

Overcoming Legal Barriers to Reentry: A Law School-Based Approach to Providing Legal Services to the Reentry Community

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MUCH HAS BEEN written in recent years about the topic of prisoner reentry. With over two million people incarcerated in America's prisons and jails and more than 600,000 being released into the community annually, probation and parole officers, judges, social welfare agencies, community-based groups, and other organizations have worked to develop effective ways of helping ex-offenders reintegrate into their communities and reduce the risk of recidivism. Despite these efforts, offenders returning home after serving terms of incarceration face an assortment of barriers to reentry, many of which are related to legal issues. This article describes a joint effort undertaken by the United States District Court for the District of New Jersey and Rutgers University School of Law (Camden) to provide legal services to offenders designed to overcome some of these legal barriers to reentry and assist them in their reintegration.

United States probation officers have received significant training in identifying the reentry challenges that face incarcerated individuals upon release from prison. Some of the challenges most commonly faced by ex-offenders include issues related to drug and alcohol abuse, mental illness, lack of stable housing and medical care, and a need for job training and employment skills development (Petersilia, 2003; Thompson, 2004). With resources including contracts with drug/alcohol and mental health treatment providers, partnerships with job training programs, and an assortment of in-house programs, U.S. probation officers are well-equipped to address the needs of the supervised population.

However, in addition to the common reentry barriers identified above, many ex-offenders frequently encounter obstacles to successful reentry that are legal in nature. These issues may include, but are certainly not limited to, child support-related matters, the suspension of a driver's license due to outstanding fines or unresolved traffic offenses, difficulty obtaining various professional licenses due to criminal convictions, and impediments related to receiving various forms of federal financial aid (Fishman, 2006; Legal Action Center, 2004). Despite the prevalence of such barriers to successful reintegration, access to legal services providers has historically been far more difficult for ex-offenders to obtain than access to other types of service providers. Indeed, this phenomenon has prompted one legal commentator to note that, in the context of reentry reforms and initiatives, "little attention has been paid to the role that the legal community should play" (Thompson, 2004, p. 1).

The reasons for the dearth of legal services available to ex-offenders are numerous and varied. For one, many of the legal barriers that ex-offenders encounter are civil in nature. Unlike criminal matters, there is no right to free legal counsel to address most outstanding civil legal issues (*Turner v. Rodgers*, 2011). A great many of those released from prison each year have little financial resources at their disposal and simply cannot afford to hire a lawyer (Western & Pettit, 2010). Furthermore, many attorneys who provide civil legal services to the poor are severely overwhelmed. While many of these civil legal services providers do

in fact make concentrated efforts to address the needs of the formerly incarcerated, the sheer volume of clients, coupled with a lack of resources, significantly limits the number of clients and scope of legal issues that these organizations can effectively handle (Udell & Diller, 2007).

As a result, ex-offenders seeking legal representation often have little choice but to seek out pro-bono legal counsel from private law firms. However, despite the resources of large law firms and the significant numbers of attorneys practicing in the United States, pro-bono attorneys have generally failed to adequately address the need for free civil legal services among many working-class and middle-income American families. Rhode (2004), for instance, has suggested that fully 80 percent of the poor's civil legal needs are not met. While the efforts of the many attorneys who provide legal services to ex-offenders should be commended, there are far more ex-offenders in need of legal services than there are pro-bono attorneys available to handle their cases.

Even beyond the difficulty of finding large law firms and individual attorneys willing to represent those with criminal records, finding pro-bono counsel is further complicated by the fact that the legal industry has become increasingly specialized. This is true both in private practice and public interest law. However, the legal barriers to successful reentry are often not concentrated in one particular practice area. Instead, the formerly incarcerated may encounter several different legal barriers to successful reentry

simultaneously, such as owing outstanding child support as well as having a driver's license suspended. Unfortunately, due partly to increased specialization, many lawyers are simply unwilling or unable to tackle the broad range of civil legal issues that have come to represent significant obstacles to successful reentry (Thompson, 2004).

Many of those who cannot afford representation and cannot locate pro-bono counsel able and willing to represent them will simply forgo pursuing legal remedies because they are intimidated by the system. Those who consider representing themselves may feel overwhelmed at the prospect of navigating the court system and give up pursuing legitimate civil actions because of the procedural difficulty of doing so. Additionally, many ex-offenders feel as though the court system will not take them seriously unless they are represented by an attorney and therefore avoid mounting formal challenges to legal barriers to reentry. Finally, non-lawyers do not have the same experience or knowledge of the substantive issues at play in particular cases. This is especially true in cases involving complex statutory legal claims and those requiring Constitutional analysis. As a result, those who choose to represent themselves in court are far less likely to be successful than those who have representation (Buhai, 2009; Lewis, 2007; Seron, et al., 2001).

The Rutgers Federal Prisoner Reentry Project

The Rutgers Federal Prisoner Reentry Project (RFPRP) was created in 2010 in an attempt to address the legal services gap in the reentry landscape. The creation of the RFPRP was spearheaded by U.S. District Court Judge Noel L. Hillman and represents a unique collaboration between the Rutgers School of Law (Camden) and the U.S. District Court and Probation Office in the District of New Jersey.

Before release from custody and during the phase of reentry planning, offenders meet with their assigned probation officers. During this initial meeting, which typically includes a review and explanation of the conditions of supervision, offenders are screened to determine if they have any legal needs that could be addressed through a referral to the RFPRP. The legal services provided by the RFPRP are designed to represent ex-offenders in the litigation of many different types of civil legal matters. Offenders who are referred to the program are assigned a second- or third-year law student. Under the supervision

of the program's managing attorney, the students learn the intricacies of conducting legal research pertinent to the issues faced by the client and how best to litigate the case at hand. Students conduct client interviews, write briefs on the client's behalf, and represent the client in various proceedings as needed.

Law students provide legal services through two specific curricular mechanisms. First, the Project was initially incorporated into the law school's existing pro-bono programs. Students who were in at least their second year of law school were invited to participate in the Project and receive "pro-bono credit" toward an existing scholarship requirement, recognition of having completed a designated number of pro-bono hours on their law school transcript, recognition at graduation, or any combination of these.

Beginning in its second year, the Project was incorporated into the law school's Civil Practice Clinic. Students who currently choose to participate in the Project through the Civil Practice Clinic, unlike their pro-bono counterparts, receive academic credit for their efforts as opposed to only credit for having completed a certain number of pro-bono hours.

Providing reentry legal services through the use of law students is an approach that has been embraced by legal observers and reentry advocates (Thompson, 2004). There are several reasons for this. For example, by having law students engage in providing legal services to ex-offenders, law schools can rectify a common criticism of American legal education: that law schools do little to prepare their students for the actual practice of law (American Bar Association, 1992; Sullivan et al., 2007). Moreover, law students who participate in the RFPRP are exposed to far more than the basics of legal skills training. Through the process of providing ex-offenders with legal representation, law students are exposed to the realities of their client's lives as well as the various administrative and policy hurdles the formerly incarcerated encounter when attempting to reenter their communities. Students not only come to recognize the importance of providing much-needed legal services to the reentry community, they also recognize that the satisfaction of doing so can be a reward in itself. As perhaps best stated by Cordray (2011), "law students' participation in pro bono work can help not only in filling the void in legal services, but more importantly, it can acquaint students with the scope and seriousness of America's unmet legal needs,

and encourage them to continue pro bono work throughout their careers. It also enables students to start using their legal training to assist people in need, which can help students maintain their passion for justice, learning the law, and helping others" (p. 30).

The resulting relationship is therefore beneficial to all parties: The offenders receive free and much-needed legal assistance in helping them overcome obstacles that once may have seemed insurmountable, the law students gain real-world experience in client advocacy and litigation, and the probation officers know that their ex-offenders are receiving valuable help in resolving complex matters that may impede their successful reentry.

As stated previously, legal issues faced by the formerly incarcerated cut across many different practice areas. For example, civil legal issues such as child support fall within the practice of family law, while other issues, such as those relating to occupational licensing, fall within the domain of labor and employment law. Moreover, outstanding warrants for failure to appear in court for traffic violations or unpaid fines have a quasi-criminal element to them due to the possible existence of a warrant, the potential for arrest and a sentence of incarceration, and the same burden of proof (reasonable doubt) that is employed in criminal cases (*State v. Feintuch*, 1977). For this reason, legal services providers may find themselves in a domain that is neither purely civil nor purely criminal. Because the legal issues faced by ex-offenders require a level of expertise in many different types of law, legal commentators have argued that an entity providing reentry legal services should eschew the emerging legal practice paradigm of specialization in specific areas and instead develop a broad range of expertise, much as a lawyer who considers himself a general practitioner (Thompson, 2004). For this reason, the general legal practice model formed the basis for how the RFPRP provides legal services to those referred by the U.S. Probation Office. This model is particularly advantageous for clients who present multiple legal needs; rather than seek out many individual attorneys to handle each separate legal issue based on their area of expertise (which is extremely difficult to do on a pro-bono basis), the RFPRP can address the vast majority of any given ex-offender's legal issues in a single setting. When (rarely) the RFPRP is not able to provide direct representation to a client, the client receives a referral to an attorney within the community who is familiar with

the program and willing to represent the ex-offender on a pro-bono basis.

Resolving Common Civil Legal Issues

The direct representation provided by the RFPRP has thus far addressed many different types of legal issues. Among these issues are:

- addressing significant amounts of past due child support,
- having suspended driving privileges restored,
- appealing the denial of occupational licenses,
- addressing failures to register for Selective Service (which precludes the awarding of federal student financial aid to offenders seeking to return to school), and
- resolving immigration issues.

The examples discussed in this section—child support, driving, and occupational license issues—are among the most common situations addressed by the RFPRP. We note that many ex-offenders also cite them as being among the issues they need most assistance with upon release from imprisonment: In a recent multi-state survey of offenders about to be released back into the community, 45 percent cited a need for assistance with outstanding child support matters, 83 percent reported the need for a driver's license, and 80 percent reported a need for employment (Visher & Travis, 2011).

Child Support

Many inmates find that they owe significant amounts of child support upon their release from custody. In 1999, an estimated 63 percent of all inmates in federal facilities and 55 percent of those in state facilities were parents of children under the age of 18 (Mumola, 2000). Many non-custodial parents who become incarcerated owe significant amounts of past-due support, and child support orders in many states continue to remain in effect while parents are incarcerated. As a result, parents are frequently released from custody owing large amounts in arrears. A study conducted in Massachusetts, for example, found that parents enter prison owing on average \$10,453 in past-due support (Thoennes, 2002). A similar study conducted in Colorado found that the average incarcerated parent owes \$11,738 in past-due child support for each of his child support orders upon entering prison and leaves prison owing approximately \$16,000 in support (Pearson & Davis, 2001).

There is little argument that child support provides much-needed income for many families. However, some have suggested that large monthly child support payments may drive ex-offenders away from their families or discourage them from seeking legitimate employment out of fear of being subjected to large garnishments on their paychecks (Brennan, 1998). Those returning home from prison who owe back child support in the State of New Jersey, for example, are subject to a wage garnishment up to the federally-allowed maximum of 65 percent of their income; this is reduced to 55 percent if they are required by law to support another child beyond the child who is the subject of the particular support order (15 U.S.C.A. § 1673 (1978); N.J. Stat. Ann. § 2A: 17-56.9 (1998)). Further compounding the poverty of many ex-offenders before entering prison is the adverse effect of time spent in prison on earning potential after incarceration. Among the many reasons for this income reduction are the stigma of a criminal conviction, various licensing restrictions, and significant absence from the labor market. Even if an ex-offender succeeds in finding employment, the time spent in prison is likely to reduce earning potential. When returning prisoners do secure jobs, they tend to earn less than those with similar background characteristics who have not been incarcerated (Western, Kling & Weiman, 2001). This “wage penalty” of incarceration has been estimated at approximately 10 to 20 percent (Travis, Solomon & Waul, 2001).

High child-support arrears and a child-support garnishment of between 55 to 65 percent of an obligor's paycheck can play a significant role in preventing the ex-offender's successful reintegration. As a result, ex-offenders often have little incentive to find legitimate employment. At best, the employment they find may be “under the table.” This type of work means that a person does not pay into Social Security or any type of pension and does not receive the kinds of workplace protections offered to people who maintain legitimate, documented employment. At worst, this lack of legitimate gainful employment can lead one back to a life of crime.

Providing direct legal representation to those with significant child support arrears can mitigate the likelihood of such a scenario. Currently, federal law prohibits a state trial court judge from reducing or eliminating any amount of child-support arrears that had accumulated before a request to modify or

terminate a child-support order (42 U.S.C.A. § 666 (a)(9) (2006)). However, New Jersey state provisions allowing for child-support garnishment of between 55 to 65 percent of the obligor's paycheck do not control if a trial court judge has issued a child-support order that specifies the exact amount of the arrears to be withdrawn from the obligor's paycheck (N.J. Stat. Ann. § 2A:17 – 56.8 (1988)). Therefore, in New Jersey, the percentage of an ex-offender's paycheck subject to garnishment can be significantly reduced. While the order providing for the exact amount of money to be garnished varies depending upon the circumstances of each individual case, the direct legal advocacy provided by the RFPRP has almost always been successful in reducing the amount of any wage garnishment to far below the 65 percent allowed by law to satisfy past-due support. By attacking the reciprocal relationship between low wages and significant garnishment of arrears payments, which may contribute to the likelihood of recidivism, this particular type of direct legal representation provided by the RFPRP addresses an extremely important reentry-related need.

Driver's License Suspensions

Often, having a driver's license is an important component of successful prisoner reentry. This is particularly true for basic economic reasons. Zimmerman and Fishman (2001) estimate that more than 90 percent of all American workers who commute to their jobs rely on the use of a private automobile (Zimmerman & Fishman, 2001). Having a driver's license (assuming one has access to an automobile) can greatly expand the geographic area in which one can find meaningful employment. This is particularly important because research demonstrates that many employers, especially those in the field of manufacturing, are abandoning American cities for suburban locations, thereby requiring inner-city residents to travel farther to get to and from work (Wilson, 1996). Additionally, having a driver's license may be a requirement for certain employers and may play a role in employee retention and promotion. Finally, having reinstatement of driving privileges often represents a very important symbolic step for the ex-offender. For many offenders returning to the community, having a valid driver's license means more than simply being able to drive; it is a symbol of one's integration into law-abiding society.

There are many different reasons why a driver's license may be suspended. For the

ex-offenders referred to the RFPRP, the most common reasons for a suspension stem from either unpaid fines for traffic or criminal offenses or the failure to resolve outstanding traffic matters, which in some cases date back many years (N.J. Stat. Ann. § 2C:46-2(1)(a)(2005); N.J. Stat. Ann. § 39:4-139.10(a)(2008)). The RFPRP can provide direct legal representation to address these particular issues by first working directly with the New Jersey Motor Vehicle Commission to identify the sources of the client's driver's license suspension. Once the reasons for the suspension are identified, the RFPRP often sends letters of legal representation to the various local courts that had suspended the license. These courts then typically schedule dates to address the outstanding respective issues. Frequently, if a warrant has been issued in an unresolved case, the student attorneys can convince the prosecuting authority to dismiss the outstanding ticket(s). If a dismissal cannot be obtained, the student attorneys, under the supervision of the Project's managing attorney, advise the client of the appropriate course of action—either entering a guilty plea or proceeding to trial. The client thus receives high-quality legal counsel in deciding what type of disposition would best resolve the pertinent issue.

When an ex-offender's driver's license has been suspended for a failure to pay fines, the same process is followed. However, once in court, the student attorneys frequently engage the judge directly on the appropriate course of action with respect to the unpaid fines. After thoroughly researching the legal remedies available, students advocate on behalf of the client. Often this involves urging the trial judge to vacate the remaining fines and lift the license suspension or vacate the amount owed in exchange for community service of some kind, as provided for under New Jersey law (N.J. Stat. Ann. § 2C:46-2 (2005)). However, if the judge rejects these courses of action, student attorneys forcefully advocate that their client be put on a reasonable payment plan and that driving privileges be reinstated as long as the client remains current on the payment plan. In either case, the matter is often resolved, resulting in a lifting of the suspension and facilitation of the offender's successful reentry into the community. In many cases the U.S. Probation Office has even been able to assist offenders in paying mandatory license restoration fees by making use of monies available through the Second Chance Act.

Occupational Licenses

In New Jersey, as in many states, the issuance of an occupational license may be denied on the basis of a prior criminal conviction. As a result, the many occupational licensing provisions that have the effect of disqualifying ex-offenders represent a significant obstacle to successful prisoner reentry (May, 1995). In New Jersey alone, there are over 22 categories of crimes that result in an absolute bar to certain types of employment (Fishman, 2006). Additionally, there are several other areas of employment requiring an occupational license that can be denied for certain types of criminal convictions. These include (but are not limited to) licensing requirements to work in auto body repair, diesel and emission inspection stations, towing and highway services providing parkway services, establishments offering legalized games of chance, and community residences for people with developmental disabilities.

In many cases, license restrictions based on an applicant's prior criminal record can be overcome if the applicant can demonstrate successful rehabilitation (*Rehabilitated Convicted Offenders Act*, N.J. Stat. Ann. § 2A:168A (1982)). Offenders who present a need for occupational licensing and are referred to the RFPRP by their probation officers meet with the assigned student attorneys, who begin by researching the applicable restrictions as well as any legal relief that could potentially be provided. If the client has already applied for and been denied a license for employment based on a prior criminal conviction, the student attorneys file an appeal on the client's behalf. Additionally, student attorneys prepare for the administrative law judges hearing the appeal materials that demonstrate the ex-offender's reintegration and argue accordingly on the client's behalf at the appeals hearing. If an appropriate resolution cannot be reached, the Project considers pursuing legal remedies beyond the administrative agency in question, including challenging the agency's decision in state or federal court.

Case Studies

Edward

Edward was released from prison in 2010 after serving a 70-month term for possession of a firearm. At the age of 34, he found himself residing with his wife and 10-year old son but unemployed and unable to locate work. Living in an economically-depressed area, he found his efforts to find work further frustrated by his suspended driver's license. Edward had

unresolved traffic tickets in three different municipalities, including two complaints of driving while intoxicated, which pre-dated his term of federal imprisonment. He was referred to the student attorneys at the RFPRP, who accompanied him to the various municipal courts and were able to have several tickets dismissed and payment plans established for several others. With regard to the DUIs, the student attorneys prevailed upon the courts to allow Edward to participate in a single two-day class for intoxicated drivers which satisfied both courts, who ordered the respective tickets dismissed. The probation office then provided him with funds under the Second Chance Act to pay his state-mandated driver's license restoration fee. Almost immediately, he secured employment working for a nearby glass manufacturer, a position he has held for the past two years. He is paying the fines owed on his tickets monthly and is saving money with plans to enroll in a school to obtain either a forklift operator's certificate or a commercial driver's license.

Truong

Truong was born in Vietnam in 1979. His father died before he was born and his mother brought him and his two siblings to the United States when he was 9 years old. He began using marijuana at age 24 and his drug use soon extended to include ecstasy. He held a variety of short-term jobs, including work in a meat-packing plant. He became involved in selling marijuana, however, and was released from prison in 2011 after serving a 60-month sentence. His problems became further compounded when, shortly following his release from custody, he lost his wallet, which contained all of his identification and his alien card. Upon applying for a new green card, he was told that one could not be issued, because he was under an ICE deportation order. However, since the United States lacks the appropriate treaty to deport to Vietnam people who immigrated to the United States in the 1980s, Truong was told by his ICE officer that his deportation was unlikely, thereby leaving him in a state of limbo in which he could not be granted a new alien registration card but could not be removed from the country, either. A referral was made to the RFPRP and the student attorneys assisted Truong in navigating the process to allow him to apply for employment authorization in lieu of a new green card. His work authorization was subsequently granted and shortly thereafter he obtained employment from a company

that builds and installs decking and flooring, a position he has held for the past two years.

Carlos

Also convicted of drug distribution, Carlos was released to supervision in 2011 at the age of 40 and returned home to live with his wife and two children, ages 13 and 9. Before his imprisonment he had held an assortment of jobs, but much of his prior employment had been spent working in the local hotel and casino industry. Shortly after beginning supervision, he obtained employment as a bar porter at a local casino, stacking glasses and dishes in the casino's restaurants. Despite the fact that his offense had been committed eight years earlier (in 2003; he was not arrested until 2008), the gaming commission intervened to deny him the appropriate license on the basis of his conviction (all employees who work within the local industry are required to be licensed). Carlos was referred to the RFPRP, where student attorneys prepared the appropriate appeal paperwork and represented him at a hearing before the licensing board. As a result of their efforts, Carlos was not only allowed to obtain the appropriate license needed to work in the restaurant, but he was cleared to obtain other licenses required to work in any other facet of the industry. He has maintained his employment at the casino for the past two years and several months ago picked up a second job, driving for a local soft drink distributor.

Conclusion

Since its inception in the summer of 2010, the Rutgers Federal Prisoner Reentry Project has provided legal services to nearly 100 ex-offenders under federal supervision in the District of New Jersey. The response to the program from ex-offenders under supervision has been overwhelmingly positive, and the Project is beneficial to all parties involved. Clients referred to the RFPRP receive free expert legal assistance in a variety of areas from a single service provider. Moreover, when a referral is made to the RFPRP and matters are successfully resolved, ex-offenders take another step in their ongoing efforts toward reintegration and are better equipped to function in a healthier, more law-abiding fashion, which contributes to compliance under supervision. This, of course, also benefits the community as a whole by addressing the needs of the returning prisoner population. Student attorneys receive valuable, hands-on training in litigation and, by advocating for

their clients in a pro-bono capacity, come to appreciate the important role of law in promoting social justice.

Finally, probation officers enjoy the benefit of knowing that their clients' most pressing civil legal matters are being addressed by skilled practitioners. Success stories such as those contained here are particularly valuable when viewed within the context of research on the importance of the relationship between probation officers and those under supervision. A significant amount of literature in the helping professions has suggested that a collaborative relationship between practitioner and client fosters greater compliance with treatment directives and contributes to improved outcomes (Beck, 1995; Horvath & Luborsky, 1993; Norcross, 2011). Perhaps not surprisingly, therefore, a growing body of research in the field of community-based corrections has found that ex-offenders are more likely to comply with the terms of their supervision when they believe that they have been justly punished, are treated fairly, and enjoy an open and collaborative relationship with their parole officials (Skeem, et al., 2007; Trotter, 1996; Viets, Walker & Miller, 2002). Many offenders beginning periods of supervision, particularly those who have served several prior terms of probation or parole and bring with them a somewhat distrustful view of parole authorities, are taken aback when introduced to the RFPRP and realize that the court, probation office, and law school are working together to provide them with such a valuable service. When this occurs, the rapport between the ex-offender and the probation officer is strengthened and the supervisee begins to view the probation officer not as an oppressive agent but rather as someone who has his best interests in mind.

We are currently collecting data on the volume of cases processed through the RFPRP as well as evaluating the outcomes of legal matters thus far treated by the Project. We are confident that the results of this evaluation will be helpful in advocating for additional funding for the program well into the future. We believe that the continued success of the Rutgers Federal Prisoner Reentry Project will be an integral part of our ongoing efforts to, in the words of the U.S. Probation Office's Charter for Excellence, "make our communities safer and make a positive difference in the lives of those we serve."

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