

From Aspiring to Inspiring

By Melissa A. Gertz

I never planned to be an entrepreneur. I've always dreamed of becoming a progressive lawyer. But, a businessperson? That's for those corporate types, and definitely not for me. However, life, as they say, is what happens when you're busy making other plans.

On July 24, 2004, *life* definitely happened, as I became the victim and thankful survivor of a near-fatal car accident. I was left with physical, neurological, and mental wounds that required countless surgeries and rehabilitative therapies. As an incoming third-year law student, I had a choice: abandon my dream of becoming a progressive lawyer or forge my own path. While others wrote for law reviews and competed for post-graduate clerkships, I was re-learning the most basic of tasks, including being able to *see*.

During my recovery, I knew what the miracles and the endless generosity of the doctors, family members, and friends meant to my own survival. A few years later, it was time to pay it forward. In New Jersey, there were no nonprofit legal services specifically for veterans. I knew firsthand the complications that come from posttraumatic stress disorder and traumatic brain injury, which are the two "signature" wounds of the current wars. I knew what it was like to wake up one day to an entirely different world around you and to have to adapt to a new "normal." So, against all odds, I became an entrepreneur. Among pizza, beer, and a few others crazy enough to become involved, the Community Justice Center was born. Opening

in March 2009, CJC provides services to veterans with disabilities and those who are homeless and with disabilities throughout New Jersey. Here are seven keys to our success that might help you start your own nonprofit:

1. Find your niche. Figure out how you will fit into the nonprofit scene in your area. The media, grantors, and others always want to know what makes you unique as compared to other nonprofits that are already funded. It helps if you have an answer.

2. Don't underestimate the value of "in-kind" support. Cash flow is an issue in any small business. Instead of asking for cash donations, pursue as many forms of "in-kind" support as possible (nonmonetary contributions of time, services, or equipment). You'll not only save money, but you'll also end up with a fantastic talent pool. Be creative! Instead of hiring a secretary, we bring

in college students looking for externship credit.

3. Learn to like hats. Understand that, especially in the beginning, you will spend a lot less time being a lawyer and a lot more time being everything else—a businessperson, a manager, a bookkeeper, a fundraiser, and the face of human resources, public relations, and outreach. The more you understand these fields before starting your nonprofit, the easier these roles are to juggle.

4. Momentum doesn't just happen. When you are new, even though your services may be free, cases don't just fall into your lap. We worked endlessly on promotion and gave many presentations to area social service agencies, government entities, and foundations. We maximized free media, such as Facebook and local television/radio. We convinced every newspaper in town that

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The Great Divide GIDEON AND CIVIL CASES

By John Pollock

Through the media of television and films it is common knowledge for many that a criminal defendant has a constitutional right to counsel and that "if you cannot afford a lawyer, one will be provided for you at government expense." Because of the U.S. Supreme Court's interpretation of the Sixth Amendment in *Gideon v. Wainwright*, the right to counsel in criminal cases exists even when a charged crime carries a sentence of just one day in jail. However, what many may not know is that indigent litigants in civil cases lack the same presumptive constitutional right to counsel even if they might be incarcerated or institutionalized.

Empirical data shows that the presence of a lawyer profoundly impacts case outcomes. The Court recognized this as early as 1932 in *Powell v. State of Alabama* by stating that "the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." However, the Sixth Amendment's right to counsel does not reach civil cases, and in 1981 the Supreme Court held in *Lassiter v. Dep't of Social Services* that there is a presumption *against* a due process right to appointed counsel in civil cases except where physical liberty (confinement) is at stake. Under *Lassiter*, even when confinement is a possibility in a civil case, a court must balance the strength of the litigant's interest, the risk of error, and the state's interest to determine whether it should appoint counsel.

The Court's *Lassiter* ruling can be seen as dramatically impact-

ing fundamental human needs. In *Lassiter*, the Court concluded that it could be "fundamentally fair" to ask an indigent parent with little education and no legal training to battle state government, with all of its resources and expertise, over permanently severing the relationship between parent and child. Because of *Lassiter* the results can be equally stark for other types of cases when litigants cannot afford a lawyer: families can lose their homes, women can be denied protective orders in domestic violence cases, and persons with low income can lose the very benefits (such as Medicaid) that keep them alive. The Court's emphasis in *Lassiter* on incarceration has led to an arguably distorted set of priorities; as legal commentator Douglas Besharov famously wrote, "*Lassiter*, for all practical purposes, stands for the proposition that a drunken driver's night in the cooler is a greater deprivation of liberty than a parent's permanent loss of rights in a child."

The National Coalition for a Civil Right to Counsel (NCCRC) was established in 2004 to address the issue of the right to counsel in civil cases. Its approximately 150 participants in 35 states help drive the litigation, education, and legislative advocacy efforts around this issue. The American Bar Association's (ABA's) Standing Committee on Legal Aid and Indigent Defendants (SCLAID), one of the five entities coordinating the NCCRC's work, plays a key role in the involvement of state bar associations.

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Act Promises Law Grads Lower Payments, Less Debt

By Heather Jarvis

For years young lawyers have struggled with high student debt, but when the College Cost Reduction and Access Act of 2007 (CCRAA) became effective on July 1, 2008, many lawyers found themselves with new options for lowering or eliminating that debt. The CCRAA offers federal student loan borrowers with high debt relative to income an opportunity to choose lower monthly student loan payments through a new repayment option: Income-Based Repayment (IBR). The CCRAA also created the Public Service Loan Forgiveness program, which offers loan forgiveness after ten years of public service employment.

Income-Based Repayment

IBRinfo.org has a simple calculator that you can use to determine your eligibility for Income-Based Repayment. For most eligible borrowers, except the highest earners, IBR loan payments are less than 10 percent of their yearly income. For example, a typical recent law graduate who owes \$100,000 in federal student loans and earns \$60,000 per year would pay less than \$500 per month under IBR. IBR will also forgive any remaining debt after twenty-five years of qualifying payments!

Public Service Loan Forgiveness

The Public Service Loan Forgiveness program encourages individuals to enter and continue full-time public service employment.

A borrower who makes 120 qualifying monthly loan payments on eligible loans while working in qualifying public service can earn substantial loan forgiveness. Qualifying payments are payments made after October 1, 2007. For example, a borrower with average law school student loan debt of about \$100,000 and an average public interest annual salary of

about \$40,000 can make payments based on income over a ten-year period and earn more than \$100,000 in tax-free loan forgiveness!

What employment qualifies?

Qualifying public service employment for Public Service Loan Forgiveness is full-time, paid work in:

- the government;
- a 501(c)(3) nonprofit;
- an AmeriCorps or Peace Corps position; or
- for a private "public service organization."



A public service organization is an organization that is funded at least partly by a local, state, federal, or tribal government and that is not organized for profit, a labor union, a partisan political organization, or an organization that is engaged in religious activities.

Full-time for most lawyers is an annual average of at least thirty hours per week, unless your employer requires a greater number of hours for full-time status.

Which loans are eligible?

Students borrow federal student loans, such as Stafford loans and GradPLUS loans, from one of two major federal student loan programs: the Federal Family Education Loan (FFEL) Program or the Federal Direct Loan Pro-

gram. Federal student loans from the FFEL Program are issued by private banks and lending institutions, such as Sallie Mae, but are still federal student loans. Federal Direct Loans are federal student loans that are issued directly by the U.S. Department of Education.

Only Federal Direct Loans are eligible for Public Service Loan Forgiveness. Borrowers with FFEL loans must consolidate or reconsolidate into Federal Direct Loans to earn loan forgiveness. Find out what kind of student loans you have using the National Student Loan Data System at www.nsls.gov.

Some students also borrow commercial loans from state or private lenders, which are not eligible for Public Service Loan Forgiveness.

Which payments count?

Borrowers must not choose an extended repayment plan as many have done in the past. Qualifying monthly payments include only those made on time as part of:

- an Income Contingent Repayment plan;
- an Income-Based Repayment plan;
- a Standard Repayment plan based on a ten-year repayment schedule; or
- a repayment plan where the monthly amount paid was not less than the monthly amount required under the Standard Repayment plan of ten years.

Most borrowers seeking loan forgiveness will choose Income-Based Repayment.

Where can I get more information?

Public Service Loan Forgiveness is not automatic. Borrowers must take specific actions to benefit. Visit IBRinfo.org for more information. Also, visit equaljusticeworks.org for free tools for pursuing debt relief, including webinars, podcasts, a downloadable checklist, and an interactive forum.

Heather Jarvis of Equal Justice Works in Washington, D.C., can be contacted at hjarvis@equaljusticeworks.org.

Service through Leadership on Nonprofit Boards

By Ashley N. Wicks and Christine M. Miller

As a young lawyer, you may be asked to serve on the board of directors of a nonprofit organization. Serving as a director of a nonprofit can be a great way to be more involved in your community and can be personally rewarding. But, before you commit to serving on a nonprofit board, you should understand what it requires. Nonprofits are subject to state laws and are governed in a way that firm or corporate attorneys may not encounter in their law practices. Your role as a board member should not conflict with your full-time job as an attorney.

A key to understanding the governing and management structure of a nonprofit is to know the difference between the roles of directors and officers. A director's role is to direct the activities of the nonprofit; an officer's role is to execute the directions of the board. A good rule of thumb to help remember this distinction is "nose in/fingers out," which means that directors are supposed to be nose in but not supposed to run the day-to-day operations of nonprofits. Officers take care of running the daily operations.

To keep your "nose in" as a director, stay active: attend board meetings, review meeting minutes and financial information, and ask hard and important questions. Generally, nonprofit directors owe two fiduciary duties to the organization: duty of loyalty and duty of care. Duty of loyalty requires directors to act in good faith and in a manner that directors reasonably believe to be in the nonprofit's best interest. It also covers conflict-of-interest situations. Duty of care requires directors to act with the care that a person in a like position would reasonably believe

to be appropriate under the circumstances. The specific duties of directors vary based on state law.

In your role as a director of a nonprofit, you may be asked for legal advice by other board members because you are an attorney. As an attorney, you must make it clear that you serve the nonprofit as a director and not as the nonprofit's attorney, and, if appropriate, you should recommend that the nonprofit retain outside legal counsel on an issue. Also, you should be aware of potential conflicts of interest that may arise and any attorney-client relationships that may develop through your board service that could be construed as conflicts of interest.

Even if you are not acting as the attorney of the nonprofit, as an attorney/director you'll benefit from having a general understanding of nonprofits and laws affecting them. It is important that the nonprofit's activities are consistent with its exempt purpose and that it has policies in place for good corporate governance, such as a gift-acceptance policy, a conflict-of-interest policy, a whistleblower policy, and an executive director compensation policy.

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NEXT STEPS

For more information, visit www.abanet.org/yld/meetings.html to register for the March 2 teleconference "Anatomy of Business Law: Non-Profit Organizations." Unable to attend? View the full presentation notes of the past CLE on this topic at www.abanet.org/yld/fall09/details.shtml#buslaw2.

LiveHelp

INCREASING ACCESS TO LEGAL INFORMATION ONLINE

By Liz Keith

Pro Bono Net, a national nonprofit that is dedicated to increasing access to justice through the innovative use of technology, has partnered with legal aid programs around the country to develop a robust network of online resources to assist people in need, including www.lawhelp.org Web sites in twenty-eight states. Collectively, this network of Web sites provides millions of visitors each year with information about free legal aid programs in their communities, answers to questions about legal rights, court information, links to social service agencies, and more. However, some users of these Web sites lack the legal knowledge to know what information is most useful in their situations. Others are inexperienced Internet users and are unsure how to conduct online research on their own.



To help these users find relevant and useful information to protecting their legal rights, Pro Bono Net, in collaboration with local service partners, developed LiveHelp. LiveHelp is a chat-based, real-time support service that helps persons find self-help resources and referral information on legal services Web sites. Implemented with LivePerson software, the service allows visitors of the Web site to click a button, connect with a trained specialist, and ask for information about a legal problem. The specialist then provides visitors

with a link to the appropriate information or escorts visitors to relevant resources on the site. If a specialist is unavailable, visitors can choose to leave a message and receive information via e-mail. In situations where legal advice may be needed, the specialist will inform visitors about how they can apply for legal services or contact a lawyer referral service.

The first two LiveHelp initiatives were launched on MontanaLawHelp.org and IowaLegalAid.org in 2006, with pilot funding from the Legal Services Corporation's Technology Initiative Grant program. With replication support from Pro Bono Net, LiveHelp has been replicated in six other states as well as Ontario, Canada.

A wide variety of persons staff LiveHelp projects—AmeriCorps VISTA volunteers, law students, paralegals, interns, attorneys, and staff members. In fall 2008, LiveHelp was implemented on TexasLawHelp.org as a rapid-response tool in the aftermath of Hurricane Ike. More than forty law firm attorneys, who were recruited by the Houston Volunteer Lawyers Program, volunteered to staff LiveHelp and respond to urgent questions about FEMA appeals and other disaster-related issues.

LiveHelp offers an innovative avenue for pro bono work by corporations or law firms. Typically individuals staff LiveHelp for one to two shifts a week and can be engaged in non-LiveHelp work during the course of their shifts. LiveHelp specialists can be located anywhere and provide LiveHelp assistance at times convenient to them. The system also can route queries to attorneys based on substantive area, language proficiency, location, or other criteria. For example,

in early 2010, LawHelp.org/ NY will launch bilingual English and Spanish LiveHelp assistance with the help of statewide volunteers.

To date, LiveHelp has assisted more than 5,000 persons in need. An evaluation of the LiveHelp pilot initiatives found that LiveHelp significantly increases

the extent to which visitors are able to find the information and the speed with which they are able to find such information. LiveHelp can increase users' understanding of their legal problems and of what needs to be done to solve them.

In addition to LiveHelp, Pro Bono Net offers a range of other

tools for attorneys interested in doing pro bono work. To find volunteer opportunities in your area and resources to support you, visit www.probono.net.

Liz Keith is a LawHelp program manager at Pro Bono Net living in the San Francisco Bay area. She can be contacted at lkeith@probono.net.

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JAN. 5	 ANATOMY OF BUSINESS LAW PART I: TIPS AND TERMS FOR CORPORATE DRAFTING
JAN. 14	 FUNDAMENTALS OF MEDICAL STAFF AND PEER REVIEW
FEB. 1	50TH ANNIVERSARY OF THE GREENSBORO FOUR SIT-INS
FEB. 4	 STARK LAW BASICS
FEB. 4-6	2010 ABA YLD MIDYEAR MEETING ORLANDO, FL
FEB. 15	2010-2011 YLD LEADERSHIP APPOINTMENT APPLICATION DEADLINE
FEB. 24-26	WHITE COLLAR CRIME 2010 MIAMI BEACH, FL
MAR. 2	 ANATOMY OF BUSINESS LAW PART II: NON-PROFIT ORGANIZATIONS
MAR. 11	 ANTI-KICKBACK LAW BASICS

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Gideon and Civil Cases

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Nationwide efforts to afford the right to counsel in civil cases have occurred through the work of NCCRC and others. The ABA House of Delegates unanimously adopted a 2006 resolution calling on federal, state, and territorial govern-

ments to provide a right to counsel at public expense where basic human needs are at stake. An Alaska state trial court ruled that an indigent parent in child custody proceedings has a right to counsel when facing a represented opponent, and the Washington Court of Appeals found a right to counsel for children in

truancy cases. State high courts in Illinois, Iowa, North Dakota, and Oregon have found a violation of their state constitutions' equal protection clauses where counsel is denied in certain cases involving termination of parental rights. Louisiana and Alabama recently extended their statutory right to counsel in cases involving termination of parental rights to cases where the state is not a party.

The lack of a presumptive right to counsel in civil cases can test the belief of the fundamental fairness of our legal system. As Hugo Black once wrote for a Supreme Court majority, "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." To learn more about the civil right to counsel movement and how to become involved, visit <http://civilrighttocounsel.org>.

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Aspiring to Inspiring

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we were worth writing about, and then used the articles in our promotional packets. We received endorsements from prominent politicians. But even after seeing the effects of the momentum, the trick is to *keep it going*.

5. Know when to say no.

Saying "no" is much easier said than done, but it is key to not becoming overwhelmed and burned out. Have clear priorities that further your goals and be wary of deviating from them. There is always room to change your priorities, but the slippery slope of saying yes to too many things will leave you feeling that you have been successful in none.

6. Evaluate, evaluate, evaluate.

Constantly evaluate your progress. Know what's working and what isn't. Be willing to redirect your path when necessary. Rather than trying to compensate for a weakness,

focus on your strengths and use them to move forward.

7. Surround yourself with inspiration.

Know what makes you happy personally and make room for it. There will be many hard days when you question everything. Couple that with the often emotionally draining legal work, and things can become dreary pretty quickly if you let them. When things seem overwhelming, consult your mentors or other sources of inspiration for support. I found that the book *Naked Idealism* by Dave Wheitner infused me with motivation on the doubtful days.

You can find out more about the work the Community Justice Center does, and how to donate, on our Web site at www.nj-communityjusticecenter.org or friend us on Facebook at CJC Trenton!

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