

Q&A with Mark Merritt, Former Mecklenburg County Bar President *(March 28, 2005)*

It's a post-Enron world and the advice that Charlotte lawyer Mark Merritt gives to his corporate clients has changed accordingly.

"Directors should be very concerned about their individual liability if they do not get to the bottom of an accounting or financial irregularity, and they need to be independent of management in investigating these kinds of issues," Merritt said in an e-mail Q&A with Lawyers Weekly.

Merritt handles business-related litigation and also does antitrust counseling, a practice area that he says is growing.

"Most of the [antitrust] clients I work with are manufacturers who need advice with respect to their pricing and distribution practices," he says. "It is also pretty common for me to deal with practices where one competitor may have limited a rival's ability to compete in the market, which may or may not raise antitrust concerns."

A former Mecklenburg Bar president, Merritt still has a hand in the bar and civic activities and serves on the local Courthouse Construction Committee.

For lawyers, "the biggest challenge is to find the right balance in our lives among work, family, church, bar and civic activities," he says.

His interview follows.

What is the local bar doing well?

The bar is doing a number of things very well. The Mecklenburg County Bar has formed a Special Committee on Diversity that is being co-chaired by George Hanna and Rob Harrington. The Diversity Committee is bringing a lot of energy to educating the Bar about the value of diversity and the unique challenges that face minority lawyers in our community. Our CLE Committee under Pat Kelly's leadership has done a wonderful job of providing excellent and diverse CLE programs close to home.

Our Bar Leadership Institute is now training our fourth class of future bar leaders in a program that could be a model for local bars on how to identify, train and motivate future bar leaders. These are a few examples of some of the work being done by the 21 committees of the Mecklenburg County Bar.

What needs work?

The local bar faces a number of challenges. We need to focus on how to meet the legal needs not only of the indigent, but of the growing population in Mecklenburg County that does not speak English well or at

all. This will require even higher participation in our Volunteer Lawyers Program and some creative thinking on how to meet the needs of an increasingly diverse population in Mecklenburg County.

Our court system in Mecklenburg County is under a lot of strain from growth. Every day that the Mecklenburg County Courthouse is open over 1,000 new matters are filed. That number will only grow. Our bar leaders, not only in Mecklenburg but across the state, need to persuade the General Assembly to fund the court system better. We need better technology and better pay so that we don't lose so many clerks, district attorneys and public defenders from our justice system. Our judges need more support to handle the caseloads in Mecklenburg County. With respect to our local bar programs, we need to raise more funds through our Mecklenburg County Bar Foundation to support these efforts from a source other than our mandatory dues.

Which of the Bar's volunteer or pro bono programs are you proudest of?

Our Volunteer Lawyers Program has been outstanding for a long time. We have a wonderful working relationship with Legal Services of the Southern Piedmont. We supply volunteers to help the needy with a variety of legal matters. Lawyers are very active in cases where domestic violence has been alleged. We help protect the rights of children. We have established a program called Pro Bono for Non-Profits, where lawyers who may not be comfortable taking on a litigation matter will work on a pro bono basis with non-profit organizations. I think we make a real difference in the lives of the people we represent and the non-profits we are assisting.

Is pro bono work an important part of being a lawyer?

I think it is an essential part of being a professional. We are called on as professionals to provide access to justice and to ensure that our legal system is not just one for the privileged or influential. It is very easy in a large firm in a big city to become disconnected from the needs of our fellow citizens and from the difference a lawyer can make in their lives. I would not trade my experiences as a pro bono lawyer for any work that I have done.

You've been actively involved with legal services organizations. How are they doing today, compared with 10 years ago?

When I was on the board of Legal Services of Southern Piedmont, there were a number of years where the entire program was under attack in Washington and it seemed that the Legal Services Corporation made it harder for us to help serve the needs of the needy. I think that situation has been turned around due to the hard work of a lot of lawyers and the ABA. I also think that the Legal Services programs have done a good job here in focusing on helping individuals, empowering people to help themselves and educating the community on the value of the service provided. Funding sources for Legal Services of Southern Piedmont are more diverse, and there is a continual search for more grants and more funding. The constant in all of this has been the extraordinary work of public interest lawyers like Ken Schorr, Ted Fillette and Doug Sea. They are remarkable people, and I admire what they do greatly.

Tell us about your involvement in the committee overseeing the new courthouse. What role are you playing there? When the bond campaign for the new courthouse was being put together, our bar president, Nancy Norelli, asked me to be one of the representatives of the Mecklenburg County Bar on the Bond Campaign Committee. I now find myself six years later still serving as the bar's representative on the Courthouse Construction Committee. The committee is made up of representatives from the bar, the judiciary, the district attorneys' office, the public defender's office, the clerk of court's office, the sheriff's office and the court system generally. The group has been determined to build the best courthouse possible for Mecklenburg County, and we have worked hand-in-hand with the architects, engineers and contractors to design the courthouse and oversee its construction. We have had countless meetings, visited courthouses and even visited our millwork supplier in Quebec to see a mock-up

courtroom. I believe we are building a great courthouse that will serve the citizens of Mecklenburg County well. I now appreciate far better the constraints and trade-offs that architects face in designing buildings.

You assist corporate clients in conducting investigations into internal accounting and financial irregularities. Have accounting scandals like the Enron case affected your practice, or the advice you give to clients?

It definitely has. Companies have to be very diligent and careful in how they go about investigating these kinds of issues. Directors should be very concerned about their individual liability if they do not get to the bottom of an accounting or financial irregularity, and they need to be independent of management in investigating these kinds of issues. If the government is involved, there is a high likelihood that the client will be asked to waive the attorney-client privilege with respect to certain aspects of the investigation. I find this practice troubling, and it raises difficult strategic issues. I have heightened concern about the government going after clients for process offenses, so I advise them to be extraordinarily careful when it comes to preserving documents and responding to CIDs or subpoenas. This area is fraught with peril for clients.

You do a good bit of antitrust work. What kinds of clients typically need antitrust advice? Is that area of your practice growing?

Most of the clients I work with are manufacturers who need advice with respect to their pricing and distribution practices. It is also pretty common for me to deal with practices where one competitor may have limited a rival's ability to compete in the market, which may or may not raise antitrust concerns. I also help companies with investigations by the federal government into their industry which would inquire into possible collusion among competitors. This is a growing area of our firm's practice, and I anticipate it will continue to grow.

What's the biggest challenge to the profession these days?

The biggest challenge is to find the right balance in our lives among work, family, church, bar and civic activities. If most lawyers allowed it to, a law practice could chew up your waking hours to the exclusion of almost anything else. I know that kind of life is not good for anyone's health, but I also believe that over the long haul it is not good for one's career. I think that balance provides professional perspective that is essential to a successful law practice over the long haul.

What's the typical day like in your law practice?

I still don't know what a typical day is. I do know that I seem to spend a lot more time answering e-mails and responding to client demands on short notice. On a typical day, my practice involves the basic tasks that characterize a commercial litigation practice or government investigation along with a lot of time on the phone helping clients solve problems.

What's your biggest pet peeve about the practice of law? I wish that I had more time to turn off the phone and computer and to simply mull issues over and think them through without interruption or distraction. Lawyers don't get enough quiet time, and technology is an enemy in that regard because you are always accessible.

How do you spend your weekends?

I will spend time with my kids, and it is not uncommon for me to play a few holes of golf with Jay, my 11-year old, on Saturday or Sunday afternoon. We have three kids still at home — one in high school, one in middle school and one in elementary school — so Lindsay and I stay pretty busy on the weekends with their activities and driving them around.

What kind of car do you drive?

A 2003 Toyota Avalon. My 11-year old, who is a car nut, thinks it's boring, but I like it.

What kind of chair do you use in your office?

An ergonomically correct and not overstuffed leather chair.

Favorite legal movie? Favorite legal book? I am a big fan of *My Cousin Vinny*, not only because it is funny, but because there is a lot for lawyers to learn from it. For a legal book, I would recommend *Unlikely Heroes*, by Professor Jack Bass of the University of Mississippi, a book about the four Fifth Circuit judges whose opinions were fundamental in the desegregation of the South. I clerked on the Fifth Circuit with Judge John Wisdom, who was one of the judges featured, and had the opportunity to meet two of the other judges featured, Judges Tuttle and Brown, during my clerkship. They were remarkable judges and remarkable men, and *Unlikely Heroes* captures both them and the legal battles that changed the South.

If you weren't practicing law, what would you do? (Your dream job)

Practicing law at Robinson Bradshaw & Hinson is my dream job. I enjoy the practice of law and look forward to it every day. If I won the lottery tomorrow, I will still show up at the office and do what I have done for the past 22 years. I do think I would enjoy teaching at a law school at some point for a semester or two when I start to slow down my practice 20 years from now.

What's your favorite restaurant in Charlotte? Its best meal?

I am a big fan of Carpe Diem. I would recommend the duck breast. I also highly recommend McIntosh's, and I would get their deep-fried lobster tail as an appetizer. The steaks and grilled seafood at McIntosh's are great.

What's the best place in Charlotte to socialize with other lawyers?

I think I see more lawyers at the YMCA than anywhere else. The Mecklenburg County Bar's annual meeting and barbecue every May is a great place to catch up with folks you have not seen in a while.

Biographical Information**Mark Merritt,**

Partner, Robinson Bradshaw & Hinson

Merritt's practice covers a broad range of business-related litigation, including antitrust litigation and counseling, complex and class action litigation and securities litigation. He represents clients in governmental investigations, including investigations conducted by federal antitrust agencies and the Securities and Exchange Commission. He has assisted corporate clients in conducting investigations into internal accounting and financial irregularities.

Education

University of Virginia, J.D., 1982

Order of the Coif; Editor-in-Chief, *Virginia Law Review*, 1981-82

University of North Carolina, B.A., 1979

John Motley Morehead Scholar; Phi Eta Sigma; Phi Beta Kappa

Civic and Community Activities

Legal Services of the Southern Piedmont, Board of Directors, 1989-98;

President, 1992-94

The Family Center, Board of Directors, 1994-99

Morehead Scholarship Regional Selection Committee, 1996-present

Tree Tops, Board of Directors

Professional Activities

Law Clerk, The Honorable John M. Wisdom, United States Court of

Appeals, Fifth Circuit

Mecklenburg County Bar: President, 2000-01; Executive Committee;

Treasurer, 1996-98

North Carolina Conference of Bar Presidents, 2002

Antitrust and Trade Regulation Law Section, North Carolina Bar

Association, 1996-present

ABA Bar Leadership Institute

Fellow, American College of Trial Lawyers