

Expert Report of Veronica Ludt



July 15, 2012

Witold J. Walczak
Legal Director
ACLU of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213

Re: Applewhite v. Commonwealth of Pennsylvania

Dear Mr. Walczak:

You have requested my testimony and professional expert opinion regarding problems and obstacles indigent people face in obtaining legal identification, and my opinion concerning the ability of many people to obtain legal identification without professional assistance. I am being paid a flat fee of \$1,500 to prepare this report and to testify at trial.

I am the Legal Center Director of Face to Face, Inc., a not for profit human services organization located in the Germantown section of Philadelphia. I have been involved with this legal clinic for over twenty years, having begun as a volunteer attorney in 1992 when it was known as "St. Vincent's Legal Clinic" and was one of the Homeless Advocacy Project's Adopt-A-Shelter sites, through the organization's incorporation as a 501(c)(3) in 1996 which resulted in the clinic being renamed "Face to Face Legal Center." In 2008 I was hired as part-time staff. The clinic separated from the Homeless Advocacy Project and became a free-standing legal services provider and is a recipient of grants from the Philadelphia Bar Foundation and the IOLTA Pro Bono Fund.

Face to Face Legal Center (hereinafter referred to as "the clinic") offers free legal services to low income clients living at 150% of the Federal Poverty Level. One of the services it provides is helping clients procure birth certificates and obtain legal identification. During my time as a clinic volunteer I had ordered only a few birth certificates per year, mainly for clients who were seeking Social Security benefits. Once hired, I became aware of the large number of clients who did not have legal identification. I discovered that, because they lacked legal ID, many clients were unable to open bank accounts to set up direct deposit of their disability checks and could not access low income utility programs, federal housing funds, public assistance benefits or obtain employment. These clients were unable to obtain legal identification due to myriad reasons outlined below.

In mid-2008, because of what I had discovered, I decided that one of the clinic's new goals would be to help clients obtain legal identification. I established a monthly Birth Certificate clinic designed to help clients obtain this essential document which is needed for securing legal

identification. Since then the clinic has represented 417 adults in their efforts to obtain birth certificates. Thirty-eight of those clients (9% overall) have experienced problems in obtaining legal identification which has resulted in our representing them beyond the initial birth certificate application. All of these clients, save one, are African American. Of these problematic cases, 24 (5.7% overall) have not been able to obtain legal ID. The clinic is actively working on nine of those cases. It has lost contact with another ten of the clients, who have not returned to complete the process. Three clients have communicated their decision to discontinue their efforts to obtain ID. I determined that we cannot help the two remaining clients due to the complexity of their cases and the limited resources of the clinic.

OBTAINING A PHOTO ID CAN BE DIFFICULT AND IN SOME CASES IS NEARLY IMPOSSIBLE

Possession of a birth certificate is the lynchpin for being able to obtain most forms of photo identification, including the identification required to vote. While, on the surface, obtaining a birth certificate may seem like a simple matter (and many erroneously believe it is), in fact, as further set forth below, those who lack a birth certificate and need to obtain one – particularly those whose efforts I am most familiar with, the poor and indigent – face a host of obstacles in doing so. Common problems faced by such applicants include: (a) many birth certificate applications require the applicant to already possess a photo ID; (b) states do not have a birth record for individuals who were born at home and whose birth was never officially recorded, e.g., some African-Americans born in the south; (c) many low-income and poorly educated people lack the life skills and technology to navigate the often-complicated application processes involved, lack documents required in the application process, or cannot afford to pay the fees and costs associated with most application processes.

PROBLEMS ENCOUNTERED IN OBTAINING BIRTH RECORDS

In order to obtain a birth certificate, states require applicants to submit a current government-issued ID, or in some instances, a combination of other documents. For the client who needs a birth certificate to obtain photo ID, this creates a problem when, as is true in many cases, the applicant does not have government issued ID or the required secondary documents. While many states, including Pennsylvania, permit certain familial relatives to order birth certificates for an applicant who has no legal ID, this remains problematic for an applicant who has no willing or available family member to apply for him, or whose family member may also lack legal ID. Fortunately, some states, including Pennsylvania, permit an attorney to order a birth certificate on behalf of a client if the attorney submits his or her state-issued photo identification, which eliminates the dilemma for the applicant who does not possess the necessary documentation.

Problems when the application is rejected: Birth certificate applications are sometimes rejected. This can be due to a discrepancy between the information on the application and the information in the vital record. To correct the discrepancy, the applicant is required to present certain documents in order to have the record amended. In other instances, the

Vital Records department may report that there is no record of the applicant's birth on file. In such cases, the client is required to collect a number of decade(s) old documents containing various data so that a delayed birth certificate can be created. Each of these problems is described below.

1) Discrepancies: There are two types of discrepancies between the application for the birth record and the official birth record which have made it difficult, or impossible for people to obtain birth certificates: differences between the name on the record and differences in the date of birth listed.

Some of the surname discrepancies encountered by clinic clients have resulted when the client's parents were unmarried. The child grew up using the mother's surname but the state listed the father's surname as the child's. To correct this type of error the applicant must submit a certified record showing that he or she used the claimed surname for a specified number of years. In Pennsylvania, the record must be at least fifteen years old. The most common document to use for this purpose is a certified record from the school district the client attended as a child. Most of the clinic's clients went to school in Philadelphia. The Philadelphia School District charges \$10 for this certified record, although the clinic has been successful in having this fee waived for its clients. In one case a client's mother enrolled him in school under the name of his step-father who had not adopted him. She had presented the school with a birth certificate in which she had erased the name of the child's birth father and had substituted the name of her new husband. Because the client's school record was not useful as proof, it took months to obtain an alternate form of proof so that his birth certificate could be amended. Until the birth certificate was amended the man could not obtain ID because the name on the record did not comport with the name on his Social Security card.

Name discrepancies due to adoption have proved the most problematic, and the clinic has handled four of them. The two clients that the legal clinic cannot help are those with issues arising from adoption.

Viviette Applewhite, a petitioner in this action, was an adult when she was adopted by a friend's father in the State of Mississippi. Her Pennsylvania birth certificate lists her name as "Viviette Brooks," the name given to her at birth. Because she was adopted, Ms. Applewhite needs to have her birth certificate amended, but the clinic does not have the financial resources or staffing to track down the adoption order in Mississippi in order to do so. Nor is Ms. Applewhite, who is 93 years old, capable of doing this on her own. Consequently, this client is unable to obtain legal ID because her Social Security card identifies her as "Viviette Applewhite."

The second case we've had to decline to handle involves an elderly client who was adopted in New York City as a child. The client herself had tried for years to obtain the record. After reviewing the documentation she presented we determined that the case was too complex and that we did not have the resources to help her.

The clinic has had two cases where there has been a discrepancy in the date of birth on the

client's record. These cases have been extremely problematic to resolve. The record we were able to correct took eighteen months to resolve. We have been working on the other case for eight months but have still not managed to obtain the birth record.

2) Birth Records “Not Found”: The clinic has had fourteen clients who received “Not Found” responses to their birth certificate requests. When this occurs, most states have a process for creating a “delayed birth record” which requires the applicant to gather numerous additional documents, sometimes including school records. These cases are the most complicated, tedious, and expensive to handle and have proven to be difficult for even pro bono attorneys to understand.

Petitioners Wilola Shinholster Lee and Gloria Cuttino are two of the clinic's clients who need to have birth certificates created. Both were born at home in southern states and their births were never officially recorded. The clinic has been handling Mrs. Lee's case for more than a year and a half. The school district sent records with insufficient data and a second request then had to be made. Mrs. Lee went in personally to obtain the corrected school document and paid the \$10 fee. She also obtained her employment records, but they are not certified and will likely not be accepted as proof. The volunteer assigned to this case did not understand the necessity of ordering Mrs. Lee's Social Security numident¹ record, which is a crucial document that would contain her name, date and state of birth, and parents' names; four pieces of data which are required to appear on one single document, according to Georgia Vital Records. This record was ordered in March at the cost of \$16, but it has still not arrived.

Ms. Cuttino's case is even more complicated. She began the process of applying for a delayed birth certificate on her own, but came to the clinic in April when she encountered problems with the documentation she received. She had ordered and paid for the school district Proof of Age record, but the document listed her brother's birth date instead of hers, and South Carolina Vital Records rejected it. It sent her a letter advising her to order the 1960 Census Record at a cost of \$65 which she cannot afford. We have ordered her numident record and have requested that the school district double check the birth date to see if this is a recent transcription error. We were informed that if the birth date error was made at the time Ms. Cuttino was enrolled in school, it can only be corrected if we present the district with a court order.

Two of our clients have chosen not to proceed with the creation of a delayed birth certificate. One elderly and disabled client has a complicated case which lacks the necessary documentation. The head of South Carolina Vital Records advised me to file a petition in the Court of Common Pleas in Philadelphia to obtain an Order requiring her office to create the birth record. Absent that, she said nothing could be done. The client was advised of the situation but asked that we cease our efforts. During the two years we had been handling the case the client became frail and is unwilling to leave her home to come to court to testify, as would have been necessary if we had filed the petition. The second client declined to have us proceed with the steps necessary to create a birth record

¹ A numident record is a computer extract of the Social Security number application. It includes a person's full name, date and place of birth (city and state) and the names of the person's parents.

because she had just lost her husband and was working to prevent losing her home to foreclosure. When she learned what was required in creating a delayed birth certificate she told us that she could not deal with the process at this time.

Thus far the clinic has been successful in obtaining delayed birth certificates for only two of the fourteen clients who need them.

ISSUES SPECIFIC TO NEW YORK STATE

Clients who were born in the state of New York often experience the most difficulty in obtaining their birth certificates. There are two separate Vital Records offices in New York: one that provides the records for people born in the five boroughs that comprise New York City, and one that provides the records for those born anywhere else in the state. Each Vital Records unit has its own criteria for releasing a birth certificate. New York City will release a record to an attorney on behalf of a client only if both the attorney and the registrant submit identification. If the registrant does not have the required identifying documents, the department provides an email address for the non-profit agency representing him to send the details of his situation. In addition, New York City Vital Records now requires that applications sent by mail be notarized, and if the applicant wants the record sent to his legal representative he or she has to include a notarized letter authorizing its release to the attorney. Clients often have unstable housing or trouble receiving their mail and prefer that this important document be sent to the clinic. The notary requirement adds the additional expense of one and possibly two fees, and can pose a problem for people who have difficulty in having their signatures notarized because they lack identifying documents. Pennsylvania law makes it illegal for a notary to certify a signature if the signer does not present satisfactory evidence of his identity and if the notary does not have personal knowledge of the signer.

New York Vital Records will only release birth certificates to the registrant or a parent of the registrant if the parent is named on the record, and will not release the document to the applicant's legal representative. If an applicant's parents are unavailable to help and the applicant lacks the required identification documents he cannot obtain his birth certificate. The clinic has four native New Yorkers who could not obtain their birth certificates because they did not have the required documents.

COST IS A SIGNIFICANT BARRIER FOR INDIGENT CLIENTS: Birth certificates cost money, ranging from the \$6.00 fee charged by some municipalities in New Jersey to \$30.00 charged by New York. For indigent clients, many of whom are without income or who have subsisted on General Assistance², any amount is a hardship. People often need bus fare to travel to the Social Security Card Center in downtown Philadelphia to obtain Social Security replacement cards or computer printouts. If there is a problem in obtaining the record, other fees may be involved, such as fees for a certified school record, a Social Security numident record, a census record, and notary fees. Some states charge an

² In the recently-adopted budget, General Assistance was eliminated for most single adults.

additional fee for the creation of a birth record or an amendment fee. Because collecting the required documents takes a long time, we have had two cases where we have had to pay a second application fee, in addition to the amendment fee, because more than a year had passed since the original application was filed.

Another factor affecting cost is the lack of access to the internet and telephone for many indigent people. People who were born outside of the Commonwealth often do not know how they can apply for birth certificates in other states. Even if they gain access to computers, the first websites that appear are for private vital records services which not only offer to obtain the record for an amount significantly higher than the state vital records departments charge, but which also require payment by credit cards. Almost none of my clients have credit cards. When problems arise with a birth certificate request, internet and telephone access is crucial. The clinic uses the internet to locate the contact sources for much of the documentary evidence needed to create a delayed birth certificate. Many of the sources require telephone calls which are both long distance and require long "hold" times. Many indigent people, even if they have telephones, have limited minutes because the phones are designed for contacting medical providers and for emergencies.

ABSENCE OF REQUIRED DOCUMENTS OTHER THAN BIRTH

CERTIFICATES: Many of the clinic's clients are transient, and, due to their unstable housing conditions have difficulty in retaining documents necessary to obtain legal identification. Some of them have mental health or substance abuse issues, or are elderly and forgetful, all conditions which also make it difficult for them to keep track of their papers. I have encountered several clients who have lost all of their documentation as a result of being evicted from their residences.

1) Social Security Card Documentation: Even when the clinic is able to help a client obtain his or her birth certificate, obtaining a Social Security card or the agency's certified computer printout has at times been a difficult task. Some clients not only lack a state-issued photo ID which is the primary evidence needed to obtain Social Security documents, but secondary evidence as well. At times I have written to clients' physicians to obtain proof of age, which may be the only secondary source they can conceivably obtain. Some of the clinic's clients have struggled to obtain legal identification due to the difficulty in obtaining documentary proof to satisfy the Social Security Administration.

2) Penn DOT Documentation: Many of the clinic's clients cannot provide two forms of proof of residency from Penn DOT's List B³. Very few of the clients have mortgage documents or a weapons permit, and most are unemployed and have no tax records or W-2. Many of the clinic's clients rent rooms in the large older houses which abound in Germantown. They rent weekly or monthly with no lease agreement and do not have utilities in their names. In this circumstance it is not feasible for the person to bring someone who resides with them to Penn DOT to vouch for their residency, which would be required for them to obtain a PA photo ID. Clients who live with friends or relatives also run into the same problem. Sometimes the people they live with are unwilling or unable to accompany them to Penn DOT, or do not have legal ID themselves. One client was

³ Pennsylvania Department of Transportation Identification and Residency Requirements for U.S. Citizens

permitted to sleep in the basement of a commercial building in return for sweeping it clean every night. He did not have any documentation to take to Penn DOT to prove his residency.

APPLICANTS ARE OFTEN “HELD HOSTAGE” BY THE CARELESSNESS, LACK OF COOPERATION, OR INEXPERIENCE OF AGENTS WHO SHOULD PROVIDE THEM WITH ASSISTANCE

We have experienced the frustration of writing numerous letters and making repeated telephone calls because a health clinic will not cooperate in providing a proof-of-age letter so that an elderly client can receive a delayed birth record. We have written numerous letters to school districts requesting that the certification indicate the student's state of birth rather than indicate “U.S.,” only to have our request ignored. The transcription error on Gloria Cuttino’s school record is an example of how clerical errors can cause difficulty in obtaining ID. In one instance, we hounded the South Carolina Vital Records unit until it located a birth record that a client knew existed, even though it had sent two “No Record Found” letters. We have had clients report misinformation given to them by clerks at the Social Security Administration when they have tried to replace their cards.

The most egregious example of ineptitude occurred when a Penn DOT clerk would not accept my client's birth certificate because he claimed it was forged. The client was born in North Carolina, and his birth certificate was an older green document that had been scanned but which contained a raised seal. I wrote a letter for my client to take to the clerk, stating that I had ordered and paid for the record, and suggested that he turn the document over to better see the seal. The client was turned away a second time, this time being told that his attorney had forged the document. I contacted someone in Penn DOT's Risk Management Department, explained the situation and faxed him copies of the application, my canceled check and the birth certificate. He called the supervisor at that center and instructed him to accept my client's birth certificate.

MANY INDIGENT PEOPLE ARE ILL-EQUIPPED TO ADVOCATE FOR THEMSELVES SHOULD PROBLEMS ARISE IN OBTAINING LEGAL ID

Most of my clients have not finished high school and have inadequate reading and comprehension skills, which is not uncommon among indigent people. The letters explaining the requirements for creating a delayed birth record are several pages long and can be confusing. Some of the clinic's volunteers, which include lawyers, have been confused when handling these cases. Less educated people often lack the skills to advocate for themselves with governmental authorities as evidenced by my client’s failure to ask for a supervisor when he was confronted with the false accusation made by a Penn DOT clerk.

CONCLUSION

Based on my 20 years’ experience working with indigent clients (the past four and a half years of directing a program designed to help them obtain legal identification) and as reflected above, it is my professional opinion that significant, unduly burdensome, and

costly barriers exist which inhibit or prevent a significant number of indigent people from obtaining legal identification.

I declare on this 15th day of July, 2012, under the penalties of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

A handwritten signature in cursive script that reads "Veronica Ludt". The signature is written in black ink and is positioned above a horizontal line.

Veronica Ludt