

The New Normal

The Competitive Analysis Underlying Bartlit Beck

By Fred Bartlit

Looking at the current challenges in legal practice, I thought back over how we came to found our firm. In the late 1980s, a few colleagues began to discuss the concepts that led to the founding of Bartlit Beck. We puzzled over the bizarre views of quality and efficiency that had resulted in the standard law firm business model.

Why was it that the accepted large firm metric for efficiency was how long it took to do a task and how many professionals were involved? The working assumption of the large firm was that the more hours a project took, and the more lawyers involved, the better the end quality.

This assumption in turn drove a business model that seemed, to us, even more peculiar, resulting in:

- Experience was devalued. Associate turnover was fostered. Most associates were terminated as they gained experience. It was typical of large firms to hire classes of 150 each year, and terminate most of them by the eighth year. The result was that the lion's share of a large firm's work force was kept intentionally inexperienced.
- The legal process was very susceptible to use of time-saving technology. Yet most associates, and almost no partners in charge, were able to use technology.
- The hour-based fee model resulted in inefficient firms being more profitable than a relatively more efficient firm.

As we thought more about the above three anomalies, we imagined a business model that would turn the accepted paradigms on their head. We said to each other:

- Why not build a firm based on experience? Experienced lawyers can clearly do a task more efficiently than untrained rookies. So, why not choose a model based on low turnover, where only a very few high potential lawyers were well trained and mentored in order to dramatically increase experience levels?
- Why not require intensive use of efficiency-driving technology by all lawyers and staff?

- And, having used experience and technology to drive higher efficiency, why not base fees on the results achieved, rather than how long it took to get the result?

These observations made so much common sense that in 1993 we formed a law firm of like-minded colleagues, who agreed that this new model would likely be more efficient, thereby giving the new firm a competitive advantage.

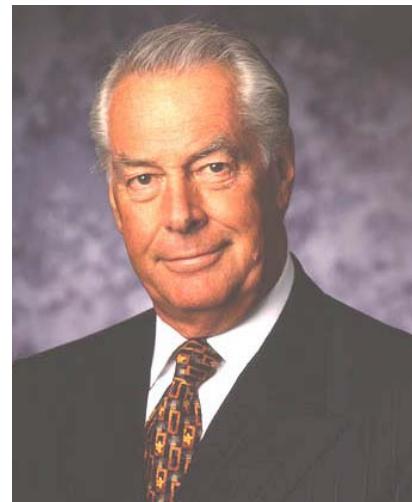
We started with 17 lawyers. For almost 20 years we have lived by the above core principles. We hired only two to four lawyers each year, enabling us to focus on training, mentoring and actual trial experience.

Narrow focus on only high potential new lawyers resulted in an unusually strong roster: Of our 70 lawyers, 55 percent are federal judicial clerks; 20 percent are U.S. Supreme Court clerks; 10 percent graduated first in their class; 10 percent were editors of their law review; and we have numerous Rhodes Scholars, Marshall Scholars, and Ph.D.s.

Our culture and business model are sufficiently known to students that we have never traveled to law schools to recruit. Most of our lawyers come to us by word of mouth.

We have never hired an experienced lateral partner, believing that our principles and culture must be learned from scratch, and that bringing in lawyers trained in the old cultures harmed efficiency and threatened quality.

Our philosophy has turned the typical law firm structure upside down. Most large firms have few true partners and a



large number of inexperienced associates. A typical ratio is 3.5 associates to each partner.

Our experience metric is dramatically different: instead of the usual 3.5 associates/partner, we have 3.5 partners for each associate. This reversal of the typical large firm partner/associate ratio gives us a major competitive advantage in experience.

We established the Bartlit Beck University teaching our lawyers all the skills needed in our profession.

We ensured that most of our lawyers get in court on trials every year so they have hard-core experience.

The result is small teams of very experienced lawyers on our matters.

Regarding technology, every lawyer in the firm is skilled at using all technology that reduces the time spent on projects and increases the quality of the projects.

Finally, we do no work where we are compensated on an hourly basis. We have made inquiry repeatedly of our peer firms, and believe we are the only firm in the world that does billion dollar litigation for Fortune 100 firms and is never compensated based on the hours expended.

We are rewarded by our clients for the value we create, not for taking a long time and using a large team.

As Peter Drucker teaches, true innovation results in beneficial, unexpected consequences beyond the original purpose of the innovation. This concept applies to our innovation in spades.

Our original purpose was to focus on efficiency: getting projects done in dramatically shorter times. But the efficiency-maximizing structure we created drove other unanticipated beneficial results:

- Our structure drives significantly higher quality. It turns out that small teams of highly experienced trial lawyers get better results than large teams of rookies. (We began to notice that, at most conferences of large firms addressing today's issues, the word "quality" is never heard. Instead the focus is on "getting average lawyer hours up," setting required hour goals, "realization" of fees

for hours, and the like.)

- Our structure of small teams gets more lawyers in court on trials and results in much more firm experience.

- Use of technology and non-hourly billing creates a much more collegial and family favorable culture. There is no "face time" – the frequent informal "requirement/preference" that lawyers be present at the firm evenings and weekends to "prove" they are working.

We have learned in the past 20 years that quality is not scalable in law. Quality depends on firm leadership having firsthand personal knowledge of the abilities of every lawyer in the firm. We do not think this is possible in a 1,500 (or even 200) lawyer firm, so we have stayed small in order to maximize quality. When we started in 1993, we felt we had a five-year window before our competition followed our innovation. We were wrong. Almost 20 years later, no other firm has followed.

Why is this? The social science of innovation provides the answer: Those who have been most successful in the old, outmoded paradigm are the last to understand and adopt a new paradigm. We have seen that this is particularly true in law: Lawyers excel at finding out what is "wrong" with someone else's idea and are by nature not nearly as comfortable with championing innovation as they are in criticizing the ideas of others.

We have more confidence than ever in the strength of our business model and in the inability of competitors to follow us.

Fred Bartlit is the founder of Bartlit Beck (Chicago and Denver), a firm described by the National Law Journal as "the nation's hottest defense boutique, with a roster of litigation stars." He was profiled by the ABA Journal in 2009 as one of the Lions of the Trial Bar, having tried more than 70 cases in 24 states, the Virgin Islands and Scotland.

He has been selected as counsel by two presidents: President George W. Bush for the Tallahassee "hanging chads" election contest, and President Barack Obama as chief counsel, for his "National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling."