

# Clearinghouse REVIEW

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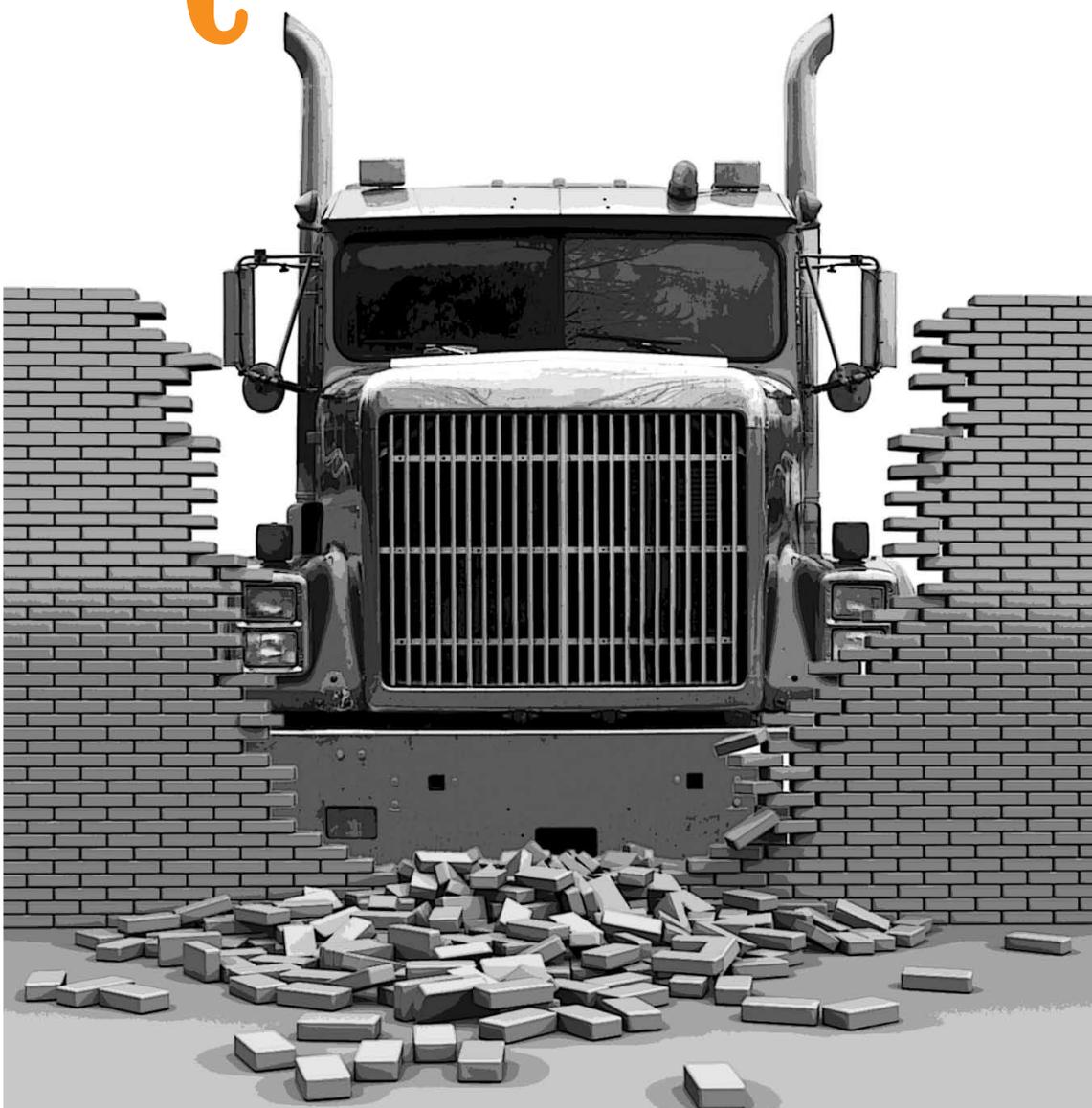
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# EMPLOYMENT

ONE MODEL FOR BREAKING DOWN BARRIERS



Sargent Shriver National Center on Poverty Law



# The Legal Barriers to Employment Project— a New Model

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**T**he American Recovery and Reinvestment Act of 2009 provides nearly \$4 billion in job training funds, almost the same amount made available in 1998 with the passage of the Workforce Investment Act (WIA).<sup>1</sup> How these funds are used at the local level is critical for low-income clients. Aside from the more traditional use of the funds for specific job training programs, legal aid programs might access a portion of the funds to help unemployed welfare recipients remove obstacles that prevent them from obtaining employment. Here we describe the evolution of Bay Area Legal Aid's Legal Barriers to Employment Project and recount how our program in the Bay Area of California has worked over the past ten years to remove employment barriers. For examples of how we have helped clients, see the stories recounted in the boxes hereabouts.

## An Evolving Model of Public Benefits Advocacy

In 1990 the public benefits unit of the San Francisco office of Bay Area Legal Aid (BayLegal) reflected the mind-set of many legal aid advocates: maximize benefits and minimize punishment.<sup>2</sup> Whether recipients should or could go to school or get job training in the hope of leaving welfare was of little concern. GAIN (Greater Avenues for Independence), the preemployment program then in place in California, was voluntary in most counties.<sup>3</sup> Our goal as advocates was to minimize welfare depart-

<sup>1</sup>American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009); Workforce Investment Act, Pub. L. No. 105-220, 112 Stat. 936 (1998). See [www.doleta.gov/USWORKFORCE/WIA/act.cfm](http://www.doleta.gov/USWORKFORCE/WIA/act.cfm) for the text of legislation, regulations, and summary of the Workforce Investment Act (WIA). The National Employment Law Project's brief summary notes that WIA was "billed as a 'no wrong door' approach, [with] a three-tiered system. At the first level, job search and placement assistance, the provision of labor market information, and preliminary assessment of skills and needs—so-called [core services]—are available to all adults who come to a one-stop center, with no eligibility requirements imposed. WIA mandated that certain federal programs, including [Temporary Assistance for Needy Families (TANF)] (welfare) and the Employment Service, be part of the 'one-stop' centers. At the next level, 'intensive services' including comprehensive assessments, case management short-term prevocational services and internships are available to qualified adults and dislocated workers who are unable to obtain or retain a job that leads to self-sufficiency. At the final level, job training ... is available to a worker who has been unable to get a job. Supportive services, including transportation, child care, and housing needed to complete a training course may also be provided" (National Employment Law Project, *The President's Proposed Changes to Dislocated Worker Programs in the FY 2007 Budget: Career Advancement Account Gimmick Can't Hide the Fact that Less Is Never More* (Feb. 2006), [http://nelp.3cdn.net/ecb40c236afd5b2f05\\_hdm6b99hd.pdf](http://nelp.3cdn.net/ecb40c236afd5b2f05_hdm6b99hd.pdf)).

<sup>2</sup>The office was then known as San Francisco Neighborhood Legal Assistance Foundation; several Legal Services Corporation-funded programs in the San Francisco Bay Area have since merged to form Bay Area Legal Aid, or BayLegal.

<sup>3</sup>See Stephen Freedman et al., *The GAIN [California's Greater Avenues for Independence Program] Evaluation: Five-Year Impacts on Employment, Earnings, and AFDC Receipt* (Manpower Demonstration Research Corporation, Working Paper 96.1, 1996), [www.mdr.org/publications/403/overview.html](http://www.mdr.org/publications/403/overview.html). The "work first" model of employment preparation that became embedded later in the TANF welfare-to-work model had much of its origin in the Manpower Demonstration Research Corporation conclusion that Riverside County (California) was doing the best job of getting people off the welfare rolls by ensuring that they took the first job that came along, regardless of how much it paid.

ment intrusion into clients' lives. Hence most of us paid little attention to GAIN; the program was not very effective and required clients to submit to even more welfare rules than if they did not participate in it.<sup>4</sup>

When Congress enacted the Temporary Assistance for Needy Families (TANF) program in 1996, the universal reaction among advocates was negative.<sup>5</sup> Opponents focused particularly on the sixty-month lifetime limit on benefits and saw the limit as so draconian that the legislation could not possibly contain any positive elements. Add in TANF's strong "work first" message, and we legal aid advocates circled our wagons around our traditional approach: maximize cash aid and minimize harm. Since our advocacy culture had not focused much on job training and educational services, many in the legal aid community were unsure how to deal with WIA's passage in 1998.

A new volunteer attorney, Rose Molloy, and Stephen Bingham began attending meetings of the newly formed Local Workforce Investment Board and tracking its work. The WIA-mandated board morphed from the Private Industry Council, which had administered federal funds under WIA's predecessor, the Job Training Partnership Act. As BayLegal entered this new world, we soon realized that we lacked the legal resources to give adequate attention to job training and education. However, the learning experience persuaded us that we absolutely had

to break out of our "maximize benefit—minimize harm" mold.

The model evolved into one of advocacy both to remove employment barriers and to secure vocational training opportunities and work supports. As we paid more attention, we learned of new opportunities and resources—for example, an uncapped source of Food Stamp Employment and Training dollars available if our welfare department put up an equal match.<sup>6</sup> Furthermore, TANF and WIA allow states to be flexible about going beyond simply providing benefits and job training.

### Recognizing Legal Barriers to Employment

Since TANF and WIA, research has established how "barriers to employment" could make the transition from welfare to work difficult—and, for some, nearly impossible.<sup>7</sup> Transportation barriers, disability barriers, mental-health barriers, substance-abuse barriers, child care barriers are all highlighted—but legal barriers are not.<sup>8</sup>

As legal aid advocates we knew from our experience "in the trenches" that many of our clients faced legal barriers. Through targeted vocational assessments, welfare department staff members were learning the same thing. Clients had suspended driver's licenses. They had astronomical child-support obligations, often based on a presumption that they had earned

<sup>4</sup>Some advocates of course did advocate around GAIN issues, and their efforts are noteworthy as few among us recognized the importance of such work.

<sup>5</sup>42 U.S.C. §§ 601–619 (2009).

<sup>6</sup>See 7 U.S.C. § 2025(a). The U.S. Department of Agriculture's Food and Nutrition Service is responsible for allocating these funds. See [www.fsetexpansion.org/](http://www.fsetexpansion.org/) for a description of how the 50-50 match can now be met by a nonprofit organization that may then receive food stamp employment and training funds directly. In 2008 San Francisco received more food stamp employment and training funds than any California county except Los Angeles.

<sup>7</sup>See, e.g., Jean C. Norris & Richard Speigman, *Welfare and Work Status Under TANF: Effect of Barriers to Employment and Implications for Program Planning* (Public Health Institute Brief, Dec. 2003), [www.phi.org/pdf-library/CalWORKsResearch.pdf](http://www.phi.org/pdf-library/CalWORKsResearch.pdf) (noting the correlation between barriers to employment and lack of employment success).

<sup>8</sup>"Although more TANF recipients are combining welfare and work, in fiscal year 1999 a majority did not participate in work activities—a monthly average of nearly 60 percent of all TANF recipients nationwide. Although this may have been caused by weak implementation of state work programs, the characteristics of TANF recipients may affect their abilities to engage in work and work activities. Studies have shown that having certain characteristics, such as poor health or disability, no high school diploma, limited work experience, exposure to domestic violence, substance abuse, and limited English proficiency, makes engaging in work activities more difficult" (U.S. GENERAL ACCOUNTING OFFICE, GAO-01-522T, *WELFARE REFORM: PROGRESS IN MEETING WORK-FOCUSED TANF GOALS* (2001), [www.gao.gov/new.items/d01522t.pdf](http://www.gao.gov/new.items/d01522t.pdf) (statement of Cynthia M. Fagnoni, Managing Director, Education, Workforce, and Income Security Issues, U.S. General Accounting Office, Before the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives)).

## Criminal-Record Exemption Expedited

Cindy (not her real name) had a fifteen-year-old felony drug conviction. She began training to work as a manager at a residential care facility for the elderly, but she was suspended as a result of a criminal background check. The state's community care licensing division required her to apply for a criminal-record exemption within forty-five days in order to keep her job. The Legal Barriers to Employment Project helped her complete the application and submit it with (1) a letter from her explaining the circumstances of her arrest and conviction and her subsequent rehabilitation, (2) three character-reference statements, (3) a police report about the arrest, (4) documentation of her last period of parole or probation, and (5) documentation of completion of substance-abuse classes. The approval process normally takes up to ten weeks, but her application was approved in two weeks, allowing her to return to work at the residential care facility.

minimum wage, even though they were on welfare and might have spent time incarcerated while child-support arrearages grew. Clients' anger at this "unfairness" led some to have little motivation to become employed. Others faced eviction. Many women, survivors of domestic violence, focused their energy on escaping the violence and so were unable to concentrate on school or job training.

We came to realize, aside from the tragedy of individual situations, that ignoring legal barriers could be a waste of vocational program dollars. Why spend \$5,000 on a commercial truck driver training program for a client who had multiple convictions for driving under the influence and a suspended license? Educating the welfare department and policymakers about removing these "legal barriers to employment" became a key advocacy goal.

The dearth of legal assistance in removing legal barriers is astonishing. In areas of law in which legal aid programs have not traditionally worked—such as child-support modification for noncustodial parents and the lifting of driver's license suspensions—the lack might not be sur-

prising. However, by the late 1990s, help even in more traditional areas of poverty law practice was no longer available due to the continuous and massive reduction in appropriations to the Legal Services Corporation. For example, BayLegal's housing practice was limited to eviction defense, and its family law practice was limited to helping survivors of domestic violence. Help on a habitability problem or a simple custody dispute was often hard to find.<sup>9</sup>

We decided early on that we were not going to try to make distinctions between more obvious legal barriers to employment such as a suspended driver's license and less obvious ones (e.g., housing habitability). Just as other traditional barriers to employment such as homelessness and mental-health and substance-abuse problems make it difficult for an individual to function, so most problems susceptible to a legal solution create or contribute to a living situation that makes getting or keeping a job particularly challenging. Any distinction we might try to make would inevitably be artificial and subjective.

## Partnering with the Welfare Department and Community Groups

We realized that removing legal barriers to employment would complement the welfare department's assigning recipients to appropriate education and training programs, and so BayLegal sought funding for this work. To its credit, San Francisco's welfare agency was an early supporter of our proposal; the agency even insisted that we serve single adults receiving county-funded general assistance benefits through its unique employment program, Personal Assisted Employment Services.<sup>10</sup> Fortunately, at this time, \$4.1 billion in federal welfare-to-work block grant funds, primarily ad-

<sup>9</sup>The best hope was (and is) to obtain a volunteer attorney through the Volunteer Legal Services Program of the Bar Association of San Francisco.

<sup>10</sup>Personal Assisted Employment Services mirrors our state TANF program, called CalWORKs (California Work Opportunity and Responsibility to Kids). E.g., clients work with "employment specialists" to develop "employment plans" and have access to "ancillary funds" to pay for work-related expenses.

ministered locally by the Local Workforce Investment Board, became available for job training and education.<sup>11</sup>

Our fund-raising efforts were not well received initially. Our concept clashed with the then-standard panoply of barriers with which the Private Industry Council and its community partners were accustomed to dealing. However, we persisted with each new request for proposals, pursuing a model of collaboration with nonprofit job-training providers accessing those funds.<sup>12</sup> We were aware that we might be accused of treading on others' turf, but our fears proved unfounded. We eventually persuaded job-training providers that not only would our work complement theirs but also our removal of legal barriers could improve their WIA-imposed outcomes and create a win-win situation. In 1999 we signed our first contract with the local Private Industry Council.<sup>13</sup>

We also built trust by giving legal assistance to the Committee of Community Agencies, a loose federation of the large network of nonprofit job training organizations in San Francisco. Negotiating WIA's shoals, with the inevitable clash of interests between business representatives and other stakeholders on the Local Workforce Investment Board, was no

easy task—nor was understanding complicated proposal requirements and outcome measures.<sup>14</sup>

### Providing Holistic Legal Services

In our new approach, whether a legal problem matched one of BayLegal's priorities was no longer a concern.<sup>15</sup> Rather, clients with children merely had to be receiving CalWORKs (California Work Opportunity and Responsibility to Kids), our state's TANF program, and thus aided by welfare-to-work block-grant funds distributed by the U.S. Department of Labor. Single adults had to be enrolled in Personal Assisted Employment Services, the general assistance program for those who are employable. For them, the Legal Barriers to Employment Project assistance was funded by the county's general fund and food stamp employment and training dollars.<sup>16</sup>

We quickly realized that our traditional intake interview was too limited. As a client described a problem, we would often, sometimes inadvertently, discover another, more pressing problem.<sup>17</sup> Our intake procedure became more open-ended. We began to scrutinize details of the interview more closely. For example, did the CalWORKs grant correspond to the number of people in the assistance

<sup>11</sup>California received \$367.6 million under the Balanced Budget Act of 1997, largely intended to complement TANF by providing additional assistance to hard-to-employ TANF recipients with specific barriers to employment. States provided a \$1 match for every \$2 of welfare-to-work grant funds awarded. In 1998–1999 California allocated more than \$300 million—to be spent over three years—to local boards (see [www.lao.ca.gov/analysis\\_2001/health\\_ss/hss\\_12\\_5100.htm](http://www.lao.ca.gov/analysis_2001/health_ss/hss_12_5100.htm)).

<sup>12</sup>Our model was particularly focused on survivors of domestic violence because of BayLegal's long-term commitment to that population. Survivors' needs were especially appropriate for a holistic approach since survivors often required help simultaneously on family law problems, homelessness, and sometimes credit and other issues related to their disastrous relationships. Ariella Hyman, staff attorney, was particularly helpful in drafting funding proposals. She now manages BayLegal's Alameda County office and has been exploring the possibility of a Legal Barriers to Employment Project there.

<sup>13</sup>After the \$2.1 billion appropriation administered by the U.S. Department of Labor was exhausted in 2001 and not renewed, the San Francisco Department of Human Services agreed to pick up the funding for the Legal Barriers to Employment Project's CalWORKs clients through the use of TANF and CalWORKs state funds. Single adults continued to be served with county general fund and food stamp employment and training dollars.

<sup>14</sup>WIA requires that 51 percent of the members of state and local workforce investment boards come from the business sector.

<sup>15</sup>As a Legal Services Corporation-funded program, ours is not allowed to handle criminal matters; expungements, though set out in the Penal Code, are civil proceedings, however.

<sup>16</sup>In later years the contract was broadened to allow us to serve anyone who had been receiving welfare benefits within the past year. Thus we may serve those newly employed—a sort of transitional program similar to transitional child care and Medi-Cal.

<sup>17</sup>Our first full-time Legal Barriers to Employment Project attorney, Jennifer Keith, was completing a routine intake when she realized that the client had no phone. The client explained that her service had just been disconnected. As what is often the case, the client had not mentioned the problem because she simply assumed that it had no legal solution. Curious, Keith investigated and learned that the cutoff was illegal; she was able to get the phone service restored.

unit? If not, we asked why. Was the client sanctioned, or had she exhausted her sixty-month time limit? Often clients did not know. We have helped many clients who had no idea that their children were wrongfully denied benefits because of the illegal application of the complicated maximum-family-grant rule, sometimes called a family cap, that denies aid for a child born ten months or more after the parent began receiving aid. The constant blending of needs in our legal and social work led us to obtain funding for a few years for an on-site social worker—a model that had been successfully used elsewhere.<sup>18</sup>

Our expertise in CalWORKs and Personal Assisted Employment Services was enhanced by two other unusual projects at BayLegal: the CalWORKs and Personal Assisted Employment Services Client Advocacy Projects. Three outstationed advocates, two of whom are at welfare offices, assist CalWORKs and Personal Assisted Employment Services applicants and recipients.<sup>19</sup> Under our contract with the San Francisco Department of Human Services, at every orientation of new CalWORKs and Personal Assisted Employment Services recipients, advocates explain the legal services available and what to look out for in entering the arcane and scary world of welfare regulations. The advocates explain the Legal Barriers to Employment Project and how its services can help recipients overcome employment barriers. With such built-in outreach, we are assured a steady stream (sometimes a river) of clients.

### Advocating Client Services

We have become familiar faces at welfare offices and are trusted because of the quality of our work. Staff members of the two client advocacy projects meet regularly with CalWORKs and Personal As-

sisted Employment Services upper management to discuss systemic problems with the programs. Our Legal Barriers to Employment Project staff members sometimes find themselves involved in the CalWORKs and Personal Assisted Employment Services employment planning itself. For example, we analyzed the likelihood that clients with particular criminal records could obtain state professional licenses such as those required for medical assistants or licensed vocational nurses. Department of Human Services employment specialists, hesitant to approve training programs without some assurance that the client will be eligible for a license, often initiate such referrals to BayLegal.

We advocate the use of CalWORKs and Personal Assisted Employment Services ancillary welfare-to-work funds to pay for the removal of legal barriers to employment (e.g., to pay for driver history reports, fingerprinting services, criminal-records requests, and license reinstatement fees). Often Legal Barriers to Employment Project staff members must be very assertive in explaining why it makes sense to spend a few hundred dollars to enable a client to leave the welfare rolls more quickly—a persuasive argument that sometimes falls on deaf ears, particularly if the caseworker is an “old school” protector of the public purse.

This past year the Department of Human Services granted BayLegal additional funds to create an Employment Barriers Remediation Fund to cover more costly barriers. For example, a client might be guaranteed a driving job on the condition that \$500 in fines and court fees is paid so that the hold on the license may be lifted. Paying that amount is impossible for a client who is living on a monthly grant of just a few hundred dollars. BayLegal is now allowed to pay off the amount owed,

<sup>18</sup>See Tanya Neiman, *Creating Community by Implementing Holistic Approaches to Solving Clients' Problems*, 33 CLEARINGHOUSE REVIEW 19 (May–June 1999) (describing the work of the Homeless Advocacy Project of the Bar Association of San Francisco's Volunteer Legal Services Program).

<sup>19</sup>The CalWORKs Client Advocacy Project grew out of community pressure on the San Francisco Department of Human Services to fund representation of clients who wished to protest some aspect of the welfare-to-work “employment plan” through a formalized grievance procedure mandated under state law. Personal Assisted Employment Services eventually adopted a similar grievance procedure, leading to the establishment of the Personal Assisted Employment Services Client Advocacy Project.

although only where the likelihood is extremely high that the client will be employed soon after the barrier is lifted.<sup>20</sup>

### Operating the Legal Barriers to Employment Project

Using the Legal Barriers to Employment Project model, with open-ended intake, is incredibly time-consuming. Learning about and taking action on the myriad problems in an individual's life can be a challenge. At the same time, having an advocate who listens to and assesses a client's gamut of problems can be transformative for the client; most clients are accustomed to being shuffled back and forth between government agencies to patch together the necessities of life. As one law clerk noted,

[o]ur clients navigate bureaucracies every day and I think that many of our clients initially view us as an extension of that same system. Some are skeptical that we can or are willing to do anything for them. It is rewarding to explain to someone that you are his/her advocate and that you are there to help, particularly when they are not used to hearing that.

Our resources do not allow us to represent clients on every matter. However, being part of a multiissue legal aid office, we can leverage BayLegal's forty years of expertise in housing, family law for domestic violence survivors, health access, and economic security law.<sup>21</sup> Besides us with our primary work being with the Legal Barriers to Employment Project, several BayLegal advocates devote a percentage of their time to the Legal Barriers to Employment Project issues falling within their expertise.<sup>22</sup>

Nonetheless, we could not provide the extent of legal assistance that we offer if we relied solely on these part-time staff attorney resources. To some extent

## Child-Support Terms Modified

Jonathan (not his real name) lost his job as a security guard and custodian due to drug addiction. He fell behind in child-support payments and accrued a debt of over \$70,000, causing suspension of his security guard license. He entered a residential drug treatment program and sought help from the Legal Barriers to Employment Project in modifying his child-support obligation so that he could get his guard license reinstated. The Legal Barriers to Employment Project helped him file court papers, and the child-support agency agreed to release its hold on his license. He got a new full-time security guard job and was able to move into his own apartment and begin making payments toward his child-support arrears.

the Legal Barriers to Employment Project now resembles a law student clinic; a dedicated cohort of year-round law clerks expands our services and shapes the project's work.

While attorneys supervise all casework and become more directly involved in more complex matters, law clerks are responsible for their own caseloads from intake through closing. We supervise cases outside BayLegal's priority areas, and, together with other staff attorneys, we supervise cases within the priority areas.

Our comprehensive approach gives law students a unique and invaluable experience. One clerk noted:

I don't know of any other law student job affording as many opportunities to develop relationships with clients and handle all aspects of a case. The Legal Barriers to Employment Project's holistic approach to serving clients exposed me to a wide range of legal issues and gave me the confidence to tackle new issues. More important, knowing that many of our clients have exhausted their legal options has trained me to be a "problem solver" for my clients, not just their lawyer.

<sup>20</sup>The remediation fund is new; to date we have made two loans. Largely modeled on the Eviction Prevention Fund of San Francisco's Eviction Defense Collaborative, the Employment Barriers Remediation Fund makes unenforceable loans to remove employment barriers. If the loan is repaid, the borrower is eligible to seek another loan.

<sup>21</sup>"Economic security" used to be "public benefits."

<sup>22</sup>In this way the Legal Barriers to Employment Project's innovative approach to client representation has begun slowly to influence how all staff members in the office work with clients.

## Driver's License Restored

Shu-Yuan (not his real name) had been a commercial truck driver for many years. He needed assistance in lifting the suspension on his driver's license due to a finding of addiction to or habitual use of drugs. The Legal Barriers to Employment Project helped him get a medical evaluation from his doctor to support a request to the Driver Safety Branch of the Department of Motor Vehicles for a hearing to evaluate whether he had any ongoing drug use. Once the hearing had been set, the Legal Barriers to Employment Project helped him obtain (1) letters of support from his welfare caseworkers and the directors of both rehabilitation programs in which he was enrolled and (2) copies of his clean-urine analysis. One month after the hearing, the Driver Safety Branch removed the suspension on his license, and he obtained his commercial driver's license two days later.

The substantive areas of law with which Legal Barriers to Employment Project staff members deal cover the range of problem codes in BayLegal's case management system: consumer finance (7 percent), education (1 percent), employment (5 percent), family law (15.5 percent), housing (22.5 percent), income maintenance (e.g., welfare, unemployment insurance, workers' compensation) (8.5 percent), individual rights (mainly postconviction relief) (8.5 percent), and licenses (driver's and professional) (30 percent).<sup>23</sup>

### Driver's Licenses

A suspended driver's license is by far the most common barrier. Because driving is very important to most people, public agencies threaten driver's license suspension to make people comply with non-driving-related obligations. For example, the 1996 welfare reform law would have states receive federal funds only if they adopt a driver's license suspension law for failure to comply with child-support obligations.<sup>24</sup>

Most Legal Barriers to Employment Project clients' driver's licenses are suspended because clients cannot pay traffic fines and associated court fees. Unaware of community service options and afraid of going to jail if they cannot pay fines, many clients fail to appear for their traffic court hearing. Convictions for failure to appear and failure to pay are misdemeanors that must be reported to the Department of Motor Vehicles.<sup>25</sup> Upon receiving such notice, the department must begin suspending driving privileges.<sup>26</sup>

Furthermore, a court may impose a separate civil assessment fee of up to \$300 against any defendant who fails to appear; this fee may not be satisfied through community service.<sup>27</sup> Thus a single adult who receives the maximum monthly Personal Assisted Employment Services grant of \$422 could spend the entire grant to satisfy a traffic violation. The court may waive the fee only under limited circumstances (e.g., illness or death in the family).

While individuals convicted of driving under the influence are eligible for a restricted license allowing them to drive to and from work, to care for a sick family member, and to take children to school, no such restricted license is available for people unable to pay fines.<sup>28</sup> Although counties have discretion to lift the hold on a license before total compliance with sentencing terms, most Bay Area courts hold the license until full payment.<sup>29</sup>

Because no hardship or employment-related exception applies to low-income drivers whose licenses are suspended due to inability to pay, clients can quickly amass thousands of dollars in traffic fines, late fees, and court assessments.

<sup>23</sup>Medical issues are negligible because BayLegal's health access cases are almost all handled under separate grants.

<sup>24</sup>42 U.S.C. § 666(a)(16) (2003).

<sup>25</sup>CAL. VEH. CODE §§ 40508, 40509, 40509.5 (Deering 2009).

<sup>26</sup>*Id.* § 13365 See also David Pifer & James A. Gramling, *Driving Out of Poverty: A Lawyer's Role in Driver-License Restoration*, in this issue.

<sup>27</sup>CAL. PENAL CODE § 1214.1 (Deering 2009).

<sup>28</sup>CAL. VEH. CODE §§ 16072, 16077 (Deering 2009).

<sup>29</sup>The California Superior Court, Alameda County, is unusual in that it will lift a license hold if one is in compliance with a payment plan.

Legal Barriers to Employment Project clients are in a catch-22: they cannot find work without a driver's license, but they cannot get the license restored without first obtaining a job.

Although most clients with suspended driver's licenses have no recourse other than incremental payment plans and, where possible, community service, we have had some success in preparing clients to represent themselves in traffic court and to ask for substantial reductions in fines and fees.<sup>30</sup>

The financial barriers to reinstating a driver's license being hard, these cases present some of our biggest challenges. These are some of our strategies:

**Assess Driver's License Status.** Ascertaining the amount in fines owed and necessary steps to release a license restriction may appear to be a straightforward endeavor. In California, however, no single document fully outlines the status of a driver's license and how to regain good standing. A ten-year driving record obtained from the Department of Motor Vehicles lists infractions reported to the department, but it does not specify which infractions are the cause of the hold or the amount owed.

Furthermore, each of California's fifty-eight counties has its own traffic court rules and procedures for reporting to the Department of Motor Vehicles and for accounting for and collecting fines and fees. An accurate understanding of the status of a driver's license often requires piecing together information from multiple agencies and courts. It is time-consuming and all but impossible for confused clients. Legal Barriers to Employment Project staff members, particularly law clerks, play a critical role in piecing together such information.

We work with clients to identify the steps needed to reinstate a license—establishing payment plans, requesting hearings and community service, obtaining low-cost insurance, and registering for

required driver's education courses. Helping clients navigate this bureaucratic morass helps them in planning job search, training, and other activities. As one Legal Barriers to Employment Project law clerk noted,

I had always thought of “success” in the legal profession as prevailing against an adversary on behalf of a client, but I've found that, for many Legal Barriers to Employment Project clients, there are no legal adversaries per se, just crushing demands on their time and limited finances. Many clients come in overwhelmed and paralyzed by the range of financial and other obligations to welfare agencies, courts, training programs, and creditors—not to mention their parenting and other family responsibilities. I've come to appreciate how my research and advice enable clients to make fully informed decisions. Gaining this little bit of control over their lives is a unique and powerful “success.”

**Prepare Clients for Court Appearances.**

Appearing before a traffic court judge is often the only way to get fines reduced or to perform community service in lieu of payment, yet many clients have never appeared at a formal hearing. We prepare them through individual advice, supplemented with fact sheets about requesting a hearing and instructions for obtaining supporting materials—such as proof of income and letters of support from caseworkers and community members—to present to the judge.

**Advocate with the Bench to Exercise Discretion in Releasing Holds.**

Most of our clients are eager to perform community service or comply with a reasonable payment plan. However, their low welfare grants mean that full payment may take years. Rigid court practices negate the welfare-to-work goal of CalWORKs

<sup>30</sup>We prepare clients to show the court their commitment to meet outstanding obligations and to illustrate how their being allowed to drive and earning a living are related. We help them obtain supporting documents, such as a letter from a welfare worker attesting to their active participation in an employment plan and, where possible, a letter from an employer offering a job once their driver's license is reinstated.

and Personal Assisted Employment Services. We have been urging traffic courts to release holds on licenses as long as people are complying with an approved payment plan.<sup>31</sup>

### Criminal Records

Criminal records are increasingly accessible to employers, and this heightens concerns about accuracy and the records' impact on job seekers with arrests or convictions. Some excellent legal advocacy projects are leading efforts to mitigate, in employment, the collateral consequences of criminal convictions.<sup>32</sup> We focus here on how legal aid programs can partner with welfare-to-work and workforce development programs to mitigate employment barriers related to criminal records.

**Communicate with Agencies About Requirements for Licensing in Employment Sectors.** Working with county welfare and workforce development agencies at the front end is vital in assessing how one's criminal conviction will be considered when one applies for specific jobs and professional licenses. Many jobs and professional licenses in sectors such as health care and law enforcement have strict requirements regarding the consideration of applicants with criminal convictions. For example, a conviction related to controlled substances almost always is a barrier to obtaining a job in health care. However, depending on the state and type of license, that conviction may not be an insurmountable barrier. There may be opportunities to

present evidence of rehabilitation or to obtain postconviction relief such as an expungement. The availability of such mitigating measures varies with the jurisdiction and the professional licensing category. Working with clients early in the welfare-to-work transition to identify such employment barriers increases the chance that the barriers can be mitigated or removed. If mitigation is not possible, at the very least such up-front review of employment barriers decreases the chance that clients will be directed toward certain types of employment where their criminal records are a bar.

**Educate Caseworkers and Clients About Worker Rights with Regard to Criminal Records and Employment.** Since employers have access to more information about applicants, job seekers and caseworkers should understand how criminal and other records such as credit history and driving records can affect employment prospects. State and federal laws govern which criminal conviction records may be considered by an employer, but employers are often unaware of or ignore the law.<sup>33</sup> Furthermore, employer reliance on private data collection agencies and the inherent difficulty in deciphering criminal records can result in misreporting and confusion.

We advise clients to obtain their criminal records as soon as possible; with our assistance, clients can have sufficient time to correct errors and to prepare for questions from prospective employers. Reviewing a criminal record, we assess the viability of postconviction relief, flag

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<sup>31</sup>See CAL VEH. CODE §§ 40509, 40509.5 (Deering 2009).

<sup>32</sup>The National Employment Law Project ([www.nelp.org/site/issues/category/criminal\\_records\\_and\\_employment/](http://www.nelp.org/site/issues/category/criminal_records_and_employment/)), Community Legal Services of Philadelphia ([www.clsphila.org/Content.aspx?id=178](http://www.clsphila.org/Content.aspx?id=178)), the East Bay Community Law Center ([www.ebclc.org/cleanSlate.php](http://www.ebclc.org/cleanSlate.php)), and the Legal Action Center (<http://lac.org/index.php/lac/164>) are among the leaders. Advocates can tap these organizations' analyses of the law on criminal records and employment, collateral consequences of criminal convictions, postconviction relief, correcting errors in criminal reporting, and challenging the discriminatory impact of employer-screening practices on African Americans and Latinos.

<sup>33</sup>For state laws limiting employer consideration of criminal convictions, see Press Release, The Sentencing Project, Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide (June 2008), [www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486](http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486), and Sharon Dietrich & Maurice Ensellem, Legal Outline of Authorities and Decisions Related to Criminal Records and Employment (June 2006), [www.nelp.org/page/-/SCLP/Legal%20OutlineofAuthoritiesDecisionsRelatedtoJune2006.pdf](http://www.nelp.org/page/-/SCLP/Legal%20OutlineofAuthoritiesDecisionsRelatedtoJune2006.pdf). Laws that limit employers' consideration of criminal records may be ineffective, however. E.g., California prohibits employers from seeking several categories of information (including arrest or detention that does not result in conviction, conviction that has been sealed or expunged, a misdemeanor conviction where probation is successfully completed and the case judicially dismissed, and successful completion of pretrial diversion) related to involvement in the criminal justice system on the part of an employee or prospective employee (CAL. LABOR CODE § 432.7(a); CAL. CODE REGS. tit 2 § 7287.4(d)(1) (2009)), but, because these provisions are unenforceable, employers routinely violate them.

convictions that may bar employment, and advise on how to handle specific inquiries into past convictions.

### Domestic Violence

Most CalWORKs recipients in California contend with domestic violence while they try to overcome the challenge of finding proper vocational training and employment with a sufficient wage.<sup>34</sup> The Legal Barriers to Employment Project's family law attorneys specialize in advocating on behalf of survivors of domestic violence. The attorneys ensure that clients benefit from the legal options available under CalWORKs to lower the unique barriers that domestic violence survivors face, to secure a safe home environment by advocating priority public housing transfers and referrals to support services, and to assist in divorce and custody proceedings.<sup>35</sup>



With 13.7 million people out of work, the national unemployment rate rising to 8.9

percent in April 2009, and over 500,000 job losses per month, the current economic crisis is being felt in every job sector.<sup>36</sup> Low-income clients—those with the fewest means and most limited access to education and training—are hit hardest. Removing legal barriers to employment is one way to help our clients compete on a level playing field with millions of other job seekers. This requires advocates to rethink program priorities and be creative in seeking new funding sources. The good news is that, in a remarkable repeat of the post-TANF period in 1998, \$4 billion in workforce development funds is about to become available through the American Recovery and Reinvestment Act, the so-called stimulus package. Legal aid programs that become engaged in workforce development activities, get to know the players, identify the various funding streams, and become knowledgeable about workforce development systems can make significant progress in removing the legal barriers to employment that keep their clients in poverty.

### COMMENTS?

We invite you to fill out the comment form at <http://tinyurl.com/MayJuneSurvey>. Thank you.

—The Editors

<sup>34</sup>Joan Meisel et al., Domestic Violence Prevalence and Effects on Employment in Two California TANF Populations (Violence Against Women Office, National Institute of Justice, Working Paper, n.d.), [www.cimh.org/downloads/DVEmplmtTANFpopsWorkPaper2003.pdf](http://www.cimh.org/downloads/DVEmplmtTANFpopsWorkPaper2003.pdf).

<sup>35</sup>For a complete overview of CalWORKs and domestic violence, see Ariella Hyman & Minouche Kandel, Bay Area Legal Aid, A Guide for Advocates on CalWORKs and Domestic Violence (2009), [http://linc.net/welfare\\_tools/guide\\_for\\_advocates\\_on\\_dv\\_and\\_calworks\\_01-05-09.pdf](http://linc.net/welfare_tools/guide_for_advocates_on_dv_and_calworks_01-05-09.pdf).

<sup>36</sup>Bureau of Labor Statistics, U.S. Department of Labor, Labor Force Statistics from the Current Population Survey (May 2009), [www.bls.gov/cps](http://www.bls.gov/cps).

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