

Of Counsel Interview . . .

Jones Day Litigator Wins Big Case for Small Town While Enhancing Local Relationships

In so many words, it has been said: Beware those who are calm, as they can quietly and systematically destroy you.

This can be especially true in the complex world of litigation. Consider this. A few years ago, the General Electric Corporation called on Jones Day attorney David Monde, one of its outside counsel, to handle some important litigation in which both sides had filed claims.

Monde, a soft-spoken litigator with a mind that clients call razor sharp, did what he always does before facing his opponents: He prepared, prepared, and then prepared some more. When it came time to depose the other side, a team of sophisticated senior executives of a company with which GE does business, Monde seemed to know all the details of the matter at hand and was capable of summoning them at will.

“As always, David was well prepared with all the facts at the front of his forehead, and he pulled them down when he needed them,” says Kenneth Resnick, an in-house attorney for GE who has worked with Monde on dozens of matters.

During the week of deposition, Monde calmly ripped through his opponents’ arguments. “David decimated them,” Resnick says. “He understood the very complex arrangement we had with our customer, was able to avoid being run over by a lot of complicated-sounding jargon from the other side, and patiently went through the facts to demonstrate

to the other side, by using their own documents, the absurdity of their claim.”

Shortly after Monde won “a very favorable result” for his client, according to Resnick, those very same “decimated” executives contacted him. “These guys immediately hired David for an unrelated matter,” Resnick says, “and that’s one of the greatest compliments you can get as a trial lawyer, to be hired by your adversaries.”

Although he’s known for his composure and quiet cunning, Monde, who works out of Jones Day’s Atlanta office, has also gained a reputation as a risk taker. Last year, he demonstrated that when he temporarily stepped out of his commercial litigator’s role to serve as the independent counsel for the city council of Alpharetta, GA.

The suburban Atlanta municipality had hoped to remove one of its own council members, R.J. Kurey, who was accused of threatening employees, misusing public funds, and other misconduct, which included claims of sexual harassment.

Monde saw this as a worthy endeavor, got his partners to agree that the firm should provide some of his time on a *pro bono* basis, took on the new role, and relatively quickly won the impeachment and subsequent removal of what he called “a cancer on the city.”

His efforts demonstrate, among other things, the importance of law firms, even global megafirms

like Jones Day, to build relationships with their communities and serve them when the right opportunities emerge.

Recently, Monde spoke with *Of Counsel* about his career, the case in Alpharetta, the likelihood of more private practice attorneys serving in similar public forums, a new trend he sees as surfacing in the litigation arena, and other topics. The following is an excerpt of that interview.

Ain't No Doctor

Of Counsel: Our readers tell us that they're interested in what initially drew lawyers to the profession. So what attracted you to law?

David Monde: The ability to make a difference in people's lives. I've always been a bit of an idealist, and the legal profession seemed to me the best way to get involved to make positive change.

OC: Do you remember when you decided that?

DM: Yes, when I was a second-year medical student. I decided then that I didn't want to pursue a medical career or a military career; I was attending a military medical school.

OC: You then went on to get your law degree at Georgetown University and, upon graduation in 1987, joined the Atlanta law firm of Hansell & Post, which within two years was acquired by Jones Day. What was the biggest difference that you encountered in switching from working in a relatively small firm to working in one of the largest firms in the world?

DM: To me, it was the opportunity to practice litigation on a national and international scale as opposed to my focus at Hansell & Post, which was on Southeast regional work.

OC: Why did you choose to become a commercial litigator?

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DM: I'm an advocate at heart. I like to get in the middle of things and try to peel all the layers of the onion and get to the core of a dispute. That's what keeps me going.

OC: When you recall some of your more important cases, certainly you must think of the matters that you've handled for GE Aircraft Engines [now GE Transportation]. Is that right, and what's it like working for GE?

DM: Yes. We've had the opportunity to handle a number of important cases for GE Aircraft, and those are certainly some of the highlights of my career. What's great about that is that GE is an outstanding client to work for. It has the highest standards for outside legal counsel. Its in-house lawyers truly partner with the outside lawyers in preparing the case for discovery and for trial. Because of Jones Day's national practice, we've had the opportunity to represent GE in numerous jurisdictions. So, we really get to know the client and how it likes to litigate cases.

OC: You've done dozens of cases for GE. What's been one of the more intriguing cases? Maybe you can offer some details about it.

DM: One of the most intriguing cases was one where GE was sued by two subsidiaries of Delta Airlines, ASA and Comair. Delta claimed that the contract with GE gave Delta a right to demand a new aircraft engine—at about \$2 million a piece—every time it bought a new aircraft, in other words, two replacement engines. That would have made it cheaper for Delta to buy new aircraft rather than to repair existing engines, which was the exact opposite of GE's intent. It really became a case of contract interpretation over a single phrase, and the outcome of that interpretation involved several hundred million dollars.

OC: That was a lot riding on the turn of a phrase. You won that case, of course. When you think of other matters you worked on that you felt were important, what comes to mind?

DM: We've represented the [energy provider/utility holding company] Southern Company in a couple of high-profile matters; one involving a defamation lawsuit in the mid-'90s, which centered on the firing of one of the chief executives of a subsidiary. We're now representing Southern Company in a number of lawsuits involving that same subsidiary.

Going to Public

OC: Let's turn to your role in representing the city of Alpharetta, GA, in its case against the city councilman R.J. Kurey. First, how did you find yourself working for the city, in this public arena, as a prosecutor in this case?

DM: I was in front of the city council one night in March last year, urging them to support a little league for kids with disabilities. I have a child with cerebral palsy who is 12 who plays in a league in Alpharetta, and we wanted to expand the facilities. I spoke on behalf of the league to the city council in support of a funding proposal to make that expansion.

That night, although I had no knowledge of it beforehand, the city council was hearing an investigative report regarding sexual harassment charges brought against Councilman Kurey. It was a very charged atmosphere. There were police in riot gear in the back of the room providing security. At the conclusion of my remarks, I stayed around to watch what was going on, and I heard the outcome of that initial report, which found that, if Kurey were a city employee, there'd be good grounds to terminate him summarily.

Since he was an elected official, obviously the city couldn't just fire him. The city council publicly discussed what to do next. They talked about the fact that their charter allowed for an impeachment proceeding. They also discussed that that path might be cost-prohibitive to pursue.

I think that it's critically important that no matter how large a firm is, no matter how far-flung its clients and services, that its people give back to the community in which they live.

So, I went to my managing partner here in Atlanta, George Manning, and proposed that we do at least a portion of the work for the city on a *pro bono* basis. George agreed to let us do that. We represented the city on a *pro bono* basis through the removal proceedings through the city council. We began charging them on a discounted basis when Mr. Kurey contested his removal.

OC: Eventually, you were successful in getting the resignation of Councilman Kurey. Was that the way he was officially removed, through forced resignation?

DM: No, it wasn't. We were appointed as special prosecutors. We investigated whether there were grounds to remove him. We prepared grounds for removal and had a public hearing before the city council. The council voted to remove him from office. Under the city charter, Kurey had a right to appeal his removal to superior court. That had the effect of staying the impeachment decision, pending the resolution of his appeal.

After litigating in court for several months, he agreed to dismiss his appeal, which had the effect of reinstating the impeachment.

Connecting Locally

OC: Obviously, this is something that's important for law firms, perhaps particularly megafirms like Jones Day—to connect with their communities. What's your view of the significance of branch offices of large firms forging ties with their respective local communities?

DM: I think that it's critically important that no matter how large a firm is, no matter how far-flung its clients and services, that its people give back to the community in which they live. Jones Day is very flexible with its lawyers in allowing them to pursue a variety of *pro bono* interests beyond what is traditionally within the realm of *pro bono* work. This is just an example of that.

So this was a way to reinforce in our community that Jones Day, with our access and resources and global reach, can provide a level of service that others can't or at least can't do as effectively.

Another example of *pro bono* work that our office does, and I do personally, is that we represent families of limited means in special education proceedings. Where kids with disabilities are having difficulties with the school systems, we have a team of lawyers,

including myself, that assists these families in the administrative and judicial proceedings on special education matters. This is another way that we give back to the community. In fact, our office was recognized by the state bar of Georgia for this work.

OC: Obviously, there are the very altruistic reasons for doing this: There are people who need your help. That's the most important part of *pro bono* work. But in a more ancillary vein, what about in terms the way in which *pro bono* work helps your business? Is that something that you market?

DM: The fact is, this work [for the city of Alpharetta] was challenging, unique legal work, presenting a host of questions never answered by Georgia courts. This was apparently only the second time in state history that an elected municipal official had been removed from office by his peers in an impeachment proceeding.

This particular matter was very high-profile in the press, so it was critically important that we do a good and thorough job. My opponent was former Congressman Bob Barr, who was obviously one of the lead people involved in the Clinton impeachment proceedings.

OC: And quite a charismatic—and this is my word not yours—eccentric character.

DM: [chuckles] That's right. That is *your* word and not mine. I had a very worthy opponent and found him extremely professional to deal with.

So, we were involved in a high-profile matter against very capable counsel on legal issues that had just not been resolved by the courts. That's the kind of work that we frequently do. So this was a way to reinforce in our community that Jones Day, with our access and resources and global reach, can provide a level of service that others can't or at least can't do as effectively.

OC: You mentioned the word "challenge" when describing this work. What was the biggest challenge, or put differently, what did you learn in working on this very high-profile case?

DM: The challenge was in assembling the facts in a way that presented a compelling case to remove this man. We advised the council that removing an elected official should be a step of last resort. It's an awesome power that they had and should exercise judiciously. Our challenge was to assemble the facts to make the case for removal convincing.

Mr. Kurey had threatened people physically and emotionally. He tried to intimidate witnesses. We had to really gain the trust and confidence of people before they would work with us and allow us to develop the evidence to succeed against him.

What I learned personally is that truly no elected official is above the law when he's confronted with ordinary citizens who are willing to stand up to an abuse of power.

Year of Public Corruption?

OC: Some people have ventured that 2006 might be the year of public corruption cases. Certainly, with the scandal regarding Jack Abramoff and several members of Congress, the year is starting off that way. Do you see that there might be a trend emerging in which attorneys at private practice law firms, especially well-known large firms, might be increasingly selected to become independent counsel and work on public corruption cases?

DM: I think that it's an acceleration of a trend that already exists. Litigators who litigate major commercial matters are trained through experience to do the kind of detailed, thorough investigative work that is essential in a proper investigation of public corruption or public ethical violations.

We have in our office, for example, Rick Deane, a former district attorney for the Northern District of Georgia who has devoted his career, first for the government and now here in private practice, to conducting the kinds of investigations that you're alluding to. So, it's not a new trend but an acceleration of one in which people will turn to private counsel who are experienced in complex commercial litigation matters for this sort of work.

It will be increasingly important [to understand] electronic discovery not only of your opponent but in preparing your own client in contested major litigation.

OC: Generally, such prosecution would mean that the private-practice attorney would be doing

work for governmental bodies. A significant portion of your work for Alpharetta was *pro bono*. Can this kind of work be at all lucrative? In other words, I can't imagine a governmental body like a city council paying the kind of fees that, say, a General Electric would pay.

DM: Well, not every matter that a municipality encounters is going to warrant the kinds of services and skills that complex commercial litigators can bring to the table. But there are those matters that are vital enough to the cities and municipalities where they are likely to turn to private firms and be willing to justify to their constituency the extra cost of doing so.

There are also opportunities to partner with in-house municipal counsel so that workloads can be shared and cost burdens reduced. But municipalities will face more situations where it makes sense for them to turn to private counsel for at least some kinds of matters.

OC: Is this something that you and your firm will try to cultivate?

DM: Where we are not in conflict with our other clients, absolutely.

OC: Did you like doing the work in the Kurey matter?

DM: I loved it.

OC: I got that impression. David, what was the most satisfying element of doing this work for the municipality?

DM: Getting a successful result for the client, or put another way, finally removing an elected official

who had been a cancer on the city for many years, someone who had a history of misconduct and abusive behavior, and threatening city employees and city citizens who opposed his views and spoke out against him, and violating campaign ethics laws, and misusing city public funds.

OC: Finally, just to shift gears, it would be interesting to our readers for you to look out across the legal landscape. Do you see any other trends in litigation that you think will emerge?

DM: Yes, I think the fundamental importance of electronic discovery will continue to emerge. There will come a day soon where any litigator worth his or her salt will be intimately familiar with the ways in which electronic data can be stored and manipulated. It will be increasingly important [to understand] electronic discovery not only of your opponent but in preparing your own client in contested major litigation.

Time and time again you see courts sanctioning parties for failure to adhere to discovery requirements in regard to electronic discovery.

There's something called the Sedona Conference, which is a consortium of lawyers and consultants who have recently published a set of guidelines regarding electronic discovery. People will look to the Sedona Conference Guidelines to restructure the way that they think about a case.

Up to now, a litigator's focus has primarily been on written documents. Litigators are just not going to be able to do that anymore. Overlooking the importance of electronic discovery is overlooking vast portions of somebody's case these days. ■

—Steven T. Taylor

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