

Citizen Lawyers—The Past, Present, and Future of the Legal Profession

by John T. Baker

For as long as I can remember, I have believed that members of the legal profession share a common commitment to something greater than their own self-interest—a professional ethos.¹

—Hon. Marcia S. Krieger,
U.S. District Court, District of Colorado

Judge Marsha Krieger shares a common vision of the legal profession with generations of “citizen lawyers” such as Thomas Jefferson, John Adams, Abraham Lincoln, Clarence Darrow, Thurgood Marshall, Sandra Day O’Connor, Ruth Bader Ginsburg, and numerous others. Citizen lawyers are judges, private lawyers, legal educators, and public officials who have willingly shared their time, skill, and talents to promote the common good in their communities. At one time or another, each has sacrificed self-interest in favor of the public good. Their work in the law is not just a way to make a living—it is a “calling.”

Tradition tells us that citizen lawyers made the legal profession a noble one. At various times in history, lawyers have been acknowledged for their efforts to improve society through selfless public works. Civic responsibility and civic involvement traditionally were the hallmarks of practicing law. The public admired lawyers and respected their work.

During the last quarter of the 20th century, this admiration and respect for lawyers declined sharply. Lawyers came to be seen as greedy and self-interested.² Some commentators attribute the decline in repute and change in perception of lawyers to a general distrust of government and legal institutions brought on by the Watergate scandal³ and the socio-political issues surrounding the Vietnam War.⁴ Some observers note that there was a simultaneous decline in the number of citizen lawyers during this period in history.⁵

There is good news at hand: the citizen lawyer is making a comeback! Anyone attending a “young lawyers” meeting at any local bar association will notice hopeful signs of an increase of civic responsibility and civic involvement in the profession. The young lawyers in the Colorado Bar Association (CBA) and in local bars around the state are demonstrating that they are motivated to lead the charge.

This article calls on every member of the legal profession to personify the citizen lawyer ideal in their everyday lives. It’s time to identify, recruit, and unite with the next generation of citizen lawyers.

What is a Citizen Lawyer?

Defining “citizen lawyer” can be difficult, in part because its meaning changes with the times. Taylor Reveley, former Dean of William and Mary Law School put it this way:

During the Revolutionary and early National Eras in our country, serving in government was what people like Thomas Jefferson and George Wythe had in mind when they began training lawyers at William and Mary to help sustain the new republic. Today when we talk about citizen lawyers, we often focus on *pro bono* representation, helping people or institutions with legal needs but with insufficient money to pay for legal assistance. While the concept of the citizen lawyer certainly includes work in the government and *pro bono* representation, [] it also ranges far beyond these two ways of meeting a lawyer’s civic responsibilities.⁶

Throughout the short history of the United States, lawyers in every type of practice have been able to work for the common good in one way or another. Lawyers have shown their civic responsibility through active community involvement. Government lawyers, public service lawyers, and lawyers in private practice have found time to be citizen lawyers. Fulfilling civic responsibility through community involvement—not simply through position or title—is the key to defining the citizen lawyer.

The various definitions of citizen lawyer have always included at least two main components: civic responsibility and civic involvement. The civic responsibility part of being of a citizen lawyer has traditionally entailed adherence to the general professional requirements of the oath taken by all licensed lawyers in Colorado. It also has called for adherence to the general spirit and letter of the Colorado Rules of Professional Conduct. Some commentators have suggested the need for more specific guidelines for the citizen lawyer. They suggest the guidelines would include such basic tenets as never interpreting the law for a client if the interpretation



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“prevents society from achieving its democratically defined, legally enacted goals. . . .”⁷ As Judge Krieger suggests in her article “A Twenty-First Century Ethos for the Legal Profession,” civic responsibility for the citizen lawyer must embody a profession-wide ethos of a commitment to the rule of law.⁸

The second component of the citizen lawyer—civic involvement—means ethically representing clients and adhering to civic responsibility. These are practical aspects of being a lawyer, but do not present a complete definition. Citizen lawyers throughout history were involved in their communities. Some gave of their fortunes; some gave their lives. They were out of their law offices. They dug in and got their hands dirty, while working shoulder-to-shoulder with fellow citizens on public causes and projects.

A Brief History of the Citizen Lawyer

The term “citizen lawyer” traces its roots back to the American Revolution. In 1779, Governor Thomas Jefferson helped George Wythe establish a law school at the College of William and Mary “to produce what we would now call citizen lawyers: lawyers who will use at least part of their legal training and experience to work for the common good.” Producing citizen lawyers was the initial intent of the nation’s oldest law school, and it endures today.⁹

In those early days of the young republic, the citizen lawyers distinguished themselves as revolutionaries, statesmen, and judges. John Adams, Thomas Paine, Thomas Jefferson, John Marshall, and James Monroe were among the first citizen lawyers.¹⁰ This trend of “public-minded” lawyers working mainly in the public sector

continued into the early 1800s. They were the statesmen and political leaders of the times.

Starting in the 1830s and continuing through most of the 19th century, there existed a new type of citizen lawyer. These citizen lawyers worked on cases and causes as lawyers in private practice. Lawyers such as Abraham Lincoln, Daniel Webster, Rufas Choate, and Clarence Darrow, while representing business clients in private practice, took on cases involving social change issues. For example, as late as the 1870s, private lawyers “who appeared most often for railroad clients in court appeared almost as often for individuals suing the railroads.”¹¹

The era of private practitioner as citizen lawyer was short-lived. During the late 1800s, some business clients insisted on exclusive loyalty from their private law firms and denied their lawyers the independence of working on cases and policy contrary to or outside the clients’ interests. The railroads, the land companies, and the manufacturing companies no longer allowed their lawyers to “work for the common good” if that work conflicted with the interests of the client.¹² Consequently, the number of private lawyers doing public interest activities declined.

The “public-minded” citizen lawyers rebounded during the Progressive Movement in the early 20th century. With the support of forward-looking business clients, lawyers such as Louis Brandeis, Elihu Root, and Harlan Fisk Stone fought in the public arena for social and labor reforms, including child labor laws, utility rate regulation, and anti-corruption measures on the order of merit civil service reforms.¹³

Then, the culture of the legal profession changed again. During the second half of the 20th century, the work of the citizen lawyers increasingly was performed by attorneys working for public interest organizations such as the NAACP, the Anti-Defamation League, Common Cause, Public Citizen, the Federalist Society, the Cato Foundation, and the Heritage Foundation. Lawyers in private practice were inclined to cede the public-minded work to a new breed of “public interest lawyers.”¹⁴ This reliance on the public interest lawyer to do the work for the common good has continued into this new century, right up to the present time.

Today, as the number of lawyers entering the profession increases, the number of lawyers in private practice engaging in public-minded projects is decreasing. This decline is attributed to the needs of those private clients who demand loyalty from their lawyers. At times, the interests of some private clients may be con-

trary to the public interest.¹⁵ For some lawyers, the time demands of their private clients exclude meaningful *pro bono* work or other civic activities.¹⁶

Results of the Decline of Citizen Lawyers

During this decline in citizen lawyers, the greed, self-interest, and lack of professionalism of some lawyers have created a stereotypical caricature for all lawyers: the “Rambo” lawyer, who does the bidding of his or her clients with “scorched-earth” courtroom tactics and through bullying.¹⁷ Incivility is a tactical strategy for these lawyers. Behaviors usually reserved for the locker room increasingly began to manifest in the courtroom, in depositions, and front and center on the nightly news.¹⁸ The public began to believe the profession mostly comprised lawyers who serve only the private interests of clients, not the public good.¹⁹ This has resulted in a flood of lawyer jokes, disparaging lawyer movies or television shows, and at times downright public hostility toward the profession.

The Bar Associations Fight Back

For at least the last twenty years, every CBA president has devoted at least one monthly column to a related concept of professionalism. Presidents have urged, cajoled, and demanded that lawyers should behave, act more civil toward one another, and do *pro bono* work. For example, in 1997, after reciting a wonderful story of a “Rabbi’s Parable,” CBA President Miles Cortez urged all lawyers to adhere to high personal standards and to show respect for our colleagues in the Bar and Bench. He said: “Each of us can make a contribution to such an environment. Each of us can raise our level of professionalism and civility a notch or two.”²⁰

Likewise, in 2005 Judge Steve Briggs warned us against lock-step adherence to zealous advocacy. He suggested that we need to “stand up to clients who want us to win for them at all costs”; to “educate our clients and the public about our real duties”; and to “engage in conduct at the office that reflects our morals and values at home.”²¹

In 2008, Bill Walters wrote one of his columns on the scourge of the uncivil “Rambo” lawyer. President Walters gave all of us hints

on how to cope. He said: “The only thing you can really control (a very difficult concept for those of us who have our own ‘control issues’) is your own behavior.”²² All three CBA presidents have practiced civic responsibility and involvement in their communities, thus making them exemplary citizen lawyers.

CBA professionalism committees have been formed to improve the image of lawyers within the profession itself and with the general public. The CBA and the Denver Bar Association (DBA), under the leadership of DBA Immediate Past President Mark Fogg, recently produced video vignettes on common professionalism issues to get out the word to lawyers about professionalism. Committee members are wonderful role models of citizen lawyers trying to improve their profession. This civic responsibility is the same as that shown by the best citizen lawyers throughout history.

Time to Get Our Hands Dirty

Unfortunately, much of the admirable work of these individual leaders and bar association committees on professionalism has gone unnoticed by the public. It’s time to go public—that is where the “civic involvement” part of being a citizen lawyer happens. Every lawyer—transactional, trial, appellate, or government lawyer; in-house counsel; and law professors—needs to get out into the community and demonstrate a commitment to civic responsibility through action and involvement.

Volunteer opportunities for lawyers abound. Those interested in politics and public office can carry on the citizen lawyer tradition of Adams, Jefferson, and Lincoln by serving on school boards, on city

councils, or on local planning boards. Trial lawyers can take on a *pro bono* case through the Metropolitan Volunteer Lawyers or other *pro bono* opportunity provider. Appellate lawyers and those interested in policy work can volunteer to participate in projects from the Colorado Lawyer's Committee, the Center for Law and Policy, Mountain States Legal Foundation, or the Heritage Foundation. Environmental organizations on all sides of the issues need volunteer lawyers.

Opportunities for bar association work are almost unlimited. Citizen lawyers can serve on a Bar committee or work with the CBA or DBA Young Lawyer's Division (YLD) on fundraising and charity work. They can give legal advice to citizens through LawLine9 and other such call-a-lawyer programs. They can coach a team participating in the high school mock trial program or mentor a young lawyer through the bar association's mentoring programs. Denver area lawyers can serve as substitute teachers in Denver Public Schools. It's possible to volunteer at a local school to teach a "So You Are 18" or a "Street Law" seminar. Public speakers can volunteer for the speaker's bureau of the *Our Courts* program to extol the virtues of the court system.²³ Local charities, 501(c)(3) organizations, and other civic organizations need lawyers to serve on their boards and advise them on legal concerns. Churches, synagogues, and temples always need lawyers to help with legal problems or projects.

Citizen lawyers can volunteer for projects unrelated to law practice—and there are unlimited opportunities. They can mentor an underprivileged school student at Denver Kids, Inc.; Boys & Girls Clubs around the state; or Big Brothers Big Sisters of Colorado. Lawyers can feed the hungry at a volunteer soup kitchen or help collect food and stock shelves at a food bank. They can stay in shape by running in a race to raise money for local charities, or by riding a bike in an event such as with the "Wheels of Justice."²⁴ Lawyers concerned about work-life balance may want to stay closer to home and become involved in their own children's lives through coaching a soccer team, volunteering for the PTA, or helping out in the classroom.

There is Hope!

There is real hope out there. The CBA YLD and the local bar YLD committees are setting fine examples as citizen lawyers. The

YLD lawyers are volunteering for numerous charitable causes. There is an entirely new generation of citizen lawyers accepting responsibility and getting involved in their cities and towns. All of us—novices and seasoned legal professionals alike—need to follow their lead and join the ranks of the citizen lawyer. Senior partners or supervisors need to give young lawyers the freedom and time to get involved in the community—and then participate alongside them. Let's make this a noble profession once again—and let's do it together!

Notes

1. Krieger, "A Twenty-First Century Ethos for the Legal Profession: Why Bother?" 86 *Univ. of Denver L.Rev.* 865 (2009).
2. Galanter, "The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Public Discourse," 66 *Univ. Cin. L.Rev.* 805 (1998).
3. See "The Watergate Story," *The Washington Post*, available at www.washingtonpost.com/wp-srv/politics/special/watergate.
4. Krieger, *supra* note 1 at 876.
5. Friedman, "Some Thoughts about Citizen Lawyers," 50 *Wm. & Mary L.Rev.* 1153, 1160 (2009).
6. Reveley, "The Citizen Lawyer," 50 *Wm. & Mary L.Rev.* 1309, 1317 (2009).
7. Rubin, "The Citizen Lawyer and the Administrative State," 50 *Wm. & Mary L.Rev.* 1335 (2009).
8. Krieger, *supra* note 1.
9. Reveley, *supra* note 6 at 1309.
10. *Id.* at 1316.
11. Gordon, "The Citizen Lawyer—A Brief History of a Myth With Some Basis in Reality," 50 *Wm. & Mary L.Rev.* 1169 (2009).
12. *Id.* at 1190.
13. *Id.*
14. *Id.* at 1200.
15. Moliterno, "A Golden Age of Civic Involvement: The Client-Centered Disadvantage for Lawyers Acting as Public Officials," 50 *Wm. & Mary L.Rev.* 1262 (2009).
16. Friedman, *supra* note 5.
17. Kanner, "Welcome Home Rambo: High-Minded Ethics and Low-Down Tactics in the Courts," 25 *Loy. L.A. L.Rev.* 81 (1991).
18. See *Lee v. American Airlines*, 93 F.Supp.2d 1322, 1324 (S.D.Fla. 2000) (comments of Federal District Judge Middlebrook).
19. Fleming, "Colloquium: What Does It Mean to Practice Law in the Interests of Justice in the Twenty-First Century?" 70 *Fordham L.Rev.* 1699, 1714 (2002).
20. Cortez, "The Rabbi's Gift," 26 *The Colorado Lawyer* 9 (April 1997), available at www.cobar.org/tcl/tcl_articles.cfm?articleid=1682.
21. Briggs, "The Myth and Mischief of Zealous Advocacy," 34 *The Colorado Lawyer* 33 (Jan. 2005), available at www.cobar.org/tcl/tcl_articles.cfm?articleid=4009.
22. Walters, "Dealing with an Uncivil Opponent—Finding the High Road," 37 *The Colorado Lawyer* 5 (Sept. 2008), available at www.cobar.org/tcl/tcl_articles.cfm?articleid=5694.
23. For information about the sponsored by the Colorado and Denver Bar Association Public Legal Education Department, contact Carolyn Gravit at cgravit@cobar.org or Meghan Seck at mseck@cobar.org.
24. To find out how to participate in future "Wheels of Justice" charity rides, write to info@wheelsofjusticecycling.org. ■