

ROLE PLAY/EXERCISE I: CLIENT INTERVIEW
(10-15 minutes including discussion)

Needed: two people to do role play; one of them can lead the discussion

(Trainer: The purpose of this role play is to underscore that the attorney should help the client to understand the importance of immigration status, and should provide information about confidentiality, take steps to understand client's immigration status and potential relief, and provide specific advice about the immigration impact of proposed dispositions)

SPOKEN INTRODUCTION to class:

This is a roleplay of the point in a client interview where the attorney talks about immigration consequences. **Please raise your hand** if you see any part of the interview that you think may not be going properly. Then we can discuss how to do it differently.

Attorney: Okay so I'll go to the DA and try to get that. By the way, are you a U.S. citizen?

Client: (hesitant, clearly bluffing) Um ... Yeah.

A: That's good because otherwise you'd be a goner. Okay, we know where we're going with this ...

(Hopefully people raise hands).

WHAT PROBLEM ARE WE HAVING? (Immigrant appears afraid to tell status or may not know status. Also attorney has fashioned plea proposal before knowing immigration status)

HOW MIGHT THE ATTORNEY HANDLE IT DIFFERENTLY? (Lead up better, discuss confidentiality, importance of immigration issues, etc. If client is not a citizen, this must be taken into account in determining goals for criminal case.)

Now "attorney" should re-do the question about citizenship according to class suggestions, e.g..

A: I need to talk with you about whether or not you are a U.S. citizen. If you might not be a U.S. citizen, this is an important question in your criminal case and we have to figure it out before we work out a plea.

First, I want you to understand that anything that you say to me is completely confidential – I will not tell anyone about your immigration status without your permission. I am not with the INS (migra/immigration authorities). I am on your side.

If you are not a U.S. citizen, it is part of my job to find out if the conviction would hurt your immigration situation. If it would hurt you in terms of immigration, then I will do some research and see if there is any way we can do it better. So, what can you tell me about your status?

C: I think I'm a U.S. citizen.

A: Why do you think that, where were you born?

C: I was born in Mexico, but I'm married to a U.S. citizen and I have a card.

A: All right, that's great.

C: Plus I think my father just became a citizen.

A: That's good, if your father is then you are.

(Hopefully people raise hands).

WHAT'S THE PROBLEM NOW? No real evidence that client is USC. Many people don't know their own status. Many people have some immigration document and wrongly believe it gives them lawful status. Many people wrongly believe that marrying a USC makes you a USC.

HOW FIX IT? Attorney should photocopy the client's "card" or any other documents, complete client questionnaire, to get more info and make analysis.

Assume that it turns out that the client is not a citizen and does not have any lawful immigration status.

A: All right, you're not a U.S. citizen. Therefore I need to warn you that if you accept this plea bargain it might make you deportable, inadmissible, or blocked from naturalization.

C: Is that for sure?

A: I think you should assume you're going to be deported.

(hopefully raise hands)

HAS THE ATTORNEY PROVIDED EFFECTIVE ASSISTANCE OF COUNSEL?

(In Calif.) No. The defense attorney must advise about the specific immigration consequences of proposed plea, not just the general warning required for the court to give under PC 1016.5. *People v. Soriano, In re Resendiz.*

EXAMPLE OF ADEQUATE COUNSEL (use this or do whatever trainer thinks is appropriate):

A: As far as I can tell, you are not now a U.S. citizen. You might be able to apply for a green card through your U.S. citizen wife. But certain convictions can stop you from getting a green card. That's called being "inadmissible," when you can't get a green card even though you're in a good position, like being married to a citizen.

The plea that I know that we could get is not good for your immigration status, because it would make you inadmissible. If you took this plea you could not get a green card through your wife, or probably ever. It is possible that I could get you another plea that would not make you inadmissible, but that might involve you doing a few months in jail instead of 30 days. You need to think about whether that's worth it to you – would doing the extra two or three months be worth being able to at least apply to stay in the U.S. legally.

In the meantime, if you're interested in this I'm going to need more time to do research and that means continuing your case. Are you willing to do that? I can explain this in more detail after I do the research, if you want.

If another attorney from my office represents you at some point, it is important to tell him or her that we talked and that you are concerned about immigration issues. I will write something up in the file here. If you care about your immigration status, you must get these questions answered before you plead guilty.

If your family could afford to get a good immigration lawyer to advise us, that would be the best. If they can't, we will work on it and get you answers.

I want to make sure you understand. What's going to happen to your green card if you take this plea? *[Client responds in some way, roleplay ends.]*

COMMENTS?

DO ATTORNEYS AT YOUR OFFICE CURRENTLY GIVE THIS LEVEL OF ADVICE?

WHAT WOULD IT TAKE TO MAKE THIS HAPPEN? *Please think about that as we continue the training.*

END OF EXERCISE I