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# Strange Bedfellows? The Classic Lawyer- Statesman and the Modern-Day Biller

Can the early American lawyer-statesman coexist with the modern American legal business model under one roof? Governmental Affairs Director Christine Butcher Hayes looks at Bondurant Mixson and Elmore LLP as an example of how firms can find this balance.

BY CHRISTINE BUTCHER HAYES



**As the story goes, when Gen. James Oglethorpe settled in Georgia, he established that the colony would be “free from that pest and scourge of mankind called lawyers.”** Apparently, Oglethorpe could only keep them away for so long. The legal profession served as a backbone during the infancy of the American democratic experiment, determined to uphold the rule of law. Lawyers organically controlled the judicial branch and were frequently elected to the legislative and the executive within the federal government and at the state level.

In 1831, Frenchman Alexis de Tocqueville famously toured America to study its society and eventually publish his findings. His work, *Democracy in America*, not only foreshadowed some of the country’s greatest struggles, but also perceived the unique dynamic of the legal profession in American democracy. From Tocqueville’s viewpoint, a lawyer’s enlight-

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Emmet Bondurant, partner, Bondurant Mixson & Elmore LLP

PHOTO PROVIDED BY BONDURANT MIXSON & ELMORE LLP

enment to the framework and mechanics governing society, along with his interest in serving the popular cause, made him a natural middleman between the government and the people. In effect, the people historically entrusted lawyers with public office. Of the 45 individuals who have served as president of the United States, 26 have been lawyers. Not to mention the numerous governors, mayors, alderman, council members and association leaders that have also been members of the bar. The profession, which draws “from their work the habits of order, a certain taste for forms, a sort of instinctive love for the regular sequence of ideas” intrinsically cultivates civic leaders.<sup>1</sup>

As America has evolved since Tocqueville’s early reflections, so too has the practice of law. Back then there were far fewer lawyers, far fewer Americans and far fewer volumes of the state and federal code. As the American population swelled to more densely populated urban and suburban cities, the lawyers followed the people and their problems. Legal professionals evolved to become more specialized, both to distinguish themselves and to help clients navigate the increased complexity that accompanied a century of technological and commercial growth. As a result, “[private] lawyers are now to a greater extent than formerly business men, a part of the great organized system of industrial and financial enterprise.”<sup>2</sup> The modern economic pressure upon lawyers has lent to more time billing clients and less of it to other civic pursuits.

This begs the question: can the early American lawyer-statesman coexist with the modern American legal business model under one roof? This inquiry lends itself to a conversation I find myself repeatedly having with members of the Bar: what’s happened to the lawyers in part-time and voluntary public service? Are we billing the profession out of civic existence?

In search of a model that struck this balance, a few legal luminaries told me to take a look at Bondurant Mixson and Elmore (BME). The firm often tops the list of the highest starting salary for first year associates in the Atlanta legal market and boasts an impressive roster of former federal law



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“I have become a better lawyer through pro bono casework. There is always a new skill to perfect, or an interesting area of law to learn. I have worked with many fantastic attorneys who have taught me lawyering techniques that I had not tried before. Of course, it feels good to serve disadvantaged clients who benefit from my experience and skills, but I often come away from pro bono projects with new knowledge and experiences that help me better represent my private clients. I love it when everyone wins!”

— Kerry McGrath, Volunteer with Catholic Charities Atlanta and Immigration Equality

clerks decked with academic accolades. But notably among the firm's roster of 27 attorneys, active participation in civic life is the rule rather than the exception.

From my chat with Emmet Bondurant, it is clear that the leadership model that has developed at BME is an effect of the support and opportunity he had as a young lawyer at Kilpatrick Townsend beginning in 1962. Ambitious to get in the courtroom, Bondurant took on three pro bono matters that allowed him to argue before the then-Fifth Circuit Court of Appeals in Atlanta. His young-and-hungry initiative led to an opportunity that few lawyers ever see in their career. At just 26 years old, Bondurant successfully argued *Wesberry v. Sanders* before the U.S. Supreme Court, which held that the state of Georgia must conform its congressional districts to the principal of "one person, one vote." After that, he was hooked. The leadership at Kilpatrick continued to allow Bondurant to take on pro bono work while managing his regular billable caseload. But for taking the *Wesberry* case pro bono, he would not have had the appellate experience as such a young lawyer. The maturity Bondurant developed from the experience has shaped the culture of the firm that bears his name today.

Bondurant describes the ethos at BME as "the classically liberal law firm." The attitude is not left or right in the political sense, but rooted in a philosophy that emphasizes freedom and independence—an attorney is left to pursue his or her own interest in his or her own way. That could be through board leadership, bar leadership, pro bono work or even running for governor. Whatever the pursuit, all of his colleagues agree—the leadership comes from the top down and it starts with Bondurant.

BME does not have an annual billable hour requirement, but attorneys are expected to get the job done. That can sometimes lead to long days, or even long months, when juggling clients and other obligations. John Floyd, a BME partner, described getting to the office at the crack of dawn to squeeze in a few hours of billable work before heading down to the Fulton County Courthouse in 2015, where he spent months as part of the prosecution team in the RICO trial of 12 teachers and

administrators stemming from the Atlanta Public Schools cheating scandal. Floyd ultimately put approximately 2,400 pro bono hours into the case.

BME Partner Robbie Ashe calls it "paying his civic rent." Ashe currently serves as chairman of the board of directors of the Metropolitan Atlanta Rapid Transit Authority (MARTA). According to Ashe, he spends between 600-700 hours per year on voluntary work related to the MARTA board. Ashe says his work with MARTA has given him the opportunity to be the client and enhance his perspective as an attorney. And he enjoys it, so he finds ways to squeeze in the time.

Admittedly, some commitments may be more encompassing than others, but the firm's philosophy lends itself to dynamic options. This allowed Jason Carter to cut back to part-time while he served in the Georgia Senate so he could pursue his interest in politics. Carter also took a leave of absence for a year while he ran for governor in 2014. Now back in full-time partnership, he spends his time outside the firm as chairman of the Carter Center Board of Trustees.

For some attorneys, there may be perceived risks in representing controversial clients in pro bono matters or serving in a political capacity that may expose them to public scrutiny. But according to Bondurant, these risks haven't deterred clients from coming through the door—in fact, quite the opposite. He says that the firm has developed a reputation for being up for a challenge. They receive a number of pro bono referrals from judges, who appreciate when private lawyers can handle these often-complicated cases. Plus, gaining exposure to new areas of the law and a different group of practitioners is often helpful for business development.

To be sure, there are some attorneys at BME that do not embrace pro bono work and civic activities with the same level of fervor. But as Carter explains, the firm "has built a harmony of people with different interests." For those who aren't as active outside their billable work, they see the benefit of supporting the passions of their colleagues. Pursuing their interests keeps these skilled individuals fulfilled, so ultimately the firm is less likely to lose

the investment it has made in its highly talented lawyers. The overall consensus is that these civic pursuits also make them better attorneys.

BME's blended litigation practice may lend itself better to the culture of civic responsibility than other traditional corporate legal practices that solely rely on revenue through billable time. The firm represents individuals and entities on both sides of the "v.," which provides a mix of contingency and hourly work. They also work with clients on alternative fee arrangements. This isn't to say that the firm doesn't take on risk or realize loss when its lawyers take on a pro bono case or commit time to other civic activities. BME has exhausted millions of dollars in time and in resources over the years to lead these pro bono cases until they reach a final disposition. But at the end of the day, there is more to the practice of law than making money.

Perhaps the biggest takeaway from my conversations at BME was the satisfaction they derived from their work. They were unequivocally happier lawyers because of their ability to engage in civic and public service. Perhaps the lawyer-statesman and the modern-day biller don't make such strange bedfellows after all.

Ultimately, balancing life and legal practice looks different for everyone. But if you ask Emmet Bondurant, he'd tell you he'd rather argue a § 1983 case pro bono than play golf. ●



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## Endnotes

1. Alexis de Tocqueville, *Democracy in America*, trans. Harvey Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 252.
2. James Bryce, "America Revisited: The Changes of a Quarter-Century," *The Outlook*, March 25, 1905, 734 as quoted in AEI Program on American Citizenship, Policy Brief 13, Sept 2013.