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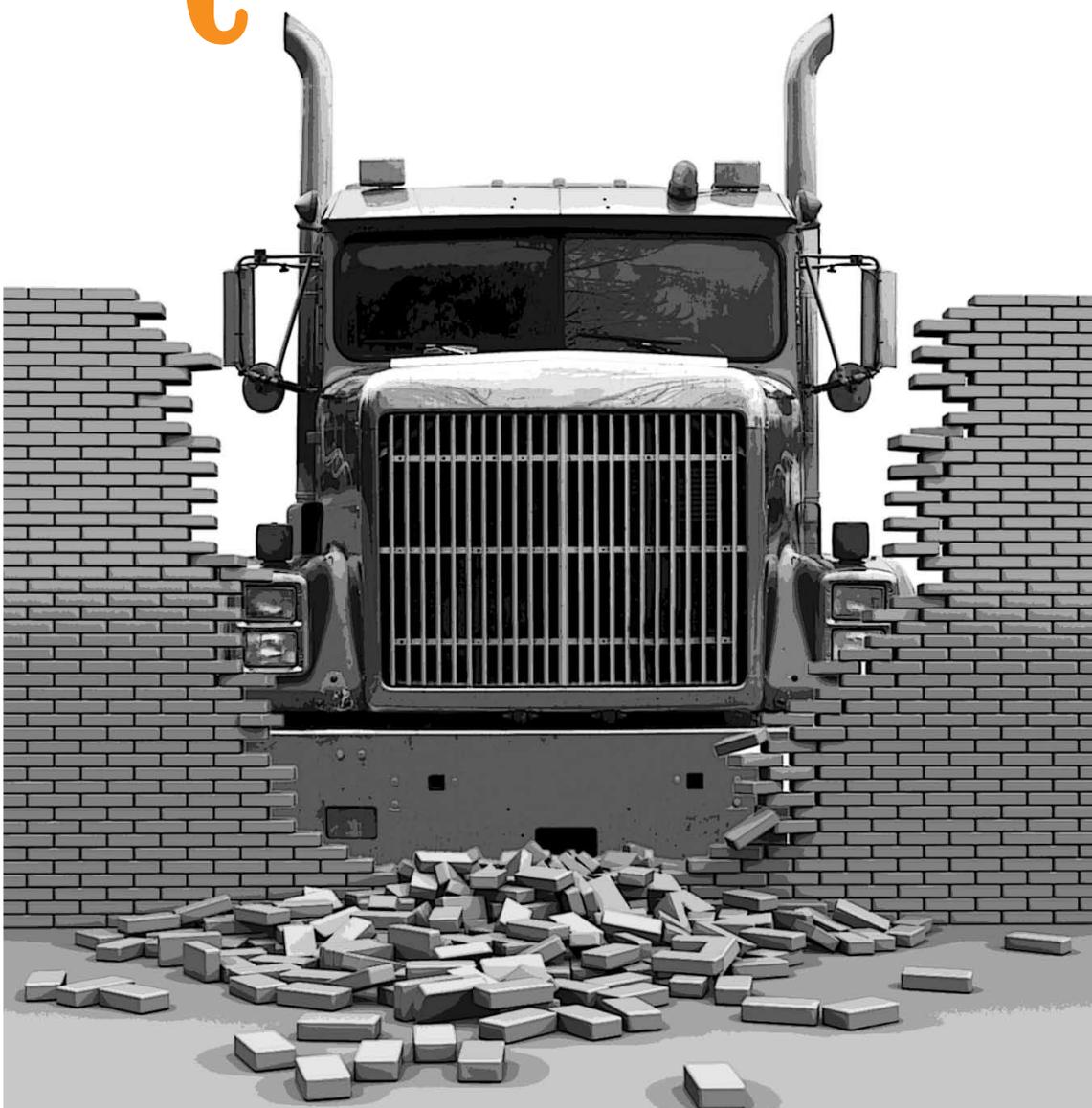
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Sargent Shriver National Center on Poverty Law



Driving Out of Poverty

A Lawyer's Role in Driver-License Restoration

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Our country is entering a new era, full of hope and expectation that opportunities will increase for everyone in the low-income community. Change may come through the End Poverty by 2015 movement, and it may entail not only a restructuring of our system of income supports but also employment. The test in the coming years will be whether the country is willing to break down the complex barriers to employment and whether we open employment opportunities to all low-income individuals.

Here we focus on one small piece of the complex task of getting the poor into jobs: driver's licenses as a barrier to employment, and the elimination of the problem of license suspensions as a poverty issue. We are not going to debate whether driver-license suspensions are a poverty issue or a barrier to employment.¹ Instead we focus on Wisconsin's experience in building a community consensus on the need to make licensure an issue of safety rather than poverty, and the role of lawyers in this process. Lawyer expertise helps community groups understand the issue and articulate solutions, and lawyers' representation is necessary to restore driver's licenses. Thinking strategically, lawyers, such as those at Legal Action of Wisconsin, have been key to the efforts to make licensure about safe driving and not about poverty. Our hope is that, by reading about what we have accomplished, you can replicate our efforts in your own state.

The Role of Lawyers—a Brief Wisconsin History

In 1997 two community groups came to Legal Action of Wisconsin with a message: many low-income residents could not get jobs for lack of a driver's license; no one helped people obtain driver's licenses; and access to a license was a ticket to work and, as such, a critical poverty issue. Traditionally, like many other legal aid organizations, Legal Action focused on public benefits, housing, and family law. Frankly we just did not understand the licensing issue. We knew that our clients had license problems but we did not see it as a poverty issue. Mindful that clients often see problems before attorneys do, Legal Action assigned two lawyers to evaluate the licensing issue. That decision started a ten-year odyssey, first with an advice project that has grown into a complex social movement, engaging legal aid lawyers, judges, prosecutors, legislators, researchers, and community groups. We have changed the way licenses are

¹Barbara Corkrey lays out the arguments in her *Restoring Drivers' Licenses Removes a Common Legal Barrier to Employment*, 37 CLEARINGHOUSE REVIEW 523 (Jan.–Feb. 2004).

treated, and there is a chance that, if we continue our efforts, licensure will be treated as a necessity if not a right.

Advice projects were our first response to the licensing issue. The Milwaukee municipal court inaugurated its own effort. Municipal judges met with individuals at community-based events, reviewed what people needed to do to restore their license, and explained what to expect in court. Legal Action launched its own advice project, through community-based organizations, for individuals seeking employment. Legal Action lawyers reviewed driver abstracts and advised individuals of the steps they needed to take to restore their licenses.

In 1998 two key events set the stage for more significant changes. The Wisconsin legislature, with the support of municipal and circuit courts, completed a major revision of license laws. Fines were reduced, and the suspension period changed from five years to two. At the same time John Pawasarat, director of the Employment and Training Institute, University of Wisconsin–Milwaukee, and Frank Stetzer published their first research showing a direct link among licensure, employment, and poverty.²

In 1999 Legal Action's "Road to Opportunity" project started. Attorneys for the project represent individuals facing driver-license problems, among other legal barriers to employment.³ While the funding streams have changed, the project continues today, and Legal Action's driver-license work has been integrated into the much larger strategy to reform how licenses are treated.

The development of a community-based strategy to reform licensing laws was partly

serendipitous. One Milwaukee community leader, Tyrone Dumas, wanted the municipal court to grant amnesty for unpaid fines, thereby lifting related suspensions and increasing the number of licensed individuals. Dumas brought together a small task force, including a Legal Action lawyer, to study licensing problems as they related to the poor. Legal Action's role was to offer expertise in understanding license law, identify impediments to licensure, and frame the issues. Community meetings were convened to vet new ideas and develop consensus around the task force's five recommendations. While not exhaustive, the recommendations represented a first attempt to deal with licensing problems systematically.⁴ Milwaukee's mayor and municipal court agreed to a four-month fine-forgiveness project, while not agreeing to amnesty for fines. Fifty percent of a person's Milwaukee municipal fines were forgiven if the person paid the remainder and obtained a license. Twenty-five percent of those who started the payment and restoration completed all of the steps—a success for a *pro se* project. The community-service component became an integral part of Legal Action's day-to-day representation, as we filed indigence motions and requested community service as a method to satisfy fines. The task force disbanded following the fine-forgiveness project. However, Legal Action continued to provide direct representation to clients who needed help with their licensure problems. The recommendations were the starting point in our 2005 strategic planning, as we tried to frame a long-term solution.

In 2005 the Milwaukee circuit court felt overwhelmed by misdemeanor traffic cases. In response, Herman John, a retired prosecutor, formed a new study

²John Pawasarat & Frank Stetzer, Employment and Training Institute, University of Wisconsin–Milwaukee, Removing Transportation Barriers to Employment: Assessing Driver's License and Vehicle Ownership Patterns of Low-Income Populations: Initial Findings (1998), www4.uwm.edu/eti/reprints/DOTbarriers.pdf (women receiving Temporary Assistance for Needy Families money were more likely to get jobs if they had a driver's license than those without). For a wider range of research on license problems, see www4.uwm.edu/eti.

³The "Road to Opportunity" project represents clients on driver-license, criminal-record, and noncustodial-parent-child-support problems. Community-based organizations refer individuals to the project when there is a legal barrier restricting their ability to find or keep employment. The referral system links the work of legal aid lawyers and of other community organizations in helping low-income individuals succeed in finding employment.

⁴The recommendations were (1) that an amnesty program be available in all courts, (2) that a community service program be available to indigent residents, (3) that free driver-license education be available for indigent students through the public schools, (4) that mandatory drug suspensions be changed to discretionary on the part of each judge, and (5) that research be done to determine the correlation between the payment of fines and indigence.

group with representatives from legal services, the public defender's office, circuit and municipal courts, and the community. To be effective, solutions had to be broad-based and systemic in nature. Legal Action helped design a long-range systemic solution intended, over time, to increase the number of licensed individuals and decrease the impact of poverty on licensure. In short, the new model is intended to make the possession of a driver's license a reflection of safe driving rather than poverty.

The model has three distinct divisions: (1) a case management unit that evaluates license cases, supervises a person's progress, and helps with other problems that might interfere with success; (2) a legal aid unit to provide representation needed to resolve legal problems preventing license issuance; and (3) a policy unit to advocate legislative and judicial change. The model evolved into the Center for Driver's License Recovery and Employability, run by a community-based organization called Justice 2000, in collaboration with Legal Action. The center now has a combined staff of fourteen people and an approximate 2009 budget of \$800,000. In two years of operation the center has garnered wide community support, and 70 percent of those receiving legal services succeed in obtaining or restoring their license, according to an Employment and Training Institute report.⁵ Advocacy with judges resulted in major cooperation in solving client problems, the state department of transportation supports many of the needed legislative changes, and the next year may bring legislative improvements that will make it easier for low-income individuals to get and retain their licenses.

The Necessary Role of Lawyers

That attorney representation is critical to relicensing is not self-evident. With the possible exception of parental help in

getting that first license in high school, most drivers stay licensed with no outside assistance. To be sure, renewing a license in a state motor vehicle office can be a challenge.⁶ But most people would not immediately think that having a lawyer on their side can make all the difference to persons trying to save their license. This outlook—that lawyers are not necessary in the area of licensing—partly explains why efforts to help low-income drivers obtain their licenses have relied on advice-only approaches. Many advocates believe that analysis of a driving record and a set of detailed, written instructions should be enough to get clients to the finish line. And often state laws prohibiting the practice of law by nonlawyers give people no other choice than to proceed without an attorney. Wisconsin law, for example, prohibits appearance by non-attorneys on behalf of other people in any court of record and from rendering any legal service to another person.⁷ Thus the absence of attorneys in a relicensing program places substantial limits on the range of actual assistance provided.

We participated in various types of advice projects during the past ten years and conclude that, while helpful, they do not adequately meet the needs of many, perhaps a majority, of suspended and revoked drivers. Drivers who are mired in the relicensing process often lack the skills and stamina required to navigate all the systems impinging on their driving privileges. The Employment and Training Institute report revealed that in the first sixteen months we appeared in sixty different court systems.⁸ That is a lot of geography to take on. Many of the municipal courts, where most traffic cases are heard, hold court sessions in the evening and only on a limited number of evenings a month. Fees are charged as a condition of filing a motion in some courts, and many judges are unfamiliar with arguments raised in relicensing strategies.

⁵Lois M. Quinn & John Pawasarat, Employment and Training Institute, University of Wisconsin–Milwaukee, Second Year Evaluation of the Center for Driver's License Recovery & Employability (2008), www4.uwm.edu/eti/2008/Evaluation.pdf.

⁶We quickly note that our driver-license program in Milwaukee has received a great deal of cooperation and assistance from the Wisconsin Department of Transportation.

⁷Wis. STAT. § 757.30(2) (2007). The penalty for a violation is a fine of \$50–\$500 and a jail sentence of up to one year.

⁸Quinn & Pawasarat, *supra* note 5.

Our experience is that, at best, one out of every five drivers succeeds in restoring a driver's license in an advice-only program. To demonstrate the benefit of attorney representation, consider the following three situations in which clients simply would not succeed in obtaining their licenses without an attorney's help.

Traffic Fines. More than 40 percent of the license suspensions and revocations in Wisconsin result from failure to pay a traffic fine. Suspension periods are two years. Many traffic stops for our clients result in more than one citation: vehicle-registration and automobile-maintenance problems are constants for low-income drivers and give law enforcement officers grounds for writing multiple citations. Thus unpaid fines can accumulate rather quickly.

Although many courts permit payment plans, our clients are often unable to meet plan terms. Community service is often the currency of choice for low-income defendants who cannot pay, and most courts are familiar with the constitutional obligation to consider community service to avoid incarcerating poor defendants.⁹ However, license suspensions are not the equivalent of jailing, and there has been no judicial consensus that courts must offer community service to suspended drivers. *Pro se* defendants find that they are deemed to have the "ability to pay" based on perfunctory and cursory judicial inquiry. Driven by the visceral desire to say anything that will get them out of the courtroom, defendants often consent to a payment plan without notice of their options. "We don't do that here" is a typical response we receive when we first approach courts with our request that the defendant do community service in lieu of making payments. Another early response is that allowing community service would diminish the seriousness of the offense. When the offense is merely speeding, one wonders what type of of-

fense a judge would consider appropriate for payment alternatives.

Convincing the courts that community service is an appropriate, if not a constitutionally commanded, means of allowing low-income drivers to pay off traffic fines became our challenge. One of the first steps we took was to obtain a standing stipulation with the Milwaukee County district attorney's office that community service could be ordered unless certain aggravated offenses appeared on the defendant's driving record. We can claim some measure of success. The Employment and Training Institute report tallied up a total of 8,250 hours of community service performed by 264 of our clients.¹⁰ We can safely state that few if any of these hours would have been authorized without the intervention of our attorneys.

Accident Judgments. Attorney representation has also proven critical when an accident judgment results in a license suspension. Wisconsin is one of two states that do not mandate liability insurance; the other is New Hampshire.¹¹ Uninsured drivers who are adjudicated liable for a motor vehicle accident can have their driving privileges suspended for twenty years unless the drivers work out a payment arrangement or declare bankruptcy. Creditors typically require monthly payments of hundreds of dollars after a substantial down payment is made, and the cost of a bankruptcy often exceeds \$1,000. Payment plans and filing for bankruptcy are impractical courses of action for many clients. Even if a driver is able to stick to a payment plan or file for bankruptcy, there is the additional requirement that the driver maintain insurance coverage for three years after the judgment hold is released. This system creates a huge barrier for low-income drivers to get their driving privileges back ever.

We made it an early priority to work with counsel for the insurance industry to

⁹See, e.g., *State ex rel. Pederson v. Blessinger*, 201 N.W.2d 778 (Wis. Ct. App. 1972).

¹⁰Quinn & Pawasarat, *supra* note 5.

¹¹In the quaint view, drivers who do not purchase insurance choose to "self-insure." A recent study by the Insurance Research Council determined that 85 percent of the drivers in Wisconsin were insured, just below the national average of 86.2 percent (Press Release, Insurance Research Council, Economic Downturn May Push Percentage of Uninsured Motorists to All-Time High (Jan. 21, 2009), www.ircweb.org/News/IRC_UM_012109.pdf).

establish reasonable payment terms on damage judgments. As a result, clients can start a plan with a down payment of \$75 or \$100 and make monthly payments in the same amount. In some cases we negotiated a reopening and dismissal of the action, thereby eliminating the requirement of insurance for the following three years. In other cases we determined that errors were made in obtaining the judgment, and we succeeded in having the judgment vacated and case dismissed.¹² We developed a bankruptcy workshop to coach clients on the *pro se* filing of a bankruptcy action to eliminate the damage judgment and permit relicensing. As in the case of securing community service for people who could not pay their fines, many clients have been relicensed primarily because they had attorney representation.

Court Fees. A third area in which attorneys have been determinative relates to motion fees charged by courts. Many clients need to ask judges to revisit earlier judgments. Some of those judgments resulted in an accumulation of demerit points and a subsequent suspension for too many points. Others resulted in revocations, which generally run for six months and require three years' worth of insurance coverage in order to be eligible for licensure.¹³ Others resulted in a mandatory suspension for conviction of a drug-related offense.¹⁴

In all such cases involving prior judgments, a motion must be filed seeking some form of relief from the court. Wisconsin law allows the imposition of a motion fee of up to \$300.¹⁵ The fee is not limited to any particular type of motion. Many courts charge fees, which can range from \$20 to \$50. Some courts maintain that the fee must be paid before the mo-

tion may be filed, and they make it clear that the fee is nonrefundable if the judge denies the motion—a practice criticized in an opinion by the Wisconsin attorney general.¹⁶ These fees are a formidable barrier to low-income defendants seeking postjudgment relief.

In the hundreds of motions that we have filed since the program began, we have endeavored to convince judges—and clerks—that motion fees are not allowed to be assessed against indigent defendants. Our arguments cite the Wisconsin attorney general's opinion and the state statute authorizing waiver of the prepayment of filing fees by indigent parties.¹⁷ Most courts agree to waive the fees or at least withhold a determination on them until the proceedings are completed, when the importance of extracting a fee is greatly reduced. A municipal court in a neighboring county insisted that a \$35 fee be paid before the judge would entertain a motion to reopen a month-old initial-appearance default. Legal Action attorneys filed a mandamus action, and, once served, the judge promptly relented and proceeded to consider the motion without a fee.

An advice-only program thus fails to accomplish significant results. Nonlawyers may not perform the tasks that only lawyers are statutorily allowed to, and *pro se* defendants are unable to convince courts and adversaries to adjust their current practices.

The Role of Lawyers in Developing Strategy

Once one accepts the lack of a license as a poverty issue, a strategy to attack the issue must be developed. We think our strategy can be divided into three streams: (1)

¹²The most common example is where a default judgment is obtained by the insurance company based upon publication of notice of the action after an unsuccessful—we argue, statutorily insufficient—effort to serve the defendant personally (see Wis. STAT. § 801.11 (2007)).

¹³*Id.* §§ 343.31 (1), 343.38 (1)(c).

¹⁴*Id.* § 961.50.

¹⁵*Id.* § 814.07.

¹⁶However, opinions of this kind do not carry the force of law (see Letter, OAG 1-00, from James E. Doyle, Attorney General, to Dennis Moran, Director of State Courts (Jan. 28, 2000), <http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=oag&jd=top> (attorney general's opinion)).

¹⁷*Id.*; see Wis. STAT. § 814.29 (2007).

creation of themes and consensus on the nature of the problem, (2) provision of direct services to help individuals in immediate need, and (3) implementation of a long-range policy plan to make legislative and judicial changes minimizing the problem.

Two themes developed over the last ten years: (1) the lack of a driver's license is a barrier to employment and (2) the possession of a driver's license should be an issue of safe driving and not poverty. Licensing as a barrier to employment had been generally recognized by 1998, and the resulting consensus translated into continuous funding for license-restoration efforts. The acceptance of this theme means that it quietly underpins the entire licensing movement. However, while the theme points to the problem, it does not capture why and how license law itself harms poor people.

That license revocation is about poverty—a theme that has become clear over the last five years—illustrates that Wisconsin's legislative scheme is more about fine collection and depriving low-income individuals of their licenses than it is about keeping unsafe drivers off the road.¹⁸ Motivated by this situation, we continue to work on a legislative agenda to eliminate or alter suspensions or revocations that are unrelated to safe driving. This theme has been important in conveying a message that is easy to accept and understand, and it has contributed to the bipartisan support for our proposals.

Direct service, such as legal representation, is necessary because individuals need help as they look for work and because the splintered nature of our judicial structure requires legal representation to navigate the license-restoration process.¹⁹ Legislative success reduces but does not eliminate the need because some individuals still need representation to succeed in reinstating their driving privileges.

Implementing a long-range plan is necessary to change licensing systemically. Direct service responds to an individual's immediate problem, but it does not reduce future problems. We seek to reintroduce driver's education for low-income students so that they start out with a license; eliminate mandatory non-safety-related revocations; eliminate mandatory drug suspensions; increase the use of community service to satisfy fines; and replace failure-to-pay suspensions with civil collection mechanisms or tax intercept.

Change comes slowly, but in Wisconsin we are succeeding at incremental reform. The Milwaukee public schools put limited money in its budget for driver's education, and we are seeking inclusion of funding in the state budget. The legislature removed tickets not related to safe driving from the five-year "habitual traffic offender" revocation, almost eliminating the application of this revocation.²⁰ We hope that this legislative session will eliminate mandatory operating-while-suspended-or-revoked revocations and drug suspensions. Judicial advocacy resulted in the increased use of community service, payment plans, civil collection, and tax intercept instead of failure-to-pay-fine suspensions.

As we approached our task to make licensing less an issue about poverty and more about safety, we recognized that success would require the effort to be bipartisan, and to do so we needed to incorporate the agendas of diverse groups. In the end we had support from judges, prosecutors, and the Department of Transportation because they wanted to do what was right, and we proposed commonsense solutions that in many cases would simplify or streamline licensing operations. Legislators also want to do what is right, and they like commonsense solutions that will help their constituents. We are helped by the community consensus that developed over the years and our ability to present a consistent theme or message.

¹⁸Although Wisconsin has no mandatory insurance requirement, insurance is required for three years following revocation if one is revoked for four operating-while-suspended tickets in a five-year period; if one is revoked for one's first operating-while-impaired ticket, one is not required to carry insurance, however (*id.* § 343.38 (1)(c), (1)(c)2(c)).

¹⁹Milwaukee and Waukesha counties alone have two circuit and thirty-seven municipal court districts.

²⁰Wis. STAT. § 351.02 (1) (2007).

COMMENTS?

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

—The Editors

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