

## Working for a Sort-of *Gideon*, on the Civil Side

by Paul Marvy

And you may ask yourself—well...how did I get here?  
Letting the days go by/let the water hold me down  
Letting the days go by/water flowing underground  
Into the blue again/after the money's gone  
Once in a lifetime/water flowing underground.  
And you may ask yourself... How do I work this?

— *Talking Heads* (1984)

As do most novice lawyers, I quickly got the news that our legal system can be a treacherous place for those with little legal training or experience. Along with several of my own not-to-be-repeated experiences as a neophyte public defender, I viscerally remember watching a civil *pro se* defendant go down in flames in a case that I believe I could have won. While I am now growing out of the handicaps associated with being a young lawyer, I have become increasingly aware of the great many self-represented litigants who are permanently at a serious disadvantage in our justice system. In fact, it is my job to help change this sad fact.

Great numbers of our state's civil litigants involuntary share the plight of the *pro se* defendant I had watched, simply because they are too poor to afford legal help. As a consequence, in serious matters, such as housing, access to medical care and even child custody, substantial numbers of people lose important rights regardless of the underlying legal merits of their case. I now coordinate some portion of the mounting storm of efforts to end this morally awkward situation – a position that certainly qualifies as the non-traditional legal work that is the theme of this issue of *De Novo*, and a position I had a hard time imagining until some months into the work.

In retrospect, I had no idea what I was doing when I started law school. I had left a cushy but sometimes boring job in San Francisco working on research studies such as “*Continuity and Change in Young Adult Drinking Behavior: Evidence from the National Longitudinal Survey of Youth*.” I came north to my now-wife’s home state, hoping to find work that furthered social justice on a broad scale, that allowed me some autonomy, that provided compelling intellectual puzzles and co-puzzlers, and that paid. And for reasons that now elude me, law school seemed a good way to get there. In short, I was dreaming.

A chance encounter with a public defender who posed abundant quantities of heart, mind, and good sense led to three years of working for The Defender Association, first as an intern working on systemic change efforts, and later as a staff attorney defending accused misdemeanants. Not dreamy work to be sure – but close, like the fuzzy recollections one gets in the morning. Then, out of the blue, I got the chance to test whether the imagined scenario that had prompted my career change was really what I wanted.

Over the last few years, a remarkable group of advocates from across Washington have explored how to address the glaring unmet legal needs of the state’s poor. Some began examining the legal bases of a right of effective access to the courts. Convinced such a right exists and that it includes a right to counsel for certain civil litigants, they started discussing strategies for obtaining recognition of that right. With good luck and good timing at which I still marvel, in February of last year, I was offered the chance to participate in this effort as project coordina-

tor for the Committee for Indigent Representation and Civil Legal Equality (“CIRCLE”).

To some, the idea of a civil right to counsel may resemble pie in the sky. That chimerical resemblance has more to do with the parochial nature of our legal experiences and educations than anything inherent in the concept itself. At common law, the right to counsel in civil cases was securely in place by at least 1494. Today, some 50 nations, including the entirety of Europe, currently provide for appointed counsel in a range of civil cases as a matter of right. And at home, a broad range of state and federal law recognizes that individuals have a right of access to the courts, and that the judiciary has a responsibility to ensure the court system is fair, open and equitable.

Armed with this knowledge, and the gut-level recognition that a legal system unusable by large segments of the population is simply not a “justice” system, a growing chorus is now urging legislatures and courts to respond to the appalling gap between the civil legal needs of the poor and the services available to assist them. The president of the American Bar Association has called for recognition of a civil right to counsel, as have prominent sitting state and federal judges. Locally and nationally, advocates are developing strategies to translate these voices into exercisable rights.

Being among these strategists is an exciting, and sometimes strange, position. Occasionally, I require a good hard pinch to remind myself I’m here, just as I used to when the judge would ask, “Response, counsel?” and I’d be forced to remember I was, indeed, a lawyer. As is often the case in public interest work, I the lawyer/advocate have benefited tremendously from being privileged to do it. I am also very optimistic that soon this work will bear fruit for its intended beneficiaries – the thousands of individuals who are routinely denied meaningful access to the justice system simply because they are poor.

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affluent enough to afford an attorney. The rejection of this rule by the WYLD Board of Trustees, and the subsequent rejection by the WSBA Board of Governors, does not mean that the legal needs targeted by the proposed rule have disappeared. Rather, as Mr. Davis and Mr. Brangwin explain, the WYLD is in a position to take a leadership role in addressing these legal needs through alternative programs, and *De Novo* will continue to provide you information about the efforts undertaken in this regard, and, of particular importance, how you can help.

As always, I invite you to continue sharing your ideas and opinions with the *De Novo* readership through your submissions. My hope is that you find the following stories of these young lawyers, as well as the discussion of the best ways to address significant legal needs of low-income people in this state, to be thought-provoking and inspiring. Perhaps you may even gain a different perspective on the answer to your own occasional questioning of why you entered this profession in the first place.

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