

BAR FIGHT: TWO LEGAL HEAVYWEIGHTS FROM CHICAGO GET READY TO DUKE OUT MICROSOFT CASE



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Chicagoans Phil Beck and Dan Webb have worked in the same city for decades. They have similar jobs, belong to the same professional mentoring group and can even see each other's Loop office buildings from their respective offices.

And yet, the two elite trial lawyers, both Republicans, don't know each other well and have never squared off in a big case—until now.

It took the era's biggest antitrust case, a clash between the coasts with Redmond, Wash., facing off against Washington D.C., to unite two quintessentially Midwestern lawyers in the legal equivalent of mortal combat.

First, Phil Beck, a belatedly rising star who helped represent George W. Bush in the court battle over the Florida presidential vote count, signed on to be lead trial counsel for the U.S. Justice Department in its antitrust suit against the Microsoft Corp., which is now in the penalty phase.

Then last week, Microsoft announced that to defend its interests it had hired Webb, a Chicago A-list lawyer with a national reputation, who is still as tough-minded—and oddly boyish looking—as when he was a young assistant to U.S. Attorney Jim Thompson, the future governor, three decades ago.

The result is a tale of two lawyers with one low-key approach to courtroom drama, two careers with one common denominator: the no-nonsense legal culture that nurtured them both, arguably making them more nimble than their counterparts at the white-shoe firms of New York and Washington. "There's a little-known fact about the practice of law," says Fred Bartlit Jr., Beck's mentor at Bartlit Beck Herman Palenchar & Scott LLP. "If you go to these monster New York firms with their literally thousands of lawyers and these senior guys with

their \$3,000 suits, a lot of them haven't tried any cases [or] haven't tried many."

In contrast, Bartlit says, Chicago law firms tend to emphasize courtroom performance.

"Dan Webb's a guy that tries cases. Phil Beck's a guy that tries cases. If you have a case like [this] and you want a trial lawyer, not an office lawyer, not a guy who postures and BSs, but someone who's been there and done that and won't be scared if the case has to be tried and will be there for you, there's a lot of great trial lawyers in Chicago."

Only moderately acquainted with each other, though members of the same professional trial lawyers' group, Chicago Inn of Court, Webb and Beck can both lay claim to the heartland equivalent of street credibility: "I've milked a lot of cows," says Webb, 55, who grew up on a farm in southern Illinois. Beck, 50, who grew up in south suburban Homewood, the son of a bookstore owner, worked in a steel mill and a shingle factory as a teenager.

As adults, both are described by colleagues as calm, pleasant and unpretentious.

"Dan's never raised his voice to me since I've known him," says Larry Desideri, a partner at Webb's law firm, Winston & Strawn. "Ever. Under intense pressure. And I was young [when I worked closely with him]."

As for Beck: "He plays golf with the guys on Saturday morning and skis, and you know, drinks beer with the guys," Bartlit says. "He's a regular guy who is an extremely cagey, experienced trial lawyer."

Asked who they would cast as Beck in the movie version of his life, friends suggested the deceptively mild-mannered Kevin Spacey; not to be outdone, a colleague of Webb's says Webb could be played by the supremely sincere Kevin Costner.

The most obvious difference is one of public exposure. Although only a few years younger, Beck is the lesser-known combatant, a successful member of a small (43-lawyer) firm.

Webb has been a local star for years, in a career that dates back to the 1970s, when he prosecuted public corruption cases as a young assistant to then-U.S. Atty. Thompson and later became a headline-grabbing U.S. Attorney himself. Today, he's a partner at Winston & Strawn, an 850-lawyer megafirm where Thompson is chairman.

Beck talks about how, as a young lawyer, he would go to court to see the big trial lawyers argue their cases. One of those big trial lawyers was Webb: "I have kind of followed his career longer than, I'm sure, he has been aware of my existence."

Who will have the advantage in the Microsoft case remains to be seen. In June, a federal appeals court upheld an earlier ruling that Microsoft illegally protected its computer-industry monopoly. However, the court also reversed an earlier order to break up the company. The case was sent back to U.S. District Court for the purpose of determining possible sanctions against the software giant, amid speculation that the Bush administration was nowhere near as interested in pursuing the matter as its predecessors in the Clinton administration.

Timing is everything

As a new administration came in, so did a new legal lineup. First, the Bush Justice Department opted to hire Beck to replace David Boies, the New York trial attorney who was generally seen to have put on a bravura performance for the government in gaining its trial court victory over Microsoft. Boies had also surfaced as Vice President Al Gore's chief trial lawyer in the Florida presidential recount, surely sealing his own doom when it came to further representation of the government in the antitrust case.

Then, last week, Microsoft opted for Webb to essentially lead an existing legal team from the company and its chief outside firm, New York's Sullivan & Cromwell, which was generally seen as having been out-lawyered by Boies.

Experts say Webb and Beck are facing off in the biggest antitrust case since the 1983 breakup of AT&T.

"What's at stake here is the future of the Internet, and what amount of power any one actor can exercise in controlling the future of the Internet," says Stanford Law School professor Lawrence Lessig.

Some think Webb has the tougher job ahead of him. Microsoft painted itself into a corner in the first trial, according to New Yorker writer Ken Auletta, author of "World War 3.0: Microsoft and Its Enemies."

One of the challenges facing Webb will be to "sit in a room with [Microsoft chairman Bill] Gates and [chief executive Steve] Ballmer and say, 'Hey, guys, let's cut the crap. We need to be a little more forthcoming than we were and a little more humble,'" Auletta says.

There's also the question of how Webb will mesh with the small army of existing Microsoft attorneys. Webb declined to comment on why Microsoft needed to add another lawyer to its lineup: "I don't want to get into that, OK? Because that's something between the client and the law firm."

The challenges facing Beck are also significant, with some observers speculating that the pro-business Bush administration may not be particularly interested in pursuing the case aggressively.

Beck responds that the Bush administration wants him to win the case, and he defends the government's decision not to pursue a Microsoft breakup, calling the move apolitical: "Most people who looked at this, including former Clinton administration personnel, said that, given the Court of Appeals opinion, there was little point in pursuing the breakup remedy."

Webb's defining characteristics as a lawyer include a fierce work ethic. He works the longest hours of any of the 850 lawyers at his firm, according to Desideri. Married with four children, Webb has a decidedly short list of hobbies: He's a runner. A reporter's question about power lunches amuses him: "I don't ever have power lunches. I almost never have lunch. I usually grab a sandwich at my desk."

His career has followed a fairly conventional path: Loyola Law School in Chicago, the prosecuting job under Thompson, a stint in private practice, a return as head of the U.S. Attorney's office, and participation in several high-profile cases.

Webb was one of the lawyers representing Philip Morris Inc. last year when a Florida jury ordered the tobacco industry to pay \$144.8 billion to sick smokers. But he also has enjoyed an impressive string of victories. He spearheaded the high-profile Operation Greylord investigation into Cook County judicial corruption in the 1980s, and successfully prosecuted former National Security Adviser John Poindexter as part of the Iran-contra trials. In 1995, he successfully defended General Electric Co. in a major price-fixing case.

Beck's career began with law school at Boston University and a clerkship for a federal judge. He went to work right out of school for the giant Loop firm of Kirkland & Ellis, but in 1993, he and Bartlit left and started their own small firm.

"Phil has always been a guy who doesn't do real well in big organizations," Bartlit says. "He's a very in-depth thinker, he dances to his own tune and way of doing things. He's a guy who's always flown under the radar."

Variety of pastimes

As perhaps befits his maverick career path, Beck, the married father of three, works hard but has varied interests outside the office. He golfs, skis and reads American history. He names names when he talks about the comedians he likes: Dennis Miller, Chris Rock. His victories include a 10-week trial in which he represented NL Industries, a major manufacturer of lead paints, against pollution charges. For Alpha Therapeutics, a Los Angeles drug company that derived clotting factor for hemophiliacs from human blood, he fended off individual wrongful-death lawsuits after HIV contaminated some of the nation's blood supply in the 1970s and caused many with the inherited clotting disorder to contract AIDS. But it wasn't until last year that Beck got his big break. Called in to assist Bush's legal team in the dispute over the Florida vote count, he played a key role in a Bush victory before Circuit Judge N. Sanders Sauls. Sauls declined to allow a count of nearly 13,000 disputed votes, and Beck caught the attention of the national press corps.

"If you had to pick a star out of the roster of lawyers down there in Florida today—and there were many of them—it might have been Phil Beck," said NBC anchor Brian Williams. Webb and Beck have only faced off once before, several years ago in a relatively low-profile case that ended in a settlement, so a full-scale Microsoft penalty hearing would be their first courtroom showdown. And the appointment of two such noted trial lawyers suggests that the two sides in the dispute are ready for bear.

On the other hand, the new U.S. District Court judge in the case, Colleen Kollar-Kotelly, on Friday put pressure on both sides to reach a settlement, citing the Sept. 11 terrorist attacks, which have been economically disruptive.

If the settlement talks are successful, the courtroom showdown between Webb and Beck may have to wait.

Which would be a pity for fans of courtroom jousting.

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