

Of Counsel Interview . . .

Randy Smith: The Man Major Telecom Players Call Upon to Clear Antitrust Hurdles

The world of telecommunications can be a complex place, especially when it comes to the Byzantine legal dimensions of this fast-paced, crucial industry. Telecom lawyers must understand the legal morass through which communications companies must navigate. But they also must know the nuanced ins and outs of the industry's business end.

Perhaps nobody understands this better than Wm. Randolph Smith, the chair of the antitrust group at Washington's Crowell & Moring.

Since 2004, Smith has been a key player in the telecom industry's most significant transactions. Three years ago, Smith and his team represented Cingular Wireless in its acquisition of AT&T Wireless. This deal was the first major consolidation in the wireless industry. At the time, Cingular was facing some challenges regarding the quality of its product; it needed more spectrum, more capacity to handle calls.

Thanks to a great extent to Smith and his lawyers, the transaction cleared any potential antitrust obstacles and is viewed as a huge success in many ways. Today, for example, Cingular is rated first in performance and customer satisfaction.

That merger was followed by two more major telecom deals that Smith helped make happen. When he talks about his work in this area, Smith is obviously proud of his role but only in a soft-spoken, modest way.

In a recent interview, Smith talked to *Of Counsel* about these three transactions, his entrance into the legal field via a very important stint at the Federal Trade Commission, his efforts to do what he can to "make the world a better place," the need to train young attorneys to fully understand their clients' business, and other ele-

ments of his career and the profession. What follows is that excerpted interview.

Of Counsel: Randy, why did you decide to pursue a career as an attorney?

Randy Smith: That's not something that I've stopped and thought about in quite awhile, actually. The short answer is: I grew up in Arkansas, and my father was a lawyer in a medium-sized town, Hot Springs, and was involved in local government and state politics as well. So I grew up thinking of the legal profession as both intellectually challenging—he'd work on the more interesting issues going on in town—and as a force for powerful change.

This was in the 1950s when Arkansas was going through all the civil rights issues. My father was in the state legislature and was one of the younger pro-civil rights members who was against the Faubus administration and the things they were trying to do. My father had a name for himself in this regard, and this is what I grew up with. I saw this as an interesting profession and a good way to make some positive changes. It was almost a given for me.

Entering the Antitrust Arena

OC: You went to Tulane University for your undergraduate studies, to Stanford for law school, and then into your career as a lawyer. How did you work your way into the antitrust area?

RS: In law school I worked for a firm in California as a summer associate, which was right after the McGovern campaign, which I was active in, and I just decided that I wanted to work for the federal government. I wanted to do my part in government to make the world a better place.

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I applied to a number of different agencies and got really interested in the Federal Trade Commission (FTC). The FTC was very active in both the consumer protection and the antitrust fields. I'd read a lot about some of the things the agency was doing and found it "relevant" to me, in the way we used to use the term "relevant." I focused on the FTC and was able to land a job there.

I didn't start out directly in antitrust. I started out in the general counsel's office and did some consumer protection work. My claim to fame then was working on [stopping] the abusive practices by funeral homes. I spent a lot of time on the "funeral home rule" that ultimately went into effect. I was part of a team that was very involved in that. That's when I got my first media training because whenever we'd go into a town to hold hearings with funeral directors the local media was all over it.

OC: Then that was after Jessica Mitford wrote her expose on the funeral industry, *The American Way of Death*, right?

RS: Exactly. Jessica Mitford was one of our consultants and witnesses in those hearings.

I got into the antitrust side later in my career at the FTC and finished off working with the executive chairman of the FTC, Michael Pertschuk, who was Jimmy Carter's chairman and an activist official and sometimes controversial. It was an interesting time to be involved in the agency. Pertschuk, for example, was most identified with his efforts to regulate children's advertising. He became a lightning rod on the Hill and in the business community, which often thought that the FTC was going too far. There were political efforts to rein in the FTC activities. We were in the middle of all that.

OC: You went from the FTC to Crowell & Moring, right?

RS: I did. When Reagan was elected in 1980 and it became clear that Pertschuk wasn't going to be the chairman anymore because the chairmanship is a presidential appointment (he still had a term left as a commissioner), I decided that it was the right time to make a transition

from government into private practice. It wasn't particularly an auspicious time for government because, as you may recall, Reagan came in on a platform of less government regulation.

I was very lucky that Crowell & Moring had recently split off from Jones Day and started a firm here in Washington. The antitrust lawyers stayed at Jones Day, so Crowell & Moring had to build an antitrust practice from scratch. They started by hiring a terrific lawyer out of the Justice Department, and he wanted to be paired with someone with FTC background. I was very much at the right place at the right time, starting on the ground floor of building an antitrust practice, and I've been at it, brick by brick, ever since.

From Jets to Telecom

OC: You have handled a lot of important cases, including many in the telecom arena, but when you look back, what comes to mind as being the most satisfying or relevant, to use that word again.

RS: [pauses] I guess I'll discuss one historic and three very recent matters. One was a very significant matter that I was involved with probably because we were, as I just said, trying to build an antitrust practice where there was not one. We were able to work with Pratt Whitney in the early 1980s. Pratt Whitney decided to give us a try to work on what at the time was a very important project, a joint venture with Rolls Royce to build the next-generation jet engine.

There were only three players in the jet-engine business: GE, Rolls Royce, and Pratt Whitney. When two of them get together, that creates some very interesting and quite significant competitive issues. It was interesting and defining in a couple of respects. One was, well, my philosophy, which I learned early in my career: that you need to get very close to the clients and learn and understand their business as well as you can. I enjoy the antitrust practice so much because you can't give a client advice about their antitrust issues unless you know what makes their business tick. I like learning about the technology and how their customer relationships work and who their competi-

tors are and what's driving the business decisions. So we got into great depth with Pratt Whitney to understand the competitive dynamics of the jet-engine business.

To make a long story shorter, that matter culminated in a Justice Department review and clearance in what is still considered by a lot of people to be the definitive statement by Justice on how it analyzes joint ventures. Joint ventures have become an increasingly common, and important, business structure for many companies in a lot of different contexts. So this was one of the early joint ventures between two competitors.

This was challenging and also rewarding because it was a forward-looking project. We were putting together a joint venture to build a jet engine that would be more fuel-efficient and higher-performing than either party could do by itself. We not only got the clearance but also saw the engine become a reality. It's still powering airplanes that fly today.

I was meeting with the CEO and the general counsel of Pratt Whitney a week before last. It's been a 25-year relationship that's been an important one to me and our practice.

OC: Thank you, and what's the other more recent cases or matters that come to mind?

RS: That would be the recent telecom deals. I've had the opportunity, three years in a row, to do three multibillion-dollar deals that have a significant effect on the telecommunications landscape worldwide. That's not something I ever thought that I'd be doing. [The three deals] were professional challenges and very rewarding at every level.

First, as you know, there was the Cingular acquisition of AT&T Wireless in 2004. The next year in 2005, SBC Communications acquired AT&T. That was one where the critics said that this was Ma Bell being reunited. I think that we successfully explained to the Justice Department that the world is very different from what it was in 1984 when the DOJ broke up AT&T. The new technology and new players and the globalization of the telecom industry make the competition situation quite different.

Last year, AT&T acquired Bell South. That deal was really necessary because of the importance of the wireless business and to continue to hold Cingular in a joint venture, a partnership with two owners, in this sort of fast-paced world, was just not working. It needed to be under a unified ownership to be competitive.

The transformation of the telecom world, with those three deals [collectively], has got to be the pinnacle of my career so far. I felt very fortunate in being able to do all that.

OC: When you think of the telecom industry and your role in that industry, what do you consider to be one of the most pressing issues that comes up from a legal standpoint? That is, what do your clients want the help with the most, in addition to counseling on the big deals?

RS: In general terms, it falls under the strategic development of new products and new services, whether it's the latest DSL pricing strategy or some sort of combination of wireless and wire lines products. In terms of the day-to-day anti-trust counseling, those are the kinds of things we spend time with them on.

Learning the Business

OC: Earlier you mentioned the need to understand the businesses and industries that you represent. In many of the client satisfaction surveys, which I'm sure you're aware of, often some of the complaints that clients have are generated around this notion that their attorneys don't have the necessary knowledge about their industries, their businesses. How do you impress upon younger associates that, yes, they need to know about law but that they also need to be business people?

RS: Well, you're right. That's a critical dimension of really good client service for a lawyer. We certainly preach it very early in our training, in fact, during the orientation sessions for new lawyers who join us. It's amazing how many times clients will comment on our ability to give very practical and efficient advice because we don't spend a lot of time theorizing or asking a lot of background questions. We can offer very specific and practical advice and do it in a 15- or

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20-minute phone call, frequently. That's what the clients keep coming back for.

I think what we have to do in addition to preaching this—and our clients agree with this—is to continue to get the younger lawyers the opportunity to learn the client's business. There's a certain amount that they can learn by reading the Web sites and annual reports. But we all know you learn a lot more, and more quickly, if you're living through it, if you're sitting in a room talking to people about their business or getting a tour of their business.

We've made a conscious effort to create opportunities for our lawyers and to participate in the discussions with clients. That flies in the face, frankly, of a lot of the pressure that you get from some clients not to have two or three lawyers go to a meeting. What we do is make an investment, as a law firm, and not charge for all that time [to share the costs with clients], and talk to the clients very candidly that this senior associate coming to the meeting is the future. All of the clients with whom I've discussed this agree that it's important to share this cost and get the upcoming lawyers these opportunities.

OC: Let's talk about the training you provide. Can you talk about the programs you have for both your attorneys and your clients?

RS: A lot of our lawyers, particularly those who come out of law school and some who come from other firms, aren't steeped in the nuances of antitrust law.

A couple of years ago, and really I give a lot of credit to a couple of my colleagues here who really spearheaded this, we created an internal antitrust training program we call The Boot Camp. It's a series of weekly sessions that are two to three hours, during which senior lawyers discuss the basic topics of antitrust law. The young lawyers listen and ask questions.

We think that it gives some of our attorneys a chance to teach and the younger attorneys a real grounding in antitrust law so that, when they get the next research assignment or the next assignment to work on a case, they have a lot more context and can be more efficient.

Externally, it's a totally different mission. By and large, what you want to do is sensitize the business team at a client, not the legal team, about antitrust issues so that they can avoid any trouble.

OC: So that's a prophylactic measure.

RS: Very much so. I want to give credit to my partner Jeff Howard, who's a natural teacher. He invented a unique approach to interactive training sessions with clients that we all use. It's very successful and we get a lot of kudos from clients. We also get a fair amount of business to do this training. Often, clients think that they're going to a boring lecture and then they realize that they end up in a lively discussion. They really get engaged. Now, this is the kind of stuff that people can go to jail for, so it's very important that they "get it."

OC: One of the biggest law firm management issues is, of course, hiring and retaining lawyers. What do you look for when you hire, either laterally or out of law school, in addition to all the qualities you'd expect in an attorney?

RS: In addition to the usual things, what I'm looking for is the spark of interest in how businesses work. That's the key. As we talked about earlier, if you're really interested in what makes a business tick, you'll more naturally learn about it and use that knowledge to give advice. You need that kind of intellectual curiosity aimed in that direction. ■

—Steven T. Taylor





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