

WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

RIAC Monthly Newsletter

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What You Need to Know for Your Noncitizen Client

If your noncitizen client is facing criminal charges or adverse findings in Family Court...

Please contact the WNY Regional Immigration Assistance Center. We provide legal support to attorneys who provide mandated representation to noncitizens in the 7th and 8th Judicial Districts of New York.

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We are funded by the New York State Office of Indigent Legal Services (ILS) to assist mandated representatives in their representation of noncitizens accused of crimes or facing findings in Family Court following the Supreme Court ruling in *Padilla v. Kentucky*, 559 U.S. 356 (2010), which requires criminal defense attorneys to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. There is no fee for our service.

Please consider also contacting us if you need assistance interviewing your client to determine their immigration status or communicating immigration consequences; or if you would like us to intercede with the DA or the judge to explain immigration consequences. We speak Spanish and French.



IN PERSON CLE TRAINING IN AUBURN, NY

“IMMIGRATION ISSUES IN CRIMINAL & FAMILY COURT PROCEEDINGS”

Presented by Sophie Feal, Esq.

MARCH 22, 2023

10am-12pm

1.5 Professional Practice Credit

.5 Ethics Credit

The Cayuga County Office Building

160 Genesee Street

Auburn, New York 13021

6th Floor Legislative Chambers

If you would like to attend, please register by emailing: abrown@legalaidbuffalo.org

If you are interested in the WNYRIAC hosting a CLE in your county, please do not hesitate to reach out. We travel!



WNY Regional Immigration Assistance Center

A partnership between the Ontario County Public Defender's Office and the Legal Aid Bureau of Buffalo, Inc.

Working with English-Language Learners, The Deaf & Hard of Hearing Community, and Interpreters in a Legal Setting

By Abbey Brown, Legal Assistant, WNYRIAC*

On February 2, 2023, the New York State Defenders Association (NYSDA) and the WNYRIAC co-hosted a CLE in which speakers discussed working with English-language learners, understanding the unique needs of the Deaf and Hard-of-Hearing population, and working with interpreters in a legal setting. The program's distinguished presenters highlighted many significant factors to take into consideration while representing these clients.

Dr. Karen Lillie (PhD, JD), an Associate Professor of Linguistics at SUNY Fredonia, focused largely on how to best work with and understand English-language learners (ELs). She emphasized that an English language learner is someone of any age who knows another language and is also learning English – and that person may or may not be an immigrant. For example, an EL could be somebody who was born here in the U.S. but who learns the language of their parents first, before they learn English. Additionally, Lillie pointed out that ELs are often called “limited English proficient” (LEP), a problematic description of those learning English. She explained, “when you say that someone is ‘limited English proficient,’ you’re actually taking a really deficit perspective toward that person, even if you don’t mean to...” Use of that term indicates the person is ‘less than’ in some way, and she noted those labeled “LEP” do know another language, so it is better to focus on the qualities and abilities the person has versus those they are still acquiring. The law uses “LEP” consistently, but it is better to shift to different terms, like:

- Multilingual or bilingual person
- Language Learner
- Speaker of English as an additional language

Lillie clarified even more myths for the audience about ELs:

- Most ELs are born in the U.S., not outside.
- English has never been recognized as the official language of the U.S.
 - ◇ Almost 62% of non-English speakers in the United States are Spanish speakers.
- Those who immigrate to the U.S. are often highly educated professionals in their home countries. But, because they do not know English at that same professional level, they are not able to take on the same kind of professional work here.
- Younger people are not necessarily more effective ELs than adults. The reason that kids are not necessarily better at acquiring the new language is that adults have “metalinguistic awareness,” which allows us to fall back on the language we already know to figure out what we need in the new language. So, using another language other than English to learn English will not delay learning English.
- If an individual is trying to learn a language to participate in a professional environment, such as a legal setting, ELs need eight to ten years to participate “fully” – meaning that person does not need support or additional help in that setting.

* A special thank you to Dr. Karen Lillie and Ms. Pamela Kefi for presenting this information in our February CLE.

- The best way to learn a language is not necessarily immersion, living in the country, repetition, or going to school (as a child would do with their first language), etc. While those may help, the EL instead should receive scaffolded instruction – meaning that they will build on the language from one point to the next while using their home language to help them, and without reducing the content knowledge (i.e., not “dumbing down” content to try to make it understandable to the EL)

Furthermore, Lillie explained that language is made up of several skills such as listening, reading, writing and speaking. Listening is usually the first skill emphasized for ELs, while speaking is the final skill developed. Every EL goes through these four skills at different paces, and is dependent on their prior language learning abilities, their level, and their age. For example, if someone already has well-developed abilities in another language, they will likely move more quickly in the new language – especially if that first language is similar to the target language. Additionally, there are “stages” of language acquisition that NYS recognizes, such as “entering,” “transitioning,” “expanding,” and “commanding” a language. It is crucial to recognize that these stages apply to all language learners regardless of age, as we may confuse “beginners” with someone who has no knowledge or someone who is young.

Additionally, Lillie pointed to the fact that language and culture cannot be separated. Culture involves “all of the observable behaviors and intangibles demonstrated in values (e.g., beliefs, rhythms, societal rules, role within a family or community),” and that culture is inherently tied to the language. Therefore, there may not always be a direct translation possible from one language to another.

The training then shifted to the expertise of Ms. Pamela Kefi, Associate Vice President of People, Inc. at Deaf Access Services. Kefi shared that, according to the National Institute of Health (NIH):

- More than 90% of Deaf children are born to hearing parents;
- Approximately 15% of American adults aged 18+ report some difficulty hearing;

Client barred from drug court because of language barrier

According to [this article](#): “A Rockland County resident sued the county’s drug court and the state court system ... accusing court officials of barring him from a diversion program because of his limited English proficiency.

[The client] had been charged with driving while intoxicated and was being prosecuted in village court when he was referred to the Rockland County Drug Court for a diversion program, according to the lawsuit.

The drug courts, which operate diversion programs in tandem with local criminal courts, allow eligible defendants to have their charges reduced or dismissed upon successful completion of a treatment program.

The lawsuit, filed in federal court, alleges that when [the client’s] defense attorney attempted to enroll him in drug court, he was rebuffed by a court official, who said the drug court ‘does not provide translation services’ or permit private translators for defendants, according to court filings.”



- Men are twice as likely to have hearing loss among adults; and
- Approximately 13% of people in the U.S. ages 12+ have hearing loss in both ears.

Kefi explained that Deafness is a spectrum, and there is a range of hearing loss, from born Deaf to late Deafness, as well as several levels of hearing loss possibilities, such as mild, moderate, severe and profound. She noted that causes of hearing loss can happen at birth or genetically, through damage to the inner ear, a build-up of earwax, an ear infection, abnormal bone growth and tumors, or a ruptured ear drum.

Arguably, even more important to understand is Deaf identity and culture. Kefi described Deaf culture as a “set of social beliefs, behaviors, art, literary traditions, history, values, and shared institutions of communities that are both influenced by Deafness, and which use sign language as the main means of communication.” Kefi explained that “We should view Deafness as a difference in human experience rather than a disability. Deaf people take pride in their Deaf identity.” Also, in the sense of Deaf community and culture, the Deaf and Hard-of-Hearing populations are considered a minority group. “Deaf people experience audism and oppression,” Kefi lamented. Audism is a negative attitude toward Deaf or Hard of Hearing people and is a form of discrimination via the lack of willingness to accommodate those who cannot hear. Those who are Deaf and Hard of Hearing often experience discrimination in their everyday lives. This form of discrimination has also been coined “hearing euphoria,” a faulty perspective that being hearing is best.

Kefi shared some other terms that the Deaf and Hard of Hearing community may use, such as:

- Hearing impaired
- Hard of Hearing
- D/HH (Deaf and Hard of Hearing)
- Hearing aids
- Deaf blind
- DDBBH (Deaf Blind Hard of Hearing)
- * Note that the capital “D” in Deaf is intentional

Immigrants who are Deaf and Hard of Hearing may not have adequate documentation or diagnoses from their home country, and they then face systemic barriers in the U.S., like no American Sign Language (ASL) classes, lack of access to basic information or adequate interpretation. They may also feel or face stigma carried over by family members (e.g., consider the general view or opinion on disabilities in their home country and culture). So, providing an interpreter in a courtroom setting can be challenging with many of these factors to be considered throughout the process.

At the end of the training, Sophie Feal, Managing Attorney of the WNYRIAC, discussed tips for working with interpreters in the legal profession and the many nuances that come with the field. A good interpreter is fluent in both languages – “near native,” as Lillie mentioned in her presentation. On that note, friends and family very rarely meet the level of fluency required in this setting, and they have a bias: an interest in the outcome of the case. Especially in the court room, the interpreter must be fluent in the legal terminology being used. Even those who are fluent in English and raised in the U.S. can have trouble understanding legal jargon, Lillie added. When it comes to ELs, trying to decipher that legal jargon and participate fully is extremely difficult, and every language learner is different.

In addition, it is important to introduce the interpreter as part of the legal team so a client can understand the role of the interpreter. Remember, interpreters should know that they are subject to the same confidentiality guidelines that attorneys abide by, and this should be discussed with the interpreter before introducing them to the client. Interpreters should never give opinions or legal advice to the client (e.g., “I think the attorney means _____”), and should be relaying only the precise interpretation, using the first-person voice (In a sense, the interpreter is ‘invisible’ – they are only your voice and your client’s voice). Importantly, the interpreter should have at least some knowledge of the client’s culture. It is okay for your client to express discomfort with the interpreter speaking for them; there could be something wrong with the circumstances that you may not necessarily understand or have context for (it could be cultural differences).

As Lillie put it, all in all, interpreters must be:

- Highly proficient in both English and the other language – interpreting is not a summarization or paraphrase;
- Impartial;
- Able to accurately and idiomatically get the message from the source to the client without any additions, omissions or other misleading factors that alter intended meaning or facts;
- Be adept at simultaneous interpretations and/or in consecutive interpretation and sight translation, depending on the context and courtroom;
- Must be a qualified interpreter. Interpreters are included in attorney-client privilege so long as the interpreter is qualified;
- Should have some cultural understanding.

For those interpreters who are in a courtroom setting and speaking on behalf of Deaf and Hard of Hearing clients, the most common solution is providing a hearing interpreter to translate ASL to English. Importantly, if interpreting for longer than 90 minutes, two interpreters will be necessary. ASL interpreters may make cultural adjustments and they may advocate if necessary, Kefi added.

Ultimately, if your client is a language learner in any way, they will benefit from your knowledge regarding structural and systemic barriers to language access here in the U.S. If you have a client whose best language is not English and you do not have access to a qualified interpreter, please contact the WNYRIAC and we can help facilitate communication with your client.

Happy 13th Birthday *Padilla v. Commonwealth of Kentucky*!

Thirteen years ago, the Supreme Court ruled that effective assistance of counsel in the Sixth Amendment requires criminal defense attorneys to specifically advise noncitizen clients of the protentional immigration consequences of a criminal conviction before taking a plea. “Changes to our immigration law have dramatically raised the stakes of a noncitizen’s criminal conviction. The importance of accurate legal advice for noncitizens accused of crimes has never been more important.” 559 U.S. 356 (2010).

Through that case the Regional Immigration Assistance Centers were born. We were established so we can share our knowledge of immigration law with public defenders and 18b counsel and help determine the immigration consequences of any particular case you may be handling.