grounds that she didn't have sufficient English. The Court of Appeals did not find that the attorney – or the trial court – acted in error:

the parties fully litigated the issue of defendant's understanding of English during a pretrial hearing on defendant's request for an interpreter and the evidence presented therein – which presumably would also have been presented at trial if the court had permitted defendant to challenge the voluntariness of her statements on the ground that she did not sufficiently understand English – established that defendant was proficient in and understood English. (*People v Meyers*, 2020)

The case has several lessons for forensic assessment of *Miranda* comprehension of non-native speakers of English. To begin with, it shows that face-to-face assessment isn't

necessarily reliable and should be used in conjunction with analyses of recordings of police interviews and other types of contemporaneous data, ranging from test performance to texts, e-mails and letters known to have been written by the defendant. The preference in such analyses should be given to recordings of the delivery and the uptake of the *Miranda* warnings.

More importantly, the case illustrates best practices in securing understanding of the rights by non-native speakers of English, namely:

- (a) dual presentation of the warnings, orally and in writing;
- (b) asking the custodial suspect to read each warning out loud and to initial each one;
- (c) adoption of the in-your-own-words requirement, whereby the custodial suspect is asked to restate each right in their own words;
- (d) simplified waiver statement *I agree to give up my rights*;
- (e) acknowledgment of the importance of the *Miranda* warnings, evident in the investigator's question "Do you understand that I will tell the complete truth regardless of whether it helps or hurts the police or helps or hurts you?"
- (f) electronic recording of custodial interrogation, including the delivery of the rights.

At present, dual presentation and recording of custodial interrogation are fairly common in the USA (cf. Bang *et al.* 2018) but the in-your-own words approach is not. Opponents of the dialogic approach are concerned that it may obstruct police work, yet the same concerns have been voiced about recording and the *Miranda* at large and neither prediction came true: an estimated 80% of adult suspects still waive their rights and talk to the police (Domanico *et al.* 2012; Leo 2008). The dialogic delivery is unlikely to reverse this trend, driven by police interrogation tactics and the suspects' need to find out what they are accused of and share their own version of the events. What the dialogic approach promises to do is reduce the time and costs spent on post-conviction litigation and to ensure that when the issues are litigated, court decisions rely on more accurate data (Domanico *et al.* 2012; Ferguson 2012).

In interviews with L2 speakers of English, the dialogic approach has three added benefits. To begin with, it scaffolds understanding for people who may be less familiar than L1 speakers not only with legal terms and complex structures but with the workings of the legal system and cultural assumptions underlying *Miranda* warnings (Pavlenko *et al.* 2019). Secondly, it reduces the guesswork regarding the need for an interpreter: if the custodial suspect is unable to restate the rights in their own words, a professional interpreter should be brought in and the procedure repeated anew (Communication of Rights Group 2015). Thirdly, while the procedure may increase reliance on interpreters, it has potential to reduce the number of overturned convictions and post-conviction appeals involving flawed delivery of the *Miranda* warnings to L2 English speakers (e.g., *Commonwealth v. Vargas*, 2018; *Khalil-Alsalaami v. State*, 2020). A few extra minutes spent on dialogic delivery – and, if need be, the wait for an interpreter – are not too high a price to pay for safeguarding both the integrity of the investigation and the due process.

Notes

¹The victim was 60-year old David O'Dell, a mentally disabled man, who was a long-time friend of Joseph Meyers and an employee of his garage. In 2015, the couple offered him \$ 8,000 for his house. O'Dell, who had little understanding of real estate, signed the deed over to Iryn. The only payment he received was \$ 400 and permission to stay in the house without paying rent. Iryn also moved in, ostensibly as his unpaid caregiver, and then purchased three insurance policies – a homeowner's policy in her own name, a renter's policy where she didn't disclose her ownership and a life insurance on O'Dell – with herself as a beneficiary for a total of \$ 145,000. On February 14, 2016, Joe and Iryn arrived at the house and found David asleep. Joe bashed him with a hammer. Then, they poured diesel fluid, ignited the fire and fled. After the fire subsided, the first responders found a charred body of David O'Dell. The autopsy revealed that David was alive when the fire began and died of smoke inhalation. Suspecting that the fire was not accidental, investigators reviewed the footage recorded by Joe Meyers' own video surveillance and saw the couple making several trips to the house, in the hours before the fire, bringing in Iryn's belongings. One video showed Iryn carrying a propane torch. Confronted with the evidence, Iryn turned on her husband and offered several accounts of the crime, pinning the blame on Joseph. The pretrial hearing, discussed here, was open to the public, and the investigation and trials of Joseph and Iryn Meyers were widely covered in the media, the *Anthology of True Crime* book series and documentary TV series *Deadly women* (season 12, episode 10 *The takers*) and *Snapped: Killer couples* (season 12, episode 9 *Joseph and Iryn Myers*). Given this public exposure, I did not hesitate to use their real names. Readers interested in hearing Iryn Meyers' English can watch *Killer couples* – the episode, available on the NBC website and on Youtube, features segments of the same recordings I analyzed.

²For more information on the ILR scale, see <https://www.govtilr.org/Skills/IRL/%20Scale/%20History.htm>

³For more information on the Flesch-Kincaid readability formula, see <https://www.webfx.com/tools/read-able/flesch-kincaid.html>

⁴For more information on the ACTFL Proficiency Guidelines (2012), see <https://www.actfl.org/resources/actfl-proficiency-guidelines-2012>

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Gonzales v. State, 131 Nev. 481, 489 (2015) [discussing increasing need for police to deal with suspects with limited English (489); here, incriminatory statements given by defendant during custodial interrogation showed sufficient knowledge of English and were thus admissible]

Khalil-Alsalaami v. State, 472 P. 3d 60 (Kansas 2020) [trial counsel provided prejudicial ineffective assistance in stipulating to *Miranda* issue despite evidence of the defendant’s limited English]

Miranda v. Arizona, 384 U.S. 436 (1966)

Moran v. Burbine, 475 U.S. 412 (1986)

People v. Meyers, 182 A.D. 3rd 1037, 1041 (N.Y. 2020)

United States v. Garibay, 143 F 3rd 534, 536 (1998)