

By TAUNYA PAINTER

Volunteering for the Vote

President Ronald Reagan called it the “second oldest profession,”¹ but some Houston Bar Association members volunteer their legal expertise to ensure not only the success of their favored candidate, but one of our greatest freedoms—the right to vote.

Although today is a cold and rainy Monday, December 11, 2000, that doesn't keep the public, the protesters, and top media brass off the steps of the United States Supreme Court. Every other day I walk by these steps on my way to work, but today is different as I walk into the highest court in the land. On this day, lawyers for George W. Bush, Al Gore and the State of Florida stand before the Court to argue an emergency appeal only three days old. Today is a day that will become famous or infamous, depending on your view of the Court's decision to intervene in the Presidential election in *Bush v. Gore*, 531 U.S. 98 (2000).

As a young lawyer, I sit in the Supreme Court in awe of the history that is made this day, the bigwigs surrounding me that I have only seen before on television, and the justices sitting behind the bench. Mostly, though, I sit in awe of the exceptional legal jousting by the attorneys that stand for the candidates. At this moment, I realize the election process is also very much a legal process.

Fast forward to the politically-charged environment of 2014 where lawyers play key roles in every aspect of the election process—fundraising, campaigning, primaries, general elections, vote counting, and recounting. While some of the high-stakes election work is billable, most of the legal work to ensure fair elections is pro bono. Recently, I had the privilege to talk with two members of the Houston Bar Association who are champions of fair elections: Philip Hilder and Marcella Burke. One is a Democrat and one is a Republican, but both volunteer their legal expertise for the same goal.

Philip Hilder

Philip Hilder has a private practice, Hilder & Associates, P.C., in the area of white collar criminal defense, internal investigations, and whistleblower rep-

resentation. Before he opened his firm, Phillip was the attorney-in-charge of the Houston Field Office of the United States Department of Justice's Organized Crime Strike Force. He also served as Assistant United States Attorney for the Southern District of Texas assigned to the Presidential Organized Crime Drug Enforcement Task Force.

One of his more famous clients since he has been in private practice was the Enron whistleblower, Sharron Watkins. "But I also assist clients with avoiding trouble," he says smiling. "Maybe that's why candidates like to have me on board. Politicians want to win. But sometimes they need more objective advice about the campaign and election laws."

So, where did it all start for you? When did you catch the "political bug?"

"My early childhood political memories weren't exactly on the Carville-Matalin drama level, but I did grow up in a politically divided household. Kids notice things like this, even at age five. My dad campaigned for Nixon and took me block walking, while my mom supported Kennedy. Mom's politics won me over, and by the time I could vote and go out myself, I was poll watching for the Democratic Party."

"I cut my political teeth in Chicago," he tells me. Now we are both smiling as we admit to admiring the now-canceled television series 'Boss' set in the middle of Chicago politics. "Chicago politics is educational on many levels, and not something I needed a law degree to do," although he admits that having a law degree proved "beneficial" to navigating the Cook County political scene.

How did you transition from street work to legal work?

"As an undergraduate at the University of Iowa, I learned the Iowa caucus procedures, which is a great notch to have in your belt for presidential primaries.

Then, at Boston College Law School, I assisted Teddy Kennedy's campaign when he challenged President Jimmy Carter for the nomination, but I was



Philip Hilder, shown in the top left of the photo behind President Barack Obama.

still very much behind the scenes. The Walter Mondale campaign for President was my 'first date,' so to speak, providing legal advice during the presidential primary. I volunteered and in short order found myself the deputy legal counsel, advising the campaign on everything from campaign finance, to Illinois primary procedures, party convention rules, and poll watching. It was 'civil war' work. We were fighting our own, not the Republicans."

What special training have you had, and how did you get it?

"On-the-job training, and a lot of self-education during non-election years. I learned federal campaign finance and federal election laws. The battleground where I've been particularly useful, though, has been in primaries. These are Democratic Party procedures on the local and state levels."

In the excitement of a campaign, do you think differently than campaign staff?

"No, and yes. Just like everyone else, I want to see my candidate win. But, when I perform legal services for a candidate or party, they are my client, and they need to be treated in that role. I have to be realistic and provide objective advice. My responsibility is to ensure that the candidate's campaign is within the elec-

tion codes. If a lawyer takes chances by bending the rules, that undermines the process and reflects poorly on the candidate."

What's the most unexpected thing that ever happened to you on an election day?

"As we all know, Barack Obama's keynote speech at the 2004 Democratic Convention in Boston catapulted him to the national stage. Remember, though, at the time, he was still a low-ranking senator from Illinois. For the 2008 presidential primary, Hillary Clinton and John Edwards were front runners. I had been involved in the

Obama campaign since February 2007. I was in Iowa for the first primary. After the polls closed, we were all at the convention center waiting for election results. I was talking with David Axelrod, Obama's chief campaign strategist, when he received a call. Axelrod was given the heads-up that one of the TV networks was projecting Obama as the winner. Immediately, Axelrod was enveloped by reporters. I strolled over to the podium to wait. In walks Barack Obama. By the time the mass of media made way for him to make a statement, I found myself right next to him."

What does a typical election day look like for you?

"Not like that!" he says jokingly, referring to the Obama encounter. Be prepared for a long day. Typically, most action occurs in the morning and then again late afternoon until polls close. Nonetheless, issues can pop up throughout the day ranging from answering a poll watcher's question to seeking a temporary restraining order to prevent voting irregularity. Of course, Presidential elections are much more intense than the off-year elections."

Was there ever a moment when you averted a disaster?

"More of a personal disaster, averted

by luck. When I was on the stage with Obama in Iowa, my phone battery was dead. Thank goodness! By the time I got off that stage and recharged my phone, I realized that I had dozens of calls from friends who saw my moment of fame. I was so crazy excited on stage, that if my phone hadn't been dead, I might have answered it not realizing I was live on national TV."

Do you have to be a political person to be involved?

"Absolutely not. An election is a legal process, similar to litigation or an administrative proceeding. If I were to make an analogy, the different elections (primary vs. general; state vs. federal, etc.) have varying rules and procedures much like the differences seen in criminal law, civil litigation, administrative proceedings and other proceedings. Early on in my career, I was involved doing mostly research and providing advice. When I worked for the government, I had to remove myself from any involvement in politics and elections. Now, that I'm back in private practice, I've become more involved. I do some fundraising, but other than that I'm focused on the area I can add the most value—my legal expertise. A lawyer at different stages of a career can have varying levels of involvement. It's a process that is easy to

try once, maybe through a local election, to see if it strikes a cord."

What would you tell attorneys that want to sign up for pro bono legal work, but are a little concerned they will get pulled into non-legal campaign work or maybe get in over their head on election law?

"They could contact one of the national legal associations—the Democratic National Lawyers Council (NLC) or the Republican National Lawyers Association (RNLA). These organizations are associated with the national parties, and they train and organize lawyers for state and presidential races on election day and any recount processes. Partnering with one of these associations will focus a volunteer's time to legal issues and will also give attorneys that are newer to the election law issues a network of more experienced attorneys."

Marcella Burke

Marcella Burke is in the litigation and appellate practice group at Akin Gump Strauss Hauer & Feld LLP. She focuses her practice on complex commercial litigation, appeals, and arbitration for a broad range of clients in the commercial, energy, financial, and oil and gas industries. In addition, with just under two years into her law practice, she has

significant knowledge and experience in election law issues assisting the Republican Party and its candidates.

By just talking with you for only a few minutes, I can sense your passion for the election process. Why do you think it is important for lawyers specifically to be involved?

"Most Americans know they have a right to vote, but may not know the extent of or limitations on that right. The right to vote is derived from a concoction of constitutional amendments, federal laws, state laws, and Democratic and Republican party rules. Needless to say, it's complex."

I read your bio, and you specialize in "complex!"

"This is one of the many reasons that I love election law. It is true, though, that the complexities of the election process are similar to the complexities in the litigation process. We help our clients access the courts by handling the complexities. That's my hope as I volunteer in the election process—to eliminate the complexities so the public can participate in the system with confidence."

Where and how did you get your start?

"In my community. Before becoming a lawyer, I did some volunteering that fa-

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