

Curriculum Vitae: Focused on Linguistics in Forensic Contexts

Linguistics Expert Witness: Margaret M. van Naerssen

Margaret M. van Naerssen, Ph.D.

Expert Witness in Applied Linguistics in Forensic Contexts

Wayne, PA, 1987, USA

Email: margaret.vannaerssen@gmail.com

Margaret M. van Naerssen, Ph.D. in Applied Linguistics (language development and sociolinguistics) is an Expert in Second/ Foreign Language Development and Language Assessment, as well as Language in Social Contexts. Since 1997, she has done consultant work in forensic contexts, focusing primarily on cases involving non-native English speakers.

Short Summary

For work in forensic contexts, I bring a doctorate in applied linguistics and expertise in language acquisition research, language assessment, and sociolinguistics. I primarily focus on language evidence in cases involving non-native English speakers. They have included charges of murder, rape, drugs, terrorism, telecom fraud, counterfeit, robbery, kidnapping, prostitution, terrorism, and civil rights violations, in federal, state, local, and military institutions. Several significant presentations have been at the Federal Bureau of Investigation, The Smithsonian Institute, the Florida Association of Criminal Defense Lawyers (CLE), and the 2013 Pennsylvania State Trial Judges Conference as opening plenary speaker.

Overview of Experience

Dr. van Naerssen's Professional Training

B.A. School of International Service, American University

M.S. School of Languages and Linguistics, Georgetown University

Ph.D. Applied Linguistics, University of Southern California

She's taken various professional development training sessions through professional organizations in language assessment, reading for bilinguals, etc. Part of earning a California secondary school teaching certificate, was her practicum in a juvenile detention center.

Citizens Police Academy, weekly, one semester, Tredyffrin Police Department headed by SWAT team officer from SWAT security ring around Philadelphia. Training included various policing procedures, patrol car ride-alongs, visit to county 911 center, emergency first aid, taser use, safe entering of buildings, and gun safety including firing range practice.

As part of the International Association of Forensic Linguists conferences:

- Attended a session in the Victoria Court in Birmingham, England
- Orientation to the International Criminal Court, the Hague
- Attended a criminal trial (drug) in Guangzhou, China
- Tour of the Old Melbourne Gaol (1842-1929), Melbourne, Australia
- Quantico, Virginia, Tour of the FBI Academy for applied linguists from nearby conference

Applying Linguistics in Forensic Contexts

Many native English speakers may not understand what it is like to be a non-native English speaker especially those with limited proficiency. Dr. van Naerssen brings her world-wide experience (US and 47 other countries) to legal cases involving non-native English speakers. She has strong language skills in Portuguese and Spanish, and range of functional skills in French, Dutch, Mandarin Chinese, Japanese, and some exposure to German, Malay, Cantonese, Russian, Samoan, Arabic, and Urdu. This gives her valuable insights on what it is like to be a non-native speaker and to function in different cultures. (She is not qualified as an interpreter or translator.)

She has also specialized in workplace and professional communications especially in the sciences.

Currently she is an independent consultant, having worked for over 50 years in applied linguistics positions in the US and in international settings. After earning her Master's from Georgetown University, she also taught English as a second language. She also had a summer Gulbenkian Fellowship to study Portuguese in Lisbon. She was an intern and then bilingual education program specialist in the US Office of Education (now Dept. of Education). She continued her career in applied linguistics.

Internationally-- she has been on university faculties in China (UCLA assistant professor as the US Chief of Party of the Beijing Chinese Academy of Sciences English training center), and faculties in Hong Kong and Singapore Regional

Language Centre (part of SEAMEO—The Southeast Asian Ministers of Education Organization).

In the US. she's taught English to non-native speakers in university and adult English language centers in Washington, D.C., Michigan, California, and Pennsylvania (including part-time at the University of Pennsylvania), and most recently a graduate departmental chair (2001) at Immaculata University until the program closed (December 2016). As an unpaid member of the advisory task force to the Pennsylvania Human Relations Commission, she provides input on non-native speaker populations protected by federal and state Civil Rights laws.

Since the early 1990s she has also been an English language specialist in short-term assignments through the U.S. Department of State, the US Agency for International Development, the Asia Foundation, and the US Fulbright Commission. Assignments have been in South America, Asia, North Africa, and two individual consultancies in Taiwan and a consultancy in northern France.

Jurisdictions and Scope of Litigation Support

Dr. van Naerssen has worked primarily on cases in Daubert jurisdictions with one Frye exception, a hearing in a Pennsylvania state case. Her other 7 state cases (Daubert) have been in Florida, Illinois, New Hampshire, Ohio, Oregon, Tennessee, and Virginia (mixed Daubert & Frye).

Federal cases in which she has provided expert support have been in the US District Court jurisdictions of Western District of Oklahoma, Eastern District of Pennsylvania, District of Southern California, Southern District of New York, District Court in Waco, Texas, and the District Court of Hawai'i. Three federal cases also involved the US Military, two of which proceeded to hearings and then one testimony in a court martial trial (US Navy: San Diego and Great Lakes). Another federal case involved personnel in the US Department of Labor.

Dr. van Naerssen has primarily consulted and testified in cases involving non-native English speakers. She's worked with both defense and prosecution primarily in criminal cases including murder, rape, drugs, money laundering, telecom fraud, robbery, illegal arrests, coercive interrogations, terrorist conspiracy, and violations of the Federal Individual Disabilities Act. Civil cases have included contract and plain language guidelines, slander, medical malpractice, analysis of civil rights affected by the state voting procedures in one state.

She has testified in 5 federal courts, in hearings, depositions stipulated by judge, and in bench trials.

Frequent Linguistic-Legal Questions in Non-native English speaker cases

Below are some of the questions that Dr. van Naerssen has been asked to address. The legal issue drives the question the expert witness is asked to address.

- What is the assessed English language proficiency of the NNS? (NNS= Non-native speaker)
- How likely is it that the NNS had communicated in his/her truthful second language (L2) proficiency? OR
How likely is it that the NNS had been intentionally trying to fake a lower than truthful L2 proficiency for a perceived legal advantage?
- What is the likely impact of the person's assessed English proficiency on language/ linguistics aspects of the case? In police interview? In undercover recordings? What evidence is there of comprehension or lack of communication?
- To what extent did law enforcement and judicial officials make efforts to adjust their communications to a NNS with a low level of English proficiency? And allow for clarifications?
- What misbeliefs or myths did law enforcement or judicial officials have about NNSs and their communication skills, and how might these have affected their opinions about the NNS?
- What external conditions might have affected communications?
- With written documents, how likely were they accessible to the NNS based on the NNS's assessed L2 literacy and based on the overall readability of the documents by native speakers?
- Are initials/ sign-offs on a document valid if the NNS probably didn't understand the document?
- Was interpreting needed? Was it provided? Was it appropriate?

Examples of cases in which linguistics made a significant difference

Below are notes on two cases in which I was told my report made a significant difference in the outcome of the case. M/D/Yr (Month Day Year)

1. US v. XXXX (Sting Operation)

Linguistic Question: How likely is it that XXX's utterance of "yeah" on M/D/Yr, is sufficient linguistic evidence that he understood Investigator NNN's plan to sell him "stolen property?"

Report submitted. Two postponements. Plea bargained Fall Yr . Trial re-set for September.

Outcome: In M/YR, apparently as a result of my report, the prosecutor offered Mr. XXXX an opportunity to do community service and have his case dismissed with no admission of guilt. Offer accepted. Attorney: "Your report brought the other side to their knees."

In this sting operation myths and anti-NNS speaker biases resulted in an operation with no foundations.

2. US v. XXXX Summer Yr—M/Yr

US District Court of Southern California

US v XXXX deported to Mexico

Legal Question: *How likely is it that Mr. XXX understood his Miranda rights and that he "knowingly" and "intelligently" waived them in the interview of M/ D/ YR? (Was his signature enough?)*

Outcome:

As a result of the combination of two reports (psychologist and linguist), the judge told parties to settle and put him on a bus back to Mexico. "Time served" used in settlement.

Language Assessment in Forensic Cases

General language assessment procedures in cases

As Dr. van Naerssen works primarily with legal cases involving a non-native English speaker, the person's English language proficiency is frequently a factor in a case.

Typically this initially involves administering one or more recognized standardized English tests. She then looks at the likely impact of the person's assessed English on relevant interactive communications and other language evidence and linguistically related factors. Linguistic analyses are done of these. As needed, she develops additional tasks (speaking, reading and writing) to increase the validity of case-specific findings considering the contexts. Research from second language development is also brought in.

The Standardized tests she has used in legal cases have included (a) the ETS *Test of Spoken English* (Educational Testing Service), (b) the *ACTFL Oral Proficiency Interview* American Council on the Teaching of Foreign Languages), and (c) the *CAL BEST Plus* (Center for Applied Linguistics). For military cases she also has become familiar with the *Armed Services Vocational Aptitude Battery* (ASVAB).

The language assessment findings become one category of language evidence. Following language assessments, she examines other language evidence in a case. Usually this then involves examining the likely impact of a person's assessed English proficiency on English interactions in a case.

Language assessments have been done in federal and state detention centers, in a state maximum security prison, and in other locations approved and arranged by the attorney such as offices, libraries, etc.

Overview of Dr. van Naerssen's language assessment background

Dr. van Naerssen has a long history in English language assessment, including a graduate-level language assessment course, through workshops at professional language assessment conferences, and through testing organizations. She's developed and administered language assessments for secondary and adult education programs as well as university-bound examinees This has been in both the US and international contexts. She has also headed a distance evaluation team for a Microsoft call center in India and supervised language assessments as the US

Chief of Party of the UCLA and Chinese Academy of Sciences English training center (Beijing).

She participated in the evaluation of a university testing program in Hong Kong, and, as a consultant, through the Canadian International Development Agency (CIDA) she examined the English language training at a medical school in central China (Chengdu). She was on the development team of a secondary school English language test with the Hong Kong Exams Authority. She has administered vocational aptitude and English testing in refugee camps in SE Asia.

In assignments with the US. Department of State she has provided language assessment orientation/ support to English instructors in Asia (Far East, Central Asia and SE Asia) and SE Europe and North Africa (Morocco and Egypt). She was also trained on the Foreign Service Institute (FSI) oral proficiency interview. She was on the selection team for the United Nations director of language assessment for New York City headquarters.

Language/ Linguistic Evidence

Simply reporting a language test score and providing an expert opinion on the legal issue is not sufficient. In addition to language assessment findings, other language evidence is examined, linking the person's assessed language proficiency more closely to the specific issue in the case (increasing relevance). Below are some examples of language evidence that Dr. van Naerssen has worked with.

- Law Enforcement interviews/ interrogations (video recordings), primarily in English, one in Spanish, several others with occasional use of Spanish
- Transcripts and videos of alleged confessions (included in above)
- Transcripts of trials and preliminary hearings
- Law Enforcement Reports: by police officers and by FBI (terrorist case)
- Communication of Rights documents: Miranda Rights/Waivers, Right to Search and Alcohol Blood Level Testing
- Transcripts of trials and preliminary hearings
- Depositions of witnesses
- Death-row, 30-day communications (written) to inmates awaiting execution and transcripts of related prison official communications (2 times, pro-bono) for California Appellate Project
- Audio-recordings, cell phone calls and transcripts of federal sting operations
- Prison video and audio recordings of guard and inmate sessions and of administrative and disciplinary hearings
- Prison training documents for behavior adjustment programming

- U.S. Drug Enforcement notices
- Mental health and medical records and treatment notes,
- Social services report of a child interview
- Expert reports of other experts, including two counter-expert reports
- Armed Services Vocational Aptitude Battery (ASVAB testing documents)
- Educational background records
- Emails and handwritten messages
- Written real estate contract
- Federal and state Plain Language acts
- State voting law and related state legislation relevant to non-native speakers

Selected Presentations and Publications

Selected Invited Forensic Presentations

Dr. van Naerssen was a speaker and conducted workshops for

- the FBI Behavioral Analysis Unit for FBI criminal profilers, the Royal Canadian Mounted Police, and Dutch investigators
- The Florida Association of Criminal Defense Lawyers in a CLE on the death penalty

Other Invited Speaker Presentations have included:

- 2013 Pennsylvania State Trial Judges Conference: Opening plenary speaker (*Is Litigant Faking Low English Proficiency? Ask a Forensic Linguist!*)
- The Smithsonian Institute in Washington D.C. part of a series on forensic sciences
- University of Utah: Forum on Non-native Speakers of English in the Legal System, April 2018

She has also presented at numerous international professional conferences including regularly at the International Association of Forensic Linguists (IAFL) and the American Association of Applied Linguistics,

She has participated in the three most recent meetings of the West Coast Roundtable on Language and the Law (University of Washington, Seattle, Washington (2015), Simon Fraser University, British Columbia (2016), Montana

State, Bozeman (2017), by invitation only, a symposium to share ideas, of about 20 participants.

Significant Collaborative Effort: International Guidelines

Contributing member of the international Communication of Rights Group (CoRG) which produced *Guidelines for Communication of Rights to Non-native English speakers in Australia, Wales & England, and the USA*, October 2015. Document available on several websites including <http://www.aaal.org/?page=CommunicationRights>

On behalf of CoRG, Dr. van Naerssen has since presented these completed *Guidelines* and updated their use at two international conferences (incl. Law & Society Association 2019 and Clarity/Plain Language 2020). She also co-authored an article announcing the *Guidelines* with the two conveners of the CoRG.

van Naerssen, Margaret. (2020). Guidelines for Communicating Rights to Non-Native Speakers of English. Power point presentation at Virtual 2020 Clarity Conference: Access to All. On behalf of CoRGroup and convenors Diana Eades and Aneta Pavlenko.

Pavlenko, A., D. Eades, & M. van Naerssen. (Spring 2016). Communicating Miranda Rights to Non-native Speakers of English. *Champion*, journal of the National Association of Criminal Defense Lawyers, Informal Opinion section of Spring 2016 issue of the journal.

van Naerssen, Margaret. (2016). Delivery of police caution: An interactive event. Guidelines for Communication of Rights to Non-native English speakers in Australia, Wales & England, and the USA, November 2015. contributing member of the international CoRG, Communication of Rights Group. Document available on several websites including at <http://www.aaal.org/?page=CommunicationRights>

van Naerssen, Margaret. (2015). Introduction to Guidelines (draft) at 2015 Conference of the International Association of Forensic Linguists, Guangzhou, China, Guangdong University of Foreign Studies.

Additional Professional Contributions

Forensic linguistics publications include “Language proficiency and its relation to language evidence” in a legal reference book, *Cultural Issues in Criminal Defense* (Juris Publishing, 2007, 2010, 2014) and two invited chapters in language testing

collections, “Going from language proficiency to linguistic evidence in court cases” (Cambridge University Press, 2009) and “The interface of language assessment and forensic contexts” (Wiley-Blackwell, 2013). Details are given under Selected Presentations/ Publications.

Selected Publications (since 2007)

The first one listed below is my most comprehensive article/ chapter on a range of issues related to language proficiency issues. It has appeared in 3 editions, with appropriate revisions. The book, *Cultural Issues in Criminal Defense*, also includes chapters related to immigration.

van Naerssen, Margaret. (2007, 2010, 2014). Language proficiency and its relation to language evidence. In [L. Ramirez, Ed.]. *Cultural Issues in Criminal Defense* (2nd, 3rd ed.). Huntington, NY: Juris Pub, 2007, 2010, 2014. In [A. Appiah, Ed. 2014 ed.]

Pavlenko, Aneta. Diana Eades, & Margaret van Naerssen. (Spring 2016). Communicating Miranda Rights to Non-native Speakers of English. *Champion*, journal of the National Association of Criminal Defense Lawyers, Informal Opinion section of Spring 2016 issue. (Introduction to the document on CoRG Guidelines described under Collaborative Efforts)

van Naerssen, Margaret. Going from Language Proficiency to Linguistic Evidence in Court Cases. In Lynda Taylor & Cyril Weir, Eds. *Language Testing Matters*. Cambridge: Cambridge University Press & University of Cambridge Local Examinations Syndicate (UCLES), Fall 2009). (Peer Reviewed, selected papers for proceedings of a conference)

van Naerssen, Margaret. (2013). Determining language proficiency in legal contexts, In C. Chapelle, Ed. *The Encyclopedia of Applied Linguistics*, Wiley-Blackwell, 2013. (Peer-reviewed article in book/ encyclopedia)

van Naerssen, Margaret. (2012). The Linguistic Functions of “Knowingly” and “Intelligently” in Police Cautions. Published in the October 2012 *Proceedings of the 3rd European conference of the International Association of Forensic Linguistics, ‘Bridging the Gap(s) between Language and the Law*, now on the website of the Faculty of Arts of the University of Porto, Portugal. (peer-reviewed)

van Naerssen, Margaret. (2013). The interface of language assessment and forensic contexts. In A. Kunnan (Ed.). *The Companion to Language Assessment*, Vol. 3, Wiley-Blackwell, 2013. (Invited chapter in book series, also peer-reviewed)

van Naerssen, Margaret. (2007). Applying Plain Language Guidelines as Criteria in Legal Cases. *Proceedings of IAFL European Conference on Forensic Linguistics / Language and the Law*. Barcelona, Spain: Pompeu Frabra University, September. 14-16, 2006. (peer reviewed)

van Naerssen, Margaret. (2005). A forensic test of a Pennsylvania contract. *Clarity*, 53, May [57-62]. (peer reviewed)

van Naerssen, Margaret. (2017). Book review of *Translating the Social World for Law: Linguistic Tools for a New Legal Realism*. Editors: Elizabeth Mertz, William K Ford, and Gregory Matoesian Oxford: Oxford University, Review for *International Journal of Language, Speech and the Law*, 2017.

2019, 2020, 2022, 2023 Conference Presentations (several overlaps from above citations)

van Naerssen, Margaret. (2022, 2023). Organizer of and presenter at two panels on same topic with some variations: Two applied linguists and two representatives of a court system share information and strategies on ways applied linguists might participate in outreach to the world of judicial systems. American Association for Applied Linguists Conferences, 2022 Pittsburgh, Pennsylvania, 2023, Portland, Oregon

van Naerssen, Margaret. (2020). Guidelines for Communicating Rights to Non-Native Speakers of English. Power point presentation at Virtual 2020 Clarity Conference: Access to All. On behalf of CoRGroup and convenors Diana Eades and Aneta Pavlenko.

van Naerssen, Margaret. (2019). Language is not like water in a citizenship faucet. Presentation (ppt) at the 2019 Conference of the International Association of Forensic Linguists, Royal Melbourne Institute of Technology, Melbourne, Australia, July 4, 2019.

van Naerssen, Margaret. (2019). Faking or not faking a low language proficiency in legal cases? Presentation (ppt) at the 2019 Conference of the Applied Linguistics in Professional Practice, University of Technology.

Kuala Lumpur, Malaysia, Sept. 24 – 26, 2019. Due to logistical complications Dr. van Naerssen made her presentation virtually.

Johnson, Kitty & Margaret van Naerssen. (2018). ESP Protecting World Heritage. Presentations at PennTESOL East 2019 and further developed at the TESOL ESP Webinar TESOL International (2023). Pilot Materials January-April, 2018. Angkor Temple Park Rangers, collaborative project between APSARA Authority & the US Embassy in Cambodia. Also, in Cambodia training for hotel managers and in Phnom Penh, teacher professional development for academic science & technology

Other Forensic-Related Professional Contributions

van Naerssen, Margaret. (2012). The Linguistic Functions of “Knowingly” and “Intelligently” in Police Cautions. Published in the October 2012 *Proceedings of the 3rd European conference of the International Association of Forensic Linguistics, ‘Bridging the Gap(s) between Language and the Law*, now on the website of the Faculty of Arts of the University of Porto, Portugal. (peer-reviewed)

van Naerssen, Margaret. (2016). Delivery of police caution: An interactive event. Presentation at 2016 American Association for Applied Linguistics, Portland, Oregon, March 18-21, 2016.

van Naerssen, Margaret. (2016). Delivery of police caution: An interactive event. 6th Annual Conference of Applied Linguistics and Professional Practice ALAPP, University of Copenhagen, Copenhagen, Denmark , November 3-5,2016. Report on above case.

3. Other Notes

van Naerssen, Margaret. (2023). Selected Misunderstandings about Validity and Reliability: Selected Challenges in Single Subject Legal Cases. Poster presentation at 2023 Language Testing and Research Colloquium, Manhattan, New York City.

van Naerssen, Margaret. (2016). Language Assessment Expert, Yes, But Are You a Police Interrogation Expert? Poster Presentation at 2016 Language Testing & Research Colloquium (LTRC), University of Palermo, Sicily.

van Naerssen, Margaret. (2015). Think “Swiss Army Knife” for Forensic Linguistics Cases. Presentation in Colloquium at the 2015 American Association for Applied Linguistics, Orlando, FL, April 9-12, 2015.

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