

Renewing Civic Engagement: Lawyers and Civil Society

By William C. Kelly, Jr.

What has happened to lawyer civic engagement? There are at least hundreds of thousands of lawyers who contribute to their communities in material ways every month. But I wish to explore the growing sense that a greater share of lawyers were once engaged more deeply in our communities and our politics. What happened? I am always suspicious of exhortations that seem to recall a golden age. Usually other less appealing features of a purported golden age escape us when we look back. In the case of the legal profession, for example, deep gender, race, and religious biases were pervasive facts. Nevertheless, I believe that over 50 years there has been a falling off in the civic engagement of lawyers, or at least of lawyers in large institutions—large law firms, corporations, government, and universities.

The usual explanation is that the relentless billing pressures leave young lawyers with little time for their families, and with much less time to participate in the community. We also know that college and law school debt weigh heavily in favor of young lawyers seeking high paying jobs. I agree that these are important factors, but the lack of employer support is something that some corporations and law firms have largely overcome. Many institutions have improved their rhetoric and incentives. For example, Latham & Watkins, where I practiced for 25 years, went from having a constrained program to being a pro bono powerhouse.

The work of the Pro Bono Institute, focused coverage by *The American Lawyer*, and ABA President Michael Greco's "renaissance of idealism" initiative all show promise of converting more large firms and businesses to the fold. *The Law Firm and The Public Good*, a small book produced nearly a decade ago by The Governance Institute and The Brookings Institution, catalogues some of

the reasons why, beyond the public interest, it is in the interest of lawyers and their employers to encourage pro bono and civic engagement.

Where Are the Small-Town Lawyers Going?

For some lawyers, a compounding factor worth noting is the increased migration of lawyers away from areas where they grew up. Schooled in a new city and narrowed by law school (a process well described by Robert Granfield in *Making Elite Lawyers*), they are often then pushed into narrow practice areas by their employers and their clients. This applies as much to government lawyers and academics as to law firm and corporate lawyers. Unsurprisingly, as a result many lawyers find themselves isolated from their communities. This is classically true in Washington and New York and true to a lesser extent in many other large cities.

In the 1950s and '60s, I grew up in Minnesota, where lawyers were expected to become involved in community work. My father went to the University of Minnesota and its law school. He and everyone else knew that Walter Mondale would be a public servant. Other contemporaries, including Agriculture Secretary Orville Freeman and Congressman and Mayor Don Fraser, were examples of an earlier generation of Minnesotans with deep local roots who attended local law schools and migrated into politics.

I had two early mentors in the importance of community involvement. Early in my career I was a law clerk for Supreme Court Justice Lewis Powell, who was deeply involved in the Richmond community and launched the pro bono culture at what is now Hunton & Williams. He was also one of Michael Greco's predecessors as ABA president and participated in national commissions. Justice Powell always urged me to go back to Minnesota

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(or, if not there, to his old firm in Richmond). Before that, I clerked for Judge Frank Coffin of the First Circuit Court of Appeals, who came from a civic-minded family and went to college in Maine. He returned from Harvard Law School to Lewiston, Maine. In part because of his history in the community and in part because of his talent and ambition, he was a natural recruit into a wide array of civic and political organizations. He went on to serve with distinction in Congress, the Kennedy and Johnson administrations, and the judiciary.

I do not believe this practice occurs to the same extent that it once did. Lawyers are now recruited by institutions in major markets far from home. Their daily companions are other disconnected lawyers and clients spread around the globe. No high school classmate or family friend is beating on the lawyer's door to recruit him or her to take on a community role.

In the background is a societywide phenomenon persuasively documented in Robert Putnam's *Bowling Alone*. Participation in civic and other group activities of almost all types rose through 1970 or so and then began a sharp decline. One revealing chart shows that membership in professional associations, including the ABA, began a sharp drop on a percentage basis in about 1975. Everything from work pressures to sprawl to generational changes and the rise of television are thought to share the blame.

What I take away from these trends in the profession are that most lawyers now have to make affirmative efforts to become involved in their communities, whether local, national, or international, and that their employers must create an enabling environment. The good news is that there are opportunities everywhere and that those opportunities can grow out of law practice, whether in a firm, the government, a corporation, or elsewhere.

What Is Happening in Civil Society?

As we think about how to re-engage more lawyers in the life of citizen organizations, we need to take into account what is happening in the world of those organizations.

First, their number keeps growing. Nonprofits and other civil society organizations (CSOs) are burgeoning around the world. In India, for example, there are now a million citizen organizations. In Brazil, the number has risen in three decades from hardly any to 400,000. Even in the United States, the global incubator of CSOs, the IRS reported its registrations of tax-exempt organizations jumping 60 percent between 1989 and 1998. With that growth comes a burgeoning need for legal services, most of them pro bono.

Apart from the increase in numbers, there is a newly competitive environment for funding and staff. Endless foundation support grants for everyone who asks are on their way out. Witness recent rumors about the Fannie Mae Foundation, a mainstay of community development corporations. Venture philanthropy is the order of the day. To hire and retain top quality staff, to innovate as a prerequisite to growing or even to staying alive, CSOs will need pro bono legal services. Often thin on broad-gauged executives, many will also need community-spirited lawyers who can bring to the collaboration their experience, business judgment, and contacts.

Moreover, we are witnessing a historic convergence between the civil society and business sectors, reflected in everything from the adoption by nonprofits of more rigorous accounting practices and a businesslike approach to achieving their missions to proliferating joint ventures between for-profits and nonprofits. In the April 28, 2005, issue of the *Journal of Philanthropy*, Jeff Schwartz, the CEO of Timberland, opines that working together the sectors "can do more than address social challenge. We can resolve social challenge if we have the strength to [clear] the path and create true collaborative partnerships." Nonprofits will not survive in this environment unless they have the human capital to be full participants, and volunteer lawyers can help them reach that point.

What Opportunities Exist for Lawyers?

To reconnect lawyers with civil society, we need to work on lining up lawyers with the burgeoning need for community legal services. A principal avenue is

through pro bono work. The work itself often provides a direct link into the community, whether at shelters for the homeless or nonprofit child care centers. At least as important, though, is the opportunity it offers, even to young lawyers, to play a larger role in a community group, often as an informal business advisor or board member.

For example, the D.C. Bar has developed what it calls the Community Economic Development Pro Bono Program. The central idea of the program is to match transactional law firms with community development corporations needing business law advice. An arrangement is established in which the firms agree to serve as general counsel to the clients. Very often, a community organization has few or only one employee with a broad perspective.

Latham's relationship with our first client under the program grew from disconnected document drafting and scattered workouts to a real partnership. Over time, we helped our client think through its economic development strategy for part of the Anacostia neighborhood in Washington, D.C. We used our experience and contacts to offer new ideas and to help the client make business judgments. After a few years, I passed on principal responsibility to a young lawyer, for whom this relationship became his main outside commitment. Of the matches made by the program, my guess is that more than 20 involve this sort of ongoing partnership between law-firm and client.

In whatever institution a lawyer practices, there are senior people who can help find opportunities for meaningful volunteering in the community. To use the terminology of the day, these people are nodes in their networks. Partners in my firm have helped younger lawyers become involved in Film Aid; the SEED School, an innovative boarding school for at-risk kids that is looking to set up a second campus; the Thurgood Marshall Academy, a charter school; Change/All Souls, a church and community group intent on preserving affordable housing in D.C.'s Columbia Heights Neighborhood; UNITUS, a global organization raising capital for microlending

institutions; and many more. I know that my firm is far from unique in helping young lawyers find these opportunities.

I have gone from being a pro bono lawyer to being a user of pro bono services. I took early retirement from Latham & Watkins in 2003 to help set up a group called Stewards of Affordable Housing for the Future, or SAHF. SAHF is a 501(c)(3) organization consisting of seven national housing nonprofits, four of whom were longtime clients of mine. Collectively, they own more than 65,000 apartments in 47. The mission of SAHF is to preserve privately owned affordable housing. As the properties have reached the end of their low-income restricted use periods, owners have begun converting them to market rate housing, exacerbating the shortage of affordable rental housing in strong markets such as the Northeast, Chicago, and California. Latham & Watkins now does pro bono work for SAHF, as do DLA Piper Marbury and Foley & Lardner. These firms are becoming my partners in crime, handling large transactions and policy matters with teams of lawyers.

Another example of a creative recruiter of lawyers for community work is The Appleseed Foundation. Appleseed and its dozen or so local affiliates, all founded by lawyers, take on advocacy roles on public policy issues ranging from voting discrimination to home rule in D.C. to housing issues. The volunteers come mostly from law firms. This is a sort of hybrid pro bono work, with aspects of client direction but also elements of community leadership. The scope of the work goes well beyond drafting and filing court documents to active involvement in the most pressing issues of the community, involving regular contact with community leaders and government officials.

The matchmaker can have a global scope. Ashoka Innovators for the Public finds social entrepreneurs around the world, elects them as Fellows, gives them three-year stipends, and develops collaborations. The U.S. program is one of the most recent, but there are now about 25 U.S. Fellows. Ashoka sees a constant flow of pattern-changing ideas and opportunities to contribute and, to

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return to my earlier point, opportunities to find meaningful roles for younger lawyers. A new network that Ashoka is calling Advocates for Social Entrepreneurs will be a global group of lawyers willing to provide pro bono and strategic help to social entrepreneurs. The effort is being launched first in India, then in Brazil and later in the year, in Poland, Canada, and the U.S. There will be a steering committee and part-time staff in each country to make the matches, and www.probono.net will set up multilingual websites for the sorts of work products needed to represent social entrepreneurs.

As you no doubt noticed, none of this work can take place without senior lawyers. Much is now afoot to help public-spirited lawyers develop second and third careers. For example, the D.C. Bar's Senior Lawyer Public Interest Project, spearheaded by Douglas Robinson of Skadden Arps, is looking to enable lawyers to work full-or part-time for public interest organizations. The International Senior Lawyers Project, founded by Robert Kapp of Hogan & Hartson, Anthony Essaye of Clifford, Chance, and a few other D.C. and New York lawyers, seeks to do the same for international pro bono matters. ISLP volunteers are working in India, South Africa, Nepal, and twenty other countries on rule of law issues, systems for getting affordable medical devices to the global South, and helping newly empowered public defenders in the Balkans understand what it means to be real advocates for defendants. Again, the idea is not just to do pro bono work narrowly understood, but to use the perspective a lawyer has developed over years of practice to offer pro bono strategic advice to NGOs and governments. This is personal development for the lawyers and not just charity.

Matching Lawyers with Opportunities

There is a useful distinction between representing an individual pro bono on a one-time basis and representing a CSO over a period of years. The mechanisms for matching lawyers and clients may be very different. My focus and experience involve CSOs, but I do have some thoughts.

One lesson from experience is that it is crucial to forge a good match. Hours invested up front pay major dividends over the years. A lawyer whose work is wasted or a client whose pro bono lawyer is unresponsive or has a cultural tin ear is unlikely to come back for more. A good match means a value proposition that attracts both sides, allowing personal development for the lawyer as well as service to the client. This is about more than taking on a single assignment. A major commitment requires both parties to do due diligence. Achieving a good interpersonal fit and a clear understanding of the scope and nature of the work often requires an intermediary to get right up front. There should be, and probably are, dozens of intermediaries like the D.C. Bar, ISLP, and Advocates for Social Entrepreneurs, and the most important step we can take is to create many more of them, focused on specific geographical areas, client fields, and categories of volunteer lawyers.

Having painted the ideal picture of careful matching, I would add that in this age of technology, it would also be helpful to have a central referral site, maybe hosted by the ABA. Such a site should not mimic most bureaucratic sites, where the user has to drill down through unfamiliar categories to locate anything useful, but should follow the Google model, where a user can readily find ideas and links for possible referrals.

There is no lack of opportunity for lawyers to be actively involved in their communities or models for that involvement. The real question is how to cause each employer to reach a "tipping point" in its corporate culture and then how to cause the whole field to do that. It is on this point that Michael Greco's "renaissance of idealism" initiative offers grounds for hope. ■

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Voice of experience

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