

COMMUNICATIVE COMPETENCE AND SECOND LANGUAGE ABILITIES IN
THE JUSTICE SYSTEM: A FORENSIC LINGUISTIC ANALYSIS OF A CHINESE
IMMIGRANT'S RUN-IN WITH THE LAW

by

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ABSTRACT

Language ability can be a determining factor in deciding a defendant's legal guilt or innocence. This was the case for Chinese immigrant, LK, a licensed gun dealer who was criminally charged with selling weapons to ineligible buyers. In his defense, LK claimed that, as an English language learner, he did not possess the sufficient language skills required to adequately complete the complex administrative forms that accompany gun purchases. This study explores whether the defendant's English language abilities were sufficient to understand the government's requisite weapon sales report forms.

Data collection comes from three sources: audio body bug (wiretap) tapes, written court transcripts, and the Alcohol, Tobacco, and Firearms' sales transaction forms. Using these sources as a basis for analysis, this study examines key linguistic features of the defendant's speech to evaluate his English language proficiency. Additionally, the language used by the defendant will be compared with the language found in the weapons purchase application report.

Drawing upon theories on communicative competence (Bachman, 1990; Bachman & Palmer, 1996; Canale & Swain, 1980; Canale, 1983; Savignon, 1997), LK's functional, linguistic, discourse, sociolinguistic, and strategic competencies will first be evaluated. The second phase of the analysis uses the insight gained from examining LK's competencies in order to determine his level of proficiency. The Speaking Proficiency English Assessment Kit (1996, SPEAK®) test and the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines (2000) will be used.

The third stage of the analysis turns to readability studies in order to determine the level of difficulty in the ATF form. Chall et al.'s (1996) rubric and Flesch's readability formula (1946, 1949, 1972, 1979) serve as the foundation for the readability assessment. And last, additional areas for a forensic linguistic investigation into this case are considered. These include thematic (topical) tracking, sociolinguistic practices, and speech accommodation.

This research serves those interested in second language issues as well as members of the judicial system. It builds on and supports other work in linguistics, language acquisition, sociolinguistics, as well as the more specialized field of forensic linguistics.

1 INTRODUCTION

1.1 Forensic Linguistics Within the Field of Linguistics

Research in the field of second language acquisition (SLA) is broad, in large part due to its interdisciplinary nature. Those working in linguistics, anthropology, education, and other areas all have contributed to our understanding of how individuals learn a second language. Although the end goal shared by second language acquisition researchers is one of knowledge, the particulars vary. In the broadest sense, general or theoretical linguists attempt to provide general principles and commonalities among languages, linguistic anthropologists question how cultural beliefs and practices are manifested in the language we use, psycholinguists delve into the intricate processes of the human brain, and educators have the learner primarily in mind and look at ways to improve the educational experience. These are only a smattering of the vast foci found in language research.

Although each field operates under differing visions, beliefs, and interests, all can be considered sub sects of linguistics, the study of language. One of the newest emerging fields of linguistic research is forensic linguistics, the study of language within a legal or judicial setting. Forensic linguistics is also interdisciplinary in nature in that it draws on applicable research strands found within the broader linguistic arena. Forensic linguistic studies examine grammatical features (Auburn, Drake, & Willig, 1995; Berk-Seligson, 2002; Bernstein, 2002; Coulthard, 1994; McMenamin, 2002; Shuy, 1993, 1998), sociolinguistic and sociocultural differences (Eades, 1996, 2000; González, 2002), power

differentials (Baldwin, 1994; Brière, 1978; Lakoff, 1990), and spoken (Gibbons, 1996; Labov, 1998) and written (Eagleson, 1998; Gibbons, 1996; Jensen, 1995) discourses.

A linguistic inquiry that is related to the judicial realm can be considered a forensic linguistics case. Even though it is the legal setting that defines this new genre of forensic linguistics, it is the specifics of the case under investigation that influences the theoretical approach taken by the researcher. As language is so complex, it is beneficial to consider any suitable framework available to researchers. Even a subject-specific field such as forensic linguistics can be broken down into smaller components. For example, having a second language speaker at the center of the inquiry adds an entirely new dimension to the situation. Since most non-native speakers do not express themselves in the same manner as native speakers do, full consideration should be given to understanding the meaning behind what they say. Interpreting their speech literally can lead to real misunderstandings. Obviously, this can prove detrimental in legal cases. Therefore, this present endeavor adds to the cases studied by forensic linguists and, one hopes, can be useful to other researchers interested in the intersection between language and the law.

1.2 An Overview of the Case: U. S. v. LK (CR00-0956-TUC-RCC)

In October 1999, the Bureau of Alcohol, Tobacco and Firearms (ATF) received information that some of the firearms sold by LK (a pseudonym), proprietor of G's Market, had been used in crimes. Since 1992, fifty-one (51) guns had been traced back to the defendants. Of these, twenty-one (21) had ended up at crime scenes within three

months of being purchased from LK. Based on this trend, ATF agents decided to investigate the circumstances under which LK was willing to sell weapons. They hypothesized that he was lax in his responsibilities as a gun seller and may be operating his business in illegal ways.

The following month, the agents attempted to gather first hand information and collect evidence in the event this case were brought to trial. Over the course of the next seven weeks, undercover officers posed as gun buyers. On five occasions, a Confidential Informant (CI) accompanied the officer. Confidential Informants are individuals who have been charged with a crime and are willing to assist the police in an undercover operation in exchange for a reduced sentence. As instructed by the investigators in this case, the role of the CI was to say very little and let the officer conduct business. More specifically, the informant's task was to provide photo identification, if asked, but not to appear too interested in buying a gun. Instead, the CI was to act as if he or she simply accompanied the agent as he attempted to purchase a gun.

The circumstances, as described in the indictment, were similar among three of the visits; once on November 19, 1999 and twice on December 9, 1999. The agent and CI entered the store and the agent expressed his (all were male officers) wish to purchase a gun. When LK asked for identification, the agent explained that he did not have any photo identification on him at the time. LK then asked the CI if had a photo identification. The CI then produced the identification and handed it to LK without verbally responding. All verbal negotiations were conducted between LK and the agent. During the course of the business transactions, the CI sometimes stood near the counter

where the negotiations were taking place. At other times, she walked away from the counter, meandering around the store. When it came time for the paperwork to be filled out, the CI completed the paperwork and signed as the purchaser.

According to prosecutors, each of these three transactions violated the law. The first was a violation of Title 18, United States Code, Sections 922(b)(5) and 924 (a)(1)(D) which states that a weapons seller must record the name, age, and place of residence of the buyer. The second charge was a violation of Title 18, United States Code, Sections 922(t)(1)(C) and 924(a)(5) in that it is required by law to verify the buyer's identity by examining a valid identification document. Although LK did record the buyer's information and verified her identity with a photo identification, the prosecutors claim LK accepted documents from the wrong person. Since primary negotiations were conducted with the agent, LK should have required that the sale be recorded in the agent's name – not the informant's.

LK and his defense team viewed these events quite differently. First, LK believes his case is, in fact, strengthened by his reporting practices for the Form 4473, the ATF report form for sales transactions. It demonstrated that he followed procedures by having a buyer complete the requisite form and never sold a weapon without filing the form with the ATF office. As was required, LK kept copies of this form in his files. Maintaining a clean paper trail showed that he followed protocol. For him, possessing these completed forms exhibited honesty on his part.

At the center of this controversy are the differing opinions about LK's linguistic competency in English. In order for a jury to convict him, the prosecutor's office must

show intent on LK's part. Thus, LK must have understood the subtleties in the reporting statutes and made a conscious decision to disobey the guidelines. LK's defense team retorted that LK followed the procedures to the best of his ability. Any errors in his reporting practices should be attributed to his poor language skills rather than any intent to disregard the law. Given these questions about LK's abilities in English, this research project will investigate his communicative competencies, level of proficiency, the readability difficulty of the forms completed by LK in his role as gun seller, as well as other potential areas a forensic linguist might use to explore this issue.

1.3 Theoretical Overview

This forensic linguistics investigation draws on several theoretical perspectives regarding communicative competency, assessment, readability studies, and analytical approaches. This multifaceted approach is typical of many of the studies undertaken by forensic linguists. Rather than pigeonholing oneself in a single approach, forensic linguists turn to a wide range of researchers to augment and compliment their work. Each dimension adds a richness to the investigation by considering aspects addressed by these differing approaches. This section offers a brief overview of the theoretical perspectives that have influenced this project. In turn, each will be discussed on a more in-depth basis throughout the chapters.

Communicative competence considers how a second language speaker integrates specific types of competencies in order to communicate. For Canale and Swain (1980), grammatical (syntax, morphology, semantics, phonology, and lexical items),

sociolinguistic (appropriateness of use), and strategic competency (ways of negotiating unfamiliar territory, e.g. using silence, circumlocution, rephrasing, and repeating) serve as their foundation for what constitutes communicative competence. Later, Canale (1983) expanded on the notion of three competencies to include a fourth aspect, discourse competency, which is the use of cohesion and coherence devices to present information in a clear, logical manner.

As with earlier models of communicative competence, Bachman (1990) views communicative language ability (CLA) as encompassing multiple competencies. He considers knowledge structures (knowledge about the world) and language competence (knowledge about language) to support a speaker's strategic competence. On a more detailed level, Bachman distinguished between organizational competence and pragmatic competence as components of language competence. Organizational competence includes grammatical competence and textual competence. Pragmatic competence encompasses illocutionary competence and sociolinguistics competence. Bachman and Palmer (1996) later modified Bachman's (1990) model to include three primary influences that affect strategic competence. These are language knowledge, personal characteristics, and topical knowledge.

Savignon's (1997) model presents communicative competence as consisting of grammatical, discourse, strategic, and sociolinguistic competencies. While, for the most part, this mirrors other models of communicative competence (Bachman, 1990; Bachman & Palmer, 1996; Canale & Swain, 1980; Canale, 1983), Savignon (1997) envisions some of the interactive dynamics differently. Sociolinguistic and strategic competences are

present at the earliest stages of language acquisition while grammatical and discourse competencies are acquired later. This views language learners as individuals who are prepared to learn a language from the outset, even before any formal learning has taken place.

Although these models of communicative competence consider how well an individual communicates in a second language, it does not have any benchmark by which to evaluate proficiency levels. The Speaking Proficiency English Assessment Kit (1996, SPEAK®) bridges communicative competence and assessment. It includes functional, sociolinguistic, discourse, and linguistic competencies. These four are viewed as components of strategic competence, the overarching fifth competency. The SPEAK® test is well-suited for this present research project because it uses the speaker's performance - specifically with regard to communicative competency - to determine a corresponding proficiency level. One limitation of this test is that it is only geared toward non-native speakers of English; thus, performance at a native-like proficiency falls outside the scope of this test and, therefore, cannot be assessed.

Therefore, the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines (2000) will be used as a complimentary assessment tool. These guidelines use detailed descriptors to establish appropriate proficiency levels ranging from novice to superior. Typically, this test is conducted as a face-to-face interview that gives the examiner an opportunity to probe into an examinee's capabilities, modifying the level of difficulty throughout the interview as needed until a final determination is made.

The importance placed on assessment will be rounded out by a readability analysis. The two approaches used will be Chall et al.'s (1996) rubric and Flesch's readability formula (1946, 1949, 1972, 1979). Both approaches consider complexity, density, and familiarity as components in determining how accessible a written text is to a reader. Moreover, they share the belief that emphasizing clarity does not diminish the quality or sophistication in writing. In fact, they argue that clear, simplistic delivery should be any writer's goal.

While the features of LK's speech will be used for evaluative purposes, it is Conversational Analysis (CA) that serves as the theoretical approach in collecting and identifying the speech samples. Based in the presumption that every utterance can be enlightening, CA allows researchers to examine language on a highly detailed level. Further, beginning a research endeavor without any preconceived ideas about what to expect lets the text speak for itself and informs us as to what information is contained in a speech sample.

For example, when imbalances of power are an issue, work by critical discourse analysts teases out some of the issues surrounding authority, hegemony, and dominance (Baldwin, 1994; Brière, 1978; Fairclough, 1995, 1989; Lakoff, 1990; van Dijk, 2001). Many times these differences can be accounted for by differing sociocultural and sociolinguistic practices (Eades, 1996, 2000; Lane, 1985, 1993; González, 2002). Research that focuses on spoken (Auburn, Drake, & Willig, 1995; Berk-Seligson, 2002; Bernstein, 2002; Coulthard, 1994; Labov, 1998; McMenamin, 2002; Shuy, 1993, 1998)

and written (Eagleson, 1998; Gibbons, 1996; Jensen, 1995) discourses helps forensic linguists evaluate the subtle aspects of language.

1.4 Rationale for the Study

Studies of this nature are essential in the development of the field of forensic linguistics. As there is such resistance in the court and police systems for this kind of work to be introduced as testimony (Baldwin, 1994; Gibbons, 1995; McMenamin, 2002), more work is required in this field. As researchers build on each other's work, new possibilities for approaches are introduced. Additionally, adding quality investigations to the pool of forensic linguistic cases will strengthen the field as well as offer more exposure to this kind of work. Hopefully, one day expert testimony by trained linguists will be a regular part of the judicial system.

However, it is vital to remember that forensic linguistic cases touch people's lives in profound ways. In academia, these cases are fascinating research endeavors that inform us about language practices, identity, cultural practices, power and dominance, as well as a host of other areas. For those personally involved, however, the impact of this kind of research can help alter the direction of a person's life. Labov said it best when he recalled his court testimony that helped free Paul Prinziwalli, a former airline employee accused of making bomb threats, in which Labov's testimony was so convincing that the judge dropped all charges. Labov reflected, "nothing could be more satisfactory for any scientific career than to separate fact from fiction in this case" (1997, p. 5).

1.5 Research Questions

This study will examine whether the defendant's language abilities were sufficient for him to have understood the weapons report forms. Therefore, the uncertainty about LK's abilities in English gives rise to the research questions which have guided and shaped the present study:

- Research Question #1 - What kind of communicative competence does LK display in his spoken discourse? Specifically, what is present in his speech with regard to: 1) functional competence, 2) linguistic competence, 3) discourse competence, 4) sociolinguistic competence, and 5) strategic competence? Expressly, what is he (not) able to do within each of these categories?
- Research Question #2 - Based on the above analysis, at what language proficiency level would LK be classified? Is this proficiency assessment consistent across different assessment guidelines (e.g. SPEAK® Assessment, ACTFL Proficiency Guidelines)?
- Research Question #3 - Based on readability studies, what level of proficiency would have been required to fully comprehend the Department of Alcohol, Tobacco, and Firearms' Transaction Record Form 4473? How does this compare to LK's abilities?
- Research Question #4 - What might a forensic linguist have considered in this case, had linguistic testimony been allowed in this case? How

could this have contributed to the court's understanding of LK's proficiency?

1.6 Definitions of Important Terms

Law enforcement officials played dual roles in this case: police officer and customer. Their task, first and foremost, was to serve as a representative of the police force. In this capacity, they operated behind the scenes, planning and coordinating their investigative job. Many law enforcement officers from different departments came together. Some worked for the Department of Alcohol, Tobacco, and Firearms while others were associated with the Tucson Police Department. It is common for agencies like these to work in tandem. Therefore, *police officer*, *police*, *agent*, *law enforcement official*, and *law enforcement officer* are all terms that represent those involved in these capacities.

However, from LK's perspective, he knew these individuals as customers in his business. Obviously, their real identities were later revealed to him, but his interactions with them were based on a client-proprietor relationship. While the recordings were being made, he presumed that he was talking with a potential customer, not a police officer. Therefore, it is necessary at times to refer to members of the police force as *customer* and *client*.

Wiretaps are recording devices used to monitor conversations. Investigations using wiretaps are typically covert actions with one or all parties unaware of the presence of any such devices. The mechanism is concealed in a room, planted in a telephone

receiver, hidden under clothing, or placed in an inconspicuous location. When the recording device is worn on the body, it is referred to as a body bug. Given that the only distinction between the two is where the device is planted, the terms *wiretap* and *body bug* will be used interchangeably.

1.7 Outline of the Dissertation

This dissertation consists of five chapters. The first chapter presents an overview of the research endeavor, positions forensic linguistics within the field of second language acquisition, briefly introduces the theoretical bases that informed this project, gives the rationale for conducting this kind of investigation, identifies the research questions to be answered, and clarifies key terms. Chapter 2 offers a review of the literature. First, the connection between linguistics and forensic linguistics is addressed (Section 2.1). Then, an overview of some of the theoretical approaches available to those interested in language issues is presented (Section 2.2). Last, since forensic linguistics is a relatively new area of research, it is beneficial to review some of the forensic linguistic work has been done to date (Section 2.3). Topics such as effective and ineffective interview techniques, speech acts of confessing and deceiving, the additional burdens faced by non-native speakers of English, and the accuracy and quality of source documents are considered.

Chapter 3 presents the case under investigation as well as other methodological considerations. First, personal background information on the defendant is provided (Section 3.1). This background knowledge provides important information about LK's

life leading up to this case. Moreover, it is good to be reminded that although forensic linguistic cases center on language, there are human beings who produce the speech we look at. Next, an overview of the data is reviewed (Section 3.2). The three sources are transcripts of the undercover police tapes, Firearms Transaction Record From 4473, and the court records. Each of these will be discussed in detail. Chapter 3 also discusses the theoretical framework regarding how the data is analyzed. An overview of three models of communicative competence is covered (Section 3.3). Research done by Canale and Swain (1980), Canale (1983), Bachman (1990), Bachman and Palmer (1996), and Savignon (1997) form the basis for the discussion on communicative competence.

Chapter 4, the analysis chapter, is composed of four subsections: an evaluation of LK's communicative competence, an assessment of his speaking proficiency, a readability analysis, and a discussion of other avenues available to a forensic linguist working on this case. After an overview (Section 4.1), the five areas of communicative competence presented are: functional, linguistic, discourse, sociolinguistic, and strategic competencies (Section 4.2). Each is discussed in turn and considers what is/is not evident in the speech samples. This is followed by an evaluation and assessment of LK's language proficiency. In order to compliment the findings of LK's communicative competence, it is enlightening to take these insights further and determine his level of proficiency. To accomplish that, the Speaking Proficiency English Assessment Kit (SPEAK®) test (1999) and the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines - Speaking are presented (Breiner-Sanders, 2000) (Sections 4.3 and 4.4, respectively). The SPEAK® assessment kit bridges communicative

competence and assessment in that it uses communicative competence to determine proficiency level. However, since models are not always ideal in every regard, it is necessary to draw upon a secondary assessment source, the ACTFL Proficiency Guidelines. While the SPEAK® test provides a useful grid for assessing a speaker's language use, the ACTFL Guidelines offer a more comprehensive description of what abilities may be found at each level. Given these differences, both assessment guidelines are included. Next, LK's abilities are compared with the language found in the ATF Form 4473 Firearms Transaction Record (Section 4.5). The two approaches applied in this textual analysis are Chall et al.'s (1996) and Flesch's (1946, 1949, 1972, 1979) readability formula. Section 4.7 considers how a forensic linguist evidence *could have* been presented to a jury, had the court allowed such testimony. As no expert witness testified at LK's trial, this is purely hypothetical; yet, it still behooves us to consider what could have been presented to a jury. Aspects such as thematic (topical) tracking, sociocultural influences, and speech accommodation are considered. Last, the need for this kind of forensic linguistic work is addressed (Section 4.7).

In Chapter 5 summarizes the findings and identifies the limitations of the study (Sections 5.1 and 5.2, respectively). The research questions posed in Chapter 1 are revisited. Next, the problem of lack of access to the subject (LK) is considered as well as how the study might have been altered if the researcher had been able to interview him and assess his English proficiency first hand. Next, some unresolved questions about the connection between reading and speaking abilities is discussed. Finally, some

conclusions regarding the value of forensic linguistic research is considered (Section 5.3)

Included is a discussion of possible future research endeavors.

2 LITERATURE REVIEW

2.1 The Relationship Between Linguistics and Forensic Linguistics

Forensic Linguistics is the study of language within a legal context. Texts, both spoken and written, form the basis of the study, analysis, and measurement of language. Generally speaking, linguistic questions regarding crime, judicial matters, and legal disputes constitute most forensic linguistic cases. Forensic Linguistics investigates those involved both on an individual level (police officers, judges, suspects) and an institutional one (jury panels, the court system). Additionally, situational context is a key factor in classifying a forensic linguistic case as such.

Although framed within a legal context, forensic linguistics incorporates elements from multiple disciplines, including anthropology, sociology, psychology, law, and others. However, since all forensic linguistic cases have language as the common element, linguistics serves as the connecting thread between the disciplines. Linguistics explores multiple aspects of language in order to develop a greater understanding of how we communicate. This includes both *what* we say and *how* we say it. The following discussion identifies how linguistics - as a general field - can be broken down into smaller sub-components. Moreover, it demonstrates how these elements are found in forensic linguistic analyses.

Linguistics is divided up into sub-fields, each with an emphasis in a particular area. While not a comprehensive list, some of the categories include phonetics, syntax, sociolinguistics, phonology, morphology, semantics, historical linguistics, psycholinguistics, computational linguistics, and neurolinguistics. Potentially all of these

could pertain to forensic linguistic cases; however, this discussion will be address how *phonetics*, *syntax*, and *sociolinguistics* have served as the focus in linguistic investigations.

Phonetics is the study of the sounds we produce as well as how we perceive them. Phoneticians are concerned with the acoustic properties of sounds, such as aspiration and sonority. They also are interested in how these sounds are articulated physically. In other words, they consider how the tongue, vocal chords, lips, and teeth all contribute to the physical manifestation of speech. This is because the way in which we produce sounds determines our individual accents. For the forensic linguist, this can be seen as sort of a 'linguistic fingerprint'. Labov (1998) focused on phonetics and regional accents in his work on a case involving the identity of an individual who made threatening phonecalls. He successfully proved that Paul Prinzivalli, a disgruntled airline employee accused of phoning in bomb threats, could not have been the caller. With the highly trained ear of a linguist, Labov detected documented and demonstrated differences in the speech patterns of the suspect and the caller. To a layperson, Prinzivalli's New York accent sounded quite similar to the caller's. But as soon as Labov heard the tape recordings of the bomb threats, he immediately identified the caller as someone from Eastern New England. In order to present his findings to a jury, Labov needed to present the results in such a way for the jury to understand the subtle differences in phonetic productions. For comparison, Labov painstakingly "made instrumental measurements of the formant positions, using the linear predictive coding algorithm ..., and the various charting programs which [were] used for displaying vowel systems" (p. 53). He then played the tapes, excerpt by

excerpt, to demonstrate the differences that became evident to the non-trained ear. In addition to the highly sophisticated audio recordings, visual diagrams that charted out the differing International Phonetics Association (IPA) features were displayed at trial. When presented in such a fashion, the judge agreed that Labov's linguistic testimony proved that Prinzivalli could not have been the individual who called in the bomb threats and acquitted the defendant¹.

Syntax is the study of how phrases and sentences are constructed. Syntacticians look at the ways an infinite number of sentences are constructed using a finite number of words (Montalbetti, personal communication, 1995). They also investigate word order, grammaticality judgments, and ambiguity, among other topics. A common inquiry in semantics is how strings of words in different languages differ but the meaning remains the same. For example, the sentence "He doesn't speak Spanish" in English requires subject + 'do' verb + base verb + object. In Spanish, this same utterance is accomplished with fewer words. It is reduced to "No habla español", thereby eliminating the subject and 'do'. Although this simplified version contains fewer words, the meaning is the same as that of the English phrase. Building on the notion of differing constructions, syntacticians also investigate how these differences are manifested in second language (L2) speakers' speech. Transference from a speaker's first language (L1) to English offers tell-tale indicators about what the speaker's L1 is. Therefore, clues to a speaker's first language origin can be found in his or her L2 syntax.

¹ William Labov noted that the Prinzivalli case not only helped free an innocent man, but also demonstrated how well this type of forensic linguistic work could be accepted in the court system. He went so far as to refer to this case as "one of his greatest personal achievements" (1988, p. 1).

Recall the famous kidnapping case of the Lindberg baby; the ransom notes appeared to have been written by a non-native speaker of English (Whipple, 1989). More specifically, some of the syntax and spelling errors suggest that the author may be a German speaker. The letter read, "...The child is in gut care. Instruction for the letters are singnature" (p. 5, spelling errors in original). Both 'gut' (which means good in German) and the German-like syntax support the hypothesis that the author was of German-speaking origin.

Sociolinguists study the relationship between language and culture and ask how language is used in different contexts. In addition, they also look at the individual and consider how age, gender, class, race, and ethnicity impact our communication. As humans, we are influenced by our surroundings as well as individual factors, all of which become evident in our speech. However, not all speech styles are regarded as equally prestigious. Some accents are considered more esteemed than others. In some way, sociolinguists extend the work of the phoneticians. Phoneticians identify sound productions; sociolinguists consider the impact of producing such sounds with one's interlocutors. Along the same lines, sociolinguists also look at discourse styles and how these styles are evident in sociocultural practices.

Marked differences in sociolinguistic and cultural practices posed real problems for the Yup'ik in legal settings (Morrow 1993, 1994; Lee, 2000). In response to a disproportionately large number of confessions and guilty pleas among the Yup'ik community, Morrow (1993) investigated how EuroAmerican and Yup'ik discourse styles differed and, more importantly, how these differences may effect the Yup'iks' experience

in the legal system. She found that the two groups differed in their expectation of quantity and effect of speech. From the EuroAmerican perspective, elaborate speaking and giving opinions about others' motives are valued. Conversely, the Yup'iks offered brief responses and avoided analysis as it was considered confusing. The belief is that since multiple interpretations are possible, it is preferable not to disrespect others by disagreeing with someone's position. Along these lines, open disagreement is frowned upon. In an egalitarian society, such as the Yup'ik one, one way equality is upheld is by accepting divergent viewpoints. Unfortunately, this avoidance of openly disagreeing with others led some Yup'ik people to agree to criminal acts which they, in fact, had not committed; hence, the high conviction rate. Further, the Yup'ik believe that truth will prevail, thereby lessening their fear of an unfair outcome. This places them at a disadvantage since it is the EuroAmerican court system that holds such power over the Yup'ik, particularly with such strong evidence as a confession.

While a linguist (we hope) would not propose that one speech style is better than another, members of society form judgments based on someone's speech. For example, Wodak-Engel (1984) predicted the outcome of court hearings simply based on the defendant's socioeconomic background. As will be discussed in greater detail later in this chapter, she found that defendants from middle class backgrounds fared better in court than those from lower or working class backgrounds, regardless of the severity of the criminal offense. She accounted for this discrepancy by examining the discourse approaches used by members of each group. The kind of language used by middle class defendants closely resembled the judge's and allowed for a smoother defense. On the

other hand, the judge became short-tempered and was confused by some of the testimony given by the lower and working-class defendants. The end result was that middle class defendants received more lenient punishments than did the defendants who spoke less prestigious varieties of English.

Because the nature of forensic linguistic cases is so dynamic and multi-faceted, it is beneficial to turn to a variety of approaches simultaneously. Drawing on the work in speech act theory (Austin, 1963; Searle, 1969) discourse studies and stylistics (Capps & Ochs, 1995; Fairclough, 1995, 1998; Gibbons, 2003; Gumperz, 1982; McMenamin, 2002; Shuy, 1998a, 1998b, 2001), pragmatics (Carlson, 2004; Horn, 2004; Levinson, 1983; Grice, 1999; Stalnaker, 1991; Wilson & Sperber, 1991), speech communities (Jaffe, 1999, Kulick, 1998; Kuipers, 1998; Lemon, 2000), language acquisition (Clark, 2003; Owens, 1996) and power (Lakoff, 1990; Tannen, 1998; van Dijk, 2001) provides an essential foundation upon which forensic linguists further contribute to our knowledge about the judicial system.

The result of this blended approach between linguistics and other disciplines has added to the quality and quantity of forensic linguistic research. Detailed work on linguistic patterns gave us insight into ‘the grammar of violence’ (Auburn, Drake & Willig, 1995), authorship in suicide notes (Eagleson, 1988; McMenamin, 2002), clues into deceptive language (Porter & Yuille, 1996) as well as idiosyncratic speech patterns in an individual’s speech (Coulthard, 1994). Conley and O’Barr coined the term *powerless language* to capture a “language of deference, subordination, and nonassertiveness” employed during witness testimony (1998, p. 65). Additionally, some

work on police procedures have led to constructive changes within law enforcement (Baldwin, 1994).

As demonstrated by the range of possible investigatory avenues previously mentioned, forensic linguistics is a multi-dimensional mode of inquiry. These kinds of cases are not constructed in a sterile laboratory setting; rather, they multi-faceted ones that encompass a variety of options for research. Forensic linguistic cases are slightly different from other types of research endeavors in that the cases are presented to a researcher *after the fact*. This runs contrary to some disciplines where the researcher sets up the experiment and controls many of the factors throughout the experiment. Moreover, forensic linguists rarely attempt to isolate one variable. They need to examine the body of evidence and see what emerges from the data provided. Each case is unique and presents the researcher with different aspects of language to consider. One of the great contributions of forensic linguistics is its ability to use theories and approaches from other disciplines in real situations. Additionally, a single case incorporates several aspects of inquiry simultaneously. The results of these forensic linguistics investigations are then available for ethnographers, sociologists, anthropologists, and educators to use in their studies.

Given the complex nature of forensic linguistics, it is fitting to first present some of the theoretical approaches available to a forensic linguist and then see how these approaches are manifested in real cases. Section 2.1 presents work in speech act theory, conversational analysis, and more particularly, adjacency pairs. After grounding forensic linguists theoretically, Section 2.2 presents individual forensic linguistic cases. Each case

demonstrates how a researcher dissected the linguistic question under investigation. Because these cases look at a multitude of factors simultaneously, it is not prudent to classify them by a single theme. As these studies are presented, it will become evident how some – but not all - of the issues overlap. For example, Wodak-Engels (1984) and Eades (2000) examine power differentials and how discourse practices vary by social and economic class while Berk-Seligson's (2002) work considers power as well as how pronouns were translated from Spanish to English. Solan (2002) excluded power from his discussion of former President Clinton's grand jury testimony and focused on a single sentence. Hill (2003) looked at the speech act of confessing and how the suspect's confession may have been adversely influenced by the investigating officers. Shuy (1998a) also looks at the discourse practices of police interviews, but focuses on how questions are formulated and the effect these formations may have on the quality of the interview. And last, some practical aspects of working with source documents are considered. This brief overview illustrates why it is best to look at each situation on an individual basis, all the while considering what information had been learned from other forensic linguistic cases.

2.2 Theoretical Overview

The following sections discuss three theoretical approaches that can be employed by forensic linguists or other researchers alike. Section 2.1.1 considers how speech act theory helps organize and identify the purposes for our communication. Speech act theory investigates what we say, what we mean, and how others interpret our meaning.

Section 2.1.2 discusses how conversational analysis reveals information within a written or spoken text. This highly detailed mode of inquiry views any and all speech as meaningful and worthy of investigation. Based in sociology, this approach has been adopted by anthropologists, educators, and others in order to delve into linguistic particulars that are not immediately evident. As will be discussed, the strength of this approach is the ability to reformulate such detail into meaningful information. Section 2.1.3 builds on the discussion of conversational analysis and explores the value of examining adjacency pairs. These couplets of dialogue shed light on turn-taking practices. These include the order in which interlocutors speak, how long each turn lasts, and unit types. Each of these three theoretical approaches offers a new and unique dimension to linguistic inquiries.

2.2.1 Speech Act Theory

Speech acts theory is based on the precept that language is “used to perform actions: thus, its fundamental insights focus on how meaning and action are related to action” (Schiffrin, 1994, p. 49). This theory was founded by philosophers John Austin (1962) and his student, John Searle (1969).

In speech act theory, all utterances are comprised of three acts: a *locutionary act*, an *illocutionary act*, and a *perlocutionary act*. The *locutionary act* is the physical utterance of the words or as Austin succinctly put it, “We use speech” (1962, p. 99). The locutionary act incorporates both the sounds and words needed to create meaning,

including the lips, vocal chords, teeth, and other parts required for the physical manifestation of such sounds.

One of the basic tenets of speech act theory is that “language is used to perform actions (Schiffirin, 1998, p. 49). Therefore, behind every statement lies an intent of some sort. The force located in the statement is considered an *illocutionary* act. Austin differentiates between illocutionary and locutionary acts by distinguishing between the “performance of an act *in* saying something as opposed to performance of an act *of* saying something” (p. 99-100). Searle offers eight general categories of illocutionary acts: 1) request, 2) assert, state (that), affirm, 3) question, 4) thank (for), 5) advise, 6) warn, 7) greet, and 8) congratulate (1969, p. 66-67). Inherent in each of these is an aim or a purpose. Stemming from these categories are possible actions such as asking questions, claiming an allegiance, expressing doubt, heeding caution, making announcements, as well as many other acts.

These utterances do not exist in an isolated state. There are consequences or resulting actions from making illocutionary acts. The outcomes are referred to as *perlocutionary* acts. For example, the effect of asking questions is receiving a response; the effect of making an appointment is establishing a future commitment. Austin notes that saying something will, “often, or even normally, produce certain consequential effects upon feelings, thoughts, or actions of the audience, or of the speaker, or of other persons; and it may be done with the design, intention, or purpose of producing them...” (p. 101).

Perhaps the best way to distinguish between the three components is to examine a single event through each of the three lenses. Borrowing Austin's example of "He said to me 'Shoot her!'" (p. 101), one can see that the locutionary act is contained in each of the words uttered. "he" refers to a male, "me" refers to the speaker, "shoot" refers to pulling a trigger. In addition to the string of spoken words, the locutionary act includes each sound produced in the creation of this sentence. Now, 'he' not only refers to the male, but also includes the sounds of /h/ and /i/ that formulate that spoken word. The illocutionary act is found in the intent of making such a statement. It would appear the speaker wishes to urge, advise, order, cajole the hearer into performing the desire act of discharging a weapon.

However, the outcome is determined by the hearer, not the speaker. This scenario may have several possible ends. The other party may be persuaded to commit the act, "He persuaded me". Or, the act may be carried out unwillingly, "He forced me to". Alternatively, the idea may be rejected entirely, "He tried to convince me to". Regardless of the actual turn of events, the important idea here is that the resulting action forms the perlocutionary act.

This triangle can be summed up as *What you said* (locutionary act), *What you meant* (illocutionary act), and *What I think you meant* (perlocutionary act). Now that the defining elements of speech acts have been presented, the following discussion will examine how they can be applied in legal settings, particularly confessions and deceptions.

Austin observed that not all statements are alike in that only some lack a truth value. He uses the terms *performative* and *constative* for these types of statements. Performative “indicates that the issuing of the utterance is the performing of an action – it is not normally thought of as just saying something” (p. 6-7). For example, when brides and groom declare “I do” during a wedding ceremony, in doing so they are forming a contractual agreement. Betting is another performative action in that making that statement goes beyond simply saying words in that the speaker has extended an offer of a bet to the hearer. But not all performatives come to fruition. If they fail at some point, Austin invokes the doctrine of *infelicity* and refers to unsuccessfully completed events as *unhappy*. Performatives with successful outcomes are considered *happy*. Infelicitous outcomes are different from *true* or *false* ones. *Constatives*, utterances that report rather than do, are either true or false in nature. On occasion, statements are simultaneously performatives and constatives, but for separate reasons. Using Austin’s example of cautioning someone about a bull’s actions with the phrase, “I warn you that it is going to charge”, this statement is a performative in that the speaker is cautioning the hearer (Searle’s category #6 – to warn). At the same time, depending whether or not the bull actually charges, this is a true or false constative statement.

The following section shifts from the hypothetical utterances used by Austin and Searle to demonstrate speech act theory and looks at how speech acts appear in actual discourse. Within the context of forensic linguistic cases, the nature of speech acts are legally or criminally situated ones. The following discussion examines how the speech acts of confessing and deceiving are analyzed by forensic linguists.

2.2.2 Conversational Analysis

Language not only serves as a vehicle to shared information but, if examined closely, offers us valuable insights into macro level societal issues as well as micro level personal ones. Discourse Analysis, and particularly Conversational Analysis (CA), gives researchers both a theoretical framework within which to operate as well as addresses technical “how to” questions (Coulthard, 1977; Levinson, 1983; Schiffrin, 1994; Ten Have, 1999). Conversational Analysis has evolved from phenomenologists’ (Schutz, 1970) and ethnomethodologists’ (Cicourel, 1972; Garfinkel, 1967) early inquiries into how society is organized to, and more specifically, how the systematic structure of language reveals greater meaning (Sacks, 1984; Sacks, Schegloff & Jefferson, 1974; Schegloff, 1972; Schegloff & Sacks, 1999). Once these sociologists had established Conversational Analysis as a theoretically sound, methodical approach to the study of language, researchers from education, anthropology and other fields adopted CA as a tool in their own investigations (Fairclough, 1995; Gee, 2000; Goodwin & Heritage, 1990; Mehan, 1979; Moerman, 1988).

Conversational Analysis has its roots in sociology. Researchers during the 1950’s and 1960’s strove to elicit ordered patterns within the greater social context. They questioned how social order is established; in other words, how do we place ourselves within the greater societal context (Goffman, 1959) and how is that relationship organized? Schutz (1970) posited that our understanding of the world around us is dependent on how we perceive life. Using the term *biographically determined situation* to express this idea he writes that every situation, “has its own history; it is the

sedimentation of all of man's previous experiences, organized in the habitual possessions of his stock of knowledge at hand, and as such his unique possession, given to him and him alone" (p. 73). Our perceptions are a composite of our past and present experiences and that each of us carries our own individually scripted versions of events. These unique perceptions are not stagnant as they are continually shaped by life's experiences.

Trying to extract order from mundane daily experiences interested sociologist Harold Garfinkel. As an ethnomethodologist, his goal was to "capture a range of phenomena associated with the use of mundane knowledge and reasoning procedures by ordinary members of society" (Heritage, 1984, p. 4). However, Garfinkel had a quirky approach to finding out about ordered existence. Determined to shake up conventional norms, he created studies designed to cause dissonance in others. For example, Garfinkel's students were assigned the task of acting as if they were boarders in their own homes and then reported their families' reaction back to Garfinkel (1967). Needless to say, family members soon became frustrated and, in some cases, quite vocal in their disapproval. In another attempt to breach background expectations, subjects interacted with 'counselors' whose answers were limited to yes or no responses. The catch was that the yes/no responses were selected randomly and did not correspond in any logical way to the questions asked by the subjects. Interestingly, the subjects still tried to decipher some kind of sense out of the nonsense fed to them. As unconventional as Garfinkel's approach was, he did succeed in demonstrating how greatly we rely on order in our lives.

Although research by sociologists sought order in everyday situations, it took the team of Sacks, Schegloff, and Jefferson (Sacks, 1984; Sacks, Schegloff, & Jefferson, 1974; Schegloff, 1972; Schegloff & Sacks, 1999) to initiate an inquiry into language. Previously, sociologists had not looked to language as a source of insight. Using conversational exchanges as the foundation for their research, they identified certain speech patterns that informed us about social order. The development of a more formulated system for investigation suited many researchers who had previously resisted other qualitative approaches. Terminology such as *turn taking*, *adjacency pairs*, and *repair* now pepper works from fields other than sociology, thus indicating their wide impact on scholars.

However, Conversational Analysis, a term created by the team, was not without its detractors. Critics argued that it was too narrow in its scope and disregarded valuable ethnographic methods. Linguistic Anthropologist Dell Hymes (1974) argued, “Some sociologists become so absorbed in words as to fail to renew their relations to actual contexts....I have read elaborate analysis of verbal interaction that failed to consider other aspects of verbal interaction to each other.... and that failed to consult or consider the interpretations of the participants themselves” (as cited in Duranti, 1997, p. 265). His caution reminds researchers to use the techniques available to them, while always considering external influences.

Even withstanding the criticism, Conversational Analysis was adopted by educators like Mehan (1979) who was interested in learning more about the structure of classroom lessons. Preferring the term *constitutive ethnography*, Mehan shunned large-

scale surveys in favor of a systematic, itemized approach to the study of language. Looking at how teachers posed questions and how students responded, he charted out *initiation-reply-evaluation* patterns that illuminated how vital language was to a student's success. These findings challenged previous assumptions that academic achievement was strictly tied to content knowledge. Mehan argued, "To be successful in the classroom, students not only must know the content of academic subjects, they must learn the appropriate form in which to cast their academic knowledge" (p. 133). Examining language within the Conversational Analysis framework allowed educators to uncover such tendencies and present their findings in a definitive manner.

Inevitably, additional questions about how language impacts various areas of our lives would arise. Indeed, scholars began to look at how language and power are interrelated and, more specifically, how stratified power relationships in government, media and politics are manifested. Critical Discourse Analysis (CDA) accommodates such questions. Van Dijk notes that, "CDA is not so much a direction, school, or specialization next to the many other 'approaches' in discourse studies, Rather, it aims to offer a different 'mode' or 'perspective' of theorizing, analysis, and application throughout out the whole field" (2003, p. 352). Relationships are always, at a minimum, bi-directional. Therefore, with issues of dominance and submission, CDA researchers examine both how and why these prevailing belief systems are - even begrudgingly - accepted. This can prove particularly tricky as Fairclough observes, "ideologies are primarily located in the 'unsaid' (implicit propositions)" (1995, p. 24). Therefore, CDA research must broaden the scope of analysis until these implicit patterns emerge. The

result of this work on power, privilege, dominance, and complicity has given us valuable insight into the dynamics in social and political arenas.

The preceding summary on the historical and disciplinary evolution in Conversational Analysis leads us to a redefined concept of how language can be studied in situ. Moerman's (1988) work embodies the multitude of changes now evident in CA research and is known for the rich cultural, personal, and linguistic information he shares. In his book, *Talking Culture*, Moerman documented his homecoming to a Thai village, where he and his wife spent fourteen months conducting ethnographic research. In this account, Moerman described the individuals, languages spoken (Lue, Yuan, Siamese) and the speakers' competency levels, turn-taking practices, political undercurrents, lexical choices made by different people, as well as reflected on his personal reaction to these events. Rather than talk *about* language, Moerman used language to examine issues such as power, economics, social practices, etc., that become evident when we look at the language used. In essence, looking at applied language is a tool to get at deeper social and political concerns (Ten Have, 1999).

2.2.3 Adjacency Pairs

As demonstrated in the previous section on Conversational Analysis (CA), the strength of such an approach is the ability for a researcher to look at language at a highly detailed level. Even within CA, particular speech patterns can be further segmented and examined. Isolating adjacency pairs, couplets of two-line speech, allows researchers to look at turn-taking practices, greetings, as well as other speech practices. For example,

when a police officer asks whether a suspect understands his or her Miranda warnings (Question A) and the individual responds (Response A) are one type of adjacency pair. Since the nature of interaction in legal settings is question-answer form, it is logical to look at adjacency pairs, “as single stimulus-plus-response sequence by the participants” (Crystal, 1997, p. 8). These pairings are commonly found in greetings, sustaining, and closing conversation.

Adjacency pairs were first introduced by Sacks, Schegloff, and Jefferson (1974) in their seminal work on turn-taking patterns in conversations. They included elements such as turn order (who goes first, second, etc.), turn size (how long each speaker talks), overlaps, and turn constructional units (unit types, i.e. single word versus sentence responses) as valuable pieces in understanding how conversation is patterned. Turn-taking construction only identifies patterns of speech, but does not delve into other sociocultural issues. Sacks, Schegloff, and Jefferson acknowledge these constraints when stating, “By contrast with [*sic*] other speech-exchange systems, the turn-taking organization for conversation makes no provision for the content of any turn, nor does it constrain what is (to be) done in any turn” (p. 710). In other words, content is outside the scope of this type of examination. However, in Levinson’s (1983) highly detailed account of conversational structure, he views the limited scope as a strength. He writes, “the procedures employed have already proved themselves capable of yielding by far the most substantial insights that have yet been gained into the organization of conversation” (p. 287).

While the original intent of this type of construction is to formulate alternating patterns of interchange, more recent approaches include content and other sociocultural factors that influence utterances. What we are left with is the ability to isolate small passages of conversation, position them in a structural framework, and then consider them in broader social contexts. Combining turn-taking organizations, as one subset of the greater Conversational Analysis approach, with other Discourse Analysis approaches, which consider sociocultural influences, rounds out the picture of all of the factors which affect conversation.

By presenting three varying modes of inquiry, the diversity in theoretical approaches has been established. In sum, these approaches look at interpretation, intent, embedded information and meaning, initiation-reply sequences, turn-taking patterns, as well as other features. With these theoretical frameworks in mind, it is now time to turn to individual cases and see how some of these aspects are present in forensic linguistic cases.

2.3 Linguists as Expert Witnesses – What do they Look at?

Forensic Linguists are slowly inching their way toward being received as valuable members of the legal community. There is much resistance on the part of lawyers and judges alike. However, strides are being made as lay persons are introduced to forensic linguistics and realize the value of the insights gained by conducting a detailed linguistic analysis (Baldwin, 1994; Gibbons, 1995; McMenamin, 2002; Shuy, 1998). Until now, this field has been viewed as abstract and vague. Language, many laypersons believe, is

unique, fluid, and impossible to organize into categories. Hence, testimony by linguists has been dismissed as unsubstantiated.

However, not all are opposed to the use of linguistic evidence. Some lawyers and judges recognize this kind of testimony can serve as a valuable tool in determining truth. The following discussion addresses some of the ways linguistics look at language and how these findings are presented in court. Drawing on one another's studies and building a pool of forensic linguistic cases adds credence to this field. In order to gain recognition of the value of linguistic analysis, it is imperative that researchers conduct thorough and methodical analyses of these situations. Not only will forensic linguists gain exposure, but the sheer number of cases will strengthen credibility. The work of a range of researchers (Berk-Seligson, 2002; Bernstein, 2002; Eades, 1996, 2000; Gibbons, 1996; González, 2002; Hill, 2003; Labov, 1997, 1998; Shuy, 1993, 1998a, 2001; Solan, 2002; Wodak-Engel, 1984) will serve as examples of how this kind of work may be conducted. While their cases differed by project, some of the elements of speech overlapped. Interview practices, declaratives, speech acts, linguistic complexity, and socio-cultural influences were focal points of their research.

2.3.1 Interviews versus Interrogations

Ideally, police inquiries are conducted in order to elicit information helpful to a police investigation (Shuy, 1998, p. 13). Typically, these are face-to-face interviews held between a representative of the police force, usually an officer or detective, and an individual. Sometimes legal council is present, but this may not always be the case. The

individual present at the inquiry may or may not be suspected of committing any sort of crime. Rather, they are believed to have some level of involvement with the situation under inquiry. The degree of involvement may range from a witness-observer, someone with supporting background knowledge, to those parties with first hand knowledge of details of the alleged criminal or civil activity.

These interviews interest forensic linguists in that they isolate exchanges between law enforcement officials and individuals. Clear power differentials exist in these types of encounters. Not only are the dynamics of these exchanges full of rich information for Critical Discourse Analysts who are interested in power, but they demonstrate the kind of cause-and-effect results which are directly based in the form the questions take. The questions-response pattern appeals to those investigating adjacency pairs. As will be demonstrated in the following section, the way in which a question is posed greatly influences the kind of response given. Further, these exchanges are classified as either an interrogation or an interview, depending on the tone and language used during the exchange.

The term for an inquiry meeting between police and subject is *interrogation* (Shuy, 1998). However, some members of the legal community consider this word to carry with it a negative connotation. Instead, they prefer the term *interview*, which has a more positive, even pleasant, connotation. Interrogations are usually carried out by law enforcement officers. Interviews, on the other hand, are conducted by journalists, employers, and other members of mainstream society.

Given the different nature of these two terms, Shuy (1998a) calls for clarification between them. He notes that a fundamental difference between an interrogation and interview is that a strong power differential exists between parties involved in an interrogation. He uses the terms “challenge, warn, accuse, deny, and complain” to characterize an interrogation (p. 13).

Rather than pose open-ended questions which may bring forth valuable information, interrogations frequently challenge the suspect with questions such as “You did it, didn’t you?” or “You were there, weren’t you?” Tag questions, such as these, function to make a claim (“You did it”) followed by an invitation to agree (“didn’t you?”). The underlying message in these questions is that the police already know the truth and the suspect need only confess. Celce-Murcia describes a tag-question as “something is being asserted to which the listener is invited to respond” in a positive way (1999, p. 261). However, *invited* may be too soft a description in this situation. Instead, *expected* might be a closer fit. The power differential is nearly absolute as law enforcement holds the knowledge (or so it seems from this line of questioning) as well as the authority to detain the suspect, if they so desire. The suspect is placed in a subordinate position of anticipated compliance. If suspects do not comply and agree to the claim made in the statement, they appear resistant and uncooperative (Eades, 2000; González, 2002).

Conversely, the goal of an interview is to voluntarily elicit information from the interviewee. A successful interviewer will encourage the other party to voluntarily share as much information as possible. The person asking questions appears genuinely

interested in the other party's response and, in doing so, creates a feeling of trust and respect. The interviewer's task is to draw out information; in turn, the interviewee's job is to provide information. In this context, more is better. The better job the interviewer does, the more information the interviewee will share. This places the two participants on equal footing in that each party is responsible for a successful outcome, thereby equalizing any power differential. In fact, the interview itself is thought of as a collaborative project.

Rather than forcibly obtain information, an interview "probes, but does not cross-examine. It inquires but does not challenge. It suggests rather than demands. It uncovers rather than traps. It guides but does not dominate" (Shuy, 1998a, p. 12). These qualities, he argues, are an effective method to extract valuable information from another party.

Shuy further subdivides interviews into four subcategories: information interview, elicitation interview, assessment interview, and persuasion interview. The *information interview* is to "find out things that are not known by the interviewer" (p. 13). Journalistic interviews fall under this category. The purpose of an information interview is to collect opinions, facts, and knowledge from the other party. The purpose of *elicitation interview* is to draw out a pre-desired answer from the interviewee. This is a common interview type employed by linguists. For example, Labov's (1997) early work on social stratification as evidenced by shoppers' pronunciation of /r/ exemplifies this kind of elicitation interview. The anticipated outcome is not to gain access to new information, but rather to confirm what the investigator – whether that person is a linguist or a police officer – already expects. The *assessment interview* is commonly used in employment situations. In this setting, the interviewer's job is to judge whether a candidate is

potentially a good fit when compared to preexisting criteria. A *persuasion interview* is a rhetorical one because the goal is to change someone's opinion or beliefs. This technique is used by religious members who canvass neighborhoods looking for converts. Although Shuy includes persuasion interviews as one interview type, he cautions they are little more than "hidden persuasion devices" (p. 14).

Two of the aforementioned interview types, *information interviews* and *persuasive interviews*, may be found in legal settings. The ideal, of course, is the information interview wherein the suspect shares information with the examiner. As will be discussed in the following section, an effective information interview will provide sufficient opportunities for the interviewee to provide a thorough and accurate account of the facts. Persuasive interviews may be used when the interviewee is hesitant in providing information. In these cases, the task of the examiner is to convince the other party to act in law enforcement's behalf. Interviewers must overcome the interviewee's belief that it is better to remain quiet, protect others, or resist cooperation than work in unison with the police. As will be discussed in the following section, asking the right questions in an atmosphere of mutual respect leads to starkly different outcomes than interviews conducted in a domineering, forceful setting.

2.3.1.1 Interview Techniques

Detectives would agree that insights gained during the interview process provide invaluable information which may not otherwise have been made available during an

investigation. The key to obtaining such information is working effectively with suspects, informants, and others who have relevant information regarding a case. Effective interviewing techniques are crucial as many of the forensic linguistic cases center around the question of forced or coerced confessions. Ineffective interview techniques, on the other hand, can be detrimental to seeking a clear and comprehensive understanding of events. Restricting the manner in which witnesses testify serves to stifle potentially valuable testimony. In addition, a lack of preparation on the investigator's part weakens the productivity of an investigative interview.

2.3.1.2 Effective Interview Techniques

While an interview setting is the ideal place to gather information from a witness or suspect, adopting an effective strategy during this process is vital to the success of the interview. Shuy (1998a) drew on the case of *United States v. Pamela Gardner* (pseudonym) to demonstrate how this process works. He commended Officers Corboy and Whalen for their controlled and methodical approach to three interviews conducted with their suspect, Pamela Gardner. In short, it was suspected that she had some involvement with the killings of her male friend, with whom she had a platonic relationship, and his girlfriend. Shuy accounts for the success of these interviews in two ways: questions patterns and diminished power asymmetry.

Shuy proposes a four-stage inquiry pattern to use during interviews: 1) ask open-ended questions, 2) ask wh- questions, 3) probe with yes-no questions, 4) repeat the cycle with another open-ended question.

All cycles of inquiry should begin with an open-ended question. Open-ended questions invite a speaker to explain events, develop a more detailed account, and expand as he or she wishes. In addition, this allows suspects to “self-generate” guilt (p. 185). Inherent in this term is the presumption that the suspect is guilty. Perhaps an appropriate modification is a “self-generate(d) account” of events. However, the idea here is that interviewees create their own narrative, therein providing investigators with rich sources of information. If the questioning is highly controlled, then no opportunity is provided for suspects to elaborate. When the suspect is allowed to introduce topics throughout an interview, then new areas for consideration are introduced. These new topics may never have been thought of as possible areas of exploration by the interviewers.

During this initial period of the questioning cycle, Shuy cautions interviewers to be attentive listeners. Any slight token of acknowledgement, such as “un-huh” or “I see” is sufficient to keep a person talking. These feedback markers demonstrate polite interest and invites the speaker to continue talking. This is in keeping with what many would classify as the goal of a good interview. When the speaker has ceased talking, Shuy advises that a brief period of silence follow. He notes that:

Silence is the interviewer’s ally. This is because people, Americans in particular, abhor a silence and tend to fill it up whenever it occurs. A 3-second pause in a conversation seems deadly, and people tend to feel uncomfortable unless something is being said (p. 182).

After the suspect has had sufficient time to produce a narrative, then the investigators should shift to Wh-questions. Asking who, what, when, where, why, and how give the

police the opportunity to fill in details not accounted for in the initial telling of the story. Additionally, points, which were previously unclear, can be clarified during this stage. Since the interviewee is still offering and elaborating on information, the amount of acquired knowledge grows.

When any ambiguous points have been cleared up, then the focus narrows to yes-no questions. Had these been posed at the earlier stages of the interview process, they would have hindered gathering important information. Since sufficient time has been provided for answering open-ended questions as well as clarifying points with the wh-questions, it is appropriate to ask more limiting yes-no questions at this later phase. When all three types of questions have been sufficiently answered, then the cycle can begin again about a subsequent topic.

When reviewing a case, linguists may choose to examine the number and type of questions being asked. Using Detectives Corboy and Whalen's questions as an example, their effectiveness can be demonstrated by tabulating the questions they posed (Shuy, 1998a, p. 177). The results are as follows:

Table 1. Summary of Question Types in United States v. Gardner

Interview	Open-Ended	Wh-	Yes-No	Multiple Choice	Tag
1	10	143	80	2	1
2	12	54	50	3	1
3	7	36	38	1	0
Totals	29	233	168	6	2

It is evident from the above table that virtually all of their questions were of the types considered effective in conducting a solid interview. Note that Shuy does not recommend eliminating other types of questions, such as multiple choice and tag questions, altogether. Instead, he suggests that these not form the primary source of questions. They are helpful in clarifying and confirming previously identified information.

The second primary strategy in creating an effective interview is to diminish the power asymmetry. The only way to accomplish this is for the officer to surrender some authority. There is little doubt that, “Although ... the person who asks the questions exerts certain power over the person who is to answer them, the police officer must suspend such power to achieve the goal of conversational style in the interview” (Shuy, 1998a, p. 180). In the Gardner case, Shuy found that the detectives consciously shifted some of their power over to their suspect. They did this in several ways. First, they treated the suspect with complete respect and acknowledged her fears and concerns. Rather than disregarding her cares, Corboy commiserates with her saying, “I know that you’re afraid. And, who knows, when a person is afraid, they obviously make the wrong decisions” (p. 180). Shuy notes that this tactic was used even when it had become apparent that she had been lying. In other words, investigators should follow these guidelines regardless of how the interview is progressing. It served these detectives well as more clues to her guilt unfolded as the interview continued.

Second, Corboy apologized for asking potentially embarrassing questions of Gardner. When he had to establish whether the suspect had a sexual relationship with another defendant, he said, “I don’t mean to pry, but I’m just asking” (ibid). This simple

act of recognizing that some topics may be uncomfortable for an individual to discuss reinforces the investigator's view of the suspect as worthy of respect. It may set the interviewee slightly more at ease and put them in a more cooperative frame of mind.

Shuy likens this kind of humility to other well-known figures, like Columbo and Sam Ervin. Columbo, the television detective, is known for his bumbling mannerisms. He most certainly uses this to his advantage as his suspects let their guards down. Of course, the audience knows that behind Columbo's awkward façade is a calculating mind. Senator Sam Erwin of Watergate fame is known for his laid-back style and gentle demeanor, even referring to himself as "just a country lawyer". While these men, as well as Detectives Corboy and Whalen, appear kind-hearted, no one questions their professional capabilities. Instead, it is their approach that enhances their performance.

2.3.1.3 Ineffective Interview Techniques

While the preceding discussion on effective interview techniques addresses how best to conduct an interview, it does not take into account any socio-cultural factors which may inhibit a productive questioning session. Differences in sociocultural practices become evident in courtroom transcripts where the witness is not of the same cultural or linguistic background as the lawyer. Eades' (2000) work on Australian Aboriginal testimony sheds light on how adopting certain practices stifles witness testimony. Her studies center around Aboriginal testimony in a New South Wales courtroom over a two-year period. The selected cases served as prime examples of mis-communication between

Anglo judges and lawyers (there are only a handful of Aboriginal legal professionals in the whole country) and Aboriginal witnesses.

She argues that limited questions forms, metalinguistic comments, and interruptions all serve to silence witnesses. Under the best circumstances, a kind of ‘evidentiary harmony’ is achieved as legal council and the witness jointly construct a valid recollection of events. This term conveys the importance of mutual respect because it is far more difficult to draw out the information the witness has to share with the court if the defense council and crown (prosecution) do not respect witnesses and/or their testimony. Evidentiary harmony benefits all parties because, “witnesses harmonize with their lawyers’ control over the narrative, elaborating when required, confirming or disconfirming propositions, and generally not disrupting the pace of the narrative as controlled by the attorney” (p. 170). Sadly, even the defendant’s own council, whose job it is to aid the accused, partakes in these kinds of behaviors.

Stylistics are culturally bound, as with direct and indirect question forms. Australian Anglos use a direct approach which presumes that repeated inquiries are most fruitful, producing the best and greatest amount of data. Not all cultures appreciate such an overt line of questioning. Others, like the Aboriginals, prefer a less direct approach. These different assumptions may lead to awkward and ineffective periods of questioning in the courtroom. This work demonstrates how non-native speakers negotiate in the justice system. Eades noted, “The Anglo assumption is that information is best sought by repeated asking of questions is central to the legal process....where the language spoken is Aboriginal English...important information is generally sought through less direct

means” (p. 163). If the examiner is not sensitive to such cultural differences, then valuable testimony may never be heard.

Eades findings that most Anglo lawyers use direct, limited question forms findings concur with Shuy’s (1998a) belief that these produce little in the way of rich narrative. In both studies, there were countless examples of times when many of the questions were presented in a concise form. First, an inherent problem with such questions is that they only require minimal answers. Elaboration only occurs if the lawyer provides follow-up questions that seek to delve into greater detail. If not, the witness is given virtually no opportunity to state his or her position.

Given that the goal of judicial interviews is to elicit information, the most productive modes of questioning should be used. These questions should provide a respondent with an opportunity to provide an extensive answer to a question. When yes-no questions are posed, witnesses are denied the opportunity to fully develop his or her version of events². Since a yes-no response does nothing more than confirm or refute what the examiner stated, witnesses are barred from contributing their story. This means that a full story is never developed. Only a sketchy, pared down version is elicited. Further, information is contained in the question rather than in the answer. The purpose of asking any question is to provide additional information. Yes-no questions only serve to confirm or refute the information offered. Since the opportunity for expansion is not provided to a witness, the result is that the story is constructed by the lawyer, not the witness. If the lawyer deems information relevant, then it is included. If not, it is omitted.

² While some witnesses may intentionally withhold information or give false testimony, Eades argument is that the laws should accommodate the rights of all witnesses.

What listeners are left with is an edited version. Not only is the witness denied the opportunity to generate more information, but the judge and jury are left without benefit of information that could help inform their decision.

Since the jurors' role is of 'non-speaking hearers' (Drew, as cited in Eades, 2000, p. 166), they rely on the lawyer to present as much information as possible for them to consider. This means that the lawyer's poor job of questioning witnesses proves a disservice not only to the witness, but the judge and members of the jury as well. More importantly, witnesses are silenced because they are not permitted to tell their version of events and, worse, the bits of their story that are shared with the court are offered by the lawyer, not them.

All yes-not questions need not be off limits to lawyers. Eades noted that, when formulated effectively, they serve to confirm information and allow witnesses to expand on their answers. She cites an example where just this kind of situation existed. At a sentencing hearing, a witness who had plead guilty to charges of assault was asked, "And do you tell His Honour that you know you shouldn't - and that you're sorry for having done that" (p. 172). The witness first confirmed that this portrayal was correct. Then, he went on to apologize to the court for his behavior and explain how difficult his struggle with alcohol addiction had been. Not only did the witness get the opportunity to apologize, but, in doing so, he established some kind of rapport with the judge. His testimony became a personal extension of himself. This helped his defense attorney who was asking the judge to consider a rehabilitation plan rather than incarceration.

Sometimes difficulties exist even when witnesses are given a chance to speak. Eades found that the metalinguistic comments made by lawyers and judges about the witnesses' testimony were derogatory and only served as another method of discounting and silencing witnesses. In one case, an Aboriginal woman, charged with assault, was asked if she stayed away from the home of the other party involved in the brawl. Her answer was crucial because the court wanted to confirm that she had maintained the mandated distance from the other party involved in the assault. In her answer, she talked about east and west regions of her reservation. Frustrated, the judge scolded, "I don't think that's an answer" (p. 175). He was insensitive to how she constructed her concepts of distance and residence. The Anglo judge expected an answer related to divisional markers common to his framework, such as separate neighborhoods and different houses. However, the witness attempted to explain that life on the reservation operated differently. She lived on the reservation, but the other person did not. Life necessitated that the other party come on to the reservation for varied reasons. Therefore, even though the witness did not seek out the other person, it was inevitable that they run into one another occasionally. Unfortunately, this witness was not allowed to explain her circumstances. Instead, her testimony was dismissed as 'not an answer'. Since her testimony was rejected, she lost the opportunity to explain how cultural differences account for her behavior.

Sadly, even defense lawyers may partake in behaviors detrimental to their client's well-being. In the following case, the defense attorney silenced his witness by interrupting her testimony and taking over telling her story. Eades documented the case

of a Mrs. Walsh, a woman who, previously in trouble with the law, had established a legal service center in her community. When asked about the center, she stumbled in her explanation. During the questioning, she found it difficult to explain how someone with a criminal records could open up such a facility. In Walsh's community, rehabilitated individuals were considered uniquely qualified to operate these kinds of support services. The judge failed to grasp this idea and presumed that Walsh's testimony was somehow lacking in coherence. Rather than rewording or repeating the questions, the defense council took it upon himself to take over her explanation. He told the judge, "I might be able to assist Your Honour – um – I have been able to cut through some of this and...It will come out more coherently perhaps" (p. 183). The judge not only allowed this to occur, but never consulted the witness whether she would agree to another party telling her story. Instead, he told her, " Well you – you listen and Mr. Thompson will tell you what he thinks of the facts and you tell us whether that's right or not" (p. 183). The witness' subsequent testimony consisted of responding to a series of yes-no questions. Her voice had effectively been silenced or as Eades describes, her story had been "hijacked" (p. 185). Although Mrs. Walsh remained on the stand, her version was no longer considered worthy. She was not able to carry out her role as witness as it had been subsumed by her lawyer. One might argue that her attorney was only trying to salvage her testimony. But since she and the lawyer did not share similar cultural backgrounds, he may not have been adequately qualified to convey her version.

While only excerpts were included in Eades article, it would be interesting to ask whether, at the end of the series of yes-no questions, the witness were asked if there were

anything else she would like to add. After being humiliated and silenced earlier, it is doubtful that she would have even attempted to add more.

These kinds of issues warrant firm and comprehensive mandates regarding what can and cannot be done during police inquiries, as well as in courtroom testimony. Baldwin (1994) calls for such measures as a result of several years of research into this subject. He asserts that police ineptitude accounts for such poorly run examinations. He found that preconceived notions about a suspect's guilt tainted investigations. Instead of hearing what an individual had to offer by way of explanations, in many cases, the investigation was conducted under the assumption that the party was guilty. At times, this may hold true. However, the goal of the interview is to gather information, not prove a person's guilt. That is the function of the court system.

Lack of preparedness by the detectives was also evident in some of the cases. Baldwin noted that some of the investigating officers had not even read the written statements prior to entering the investigation room. This required that they spend quite a bit of time looking through the documents rather than at the suspect. In addition to giving the appearance of unprofessionalism, the officers lost out on the opportunity to observe the suspect's body language. Information conveyed through posture, eye movements, and facial expression went unnoticed.

The United Kingdom's Royal Commission (where Baldwin has conducted much of his research) recognizes that conduct by some of its police officers needs to be curtailed, but surprisingly little is stated in the Code of Conduct about what officers may or may not do. He notes that no guidelines exist about whether an investigating officer

may shout or swear at a suspect. Additionally, no rules of conduct address whether officers are permitted to intentionally lie or mislead a suspect. At present, this is permissible. At times, a suspect may choose to maintain silence. Yet, the rules of conduct are unclear as to whether that silence should be respected and, if not, how much pressure may be exerted to break the silence. Additionally, no guidelines exist as to how long the suspect can be kept in an interrogation room sitting in silence. Baldwin notes that, “Officers have at present no firm guidance on whether they can relentlessly fire questions at a silent suspect without the interview becoming oppressive” (p. 70). The absence of guidelines create an environment in which shouting, swearing, and actively attempting to break an individual’s silence are all permissible.

One would hope that the suspect’s lawyer would, first, be present and, second, step in to stop such inappropriate interrogations. But since the rules remain vague, there is little that attorneys can do. If, at present, no one is able to define when an investigator crosses the line from appropriate to inappropriate behavior, then swearing, shouting, and breaking a suspect’s silence will continue. If the code were in place, then those rules and regulations would serve as a sort of neutral presence in that each party would know what those boundaries were. This might alleviate some of the adversarial dynamics present in these settings.

Even with such vague guidelines, the defendant’s council should be expected to intervene on their client’s behalf. However, Baldwin saw little of this during his time at the courts. In fact, he found that the lawyers helped the investigators more than they did their own client. When he reviewed the videotapes, he was surprised to see that a

question, one that would logically be asked by the police, was in fact posed by the defense council. Worse, he observed that, “[t]he videotapes also occasionally show conspiratorial glances being exchanged between police interviewers and legal advisers, and there was even one case in which the interviewer thanked the lawyer on tape for his assistance” (p. 73). He accounted for this situation by suggesting that it was both an economic as well as a legal issue. Since defense lawyers earn relatively little monetary compensation for working on public cases, lesser qualified junior lawyers are sent to these appointments. Upon their arrival, they are met with highly experienced police detectives who have years of experience in such settings. This leaves the suspect in the hands of a novice attorney who may inadvertently follow the more experienced party’s lead. This imbalance in experience made Baldwin question if the suspect may be better off without any legal council at all. In his report to the Royal Commission, Baldwin noted fifteen cases where the attorney sat in silence during periods one would expect some sort of intervention.

The role of the attorney is a trick one. Lawyers are torn between silently monitoring the interview or objecting throughout the process. Neither extreme is favorable. At times, remaining silent and letting the suspect speak works to the client’s advantage. Even if he or she admits guilt, this may still work in favor of the client. Acknowledging wrongdoing saves the court the burden of going to trial and, as a result, the suspect typically receives a lighter sentence. In situations of abusive practices, it is highly appropriate for the lawyers to interject and confront unprofessional practices.

2.3.2 The Syntactic Complexity of a ‘Simplistic’ Declarative

One of the preliminary obligations of someone filing bankruptcy is to notify any and all creditors of the forthcoming (partial or full) discharge of debts. After creditors have been notified, it is their responsibility to file their request with the court to receive any remaining distributable funds. Notification may be oral and/or written. Additionally, filing must occur in a timely fashion, 60 days in U.S. courts. Logic tells us that written notification alleviates some issues of ‘he said; she said’ found in disputes over oral notification. While disagreement may exist over the meaning of the written text, at least there is a physical document which can be used for subsequent reference.

In the case of one U.S. bankruptcy case, Bernstein’s (2002) found that a misinterpretation of the phrase “I go bankrupt” led to one creditor nearly being short changed out of what was legally due to him. The case centered around two long time friends and business associates, Kim, a Korean immigrant who was owed \$3.2 million and Dunning, the bankruptcy petitioner. Kim filed an appeal with the bankruptcy court claiming that he had not been notified by Dunning of his intent to discharge his outstanding debts. Dunning countered that he had verbally informed Kim of his plans. Since the allotted 60-day period had passed, this case was heard as a formal securities arbitration proceeding.

The two parties had differing recollections of how the notification did (or did not) occur. Kim recalled that during a phone conversation Dunning had told him “I go bankrupt”. The subject of bankruptcy had come up in conversation on several occasions over the previous months and Kim attributed this latest comment to Dunning’s resistance

to repay the money. Kim considered it a stalling tactic used in everyday business negotiations and was in no way out of the ordinary. Overall, their business and personal relationships was an amicable one, so this comment appeared to be little more than grumbling over tight financial times.

To understand how Kim interpreted the phrase “I go bankrupt”, the court considered all the possible interpretations in Kim’s idiolect. To accomplish this, they presented him with a series of statements regarding bankruptcy and asked whether the event had occurred or not. It is important to note that all proceedings were conducted in English and Kim received no assistance from a Korean-speaking interpreter. No mention was made in the legal filings that Kim had a limited proficiency in English. Nevertheless, the court did attempt to determine his level of understanding. His responses indicate that multiple interpretations were possible. For him, this phrase could mean, “‘I [may] go bankrupt [at some future point in time, but then again I may not]’ or ‘I [am still considering whether to] go bankrupt, [but then again I may change my plans and once again decide not to go bankrupt]’” (p. 218). These interpretations are all possibilities, not finalities. For Kim, an interpretation of a completed act was not among his possible scenarios.

Dunning’s version was that he told Kim “I filed for bankruptcy”. The verb ‘filed’ leaves little uncertainty of Dunning’s act. The verb ‘filed’ implies taking some sort of administrative action, such as filing for divorce. Additionally, the past tense conveys that this event has already occurred. Even Kim conceded that he would have clearly understood the meaning of this sentence.

Not only does Dunning offer a different version of what may have been uttered, but he strongly refutes Kim's recollection ("I go bankrupt") as highly unlikely. The defense lawyers argued that no native English speaker would utter such a sentence. First, the present tense construction of the verb 'go' does not fit with the completed action. Had Dunning used the verb *go*, he may have informed Kim "I went bankrupt" or "I've gone bankrupt". However, this implies that the outcome of the bankruptcy petition had been completed. At the time of the conversation, Kim's deadline had passed by six weeks, but Dunning's case was still open in the court system. Since the case was still open, he may have said, "I'm going bankrupt". However, Kim maintained that his recollection was correct.

The case was decided on three statements made by Dunning. When asked how Dunning informed Kim that he had filed for bankruptcy, he testified that during a phone conversation he said, "I can't meet you for dinner. I was advised by my attorney not to. That I've filed for bankruptcy. And I'm not obligated to pay you [sic] the money that I owe you [sic]" (p. 221). When asked to clarify this point he stated, "...[H]e mentioned to me about getting the money back....And I said that I filed for bankruptcy, I don't have to pay this money back" (p. 221). Both of these statements support Dunning's claim that Kim understood that the action was a completed one and it in no way referred to a possible outcome. However, Dunning contradicted this position when Kim's attorneys asked how Dunning's conversations with Kim about bankruptcy differed over the course of their business relationship. He replied, "I specifically told him that I filed bankruptcy, not that I was thinking about it, but that I filed it" (p. 224). This statement was Dunning's

undoing because it supported Kim's claim that their discussions regarding bankruptcy had been hypothetical ones. Since it was Dunning's responsibility to ensure that Kim was made aware of the change in legal status, he was required to, as Austin (1962) says, "secure the uptake". Dunning failed to do so and the courts decided in favor of Kim.

2.3.3 The Speech Act of Confessing

There is hardly a more convincing document to implicate an individual's guilt than a confession. In most interrogations of prime suspects, obtaining a confession is the foremost goal of the police. Without such a confession, detectives rely on external sources such as the coroner's office, eyewitness accounts, or other corroborating sources. While these are valuable resources in solving crimes, each party may be able to provide only a piece of the whole picture. However, when a criminal confesses, the police secure a first hand account of events. This narrative is then used at trial and, nearly always, guarantees a conviction.

Crucial to an informative confession is the suspect's *original* contribution to the account. Although the perpetrator acts as the creator of the confession, the two are separate entities. In order for the confession to be 'pure' it mustn't be helped along by others other than the criminal. The confessor should serve as the primary raconteur. Ideally, the suspect provides an account of events and periodic questions, posed by detectives, follow. But this scenario does not always appear in cases of confessions. At times, the police offer their version of how they believe events took place and the suspect is only asked to agree or disagree.

In a case involving a young Arkansas man, Hill (2003) found that the suspect's confession was created nearly entirely by police officers. At trial, the prosecution used Misskelley's 'confession' as the basis for their case while the defense argued that the confession was fabricated to some degree because it was coerced. This was problematic on two counts. First, it appears that Jessie Misskelley, the suspect, admitted limited culpability but not guilty knowledge of all of the criminal acts involved. Second, the suspect had an IQ of 72. Given his limited mental capacity, one might suspect that he could be easily manipulated, even convinced of events which never happened. At trial, Misskelley's council claimed that the confession was coerced and that it contained major inconsistencies and discrepancies.

The case involved the rape, beating, and murder of three eight-year-old boys. While Misskelley admitted being present while the boys were being beaten, he maintains that he left before the rapes and murders occurred. Forensic Linguist Hill scrutinized Misskelley's confession to formulate question and answer patterns. He isolated four topics for examination: the location of the crime, the time of the crime, aspects related to violence, and aspects related to rape and restraint.

Misskelley incorrectly described the wooded area where the crime occurred. He stated that entrance and exit points existed when they did not. He was unsure if he could see the victims approach on their bikes. In fact, the only details offered by Misskelley were that the bank had a 'top' and a 'bottom'. This simplistic description is consistent with his cognitive constraints. On the other hand, the police introduced descriptions of the crime scene, including the size of the creek, landmarks, surrounding houses, the field,

the bayou, and other orienting features. Investigators' notes indicated that initially Misskelley stated he had been nearby, but denied being at the crime scene. His account vacillated between denial, partial agreement, and offering incorrect information.

In contrast to his scant testimony about the location, Miskelley offered plenty of details regarding the time the crimes were committed. Unfortunately, few of the times he mentioned actually fit with the timeframe of the rapes and murders. Times ranges from 9 a.m., 9 p.m., early in the morning, about noon, when it was getting dark, or at night. Even when the investigators suggested implausible options, he agreed every time. While prosecutors selected passages from the interrogation which supported reconstructed events, numerous excerpts existed which did not suggest Misskelley clearly recalled times.

Further inconsistencies are found in the suspect's testimony regarding acts of violence. While the coroner determined that the boys' deaths were the result of stabbing and drowning, Misskelley attributed their deaths to "a big old stick" (p. 35), a gun, and hands, none of which appear to have been used. No traces of bark or splinters were discovered on the bodies nor were any bullet holes found. His story changed after police suggested that knives, a belt, or water were other possible weapons. As with other topics, he agreed with other variations offered by police. Hill noted that Misskelley may also have been influenced by the crime scene photos. After he had been shown a photo in which one of the boy's face had been cut, he agreed that knives had been used. When asked about genital mutilation, he explained that one of the other suspects had cut him 'at

the bottom'. However, he described the victim as lying face down, again inconsistent with events.

As with the other topics, inconsistencies were found when Misskelley discussed how the victims were physically restrained. Although he offered graphic details, they were not correct. For example, he stated that brown rope was used rather than the shoelaces found on the bodies. He also explained that the boys could not run away because their hands were tied. The victims were found hog-tied, yet no mention is made of bound feet or legs. Other comments regarding restraint during the rapes were also inconsistent. Although Miskelley did get some of the facts correct, such as "they knocked them down" (p. 39), these similarities were few in number and were to be anticipated given a struggle.

Taken as a whole, Hill argues that Miskelley's confession was coerced. This argument rests on the fact that the suspect offered few original details and the ones he did provide were incorrect. Hill notes, "It is proposed that by identifying the source and degree of provision of key details it will be possible to determine whether the suspect has displayed guilty knowledge. In turn, this guilty knowledge is powerful confirmation of actual guilt" (p. 40). While Hill acknowledges that at times it is appropriate for interrogators to introduce topics, the primary responsibility lies with the confessor. Only then, is his or her confession unquestionably an admission of guilt.

This case exemplifies that there was a marked difference between the detective's illocutionary act of questioning (Searle's category #3) and the perlocutionary effect on the suspect. The police's goal does not appear to match Searle's sincerity test that the

goal of asking a question is that the “S[peaker] wants this information” (p. 66). The police already had the information they believed to be true and wanted Miskelley to confirm their position, it would appear whether or not the facts were true.

Some of Miskelley’s statements also violate the truth condition of constative utterances. For example, when statements regarding the time of the crime and many of the times did not coincide with the actual time frame, he made false statements. It would appear that Searle’s categories could be augmented by the addition of *cooperate*. For Miskelley, who could hardly match wits with experienced detectives, these false statements may also function as performative statements in that by cooperating with police, Miskelley is confessing his part in the crime.

The jury believed the confession to be valid and sentenced Misskelley to life in prison plus 40 years. While Hill’s analysis was not successful in gaining a lesser verdict for his client, Hill hopes that this type of work “presented here is a systematic means of analyzing the information in confessional interrogations so as to determine what was said, by whom, and with what degree of prompting” (p. 41).

2.3.4 The Speech Act of Deceiving

The 1990’s saw no greater scandal than the Clinton-Lewinsky affair. Round the clock coverage inundated television viewers with sordid details of their relationship. In short, former President Clinton engaged in an affair with White House Intern Monica Lewinsky. Lewinsky shared details of the relationship with her friend, Linda Tripp. Unbeknownst to Lewinsky, Tripp secretly recorded the telephone conversations and

eventually turned them over to special counsel Kenneth Starr. Starr had been investigating Clinton's involvement in the Whitewater real estate venture; however, Starr was unsuccessful in proving wrongdoing on Clinton's part. With tapes in hand, Starr assisted investigators working on another Clinton case involving Paula Jones. Jones accused Clinton of sexually harassing her during his time as Governor of Arkansas. Although Starr's leads in the Whitewater case had dwindled, he broadened the scope of his investigation to include Clinton's testimony in the Jones deposition. Starr suspected Clinton may have made false statements which would have constituted perjury.

When Clinton arrived at the Jones' hearing, he was unaware that investigators were aware of his relationship with Lewinsky. Instead of asking questions about Jones, as Clinton would have expected, most of the questions were about Lewinsky. Caught off-guard, Clinton had no time to prepare his answers for this kind of questioning. During the Jones deposition, he denied having a relationship with Lewinsky. The veracity of his statements would later come into question.

Later at the Grand Jury hearing, Clinton was asked if the statements (his and Lewinsky's) were false. Clinton denied that he had answered untruthfully. Additionally, he argued that he was under no obligation to correct his attorney's incorrect statement that, "Ms. Lewinsky has filed ...an affidavit ... saying that there is absolutely no sex of any kind in any manner, shape, or form with President Clinton" (Grand Jury Transcript, cited in Solan, 2002, p. 183). The key word in the preceding statement was *is*. It is used here in the simple present, but several possible interpretations are possible. Two will be considered here. One form of the present tense refers to a habitual action in the present,

such as “I am writing a dissertation”. This implies that the action is happening over time, including, but not necessarily, the present moment. A second alternative is a present event or action. This is an absolute position in that an event is either happening or it’s not. For example, in the sentence “She’s pregnant”, either she’s pregnant or not. There is no in-between state. If a woman wishes to speak of being pregnant before now, the speaker would always use the past tense to express that.

When asked about the veracity of that statement, Clinton hedged, “*It depends on what the meaning of the word ‘is’ is.* If is means is, and never has been, that’s one thing, If it means, there is none, that was a completely true statement” (ibid, italics in cited source, p. 191). Here, Clinton develops a dual interpretation. He offers two readings with differing time frames. He first allows that ‘is’ spans past and present and, therefore, would have included any former liaison with Lewinsky. However, this alternative is not in his favor as it means that Clinton lied. Moreover, he is acutely aware that lying under these circumstances constitutes perjury.

To resolve this time problem, Clinton shifted from the past timeframe to include only the present. This allowed him to state that his denial of a relationship was true in that the affair had ended at the time he gave that answer. Most importantly, in doing so, he saves himself from a perjured testimony.

Although Solan does not include this in his discussion of the Clinton scandal, it is interesting to note that Clinton does not call the first version a lie. Instead, he concedes, “that’s one thing”. He avoided using any derogatory terms such as lie, false claim, untruth, or misrepresentation. Any of these would have reinforced the public’s image of

him as a liar. In contrast, when he discussed his preferred version of 'is', then he called it "a completely true statement". Now instead of a *thing*, his words were a *statement*. Additionally, he fortifies his account with the intensifiers *very* and *completely*.

Many argued that these were slippery tactics. Not only was Clinton was splitting hairs from a linguistic standpoint, but from a legal one as well. He had to position himself as a law-abiding individual as well as try to appease the American public. As a lawyer, Clinton was well aware of what constituted perjury. According to law it is a crime to, "testify under oath to a material matter that the witness does not believe to be true; nothing in the perjury statute requires that a statement be literally false" (Solan, 2002, p. 184). With his legal insight, it would appear that the illocutionary force behind Clinton's initial utterance was to deceive. Otherwise, such manipulations would not have been necessary.

The perlocutionary effect on those present at the deposition and, later, the general public was to understand that no relationship existed, either in the past or in the present. Since Clinton failed in the speech act of deception, his words were an unhappy perlocutionary statement. Simultaneously, it was a false constative statement; however, Clinton and his attorneys may not agree with that representation. The courts, however, found his actions to be deceptive and Clinton was held in contempt with a resulting loss of his license to practice law for a five-year period.

Solan noted how tricky this subject can become. In reviewing the transcripts, he found that when Wisenberg, a lawyer for the prosecution, incorrectly posed the original question to Clinton. He inadvertently recalled the question, "there *was* no sex of any

kind...” (Solan, 2002, p. 191, emphasis added). This slip up caused Solan to conclude, “It is hard to blame Clinton for his legalistic response when the purpose of the questions was to hold him criminally liable for not correcting a truthful statement that someone else made, and which the questioner misquoted” (ibid).

2.3.5 Using Adjacency Pairs to Investigate a Miranda Warning

While looking at paired exchanges of conversation informs our understanding of events, for forensic linguists operating in a legal context, examining the brief passage when a suspect does (or does not) acknowledge their understanding of their Miranda rights is one of the most pivotal moments in a conversation. Many cases focus on whether or not the act of confirming understanding actually happened. A detailed review of only a few lines of text can reveal crucial information.

González’s (2002) case centered around whether a suspect chose to exercise his Miranda rights. As a forensic linguist and bilingual speaker of Spanish, González was asked to determine whether Haron Ontiveros, a suspect and native Spanish speaker with limited English proficiency, agreed that he understood his Miranda rights. More importantly, if Ontiveros declared that he did *not* understand his rights and the interrogation continued, then none of his testimony would be admissible in court. González looked at many factors in the suspect’s speech, such as verb tense, vocabulary, and code switching. One particular passage proved telling that he did not, in fact, grasp all the elements in the Miranda warning (p. 21):

Police: Okay. Why don’t you scoot your chair up? And you can get you a little closer. There you go. Okay. Having in mind and understanding your rights

as I've told you, are you willing to talk to me?

Ontiveros: Si...

Police: Okay. So, you said Si, you mean yes?

Ontiveros: No, I mean, see I don't understand what you said in the last...

Police: Okay. Having in mind and understand your rights as I've told you, are you willing to talk to me?

Ontiveros: Oh, if I understand if I can talk to you without a lawyer?

Police: Yeah.

Ontiveros: Yes.

According to González, the preceding passage clearly demonstrates that Ontiveros did not fully comprehend his rights. He stated that he did not understand what had been said. Both the police officer and, later, the transcriber, interpreted 'Si' as *Sí* (the affirmative 'yes' in Spanish) rather than *See* (a opening marker in English, as in 'See, I don't understand'). If he did not understand his rights, then he could not very well waive them.

The present interpretation of this passage claims that Ontiveros understood only one part of the Miranda warnings. González divides them into four primary messages and categorizes them as, "1) right to remain silent; 2) that anything he says or does will be used against him; 3) right to speak to counsel; 4) the right to have an attorney appointed prior to questioning" (p. 22). It appears that the suspect confused his right to speak to counsel (#3, #4) with his right to remain silent (#1). Later, when interviewed in Spanish, he explained that he believed that cooperation was essential for a favorable outcome. It would reflect poorly on him if he did not speak to the police because it would appear that

he had something to hide. For Ontiveros, opting for silence was not an option. Further, he felt that speaking now rather than waiting for legal counsel to be present would help his case.

Using adjacency pairs helps reconstruct events in even smaller segments. The previous passage can be divided up into four sets of adjacency pairs. First, there is a request for confirmation (“*Are you willing to talk to me?*”) by a hesitant response (“*Si*”). In order for the interview to continue the second part of that coupling **must** have been an affirmative response. Inherent in Ontiveros’ uncertain answer is a request for clarification. This was not forthcoming on the investigator’s part. Instead, the second set of pairs is a request clarification (“*You mean yes?*”) followed by a denial and restatement of confusion (“*No, I mean, see I don’t understand...*”). The wrong party is requesting clarification. Instead of the suspect’s call for further explanation receiving a response, the officer wishes to confirm that he heard an affirmative response. However, the denial and restatement of confusion is not met with further elucidation. Without rephrasing his words into simpler language or adding additional information, which would help the suspect, the investigator simply restated what was said earlier. Nor did the officer appear to acknowledge the previous request. He begins with “Okay.”, a phrase typically used to denote agreement by both parties. The fourth set of adjacency pairs exemplifies Ontiveros’ comprehension of what the Miranda warning means. His interpretation (“*I understand I can talk to you without a lawyer*”) in no way expresses that he understands he may waive his right to silence. Nor does it convey a comprehension of his right to counsel. However, the detective affirms the suspect’s understanding with his response of

“*Yeah*”. This only reinforces Ontiveros’ interpretation that he should cooperate without representation by a defense attorney.

2.3.6 Using Adjacency Pairs to Establish Acceptance of a Bribe

Examining adjacency pairs can demonstrate understandings other than agreement. Shuy (1993) used speaker pairings to show whether two men accused of accepting a bribe did in fact do so. John McNown and John Poli, recently appointed to the Nevada brothel commission, suspected that one of the applicants, Janice (no last name provided), was a member of the mafia. To test their theory, McNown and Poli reasoned that if Janice agreed to their spurious request for a bribe, then they could confirm their suspicions and deny her request for a brothel license. Janice, however, was not part of the mafia. In fact, she was so offended by their request that she immediately contacted the Federal Bureau of Investigation (FBI) to report extortion. Shortly after, the FBI wired Janice and set up a follow-up meeting to conclude the transaction. On every occasion in which money was discussed, it was Janice who initiated the subject. At the end of the meeting, Janice placed an envelope on McNown’s chair and left. Unsure of what to do, he pocketed the money and followed Poli to the parking lot. Poli, unaware any money had been accepted, became irate when he learned what had happened. They turned the car around and returned to the meeting place in hopes of catching Janice and returning the money. Instead, they were met by FBI agents who promptly arrested them. Shuy was asked to determine if a bribe had been accepted. His analysis operates under the premise that in order to accept a bribe two events must occur. First, someone must receive something.

Second, he or she must consent to receive it. The first condition was met. The second was suspect.

In his analysis, Shuy paired Janice's topic introductions with Poli and McNown's responses. The data consisted of the fourteen occasions when Janice brought up the subject of the bribe. Their responses included denial, postponement, perplexity, and silence. There was not one instance when either man gave an affirmative response. When asked if Janice would need to continue paying each year, she was told "No".

Astonishingly, when she complained that the bribe of \$50,000 was too high, she was asked "*Could you put that in writing?*" That certainly doesn't appear to sound like a response from someone about to accept illegal monies. Common sense tells us that documenting any part of an illegal transaction puts all parties at risk. At the moment when Janice placed the envelope on McNown's chair and told him, "*Just take it. Here!*" bewilderedly he answered, "*What do you mean?*" None of these responses portray the defendants as greedy criminals. At best, they suggest their behavior was unwise. From a linguistic standpoint, pairing the statements and responses in no way supports the idea that either party willingly accepted a bribe. However, the court system did not agree and convicted the two men of accepting a bribe.

2.3.7 Linguistically, Economically, and Socially Disadvantaged Persons in Legal Settings

Another consideration is the additional burden faced by second language speakers as they struggle with comprehension and expression issues. Other than limited work by

some researchers (Brière, 1978; Eades, 2000; Lane, 1985, 1993), this field remains virtually unmined. However, as will be evident in the following discussion of Wodak-Engel's (1984) and Berk-Seligson's (2002) work, these factors can be highly influential in courtroom outcomes.

Language use, among other factors, places an individual as a member of a particular socioeconomic level. Discourse patterns vary according to social class and educational background, and are frequently interrelated with economic levels. As individuals interact with others, they are continually identified and classified according to their speech. These sorts of interactions take place in social, employment, or business environments. In the case of legal contexts, marked or unmarked linguistic patterns are noted by representatives of the court, such as judges and juries. Wodak-Engel (1984) argues that, in some cases, when judges hear a defendant's speech, they may treat him or her favorably or unfavorably, depending on the person's social standing.

Her work is based on early sociolinguistic work by Bernstein (1962, 1970a, 1970b) and Labov (1966, 1972). Bernstein claims that middle class children have an advantage over working class children because of the way in which they are spoken to by their parents. He claims that middle class children receive elaborate and detailed explanations from their parents. They are told how and why parents make the decisions they do. They benefit from exposure to 'elaborated codes' by later developing an ability to manipulate language at an abstract and metatheoretical level. Working class children, on the other hand, do not have this advantage because their parents only state the final outcome of their decisions. No process information is shared with the children. Bernstein

refers to these skeleton answers as 'restricted codes'. The result of exposure to only restricted codes is that the working class children do not develop a flexible rule system. This in some ways handicaps working class children since they are not accustomed to manipulating and modifying their speech patterns according to the setting. As will be evident in Wodak-Engel's (1984) study, this ability to manipulate language is essential to a favorable outcome in a courtroom setting.

Labov (1972a, 1972b) disagrees with the notion that the language spoken by the economically disadvantaged and is in any way inferior to more prestigious registers. He methodically presents his case that the Blacks' language has rules and frameworks just like any other. Labov's posits, "linguistic theory can no more argue the social behavior of speakers of a language than chemical theory can ignore the observed properties of the elements" (Labov, 1972b, p. 259). Wodak-Engel supports his position, which is one of the reasons, as will be seen, that she conducts her work inside the courtroom setting.

However, Wodak-Engel feels that Labov's work falls short of recognizing *how* speaking less prestigious registers may hinder a speaker's performance. He does not acknowledge that even though a speech variety has a fully operational internal structure, this variety will be considered an acceptable one by members of mainstream society. Social consequences include viewing speakers of that variety as somehow inferior to those speakers of a positively sanctioned variety. Wodak-Engel argues that the inability of speakers of lower prestige varieties to manipulate language places them at a disadvantage since they cannot draw on language as a resource in different settings. She states that, "The internalization of institutional norms succeeds most ideally if the

dialogues through which children develop their linguistic repertoires replicate the dialogues that they will encounter in social situations” (1984, p. 91.) It is exactly this sort of inability to adapt language to a given setting that forms the basis for the following study.

Wodak-Engel’s study, framed within sociolinguistic socialization theory, investigates the inter-relationship between language use as representative of social standing with courtroom outcomes. She describes the court situation as an ‘institutionalized speech setting’ in that participants are helped by an understanding of the implicit practices and norms of such a setting (p. 93).

The study examined court cases dealing with automobile accidents. This allowed her to maintain a constant of location, judge, and researcher. An additional consideration was that offenses related to automobile accidents are less class-specific than other crimes. Wodak-Engel hypothesized that individuals would conduct themselves differently according to their socio-economic background. Working class defendants, she believed, would perform poorly since they were not familiar with discourse practices in such formal settings. Lower middle-class individuals would have an advantage over members of the working class group since their linguistic practices were slightly more akin to courtroom-style speech. Middle class defendants would perform the best since they would have internalized the strategies necessary to cope sufficiently. The last group, those who were previously convicted defendants, would also perform better than the working class and lower middle-class groups simply because they had been exposed to this setting on previous occasions.

Of the fifteen cases included in the study, two accounts served to illustrate the marked differences in discourse practices and trial outcomes. The first defendant was a member of the middle class group. He proved quite adept at recounting his version of events while expressing remorse for his actions. His story was highly detailed and included points for consideration in determining how his accident might have happened to anyone. Wodak-Engel characterized the defendant's rendition as a personal perspective, "by the completeness of the story structure, by the explicitness of evaluative speech acts, and by very coherent phrasing" (p. 96).

The second story, given by a woman belonging to the lower middle-class group, was markedly different from the first. The defendant struggled throughout her testimony. Her comments were limited to a description of the scene and how she felt at the moment of impact. Frustrated by the lack of detail offered, the judge felt he had to draw out her version of events. His inquiry was described as "cynical questioning" (p. 96) asked in a derogatory tone. Instead of asking open-ended questions to elicit a full and clear explanation, the judge mocked the witness's uncertainty with the word 'swerve'. In response to her request for clarification, he said, "Every vehicle has a steering wheel. If one turns it around, the direction changes, doesn't it? If it's not broken. If one turns this thing, it is called 'swerving', to put it briefly. Understood? Yes?" (p. 100). This unhelpful response did little to aid in the judge's understanding of events and only succeeded in stunning the witness further, even causing her to repeat, "I couldn't brake" over twenty times. Wodak-Engel accounts for his terse tone by noting that, prior to the start of the hearing, the judge remarked that "[women] can't drive anyway" (p. 93).

Although this study had a very limited sample size, Wodak-Engel's hypothesis that the sentences passed by judges may correlate with a defendant's social class appear to be founded. The defendant from the middle class background received a minimal fine. This is quite light considering that his offense was manslaughter. The struggling female defendant from a lower middle-class background received a three-month jail sentence. While her exact offense is not offered, it is noted that her crime was a less severe one.

Noting the differing implicit speech norms learned by middle and working class children, as evidenced in adults' courtroom speech, she argues that such a disparity may be detrimental to those less-advantaged persons. The result is that, "... defendants not socialized in these norms of language use are discriminated against, and only MC [middle class] defendants succeed, as a rule, in good image management before the judge" (p. 97).

Non-native speakers are, to some degree, at a disadvantage during the course of daily activities. Any time they come into contact with native speakers, the interaction requires more work on the part of the individual operating in a language other than his or her own. The legal system recognizes these problems. To help compensate for a speaker's inability to fully function in another language, interpreters are available for those who need one. While it might seem that having someone whose specific task it was to work on behalf of the suspect would be beneficial, this is not always the case. Berk-Seligson (2002) found that even in cases where an interpreter was provided, there is not always a clear distinction about that individual's role.

Native Spanish speaker Manuel Hernández Montaña was provided an interpreter during questioning regarding his involvement in a first-degree murder and rape case. The California man was seen running away from bushes where the body of a young woman was found. In addition to being present at the scene of the crime, he had blood on his clothing and shoes.

The interpreter provided Montaña's was one of the investigating officers, Officer Kincannon. Kincannon was a bilingual English/Spanish speaker, however, his abilities in Spanish appear quite limited. In reviewing the transcripts, Berk-Seligson found numerous grammatical errors as well as lexical deficiencies. She also noted that his accent was heavily marked. Kincannon's partner, Officer Breuker, was a monolingual English speaker. Both officers were present during an hour and a half interrogation although Breuker did step out of the room for a short period of time on one occasion.

This case came under review by the Court of Appeals after Montaña's lawyers argued that although the suspect chose to exercise his right to remain silent, as provided for in the Miranda warning, the interrogation continued. The second problem lay with the behavior of Officer Kincannon. Rather than serve as an interpreter, he acted primarily as a second interrogating officer. Since his role was somewhat ambiguous as he waffled between the two roles, this essentially left Montaña without an interpreter. Drawing on Goffman's (1979) notion of 'footing' as acting according to one's role, Berk-Seligson argues that Kincannon's enigmatic performance significantly altered the dynamics during the interrogation to the detriment of the suspect.

There is little doubt that Montaña expressed his desire to exercise his right. As is demonstrated in the following passage, his wishes were ignored:

Kincannon: ¿Usted no quiso hacerle tanto daño?

(You didn't want to hurt her so much?)

Montaña: No quiero hablar más. No quiero hablar más de nada.

(I don't want to talk more. I don't want to talk more about anything.)

Kincannon: ¿No sabía que estaba muerta?

(You didn't know that she was dead?)

Montaña: No. No quiero hablar más. No quiero saber nada más.

(No. I don't want to talk more. I don't want to know anything more.)

Kincannon: ¿No quiero saber nada más?

(You don't want to know anything more?)

Montaña: No, no quiero (u). No sé.

(No, I don't want (u). I don't know.)

The court took issue with two aspects of this type of exchange. First, Montaña clearly had the right to refrain from answering questions and stated as much. The interrogation should have ceased at that moment. Instead, Kincannon continued asking questions about the crime, specifically whether the suspect knew if the victim were dead. This continuance violated protocol. Second, the types of questions asked were viewed as coercive by the courts. The inquiry into whether or not the suspect realized that the victim

was dead did not flow within the conversation and, therefore, was interpreted as intentional on the investigator's part. Further, it gives the impression that the police have much more information that they know, but have not yet shared with the suspect. This ploy is used to draw in Montaña. Berk-Seligson observed, "One gets the impression that Montaña feels that if he heard more of the details of the murder, he would get more deeply into the police net" (p. 137). What the police should have done was to stop the interview and ask these questions at a later date, with counsel present and, most importantly, only if the defendant agreed to such a meeting. It is important to note that the issue was whether or not the confession was coerced. Shockingly, the police are allowed, "to lie, to flatter, to adduce, to ask questions roughly, to play act, to trick, and to cajole" (Shuy, 1998a, p. 15). Logic tells us if we expect honesty from suspects, the police should behave in a similarly truthful manner. But this is true only to the point where manipulating language crosses over to a coercive act.

One of the key determinants in proving that Kincannon failed to act on behalf of the defendant was his use of pronouns when translating from English to Spanish. Although a detailed examination of appropriate translation practices is outside the scope of Berk-Seligson's work, it is fair to expect that the translation be as literal as possible. This ensures that a shared understanding exists for parties who hear the information, regardless of which language they hear it in.

Kincannon incorrectly translated Officer Breuker's first-person singular question into the first-person plural. For example, when translating Breuker's request that the suspect "Explain to **me** how you feel" Kincannon furnishes "Dígan**os** cómo se..." ("Tell

us how you feel...”) (p. 134, bold and italics in original). The *us* here is clearly the two police officers present in the interrogation room. Kincannon also reinforces his footing as officer rather than interpreter when he translated “Sabemos que conoció a una muchacha esta noche” (“We know that you met a girl tonight”) (p. 135).

Officer Breuker also appears unable to distinguish Kincannon’s role. Although Kincannon was primarily responsible for acting as an interpreter, Breuker was equally responsible for treating Kincannon as such. Breuker’s behavior should support Kincannon’s identity as interpreter. Breuker did not possess the skills in Spanish to aid in translation, but he did have the ability to separate himself from Kincannon as an officer. Yet, many of Breuker’s questions align the two as interrogators. Many of his statements used the plural *we* to refer to himself and Officer Kincannon. The following samples (selected from a more extensive list, emphasis added) illustrate the alignment of the two officers:

Breuker: **We** found a knife... in the bushes....and **we** will be able to tell because of your footprints.

Breuker: **We** know that there’s blood on your shoes...

Breuker: And **we** will also know if that’s from him or somebody else...

By all accounts, it appears that Kincannon played the role of police officer rather than interpreter. It could be argued that he simultaneously fulfilled both roles of officer and interpreter. However, it does not seem that any of the three participants considered Kincannon as anything other than interrogator. Berk-Seligson uses three criteria to determine Kincannon’s primary role. First, he aligns himself with the officer rather than

the person he is supposed to assist. Even in the instances when Breuker refers to himself as *I*, Kincannon takes it upon himself to reconstruct the passage to refer to both officers. It must be remembered that these are subtle changes. Even if Montaña did speak some English, he may not have detected the shift in pronouns. He would certainly not be expected to do so, given his request for a translator. Second, during the brief passage of time when Breuker left the interrogation, Kincannon continued the interrogation alone. It would not have posed a problem for Kincannon to converse with Montaña about subjects outside of the investigation. It is not required that silence be maintained when the investigating officer is not present. However, Kincannon's behavior reinforces the image of him, first and foremost, as a law enforcement officer. The third area that suggests that Kincannon was not an interpreter is the poor quality of his translation. It was observed that, "he fail[ed] to interpret many of the questions and statements of Breuker, and the responses of Montaña" (p. 134). While this fact alone would not disqualify Kincannon as an interpreter, it does add to the other problems contained in this investigation regarding Montaña's confession. Having such a poorly trained Spanish-speaking officer assigned as an interpreter does suggest that police practices regarding the qualifications of interpreters should be reviewed. One wouldn't suppose that in California, it would be very difficult to find an interpreter who was at a native or near native proficiency in Spanish.

These factors did indeed persuade the Court of Appeals that Montaña's confession was coerced. Given this, his conviction was overturned. The court cited the investigators' behavior as a key determinant in making their decision. They decided, even

at the risk of freeing a guilty man, that a strong message needed to be sent to law enforcement officers that their actions could prove detrimental in cases such as these. It seems the police officer's behavior let a guilty man walk away. After all, Montaña was seen at the scene of the crime, had the victim's blood on his clothes, and admitted to carrying a knife that evening. However, the case didn't come down to physical evidence. The linguistic influences present were more damaging to maintaining a conviction.

These cases demonstrate how strongly courtroom outcomes are influenced by a defendant's sociocultural and sociolinguistic practices. These situations confirm the belief that courtroom outcomes are directly dependent on how prestigious a defendant's speech is. Misunderstandings may be due in part to differing discourse styles and can potentially be exacerbated by judges or lawyers who regard witness testimony by those in the lower classes as worthless and unimportant.

2.3.8 Source Documents

Much of the previous discussion has centered on verbal speech. However, written texts also play a role in forensic linguistic cases. These include writing samples, transcripts of police interviews, legal documents, as well as others. In the past, the quality and veracity of written transcripts were called into question. Police officers typically served in dual capacities, as both investigator and transcriber. Even with improvements, such as videotaping police interviews, problems still exist with the written transcripts. For example, non-native speakers may be asked to confirm or refute facts that they may not understand linguistically.

One positive change is that video and audio records are now a standard part of the interrogation process. Much of the early work in forensic linguistics centered on questions of ‘who said what’. Access to a permanent record allows interested parties to revisit sessions after the interrogation has taken place. Earlier secretive practices favored the police as, in the event of disputes, it was frequently a ‘he said; she said’ situation. It is no surprise that decision makers typically favored the police rather than the suspect. The previous practice was for the police officers present to write up the proceedings. The intent was for them to produce ‘verbatim’ replications of the interview, a seemingly impossible task. Not surprisingly, defendants frequently argued that what was transcribed did not correlate with the account they gave.

The purpose of recording interrogations was to *accurately* document an investigation; however, documented investigations are not problem-free. Eades (1996) examined transcript conventions and found marked differences between what was said and what was transcribed. Some elements of interaction, such as ‘um’ or repetitions, were not included in the legal transcript. This caused her to comment that “It is information, not interaction, which is transcribed”. (p. 251). One striking example is found in Gibbons’ (1996) work on distortions of police interviews. A Tongan-Australian suspect was asked about his involvement in a robbery. Unsure of how to respond, he repeatedly responded in the affirmative, even though it was clear that his ‘yes’ meant that he was seeking clarification. In one instance, he responded to a question about whether his crime was premeditated. He hesitantly responded, “I...say yes...or what?” Interestingly, the ‘or what?’ was omitted from the transcript; therefore, only “I...say yes” remained. What we

are left with is a response that paints a different picture from what truly occurred during his interview. It is shocking findings such as these that emphasize the need for fully documented and correctly transcribed records of the proceedings.

While videotaping may alleviate some of these problems, it is only beneficial if the gains of actually seeing the interaction are included in the transcript. Shuy (1993, 1998a) is a proponent of videotaping. His early work focused on problems of coerced confessions and other abuses. His work, both in his writings and his expert witness testimony, called for comprehensive documentation during interrogations. By reaching beyond the traditional confines of academia, Shuy helped shape policy on the human rights issues. With recorded interviews as a matter of standard practice, earlier 'he said; she said' questions are more easily resolved.

Gibbons' (1990, 1995, 1996) primary concern is that non-native speakers do not possess the sufficient language skills to participate in investigations conducted in English. They are unfairly placed in a position where they do not fully comprehend what is being asked of them. Further, they answer questions based on false assumptions.

Proponents of taped interviews claim that adopting this practice will alleviate questions about what actually happened during a taped interview. After all, the tapes become part of public record and are available to both prosecutors and defense lawyers. Implicitly, it is argued that since the interviews are recorded, any suspicious practices will cease. Police officers would not knowingly partake in asking inappropriate questions or leading the witness in any way. Somewhat disheartened, Gibbons (1995, 1996) found that these practices are *revealed* by the videotapes. He claims that videotapes are more

valuable than ever because they provide proof that suspects are placed in situations they shouldn't be. Imagine what the interviews must have been like when no telling evidence remained.

The Royal Commission uses two types of interview documents, the Record of Interview and the Statement. The Record of Interview is a verbatim transcript of the interview. The value of this document is that it provides a highly detailed and accurate account of what was said. The drawback is that it is lengthy and inconvenient for lawyers. To remedy this problem, a Statement is produced. The Statement is a summary of what happened during the interview. It is prepared by the police department. While it provides a synopsis of events, it may not accurately recount events. Gibbons cautions that the police officer creating this summary may “*impose a predetermined story*” (p. 291, italics in original). The resulting document may provide a slanted version of what happened. Although the Record of Interview contains the original version, it is infrequently used due to its cumbersome length.

One possible remedy is to ask the suspect if he or she agrees with how the event was summarized. This could be done by, “presenting the police story, element by element, and asking for the interviewee's agreement to this interpretation of events; or it may take the form of a pressured joint reconstruction” (p. 291). Even this seemingly collaborative process is flawed. First, the story is still being constructed by the police rather than suspect. The suspect is only charged with confirming or disputing the police's edited versions. Furthermore, civilians are hesitant to disagree with those more powerful

than they. Suspects do not wish to appear disagreeable. They may be intimidated and, therefore, unable to disagree with the police.

In summary, studies in forensic linguistics have centered on investigative techniques (Baldwin, 1994; Shuy, 1998a), transcription practices (Gibbons, 1995, 1996) word level and sentence level analyses (Bernstein, 2002; Eagleson, 1998; Solan, 2002), adjacency pairs (González, 2002; Shuy, 1993), phonetics (Labov, 1998); speech acts (Hill, 2003; Shuy, 1998b), power differentials (Tannen, 1998), while considering social and cultural influences (Berk-Seligson, 2002; Eades, 2000; Wodak-Engel, 1984).

This present study builds on the above-referenced work by forensic linguists. The analysis in Chapter 4 will revisit some of these aspects of forensic linguistic studies, such as word level and sentence level analyses, adjacency pairs, social and cultural differences. In addition, the analysis will use discourse analysis to consider communicative competence (see Chapter 3 for a more in-depth discussion) as well as the degree of difficulty in reading written text. While each forensic linguistic case is unique, this study illustrates how forensic linguists are continually adding to the linguistic tools that analysts can use in studies of this kind.

3 METHODOLOGY

3.1 Participant's Background: LK's Story

While the details of the case were presented in the first chapter, it is important to develop a clearer picture of the defendant himself. Regardless of guilt or innocence, forensic linguistic cases are about living, breathing human beings. Although some of the parties involved in forensic linguistics cases have committed crimes and are not viewed as upstanding citizens, it is still helpful to develop a better understanding of the people who have come to this point in their lives.

LK was born in Guang Doang, China in 1952. At the age of 20, he left China for Hong Kong. Politically, this was a risky undertaking. In fact, LK had to swim from China to Hong Kong. Concerned that the family members who remained on mainland China would suffer for LK's actions, he created a new identity. Through his court appointed interpreter, LK gave testimony that he was, "afraid that people in China is going to give problems to my family" (p. 94), and as a result, changed his name to WFK. While in Hong Kong, he met his wife, ZYG; she passed away in 2003. They have one teenage daughter.

In August of 1982, LK immigrated to the United States. He entered the country legally and later became a citizen around 1994. He relocated to Tucson, Arizona where his brother resides. His brother, JK, has been a strong support system for LK and even sold the business, G's Market, to him. Due to financial difficulties posed by his legal troubles, LK placed the business on the market in 2004.

According to his testimony, LK has never studied English in school and reads very little English. He does not read books or magazines in English. His reading habits are important because much of the research on the relationship between an individual's speaking and reading abilities presume that the subject is learning in a formal educational setting; therefore, both skills are simultaneously reinforced (deGelder & Morais, 1995; Hilferty, 2000; Liberman, 1998). He developed some of his oral proficiency by using listen-and-repeat style cassette tapes designed for home use. He assesses his writing skills as limited. He holds an Arizona Driver's License but opted to take the written test in Chinese.

LK periodically needs an interpreter. His brother frequently serves as translator for interactions outside his immediate realm of operating the store. As will be discussed in greater depth later, LK's encounter with the Alcohol, Tobacco, and Firearms (ATF) inspector, was so fraught with communication breakdowns that their appointment had to be rescheduled for a time when an interpreter (JK) could be present. At his trial, LK requested the services of a Chinese interpreter. When asked why he felt he needed to rely on these services, LK explained that he was concerned that he would not perform well and that the direction of his life was riding on the outcome of this case.

3.2 Data Collection

3.2.1 The Transcripts of the Undercover Police Tapes

Much of this linguistic analysis is based on six undercover police recordings (see Appendix A). The operations took place between November 19, 1999, and January 6,

2000; two recordings were made on the same day on December 9, 1999. The undercover police officer wore the recording device; the confidential informant (CI) did not. The officers started recording while they were getting organized prior to entering G's Market. Naturally, this occurred a few blocks away from the market so that a support team was in close proximity to the target location. As a matter of protocol when recording, the officers identified themselves, cited the case, and noted the date and time. Some commentary was heard as the officer and informant left the store after conducting their business, but the majority of the tapes contained the interaction between the suspect and law enforcement officials. These tapes were later transcribed by AV Tronics, a transcription company based in Phoenix, Arizona. Both the cassette tapes and accompanying transcription were later used at trial. Copies of these tapes were obtained from the defense council and used for this study.

At times, the quality of these tapes is poor. The primary problem was the distance between LK and the wired undercover officer. Since the officers were the only one wired, their voices are clearest. The informants' voices and, most importantly, LK's voice varied between easily understood and incomprehensible. In both the original transcript and the augmented version used for this analysis, parts that were unclear were identified as 'indiscernible'. Sometimes the indiscernible parts were single words; at other times, they were more than one sentence in length.

In order to enhance the quality of the sound for this analysis, the cassette tapes were digitally enhanced. Using the facilities in the Multimedia Learning Lab at the University of Arizona, the recordings underwent a three-step improvement process.

Initially, the tapes were played on a Denon DN-780R cassette tape player and recorded onto a Yamaha 01V digital mixing console. An Apple G5 computer housed ProTools LE, which recorded an analog signal coming into the computer from the cassette player. After the digitization process, M-Box software was used to improve the quality of the sounds. This program eliminates external frequencies which fall outside of a predetermined range. The high-pass filter attenuated frequencies below 300 Hz (hertz). Low-pass frequencies blocked out sounds above 12 kHz (kilohertz). The end result was that these much of the hiss and hum noises were reduced. The third step involved burning a CD using Easy CD Creator. The CDs were later played on Windows Media Player on a Gateway FDP1730.

However, even with improvements, some audio problems remained. Some were technical while others were practical. Some of the static remained and made parts difficult to comprehend. Therefore, the augmented transcripts still contain many passages that remain “indiscernible”. Some problems were external to the equipment used and even more sophisticated equipment would still have had problems recording flawlessly. For example, the officers who arrived on motorcycle wore leather jackets. As their arms rubbed against their body, where the microphone was hidden, squeaky sounds of leather-on-leather covered up other speech. Distance was also a problem in tracking the defendant’s voice. The telephone he used to call in the gun purchase was located some distance away from the display counter. Although it had a long cord that LK could use if he wanted to step closer to the person at the counter, he sometimes chose to remain near the telephone. While the undercover office and confidential informant were waiting for

LK to complete the phone-in process, they wandered throughout the store looking at merchandise. During these times, it is impossible to capture any of LK's speech across the store.

What remains are over four hours of interaction between agent, informant, and suspect. The overall quality and amount of text available for analysis is substantially improved. While the conversations were not captured in their entirety, the majority were. Enough speech samples are available to determine the subject's speaking ability. Yet, this is typical in forensic linguistic cases, as documentation is rarely created under the best of circumstances. Researchers and linguistic experts must operate with whatever texts are available, however limited they may be. Given the nature of these cases, it is virtually impossible to re-record or re-do the original sources. Hence, it is the existing samples that form the basis for this study.

Where possible, the parties were identified by name. Since the undercover agents wore the recording devices, they are always identified by last name. The informants are referred to as 'female voice' or 'male voice'. The informant's voices can be heard before, during, and after the store visit and are readily identified. No question of misrepresented identity was ever called into question, so there is no reason to assume that the voices will not be identified. LK is also described as 'male voice' on the transcript. Since he is a non-native speaker of English, it is easy to distinguish between the male voices.

3.2.2 The Courtroom and Court Records

The court records of U.S. v. LK (CR00-0956-TUC-RCC) consist of hundreds of documents, among them were motion hearings, trial transcripts, search warrants, body bug tape transcripts, status hearings, arrest warrants, sentence hearings, and gun inventories. All of these are located at the Federal Courthouse in Tucson, Arizona and are available to the public.

Approximately one half of the court record was made up of court transcripts, the written version of what was said during trial. One reason that the files are so extensive is that the case was tried twice. The first trial was a three-day trial that was held in December 2001. The jury was unable to agree to a verdict; therefore, a mistrial was declared. The second set of court transcripts are from the subsequent retrial, also a three-day trial. Each set of trial transcripts began with motions hearings, jury instructions and the swearing-in of the session. Each trial terminated with the court's final jury instructions and the jury verdict. Deliberations among jury members are confidential and, therefore, are not part of the available documents.

Court systems follow a highly regimented protocol and are, by their nature, highly adversarial (Lakoff, 1990). The setting of the court room imposes its formal tone onto legal proceedings. It is expected that all present will be dressed in professional attire and conduct themselves in a serious manner.

The discourse of inquiry into court settings run contrary to everyday conversation. Under normal circumstances, conversations are a give-and-take with each party contributing to the event. Spontaneous interjections are common and a sign of interest or

outrage. However, the pattern of lawyer and witness taking distinct turns with little overlap adds to the formal and adversarial feeling of the court setting. When writing about the roles of judges, Lakoff observed, “Because the questioning is adversarial, there must be an umpire, a referee, to keep the fight clean and make sure no one’s rights are interfered with” (p. 92). Additionally, the use of titles and formulaic utterances heightens the courtroom ceremony. The judge is addressed as ‘Your Honor’ or ‘the Court’ while jurors are referenced according to their seat assignments, such as ‘Juror Number Three’. When addressing the bench, lawyers preface a request with ‘If it please the court’. These are only a few examples of a specific discourse used only in legal settings. When one hears the phrase “Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?” there can be little doubt that this event could only be taking place inside a courtroom. Not only are the discourse patterns highly stylized, but the procedures are as well.

Examination of witnesses consists of five steps. These are Direct Examination, Cross Examination, Redirect Examination, Recross-Examination, and Questions by Jurors. Each time a witness give testimony, the same pattern of questioning was adhered to. This pattern is followed by both the prosecutors and defense lawyers. The prosecutor presents his or her case first in its entirety. Upon completion, the defense is then given the opportunity to present their version of events. During each presentation, the opposing side is allowed to question all witnesses.

When witnesses testify, they are initially questioned by the side that summoned them. This is referred to as the Direct Examination. Typically, witnesses identify

themselves and establish why they have been asked to be present, e.g. professional qualifications, nature of their involvement with the case, family relationship, etc. While this person is being questioned, the prosecutor or defense council can object at any time. The lawyer must briefly explain what is considered (legally) objectionable and the judge makes an immediate ruling if the line of questioning can continue. The judge then announces if the objection is sustained (the judge agrees with the objector's concern) or over-ruled (the judge does not consider the objection a valid one).

When the attorney has finished asking questions of the witness, the other side is then given the opportunity to ask questions. This is referred to as Cross Examination. This second phase is less harmonious than the first. During this stage, the attorney's job is to weaken the impact this witness' testimony had on the judge or jury. This may take several forms. Professional qualifications may be questioned; versions of events can be challenged; alternative interpretations are offered. Regardless of the tactic used, the goal of this session is to either undermine or, at the very least, ameliorate the witness's testimony.

After both sides have questioned a witness, they are given a second chance to ask additional questions. These third and fourth phases are called the Redirect Examination and Recross-Examination. One stipulation is that only subject matter that has already been introduced during testimony is open for discussion. In other words, if the prosecutor forgot to bring up a certain point during Cross-Examination, they are out of luck. The opportunity to introduce topics has passed. Generally, these phases are used to clarify points or to reiterate earlier positions.

Juries are also allowed to ask questions; however, these are presented in written format and are screened by the judge, prosecutor, and defense council. Jurors write questions in their notebooks (these must be returned to the bailiff when they leave the courtroom and are turned in when the trial is over) and submit them for consideration. The lawyers approach the bench and review the questions with the judge. Sometimes the jurors are excused; at other times, the three officers (judge, prosecutor, defense attorney) turn off the microphone at the judge's bench and speak among themselves. The court reporter is positioned close enough to the bench so that he or she can record what is said. It is at the judge's discretion what the jurors may ask and no explanation is given to jurors as to why some of their questions were not put forth. The trio discuss which questions will be introduced and who should ask them. Either the judge, prosecutor, or defense attorney can ask the question of the witness. After the juror's questions, if any, have been answered, the witness is asked to step down and the cycle repeats with the next witness.

3.2.3 Firearms Transaction Record Form 4473

Form 4473, the Firearms Transaction Record, is a document required by the Bureau of Alcohol, Tobacco and Firearms any time a weapon is sold in an over-the-counter sale from a licensed gun dealer to a private individual (see Appendix B). It is a four-page document consisting of four sections (A-D) followed by two pages of notices, instructions, definitions, and other relevant information.

While the form is generated by the seller, most of the information must be completed by the buyer. Section A asks for identifying information about the buyer, e.g. name, address, height, weight, birth date, place of birth, and social security number. Additionally, there are screening criteria in which a potential buyer must answer 'yes' or 'no'. These questions pertain to a person's criminal past or current legal problems, honorable military discharges, fugitive status, illegal substance use, and citizenship. The buyer must also state that he or she is the actual buyer of the gun.

Section B, completed by the seller, records whether the application was approved or denied. The seller must also verify the buyer's identification, such as the driver's license number or other government-issued photo identification. After the buyer has filled out the information and the seller has looked over the photo identification, the seller places a call to the National Instant Criminal Background Check System (NICS) and awaits their approval. Based on the length of time on each of the tapes, the process appears to take approximately fifteen minutes. If approved, NICS gives the seller a transaction number for that purchase. If denied or delayed, this is also noted on the form. Section C is only used when the transfer of the firearm occurred on a different day from when it was approved. Section D lists the specifics of the weapon sold; manufacturer, model, serial number, type, and caliber or gauge. This last section is filled in by the seller.

The last two pages are instructions consisting of thirty-five paragraphs, printed in small letters. The category headings are important notices, instructions to transferee (buyer) and transferor (seller), definitions, privacy act information, and paperwork

reduction act notice. Of relevance in this case is the first paragraph referring to purchases intended as gifts. The paragraph reads:

WARNING – The Federal firearms laws require that the individual filling out this form must be buying the firearm for himself or herself or as a gift. Any individual who is not buying the firearm for himself or herself or as a gift, but who completes this form, violates the law. Example: Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. If Mr. Jones fills out this form, he will violate the law. However, if Mr. Jones buys a firearm with his own money to give to Mr. Smith as a birthday present, Mr. Jones may lawfully complete this form. A licensee who knowingly delivers a firearm to an individual who is not buying the firearm for himself or herself as a gift violates that law by maintaining a false ATF F 4473 (p. 3).

As will be discussed in Chapter 4, the analysis section, the language skills required to complete the buyer's sections of this form are limited in that the seller need only copy information from other source documents. Further, the complexity of the language used in the instructions section is highly advanced. It is this form and the language contained within it that the defendant was held responsible for fully comprehending.

3.3 Communicative Competence

3.3.1 Canale and Swain's Model

In the 1960's, the terms competence and performance were first introduced by linguist Noam Chomsky (1965). According to Chomsky, 'competence' referred to a speaker's knowledge about grammar and this competency was assumed to be shared by all native speakers. He differentiated the idea of grammatical competence with 'performance', which reflects a speaker's actual use of the language. However, this

notion was met with some resistance as this abstract notion of the ideal native speaker failed to be applicable to speakers of varying abilities and linguistic backgrounds. While it did account for rules as well as some aspects of production, it lacked the ability to account for appropriateness of language use.

Building on this notion of visible performance, Hymes (1962, 1967, 1972a, 1972b) focused on communicative performance. He broadened the notion of performance, thereby accounting for the appropriateness of language use. He set aside the target of what an *ideal* speaker would do and instead considered both what a *real* speaker would say and how they would behave in a given context. Although he still acknowledged the importance of grammatical competency in that it facilitated communication, he placed equal importance on appropriateness, feasibility, and contextual considerations.

While the theoretical concepts of communicative competence were developing, great strides were being made in second language pedagogy. Theoretically positioned closer to Hymes than Chomsky, Canale and Swain's (1980) article encompassed the newly forming concept of *communicative competence*. For them, *communicative competence* was comprised of three types of competencies: grammatical, sociolinguistic, and strategic. Their vision of a communicative approach was:

an integrative one in which emphasis is on preparing second language learners to exploit - initially through aspects of sociolinguistic competence and strategic competence acquired through experience in communicative use of the first or dominant language - those grammatical features of the second language that are selected on the basis of, among other criteria, their grammatical and cognitive complexity, transparency with respect to communicative function, probability of use by native speakers, generalizability to different communicative functions and contexts, and

relevance to the learners' communicative needs in the second language (p. 29).

Grammatical competence includes knowledge of syntax, morphology, semantics, phonology, and lexical items. These are considered the building blocks needed to formulate utterances and express one's ideas. Without them, communication is impossible.

When a speaker demonstrates *sociolinguistic competence*, this refers to the **appropriateness** of language use. Both sociocultural rules of use and rules of discourse should be considered. Based on Hymes (1962, 1972a, 1972b) earlier work on ethnography of communication, Canale and Swain draw on Hymes' SPEAKING (setting, participants, ends, acts, key, instruments, norms of interaction, and genre) mnemonic which was developed as a comprehensive framework for discussing communicative events. Thus, Canale and Swain's sociocultural rules question whether a speaker is sensitive to the dynamics found in each of these components.

Rules of discourse, the second component of sociolinguistic competence, considers register and attitude during interactions. Factors such as tone or polite forms of address are included. While utterances may be grammatically correct, the manner in which they are delivered must be fitting given the social setting, relationship between participants, purpose of the interaction, as well as other factors. Canale and Swain offer the example of a waiter in an upscale restaurant who asks his customer, "O.K., chump, what are you and this broad gonna eat?" (p. 30). As this utterance is grammatically correct, any native English speaker would easily comprehend this question; however, the

majority of native speakers would likely take offense to such an abrupt question. This example exemplifies the distinction between *cohesion* and *coherence*. The question poorly posed by the waiter demonstrates cohesion as it is grammatically correct; however, it lacks coherence since it is not an appropriate one.

Obviously, not all communicative interactions go smoothly. When beginning and intermediate level speakers communicate with native speakers or other second language learners, they may be unsure how to express their ideas clearly. This could be due to performance variables or insufficient competence. This trend continues as even some high level speakers may find themselves stumbling at times. In order to cope in such awkward moments, second language speakers draw on their *strategic competencies*. Strategic competencies relate to both grammatical and sociocultural competencies. Paraphrasing, repeating, or circumlocution are all grammatical functions that aid in maintaining strategic competency. Shifting style or registers, as in the earlier example of the waiter, are ways to draw on sociolinguistic competence. Additionally, these strategic competencies can be both verbal and non-verbal.

Canale (1983) later expanded on the notion of three competencies to include *discourse competencies*. This type of competency concerns the, “mastery of how to combine grammatical forms and meanings to achieve a unified spoken or written text in different genres” (p. 9). Cohesion and coherence, earlier components of sociolinguistic competence, serve to smooth interactions and require less effort by the listener to fully comprehend the speaker’s meaning. Cohesion in form considers the structure of utterances and whether they facilitate meaning. These devices include pronouns, ellipsis,

conjunctions, synonyms, and parallel structures. They serve to link ideas in different ways; logically and chronically are two such possibilities. Coherence aids in meaning and defines and connects the relationships between ideas. These could be literal meanings, communicative functions, and attitudes.

Canale further sought to clarify the scope of communicative competence. Rejecting earlier terms such as ‘communication’ and ‘performance’, Canale considers these terms to be plagued by confusion. Instead, he reiterates that communicative competence refers to “both the knowledge and skill in using this knowledge when interacting in actual communication” (p. 5). Since knowledge is our understanding of language, it is not always easy to see that knowledge manifested in speech. However, skills bridge our internal knowledge with performance in actual communication. Both are considered components of communicative competence.

It is this multiple-faceted vision of communication that frames the forthcoming analysis. This is a comprehensive framework that includes grammatical knowledge, sensitivity to cultural norms, as well as repair strategies that become evident in some interactions between native and non-native speakers. These categories will be addressed individually; however, they should not be viewed independently from one another. Although the categories help isolate features for demonstrative purposes, language is, most assuredly, an integrative process that draws on multiple competencies simultaneously.

3.3.2 Bachman's Model

As do Canale and Swain (1980), Bachman (1990) views communicative language ability (CLA) as encompassing multiple competencies. He considers knowledge structures (knowledge about the world) and language competence (knowledge about language) to support a speaker's strategic competence. In order to produce an utterance, psychophysiological mechanisms are employed. These refer to the "neurological and psychological processes involved in the actual execution of language as a physical phenomenon (sound, light)" (p. 84, parenthesis in original).

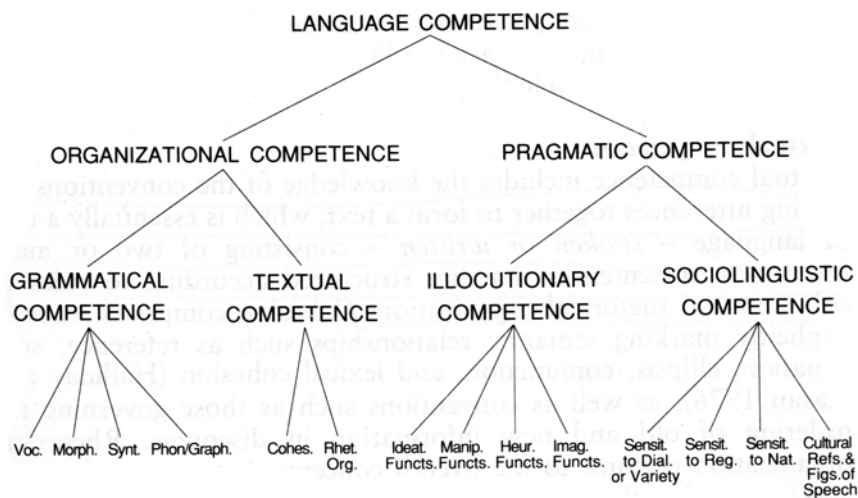


Figure 1. Bachman's (1990) model

While Canale and Swain (1980) claim that grammatical competence differs from sociolinguistic competence, Bachman (1990) argues that grammatical and pragmatic competence are closely linked and that sociolinguistic competence, although interrelated, is distinct from them. This led Bachman to detail the multiple layers of language

competence. Initially, he acknowledges an initial distinction between organizational competence and pragmatic competence. Organizational competence includes grammatical competence and textual competence. Pragmatic competence encompasses illocutionary competence and sociolinguistics competence. These finer distinctions will be discussed in greater detail.

Organizational competence comprises, “those abilities involved in controlling the formal structure of language for producing or recognizing grammatically correct sentences, comprehending their propositional content, and ordering them to form texts” (p. 87). These include grammatical competence and textual competence. Grammatical competence addresses one’s use of vocabulary, morphology, syntax, and phonology/morphology. This encompasses the words selected, how they are ordered, in addition to how they are pronounced or written. In the example of “I bought a lovely, sky blue shirt”, the speaker demonstrated his or her level of lexical competence in selecting quite specific color terms (*sky blue*) and descriptor (*lovely*). The word order follows English’s SVO pattern. Assuming that the speaker pronounced the utterance without posing too much difficulty on the hearer’s part, it can be assumed that the utterance was communicated successfully.

Seldom are sentences spoken or written as lone utterances without expectation of a reply or of continuing a conversation. In order to link one thought to another, cohesive devices are employed. Using these devices competently suggests a *textual competence*. These are, “a rich variety of devices for marking cohesive relationships on oral discourse, and for organizing such discourse in ways that are maximally appropriate to the language

use context and maximally efficient in achieving the communicative goals of the interlocutors” (p. 89). These include cohesive devices and rhetorical strategies.

Going back to our earlier example of the purchase of the shirt, a speaker may further detail events by saying “I bought a lovely, sky blue shirt, but later I took it back to the store for a refund” This differs from the first sentence in that not only are two events are conveyed in a single sentence, but the order follows a topic-comment format. A comment (new information = took it back to the store for a refund) is added to the topic (old information = the lovely, sky blue shirt). Although this example is one of spoken discourse, these conventions are expected in written discourse as well. It would be highly odd to begin a letter with ‘Sincerely yours’. Bachman observed that outside of composition classes, textual competence is rarely taught. He accounted for this by noting that many of these conventions are not clearly understood even by native speakers or, even if they are, they are highly complex and difficult to manage pedagogically.

The second branch of language competence is pragmatic competence, which is concerned with signs and referents. According to Bachman, *pragmatic competence* pertains to, “the organization of the linguistic signals that are used in communication, and how these signals are used to refer to persons, objects, ideas, and feelings” (p. 89). Included in pragmatic competence are illocutionary competence (expressing a wide range of functions) and sociolinguistic competence (expressing these functions appropriately). The notion of illocutionary competence is first introduced in Searle’s (1969) discussion of speech acts. In short, an illocutionary serves some sort of function, such as warning, asserting, or requesting. (See Chapter 1, Section 2.2.2).

Bachman, however, chooses to broaden this framework to include four macro-functions: ideational, manipulative, heuristic, and imaginative (1990, p. 92). An *ideational function* draws on our own experiences of the world in order to express meaning. For example, when professors give lectures, they use their academic knowledge to share their understandings with their students. The goal of *manipulative functions* is to alter circumstances around us. We may wish to exert influence to varying degrees, ranging from suggesting to demanding. Stated or implied norms and rules of behavior are considered manipulative functions in that adhering to or breaking these rules suggest a degree of cooperation or resistance. The process of self-discovery is present in the *heuristic function*. As learners, we continually reshape our understanding of the world. This takes place in both formal and informal settings. But not all learning must be of a serious nature. The *imaginative function* formulates creative language. Story telling, joke telling, spinning tales are examples of the imaginative function. It is important to note that each of these functions may be performed simultaneously. For example, a parent may creatively (*imaginative function*) teach values they deem important (*ideational, manipulative, heuristic functions*) through fables or other means.

In addition to being able to manipulate language in a meaningful way, as communicators we must do so in an appropriate way. *Sociolinguistic competence*, the second component of pragmatic competence, is “the sensitivity to, or control of the conventions of language use that are determined by the features of the specific language use context; it enables us to perform language functions in ways that are appropriate to that context” (p. 94). In essence, the goal is not to offend. Otherwise, much of what we

choose to share will be disregarded or overlooked because our interlocutor is distracted by a sociolinguistic faux pas. Since speech patterns vary by region, it is important to be sensitive to differences in dialect or variety. These differ by socioeconomic class and/or region. Bachman offers the example the varying speech patterns that may be used by an African-American student. In an academic setting, he or she would use Standard American English. However, in a familial context, this same person would likely revert to Black Vernacular English (BVE). Using one variety in an alternative setting would strike interlocutors as odd and inappropriate. Adapting one's register is equally important.

Naturalness is also important in that a speaker may utter a sentence which is grammatically correct, but would never have been uttered by a native speaker. The earlier example of the plaintive who claimed that his business partner, a native English speaker, told him "I go bankrupt" is an example of violating a naturalness norm (Bernstein, 2002). Cultural references and figures of speech may potentially influence communication. Without shared background knowledge, the deeper meaning the speaker wishes to convey may be lost. Bachman (1990) offers the example of a reference to Waterloo, in that the use of that word suggests more than a location. Inherent in that single word is the suggestions of ultimate defeat.

It is a blend of these competencies which enhance or impede communication. While the organizational competences address schematization, pragmatic competence is essential in creating smooth interaction between interlocutors. Both are essential to successful interactions.

3.3.3 Bachman and Palmer's Model

Set within the framework of formal language assessment, Bachman and Palmer (1996) expand on Bachman's (1990) earlier model of communicative competence. This revised model focuses on "the interactions among areas of language ability (language knowledge and strategic competence, or metacognitive strategies), topical knowledge, and affective schemata, on the one hand, and how these interact with the characteristics of the language use situation, or test task, on the other" (Bachman & Palmer, 1996, p. 62). This collaborative effort is defined within the context of language testing.

Three primary influences affect strategic competence. These are *language knowledge*, *personal characteristics*, and *topical knowledge*. *Language knowledge* is a carry-over from the earlier model in that it includes organizational knowledge and pragmatic knowledge, as discussed in the previous section (see Section 3.3.2).

Personal characteristics inform the learners' language experience. These are not directly related to a learner's linguistic abilities, but may still influence test outcomes. The list is potentially limitless, but some of the foremost factors include age, nationality, native language, and educational background. Some of these are easier to account for when trying to determine a link between personal characteristics and test-taking outcomes. For example, age is readily accounted for, but learning styles are more vague and difficult to pin down to a predefined category.

In addition to bringing personal characteristics to a test situation, learners also draw on their topical knowledge. *Topical knowledge* refers to their background knowledge or real-world knowledge. Since each of us has had a unique combination of

life experiences, our topical knowledge is equally varied. As these play such an important role in shaping our understanding of events, relationships, and priorities, it is necessary to account for them. Topical knowledge encompasses both academic knowledge about a particular subject matter as well as cultural background knowledge.

Somewhat related to topical knowledge is the learner's affective schemata. While topical knowledge is factual and/or experiential in nature, affective schemata is the emotional or affective response to topical knowledge. Affective schemata provide, "the basis on which users assess, consciously or unconsciously, the characteristics of the language use task and its setting in terms of past emotional experiences in similar contexts" (p. 65). Affective knowledge can be either positive or negative. If subject matter is presented that in some way is offensive to a speaker, then s/he may wish not to partake in that discussion. Political debates, discussions about abortion or other socially and emotionally charged topics are examples of subjects in which a speaker may experience negative affective knowledge. On the other hand, other speakers may react in a positive manner. Those who prefer delving into highly controversial topics and take pleasure in the intellectual dialogue that frequently accompanies these kinds of interactions may extend their present linguistic boundaries in order to fully participate.

Bachman and Palmer (1996) caution that test givers should be aware of topics that may adversely affect one's affective knowledge. Even though test takers may wish to perform well in a test situation or during in-class discussions, they may not participate to the extent they wish to. Even the arrangement of a face-to-face oral examination may cause test takers to feel threatened and negatively affect their affective knowledge. To

compensate for the artificial nature of an institutional test, warm-up activities may help alleviate some of the test takers discomfort.

Two major differences exist between the earlier (Bachman, 1990) and latter (Bachman & Palmer, 1996) models: the view of learners as unique learners and the impact of context and setting. The notion of learner as distinct from other learners is evident in Bachman and Palmer's consideration of topical knowledge, personal characteristics and how setting impacts conversational interactions.

Virtually nothing was mentioned regarding individual differences in Bachman's (1990) model. Although the model did account for how a speaker may approach a given situation, it did not delve further into why a speaker may make those choices. In Bachman and Palmer's (1996) model, the *individual* is present throughout the model. Here, personal characteristics, topical knowledge, and affective knowledge are recognized, both individually and integrally, as important aspects of the communication process.

Additionally, the entire interaction is considered with regard to the task or setting. Two circles define different aspects of interaction (See Figure 2). An inner and outer circle are used to designate this distinction. The inner circle represents the learner as an individual. Topical knowledge, language knowledge, personal characteristics, strategic competence, and affect all fall within this inner circle. The outer circle represents the task or situation where the interaction may occur. Double-headed arrows indicate that each of these factors affects others in a simultaneous way. Strategic competence is the primary

link in the model. It is influenced by topical knowledge, language knowledge, and personal characteristics and, at the same time, is linked to the setting or task.

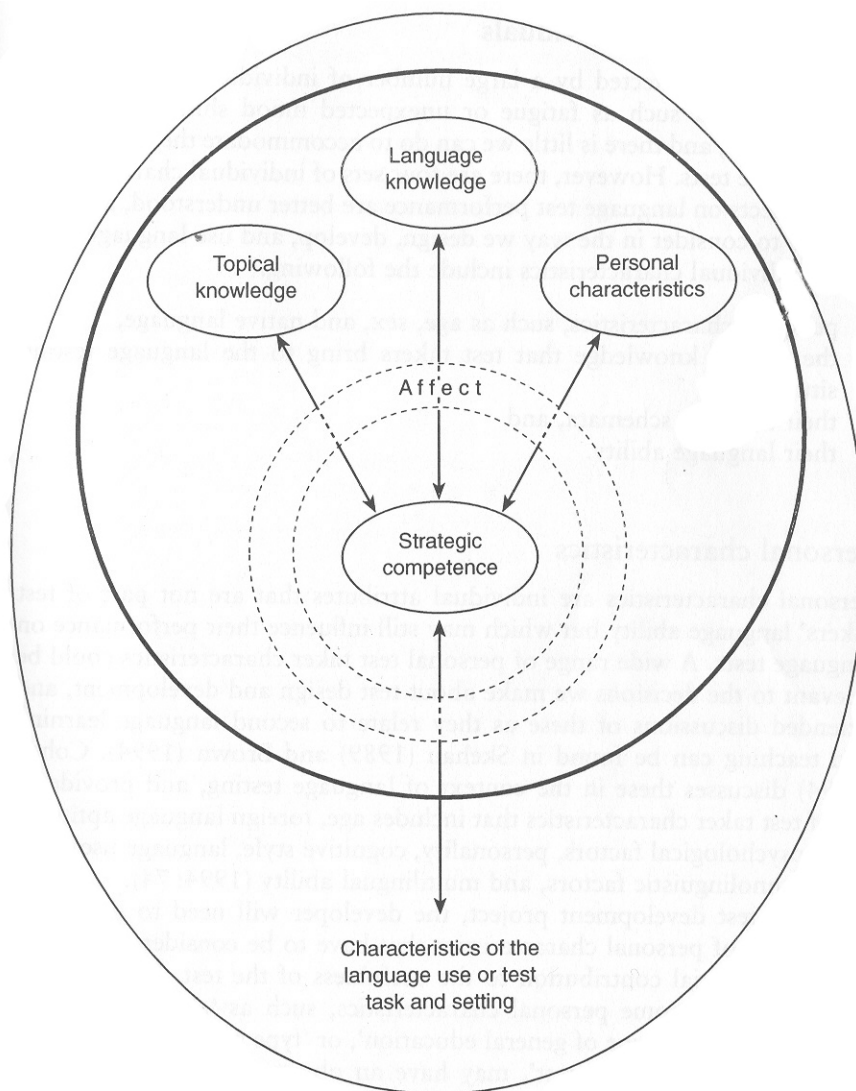


Figure 2. Bachman and Palmer's (1996) model

This conceptual layout differs from Bachman's (1990) previous model in that it followed a top-down format that did not suggest integrated components. Although he recognized that the features operated simultaneously, the individual components operate

independently on of one another. For example, functional knowledge is not shown to be integrated with a speaker's grammatical knowledge. Each falls under a different type of knowledge: organizational and pragmatic, respectively.

3.3.4 Savignon's Model

In her hypothetical model, Savignon (1997) presents communicative competence as consisting of grammatical, discourse, strategic, and sociolinguistic competencies. While, for the most part, these mirror other models of communicative competence (Bachman, 1990; Bachman & Palmer, 1996; Canale & Swain, 1980; Canale, 1983), Savignon (1997) envisions some of the interactive dynamics differently. Sociolinguistic and strategic competences are present at the earliest stages of language acquisition while grammatical and discourse competencies are acquired later. She accounts for this by noting, "Universal rules of social interaction and a willingness or need to communicate through gestures, facial expressions, and any other available means may serve to get a message across without the use of language, provided there is a willing partner" (Savignon, p. 49). In other words, communicators already possess some skills in a second language before they ever undergo the learning process.

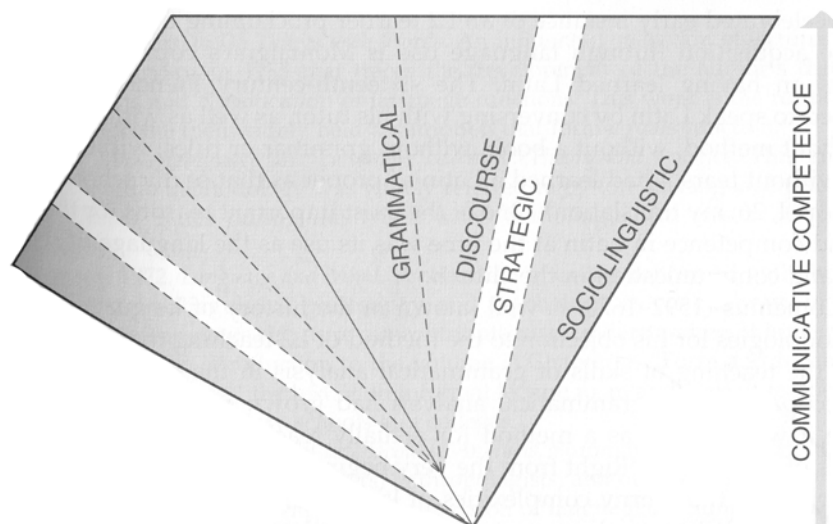


Figure 3. Savignon's (1997) model

An inverted pyramid represents both the process and degree of acquiring competencies (See Figure 3). The limited skills at the early stages are represented by a narrow point at the base of the pyramid. As these competencies become further developed, the width expands to accommodate more knowledge. However, this development only applies to grammatical, discourse, and sociolinguistic competencies. Savignon considers strategic competence as a constant feature in that “regardless of experience and level of proficiency one never knows *all* a language” (pp. 49-50, italics in original). Initially, strategic competence plays a greater role in communicating, but as other skills are developed, its influence decreases in relation to overall competency.

Although the degree to which a speaker relies on a particular competency varies according to proficiency level and given situation, Savignon views the relationship

among them as an interactive one. This constant interaction between them enhances overall communicative competence.

3.4 Bridging Communicative Competence and Assessment: SPEAK® Assessment

The Speaking Proficiency English Assessment Kit (1996, hereafter referred to as SPEAK®) (see Appendix C) is a product of Educational Testing Services (ETS), a well-established and reputable testing and assessment company. One of its primary products, the Test of English as a Foreign Language (TOEFL) is known the world over.

The SPEAK® is designed to “assess *generalized* speaking ability; performance on the test provides an indication of an examinee’s ability to communicate in English” (p. iv, italics in original). It is most frequently administered to assess the speaking abilities of international teaching assistants (ITAs). It is also useful as a placement tool in determining the appropriate English courses for second language learners, monitoring progress before and after the course of study, evaluating applicants for English-speaking positions, and testing for certification requirements. ETS cautions that the SPEAK® results are not a predictor of academic success. Rather, the assessment test establishes a level of existing preparedness.

Administering the SPEAK® test requires minimal materials: two cassette tape recorders and a test booklet. One of the cassette recorders plays the interviewer’s voice. In it, he or she guides the examinee through the directions, announces when tasks begin and end, and reads aloud the questions contained in the text booklet. The second cassette player records the examinee’s speech. These answer tapes are then forwarded to

evaluators to be rated. There are two warm-up questions at the beginning of the session; these are not graded and only serve to acquaint the test taker with the process.

Examinees are given one of six textbooks. Each booklet contains similar questions, but the specifics contained in each version differ slightly. For example, one version contains a map of a downtown district while another shows a campus map. The test consists of 12 questions and lasts exactly twenty minutes. Each question is general enough in nature for examinees of varying levels to be able to respond. The allotted time ranges from 30 to 90 seconds. Some of the tasks include giving directions, telling a story depicted in a series of photographs, discussing the examinee's academic subject area, describing national holidays in their home countries, and interpreting visual graphs. All are open-ended questions.

Test scores are numerical and “represent the bands on a continuum of oral communicative ability” (p. 12). The rating scale consists of five scores: 60 (communication almost always effective: task performed very competently), 50 (communication generally effective: task performed competently), 40 (communication somewhat effective: task performed somewhat competently), 30 (communication generally not effective: task performed poorly), and 20 (No effective communication: no evidence of ability to perform task). More detailed descriptors are found in the rating scale guides.

Unlike other assessment devices, such as the ACTFL test, the SPEAK® test only evaluates non-native speakers of English. In other words, a score of 60, the highest attainable score, does not imply that the individual sounds like a native speaker. Instead,

it suggests a strong performance within the limitations of communicating in a second language. Moreover, native English speakers would hypothetically score higher than the maximum permissible score of 60. It is not within the scope of this assessment device to evaluate or compare native speakers. Raters should evaluate the samples from the perspective of a native English speaker who is unaccustomed to hearing non-native speakers' speech. Although it can be assumed that most raters have some level of ESL training, they must put these skills aside and adopt a layperson's understanding. This shift is essential to successfully assessing the examinees since it is expected that those testees who pass will move onto positions in which they need to be understood by the general population.

When assessing a speaker's abilities, the SPEAK® test looks at four competencies (functional, sociolinguistic, discourse, and linguistic) as subcomponents of the overarching fifth competency, strategic competence. *Strategic competence* refers to "the speaker's ability to assess the communicative situation, plan what to say, and execute the speech" (p. 10). Strategic competence is a cognitive skill that involves assessing and planning, it is not directly observable. However, other four competences used to fulfill the task manifest strategic competence. For example, in the case of a speaker who needed to borrow money from someone, s/he will assess his or her needs, decide that the appropriate action is to make a request, and finally choose the language needed to make the given request. In this situation, only the physical utterance is observable; the planning that preceded such a request is not. On the other extreme, a low level speaker who felt overwhelmed in a situation, unable to cope, and withdraws into

silence has undergone the same assessment process as the speaker in the earlier example. Yet, in this case, the strategic competence of maintaining silence may not be as readily noticeable to outsiders.

A second facet of strategic competence is preventing, repairing, or salvaging communication breakdowns. Preventing communication breakdown is not observable while repairing or salvaging is. Unless a speaker openly admits “I’m not sure about how to say this”, the hearer may be unaware that the speaker has struggled at all. Some of the observable strategies include rephrasing, repeating, or pausing. Native speaker interlocutors frequently use these strategies in their own speech; therefore, the employment of them could go unnoticed. However, in cases where lower level non-native speakers rely on them excessively, the lack of strategic competencies needed to overcome hurdles may impede communication.

Functional competence is “the speaker’s ability to select appropriate language functions to reasonably address the task and to select language to carry out these functions” (p. 10). This can be thought of as the ‘task-oriented’ component. Each of the dozen questions on the SPEAK® test is designed to elicit a function, such as recommending, providing information, or offering and supporting opinions. Lower level speakers may struggle with this in that they are unable to fulfill the task. Perhaps they are able to offer their opinion (“I think X “), but fail to support their position (“because of Y”). Higher level speakers, on the other hand, may exceed expectations. They may expand past offering and supporting their opinion by refuting or challenging the other party’s views.

However, simply fulfilling a task is not always enough. The way in which one completes the task speaks to their overall abilities. When speakers demonstrate the “...ability to demonstrate an awareness of audience and situation by selecting language that is appropriate” (p. 11), they demonstrate their *sociolinguistic competence*. This includes both what they say (lexical selections, use of idiomatic expressions) and how they say it (tone, register, rhythm, and intonation). In order to test a speaker’s sociolinguistic competence, some of the questions posed to the examinees require that they be sensitive to their audience.

Thinking back to the earlier example of borrowing money, the type of audience would most certainly shape how the request were made. With friends or family, a casual request of “Hey, could I borrow a couple of dollars?” would be appropriate given the close relationship of the parties involved. However, in a more formal setting, the request might be rephrased as “Would it be alright if I borrow two dollars until tomorrow?” High-level speakers may possess the linguistic repertoire to select from a number of possible scenarios. Lower-level speakers do not have such a pool to choose from. In their case they be familiar with a fewer number of possibilities (such as *give*) when another selection may be more fitting (*lend* or *borrow*). Additionally, they may have acquired the best-suited vocabulary, but are still learning about appropriate registers or tone.

Cohesion and cohesive message influence how well hearers grasp a speaker’s message. In light of this, discourse competence should be taken into account when evaluating speech. *Discourse competence* is “the speaker’s ability to organize information in a coherent manner and to make effective use of cohesive devices to help

the listener follow the organization of the response” (p. 11). How one organizes and presents information determines whether or not a message is deemed coherent. Cohesive devices are used to construct coherent messages. Cohesive devices such as ‘however’, ‘for this reason’, and ‘therefore’ aid in framing ideas. They facilitate a logical flow and indicate shifts in thought.

All competencies affect comprehensibility to some degree, however, none have as much impact linguistic competence does. Knowledge about vocabulary, phonology, morphology, and syntax form linguistic competence. In order to effectively communicate, speakers need to possess an adequate vocabulary sufficient enough to express their ideas satisfactorily. Only with this breadth of knowledge will speakers convey subtleties in meaning. Clear pronunciation is essential to intelligible speech. Speakers must be able to distinguish between phonetic contrasts to avoid confusion. Consider the altered of meaning of *live/leave*, *walk/work*, or *ten/den*. The possible list of these contrasts is endless and frequently pose problems for English as a Second Language students. While trained ESL instructors may quickly decipher the intended utterance, most lay persons would not. Recent research argues that stress, rhythm, and intonation effect intelligibility even more than discrete sound (vowels and consonant) production (Avery, Ehrlich & Jull, 1992; Derwing, Munro & Wiebe, 1998; McNerney & Mendelsohn, 1992; Wong, 1987). Therefore, suprasegmentals, in addition to discrete sounds, should be accounted for when evaluating the pronunciation aspect of linguistic competence. Taken in conjunction, each adds to smooth speech that requires little effort on the listener’s part.

Equally important are morphology and syntax. Word order, verb tense, and agreement each contribute to meaning. Listeners quickly become scrambled when they are unsure if the speaker is referring to a past event or a present one. Delivery, the combination of speed and fluency, is another component that enhances or detracts from ease in comprehensibility. Speech delivered at a slow, painful pace raises the level of frustration on the hearer's part. Conversely, a rapid delivery, at the expense of clarity, does little to ease the listener's difficulties.

Because linguistic competence has such an impact on comprehensibility, speakers must perform above a certain level in order to have any hopes of communicating with the general public. Speakers who fall below this linguistic threshold will most assuredly struggle. On the SPEAK® test, it appears that this linguistic threshold occurs between levels 30 and 40. Sometimes difficulty in even one aspect of linguistic competence can result in a substantially lower evaluation. For example, even if an examinee has an extensive vocabulary and has a strong command of English grammar, these do little to place the speaker at a higher level if their pronunciation is so poor that these strengths are outweighed by their other limitations.

Given that functional, sociolinguistic, discourse, and linguistic are so intertwined, it is necessary to give one holistic score. Strengths and weaknesses are to be taken in to account, considered, and evaluated as a whole. This combined score then reflects the general abilities of the speaker. These four competencies, in conjunction with the overarching strategic competence, are combined to assign a score for each of the twelve questions. These are then averaged and each rater assigns a single score. Typically, a

second rater listens to the tapes and these two final scores are averaged. In the event of a marked discrepancy in scores, a third party makes a final determination.

The presuppositions contained in the SPEAK® test serve to support the type of linguistic endeavor put forth in this project. First, both are a unilateral communiqué in that they are recorded interviews, of sorts, without the ability of examiner to probe or elicit more information. Second, both are designed to establish a general level of proficiency. Third, they both strive for a “realistic measure of oral communicative ability” (p. vi). The undercover police tapes most assuredly capture language use in a realistic setting. The SPEAK® test aims to alleviate some natural test anxieties by asking opening questions that are not graded by the examiners. Moreover, the nature of the questions are contextualized, open-ended questions ones. One goal of asking such flexible questions is that the speaker will become absorbed in the process of responding to the question, therein, being distracted by focusing so intently on grammar or other such issues.

3.5 ACTFL Proficiency Guidelines

The American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines were developed as a standard by which to measure language proficiency (see Appendix D). The movement toward recognizing a need for such an assessment tool was inspired by former President Jimmy Carter’s 1978 commission that examined the state of the educational system. Among many concerns regarding the educational system in America, the findings indicated a marked lack of Americans who

were bilingual. In response to the need for national standards for language assessment, scholars collaborated to create such guidelines. The product of these efforts resulted in the 1986 publication of the ACTFL guidelines. These were later revised in 1999.

The *ACTFL Proficiency Guidelines* measure language ability in speaking, listening, reading, and writing. Levels include novice (low, mid, high), intermediate (low, mid, high), advanced (high, mid, low), and superior. A plus (+) is used to indicate the progression within that level. The scale is visually represented by an inverted pyramid, with novice at the lower point and superior at the widest top portion of the pyramid. Bands of varying width indicate the increasingly difficult task of gaining proficiency. The bands in the novice range are relative narrow, suggesting the relative ease with which a novice may initially progress. However, it is far more difficult to progress from an advanced to a superior level. In fact, many highly proficient speakers never move into the superior range.

The assessment criteria for the speaking proficiency is organized by four categories: global tasks/functions, context/content, accuracy, and text type. The global tasks/functions refers to the real-world interactions a speaker would encounter. Lower-level speakers produce simple, formulaic utterances. They rely on basic vocabulary. For example, they are able to make basic, introductory greetings but are not able to maintain a conversation for any great length of time. Intermediate speakers are capable of handling more complex situations that require a broader range of skills. These might include asking for and giving information or responding to questions. Advanced speakers shift time and aspect frames, describe, and narrate. These tasks require a speaker to sustain

their conversation for an extended period of time. At the highest level, superior speakers operate at a more abstract level in that they are able to hypothesize or argue a position. Within these levels, skills are developed so that the speaker becomes more accomplished at completing these tasks.

Context addresses the situation or setting where interactions take place. Lower-level speakers rely on predictability to support them in their attempts at communication. Situations, such as greetings, typically require prescribed dialogues that require little creativity in language use. Higher-level speakers are better suited to handle spontaneous situations. They possess the linguistic flexibility to manipulate their language according to varying situations.

The content is the most variable of these categories in that speakers bring their own experiences with them. At the early stages, conversation is again dependent on predictability. Daily routines form the basic content of the material discussed. At an intermediate level, speakers are able to discuss their immediate environment, such as family or self. As they become more advanced, they expand the scope of topics to include broader subjects outside their immediate sphere. As their facility increases, so does the content.

Most topics could potentially be discussed by members of any group. That is to say, there is no hierarchy of subject matter. Take the example of 'family' as a topic. Initially, novice speakers list the members of their family and identify their relationships to each one. Intermediate speakers are able to retell experiences with family members.

Advanced speakers can talk about family dynamics while superior speakers can address societal issues, such as domestic violence or family planning.

Assessing accuracy looks at “the degree to which the speaker relies on the listener for filling in gaps in the message due to imperfect control of the language...” (Buck, Byrnes, and Thompson, 1989, p. 3; quoted in Omaggio Hadley, 1993). Fluency, grammar, pronunciation, vocabulary, pragmatic competence, and sociolinguistic competence are the features that are considered when assessing accuracy. Typically, novice learners are harder to understand than more advanced speakers. However, at times, a lower-level speaker who has memorized prescribed dialogue chunks may make virtually no errors in their speech. Outside of the safety zone of memorized utterances, these speakers soon encounter difficulties. One benchmark is how well a second language learner performs when speaking with someone who is unaccustomed to talking with non-native speakers. Conversations generally flow better when less effort is required of the listener.

Text type refers to the length and structure of the discourse. Novices are limited to single words or brief phrases. Intermediate level speakers produce sentences while advanced speakers speak in paragraph length utterances, if needed. Superior speakers are capable of highly organized discourse that can be extended for a substantial period of time.

The 1999 version of the ACFTL Proficiency Guidelines also includes summary highlights. This was devised to aid users of the guidelines who may not have extensive training in this field. Each category is prefaced by the phrase “[specified level] speakers

are characterized by the ability to:” (Breiner-Sanders, Lowe, Miles, & Swender, 2000, p. 18). This is followed by bulleted guidelines that capture what can be expected in speakers of these categories.

These guidelines are not without detractors. Critics posit that the current tests has low validity and reliability. Salaberry (2000) argues that the test is artificial in that the mock conversations do little in the way of replicating real-life encounters. Given the unrealistic nature of the ACTFL interview, he recommends that the scope be broadened to include more possible types of interactions as well as a greater variety of content areas for discussion. Salaberry finds the tasks may limit some speakers because the interviews are driven by the interviewer, not the test taker. He argues that some test takers will not be given the opportunity to show their true proficiency. He envisions a scenario where a speaker may be capable of narrating, a skill considered to be accessible only to advanced level speakers or higher, but is only asked to describe, an ability more suited to novices or intermediate level speakers. However, Salaberry does not address how assessor training may have already considered this dilemma. He further takes issue with the concept of varying difficulty in formal and informal settings. He argues that the idea that formal settings pose additional challenges is unfounded.

Additionally, Salaberry is concerned with the scoring system. At present, language is viewed more globally in that proficiency is determined by looking at all the factors that contribute to communicative effectiveness. The concern is that raters unconsciously carry preferences or prejudices which may affect how they rate a testee. Rather than leave these unconscious preferences to the evaluator’s discretion, Salaberry

proposes assigning categorical ratings. He claims that this will alleviate the problems associated with varying relative weight assignments of assessment criteria.

Others concerns include hesitation that the ACTFL test has been designed based on instinct but has not been theoretically justified (Lantolf and Frawley, 1985; Salaberry, 2000). Additional concerns include questions regarding the reliability and validity of the ACTFL ratings (Bachman & Palmer, 1986) and an inability to control for cultural background knowledge (Douglas, 1988, cited in Henning, 1992).

Given that the sole subject of this study is a native Chinese speaker, it is necessary to note that an ACTFL Chinese Proficiency Guidelines exist (ACTFL, 1987). Guidelines were developed for less commonly taught languages (LCTL), such as Russian, Chinese, Japanese, and Arabic in response to two problems. First, there was a bias in favor of Western language that shared similar tense and gender. Second, Far East and Middle East languages do not share the Roman script used by English. As a result, speakers of these languages are faced with the additional burden of mastering a second script. While these are worthwhile considerations, these modified descriptions require the tester to understand the speaker's first language. For example, one descriptor for an intermediate-mid speaker is the accurate use of "high-frequency verbs and auxiliaries (*shì, yǒu, yào, xǐhuan*)" (p. 473, italics in original). Without an understanding of these words, this author did not find the ACTFL Chinese Proficiency Guidelines helpful.

4 ANALYSIS AND DISCUSSION

4.1 Introduction

Conversation is not random. Rather, it is an ordered system whereby each utterance has meaning, regardless of how impromptu the remark may seem. As Heritage (1984) observed, “no order of detail can be dismissed, *a priori*, as disorderly, accidental, or irrelevant” (p. 241). Discourse, whether oral or written, inherently carries information about the speaker’s beliefs, attitudes, presuppositions, personality, sense of humor, among a multitude of other insights. For the most part, meaning is taken up within the confines of a conversation or reading another person’s writings. However, sometimes minute details can be overlooked due to the highly complex nature of conversation and the rapid rate at which we communicate. Therefore, highly detailed analyses about language can help where everyday encounters leave off. Only after sifting through conversations and reflecting on deeper meanings can our understanding of the speech event and the participants involved in those exchanges be expanded. Linguists fulfill such a function. Their keen awareness of language enable those less familiar with the topic to appreciate the richness of language. With cases situated in a legal context, forensic linguists have the training and interest to achieve this goal.

The following analysis attempts to shed light on one speaker’s use of English. First, LK’s functional, linguistic, discourse, sociolinguistic, and strategic competencies will be addressed. The second part draws on his competencies (as well as additional examples) to evaluate and assess his language proficiency. Both the SPEAK® (1996) test

and the ACTFL Proficiency Guidelines (Breiner-Sanders et al., 2000) will be incorporated in this determination. Third, LK's abilities will be compared with the language found in the ATF Form 4473 Firearms Transaction Record. The last section hypothesizes how this case could have been presented to a jury, had the court allowed such testimony. Although this current project focused on communicative competence and assessment, other avenues were also available for a forensic linguist to study. As no forensic linguist testified at LK's trial, this is purely hypothetical; yet, it still behooves us to consider what could have been presented to a jury.

4.2 Communicative Competencies

4.2.1 Functional Competence

4.2.1.1 Sales-Related Tasks and Functions

The nature of any retail business warrants that the proprietor is able to perform sales-related functions. In general, these encompass determining the customers' needs, offering information, describing a product or process, and, if lucky, persuading the client to seal the deal. In his role as businessman, LK demonstrated the ability to greet customers, give prices, discuss merchandise availability, request identification, act as middleman between the customer and an external agency, and explain procedures. Although LK did display an ability to perform these functions, he did so with varying degrees of success. In other cases, he did not possess the functional competence

necessary to complete even basic tasks. These were typically more intricate negotiations that required abstract expressions or an advanced ability to manipulate language.

A customary way in which storekeepers greet customers is to open with some sort of salutation, “Hello” or “Good morning”, followed by an offer of assistance. LK greeted his customers with some of the normal greetings, “Hello”, and offers of assistance, e.g. “You need some help, sir? Oh, okay” (line 195).

Customary greetings were not consistent throughout LK’s speech. At times, he appeared to start in mid-stream, after the point where greetings would normally be practiced. On one occasion, LK walked away from the customer just as he was approaching the counter. After the customer asked where he went, LK returned but did not greet the customer. In response to a request to look at one of the Morrisons (a brand of gun), LK responded “What kind?” This was his opening line to start a conversation. He did not acknowledge nor apologize for walking away from his customer. This may be in part due to the customer’s abrupt beginning, as he did not make any attempt to open the transaction with any sort of greeting. In some way, each mirrored the other’s lack of salutations.

This tendency to leap past the salutations stage was repeated again. Upon entering the store, a second customer called out asking if someone could help him. By the time he made this request, the customer had already reached the display case and was looking at the guns. LK opened this transaction with the statement “It’s high point” (line 51). He omitted any sort of greeting in favor of moving directly into the next stage of the transaction process. A trained sales professional might try to restart the transaction by

interjecting some kind of welcome before moving into a discussion of the product, thereby establishing a rapport.

Greetings are one of the first functions that language learners learn, regardless of whether they learn language in a formal school setting or by other means, e.g. by immersion. Additionally, since greetings are formulaic, they are easier to master than other abstract features of language. But even in settings where one might expect greetings to be uttered, this was not done on a consistent basis. Although one could argue that these omissions were an oversight or simply a personal practice on LK's part, it is evident that he lacked the functional competence to perform these greetings adequately. One of the constraints of functional competence is the speaker's ability to "reasonably address the task and to select the language needed to carry out the function" (SPEAK®, 1999, p. 10). It is clear that LK did know the vocabulary, yet he failed to address the task.

Once the conversation was underway, LK provided facts about the merchandise. Much of the information (23%) he shared was about price information and product availability. Typically, he said how much the guns cost as a single number, occasionally following up with "dollar". For example, he would state, "Eighty-nine" or "Sixty nine dollar". While cost is a primary concern for most consumers, he did not elaborate on any markdowns, sales, or other pricing considerations that help shape buyers' decisions.

Another common piece of information LK shared was about quantity. In fact, of all the references regarding product information, 43% of them were about merchandise that was out of stock. He relayed this with the phrase "No more", repeating it several times in a row. This single phrase conveyed three concepts: 1) the item was currently out

of stock, 2) he did not intend on ordering more from the current manufacturer, or 3) from any other manufacturer. The following passage illustrates how LK uses one phrase to communicate these facts:

Agent GH: How about when are you going to get some of these nines? When are you going to get the ones that you say you're out of?

LK: 89?

Agent GH: Yeah.

LK: No more.

Agent GH: You going to get those in?

LK: No more.

Agent GH: No more.

LK: No more.

Agent GH: You can't even order them?

LK: No. No more. They don't make no more... (lines 336-352)

Other factual information was equally concise. He named the type of gun and/or manufacturer (16%), identified or explained features of the gun (16%). When LK did impart these facts, he did so with either a single word or brief phrase. References to product names were "Morrison", "AB-10", "M11" "44 magnum" (lines 674, 1375, 372, 1397) without any sort of prefacing build-up like "Would you like to look at the Morrison?". When he discussed features of the gun, he used simplified language like "The safety" (line 209). One might expect that since the safety serves as a vital protective component, it would warrant a detailed explanation; however, he may have omitted this because he considered his customer to be knowledgeable about the safety catch. When asked about why a magazine was so expensive, LK replied, "They come—they don't make long one" (line 1014). He was referring to a special kind of magazine that holds extra rounds. Since that item was a deluxe version of the standard magazine, it was priced higher. But, here we see that LK struggles in that he cannot successfully finish his

utterance explaining what *does* come with the gun; instead he switches to a negative framework and says what the manufacturer *doesn't* provide. In terms of functional competence, LK is limited in his ability to clearly elucidate why he carries the merchandise he does and how that knowledge may help his customer make an informed buying decision.

LK's struggles were not only found when he discussed firearms, but extended to other product areas. In one instance, a customer saw some pickled pigs feet in a jar on the counter and asked "What are these things?" LK replied, "China. They taste like good for you"(lines 1627-1629). Several key features are noted in his response. First, LK didn't answer the question. The first part of his response indicated that he confused "What" and "Where". The customer didn't inquire as to the origin of the food item, but instead asked about the food item. The second half did not serve to answer the question either. LK's response merges 'They taste good' with 'They're good for you'. This muddles issues of flavor (taste like) with health properties (good for you). In any case, LK failed to in the task of responding to a customer's inquiry about products.

While price and availability are important to consumers, other topics of discussion are equally common. It appears from LK's discourse that his functional competence is limited to naming. LK identified the merchandise but never discussed issues of quality, customer preference, or other product considerations. These require more highly developed competences, such as the ability to compare items and explain the advantages and disadvantages of each, determine what the customer's needs are, and persuade the customer that the purchase is a sound one. Additionally, it is typical in a retail situation

for a sales clerk to try use persuasive devices, ranging from a subtle invitation to buy to a hard-sell approach. None of these bargaining strategies were evident in LK's discourse. Bartering practices are also part of Chinese culture (Sinclair & Wong Po-yee, 2000, p. 202), so this absence cannot be attributed to a cultural gap. Although LK did regularly complete sales transactions, it cannot be ascribed to sophisticated sales tactics.

4.2.1.2 Information Gathering and Reporting

As soon as the customer decided to purchase the gun, LK shifted his role of middleman, bridging the purchaser and the Bureau of Alcohol, Tobacco, and Firearms agency. This phase of the sales process necessitated that LK display dual functional competences in information gathering and reporting. As with the functional competencies of naming, it is again evident that gathering and reporting were performed in a simplistic manner.

The prosecution argued that LK must have possessed a relatively high degree of literacy to be able to complete an application form. Yet, only rudimentary skills are needed to complete the application. The seller verifies the type and number (e.g. driver's license number) of the buyer's identification, information about the gun being sold, and records the approval code provided by ATF. Each of these pieces of data requires only copying skills instead of creative and original language use. The identification information is copied from the buyer's driver's license and the weapons data (manufacturer, model, serial number, etc.) is available on invoices or printed on the gun itself. In fact, the spoken language LK used during this phase was when he asked "You

got a picture ID?” (lines 219, 1419, 1510). This means that he only needed the oral skills required to ask a single question to accomplish this task. The remainder relied on undemanding writing skills.

The second functional competence LK displayed was to report information to the ATF representative. This can be done by telephone or by fax. There are five steps when reporting information: identify oneself, provide the gun seller’s license number, read aloud the information previously written on the form, record the ATF’s response, and end the conversation. Again, we will see that LK possesses only rudimentary skills in accomplishing these functions.

Interestingly, when LK opens the conversation, he immediately stated his name, frequently spelling it. There was no opening greeting as in “Good morning, this is LK from G’s market. I’m calling in a gun sale”. It does not appear that he knew any of the people at the agency because there was an absence of any chitchat or other kind of casual business banter. After identifying himself, LK stated his fifteen-digit license number. His transition to the gun sale was made with a statement like “This for [the] handgun”. This was followed by information about the purchasing party and the weapon. Before getting the final (dis)approval, LK confirmed what was read back to him. He used a string of “okay”s to acknowledge that the information was correct. On the occasions when the application was refused, LK only said “Okay. You deny. Okay, okay, okay. Bye” (line 1472).

The reporting stage is a mirror image of the gathering stage in that, for the most part, LK simply needed to pass on the information listed on the form. This series of

events demonstrates that when reporting, LK greets, names, reads aloud, confirms, and closes. None of these are carried out with any high degree of linguistic sophistication. In sum, LK does possess the functional capacity to complete the tasks required of a salesclerk; however, relatively simple skills are needed to perform them. This minimalist approach to language use is replicated in both how LK addressed the task and the selected language used.

4.2.2 Linguistic Competence

Linguistic competence includes vocabulary selection, grammatical structures, and accurate pronunciation. Developing this kind of linguistic competence is crucial to successful as it bridges such vital areas of communication. It is noted in the SPEAK® manual that, “There is a *linguistic threshold* that speakers must reach before the other competencies can be considered” (1999, p. 12, italics in original). This illustrates how dependant communication is on basic proficiency in linguistic competencies. Without it, one’s interlocutor is overly distracted by incomprehensible pronunciation, insufficient vocabulary, or odd grammatical structures.

4.2.2.1 Lexical Ambiguity

Mastery of specialized vocabulary can be deceiving. LK possesses an extensive particularized lexicon of firearm-related purchases. He readily used terms such as ‘high point’, ‘magazine’, and ‘clip’. His vocabulary extends past basic features of guns to

model-types, e.g. M11, AB-10, V80ACT, nine mm. In fact, LK's weapons vocabulary exceeds that of some native speakers. While many native English speakers may be familiar with the terms 'magazine' and 'clip', they may offer different definitions. Typically, more common uses would come to mind first, e.g. reading material for 'magazine' or hair accessory for 'clip'. This hierarchy of word popularity adds to the perception of LK as a more advanced speaker. The idea is that a speaker who uses such vocabulary must have already mastered more commonly used definitions. Yet, even within the context of firearms, many native speakers may not know these words. Some may guess that they are parts of a gun while others may (correctly) characterize that both terms refer to a bullet or cartridge holder. LK's familiarity with highly specialized vocabulary is sometimes referred to as a *hot house special*. This term denotes a non-native speaker's use of special interest lexical choices, typically words with lower frequency use, which has the effect of implying that he or she is at a higher level of proficiency that is actually the case. By incorporating more specialized vocabulary into one's speech, a non-native speaker gives the impression that this ability might be found throughout his or her speech.

Although LK knew seemingly advanced words within his professional context, his knowledge was limited. The following passage demonstrates how a relatively common words were unfamiliar to LK:

Agent: You all have no clear clips?

LK: Clear? [kyir]

Agent: Clear, Clear. You can see through them.

Informant: You've never heard of that?

LK: Yeah, I give you two (lines 1407-1415).

It is apparent that LK didn't grasp the agent's use of the word 'clear'. Grammatically, this word functions as an adjective. Adjectives relate to color, brand, purpose, size, among other possible properties. Both interlocutors immediately gathered that LK was not following this line of the conversation. The first interlocutor, the agent, repeated the word twice and then defined it. Repeating the word twice might be in response to LK's incorrect pronunciation. Many second language speakers whose first language is Chinese will confuse the /l/ and /r/ sounds, hence producing [kyir] instead of [klir]. For trained ESL teachers, this is to be expected. These learners encounter problems both in perceiving and producing /l/ and /r/, and it is quite a struggle for them to learn to differentiate between the two. For someone unaccustomed to interacting with non-native speakers, this is more marked.

The second interlocutor, the informant, appeared surprised that this word was unknown when he asked "You've never heard of that?" At first glance, the informant could have been referring to the rarity of clear clips because most come in black or silver. However, upon closer examination, he was talking about clear as a word, not as a rarity. If he were referring to rare clips, he most likely would have used the pronoun *them*, as in "You've ever heard of them?" Instead, he used the singular adjective '*that*'.

All three participants in the above conversation were acutely aware that a breakdown had occurred. For LK, he was unable to produce the discrete sounds for the word he was attempting to pronounce. Additionally, the word appears to be an unfamiliar one and was not part of his lexical repertoire. Both his interlocutors' reactions support

LK's evident struggle. For them, he was not linguistically competent either phonetically or lexically.

A second example occurred with a different agent when LK was helping the agent complete an application form. The problematic word in this instance was *optional*. In one section, the application is asked to provide a social security number, an alien registration number, or a miscellaneous number (e.g. military ID). The boxed information reads, “**OPTIONAL INFORMATION** – The information requested in this item (8) is strictly **optional** but will help to ensure the lawfulness of the sale and avoid the possibility of being misidentified as a felon or other prohibited person” (DOT ATF 4473, p. 1, bold and capital letters in original). The agent had to explain to LK, “See, because this says optional. So you don't have to put – you don't have to put that there” (line 1153). Rather than LK acting as an authority in completing these forms, something one might assume he's done hundreds of times over the past four years, the agent assumed the role of expert here and explained that he is not required to complete that section if he does not choose to. As an aside, LK's actions also support his claim that he was a law-abiding citizen. He wanted to ensure that the paperwork he filed was completed in its entirety.

The previous two examples illustrate how LK's lack of a particular lexical item was apparent to both interlocutors. Not only did each opt to comment on this, but they felt the need to define the terms ‘clear’ and ‘optional’ for him. In the case of ‘clear’, the agent even corrected his pronunciation. However, LK's insufficient vocabulary knowledge extended past these two examples. At other times, he substituted words for those he didn't know or could not access at that time. In numerous other instances, these

errors were not acknowledged by the other party. For example, after being denied permission to purchase a gun, the agent complained and asked for LK's help in trying to determine why the application had been refused. LK responded, "I can't do nothing. You want the telephone, I pass the telephone number" (line 1594).

This response demonstrates that LK confused either the verb (*pass*) or the object (*telephone number*) in the second clause. Typically, the verb *give* would be used in this circumstance, as in "I'll give you the telephone number". While both suggest the idea of transference, they cannot always be used interchangeably. *Give* denotes transferring possession of something from one person to another. *Pass* infers moving past or through a place. Perhaps the subtle distinction lies in the end result. *Give* may suggest a unidirectional action where the giver may or may not get the item back, e.g. *Give me some money*. *Pass*, on the other hand, implies continual movement with less focus on the final destination, e.g. *Pass the salt* or *pass on information*. One doesn't anticipate that the saltshaker will be permanently located at the other end of the dinner table.

Not only is the verb somewhat ambiguous, but the object of the subordinate clause is also. It is unclear as to *what* LK wants to pass to his client. Is it the telephone number or the telephone? Recall that the client had asked LK to intervene by calling the agency and LK declined; therefore, either option could be considered contextually. First, if the word 'telephone' from the primary clause and 'telephone number' were different, then it is appropriate to use two different nouns, i.e. *If you want to use the telephone, I'll get you the telephone number*. If, on the other hand, these were one in the same, one would expect a pronoun to be used in the subordinate clause, i.e. *If you want the*

telephone, I'll pass it (it = the telephone). The reverse would still hold true if the conceptual subject were the telephone number, i.e. *If you want the telephone number, I'll give it to you(it = the telephone number).*

The agent interpreted LK's answer to mean the telephone number, as evidenced in his response of "You got a telephone number?" (line 1596), even though this contradicts the agent's earlier request for LK to place a phone call to the ATF office.

4.2.2.2 Syntactic Ambiguity

Meaning can be conveyed in the simplest of utterances. While this can be effective in many communicative interactions, sometimes more is better. Subtle nuances of meaning get lost when a speaker is not able to fully convey their intent. At other times, the general idea is successfully shared even if the syntactic structure of the utterance is not native-like. LK demonstrated the ability to create full sentences; however, in nearly every occasion his utterances do not follow Standard English grammatical rules. English follows a Subject-Verb-Object (SVO) order. Chinese, on the other hand, is regarded as an SOV language (J. Zhao, personal communication, February 1, 2005). When this order is not adhered to, the listener may fail to comprehend by varying degrees. Sometimes the entire message is lost while at other times only parts are misinterpreted.

Altered order is one way in which problems are manifested. LK's speech ranges from easily understood with a native-like structure to more problematic due to additional effort on the interlocutor's part. In the example of "You bought a gun here before, right?" (line 493), this utterance follows the SVO format. In addition, LK has correctly

formulated a question using a tag question structure. This is typical of the kind of sentence that a native speaker would make.

Not all LK's utterances are as easy to follow. A speaker may have all the necessary components, but they are arranged in a non-native like fashion. There are several examples of this type of misordering in LK's speech. In the following situation, LK told his customer that his application has been denied and the customer asked why this was the case. LK responded, "What happen in the past. If in past you ask me what happen, you better get a telephone call and ask them" (line 1590). This demonstrates that only some English patterns have been followed. LK established that he was referring to a past event in his lexical selection of "in the past". These kinds of conditionals pose real challenges for many ESL learners (Celce-Murcia & Larsen-Freeman, 1999, p. 545). A native English speaker may frame their comments as a past event, but s/he would have inflected the past tense -ed, and instead, would have said "What happened in the past".

There are some slight lexical variations that require more cognitive processing on the listener's part. "You better" serves as a way to offer advice as in "You need to" or "You could ...". For a native speaker, "You better" sounds like a stronger command form and is only spoken by those in a position of authority. Another example of an irregular lexical selection is the choice of 'get a telephone call'. This is said in English, but under different circumstances. This suggests that someone called, not that the speaker will perform the action. This shift is from a passive role of recipient to an active one that requires action. LK confuses 'get' with 'make' or 'place'. Even more common would be to reduce this phrase to 'call'.

Given what we know, it is clear is that some past event has taken place and that a subsequent action is recommended. What is unclear, even after some contemplation, is what that past event was. Two possibilities of the past event are: the denial of the application or LK's previous encounters with the agency. The first interpretation infers that now that the application has been refused, there is nothing more LK can do to help his client. The alternative possibility suggests that LK is a seasoned professional accustomed to working with this agency and, given his background knowledge, he is qualified to make the subsequent recommendation. But, even though the tone and lexical selection are a bit off, the general idea is understood. Regardless of which past event LK refers to, his recommended outcome of placing a call remains the same. Therefore, this utterance can be interpreted to mean "If you want to know what happened, you need to call and ask them".

It is evident from the preceding example that some effort was required to interpret LK's utterances and, even then, some doubt remains as to what the intended meaning was. In essence, about half was fully understood and the other half remains a little foggy. Other utterances were even more convoluted syntactically. The sentence "I'll make you drop down all kind the bullet price" appears to be an offer to reduce the price of some bullets. The initial part of the phrase, "I'll make you..." conforms to Standard English, but then veers off and merges two ideas in one. LK joins "I'll make you an offer" and "I'll drop the price". Even though he replaces 'an offer' with 'drop down', they are similar conceptually. "All kind the bullet price" suggests that his offer is not limited to

bullets for the gun presently under consideration, but can be applied to bullets for whichever firearm his patron ultimately selects³.

4.2.3 Discourse Competence

Sentences are more than isolated thoughts; they convey information, opinions, thoughts, and ideas. Given that meaning is transmitted through a stream of utterances, speakers must present their thoughts in an organized fashion in order for their listener to comprehend. Cohesive devices serve such a function. Sequencing information in a logical order, prefacing new information with old, familiar content (Bachman & Palmer, 1990, p. 89), and using phrases of coordination, subordination, and transition (SPEAK®, 1996, p. 11) are among the possible linguistic mechanisms.

LK used simplistic cohesive devices in his speech. One such occasion when LK drew on these strategies was when he explained to his client how to contact the Alcohol, Tobacco, and Firearm agency. The customer wished to know why his application had been denied. The reason for a refusal is not given to the gun seller; therefore, any inquiries must be initiated by the applicant. LK explained, “You call; somebody answer. Okay, if you want to say your kind, okay, you just tell them this one. See, somebody answer the phone, you just say this morning tried to buy a gun. That’s the --” (lines 1606-1607). This advice contains six anticipated events formulated in three segments: Phase 1; a) place a call, b) the call is answered, Phase 2; c) give identifying information, d) clarify supporting documentation, and Phase 3; e) the call is answered, f) state the problem. At

³ This was the only instance where LK employed any sort of negotiation tactics.

first glance, this appears to be a relatively cohesive way to tell someone what to expect when calling an office.

The first phase considers what may happen immediately upon placing the call, “You call; somebody answer”. While this utterance orders two events, it does little in the way of informing his client about what to expect procedurally from the person who answers the phone. The content is obvious as telephone calls are always answered, either by a live individual or by an answering machine. A native English speaker may say, “When you call, ask them X”. In this case, it is assumed that the purpose of placing a call is to get information about X. But, for LK the comment associated with placing a call is that someone will answer the phone. This is an unnecessary step in that it accomplished nothing with regard to relevant outcomes.

The second phase included some practical advice. LK advised, “Okay, if you want to say your kind, okay, you just tell them this one”. It is unclear, even when looking at the language that preceded and succeeded this short passage, what ‘kind’ refers to. He may have been thinking about a kind of weapon, a kind of form, or a kind of numerical reference number. Since he indicated ‘this one’, it may have been clear at that time to those present. Nevertheless, his discourse offers a plan of action – For Goal A, perform Action B.

The third phase includes one revisit to an earlier topic and states the purpose of the telephone call. The logical presentation went awry here as LK circled back to earlier subject matter that had already been addressed. Twice, he covered irrelevant material, “Somebody answer the phone”. This is no more relevant than it was previously.

Additionally, he reminded his customer to “say this morning tried to buy a gun”.

Although this pattern does follow the topic-comment style of building on familiar, established material, it does not promote understanding nor inform LK’s client of any procedural considerations or helpful tips.

Peppered throughout this passage are fillers, such as ‘okay’ and ‘see’. Fillers function to link one idea to another or indicate a transition has or is about to occur. In English, ‘okay’ and ‘see’ serve to indicate that important information is to follow, e.g., ‘Okay, listen up’ or that the speaker is right and it would behoove the listener to heed the speaker’s warning, e.g., ‘See, that’s why we do it that way’. But, these fillers did not serve the functions they typically do in English. The result is that there is a disconnect between the flow of ideas. It is not marked enough to significantly alter the meaning of the utterance; however, the natural flow and progression of speech is halting.

Another common way to build cohesion in conversation is use a topic-comment approach where old information is introduced first followed by new information, referred to as the comment. A second alternative is to introduce a new topic for discussion. When these patterns are followed, both interlocutors know what the subject matter is and can develop it as they wish. This moves the conversation forward in a coherent fashion.

In LK’s speech, he is not always capable of doing this. He gets stuck at the topic stage, unsure of how to shift the conversation to a new topic or to comment on ideas that new development. In the following passage, LK attempted to give the agent a carrying case for the gun he just purchased. Here, he displays limitations with regard to discourse competence:

LK: You want case?

Agent JD: I'm just – you can have that. You can just keep it for one of yours. This is all – I don't need the directions.

LK: You don't want case?

Agent JD: No, I know how to shoot it. Point it and squeeze the trigger. [speaking to the CI] Will you just stick that under your jacket or something? [to LK] Okay, thank you.

LK: Everybody want.

Agent JD: Nobody wants a box, huh?

LK: You don't need a box?

Agent JD: No, I don't need a box.

LK: ...The box cost almost thirty or something like that.

Agent JD: So today's your day. You can resell it, or put one of yours in it. Put one of your guns in it. Okay, see you. (lines 1320-1343)

Evident in this passage is LK's struggle to clarify that his customer *truly* doesn't want the gun case that comes with the weapon just purchased. He has five opportunities to accomplish this. Three of them are inquiries about whether his customer plans to take one. They can be summarized as "You do (not) want a case/box?" The fourth emphasizes that most customers do want one, and the fifth notes the value of the item.

Even though the type of statement made by LK varies slightly, his statements are not distinct or strong enough to get the desired response back from his customer. It is clear that LK views the case as a valuable item that is part of the total sales package while the customer discounted it as unnecessary because he "doesn't [sic] need the directions". Instead of clarifying how his customer viewed the accessory or elaborating that he could take the case, but disregard the directions, LK loops back around to the same starting point, only rephrasing from a positive ("you want...") to a negative ("you don't want...") stance. However, the customer still viewed that case as a holder for the directions and again reiterated that he didn't require that kind of instruction at this time. LK, however,

appears not to be satisfied and wonders why this customer is unlike all the others. Yet, the agent didn't understand LK's comment to be about himself; instead, he interpreted it to mean that virtually no one opts to take the case. LK's last attempt is to quantify the value of the case with a dollar amount. Finally, LK has some success by the agent's recognition of the value.

In looking over this passage, it becomes evident that LK failed to "present a logical flow of thoughts and to signal shifts in thought" (SPEAK®, 1996, p. 12) which are indicators of discourse competence. Instead of having enough control of the situation to manipulate the direction of the conversation, he stayed put circling around the same information. He was only successful in conveying the monetary value of the case, but struggled throughout, unable to clearly express his ideas. This is typical of less proficient speakers as they cannot connect their ideas together and, if and when, they do, it is done in a haphazard, awkward manner. Someone of higher proficiency would have said something along the lines of "Are you sure you don't want the case? It's worth about thirty dollars". In forming the inquiry in this way, the speaker acknowledged that the customer previously declined the offer (old information) and offers new information about why he should reconsider, i.e. the value. The outcome may have been the same, but since LK was not able to manipulate the situation as he may have wished, we'll never know.

4.2.4 Sociolinguistic Competence

Sociolinguistic competence is the “speaker’s ability to demonstrate an awareness of audience and situation by selecting language that is appropriate” (SPEAK®, 1996, p. 11). This kind of competence requires sensitivity on the interlocutors’ part. Aspects such as tone, register, choice of vocabulary, use of idiomatic expressions, and complexity of response need to be considered. Speakers also need to think about issues of formality and how such conventions are manifested in communication. In short, audience awareness is paramount to sociolinguistic competence.

Apologies serve as one forum to examine how sociolinguistic competence operates. The goal of any apology is to express regret and appear (at least a little) penitent. Naturally, the degree to which someone offers an apology depends on the particulars of the situation. Accidentally stepping on someone’s toe is far less grievous than getting caught stealing from the till. Intent, degree of harm to the offended party, and past history all add to the complexity of expressing apologies.

Taking the example of stepping on someone’s toe, we can see how an apology might vary by situation. If this happened on a crowded bus with passengers being jostled about, a cursory “Sorry” is all that is in order. However, the response would likely be elaborated with a co-worker. If this happened at the water cooler, the apology would likely be extended to “Sorry. Did I hurt you?”, thereby assuring that enough attention had been paid to the other person.

Another example of sociolinguistic competence is leave taking. Given the length and nature of the encounter, salutations may include “See you soon” or “Thank you so

much for dinner. It was delicious”. Rarely would an abrupt “Goodbye” suffice. Typically, there’s some banter back and forth during the leave taking process. The response to thanking someone for dinner might be “It was our pleasure. I really enjoy cooking for people” or “You are always wonderful company to have over”. During this turn taking process, the tone is matched by both speakers. It would be highly odd to respond to someone’s gratitude for sharing a meal with “See ya”.

Yet, this odd pairing of informal and formal discourse style is exactly what we find in LK’s speech. At the end of the business transaction as the customer was walking out the door, the following exchange occurred:

Agent: “Okay, all right. All right, man. Cool, babe.”

LK: “Yes.” (lines 1693-1695)

The agent’s string of goodbyes are a mixture of standard conversations closures with highly informal terms of address. His use of ‘okay’, ‘all right’ are common indicators that a conversation has ended. Both intimate that some agreement has been reached and that it is now the appropriate time to move to final closure. The employment of ‘man’, ‘cool’, and ‘babe’ all function as ways to part on a friendly note. Typically, these terms are used only between males, particularly within the African American community. While LK may have heard these terms before, he did not adopt them in his speech. Nor did he retort with a similar slang term, e.g. ‘dude’ or ‘guy’. While LK is not obligated to conform to his interlocutor’s speech patterns, he did not even make any attempt to respond in any similar congenial fashion. His brief response contained a single word “yes”. Yes to what? His minimal response is little more than an acknowledgement of his customer’s farewell.

He appears not to understand the possible appropriate responses that could be available to him. In this, he does not understand the “communicative functions that [sic] are appropriate within a given sociocultural context” (Canale & Swain, 1980, p. 30). In this, LK again demonstrates that his sociolinguistic competence is limited by his inability to draw on a larger number of possible responses. While he does not befriend anyone by giving this answer, at least he does not offend.

Sociolinguistics competence not only refers to appropriateness of language and using cohesive devices in speech, but also includes background knowledge necessary to have a shared understanding. According to Savignon (1997), this requires “an understanding of the social context in which language is used: the roles of the participants, the information they share, and the function of the interaction” (p. 41). Native speakers often take for granted their understanding of social convention, habits, practices, and other such aspects of sociolinguistic (and sociocultural) competence.

Gaining initial exposure from textbooks offers a preliminary introduction in some behaviors and practices one will likely encounter in that target culture. Insights from one’s teacher is also helpful. Native speaker instructors have an insider’s perspective on social and linguistic practices and understand the subtleties within their own culture. This is not to say that having non-native speakers as instructors suggests that they lack in this area. Non-native speakers have an outsider’s perspective that keenly observes differences between the target and home culture. This is especially if the instructor and students share a home culture as it offers a similar starting point for comparison. Observations such as “Act X is performed entirely differently in that country than we do here” can give real

insight into differing practices. However, developing an awareness is certainly not dependent on learning in a classroom setting. Although culture is taught in textbooks, nothing is better than existing in the target culture for developing an understanding of cultural and linguistic practices.

LK, not schooled in an English classroom, relied entirely on exposure in the target culture to figure out American ways of communicating and all of the features of American life that accompany that. While this kind of immersion is ideal for language learning, it provides no support for clarification nor does the second language learner have any opportunity for educated input from a teacher. Given his kind of exposure, LK was aware of many surface level aspects, but appears not to fully understand some practices in their entirety. At times, LK interpreted wisecrack remarks or off-handed comments literally. In the following passage, LK has been waiting for on hold for about a quarter of an hour for a response from the ATF office. Frustrated, the customer asked:

Agent AD: “Ain’t it a holiday or what?”

LK: Huh?

Agent AD: A holiday or what?

LK: No, not holiday (lines 479-485).

For a native English speaker, it is readily apparent that the question had little to do with a holiday, but instead was a complaint about the extensive waiting period. The reference to ‘a holiday’ meant that the clerks on the other end of the phone were taking far too long in his opinion. Yet, the intended meaning was lost on LK. For him, this was a literal question about holiday closures, not a cynical remark.

In English, ‘holiday’ carries more than one meaning. Most common is a celebratory occasion where offices and schools close and festivities abound. Wrapped up

in this idea of idleness, ‘holiday’ can have a negative interpretation. It can refer to laziness, lethargy, and languidness. Inherent in this unfavorable notion is the idea that the clerks on the telephone were slow and inefficient. However, with LK’s limited repertoire of linguistic selections, he reverted to the more frequently used definition, foregoing the intended meaning.

This illustrates LK’s shortcomings in differentiating between literal and figurative meanings. This kind of exchange could be equated with appreciating humor in a second language. Both require an understanding of the target language that allows interpretation of wit or sarcasm. Generally, this is acquired at the more advanced stages of language learning. But since LK is not an advanced speaker of English, he was not able to grasp the extent of his customer’s frustrations.

Sociolinguistic competence is not only limited to what we say, but includes our understanding of the target culture around us. Bachman refers to this as an *ideational function* in which speakers draw on their experiences of the world in order to express meaning (1990, p. 92). Conversely, without a shared understanding, non-native speakers will miss out on important references embedded in spoken (and written) discourse. For LK, these uncertainties included:

- Location:
 - “Indiana. What’s that?” (line 1089)
 - “What is PA?” (re: Pennsylvania, line 1427)
- Names:
 - “Charlies” (re: Charles, line 1446)
- Business practices/concerns:
 - “Like Coke company” (re: possible confusion with another company, line 356)

- “Shit. Place not like 7-11. They open everyday. I not open every 24 hour” (re: confuses daily schedule with hours of operation, lines 388-389)
- “Everybody is Y2K. I don’t know what is. (re: doesn’t know what Y2K represents, line 1056)

The example about the Seven Eleven store illustrates how LK has partial, but not complete, understanding of American culture. This was in response to his customer’s comment that since G’s market would be open on Christmas Even and Christmas Day, “... It’s like Seven-Eleven. What’s up?” (line 386) It appears that LK did not consider his store to be like a Seven-Eleven. This utterance reveals several ideas about his perception of the differences. First, he began this utterance with an explicative, a definite indication of strong disagreement. He then clearly stated that the two businesses are not alike. For him, the amount of time that a store is open defines the type of store. From LK’s perspective, a store that stays open long hours is inferior to one that closes at the end of each day.

4.2.5 Strategic Competence

Strategic competence is the ability to repair, reformulate, rephrase, and generally restructure when communication breaks down. Sometimes this involves asking for reclarification, while at other times, it may be more prudent to opt for silence. The best solution depends on the individual and the setting. These strategies are used by both native and non-native speakers. Savignon offers the following questions to discuss coping and survival strategies:

What do you do when you cannot think of a word? What are the ways of keeping the channels of communication open while you pause to collect your thoughts? How do you let your interlocutor know you did not understand a particular word or that he or she was speaking too fast? How do you, in turn, adapt when your message is misunderstood? (1972, quoted in Savignon, 1997, p. 45)

Sometimes it is difficult to determine when a speaker is employing coping strategies. If the speaker vocalizes their difficulties, their interlocutor can intercede by rephrasing or repeating. When the speaker is silent or adopts other non-overt methods to keep the lines of communication open while processing meaning, it is more problematic to identify the use of strategies.

4.2.5.1 Coping Strategies

During more challenging conversations, second language speakers may resort to using a number of survival strategies. In the following passage, we see how LK struggles to comprehend what the agent is proposing about an alternative monetary structure:

Agent GH: You don't have a charge account do you?

LK: Huh?

Agent GH: You have a charge kit for a charge account?

LK: No.

Agent GH: No charge account?

LK: No.

Agent GH: Do you set up a cash charge account?

LK: [laughs] I don't know how to do that.

Agent GH: You bring in an advance of cash, and then you charge it out to cash.

LK: [7 second pause] Charge account, no. We don't have charge account.

Agent GH: What if I bring in some cash, and then you just charge it off my account?

LK: Cash?

Agent GH: An advance when you just come in and you--

LK: -- Every time you have to fill out form. I have to call in. (lines 399-425)

The speakers' communication breakdown occurred on two levels. First, LK does not appear to be familiar with the terms used by his customer. Second, it took LK some time to grasp that what his customer was proposing may in fact be illegal. To compensate, LK asks for clarification, pauses to process the information, admits that he is unfamiliar with either the process or the terminology, and anchors his understanding to familiar words.

LK does not appear apprehensive to concede that he cannot follow what his interlocutor said. This is evident in his use of "huh?" (line 401) and "I don't know how to do that." (line 413). While both functions as ways to indicate that a communication breakdown has occurred, each serves a slightly different purpose. "Huh?" is an interjection that expresses confusion, doubt, or uncertainty. Inherent in this utterance is a request to repeat and/or clarify the previous sentence. The conversational partner readily takes up this request and responds with some sort of elucidation.

The second statement is an admittance of a lack of knowledge rather than one of understanding. It is more a matter of lacking in topical knowledge than in language. However, given the vague nature of the request to *set up a cash charge account*, it is not surprising that LK cannot follow the discussion. This phrase is not a common one in English. *Cash* and *charge account* are contrary terms. Paying with cash means that the item is paid for at the time of sale. Charge accounts are designed to delay payment to some future date. While the buyer is more affected by the mode of payment than the businessman (putting merchants' fees aside), the customer is the one who selects the payment method. LK appears to pick up on these key words as he later tried to clarify what his customer was proposing.

When the agent explained that “you bring in an advance of cash, and then you charge it out to cash” (line 415), LK paused for seven seconds, quite an extended interval, decided that his customer was referring to some kind of charge account that LK did not have at this store, and then responded “Charge account, no.” (line 417). This is interesting given that in the preceding utterance, the agent used the word ‘cash’ twice and ‘charge’ only once. Further, the word ‘charge’ was couched in the middle of the sentence with ‘cash’ preceding and following it. But for LK, ‘charge’ was the more prominent. However, since a cash sale wouldn’t pose any difficulty for LK, he evidently decided that the process of charging merchandise was not something he could do at his store. It is curious that he did not opt to use other universal words like ‘Visa’ to aid him. Visa is instantly equated with charge purchases and is used globally.

While LK may have assumed that the conversation about charging merchandise had concluded, the agent kept this line of discussion open when he proposed, “What if I bring in some cash, and then you just charge it off my account?” (line 419). Immediately as the sentence began, it becomes apparent that the customer is suggesting some sort of plan. “What if I...and then you just.....” implies that the speaker is putting forth his or her own plan. While there is no evidence that indicates that LK interpreted this subtle construction as a device intended to convince someone of something, he continued to struggle to decipher how *cash* and *charge account* are related. Having previously eliminated a credit card purchase as a possibility, he then turned to cash as the only possible remaining interpretation. Hence, he asks “Cash?” (line 421)

Finally, when the customer again tries to explain this puzzle of a negotiation, it dawned on LK that this is not the kind of transaction he is willing to partake in. Here, he changed from a struggling second language speaker and repositioned himself as a businessman who determines how his operation will be conducted. He reiterated the rules his establishment follows when he explained that, “Every time you have to fill out form. I have to call in.” Now, cash is no longer the subject and LK doesn’t refer to any payment method. Instead, he reaffirmed how this and any other business transaction will be conducted.

This passage demonstrates several stages LK went through to reach of the point of understanding. After grasping at familiar words and repeating them in the hopes of getting some further clarification, LK finally understands and appreciates the nuances of the agent’s request. Here, he clearly defined what was expected of both he and his customers. His struggles paid off as there is no evidence that LK was willing to participate in any unconventional payment practices.

One of the most marked speech patterns in LK’s speech was his frequent repetition. He either repeated the same word or slightly modified it. While he typically said the same word or phrase two times, on occasion he repeated it more than once. The following selection represents the kind of repetition most frequently made by LK:

- a) “This one is not nine m.m. See? Nine m-m. Nine m-m. Nine [slowly]. Ninety nine this one. See? Nine m-m. This ochenta.” (line 210)
- b) “You know we open everyday. Everyday. Everyday.” (line 393)
- c) “I can’t do nothing. I don’t know nothing.” (line 1584)
- d) “Every time, everybody. Every time. “ (line 437)
- e) “Oh, I don’t know why. Everything. This year. This year. This morning.” (line 513)

Sample A contains several repair strategies: repetition, reading aloud, slowed speech, comprehension check, code switching. In this brief passage, LK recites 'nine (m-m)' five times. Since the two interlocutors were talking face to face and looking at the guns themselves, it is unlikely that this kind of reiteration would have been necessary. Had this conversation occurred on the telephone, clarifying the names of the guns may have proven helpful. However, since this was not that kind of encounter, it seems futile.

Repeating exactly the same word was also noted in Samples B, C, D, and E. It suggests that the speaker is frequently misunderstood and has acquired this habit as a method of compensation. Perhaps LK is asked so frequently to repeat what he said, that he simply takes the initiative and saves his interlocutor the trouble of asking.

Spelling and reading aloud are also ways to help one's conversational partner understand what has been said. *Nine m-m* would be read by most literate native English speakers as *nine millimeter*; however, LK read exactly what he saw in printed form; that is, letter 'm', letter 'm'. This suggests that this abbreviation was an unfamiliar one to him and that he lacked the linguistic knowledge to manipulate the language to reflect how the term is used in speech. This is particularly interesting because LK would never have received positive input from another source that would make him adopt this way of calling a nine m-m gun. Quite the reverse is true; it is very unlikely that he would have heard *m-m* for *millimeter*.

This practice of spelling obvious words is found in his telephone conversations with the ATF office. While it is more common to spell words while on the phone, especially when calling in an application, LK selected odd words to spell. For example,

he always spelled both his first and last name; however, it is unknown if the other party on the line was familiar to him. Additionally, he spelled the words 'S-T-A-T-E' and began spelling 'I-N-D-I--' for 'Indian' until the other person cut him off (lines 1611 and 1574, respectively). Although it is usually better to err on the side of caution and make sure that the person one is speaking with follows what is being said, it can be frustrating and detrimental to the fluidity of the conversation if it is done unnecessarily so.

Slow, careful enunciation of sounds also aids comprehension. It alleviates confusion over similarly pronounced words. In Sample A, LK drew out the sounds for 'Nine'. Initially, this may appear odd as it is the fourth occurrence in his string of 'nine mm's. Yet, immediately following this fourth utterance were the words 'Ninety-nine this one'. By dragging out the word 'nine', LK marked it as different from the subsequent utterance of 'ninety nine'. Native and non-native speakers alike know the confusion over numbers in the teens and those marking increments of ten, e.g. fifteen v. fifty, thirteen v. thirty. Commonly, the number is followed by some sort of clarifier, e.g. "fifty-five oh". LK seems to have extended this practice to include numbers that are even slightly similar to one another.

Twice, LK checked in to verify that his interlocutor understood what was being said. His use of "See?" is used as a comprehension check. However, no evidence was found that this technique was noted by the other person. No extended pauses were found to suggest that after asking "See?", LK waited for any kind of response. Additionally, no responsive utterances such as 'uh-huh' were heard on the tape. Since these recordings are only audio and not video recordings, the body language used by each person is unknown.

Therefore, we do not know if the agent were nodding in acknowledgement as LK was talking.

The last strategy evident in Sample A is the practice of code switching. During LK's conversations on one of the tapes, he used Spanish. Agent ER was identified as a U.S. Immigration Officer and is a completely bilingual speaker of English and Spanish. Excerpt A demonstrates that LK reverted to Spanish to tell what the prices were, "This ochenta" (This eighty). However, he cannot maintain a conversation in Spanish. He only uses word interspersed with English. For example, LK asked "You gotta picture ID? Es una mica? Yeah, that's good, too. That's good, too" (line 219). A mica is a form of identification that Mexican citizens use to cross the border into the United States to conduct short-term business, e.g. a daily shopping expedition. Although LK knew this specialized vocabulary in Spanish, the majority of his speech is in English. Further, 'mica' does not have a single word that is convenient to substitute. The closest is 'green card', but this implies that the holder of this card may have working privileges. Regardless, LK does adopt Spanish, perhaps as a good will gesture, to conduct small segments of business with his bilingual client.

The preceding sections have demonstrated LK's functional, linguistic, discourse, sociolinguistic, and strategic competencies. However, competency is different from proficiency. A speaker's competency shows his or her strengths and weaknesses in particular areas of speech. Although these competencies are to be considered in a holistic and integrated manner, they do not relate the speaker's level of proficiency. Proficiency conveys how advanced the speaker is in speaking in a second language, as well as how

well he or she might be understood by a native speaker who is unaccustomed to interacting with non-native speakers. Therefore, it is time to revisit LK's speech, using the understanding gained from the analysis of his competencies in five fields, and apply that knowledge to determining his level of English proficiency.

4.3 A Proficiency Assessment Using the SPEAK® Band Descriptor Chart

The SPEAK® Band Descriptor Chart provides a framework for examiners' to assess the varying features of a testee's speech. Although the SPEAK® test has been discussed extensively (see Chapter 3, Section 4), it may prove helpful for quickly recap where LK's speech may fall. None of LK's language corresponded with Levels 20, 50, or 60. Therefore, this analysis will focus on Levels 30 and 40 only. The following table summarizes the criteria for those two levels. A complete copy of the descriptors can be found in Appendix A. The bolded portions represent where LK fell within the bands. These will be discussed in depth in this section.

Table 2. Adapted from SPEAK® Band Descriptor Chart for Levels 40 and 30 (SPEAK®, 1996)

	Level 40 Communication somewhat effective: task performed somewhat competently	Level 30 Communication generally not effective: task generally performed poorly
Overall features to consider:	Speaker responds with effort. Sometimes excessive, distracting, and ineffective repair strategies used to compensate for linguistic weaknesses (e.g. vocabulary and/or grammar). Adequate control. Some listener effort required.	Speaker responds with much effort. Repair strategies excessive, very distracting, and ineffective. Much listener effort required. Difficult to tell if task is fully performed because of linguistic weaknesses, but function can be identified.
Functional Competence	Functions performed somewhat clearly and effectively. Speaker may lack skill in selecting language to carry out functions that reasonably address the task.	Functions generally performed unclearly and ineffectively. Speaker often lacks skill in selecting language to carry out functions that reasonably address task.
Sociolinguistic Competence	Somewhat appropriate response to audience/situation. Speaker demonstrates some audience awareness, but register is not always considered. Lack of linguistic skills that would demonstrate sociolinguistic sophistication.	Generally inappropriate response to audience/situation. Speaker usually does not demonstrate audience awareness since register is often not considered. Lack of linguistic skills generally masks sociolinguistic skills.
Discourse Competence	Somewhat coherent, with some use of cohesive devices. Coherence of the response is sometimes affected by lack of development and/or somewhat illogical or unclear organization, sometimes leaving the listener confused. May lack details. Mostly simple cohesive devices are used. Somewhat abrupt openings and closures.	Generally incoherent, with little use of cohesive devices. Response is often incoherent; loosely organized and inadequately developed or disjointed discourse often leaves the listener confused. Often lacks details. Simple conjunctions used as cohesive devices, if at all. Abrupt opening and closures.
Linguistic Competence	Use of linguistic features somewhat effective; communication sometimes affected by errors. Minor and major errors present. Accent usually distracting. Simple structures sometimes accurate, but errors in more complex structures common. Limited ranges in vocabulary; some inaccurate word choices. Delivery often slow or choppy; hesitancy and pauses common.	Use of linguistic features generally poor; communication often impeded by major errors. Limited linguistic control; major errors present. Accent very distracting. Speech contains numerous sentence fragments and errors in simple structures. Frequent inaccurate word choices; general lack of vocabulary for task completion. Delivery almost always plodding, choppy, and repetitive; hesitancy and pauses very common.

Overall, LK's speech contains aspects found in levels 30 and 40. This is a typical situation as most speakers rarely follow all the features within a single level. It must be noted that this evaluation is constrained because LK's speech samples are only located in a business context. As Chinese is spoken at his home, it can be concluded that the work place may provide the greatest opportunity to speak English. Given this, it can be presumed that he has mastered business-related lexicon, but may not have acquired vocabulary in other areas. No additional data were available to evaluate his speech in differing contexts and over varied subject matter. The developers of the SPEAK® test recognize the importance of presenting the testee with varied situations. The twelve questions contained in the SPEAK® test are designed to hypothetically place examinees in different settings so that they can demonstrate how they would perform in various situations. Nevertheless, since many forensic linguistic cases have limited data sources, the assessment will focus on the data that is available for examination.

4.3.1 SPEAK® Assessment – Functional Competence

LK was able to fulfill the basic sales-related functions and tasks associated with selling weapons. He demonstrated the product, provided the prices, collected information from the buyers' identification cards, called in the application to the ATF office, and completed the monetary transactions. Two cautionary notes must be made here. First, as mentioned above, this assessment is limited to business-related activities. An array of multiple functions and tasks has not been considered. Second, even within LK's strongest context, he appears constrained in his ability to fulfill some other sales-related activities,

such as persuading the buyer to purchase the gun, or suggesting that he upgrade to a more expensive model. There is no evidence of his ability to lure, cajole, or otherwise convince his client to elevate his purchase. While these may be culturally dependent or personality-related, there was no evidence of any extension beyond the bare basic functions in completing a sales transaction. Therefore, his performance is consistent with what is expected at Level 40.

4.3.2 SPEAK® Assessment – Sociolinguistic Competence

As a businessman, LK appears to have some audience awareness and does give appropriate responses. One of the most telling aspects of LK's ability is his capacity to align himself with either the customer or the agency. He vacillated between the two roles. At times, he positioned himself with the customer and sympathized when applications were denied. He expressed frustration as he and his customer waited when he said, "Take so long. Take so long" (line 1472). Here, neither party can continue with the transaction until the approval process is completed, so they are completely dependent on the pace of the operator. Prompt service is valued and the slow pace placed LK and his customer at a disadvantage as they waited for the result.

In his role as businessman, LK even went further giving advice to his customer before the call was even placed. Section B of the ATF Form 4473 requires the applicant to check off 'yes' or 'no' about any previous criminal history. (See Chapter 3, Section 3.2.3) The following passage demonstrates how LK guided his customer on the ramifications of responding in the affirmative:

Agent: Do I just put yes or no?

CI: Yes or no.

Agent: What's this? What's this?

LK: [laughs] Say no.

Agent: Oh. No? You say yes, what happens?

LK: On the phone, I say yes. You go to jail before what happens. Not found
(lines 1556-1566)

Clearly, LK's goal was to help the client, not the agency. Had the applicant answered 'yes' to that questions, the application would have automatically been denied. It is not clear if LK presumed that his customer did not have a criminal record and wanted to reassure him to respond appropriately or if LK disregarded the truth. One might assume the first possibility because a background check on the social security number would instantly alert the ATF office that a convicted felon was attempting to purchase a gun.

On other occasions, LK distanced himself from the buyer and aligned himself as a lowly representative of the ATF office. For example, LK showed little sympathy when another client's application had been denied. His explanation consisted of, "I can't do nothing. I don't know nothing. See tell you driver license on this. They take almost 20 minute to check. I tell you driver license on that you know how fast. How do I know they check? They tell me to do this paperwork. I do the paperwork. That's all I know" (lines 1584-1586). LK portrays himself as a powerless worker, at the mercy of the governing agency. He did not, however, display any real sympathy for his customer, as he did in the previous example. Instead, he quickly attempted to distance himself from the decision makers and related where his responsibilities as a gun seller ended.

This ability to comport oneself in different ways implies an ability to acutely assess a situation, determine the appropriate demeanor, and act accordingly. This

suggests a heightened awareness of one's audience. While LK was not always attuned with the finer subtleties of social graces, he was more assuredly aware of who his audience was and what the ramifications of that were. This kind of audience awareness places him in at level 40.

4.3.3 SPEAK® Assessment – Discourse Competence

Until now, it had appeared that LK consistently fell in to the 40 category. Yet, waiting to assess a second language speaker on all fronts is precisely why the SPEAK® requires raters to wait until they hear the entire response to evaluate overall proficiency. From LK's starkly limited cohesive devices and his awkward conversational openings and closing, his performance drops to a 30 level performance. With regard to discourse competence, his speech often lacks details, is difficult to follow due to few or ineffective cohesive devices, as well as his use of brusque and clumsy openings and closures.

For the most part, LK can convey the general sense of what he intended to tell his interlocutor. However, this is done in choppy segments that appear to have little or no relationship to one another. This is clearly evident in the previous example of LK's directions to his client on how to complete the ATF Form 4473. Regarding the section of the form where the applicant must indicate whether he or she has any prior criminal conviction, LK instructed, "On the phone I say yes. You go to jail before this what happens. Not found" (line 1566).

Here we see that only fragments are readily understood. It is apparent, given the context of a phone-in application, that LK initially referred to the phone call he must place for the approval process, "*On the phone I say yes*". It would not be misconstrued

that he were referring to another agency or another sort of phone call. Thereby, by process of elimination, it is fairly easy to assume how LK contextualized his comments. Even though the intended meaning has been framed, the subsequent two sentences become increasingly unclear.

In the phrase, “*You go to jail before this what happens*”, the syntax muddies the meaning. “*You go to jail*”, implies a future event, not a past one. Next, “*before this*” indicates some kind of event or occurrences have taken place, but these have yet to be addressed in this utterance. Typically, this would be used to introduce a clause stipulating what had ensued previously. Yet, when, as listeners, we are finally told what took place, we are only told, “*what happens*”. This vague explanation lacks any sort of detail that would guide the listener about what previous event should be considered. This begs the question: “*So, what did happen?*” In sum, what the interlocutor was presented with lacked both the cohesive devices to lead the interlocutor through the maze of sequential events as well as generally placing a burden on the listener to comprehend such a disarray of ideas.

This excerpt exemplifies the problems LK faced in organizing and presenting his ideas. His awkward arrangement of events does little to further his interlocutors understanding of events. Further, no cohesive are used to link one idea with another. Simply chaining one sentence with another is ineffective. As presented, the ideas appeared disjointed. Last, no supporting background information was given to aid the listener in piecing together the previous events with future consequences.

Throughout LK's discourse, both here and in numerous other exchanges, he provided as minimal information as possible. The result was that the interlocutor was placed in the position of postulating about possible relationships between ideas. Such marked effort on the part of the listener is an indicator of a speaker's lack of proficiency to present these ideas in a clear format.

4.3.4 SPEAK® Assessment – Linguistic Competence

Linguistics competence is primarily concerned with producing intelligible speech. Factored into this are sentence construction, frequency of errors, accent, and delivery. Based on these elements, LK appears split between a 30 and 40 level proficiency. His speech contains both major and minor errors. These primarily are syntactic and grammatical errors. At times, LK omits the subject or verb or constructs the sentence in a way that a native speaker would never do:

- a) "Like Coke company" (line 352)
- b) "That's the way possible" (line 1528)
- c) "Not finished people" (line 505)
- d) "It's not me to go to" (line 1675)

Some of these utterances are easier to follow than others. In Sample A, "*Like Coke Company*", it poses no great difficulty to understand that something is like the Coca Cola Company, even though the subject is missing. Sample B, "*That's the way possible*", encompasses two possible English constructions (*That's the way* and *That's possible*) into a single sentence. Each suggests an explication or a resolution to something. Because these concepts are so closely related, the listener can capture the gist of the message. In

Sample C, “*Not finished people*”, the subject is placed in the object position and also lacks a copula. One could assume that the intended message was “The people are/were not finished”. But since LK uses such simple sentence constructions, it can be understood. The brevity of his sentences helps the listener’s comprehension but may, simultaneously, hide his inability to string more complex ideas together. Therefore, he makes relatively simple errors but *only* because more sophisticated language is not attempted.

The last sample is the most problematic and exemplifies how challenged LK is when he produces more complicated sentences. The sentence “*It’s not me to go to*” lacks both a subject and modal in the secondary clause. Since LK is instructing his client on procedures, it could be assumed that *you* is the appropriate selection here of subject. Possible modal choices are *need*, *have*, and *should*. Having this additional and necessary information, the sentence would be stated something like “It’s not me [you] [need, have, should] to go to”. This sentence ideally captures the linguistic competence level 40 descriptor of “simple structures sometimes accurate, but errors in more complex structures common” (SPEAK® Band Descriptor Chart)

As noted earlier, it is not possible to determine LK’s lexical capabilities in subjects other than guns and associated paraphernalia. However, looking past his highly specified work-related vocabulary, he appears to possess a limited range of vocabulary. When LK described something that one is obligated to do, he alternated between *have to* and *need to*. This demonstrates that he possesses more than one possible way to express an idea. Moreover, he correctly distinguished between *have* with regard to possession

(*“We don’t have charge account”*, line 417) and *have to* for an obligation (*“I have to see it”*, line 1663). Again, these are quite simple examples of alternating speech patterns.

More complex modifications were not evident in his speech.

Delivery posed the greatest challenge for LK with regard to linguistic competence. Although SPEAK® raters are instructed to listen for choppy or laborious speech, LK demonstrated another kind of difficulty. He spoke in little bursts and then immediately circled back and repeated what he had just said. This style placed an additional burden on his listeners because they had to get past the staccato presentation before ever starting to interpret his words. Additionally, his constant repetition made it difficult to translate his words into ideas, particularly since it appeared that the conversation wasn’t progressing. Even though the intent was to aid comprehension, at times, this practice hindered communication. This further supports SPEAK’s® position that strategic competence is an overarching competency that is evident throughout speech.

Although LK’s speech production could be classified as either level 30 or 40, I propose that his overall level of proficiency should be classified as a level 40. This determination is made for several reasons. First, the descriptors differentiate between “somewhat competently” and “generally performed poorly” (p. 8). For example, despite some awkward sociolinguistic errors, his responses were somewhat appropriate given the audience and situation. They were not grievous enough to warrant a ‘poor’ classification. Further, examinees are not predicted to perform consistently within one band. The training manual notes that, “Raters may find that in an examinee’s responses (a) not all

competencies exhibited by the speaker are at the same level or (b) the speaker's performance fluctuates between two bands across all competencies" (p. 14).

Second, LK was able to maintain conversations with native speakers of English who are unaccustomed to non-native speakers. The tapes contained business transaction lasting approximately half an hour. Although communication breakdowns did occur throughout these conversations, the end result was that LK was able to complete a business transaction. A level 30 speaker would not likely be able to accomplish such a task. Additionally, LK conducted business on a daily basis and had done so for a number of years.

Third, LK possessed sufficient proficiency to enable an examiner to assess multiple consistencies, particularly with regard to linguistic competence. Without some proficiency in this area, it is problematic to assess some of the other proficiencies. SPEAK® notes that, There is a *linguistic threshold* that speakers must reach before other competencies can be considered....this linguistic threshold seems to occur between levels 30 and 40" (p. 12, italics in original). At no time during this assessment process was it problematic to focus on one competency at a time. There was sufficient production to govern a proper assessment.

Fourth, the level 40 band readily acknowledges that errors are commonly present in a speaker's production. This allows for classification into this category without any expectations of near perfect speech. This mid-range level recognizes a level 40 speaker as someone who is no longer a novice, but still struggles with the language. Level 40 does not suggest a high-intermediate speaker. Recall that this test is only designed for non-

native speakers. Therefore, it should not be presumed that a level 40 designation indicates that this speaker is rapidly nearing his way to a ‘perfect’ 60. No such category exists. Rather, level 40 assumes that speakers of this level have mastered some basic grammatical structures, but lack the ability to perform in more complex situations.

When possible, it is beneficial to compare assessments. Therefore, after having determined that LK is a level 40 speaker on the SPEAK® Rating Scale, his language will again be analyzed using the AFTFL Proficiency Guidelines.

4.4 A Proficiency Assessment Using the AFTFL Guidelines

The American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines – Speaking “measure learners’ functional competence; that is, their ability to accomplish linguistic tasks representing a variety of levels” (Breiner-Sanders et al., 2000, p. 13). They are similar to the SPEAK® Assessment (1996) in that they both strive to evaluate oral proficiency, most commonly for educational or professional placement purposes. Although a summary chart of highlights is included, the basis of the evaluation is based on how closely an examinee performs as compared to the detailed descriptors. (See Chapter, Section 5 for a detailed overview).

As a starting point, LK appears to fall into the intermediate range. His abilities closely correspond to the characterizations found in the summary highlights. In short, he is able to conduct his daily affairs (at least at work), string elements together to form sentences, ask and answer questions, and complete basic survival tasks. He has surpassed the novice classification since his utterances are more than ‘minimal’ and his recombined

sentences are more complex than memorized phrases. He falls far short of the abilities needed to be considered an advanced speaker. No evidence was found to support a capacity to “narrate and describe in major time frames with good control of aspect” (Breiner-Sanders et al., 2000, p. 18). This leaves us fairly confident that it would be appropriate to look closer at the ranges within an intermediate classification. Three possible sub-categories exist within the scope of an intermediate classification: high, mid, and low. Upon closer examination, LK’s speech most closely resembles that described for an Intermediate-Mid speaker of English.

At the onset of this discussion, it is prudent to eliminate the Intermediate-High and Intermediate-Low levels from consideration before narrowing the discussion to the most appropriate classification, Intermediate-Mid. Below are aspects of language of Intermediate-High that LK has not demonstrated proficiency in:

- converse with ease and confidence;
- paragraph-length utterances;
- handle the tasks pertaining to the Advanced level, but without the ability to sustain a performance for an extended period (p. 16).

Therefore, Intermediate-high can be precluded from the possible classifications best suited to describe LK’s language proficiency. Additionally, it is necessary to identify the areas that his language has surpassed at the Intermediate-Low level:

- conversation restricted to concrete exchanges and predictable topics;
- topics limited to food and simple purchases;
- struggle to answer direct questions or requests (p. 16).

Given LK's ability to address such abilities, it does not appear that he should be limited to this level. Rather, an intermediary evaluation at the Intermediate-Mid level is most closely matched to the descriptors found in the ACTFL Guidelines. The following considerations best capture the nature of speech produced by LK as an Intermediate-Mid speaker:

- handles uncomplicated communicative tasks in straightforward situations;
- functions reactively;
- formulates strings of sentences;
- speech contains pauses, reformulations, and self-corrections;
- misunderstandings so occur, but are generally understood by sympathetic interlocutors (p. 16).

As noted in LK's functional competence, he is limited to sales-related tasks, as well as information gathering and reporting. These functions consist of greeting customers, giving prices, discussing merchandise availability, requesting identification, and explaining procedures. Since he deals with these situations on a daily basis, they can be considered straightforward situations. Although the typical ACTFL testing situation does not lend itself to an individualized analysis, circumstances in forensic linguistic analyses necessitate that the examiner account for daily contact, perfunctory routines, and topical knowledge. Additionally, LK does not incorporate any sales techniques, such as strong persuasive tactics, bartering, or heavy negotiating. Instead, he is limited to reactive functions.

The length of utterance is also telling in assessing a speaker's proficiency. Lower-level speakers are limited to memorized utterances or highly simplistic sentences. At the other extreme, advanced speakers can develop highly abstract speech that can be maintained for an extended period of time. LK falls somewhere in between these two extremes. He is able to formulate strings of sentences, but rarely expands past a few sentences uttered at a given time. Moreover, these strings were quite short and elementary.

Most marked in LK's speech was his reliance on strategic competencies. These entail reformulation and repetition. His speech was peppered with replicated phrases, either verbatim or slightly modified. This is a clear indicator of a speaker's hesitancy and lack of confidence. This pattern frequently happens with intermediate performers who can partake in a conversation, but are frequently misunderstood during the process. Although these misunderstandings occur, LK did attempt to employ strategies that will help him clarify what he wishes to convey. Most importantly, they *are* effective with interlocutors who do not have frequent contact with non-native speakers of English. These individuals can be a tough audience, so LK's capacity to trudge through these situations suggests capability above the novice level.

All in all, a proficiency assessment using the SPEAK® Band Descriptor Chart and AFTFL Proficiency Guidelines concur that LK's speech is in the Intermediate-Mid range. This assessment was based on complexity of language, patterns contained within strings of utterances, cohesive devices, repair strategies, and reactions of sympathetic interlocutors unaccustomed to interacting with non-native speakers of English. Although

some particulars differed between the assessment models, in general, there was strong agreement that Intermediate-Mid is the appropriate assessment determination.

4.5 An Analysis of the Language in ATF Form 4473

4.5.1 Sentence Embedding and Other Complexities

As with most legal documents, the language in ATF Form 4473 is highly complex. This comes as no surprise as citizens need lawyers to interpret the law for them. This happens even though many U.S. citizens are native speakers of English. Heated debates frequently occur among these experts as points of law are interpreted in various ways. On some level, legalese could be considered a dialect, spoken only by those familiar with the lexicon and syntactic structures found in legal discourse. The following analysis uses only one sentence to demonstrate how highly complex the language is in this document. The sentence under examination is one that proved pivotal in LK's legal case. (The full paragraph is contained in Chapter 3, section 2.3). LK was responsible for understanding the subtle differences between a gift and a purchase. But, this difference was not presented in such a clear-cut fashion in the form. Diagram 1 illustrates as many as four level of embedded meaning within this single sentence:

“A licensee who knowingly delivers a firearm to an individual who is not buying the gift for himself or herself or as a gift violates the law by maintaining a false ATF F 4473”(p. 3)

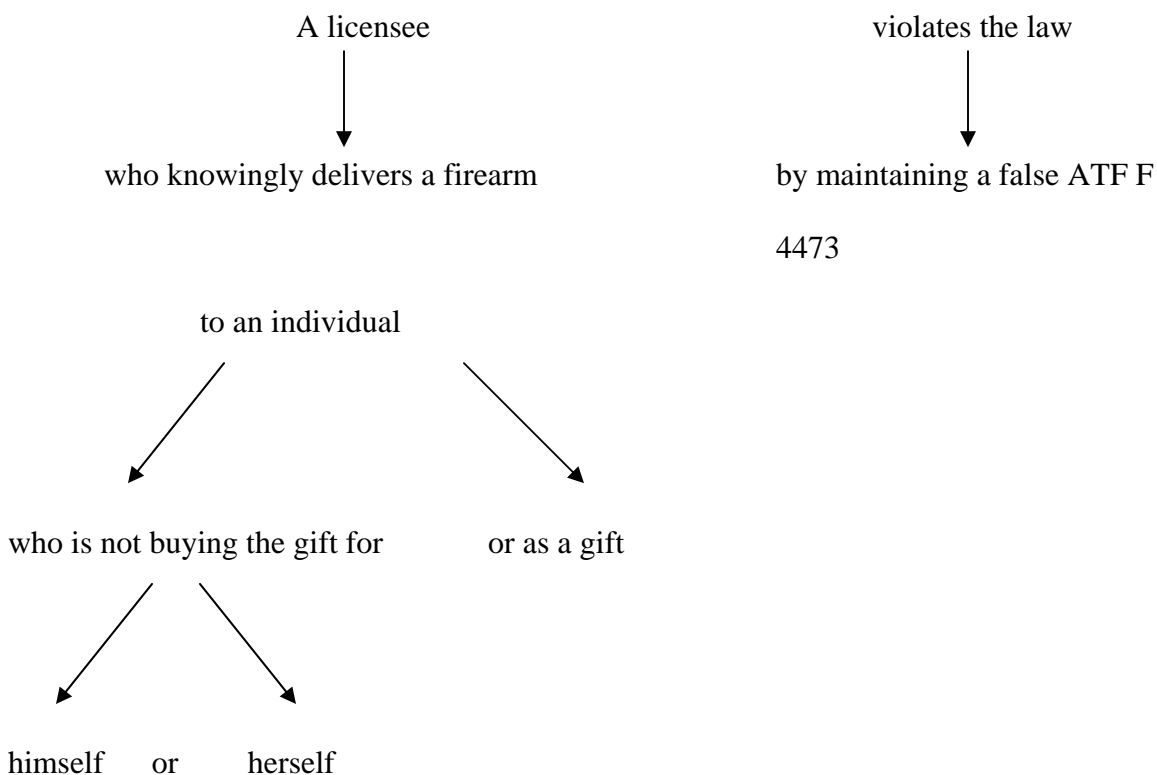


Diagram 1. Diagram of Sentence Complexity

Diagram 1 represents the multiple layers of simultaneous interpretation necessary to fully comprehend the meaning of this sentence. Misunderstandings can occur at any point while reading this sentence. At first read, it may appear that the illegal action is to buy a gift for another person. In other words, each person should be required to purchase his or her own weapon. This, however, is incorrect. Surprisingly, it is perfectly legal to buy a gun as a gift for someone. The only stipulation is that the buyer must complete the form. The problem lies with an individual who accepts payment to purchase a gun on behalf of

another person and that this transaction is not considered a gift. So, right from the start, the intended message is convoluted and lost in the complexity of the embedded language.

Sentences containing multiple clauses are not the only aspect that make this form so problematic to read. Some of the legal language requires a translation immediately following it. For example, in Section A, the buyer is required to provide self-identifying information about himself or herself. However, the instructions note that this section must be, “completed personally by transferee (buyer)” (p. 1). Transferee is not a lexical term accessible to most of the general population. Therefore, it requires interpreting by the legal experts who composed the form. Positioning these terms next to one another emphasizes the need for clarification.

This was not the only occasion where further explanation within the text was warranted. In Item 9b, the applicant must indicate yes or no to the following question, “Are you under indictment or information in any court for a crime for which the judge could imprison you for more than one year?” (p. 1) The word *information* typically implies factual knowledge or a derived understanding. However, in this situation, this rare use of the word in a different context justified an explanation, “An information is a formal accusation of a crime made by a prosecuting attorney” (p. 1). Even highly proficient speakers of English may not be familiar with this use. Consequently, the language contained in the form is problematic for most English speakers and accessible only to those accustomed to wading through such complex legalese.

Some parts of the form initially appear easy to manage, as in the case of Section D, which is a five column section of boxes in which the seller writes down data about the

weapon being sold, e.g. the manufacturer, model, serial number, type, and caliber or gauge. This section requires the seller to copy information from another source and record it on this form. Since the skill needed to complete this part entails copying, only limited literacy skills are required. However, the introduction at the beginning of the section is remarkably sophisticated. The section reads:

On the basis of (1) the statements in Section A; (2) the verification of identity in item 11 and my verification again at the time of transfer (if the transfer does not occur on the same day as the verification noted in item 11); and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below to the person identified in section A (p. 2)

This means that despite a person's ability to fill in some boxes on a form, that individual may lack the ability to understand how that section of information is framed and what the greater consequences are of providing the designated information. Additionally, the seller is required to understand what is contained in other parts of the form, specifically Section A and Item 11.

Another problematic element is that some of the language use is not consistent throughout out the document. For example, the term 'Published Ordinances' is used to describe the third and fourth pages of this application which stipulate the rules and regulations that govern these types of sales. Yet, that same terminology is not found in the those pages. Instead, the heading reads 'Important Notices'. The reader is then

burdened with making the connection that the ‘Published Ordinances’ and the ‘Important Notices’ are one in the same.

Last, much of the terminology used in this type of document is highly advanced. Among a litany of sophisticated lexical selections are *adjudicated*, *renounced*, *expunged*, *provisions*, and *complied*. In addition, even more accessible words become convoluted when combined in unfamiliar ways. For example, when referring to a person previously mentioned, the term ‘such partner’ was used. Rather than the most frequent meanings of *very* (e.g., such a nice day) or of *belonging* (e.g., a boy such as yourself), *such* now denotes a prior referent.

A second example is found with the word ‘disposition’. Form 4473 reads, “This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (*buyer*) occurring on such premises” (p. 3, italics in original). Generally, the word *disposition* refers to temperament or character (e.g., The puppy had a nice disposition). Even in this more common context, this word would be familiar to higher proficiency speakers. Lower-level proficiency speaker would most likely use ‘personality’ in its place (e.g., The puppy had a nice personality). And again we see the seldom used *such* with regard to premises, once more designating something previously referenced, this time location.

Although ATF Form 4473 is a written document, some of the features found in it can be compared with the ACTFL Proficiency Guidelines - Speaking. While it may initially appear more prudent to use the ACTFL Reading Guidelines (ACTFL, 1999), they are lacking in two areas. First, it is necessary to evaluate a reader’s level of

comprehension as to how much of the content information was absorbed. Readers must demonstrate whether or not they were able to comprehend vocabulary, infer meaning, and follow diverse texts. Second, speed is also a consideration when attempting to determine a reader's level. The pace at which a reader moves through a text is also insightful when determining proficiency levels. Since no access to LK was possible not available, neither of these two primary factors can be addressed. Therefore, the analysis will draw on the spoken sources of data which are available. The following features from the descriptor of a superior speaker (p. 14) capture many elements found in the ATF form:

- communicate both concrete and abstract perspectives
- discuss interests and special fields of competence
- explain complex matters in detail, provide lengthy and coherent narrations
- provide structured argument
- construct and develop hypotheses to explore alternative possibilities
- demonstrate virtually no pattern of error in the use of basic structures

Given that most of the language found in the form meets the above listed criteria, it is practical to categorize this document at the 'Superior' classification. It is a highly detailed document that is written to cover nearly every conceivable situation; thereby, making the language general and specific at the same time. It could also be argued that the intended audience is not the buyers and sellers who will use this form. Instead, the writers of this envision how the courts would interpret the language. In other words, it is written for lawyers and judges who have extensive experience with judicial texts. Most certainly,

this form was written by numerous authors and underwent extensive review prior to implementing it.

4.5.2 The Readability of ATF Form 4473

In addition to looking at sentence complexity, vocabulary, and embedded sentences, it is also insightful to apply a logical readability test to determine the level of education one might need to fully comprehend the document. Although it might be presumed that lengthy, eloquent language is more pleasing to read than brusque, short sentences, some argue that the added complexity takes away from the reader's understanding (Booher, 1983; Chall, et al., 1996; Giles & Still, 2005; Longo, 2004; Quill, 2005). Quill goes so far as to argue that long sentences "damage" lucidity and readability (2005, p. 1). She notes that when stylistics are of greater concern than clarity is, then valuable information is lost in the process. Giles and Still's definition of good technical writing is, "writing clear enough to be easily understood by a tired man reading in bad light" (2005, p. 49). This purports that clear, accessible writing need not be cumbersome. In short, easier is better.

In order to evaluate the language contained in ATF Form 4473, two methods will be used. First, Chall et al.'s (1996) rubric for evaluating the difficulty of science texts will be used. Then, Flesch's Readability Formula (1946, 1949, 1972, 1979) will look at word and syllable counts. An advocate of 'plain talk', Flesch argues for simplicity over stylistics (1946). Based on the complexity and level of interest, a score is assigned between 0 and 100. As Flesch puts it, "0 on the scale is apt to give the reader a headache;

a paragraph that scores 100 is child's play" (1979, p. 22). The following discussion considers Chall et al.'s (1996) and Flesch's (1946, 1949, 1972, 1979) approaches, respectively.

First, the language will be compared to Chall et al.'s (1996) rubric for science texts. Within their framework, the science texts most closely approximated the nature of legal discourse.⁴ In both genres, the text contains material that is both general and specific in nature. Further, it does not include creative literary expression that is found in poetry, narrative, or popular fiction. Scientific terms become more precise as the difficulty increases; this is also true of legal texts. In short, both can be described as "microscopic, detailed, and technical" (p. 60). Table 3 demonstrates what should be considered when trying to determine text difficulty and how those features correlate to text difficulty. Although the scale ranges from Grade 1 (first grade) to Grade 16+ (graduate), the summary in Table 3 only includes the higher end of the spectrum:

⁴ Chall et al. (1996) offer rubrics for determining readability in the following areas: literature, popular fiction, life sciences, physical sciences, narrative social studies, and expository social studies.

Table 3. What a Reader Needs to Bring to the Text to Read Science Materials with Understanding (Adapted from Chall, et al., 1996, p. 64).

Reading Levels	11-12 & 13-15 (College)	16+ (Graduate)
Knowledge of vocabulary	Highly technical and specified science terms. Use of words related to theoretical and abstract thinking.	Uncommon vocabulary, theoretical and abstract.
Familiarity with sentence structure	Longer, more complex sentences with more embedded phrases.	Long, highly complex sentences with highly embedded phrases.
Subject-related and cultural knowledge	Requires knowledge gained from observations, demonstrations, experiments, and from books.	High extent of prior scientific knowledge. Knowledge of hypothesis testing. Knowledge of science principles.
Technical knowledge	Highly specified and more exact technical knowledge.	
Density of ideas	Ability to deal with many, often highly embedded ideas.	Ability to deal with highly embedded ideas, often inferred.
Level of reasoning	Ability to apply abstract and theoretical ideas.	Highly abstract and theoretical.

Based on Chall et al.'s classification, Form 4473 should be classified as a document with accessibility to those individuals educated at the graduate level and above. As noted in the previous section, much of the vocabulary is uncommon. The examples offered are: *adjudicated*, *renounced*, *expunged*, *provisions*, and *complied*. Additionally, some common words are used in an atypical manner, e.g. *such* and *information*. This elitist vocabulary places a substantial burden on any reader who does not have a sufficient background in legal matters. It also requires some knowledge of how the American legal system operates. Further, it presumes an understanding of life in democratic societies. In addition to the lexical and operational burdens, the reader is also faced with numerous embedded sentences. These require a substantial background in the language in order to unpack the meaning contained in such complex sentences.

Not only were many embedded sentences found throughout the document, but they were highly complex ones. This was exemplified in the sample of the four-levels:

“A licensee who knowingly delivers a firearm to an individual who is not buying the gift for himself or herself or as a gift violates the law by maintaining a false ATF Form 4473”(ATF Form 4473, p. 3). This suggests that the level of reasoning demanded by the reader falls in the highest ranking at a graduate-level comprehension.

As seen in the descriptors above, clearly comprehending embedded sentences is influenced by a reader’s familiarity with sentence structure, the ability to manage dense ideas, and the capacity to reason through such difficult material. All of these factors together illustrate that Form 4473 can only be read and completely understood, minimally by those with a college education, but more probably with those who have completed their undergraduate studies – an academic challenge in and of itself - and continued with graduate coursework.

The second test of readability will draw on Flesch’s Readability Formula (1946, 1949, 1972, 1979). Although more than five decades old, it is still used widely by technical, science, and government writers (Giles & Still, 2005). Part of its appeal is the facility of process and ease of interpretation for users of this test. This approach is particularly fitting for legal inquiries such as this endeavor. Flesch continued his investigations into text difficulty and accessibility and wrote his book, *How to Write Plain English: A Book for Lawyers and Consumers* (1979), specifically aimed at members of the legal community. He argues for clear, concise delivery that allows the reader to easily grasp the author’s intent. He advocates short sentences as, “the longer the sentence, the more ideas your mind has to hold in suspense until its final decision on what all the words mean together” (p. 22). Flesch developed an eight-point approach that

considers text sample, word and sentence length, and word types. His approach will be applied to the text under consideration, the Form 4473.

The first step is to pick a sample. He does not advocate an analysis of a complete text; samples are sufficient. He proposed avoiding 'good' or 'bad' samples, but instead following a random pattern. However, since parts of the ATF Form 4473 is under question, it is appropriate to use it in this study. This is both for consistency's sake as well as offering another interpretation of the same text. Two passages have been discussed throughout this study and will serve as the text for examination. (These are recapped in the following paragraph).

Second, count the words contained in the text and try to get as close to 100 words as possible. This exact number does not need to be adhered to, a close approximation works. As noted previously, two relevant passages will be combined in order to reach the recommended length. The passages are:

On the basis of (1) the statements in Section A; (2) the verification of identity in item 11 and my verification again at the time of transfer (if the transfer does not occur on the same day as the verification noted in item 11); and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below to the person identified in section A.... A licensee who knowingly delivers a firearm to an individual who is not buying the firearm for himself or herself or as a gift violates the law by maintaining a false ATF F 4473 (p. 2, 3).

This passage contains 119 words. As instructed by Flesch, numbers and letters are counted. If this document contained any contractions, hyphenated words, or acronyms, they would have been counted as a single word. Following this line of thinking, *ATF F 4473* is counted as a three words.

The third step involves figuring the average sentence length. Although punctuation can be a guide, logic should prevail if there is any uncertainty. Further, sentences joined by conjunctions *like* and *or* *but* are counted as a single sentence. The first sentence is 85 words in length; the second is 34 words long. This averages out to 60 words per sentence (59.5 rounded up). Next, in step four, the number of syllables are counted. Then, the total number of syllables is divided by the number of samples. With a single sample text, divide the total number of syllables by the total number of words and multiply by 100 so that the score corresponds to the evaluation chart. This passage contained 194 syllables. Therefore, the calculation is as follows: $194/119 * 100 = 163$.

Steps five and six involve counting the number of personal words and sentences, respectively. Personal words are, “a) all first-, second-, and third-person pronouns except the neuter pronouns... and b) All words that have masculine or feminine natural gender, e.g. John Jones...father.... Do not count common-gender words like teacher, doctor, employee....” (p. 214). Only two words fell under these guidelines, *himself* and *herself*. The calculation divides the number of personal words by the total number of words and multiplies this by 100 to get an average: $2/119*100 = 2$ (1.68 rounded up). No personal sentences were found. These are quoted statements, questions, commands, exclamations. Therefore, this receives a score of zero.

Step seven finds the 'reading ease' score. To arrive at this number, divide the average sentence length in words (from step 3) by the average number of syllables per 100 words: $60/163 * 100 = 37$ (36.8 rounded up). According to Flesch's readability ease tabulations, this places this text in the 'difficult' range. This is on a spectrum ranges from very easy-easy-fairly easy-standard-fairly difficult-difficult-very difficult.

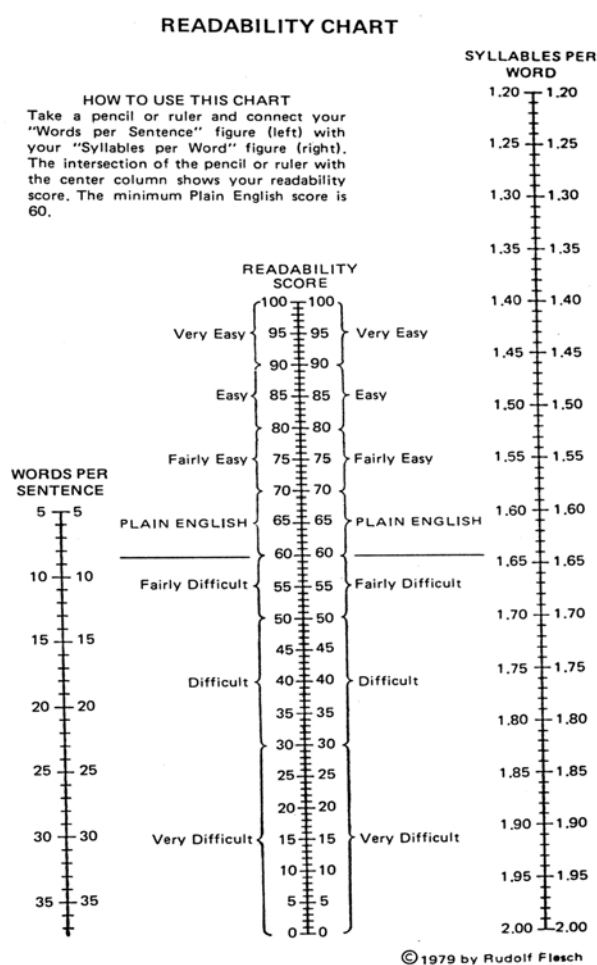


Figure 4. Flesch's Readability Score

The last step, step eight, evaluates the 'human interest' score. Again drawing on prior calculation, the number of personal words (2) and personal sentences (0) are compared to a general human interest score. According to Flesch's scale, personal words fall in the 'mildly interesting' category while personal sentences are in the 'dull' category. Even this is misleading because the *himself* and *herself* located in the original text did not refer to actual people. Instead, they referred to hypothetical customer. This last step has been included in order to give a complete overview of the process. However, it is hardly surprising that this kind of text warrants any personal interest at all.

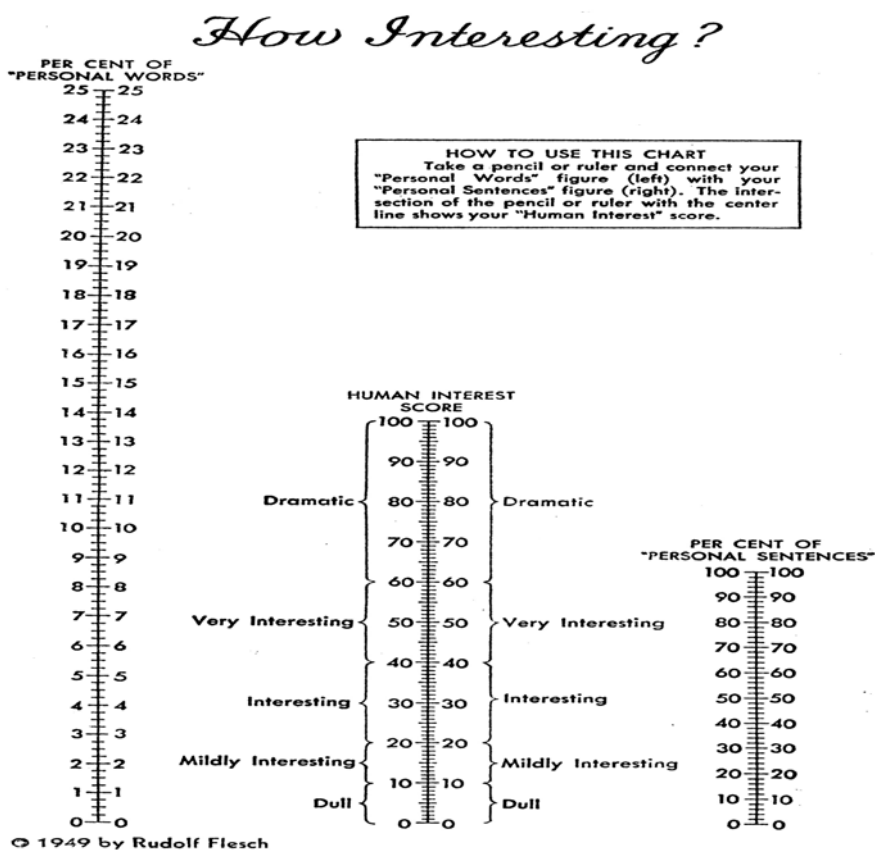


Figure 5. Flesch's Human Interest Score

All in all, this text appears inaccessible and of little interest to the average person, and perhaps even more so for a second language speaker. For Chall et al. (1996), this text fell into the most challenging category and was most likely understood by only those who have received advanced graduate degrees. Using Flesch's (1946, 1949, 1972, 1979) readability formula, a similar determination could be made. In that case, the text was evaluated as difficult, mildly interesting, and dull.

One might be tempted to say that the reader of this document, whose profession it is to adhere to these regulations, should pay more attention to such matters. However, most consumers would be hard pressed to explain the details contained in the mortgages documents they signed. These forms are for the most valuable item most Americans own, their home, and represent a 30-year financial commitment. Perhaps the same would be found with credit card applications, medical forms, and other such documents we encounter on nearly a daily basis.

4.6 How a Forensic Linguist Might Approach this Case

Although not well received in the court system (Eades, 2000; Gibbons, 1990, 1995, 1996, 2003; Jensen, 1995, Labov, 1998; Olsson, 2004; Shuy, 1998a, 1998b), forensic linguistics can be an invaluable tool in gaining insight into what lies behind the words we speak. Linguists trained to detect the finest nuances in language can offer insight to those less accustomed to looking at language under a microscope. However, not all judges welcome this kind of analysis. Although this field has evolved over the past few years, many people consider language to be random, thereby discrediting any sort of

systematic analysis. Although the services of a forensic linguist was not employed during LK's trial, it is prudent to consider what additional information could have been considered. This present study has examined communicative competence within a theoretical framework (Bachman, 1990; Bachman & Palmer, 1996; Canale & Swain, 1980; Canale, 1983; Savignon, 1997). Additionally, LK's proficiency level was evaluated (ACTFL Proficiency Guidelines, 1999; SPEAK®, 1996).

While these are sound approaches to evaluate language, other avenues are also available to forensic linguists. The subsequent discussion will consider other features that could have been used to present information to a judge or jury, had the court allowed such testimony. These approaches will include thematic tracking, sociocultural considerations, and speech accommodation.

4.6.1 Thematic Tracking

Thematic tracking tracks one particular topic at a time. In the past, this has been used to monitor how single and multiple individuals talk about the same topic. Topics such as the time of a murder (Hill, 2003), Miranda warnings (González, 2002), and degree of personal involvement (Shuy, 1998a) have served as foundations for thematic inquiries. In LK's case, it would be helpful to gather and analyze how he spoke about the law. In order to gain a conviction, one of the prosecution's duties was to show intent to commit an illegal act on the defendant's part. If he acknowledged wrongdoing and flouted the law, one can infer that his errors in selling to unqualified parties was intentional. If, on the other hand, he tried to adhere to the guidelines as he understood

them, then no intent is present. Table 4 includes all the statements LK made regarding his understanding of the law and any associated obligations or procedures.

Table 4. Summary of comments regarding legal responsibility.

Implication	Comment	Line number
(1) Seller conforms to procedures	Every time you have to fill out form. I have to call in.... Like you buy one gun here.... And you go out and get other one. I call it in....Every time, everybody. Every time. Now you think you need two gun you have to call in....Every time, any day.	425-441
	...You better get a telephone call and ask them	1590
(2) Phones in application	That's ###.... (license number)	79
	...K, K-X--- (spells last name). Yes. This for handgun....	797
	...### (license number)	1081
	Yeah..license...##### (license number) ...Yeah, L L-X--- (spells first name)	1171-1172
	Yes, this is L. ##### (license number) K. K-X. L-XX (spells last and first name)	1439
	This is L. My license ##### (license number). K- Yes, this is for the handgun.	1570
(3) Requests picture identification	You gotta picture ID? Es una mica? Yeah, that's good, too That's good, too.	219
	You gotta picture ID with you?	1419
	Yeah, you gotta picture ID, yeah	1510
(4) Instructs customer on how to follow procedures	And then if you sell the gun, just write down the person's name.	92
	Fill out form and I call in	1425
	All kind of problem. You just way send back, okay?	1651
	If something happen with company, you (indiscernible) here....We only just buy and sell.	1667-1671
	You should write down what you sold	1687
(5) Declines bribe	Agent: Anything else I can change? I want to get that gun. I came a long way. Anything I can do? LK: No.	1482-1484
(6) Accepts second identification from another state	Agent: I have a different one. I have a different one, This is the one I used last week. This is the one. LK: Arizona	1135-1137
(7) Manipulates system	See, usually somebody answer the phone. Tell them all the information, Couple minute, Different. Make it....That's the way possible.	1520, 1528
	Agent: What's this? What this? LK: Say no [laughs]. Agent: Oh, no? You say yes, what happens? LK: On the phone I say yes. You go to jail before this what happens? Not found.	1560-1566

Essentially, LK complied with the law. He told how he viewed his role as gun seller (1) and followed through with his actions (2, 3). Additionally, he advised his clients on how they should do the same and instructed them on what procedures to follow (3). When declined a bribe (5), but did discuss how to finesse the system in order to gain the desired outcome (6, 7). However, when LK devised an alternative plan, it involved the governing agency. In other words, LK never sidestepped the agency and sold a gun without reporting it to the ATF office. Instead, he accepted an alternative identification and proposed that he place a second phone call on his client's behalf. Although most people only have one driver's license, it is permissible to hold licenses in more than one state. Additionally, the agent told LK, "I'm going to throw away that bad one. It's no good. It's no good for anything" (line 1280). Whether LK believed that his customer would do so or not is another matter. LK's second suggestion entailed placing a second phone call to the agency with the hopes of a different outcome. Again, the end result lay with the agency, not with LK. The ATF office held the power to approve or decline applications.

This type of visual summary first isolates only the relevant information and then organizes it in a fashion that is easy to interpret. Further, even though the presentation was developed by the forensic linguist, it is still open to interpretation by judges and jurors. This enables these decision makers to have informed judgments.

4.6.2 Sociocultural Considerations

The courts did not allow testimony by either a cultural or linguistic expert to introduce some of the sociocultural differences between American and Chinese culture.

While it may be easy to argue that LK of should have known what was legal, it is not readily apparent to an immigrant unaccustomed to some American practices. In China, the only citizens who carry guns are police officers. Even in these cases, officers lock up their weapons at the police station at the end of every shift (J. Zhao, personal communication, February 1, 2005).

The United States is widely viewed as one of the most violent countries in the world. Quite recently, China's State Council published the "Human Rights Record of the US in 2004" (People's Daily Online, March 3, 2005). Included in this report are depictions of America as a country with agitated citizens who are armed and prepared to defend themselves from their fellow countrymen. The article describes American society as a country with, "rampant violent crimes, severe infringement of people's rights by law enforcement departments and lack of guarantee for people's rights to life, liberty and security of person" (p. 1)

While LK has been living in the United States for a number of years, this report articulates how many foreigners view this country. Given such a violent portrayal, it is hardly surprisingly that a gun seller from China would presume that nearly every citizen is permitted to carry a weapon. Given that the United States appears such a permissive society, it follows that a lenient system is in place to allow such a substantial number of purchases. In fact, the report notes a 2001 survey that found that, "41.7 percent of men and 28.5 percent of women in the United States having a gun in their homes" (p. 1).

These astonishing figures, whether credible or not, still reinforce the notion of the typical

American as a gun owner. Moreover they only bolster an immigrant's concept of a gun permissive society.

4.6.3 Speech Accommodation and Other Reactions by Native English Speakers

While using LK's speech as the primary source of linguistic analysis serves to demonstrate certain speech patterns, practices, and abilities, external support can be equally enlightening. It is helpful to see how others reacted to and interacted with LK while he was speaking English. The following discussion shows how interactions with three undercover agents and a Special Operations Inspector for the Bureau of Alcohol, Tobacco, and Firearms unfolded. In particular, it will be demonstrated that the persons interacting with LK had to modify their speech in order to be understood. But first, it is important to state that when an interlocutor modifies his or her speech, it is clear indication of a communication breakdown. This is referred to as Speech Accommodation. This can take the form of adopting the other person's speech patterns, making lexical substitutions, as well as other attempts at modifying one's speech.

One telling sign that interlocutors consider their partner in need of help is when they modify their speech. This tendency was noted by repeating words and phrases, using implausible English utterances in their own speech and not acknowledging errors. As noted in the discussion on Strategic Competence (see Section 4.5), frequent repetitions were noted in LK's speech. These took the form of single words or multiple phrases. This is typified in the following exchange:

LK: Every way. Everyday.

Agent JD: Everyday?

LK: You just come in, okay?

Agent JD: So I get a Christmas gift? I'm going to get a Christmas gift?

LK: Everyday. Christmas Eve. Christmas Day (lines 376-386).

Although this particular excerpt opens with LK's repetition, this was not the first instance of this kind of speech habit. It is prevalent throughout his conversations with this individual as well as other persons. What is interesting is that the agent has now begun to employ this same strategy into his *own* speech. One might conclude that since he was making an attempt at humor – something that could potentially flop, especially with a second language speaker – the agent felt the need to double up his efforts so that LK would understand both the words spoken and the humorous intent behind them.

A second example of modified speech took place during a conversation about setting up some kind of arrangement where the customer deposits money and then his or her purchases are deducted from that deposit. The agent described it as:

Agent: You bring an advance of cash and then you charge it out to cash

LK: Charge account, no. We don't have a charge account

Agent: What if I bring in some cash, and then you just charge it off my account?
(lines 415-419)

It became clear in LK's response that he did not grasp the arrangement the agent was proposing. Therefore, the agent simplified his description in order to convey the message. He replaced *advance* with *I bring in*. In addition to using simpler more accessible language, it also served as a way to soften his pitch. Additionally, the agent changed *out to cash* with *off my account*. The phrase, and particularly the preposition, *out to cash* is somewhat vague in that it does not identify any sort of destination – out to where? *Off my account* narrows the possible meanings to something that refers to the speaker (*my*) and

reiterates his wish to set up an account (*account*) at LK's store. Thanks to this restructuring of the request, LK eventually understood what the intended meaning was. As we revisit these interactions, it is crucial to remember that the agent's job was to test how far outside the law LK might stray. Although they acted as a customer, the agents were first and foremost undercover police officers. Given this, they operated as if the case would be heard in court. If this did happen, it would need to be clear to anyone who later heard the tape what had transpired. Since the agent knew at all times that he was being recorded, he needed to ensure that what LK agreed to (if he did so) could only be interpreted one way.

In the preceding selection, the agent used grammatical constructions that are used by native English speakers. However, at other times, the interlocutor used non-traditional ways to express their ideas. For example, this same agent mirrored LK's use of 'No more' rather than employing the more standard variation of 'Anymore':

Agent JD: You going to get those in?

LK: No more.

Agent JD: No more?

LK: No more (lines 342-348).

It appears that the agent may have opted to keep the same linguistic rhythm, so to speak, with his speech partner rather than use what may have been more natural for him⁵.

Another possibility is that he did not wish to correct LK's error, thereby diminishing any camaraderie that may have developed thus far. Either way, he used a marked negation for a native English speaker.

⁵ While this type of negation does appear in Black Vernacular English (BVE), the agent sounded Anglo and does not seem to belong to speakers of that category.

The practice of using lexical substitutions is exemplified in the following excerpt. Here, the agent's application has just been denied and he is questioning what could have led to this unfavorable response:

LK: He says no

Agent JD: No?

LK: No.

Agent JD: What's he so upset about?

LK: I don't know.

Agent JD: Really? Did they say why? **Why no?**

LK: No, they never tell me when they say no (lines 1115-1127, bold for emphasis)

In this example, we see that the agent used a non-native like negative construction, "Why no?" rather than "Why not?" Although LK did correctly use negatives in his speech, his overall accuracy rate was 45%. With correct responses less than half the time, one might presume that the agent adopted the patterns he had heard LK use.

The tendency to adopt one's interlocutor's speech was not limited to the native English speaking undercover officers. LK also incorporated some of their phrasing into his speech. While waiting for approval from the ATF office by telephone, the agent became a little impatient and asked, "Ain't nobody home?" to which LK responded "Ain't nobody home" (lines 447, 449). This is the first and only instance where LK used 'ain't' to express 'is not' or 'are not'. Although he does occasionally use a double negative, "I can't do nothing". His errors leaned more toward substituting 'no' for 'not', e.g., "It's no good" (line 88).

These instances, among others, demonstrate the need to manipulate language in order to be understood. These compensatory strategies are typically employed when

difficulty arises. With the case of LO, the Special Operations Inspector for the Bureau of Alcohol, Tobacco, and Firearms, she was not able to complete her inspection of LK's facility and had to reschedule for another time when an interpreter was available. This is quite significant because it suggests that not all of LK's encounters were successful. It may also indicate how strongly he depends on memorized activities. During the early stages of his career as a storeowner, it does not appear that he could complete a conversation, at least to the satisfaction of the inspector.

LK also required the services of an interpreter when he was arrested. Officers waited until his brother could be present before speaking with LK. They contacted his brother and then left him to wait outside his home and office until his English-proficient brother arrived. This is crucial to LK's case because it supports his argument that he was not highly proficient and did not understand incidents outside his daily routine. Officers may have had the entire case thrown out of court if it were determined that LK did not understand his Miranda rights. Their caution implies that there was some level of concern on their part that the use of an interpreter was warranted.

4.7 The Need for Forensic Linguists in Court

Depending on the nature of the case, forensic linguists can narrow their focus to any number of areas. In other settings, some possible approaches may include investigations into power differentials, grammatical structures, individualized speaking and writing patterns, rhetoric, and phonology. In theory, any approach used by linguists to examine language can be

adopted by forensic linguists. It is only the context that positions a forensic linguist as such.

The approach taken by the forensic linguist is, in part, guided by the needs of the client. When practices of undue influence are in question, issues of Critical Discourse serve as an appropriate starting point (Baldwin, 1994; Brière, 1978; Fairclough, 1995, 1989; Lakoff, 1990; van Dijk, 2001). The same is true for any case where power differentials are present. In many cases, this can be attributed to differing sociocultural and sociolinguistic backgrounds (Eades, 1996, 2000; González, 2002). Disputes over linguistic competency can be best addressed by fine-grained grammatical analysis (Auburn, Drake, & Willig, 1995; Berk-Seligson, 2002; Bernstein, 2002; Coulthard, 1994; McMenamin, 2002; Shuy, 1993, 1998). With single writing samples, comparative approaches help to either include or preclude authors from suspicion (Eagleson, 1998; Gibbons, 1996; Jensen, 1995). In the cases where information can be found at the spoken and phonological level, audio analyses prove helpful (Gibbons, 1996; Labov, 1998).

Regardless of the approach, the key to being a successful forensic linguist is presenting the findings in a manner that is accessible to the audience, whether the audience consists of highly trained legal experts or laypersons serving as jurors. A well-devised plan can overcome some of the resistance presently found in the courts. One hopes that in time, the judicial system will come to appreciate what can be learned from linguistic analyses.

5 CONCLUSIONS

5.1 Summary of the Findings

There were four goals of this study - to evaluate LK's English communicative competence, determine his English proficiency level, evaluate the readability level of the ATF Form 4473, and to consider other ways a forensic linguist may have approached this case. This section summarizes the conclusions drawn in each of these areas.

Research question #1 asked what kind of competency LK displayed in his speech. To answer this, features in his speech were examined with regard to five areas, specifically his functional, linguistic, discourse, sociolinguistic, and strategic competencies. Although LK displayed abilities in all five areas, he did so with limited success. His generalized vocabulary could be described as adequate, at best, while his weapons-related lexicon proved quite substantial. He performed rudimentary tasks expected of a storeowner, but did not communicate effectively on any sort of abstract level. An inability to effectively use cohesive and coherence devices made his interlocutors struggle to follow his line of thinking. At times, he appeared not to grasp some of the sociocultural references used by his interlocutor. He did, however, modify his speech in a conscious way that indicated he was aware of his audience and could manipulate his speech accordingly. This was not done on a consistent basis. In sum, LK's English abilities were sufficient enough for him to conduct his business affairs; however, his interactions were problematic throughout.

The second question attempted to determine LK's English proficiency level. Based on the previous analysis that considered his communicative competence as well as his speech in general, it was determined that his abilities could be classified as a 40 on the SPEAK® scale (1996). This level presumes "communication [is] somewhat effective" and that "task[s] [are] performed somewhat competently" (p. 8). A level 40 speaker possesses a limited vocabulary and can use fundamental grammatical structures, but has difficulty when faced with more complex linguistic demands. Typically, these speakers do not present information in a logical fashion on a consistent basis, but they can convey general information and are aware of their audience. Most telling is their reliance on strategic tactics.

The results of the SPEAK® test that placed LK's speech at a mid-range proficiency was replicated using the ACTFL Proficiency Guidelines - Speaking (Breiner-Sanders et al., 2000). Similar linguistic indicators noted in the SPEAK® assessment supported such a determination. For example, the use of uncomplicated structures, limited functions, and reliance on predictable exchanges all suggest an Intermediate-Mid level. LK's speech closely fits the following description: "Because of inaccuracies in their vocabulary and/or pronunciation and/or grammar and/or syntax, misunderstandings can occur, but Intermediate-Mid speakers are generally understood by sympathetic interlocutors accustomed to dealing with non-natives" (p. 16).

As the court argued that LK's abilities were adequate enough to understand ATF Form 4473, Question #3 attempted to evaluate the level of difficulty when reading this document. Although no studies have confirmed a link between an individual's speaking

and reading abilities, this must still be addressed because the legal system assumes such a connection. Based on the criteria set forth in Chall et al. (1996) and Flesch (1946, 1949, 1972, 1979), the text should be classified as challenging. Chall et al.'s (1996) rubric considered the vocabulary, sentence complexity, and background knowledge required to comprehend this type of text. Flesch's Readability Formula (1946, 1949, 1972, 1979) looked at word and syllable counts. The ATF Form 4473 not only contained lengthy sentences, but was considered dull and of little interest to a reader. In short, the text could be described as difficult, tedious, and demanding to comprehend. Although a formal test was not administered that evaluated LK's comprehension of the text, it may be presumed that such an intricate text may prove overwhelming for an intermediate-level second language speaker.

The last question (Question #4) considered additional ways a forensic linguist may have approached this case. As noted earlier, forensic linguists draw on a multitude of disciplines when conducting this kind of research. Since it is the legal context that classifies a study as a forensic linguistic investigation, countless approaches are available to researchers. Three possible avenues were posed in this situation: thematic tracking, sociocultural considerations, and speech accommodation. Thematic tracking uses selected passages that share a common topic. Here, LK's comments on legal obligations were considered. Hypothetically, any subject could have been chosen. Relevant samples were located within the text and then assembled together in a chart summarizing the findings. Organizing information in a summarized format facilitates evaluation. Clearly arranging aids comprehension, particularly for jurors who may feel overwhelmed by the amount of

information they are expected to absorb. In this case, the pattern of LK's comments suggests that, generally, he followed all the rules and regulations. He explained to his customers what his duties were as a gun merchant, as well as the limitations he faced in that capacity. When he was asked to stray from this, LK either declined or cooperated, but observed that the ultimate decision still remained with the ATF office. When one sees all his views on this topic summarized in one place, no evidence suggests that his intent was not to disobey the law.

Since the only Chinese in the courtroom were the defendant and his translator, it would have been helpful to have had an expert on Chinese culture explain some of the sociocultural practices LK would have been accustomed to. These may have influenced some of his business practices. Even though LK was raised in China and has first-hand knowledge of Chinese culture, he is not trained to evaluate the impact of differing cultural expectations. A professional with experience in dissecting cultural practices, particularly with respect to an immigrant population, would have proven insightful. Further, since it was apparent that LK did not fully understand American practices, it would have been impossible for him to compare and contrast the two cultures.

A third aspect that would have reinforced LK's position that his English skills were not very strong were the reactions of his interlocutors. While there was some general discussion at trial about how the agents and inspector had trouble communicating with LK, this was discussed at a superficial level. Had speech accommodation been presented to a jury by a linguistic expert, they may have appreciated how much LK struggled with English as evidenced by his interlocutors reactions. This situation typifies

the need for such experts because cursory attempts at looking at linguistic evidence do little to advance our understanding. Because language and communication are so complex, expert testimony is clearly warranted.

5.2 Limitations of the Study

No study is without flaws. While many aspects of an investigation are considered in the planning, implementation, and analysis stages, sometimes elements are out of a researcher's control. In the present study, these limitations included not having the opportunity to interact with the study participant, working with poor audio recordings, and applying assessment tools designed for controlled settings to an unstructured language encounter.

Conducting one-on-one interviews with the primary participant of a study adds a richness to a research project. Most importantly, it allows the individual's voice to be heard and his or her account to be told. From a researcher's perspective, it adds to the pool of data and offers more angles for consideration. Yet, even if subjects are still alive (as they unfortunately are *not*, in a number of forensic linguistic cases), sometimes they are unwilling to participate in face-to-face interviews.

This was true for LK. Busy settling his affairs before leaving his family to serve his sentence, he was reluctant to speak with me about his case. Perhaps he accepted his fate (he opted not to appeal after the second trial) and was only focused on getting through the next difficult phase of his life. Either way, no additional interviews were forthcoming in this case. However, LK did authorize his defense attorneys to provide me

with whatever existing information they had available. This included cassette tapes of the audio recordings, written transcripts of these tapes, as well as some of the court records⁶.

The forethought that goes into setting up forensic linguistic cases are atypical within academia in that the researcher rarely, if ever, gets to set up the study. Instead, he or she is presented with linguistic evidence long after the event in question occurred. Moreover, of the samples given over for analysis, many are less than ideal samples. They are frequently limited in many regards, such as length, quantity, depth, and variety. For example, there is no second chance to obtain a redrafted version of a suicide note, confessions are most frequently single events, and undercover sting operations sometimes unfold according to fate rather than any systematic, scientific plan. In short, destiny trumps order. The result of such a multitude of variables is that the forensic linguist works with what he or she has. That is not to say that in some cases, the researcher can augment the quantity of data. As noted previously, had the LK been willing to contribute to this study, it may have developed in ways not originally anticipated. Regardless, forensic linguists must accept the hand they are dealt.

With such heated discussion over LK's language abilities, it would have been beneficial to administer a formal assessment test to see what the results were. The SPEAK® test allows for a quick, twenty-minute evaluation that considers multiple linguistic abilities. This test presents examinees with twelve situations in which they display their communicative abilities. A second alternative would have been to determine second language proficiency using the ACTFL test. Here, the examiner would have had

⁶ Other court files were obtained from the Federal Court Office in Tucson, Arizona.

an opportunity to fish around a bit more to determine a fitting proficiency level.

Arguably, one might say that LK could manipulate the testing situation in his favor by performing poorly, but this is another matter. Since he was not comfortable granting an interview, this will remain an unknown. Notwithstanding, evaluators are trained to perceive even the most minute aspects of language use and could well have detected and perceived linguistic patterns which would inform the final result. Although the normal procedures in administering the SPEAK® test were not replicated in the present study, the evaluation criteria can still be applied to a non-traditional speech sample.

5.3 Research Implications

The focus of this project has been to dissect, assemble, and interpret as much information as possible about second language learner's English abilities. Some of the questions raised in this investigation were supported by research while others were not.

Questions regarding communicative competence and assessment benefited from years of research in these areas. Over the years, researchers have developed several models of communicative competence and have reflected on how these components may interact. While they differ in some minor ways, the general consensus is that non-native speakers regularly draw on competencies in order to communicate. As with most aspects of life, individuals have strengths and weaknesses in each area. The theoretical models proposed by researchers (Bachman, 1990; Bachman & Palmer, 1996; Canale & Swain, 1980; Canale, 1983), Savignon (1997) allowed for a thorough discussion about competency.

Using existing assessment tools (SPEAK®, 1996; ACTFL Proficiency Guidelines, 2000), a fair determination was made about LK's proficiency level. Enough sound research has been conducted in the area of assessment that it is relatively easy for a researcher to find enough models to work with, and more importantly, to compare the results. In this case, having the option of applying two different assessment approaches served to strengthen the final determination regarding LK's ability level.

However, what remains unanswered is the connection between a second language learner's speaking abilities and his or her reading ability. To date, most studies have focused on developing abilities in speaking and reading within the confines of an educational setting (deGelder & Morais, 1995; Hilferty, 2000; Liberman, 1998). This was not the case for LK as he did not receive any formal education in written English; he was self-taught. Therefore, the overlap in LK's reading and speaking abilities remains in question. But since those outside academia presume that some connection *does* exist, it would be beneficial to investigate whether there is or is not such a relationship. What is challenging is not having any basis with which to undertake such a determination.

Even if it became increasingly clear that the active skill of speaking and the passive skill of reading are unrelated, this information can be helpful. For example, in this case, the judge and jury could have been informed that it is not possible to make such an assumption. On the other hand, if studies find some connection between reading and speaking, this would make juries more informed decision makers when asked to make such determinations. Further, evaluating a speaking-reading connection may even offer further insight into assessment issues. Either way, it is not knowing that is problematic.

5.3 Conclusions

My reason for selecting this research topic was to explore a second language speaker's struggle with the legal system. Although it is not my place to argue about legal issues, as a linguist, I am concerned that non-native speakers of English may be at a disadvantage when it comes to these kind of situations. Many second language speakers, especially lower proficiency ones, face additional burdens as they try to establish new lives in a foreign country. Events may happen that can be attributed, at least in part, to linguistic and/or cultural misunderstandings. I am not naïve enough to believe that all second language speakers are innocent. We are responsible for the choices that we make, but it would be sad to imagine an individual paying a price for a crime for which he or she may not be fully responsible.

It is my hope that this kind of research helps linguists, educators, language learners, and legal professionals understand that questions regarding second language speakers in a legal context warrant a full investigation. The field of forensic linguists is poised to contribute research findings from actual cases to the existing body of knowledge about language issues. The theoretical frameworks - as well as the tools for these types of investigations - are well-established and well-tested. Hence, this project clearly demonstrates the natural connection that can be formed between theory (speech act theory, conversational analysis, adjacency pairs, assessments, readability studies etc.) and a practical application (LK's case).

1

APPENDIX A: UNDERCOVER BODY BUG TAPES

2

TAPE 1 – NOVEMBER 19, 1999:

3

TRANSCRIPT OF UNDERCOVER TAPE

4

5

In re U.S. v. Lenny Kong:

6

7

Case No. CR-00-0956-TUC-RCC

8

9

November 19, 1999

10

11

AGENT DOBBINS: This is Special Agent Jay A: bobbins with the Bureau of Alcohol, Tobacco & Firearms. This recording is made in relation to ATF investigation number 785065000011. Task Force Agent Glen Howell and an ATF confidential informant will be attempting to contact Lenny Kong at Gong's Market, 6130 South Nogales Highway in Tucson, Arizona. They will be attempting to purchase -- complete a straw purchase of a firearm. It is now Friday, November 19th, 1999 at 11:00 a.m. Cool? You okay?

16

17

FEMALE VOICE: Yeah.

18

19

AGENT DOBBINS: All right. Just so you know, this is the twelfth anniversary of when I got shot. Let's not have that in common.

20

21

AGENT HOWELL: Yeah, nice.

22

23

AGENT DOBBINS: Are you ready?

24

25

FEMALE VOICE: Uh-huh.

26

27

AGENT HOWELL: The thing is right on -- we'll goin, and it's right to the right. And we're looking at a high point 5 mm. We'll look at some other guns. We'll look around.

28

29

30

FEMALE VOICE: You don't want the air.

31

32

AGENT HOWELL: I don't care. Go ahead. You want the air. Go ahead. (Indiscernible).

33

34

FEMALE VOICE: (Indiscernible).

35

36

AGENT HOWELL: Yeah, it's a little strip mall. Go ahead.

37

38

(Enter store)

39

40

AGENT HOWELL: Can you get someone to help me?

41

42

MALE VOICE: It's high point.

43

44

FEMALE VOICE: What kind?

45

46

MALE VOICE: V80ACT.

47

48

FEMALE VOICE: V80?

49

50

MALE VOICE: Yeah, high point.

51

52
53 AGENT HOWELL: I just want to look at it. I don't know if I want to buy it yet. I just want to look.
54
55 FEMALE VOICE: Well, we are offer all these guns.
56
57 AGENT HOWELL: What's that?
58
59 FEMALE VOICE: Let me see it. I need to see your ID.
60
61 AGENT HOWELL: (Indiscernible). Does it have a safety on it?
62
63 FEMALE VOICE: (Indiscernible)?
64
65 AGENT HOWELL: How much is it?
66
67 MALE VOICE: Ninety-nine.
68
69 FEMALE VOICE: How much (indiscernible)?
70
71 MALE VOICE: Hundred and twenty.
72
73 FEMALE VOICE: (Indiscernible).
74
75 MALE VOICE: Yeah. (Phone ringing)
76
77 MALE VOICE: Yeah, okay, yeah. All right. Yeah. Not till 1:00; right? 1:00. I told you 1:00. All right,
78
79 MALE VOICE: That's 99860001(indiscernible)37363. (Indiscernible). 25764841 west C-O-N-T-O-R
80 (indiscernible) 857089 -- 640896240305. Yes. 566175 (indiscernible). Yes. 278 (indiscernible). Okay,
81 that's it.
82
83 AGENT HOWELL: Yeah, yeah. All right, I told you at 1:00. Okay. Shit, Boo. Boo, 1:00. Shit.
84 (Indiscernible), man. Tell (Indiscernible) to hold up. Right. Tell him I can knock on the door. I can knock
85 on the next door. Later. Shit. All right. Later.
86
87 AGENT HOWELL: You can set it back?
88
89 MALE VOICE: Yeah. If something happen, it's no good. You just send it back.
90
91 AGENT HOWELL: This is (indiscernible).
92
93 MALE VOICE: And then if you sell the gun, just write down the person's name. (Indiscernible). If you like
94 to sell it (indiscernible). The gun still -(indiscernible). Is the gun fine (indiscernible). (Indiscernible). You
95 don't have (indiscernible), two, three four, five.
96
97 MALE VOICE: This is the last one. (Indiscernible).
98
99 AGENT HOWELL: You don't have any sales going on? There are going to be sales from what I heard.
100
101 MALE VOICE: No, no, no.
102
103 FEMALE VOICE: Usually we don't price not much. (Indiscernible). Okay? And everything is
104 (indiscernible) guaranteed. It's (indiscernible).

105
106 AGENT HOWELL: Okay, thank you. (Leave the store)
107
108 AGENT HOWELL: Just about ready?
109
110 FEMALE VOICE: I can't talk. I stand there like
111
112 AGENT HOWELL: This is better, ain't it, Bob? (Indiscernible). She didn't say a fucking word. Just bought
113 that shit. This mother fucker -- I was going to try to get
114
115 FEMALE VOICE: That guy was so fucking rank, I thought I was going to throw up.
116
117 AGENT HOWELL: What's that?
118
119 FEMALE VOICE: Could you smell that dude?
120
121 AGENT HOWELL: He was (indiscernible).
122
123 FEMALE VOICE: Oh, my God. Is that food in here?
124
125 AGENT HOWELL: That dude was funky. He was funky as hell. Hey, Dob, give me a call on the cell.
126
127 FEMALE VOICE: I was thinking even if I could talk (indiscernible).something on sale. I almost bought
128 two guns. Shit. I would come back for the sale. I said, "Do you have a Thanksgiving sale?" Shit. Jay, the
129 guy is ordering fricking more guns. That was his last one. I can probably come in there and buy some other
130 shit, too.
131
132 FEMALE VOICE: I bet he would remember you.
133
134 AGENT HOWELL: Huh?
135
136 FEMALE VOICE: I bet he would remember you.
137
138 AGENT HOWELL: Oh, yeah, he would. He was all a nice guy to me. Dude, I got to go to the
139 Asian-Hawaiian breakfast tomorrow. I'll probably see him there. Oh, shit.
140
141 (End of tape)
142
143
144
145
146
147
148
149
150
151
152
153
154
155

156 **TAPE 2 – NOVEMBER 29, 1999**

157

158 TRANSCRIPT OF UNDERCOVER TAPE

159 In re U.S. v. Lenny Kong

160 Case No. CR-00-0956-TUC-RCC

161 November 29, 1999

162

163 AGENT MANNING: The date is 11/29, 1999. This is Special Agent Dana Manning of the Tucson Field
164 Office ATF.. The attempted undercover purchase from Lenny Kong at 6130 South Nogales Highway,
165 Tucson, Arizona under investigation number 745805000011. Special Agent Ed Reyes from the U.S.
166 Immigration office will be attempting to make this purchase.

167

168 AGENT REYES: Leave it on?

169

170 AGENT MANNING: You're set.

171

172 AGENT REYES: All set for us. Officer (indiscernible). All right, folks, I'm headed southbound now. I'm at
173 Drexel and Nogales Highway southbound. Coming up to Bilby. And I'll be coming into the place now. I'm
174 going to wait till a train passes by. I don't know. Somebody left the (indiscernible). I'll wait till the train
175 passes by, and assume that you are going to go (indiscernible). Nobody has approached me about that. This
176 may be my target right next to me working on the (indiscernible).

177

178 (Entering store)

179 KONG: Hello. (Indiscernible).

180

181 MALE CUSTOMER: (Indiscernible) back here. (Indiscernible) .

182

183 MALE VOICE: (Indiscernible). Thank you.

184

185 KONG: Okay, thank you.

186

187 MALE VOICE: (Indiscernible). How are you?

188

189 AGENT REYES: Buenas dias.

190

191 MALE VOICE: How are you?

192

193 FEMALE VOICE: You need help, sir?

194

195 MALE VOICE: You need some help, sir? Oh, okay.

196

197 (Indiscernible -- in Chinese).

198

199 (Conversation in Spanish)

200

201 MALE VOICE: Is that that one?

202

203 MALE VOICE: No, this one?

204

205 (Conversation-in Spanish)

206

207 MALE VOICE: Ten ninety-nine plus tax, once (11) tax.

208

209 KONG: The safety.
210 KONG: This one is not nine mm. See? nine mm. Nine mm. Nine (slowly). Ninety nine this one. See? Nine
211 mm. This ochenta.
212
213 KONG: Goa. Goa. Ninety nine. Nine mm. Seventeen. Eighteen. Nineteen.
214
215 KONG: Con tax? Tax. Ten six.
216
217 KONG: Est
218
219 KONG: You gotta picture I.D.? Es una mica? Yeah, that's good, too. That's good, too.
220
221 REYES: No es mi. Es mi hermano.
222
223 KONG: Okay, that's good, too. Try it okay?
224
225 KONG: What is the address here?
226
227 (Conversation in Spanish)
228
229 AGENT REYES: I'm out with a fortress. I'm heading back to the meat place (indiscernible). Northbound
230 past Bilby.
231
232 (End of tape)

233 **TAPE #3 – DECEMBER 9, 1999 AT 9:20 A.M.**

234

235

236 TRANSCRIPT OF UNDERCOVER TAPES

237 In re U.S. v. Lenny Kong

238 Case No. CR-00-0956-TUC-RCC

239 December 9, 1999

240

241 AGENT DOBBINS: This is Special Agent Jay Dobbins, the Bureau of Alcohol, Tobacco & Firearms. I'm
242 working with Task Force Agent Glen Howell and an ATF confidential informant. This recording is made in
243 relation to ATF investigation number 785065000011. Be attempting to contact Lenny Kong at Gong's
244 Market, 6130 South Nogales Highway in Tucson, Arizona. Is it now Thursday, December 9th, 1999 at 9:20
245 a.m.Okay, if you can just pop that wire back on, and just --

246

247 AGENT HOWELL: Are they already there waiting for us?

248

249 AGENT DOBBINS: You guys are good to go.

250

251 AGENT HOWELL: All right. You got my cell stuff?

252

253 AGENT DOBBINS: Yeah.

254

255 AGENT HOWELL: Okay.

256

257 AGENT DOBBINS: All right, see ya.

258

259 AGENT HOWELL: See you in a minute.

260 There he goes. (Indiscernible).

261

262 FEMALE VOICE: (Indiscernible).

263

264 AGENT HOWELL: Yeah, yeah.

265

266 FEMALE VOICE: (Indiscernible).

267

268 AGENT HOWELL: Exactly. Laura Blomberg?

269

270 FEMALE VOICE: Blanberg.

271

272 AGENT HOWELL: Blanberg.

273

274 FEMALE VOICE: Yeah. (Indiscernible).

275

276 AGENT HOWELL: Heart attack. That place has been operating 30-some years.

277

278 FEMALE VOICE: I don't .know why.

279

280 AGENT HOWELL: (Indiscernible). They have some nasty food.

281

282 FEMALE VOICE: (Indiscernible) he's allergic to am sea food that's not fresh. His face (Indiscernible) it
283 was bright red, and he couldn't feel it. He was like, "It's hot in here." Well, it's your face.

284

285 AGENT HOWELL: Oh, shit.

286
287 FEMALE VOICE: Did you guys (indiscernible)?
288
289 AGENT HOWELL: Yeah, (indiscernible) is horrible.
290
291 FEMALE VOICE: Is it really?
292
293 AGENT HOWELL: They suck.
294
295 FEMALE VOICE: Oh, man. My friend that I was ther with. They won that game barely, and then they got
296 beat by -- that was like their final game was when -- they got beat like 22 to 7, and it was the fourth inning,
297 the end of the fourth inning.
298
299 AGENT HOWELL: Fourth inning? Nothing.
300
301 FEMALE VOICE: 22 to 7. That was like the PD rule or something like that.
302
303 MALE VOICE: (Indiscernible).
304
305 AGENT HOWELL: Let me take this one (indiscernible) Is it stainless?
306
307 MALE VOICE: No more 89. No mm, too.
308
309 AGENT HOWELL: How much is that with tax?
310
311 MALE VOICE: One hundred thirty nine.
312
313 AGENT HOWELL: Yeah, (indiscernible) jacket. (Indiscernible). Is that better? What's up with that? This
314 one right. here.
315
316 MALE VOICE: This the one.
317
318 AGENT HOWELL: Oh, that's the one? Okay. Okay.
319
320 MALE VOICE: (Indiscernible).
321 AGENT HOWELL: (Indiscernible).
322
323 KONG: This look like.
324
325 AGENT HOWELL: Say what?
326
327 MALE VOICE: It looks like.
328
329 AGENT HOWELL: Oh.
330
331 MALE VOICE: (Indiscernible).
332
333 AGENT HOWELL: Okay. How about when are you going to get some of these nines? When are you going
334 to get the ones that you say you're out of?
335
336 MALE VOICE: 89?
337
338 AGENT HOWELL: Yeah.

339
340 MALE VOICE: No more.
341
342 AGENT HOWELL: You going to get those in?
343
344 MALE VOICE: No more.
345
346 AGENT HOWELL: No more.
347
348 MALE VOICE: No more.
349
350 AGENT HOWELL: You can't even order them?
351
352 MALE VOICE: No. No more. They don't make no more. The company closed their business. They like
353 Coke.
354 AGENT HOWELL: Huh?
355
356 MALE VOICE: Like Coke company. They don't make no more.
357
358 AGENT HOWELL: Oh.
359
360 MALE VOICE: They close the business.
361
362 AGENT HOWELL: You need to take that sign off. It looks good; that looks good.
363
364 MALE VOICE: (Indiscernible). If you tell them buy it, they say "yeah, I should buy it". I can't do nothing.
365
366 AGENT HOWELL: How about this one?
367
368 MALE VOICE: Which one?
369
370 AGENT HOWELL: The M12.
371
372 MALE VOICE: Yeah, M12, M11. They out. They on order.
373
374 AGENT HOWELL: You going to be here -- you guys open next week?
375
376 MALE VOICE: Every way. Every day.
377
378 AGENT HOWELL: Every day?
379
380 MALE VOICE: You just come in, okay?
381
382 AGENT HOWELL: So I get a Christmas gift? I'm going to get a Christmas Eve gift.
383
384 MALE VOICE: Everyday. Christmas Eve. Christmas Day.
385
386 AGENT HOWELL: It's like Seven-Eleven. It's like Seven-Eleven. What's up?
387
388 MALE VOICE: Shit. Place not like Seven-Eleven. They open everyday. I not open every 24 hour. [18
389 second pause] I know I open every day. [15 second pause]. Only need one; right? Only need one?
390
391 AGENT HOWELL: Just one, yeah. Next week I'll come back.

392
393 MALE VOICE: You know we open everyday. Everyday.
394
395 AGENT HOWELL: Every day. I like that.
396
397 MALE VOICE: Everyday.
398
399 AGENT HOWELL: You don't have a charge account, do you?
400
401 MALE VOICE: Huh?
402
403 AGENT HOWELL: You have a charge kit for a charge account.
404
405 MALE VOICE: No.
406
407 AGENT HOWELL: No charge account?
408
409 MALE VOICE: No.
410
411 AGENT HOWELL: Do you set up a cash charge account?
412
413 MALE VOICE: [laughs] I don't know how to do that.
414
415 AGENT HOWELL: You bring in an advance of cash, and then you charge it out to cash.
416
417 MALE VOICE: [7 second pause] Charge account, no. We don't have charge account.
418
419 AGENT HOWELL: What if I bringing in some cash, and then you just charge it off my account?
420
421 MALE VOICE: Cash?
422
423 AGENT HOWELL: An advance when you just come in and you - .
424
425 MALE VOICE: Every time you have to fill out form. I have to call in.
426
427 AGENT HOWELL: Oh.
428
429 MALE VOICE: Like you buy one gun here.
430
431 AGENT HOWELL: Yeah.
432
433 MALE VOICE: And you go out and get other one. I call it in.
434
435 AGENT HOWELL: Every time?
436
437 MALE VOICE: Every time, everybody. Every time. Now you think you need two gun you have to call in.
438
439 AGENT HOWELL: Every time?
440
441 MALE VOICE: Every time, any day.
442
443 AGENT HOWELL: Ain't nobody home or what?
444

445 MALE VOICE: Huh?
446
447 AGENT HOWELL: Ain't nobody home?
448
449 MALE VOICE: Ain't nobody home. [hums] 289.
450
451 AGENT HOWELL: Yeah, 289.95. Ain't no Christmas sale on that?
452
453 MALE VOICE: Huh?
454
455 AGENT HOWELL: No Christmas sale?
456
457 MALE VOICE: Not here. [laughs]
458
459 AGENT HOWELL: No Santa Claus sale, man?
460
461 MALE VOICE: I'll make you drop down all kind the bullet price.
462
463 AGENT HOWELL: No St. Nick discount.
464
465 FEMALE VOICE: (Indiscernible).
466
467 AGENT HOWELL: (Indiscernible).
468
469 FEMALE VOICE: We'll find someone (indiscernible).
470
471 AGENT HOWELL: (Indiscernible).
472
473 FEMALE VOICE: We'll find someone (indiscernible).Put it in your jacket.
474
475 AGENT HOWELL: Yeah, (indiscernible).
476
477 FEMALE VOICE: (Indiscernible).
478
479 AGENT HOWELL: Ain't it a holiday or what?
480
481 MALE VOICE: Huh?
482
483 AGENT HOWELL: A holiday or what?
484
485 MALE VOICE: No, not holiday.
486
487 AGENT HOWELL: (Indiscernible).
488
489 FEMALE VOICE: (Indiscernible)?
490
491 AGENT HOWELL: Yeah, (indiscernible).
492
493 MALE VOICE: You bought a gun before, right? You bought a gun here before; right?
494
495 AGENT HOWELL: Yes, yes.
496
497 MALE VOICE: (Indiscernible)?

498
499 AGENT HOWELL: Yeah, we got one before. (Indiscernible). You did that. You've done that.
500
501 MALE VOICE: Yeah, a long time ago.
502
503 AGENT HOWELL: Yeah.
504
505 MALE VOICE: Not finished people. There's a lot of people buying guns December.
506
507 AGENT HOWELL: What?
508
509 MALE VOICE: I said December. A lot of people buying guns.
510
511 AGENT HOWELL: Yeah, Y2K, man.
512
513 MALE VOICE: Oh, I don't know why. Everything. This year. This year. This morning.
514
515 AGENT HOWELL: All of them?
516
517 MALE VOICE: Almost.
518
519 AGENT HOWELL: We'll be back. You have no sale next week or anything?
520
521 MALE VOICE: I don't know. Half the house is full of stuff (indiscernible). I have to have (indiscernible).
522
523 AGENT HOWELL: Be a sale. (Indiscernible).
524
525 MALE VOICE: Yeah, sell something. Sell something. Nobody coming. (indiscernible).
526
527 AGENT HOWELL: You should call back. (Indiscernible).
528
529 MALE VOICE: You want to come back?
530
531 AGENT HOWELL: No. I say why don't you call back.
532
533 MALE VOICE: You call back, you have to wait again, I just call them.
534
535 AGENT HOWELL: We've already done this, man. MALE VOICE: (Indiscernible).
536
537 (Indiscernible conversation between Agent Howell and female)
538
539 AGENT HOWELL: You take nine (indiscernible)?
540
541 MALE VOICE: Nine.
542
543 AGENT HOWELL: How much is the extra clip?
544
545 MALE VOICE: Thirty-two dollar. Sixty nine dollar. Sixty nine dollar. I don't know which. It seventy nine
546 dollar. Six rounds. This one comes from (indiscernible).
547
548 AGENT HOWELL: (Indiscernible). Yeah, yeah.
549
550 MALE VOICE: That sixty.

551
552 AGENT HOWELL: That one's what, 32? This one goes with the 32? This goes with the 32.
553
554 MALE VOICE: No more. (Indiscernible) fire.
555
556 AGENT HOWELL: I hear you.
557
558 MALE VOICE: Must put this down. Screw that in. That's the safety.
559
560 MALE VOICE: What's up with - ?
561
562 AGENT HOWELL: I got all this.
563
564 MALE VOICE: [To another customer] Tequila.
565
566 AGENT HOWELL: I get the whole thing for that?
567
568 MALE VOICE: (Indiscernible).
569
570 AGENT HOWELL: Yeah. (Indiscernible), yeah.
571
572 MALE VOICE: (Indiscernible).
573
574 (Indiscernible conversation between Agent Howell and female)
575
576 AGENT HOWELL: Santa's getting his grub on. (indiscernible). Arizona?
577
578 FEMALE VOICE: Did he tell you?
579
580 (Indiscernible conversation between Agent Howell and female)
581
582 AGENT HOWELL: Make an appointment. Yeah, yeah, yeah, yeah. Are you serious? Tuc-son, Arizona.
583
584 (Indiscernible conversation between Agent Howell and female)
585
586 FEMALE VOICE: Are you done? You're not done yet.
587
588 AGENT HOWELL: No, (indiscernible).
589
590 FEMALE VOICE: You're not done yet?
591
592 AGENT HOWELL: I'd like you to see.
593
594 FEMALE VOICE: (Indiscernible):
595
596 AGENT HOWELL: Yeah. I was going to say we have 29 Arizona.
597
598 MALE VOICE: This much.
599
600 AGENT HOWELL: Okay.
601
602 MALE VOICE: (Indiscernible).
603

604 AGENT HOWELL: You got to take it back to the company, not you then.
605
606 MALE VOICE: No.
607
608 AGENT HOWELL: Yeah, you're done, huh?
609
610 MALE VOICE: Yes. (Indiscernible).
611
612 AGENT HOWELL: All right, man, right on. Thanks a lot, man.
613
614 MALE VOICE: (Indiscernible).
615
616 AGENT HOWELL: All right.
617
618 MALE VOICE: (Indiscernible).
619
620 AGENT HOWELL: What's that?
621
622 MALE VOICE: (Indiscernible).
623
624 AGENT HOWELL: Yeah, thanks.
625
626 FEMALE VOICE: (Indiscernible).
627
628 AGENT HOWELL: He gave me the gun and talked to me about my gun. [Into the microphone] Call me on
629 my cell. [To the informant] Turn the mike off. I was trying to see if I could bring in some money, and do
630 the money. With him you just have an account where you just fricking use the same information.
631
632 FEMALE VOICE: Uh-huh. I have no idea.
633
634 (End of tape)
635
636
637
638
639

640 **TAPE #4 – DECEMBER 9, 1999 AT 11:00 A.M.**

641

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AGENT DOBBINS: This is Special Agent Jay A. Dobbins, the Bureau of Alcohol, Tobacco & Firearms. I'm working with ATF Special Agent Bobby Gant and an ATF confidential informant. They'll be attempting to contact Lenny Kong at Gong's Market, 6130 South Nogales Highway in Tucson, Arizona. It's now Thursday, December 9th, 1999 at 11:00 a.m.

AGENT GANT: I haven't worn this frisking jacket forever.

MALE VOICE: Holy cow.

MALE VOICE: How far away are we?

AGENT DOBBINS: About a mile and a half up the street. It's on the right-hand side. Tony knows where it's at. It's a little dive. Just do the same thing like with Glen. Just lay back and let him run everything. If the guy gives you guys any problems about just being in or whatever, you know, he'll talk his way around it.

AGENT GANT: Make sure this fricking thing is on.

MALE VOICE: Okay, we're live on the wire.

AGENT GANT: Do a radio -

MALE VOICE: The wire is hooked in.

AGENT GANT: Do a radio check real quick and make sure. Testing.

MALE VOICE: You're (indiscernible) is not going to like this for help. Okay?

(Enter store)

AGENT GANT: Where did he go? Can I see your 'Morrison?

MALE VOICE: What kind?

AGENT GANT: 22. (Indiscernible) Morrison, yes. What's the difference between that one, that one, and that one right there?

MALE VOICE: (Indiscernible).

AGENT GANT: I mean -

MALE VOICE: That's the company (indiscernible).

AGENT GANT: Yeah, can I see one of those.

MALE VOICE: Okay.

FEMALE VOICE: Can I see (indiscernible)?

AGENT GANT: Is that 25, (indiscernible) 25?

693 MALE VOICE: (Indiscernible).
694
695 AGENT GANT: Where's the one you got for 79, 79.69?
696
697 MALE VOICE: (Indiscernible). This is 25.
698
699 AGENT GANT: This is 25?
700
701 MALE VOICE: This is more cheaper, 69.
702
703 AGENT GANT: This is 69?
704
705 MALE VOICE: (Indiscernible).
706
707 AGENT GANT: Twenty-five?
708
709 MALE VOICE: Twenty-five.
710
711 AGENT GANT: This one says "69."
712
713 MALE VOICE: (Indiscernible).
714
715 AGENT GANT: This one right here. This is 69?
716
717 MALE VOICE: Yeah, (indiscernible).
718
719 AGENT GANT: Oh, okay, I see. I see, yeah, 69 I see.
720
721 MALE VOICE: (Indiscernible).
722
723 AGENT GANT: This (indiscernible). Maybe -
724
725 MALE VOICE: (Indiscernible).
726
727 AGENT GANT: You have this one (indiscernible)?
728
729 MALE VOICE: Not on (indiscernible) this one., but the name is different (indiscernible).
730
731 AGENT GANT: (Indiscernible)? Oh, I'll give it back. I just looked at it. (Indiscernible). You have three?
732
733 MALE VOICE: No. This is the last one.
734
735 AGENT GANT: This is the last one?
736
737 MALE VOICE: (Indiscernible).
738
739 AGENT GANT: Oh, man.
740
741 FEMALE VOICE: (Indiscernible).
742
743 MALE VOICE: I got this one.
744
745 FEMALE VOICE: (Indiscernible).

746
747 MALE VOICE: (Indiscernible).
748
749 AGENT GANT: You got two of these?
750
751 MALE VOICE: (Indiscernible).
752
753 AGENT GANT: So you have three of these?
754
755 MALE VOICE: (Indiscernible).
756
757 AGENT GANT: Oh, you got the silver one? Can I get one of these, and two of these, (indiscernible)
758 number seven?
759
760 MALE VOICE: On one (indiscernible)?
761
762 AGENT GANT: Yeah, if I can get them.
763
764 MALE VOICE: I don't know. I'll have to order them.
765
766 FEMALE VOICE: (Indiscernible).
767
768 MALE VOICE: (Indiscernible).
769
770 FEMALE VOICE: I think one (indiscernible).
771
772 AGENT GANT: Only two. (Indiscernible).
773
774 MALE VOICE: (Indiscernible).
775
776 AGENT GANT: I can buy these two right now? Let's do that. You want to do that?
777
778 FEMALE VOICE: Yeah.
779
780 AGENT GANT: I'll buy these two. Now I'm going to have to wait till I come back in.
781
782 MALE VOICE: (Indiscernible).
783
784 AGENT GANT: If I wait like a half hour, can I come back and get the other one?
785
786 FEMALE VOICE: You (indiscernible) today you can see (indiscernible).
787
788 AGENT GANT: Oh, oh, oh, so I can only buy two in a day.
789
790 FEMALE VOICE: Yeah.
791
792 AGENT GANT: Oh, okay.
793
794 FEMALE VOICE: (Indiscernible). You buy one this morning? You buy it now?
795 (Male voice speaking in Chinese)
796

797 MALE VOICE: L -- 1L27362, Kong, K-O-N-G. Yes. This for handgun, and (indiscernible). Okay, this
798 is(indiscernible) gun (indiscernible) Arizona. Yes, yeah, 28621199. Yeah, yeah, okay, okay.
799 (Indiscernible).
800
801 AGENT GANT: I'll buy those two, man. Once I found out (indiscernible).
802
803 MALE VOICE: (Indiscernible).
804
805 AGENT GANT: Oh, do you?
806 MALE VOICE: (Indiscernible).
807
808 AGENT GANT: I'll take those two.
809
810 MALE VOICE: (Indiscernible).
811
812 AGENT GANT: Okay, I'll take them.
813
814 MALE VOICE: (Indiscernible).
815
816 AGENT GANT: Well, can't I just buy those two? I'll just buy those two.
817
818 MALE VOICE: (Indiscernible).
819
820 AGENT GANT: (Indiscernible).
821
822 MALE VOICE: (Indiscernible).
823
824 AGENT GANT: If I could buy those two.
825
826 MALE VOICE: (Indiscernible) you can buy the (indiscernible).
827
828 AGENT GANT: All right.
829
830 MALE VOICE: It's going to have (indiscernible). (Indiscernible).
831
832 AGENT GANT: Oh, okay, I see. It comes out; right?
833
834 FEMALE VOICE: Do you (indiscernible)?
835
836 MALE VOICE: (Indiscernible).
837
838 FEMALE VOICE: Do you need help, sir?
839
840 MALE VOICE: (Indiscernible).
841
842 FEMALE VOICE: On the bottom.
843
844 MALE VOICE: (Indiscernible).
845
846 FEMALE VOICE: That on my side. My side, my side.
847
848 (Indiscernible), yeah, on the bottom. This gun is supposedly like antique. And they usually we don't refund
849 gun.

850
851 AGENT GANT: You don't?
852
853 FEMALE VOICE: We don't.
854
855 AGENT GANT: So if it breaks, I can't come and get my money back.
856
857 FEMALE VOICE: No. (Indiscernible).
858
859 AGENT GANT: From the company?
860
861 FEMALE VOICE: (Indiscernible).
862
863 AGENT GANT: If my gun breaks, (indiscernible) get it back?
864
865 FEMALE VOICE: I have no idea. (Indiscernible). I send something back, I don't know where, because they
866 do not tell you. They send it UPS (indiscernible).
867
868 AGENT GANT: Will they just send me a new one or will they just fix it?
869
870 FEMALE VOICE: I don't know. If they fix it, they fix it. (Indiscernible). They don't tell you.
871 (Indiscernible). And then if you lost the gun, you just tell the police. That's your number. You got it from
872 us. Like what day you got it from us and the gun serial number. (Indiscernible). (Indiscernible), and just
873 write down the person's name (indiscernible), and then what state (indiscernible). If something happen to
874 gun, you do something wrong, (indiscernible). Like you lost it, what day you lost it, what day you sold it.
875 (Indiscernible). If you sell it, then (indiscernible) name and what date. Because we are the dealer
876 (indiscernible).
877
878 AGENT GANT: So if I sell the gun I don't have to call anybody to -- I mean like I sold it.
879
880 FEMALE VOICE: (Indiscernible) just like (indiscernible).
881
882 AGENT GANT: (Indiscernible).
883
884 FEMALE VOICE: Do you want (indiscernible)?
885
886 AGENT GANT: No. A hundred sixty.
887
888 MALE VOICE: (Indiscernible).
889
890 AGENT GANT: I'm looking for the (indiscernible).
891
892 MALE VOICE: Oh, (indiscernible).
893
894 AGENT GANT: Couldn't find it.
895
896 MALE VOICE: (Indiscernible).
897
898 AGENT GANT: How long do I have to wait till I finally get that (indiscernible)?
899
900 FEMALE VOICE: (Indiscernible) tomorrow.
901
902 AGENT GANT: Tomorrow or the next day (indiscernible)?

903
904 FEMALE VOICE: I can (indiscernible).
905
906 AGENT GANT: All right, thanks.
907
908 FEMALE VOICE: You come back tomorrow or the next day? (Indiscernible). Okay?
909
910 AGENT GANT: Thanks.
911
912 (Leave store)
913 MALE VOICE: Okay, they're out, and they're in their vehicle.
914 (End of tape)

915 **TAPE #5 – DECEMBER 15, 1999**

916

917

918 TRANSCRIPT OF UNDERCOVER TAPE

919 In re U.S. v. Lenny Kong

920 Case No. CR-00-0956-TUC-RCC

921

922

923 AGENT DOBBINS: This is Special Agent Jay A.Dobbins of the Bureau of Alcohol,
924 Tobacco & Firearms. This recording is made in relation to ATF investigation number
925 785065000011. I'll be attempting to contact Lenny Kong at Gong's Market, 130 South
926 Nogales Highway in Tucson, Arizona. It is now Wednesday, December 15th, 1999 at 9:35
927 a.m.

928

929 MALE VOICE: Hook that wire to the arm. (Indiscernible). When we get in they're
930 probably going to want to see a license before they sell us anything. So just give them that
931 driver's license right off the bat. Ready?

932

933 FEMALE VOICE: If this will start up again after we get out, it'll be a success. Make sure I sit in the back.

934

935 MALE AGENT: Please start. That's going to be bad if we got to call a bunch of people to come and push it
936 around.

937

938 (Enter store)

939 MALE AGENT: How are you doing?

940

941 MALE VOICE: (Indiscernible).

942

943 MALE AGENT: All right. You don't have any coffee or anything, do you?

944

945 MALE VOICE: No? I'll make some.

946

947 MALE AGENT: Oh, that's all right. I want to look at -- I want to look at one of your guns.

948

949 MALE VOICE: Oh, okay.

950

951 MALE AGENT: Do you -- do you have any of these left?

952

953 MALE VOICE: Yes, (indiscernible).

954

955 MALE AGENT: Ooh, it's cold riding that motorcycle.

956

957 MALE VOICE: You want to look at one?

958

959 MALE AGENT: Yeah, I'd like to look at one, please. Okay.

960

961 MALE VOICE: (Indiscernible).

962

963 MALE AGENT: What's that?

964

965 MALE VOICE,: I say you say lucky.

966

967 MALE AGENT: Why's that?

968
969 MALE VOICE: Because (indiscernible) 10 minute.
970
971 MALE AGENT: He just brought this one?
972
973 MALE VOICE: (Indiscernible) 10 minute.
974
975 MALE AGENT: Oh. You sell very many of these?
976
977 MALE VOICE: Huh?
978
979 MALE AGENT: Do you sell very many of these?
980
981 MALE VOICE: I think so.
982
983 MALE AGENT: Do you like them? Have you ever shot one before?
984
985 MALE VOICE: (Indiscernible), but I didn't (indiscernible).
986
987 MALE AGENT: Do you -- do people ever try to bring them back, or people complain about them? They
988 don't work good or -
989
990 MALE VOICE: Okay. I found one from the back. (Indiscernible).
991
992 MALE AGENT: Really?
993
994 MALE VOICE: (Indiscernible). I try to find (indiscernible).
995
996 MALE AGENT: How much is this? 289?
997
998 MALE VOICE: (Indiscernible).
999
1000 MALE AGENT: Just one magazine?
1001
1002 MALE VOICE: Yeah. But it's got a (indiscernible).
1003
1004 MALE AGENT: A different magazine?
1005
1006 MALE VOICE: Yeah.
1007
1008 MALE AGENT: Okay. How much is the extra magazine?
1009
1010 MALE VOICE: A hundred forty-nine (indiscernible).
1011
1012 MALE AGENT: Okay, okay. Why is the magazine so expensive?
1013
1014 MALE VOICE: They come -- they don't make long one.
1015
1016 MALE AGENT: Oh, don't make the long ones?
1017
1018 MALE VOICE: (Indiscernible). I order a (indiscernible).
1019
1020 MALE AGENT: Right.

1021
1022 MALE VOICE: (Indiscernible).
1023
1024 MALE AGENT: Right.
1025
1026 MALE VOICE: Shit.
1027
1028 MALE AGENT: How many does this hold, 10?
1029
1030 MALE VOICE: Usually 10, okay? Only (indiscernible) make it 10.
1031
1032 MALE AGENT: Right.
1033
1034 MALE VOICE: (Indiscernible).
1035
1036 MALE AGENT: Right. Dana, how much money do I have left in my wallet? 289. What is that with tax,
1037 about three something?
1038
1039 MALE VOICE: (Indiscernible).
1040
1041 MALE AGENT: Okay. How much do I have? We were gambling. I don't know how much money I have
1042 left.
1043
1044 FEMALE VOICE: (Indiscernible).
1045
1046 MALE AGENT: Okay. Yeah, you know, I'll take this.
1047
1048 MALE VOICE: (Indiscernible)?
1049
1050 MALE AGENT: Yeah, yeah. I might come back later for the long magazine if I like the way this shoots. I
1051 want to test it and shoot it first though to see if I like it. Give me my license.
1052 MALE VOICE: (Indiscernible).
1053
1054 MALE AGENT: Yeah.
1055
1056 MALE VOICE: (Indiscernible). (Indiscernible). Everybody is Y2K. I don't know what is. (Another
1057 conversation)
1058
1059
1060 MALE AGENT: Did you leave me the long?
1061
1062 MALE VOICE: (Indiscernible).
1063
1064 MALE AGENT: No. (Indiscernible). You know it was like I called him. There was no one there till 9:00.
1065
1066 FEMALE VOICE: Oh, really.
1067
1068 MALE AGENT: Yeah.
1069
1070 FEMALE VOICE: (Indiscernible).
1071
1072 MALE VOICE: (Indiscernible). Yeah.
1073

1074 MALE AGENT: You want one of these pickled pigs' feet? I'll have one of these, one of these. These are
1075 pickled digs' feet. Oh, my God. If you'll eat it I'll buy it. (Indiscernible). It's one-stop shopping. I'm sure that
1076 (indiscernible) everything that we need is right here. (Indiscernible).
1077
1078 FEMALE VOICE: (Indiscernible).
1079 MALE AGENT: (Indiscernible).
1080
1081 MALE VOICE: 60039 (indiscernible).
1082
1083 MALE AGENT: Excuse me?
1084
1085 MALE VOICE: What (indiscernible)?
1086
1087 MALE AGENT: Hammond, Indiana.
1088
1089 MALE VOICE: Indiana. What's that?
1090
1091 FEMALE VOICE: (Indiscernible).
1092
1093 MALE AGENT: Put them on the handle bars?
1094
1095 FEMALE VOICE: Uh-huh.
1096
1097 MALE AGENT: Anything else? You need some pliers? Need a hacksaw? Spotlight? Drill bit?
1098 (Indiscernible). (Indiscernible) starting because it was (indiscernible) later you wait the more chance of
1099 running into that. I don't know. It looks like it goes (indiscernible) or something, but I don't know. Do you
1100 know? (Indiscernible).
1101 FEMALE VOICE: (Indiscernible).
1102
1103 MALE AGENT: This is some last-minute business shopping here (indiscernible).
1104
1105 FEMALE VOICE: (Indiscernible).
1106
1107 MALE AGENT: Yeah, we do. Just spray it all over the whole motorcycle.
1108
1109 FEMALE VOICE: (Indiscernible).
1110
1111 MALE AGENT: (Indiscernible). Uh-huh. Who is he boarding? Where is he boarding at?
1112
1113 FEMALE VOICE: (Indiscernible).
1114
1115 MALE VOICE: He says no.
1116
1117 MALE AGENT: No?
1118
1119 MALE VOICE: No.
1120
1121 MALE AGENT: Why is he so upset about?
1122
1123 MALE VOICE: I don't know.
1124
1125 MALE AGENT: Really? Did they say why? Why no?
1126

1127 MALE VOICE: No, they never tell me when they say no (indiscernible).
1128
1129 MALE AGENT: Because I bought one last week. You know what? I used my other license last week. I
1130 bought one last week, but I used -- Frank, can I start over? Can I do a different -- another one of these? I
1131 used that -- give me that ID card.
1132 MALE VOICE: (Indiscernible).
1133
1134 MALE AGENT: I have a different one. I have a different one. This is the one I used last week. This is the
1135 one.
1136
1137 MALE VOICE: Arizona.
1138
1139 MALE AGENT: Okay, yeah; Arizona.
1140
1141 MALE VOICE: No, no. You have to write "Arizona" on it.
1142
1143 MALE AGENT: Okay.
1144
1145 FEMALE VOICE: (Indiscernible)?
1146
1147 MALE AGENT: Yeah.
1148
1149 FEMALE VOICE: (Indiscernible) nine.
1150
1151 MALE VOICE: (Indiscernible).
1152
1153 MALE AGENT: See, because this says "optional." So you don't have to put -- you don't have to put that
1154 there.
1155 MALE VOICE: Look on the bottom. It's up to you.
1156
1157 FEMALE VOICE: Where do you get your paper from?
1158
1159 MALE VOICE: Huh?
1160
1161 FEMALE VOICE: Where do you get your paper from?
1162
1163 MALE VOICE: L.A.
1164
1165 FEMALE VOICE: In L.A.?
1166
1167 MALE VOICE: (Indiscernible).
1168
1169 FEMALE VOICE: Oh, okay.
1170
1171 MALE VOICE: Yeah, (indiscernible) license (indiscernible) 68010(indiscernible)27363. Yeah,
1172 (indiscernible). Lenny, L-E-N-N-Y, (indiscernible)
1173
1174 MALE AGENT: (Indiscernible). I'm tired of (indiscernible). I just want (indiscernible). Do I just send them
1175 to you? (Indiscernible) my motorcycle (indiscernible). What's that?
1176
1177 MALE VOICE: (Indiscernible).
1178
1179 MALE AGENT: No, not in this weather though. We're just down here for a little while, yeah.

1180
1181 MALE VOICE: (Indiscernible).
1182
1183 MALE AGENT: Uh-huh.
1184
1185 MALE VOICE: (Indiscernible).
1186
1187 MALE AGENT: Maybe park in a garage somewhere.
1188
1189 MALE VOICE: (Indiscernible).
1190
1191 MALE AGENT: I'm sure they'd love that. (Indiscernible) other teacher.
1192
1193 FEMALE VOICE: (Indiscernible).
1194
1195 MALE AGENT: That would be perfect.
1196
1197 FEMALE VOICE: (Indiscernible).
1198
1199 MALE AGENT: What's that?
1200
1201 FEMALE VOICE: (Indiscernible).
1202
1203 MALE AGENT: Yeah, something like that. In Nogales?
1204
1205 FEMALE VOICE: Yes. AZ 90
1206
1207 MALE VOICE: (Indiscernible).
1208
1209 MALE VOICE: How much do you want? How much? Okay. (Indiscernible).
1210
1211 MALE AGENT: Have you seen this Arizona (indiscernible) magazine? (Indiscernible).
1212
1213 FEMALE VOICE: (Indiscernible).
1214
1215 (Indiscernible conversation between Agent and female)
1216
1217 MALE VOICE: (Indiscernible)?
1218
1219 MALE AGENT: Yeah, I shouldn't have given you that. I gave you that other one by accident, that other
1220 license by accident. You can take care of her if you want to.
1221
1222 MALE VOICE: (Indiscernible):
1223
1224 (Indiscernible conversation between Agent and female)
1225
1226 MALE AGENT: It says, "Buy your guns at Gong."
1227
1228 MALE VOICE: (Indiscernible). Sugar.
1229
1230 MALE AGENT: (Indiscernible).
1231
1232 MALE VOICE: No.

1233
1234 MALE AGENT: Oh, cream, (indiscernible)?
1235
1236 MALE VOICE: Yeah, (indiscernible).
1237
1238 MALE AGENT: I thought it said, "Special at Gong's. Pistols on sale for Christmas."
1239
1240 MALE VOICE: (Indiscernible)?
1241
1242 MALE AGENT: Yes, yeah. You know, if you don't - I don't care if I have a receipt or not. Do you need it
1243 for
1244 that? Okay, on the receipt, 85033, 33. There you go.
1245
1246 FEMALE VOICE: Does this have the (indiscernible) prices here?
1247
1248 MALE VOICE: Yeah.
1249
1250 FEMALE VOICE: (Indiscernible). Webiste.
1251
1252 MALE VOICE: Uh-huh.
1253
1254 MALE VOICE: (Indiscernible).
1255
1256 MALE AGENT: Oh, really.
1257
1258 MALE VOICE: Two hundred eighty-nine.
1259
1260 MALE AGENT: Two eighty-nine ninety-five.
1261 MALE VOICE: (Indiscernible).
1262
1263 MALE AGENT: Okay. I'll keep my receipt. (Indiscernible), and today (indiscernible). It should start. I
1264 mean it probably ran for about 20 minutes. I mean when I tried it once we got out of the traffic, I tried to
1265 blow it out a little bit.
1266 FEMALE VOICE: (Indiscernible).
1267
1268 MALE AGENT: You can (indiscernible).
1269
1270 MALE VOICE: (Indiscernible).
1271
1272 MALE AGENT: Can you change that?
1273
1274 MALE VOICE: Yeah, no problem.
1275
1276 MALE AGENT: Okay. Yeah, both my licenses (indiscernible).
1277
1278 FEMALE VOICE: I got them both.
1279
1280 MALE AGENT: (Indiscernible). I'm going to throw that bad one away. It's no good. It's no good for
1281 anything.
1282
1283 KONG: [laughs]
1284
1285 MALE VOICE: 689.

1286 MALE AGENT: Okay, okay. I don't --
1287
1288 FEMALE VOICE: (Indiscernible).
1289
1290 MALE AGENT: I don't need the case. I don't want the case.
1291
1292 KONG: (Indiscernible). You want case?
1293 MALE AGENT: I'm just -- you can have that. You can just keep it for one of yours. This is all -- I don't
1294 need the-directions.
1295
1296 KONG: (Indiscernible). You don't want case?
1297
1298 MALE AGENT: No. I know how to shoot it. Point it and squeeze the trigger. Will you just stick that under
1299 your jacket or something. Okay, thank you.
1300
1301 KONG: [laughs]
1302
1303 KONG: (Indiscernible).Everybody want.
1304
1305 MALE AGENT: Nobody wants a box, huh?
1306
1307 KONG: You don't need a box?
1308
1309 MALE AGENT: No, I don't need a box.
1310
1311 KONG: (Indiscernible). The box cost almost thirty or something like that.
1312
1313 MALE AGENT: So today's your day. You can resell it, or put one of yours in it, put one of your guns in it.
1314 Okay, see you later.
1315
1316 MALE VOICE: (Indiscernible). Thank you. Okay, have a good day.
1317
1318 MALE AGENT: Thanks. Okay, bye-bye.
1319
1320 (Indiscernible). 10:05.
1321
1322 (Leave store)
1323
1324 MALE AGENT: Know it's going to start.
1325
1326 FEMALE VOICE: You know what?
1327
1328 MALE AGENT: It's in the sun. It's going to start. Choke just a little bit. Okay, everybody, get ready for
1329 this. One kick. I didn't have it on. That one didn't count. You want to go that way or that way?
1330
1331 FEMALE VOICE: (Indiscernible).
1332
1333 (End of tape)

1334 **TAPE #6 – JANUARY 6, 2000**
1335
1336 TRANSCRIPT OF UNDERCOVER TAPE
1337 In re U.S. v. Lenny Kong
1338 Case No. CR-00-0956-TUC-RCC
1339 January 6, 2000
1340
1341 MALE VOICE: (Indiscernible).
1342
1343 MALE VOICE: (Indiscernible).
1344
1345 MALE VOICE: Got it. (Indiscernible).
1346
1347 (Enter store)
1348
1349 MALE AGENT: Hey, how you all, buddy? Yeah, man. (Indiscernible). So what you got, buddy?
1350
1351 MR. KONG: I don't know. I don't know if I know what you need.
1352
1353 MALE AGENT: That's (indiscernible) right there.
1354
1355 MALE VOICE: (Indiscernible). Right on the bottom. Are you going to get no more of those?
1356
1357 MR. KONG: (Indiscernible).
1358
1359 MALE VOICE: Dang. What about the --
1360
1361 MALE AGENT: The (indiscernible) 8-10. Let me see that.
1362
1363 MALE VOICE: How much is that worth?
1364
1365 MR. KONG: (Indiscernible).
1366
1367 MALE VOICE: All right. No problem.
1368
1369 MR. KONG: What else?
1370
1371 MALE VOICE: I just want to see that clip.
1372
1373 MR. KONG: Which one?
1374
1375 MALE VOICE: (Indiscernible), AB10. Yeah, they got two colors though.
1376
1377 MR. KONG: (Indiscernible). I only got one black color one.
1378
1379 MALE VOICE: Can I see the black?
1380
1381 MR. KONG: What else?
1382
1383 MALE VOICE: That's it.
1384
1385 MR. KONG: (Indiscernible).
1386

1387 MALE VOICE: Yeah.
1388
1389 MALE AGENT: You want to look at a 380?
1390
1391 MALE VOICE: I don't know. Yes, that one right there.
1392
1393 MALE AGENT: You want to look at a 382?
1394
1395 MALE VOICE: No. (Indiscernible). That one's expensive. They have all kinda shit.
1396
1397 MALE AGENT: That's a 44 Magnum. (Indiscernible) scope for it.
1398
1399 MALE VOICE: (Indiscernible) smell good. (Indiscernible).
1400
1401 MALE VOICE: (Indiscernible).
1402
1403 MALE AGENT: How many does that hold? Two.
1404
1405 MALE VOICE: (Indiscernible).
1406
1407 MALE VOICE: You all have no clear clips?
1408
1409 MR. KONG: Clear?
1410
1411 MALE VOICE: Clear, clear. You can see through them (indiscernible).
1412
1413 MALE AGENT: You've never heard of that.
1414
1415 MR. KONG: Yeah, I give you two.
1416
1417 MALE AGENT: I want to take that. (Indiscernible).
1418
1419 MR. KONG: You got a picture ID with you?
1420
1421 MALE AGENT: Yeah, buddy.
1422
1423 (Indiscernible conversation)
1424
1425 KONG: Fill out form and I call in.
1426
1427 KONG: PA. What is PA?
1428
1429 MALE AGENT: Pennsylvania.
1430
1431 KONG: Oh.
1432
1433 MALE AGENT: (Indiscernible).
1434
1435 MALE VOICE: (Indiscernible).
1436
1437 MALE AGENT: (Indiscernible).
1438

1439 MR. KONG: Yes, this is Lenny. 66818-37363. Kong K-O-N-G. Lenny L-E-N-N-Y (Indiscernible) R-N-E-
1440 R. Yeah, yeah. S-T-E-V-E-N. Five-four-sixty six. Five-eight. U-T-A-N-E (?) Yeah, yeah. In Mesa, Arizona
1441 85204, Five-eight. One-oh-six. PA. (Indiscernible). Yeah.
1442
1443 MALE AGENT: Do you carry (Indiscernible) for a mobile phone?
1444
1445 MR. KONG: (Indiscernible). (Indiscernible). Yeah, all right then. Yeah. You see the sign right there? All
1446 right there. (Indiscernible). Yeah. Charlies.
1447
1448 MALE AGENT: Charles.
1449
1450 MR. KONG: Charles. (Indiscernible). Yeah.
1451
1452 MALE VOICE: Can use some (Indiscernible), man. You doing all that damn (Indiscernible).
1453
1454 MR. KONG: Yeah, (Indiscernible).
1455
1456 MALE VOICE: Man, is there something (Indiscernible). I don't know. (Indiscernible).
1457
1458 MALE VOICE: (Indiscernible).
1459
1460 MALE AGENT: (Indiscernible).
1461
1462 MALE VOICE: Get our own magazines.
1463
1464 MALE VOICE: (Indiscernible).
1465
1466 MALE VOICE: I didn't notice because of (Indiscernible).
1467
1468 MALE VOICE: (Indiscernible).
1469
1470 MALE AGENT: (Indiscernible).
1471
1472 MR. KONG: Yeah. Okay. You deny. (Indiscernible). Okay, okay, okay. Bye.
1473
1474 MALE VOICE: Out of numbers.
1475
1476 MR. KONG: Huh?
1477
1478 MALE VOICE: It's out of numbers.
1479
1480 MR. KONG: Okay. This is (Indiscernible). Take so long. Take so long.
1481
1482 MALE VOICE: Anything else I can change? I want to get that gun. I come a long way. Anything I can
1483 change so I...?
1484
1485 MR. KONG: No.
1486
1487 MALE VOICE: Huh?
1488
1489 MR. KONG: No.
1490
1491 MALE VOICE: (Indiscernible).

1492 MR. KONG: Only one thing.
1493
1494 MALE VOICE: Huh?
1495
1496 MR. KONG: Only one thing. I need to call.
1497
1498 MALE VOICE: Oh, go ahead and call. (Indiscernible). All right.
1499
1500 MR. KONG: Sorry, sir.
1501
1502 MALE VOICE: (Indiscernible).
1503
1504 MALE VOICE: Man, I need -- I'll do it. I ain't do it no more.
1505
1506 MALE AGENT: All right.
1507
1508 MALE VOICE: What do I got to fill out on it? I got to put on my stuff?
1509
1510 MR. KONG: Yeah, you gotta picture ID, yeah.
1511
1512 MALE VOICE: You need it; you need it.
1513
1514 MR. KONG: Yeah.
1515
1516 MALE AGENT: Hey guys, do you want to (indiscernible)?
1517
1518 MALE VOICE: Yeah.
1519
1520 MR. KONG: See, usually somebody answer the phone. Tell them all the information. Couple minute.
1521 Different. Make it.
1522 MALE VOICE: That's why do you say that (indiscernible).
1523
1524 MR. KONG: I know, see? It take a while, see?
1525
1526 MALE VOICE: Yeah.
1527
1528 KONG: That's the way possible.
1529
1530 MALE VOICE: (Indiscernible).
1531
1532 MALE AGENT: (Indiscernible) whenever you at. Hey, man, what is that (indiscernible) stuff?
1533
1534 MR. KONG: (Indiscernible) some kind of sour hot stuff. They like it.
1535
1536 MALE VOICE: State or foreign country.
1537
1538 MALE AGENT: Check this out.
1539
1540 MALE VOICE: Are you going to put it on my social security number, too?
1541
1542 MR. KONG: I think so.
1543
1544 MALE VOICE: Yeah, shit man.

1545
1546 MALE AGENT: That's America, ain't it?
1547
1548 MALE VOICE: I don't even (indiscernible) this thing.
1549
1550 MALE AGENT: This is the last one anyway.
1551
1552 MALE VOICE: Man. What do I got to do?
1553
1554 MALE AGENT: Check this out (indiscernible).
1555
1556 MALE VOICE: Do I just put yes or no?
1557
1558 MALE AGENT: Yes or no.
1559
1560 MALE VOICE: What's this? What's this?
1561
1562 KONG: Say no. [laughs]
1563
1564 MALE VOICE: Oh, no? You say yes, what happens?
1565
1566 KONG: On the phone I say yes. You go to jail before this what happens? Not found.
1567
1568 MALE AGENT: (Indiscernible) what happens (indiscernible).
1569
1570 MR. KONG: Oh, yes. This is Lenny. My license 986010011L37363, 37363 Kong. Yes. This for the
1571 handgun.
1572
1573 MALE AGENT: Six (indiscernible).
1574
1575 MR. KONG: This for the handgun. What's your last name? Last name Meadows, M-E-A-D-O-W-S,
1576 C-H-R-I-S, and (indiscernible) 92464. (Indiscernible) is twenty-nine-one-two (I-N-D-I) Indian School,
1577 1107. You got a call from who? Me too. In Phoenix, Arizona 85016. Social, 601-85-7940, five-foot-ten
1578 Arizona.(Indiscernible).
1579 MALE AGENT: Indian.
1580 MR. KONG: Okay? Huh? Okay, okay, okay, okay, okay, okay. Oh-four-five. That's all? Okay, thank you.
1581 Bye.
1582 MALE AGENT: What's the difference between --
1583
1584 MR. KONG: I can't do nothing. I don't know nothing. See tell you driver license on this. They take almost
1585 20 minute to check. I tell you driver license on that you know how fast. How do I know how they check?
1586 They tell me to do this paperwork. I do the paperwork. That's all I know.
1587
1588 MALE AGENT: That's all you know.
1589
1590 MR. KONG: What happen in the past. If in past you ask me what happen, you better get a telephone call
1591 and ask them.
1592
1593 MALE AGENT: You got to call them, man. I ain't calling (indiscernible).
1594 MR. KONG: I can't do nothing. You want the telephone, I pass the telephone number.
1595
1596 MALE AGENT: You got a telephone number?
1597

1598 MR. KONG: Of course, man.
1599
1600 MALE VOICE: Give me the number to take with me.
1601
1602 MR. KONG: Okay, sir. No more (indiscernible).
1603
1604 MALE VOICE: Damn. So you got to call this number, and they can tell me what's --
1605
1606 MR. KONG: You call; somebody answer. Okay, If you want to say your kind, okay, you just tell them this
1607 one. See, somebody answer the phone, you just say this morning tried to buy a gun. That's the --
1608
1609 MALE VOICE: (Indiscernible).
1610
1611 MR. KONG: -- state, S-T-A-T-E? (Indiscernible).
1612
1613 MALE VOICE: I'll take care of it (indiscernible). You still need that?
1614
1615 MR. KONG: What?
1616
1617 MALE VOICE: My license.
1618
1619 MR. KONG: Yeah. You forgot the date.
1620
1621 MALE VOICE: Oh, what's the date again?
1622
1623 MR. KONG: 1/6/00.
1624
1625 MALE VOICE: 00?
1626
1627 MALE VOICE: What are these things?
1628
1629 KONG: China. They taste like good for you.
1630
1631 (Indiscernible conversation)
1632
1633 MALE VOICE: (Indiscernible) to the bathroom, man?
1634
1635 (Indiscernible conversation)
1636
1637 MALE AGENT: You and me both.
1638
1639 (Indiscernible conversation)
1640
1641 MALE AGENT: How much are these?
1642
1643 MR. KONG: How much? 200.
1644
1645 MALE AGENT: 289.95.
1646
1647 MR. KONG: You return the gun, okay?
1648
1649 MALE AGENT: No.
1650

1651 MR. KONG: All kind of problem You just way send back. . Okay?
1652
1653 MALE AGENT: Okay. Who do you send it to?
1654
1655 MR. KONG: They got a company, got an address, got (indiscernible).
1656
1657 MALE AGENT: How are you going to (indiscernible)?
1658
1659 MR. KONG: Can I see it?
1660
1661 MALE AGENT: Maybe.
1662
1663 MR. KONG: I have to see it. [laughs]
1664
1665 (Indiscernible conversation)
1666
1667 MR. KONG: If something happen with company, you (indiscernible) here.
1668
1669 MALE AGENT: Okay.
1670
1671 MR. KONG: We only just buy and sell. That's all.
1672
1673 MALE AGENT: (Indiscernible) repair.
1674
1675 MR. KONG: It's not me go to.
1676
1677 MALE AGENT: No, (indiscernible). (Indiscernible)?
1678
1679 MR. KONG: Yeah.
1680
1681 MALE AGENT: One, two, three, four. Hey, (indiscernible).
1682
1683 MR. KONG: (Indiscernible).
1684
1685 MALE AGENT: I got to do what?
1686
1687 MR. KONG: You should write down what you sold (indiscernible).
1688
1689 MALE AGENT: Oh, really?
1690
1691 MR. KONG: Yes.
1692
1693 MALE AGENT: Okay, all right. All right, man, thank you. Cool, babe.
1694
1695 KONG: Yes.
1696
1697 (Leave store)
1698
1699 MALE VOICE:
1700
1701 (End of tape)
1702

APPENDIX B. SPEAK® BAND DESCRIPTOR CHART

(Adapted From SPEAK®, 1996)

	Level 60 Communication almost always effective: task performed very competently	Level 50 Communication generally effective: task performed somewhat competently
Overall features to consider:	Speaker volunteers information freely, with little or no effort, and may go beyond the task by using additional appropriate functions. Native-like repair strategies; sophisticated expressions; very strong content; almost no listener effort required.	Speaker volunteers information, sometimes with effort; usually does not run out of time. Linguistic weaknesses may necessitate some repair strategies that may be slightly distracting.
Functional Competence	Speaker is highly skilled in selecting language to carry out intended functions that reasonably address the task.	Speaker is able to select language to carry out functions that reasonably address task.
Sociolinguistic Competence	Speaker almost always considers register and demonstrates audience awareness. Understanding of context, and strength in discourse and linguistic sophistication.	Speaker generally considers register and demonstrates sense of audience awareness. Occasionally lacks extensive range, variety, and sophistication; response may be slightly unpolished.
Discourse Competence	Response is coherent with logical organization and clear development. Contains enough details to almost always be effective; sophisticated cohesive devices result in smooth connection of ideas.	Response is generally coherent, with generally clear, logical organization and adequate development. Contains enough details to be generally effective; some lack of sophistication in use of cohesive devices may detract from smooth connection of ideas.
Linguistic Competence	Errors not noticeable; accent not distracting; range in grammatical structures and vocabulary; delivery often has native-like smoothness.	Use of linguistic features generally effective; communication often impeded by major errors. Errors not unusual, but rarely major; Accent may be slightly distracting; some range in vocabulary and grammatical structures, which may be slightly awkward or inaccurate; delivery generally smooth, with some hesitancy and pauses .

	Level 40 Communication somewhat effective: task performed somewhat competently	Level 30 Communication generally not effective: task generally performed poorly
Overall features to consider:	Speaker responds with effort. Sometimes excessive, distracting, and ineffective repair strategies used to compensate for linguistic weaknesses (e.g. vocabulary and/or grammar). Adequate control. Some listener effort required.	Speaker responds with much effort. Repair strategies excessive, very distracting, and ineffective. Much listener effort required. Difficult to tell if task is fully performed because of linguistic weaknesses, but function can be identified.
Functional Competence	Functions performed somewhat clearly and effectively. Speaker may lack skill in selecting language to carry out functions that reasonably address the task.	Functions generally performed unclearly and ineffectively. Speaker often lacks skill in selecting language to carry out functions that reasonably address task.
Sociolinguistic Competence	Somewhat appropriate response to audience/situation. Speaker demonstrates some audience awareness, but register is not always considered. Lack of linguistic skills that would demonstrate sociolinguistic sophistication.	Generally inappropriate response to audience/situation. Speaker usually does not demonstrate audience awareness since register is often not considered. Lack of linguistic skills generally masks sociolinguistic skills.
Discourse Competence	Somewhat coherent, with some use of cohesive devices. Coherence of the response is sometimes affected by lack of development and/or somewhat illogical or unclear organization, sometimes leaving the listener confused. May lack details. Mostly simple cohesive devices are used. Somewhat abrupt openings and closures.	Generally incoherent, with little use of cohesive devices. Response is often incoherent; loosely organized and inadequately developed or disjointed discourse often leaves the listener confused. Often lacks details. Simple conjunctions used as cohesive devices, if at all. Abrupt opening and closures.
Linguistic Competence	Use of linguistic features somewhat effective; communication sometimes affected by errors. Minor and major errors present. Accent usually distracting. Simple structures sometimes accurate, but errors in more complex structures common. Limited ranges in vocabulary; some inaccurate word choices. Delivery often slow or choppy; hesitancy and pauses common.	Use of linguistic features generally poor; communication often impeded by major errors. Limited linguistic control; major errors present. Accent very distracting. Speech contains numerous sentence fragments and errors in simple structures. Frequent inaccurate word choices; general lack of vocabulary for task completion. Delivery almost always plodding, choppy, and repetitive; hesitancy and pauses very common.

	Level 20 No effective communication: no evidence of ability to perform task
Overall features to consider:	Extreme speaker effort is evident; speaker may repeat prompt, give up on task, or be silent.
Functional Competence	No evidence that functions were performed. Speaker is unable to select language to carry out the functions.
Sociolinguistic Competence	No evidence that functions were performed. Speaker is unable to demonstrate sociolinguistic skills and fails to acknowledge audience or consider register
Discourse Competence	Incoherent, with no use of cohesive devices. Response is incoherent; lack of linguistic competence interferes with listener's ability to assess discourse competence
Linguistic Competence	Use of linguistic features poor; communication ineffective due to major errors. Lack of linguistic control; accent so distracting that few words are intelligible; speech contains mostly sentence fragments, repetition of vocabulary, and simple phrases; delivery so plodding that only few words are produced.

APPENDIX C: ACTFL SPEAKING GUIDELINES

ACTFL guidelines: Speaking--Novice

General Description

The Novice level is characterized by the ability to communicate minimally with learned material.

Novice-Low

Oral production consists of isolated words and perhaps a few high-frequency phrases. Essentially no functional communicative ability.

Novice-Mid

Oral production continues to consist of isolated words and learned phrases within very predictable areas of need, although quantity is increased. Vocabulary is sufficient only for handling simple, elementary needs and expressing basic courtesies. Utterances rarely consist of more than two or three words and show frequent long pauses and repetition of interlocutor's words. Speaker may have some difficulty producing even the simplest utterances. Some Novice-Mid speakers will be understood only with great difficulty.

Novice-High

Able to satisfy partially the requirements of basic communicative exchanges by relying heavily on learned utterances but occasionally expanding these through simple recombinations of their elements. Can ask questions or make statements involving learned material. Shows signs of spontaneity although this falls short of real autonomy of expression. Speech continues to consist of learned utterances rather than of personalized, situationally adapted ones. Vocabulary centers on areas such as basic objects, places, and most common kinship terms. Pronunciation may still be strongly influenced by first language. Errors are frequent and, in spite of repetition, some Novice-High speakers will have difficulty being understood even by sympathetic interlocutors.

ACTFL guidelines: Speaking--Intermediate**General Description**

The Intermediate level is characterized by the speaker's ability to:

- create with the language by combining and recombining learned elements, though primarily in a reactive mode
- initiate, minimally sustain, and close in a simple way basic communicative tasks
- ask and answer questions.

Intermediate-Low

Able to handle successfully a limited number of interactive, task-oriented, and social situations. Can ask and answer questions, initiate and respond to simple statements, and maintain face-to-face conversation, although in a highly restricted manner and with much linguistic inaccuracy. Within these limitations, can perform such tasks as introducing self, ordering a meal, asking directions, and making purchases. Vocabulary is adequate to express only the most elementary needs. Strong interference from native language may occur. Misunderstandings frequently arise, but with repetition, the Intermediate-Low speaker can generally be understood by sympathetic interlocutors.

Intermediate-Mid

Able to handle successfully a variety of uncomplicated, basic, and communicative tasks and social situations. Can talk simply about self and family members. Can ask and answer questions and participate in simple conversations on topics beyond the most immediate needs; e.g., personal history and leisure time activities. Utterance length increases slightly, but speech may continue to be characterized by frequent long pauses, since the smooth incorporation of even basic conversational strategies is often hindered as the speaker struggles to create appropriate language forms. Pronunciation may continue to be strongly influenced by first language and fluency may still be strained. Although misunderstandings still arise, the Intermediate-Mid speaker can generally be understood by sympathetic interlocutors.

Intermediate-High

Able to handle successfully most uncomplicated communicative tasks and social situations. Can initiate, sustain, and close a general conversation with a number of strategies appropriate to a range of circumstances and topics, but errors are evident. Limited vocabulary still necessitates hesitation and may bring about slightly unexpected circumlocution. There is emerging evidence of connected discourse, particularly for simple narration and/or description. The Intermediate-High speaker can generally be understood even by interlocutors not accustomed to dealing with speakers at this level, but repetition may still be required.

ACTFL guidelines: Speaking--Advanced

General Description

The Advanced level is characterized by the speaker's ability to:

- converse in a clearly participatory fashion
- initiate, sustain, and bring to closure a wide variety of communicative tasks, including those that require an increased ability to convey meaning with diverse language strategies due to a complication or an unforeseen turn of events
- satisfy the requirements of school and work situations, and
- narrate and describe with paragraph-length connected discourse.

Advanced

Able to satisfy the requirements of everyday situations and routine school and work requirements. Can handle with confidence but not with facility complicated tasks and social situations, such as elaborating, complaining, and apologizing. Can narrate and describe with some details, linking sentences together smoothly. Can communicate facts and talk casually about topics of current public and personal interest, using general vocabulary. Shortcomings can often be smoothed over by communicative strategies, such as pause fillers, stalling devices, and different rates of speech. Circumlocution which arises from vocabulary or syntactic limitations very often is quite successful, though some groping for words may still be evident. The Advanced-level speaker can be understood without difficulty by native interlocutors.

Advanced Plus

Able to satisfy the requirements of a broad variety of everyday, school, and work situations. Can discuss concrete topics relating to particular interests and special fields of competence. There is emerging evidence of ability to support opinions, explain in detail, and hypothesize. The Advanced-Plus speaker often shows a well-developed ability to compensate for an imperfect grasp of some forms with confident use of communicative strategies, such as paraphrasing and circumlocution. Differentiated vocabulary and intonation are effectively used to communicate fine shades of meaning. The Advanced-Plus speaker often shows remarkable fluency and ease of speech, but under the demands of Superior-level complex tasks, language may break down or prove inadequate.

Distinguishing characteristics

The Superior level is characterized by the speaker's ability to:

- participate effectively in most formal and informal conversations on practical, social, professional, and abstract topics
- support opinions and hypothesize using native-like discourse strategies.

Description

Able to speak the language with sufficient accuracy to participate effectively in most formal and informal conversations on practical, social, professional, and abstract topics. Can discuss special fields of competence and interest with ease. Can support opinions and hypothesize, but may not be able to tailor language to audience or discuss in depth highly abstract or unfamiliar topics. Usually the Superior level speaker is only partially familiar with regional or other dialectical variants. The Superior level speaker commands a wide variety of interactive strategies and shows good awareness of discourse strategies. The latter involves the ability to distinguish main ideas from supporting information through syntactic, lexical, and suprasegmental features (pitch, stress, intonation). Sporadic errors may occur, particularly in low-frequency structures and some complex high-frequency structures more common to formal writing, but no patterns of error are evident. Errors do not disturb the native speaker or interfere with communication.

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