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THIS MONTH

Keys to Successful Business Development
By Brad Nahstadv & C. Barry Montgomery
Advice to Women Attorneys of Color
By Juanita C. Hernández

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 right 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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JAN. 14	☎ FUNDAMENTALS OF MEDICAL STAFF AND PEER REVIEW
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FEB. 4	☎ STARK LAW BASICS
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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>.

John Pollock is the ABA Section of Litigation's Civil Right to Counsel Fellow. He works for the Public Justice Center, which is in Baltimore, Maryland, and can be contacted at jpollock@publicjustice.org.



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 Whitner 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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