

WHAT DO YOU GET WHEN YOU CROSS A LAWYER WITH A LAPTOP?



Angela R. Garber
Small Business Computing
04.2001

ANSWER: A SMARTER LAW FIRM

Bartlit Beck Herman Palenchar and Scott is a rare breed: A corporate litigation law firm filled with gee-whiz tech geeks. Most lawyers have a savvy that doesn't extend past Word Perfect. These guys walk into court with laptops, LCD projectors, bar code scanners, and a laser printer. One industry magazine, *The Mobile Lawyer*, has called partner Peter Bensinger "the most wired lawyer in America."

It wasn't love for technology that brought the Chicago-based partnership together in 1993. Fred Bartlit and Phil Beck dreamed of a successful practice composed of small teams that would charge by the project rather than by the hour. They turned to technology to make the model work.

"We thought that we could achieve the same kinds of results as the bigger firms in part by simply attracting the best people," says Phil Beck, one of the founding partners. "But we also realized that if we were really to achieve our goal, we were going to have to become more efficient."

There was one small obstacle: "Neither one of us actually knew how to use computers," Beck laughs. So he and Bartlit picked up a couple of laptops, taught themselves how they worked, and recruited like-minded partners and associates. Bensinger was one of those who signed on in the early days. "Everybody uses computers, everybody has laptops, everybody communicates like crazy with e-mail, everybody has to understand how we are using our databases," he says. "You can't function at our firm if you aren't signed on to that fundamental premise, because our teams operate in a very integrated fashion."

Despite conventional practice, they've even brought technology into the courtroom. "If you listen to lawyers—middle-aged, white guys who try cases—most of them will talk about how jurors don't like slick lawyers who have a lot of technology and that they prefer the down home fellow with the legal pad," Beck says. "But it's just a myth middle-aged lawyers perpetuate because they don't feel comfortable with the technology themselves."

As young, tech-literate lawyers enter the workforce and firms like Bartlit Beck show that even veteran litigators can adapt, litigation will change, according to Fredric Lederer, chancellor professor at the College of William and Mary Law School and director of its Courtroom 21 electronic courtroom project. "As this technology starts working its way into practice, lawyers without prior experience see the benefits and want to learn," he says. "There's nothing tough about it. It doesn't take anything more than a laptop, a projector, a screen, and the judge's permission."

Signing On To The Vision

Bartlit Beck's tech-driven attack starts far from any judge's chambers. Most outsiders would consider law-firms' standard administrative practices inefficient and wasteful. Organizations are bottom-heavy with support staff so the lawyers themselves can devote every possible moment to billable work. Bartlit and Beck felt they needed to find another way to operate. "The hourly fee system rewards inefficiency," Beck says. "But when you're charging by the project and getting paid more for success than for failure, you absolutely have to make sure that things are run as efficiently as possible."

Bensingers says that at his first law firm, he actually had to write a memo to the management committee to explain why he should have a computer at his desk. That "why do you need a computer when you have a secretary?" mentality has been banished at Bartlit Beck. The partners wanted to cut down on support staff and keep teams small.

Lawyers compose their own briefs and client communications, so organizational layers are few. Each lawyer has hands-on knowledge of cases and maintains direct contact with clients. "We're what I would call a fairly transparent law firm," Beck says. "The client personnel don't have their dealings with us filtered through a billing partner. They are communicating by e-mail several times a day with the people who are doing the case work on a day-to-day basis."

To get there, the firm first made sure that every lawyer and legal assistant in the firm had his or her own laptop, was proficient with it, and dedicated to the Bartlit Beck vision. It also made sure that every piece of work created went onto a network that could be searched by all employees—whether they were in the office, on the road, or sitting in the courtroom.

"We'd seen first hand that law firms are constantly reinventing the wheel," Beck says. "In a big law firm, when somebody is assigned a research project, that same research has probably been done several times by different people on that staff, but there's no repository of this information. We wanted to make sure that if somebody wrote a brief three weeks ago on the standards that apply in a preliminary injunction, someone today could enter the words 'preliminary injunction' into the database and get that brief or motion paper instantly, rather than starting from scratch."

It's In There

When a Bartlit Beck lawyer starts a new case, he or she creates a Microsoft Access database to hold all of the related information: Memos, deposition and trial transcripts, business records, exhibits, and briefs. Lawyers input all the data themselves.

This database is the storehouse of information for each case. To log it all, Bartlit Beck employs several different technologies: Deposition transcripts are translated from code to plain English, presentations and briefs are created in PowerPoint, documents and photographs are scanned, video clips are digitized. Once, lawyers would have wasted time shuffling through papers to find out who said what when. Storing all the pertinent information electronically in one place has put an end to that.

As corporate litigators, the lawyers at Bartlit Beck must often gather hundreds of boxes and years' worth of business documents. As they determine which papers, photographs, and other images could be potential exhibits in the case, they scan them for storage on the networked database, where they are inventoried and marked with barcodes. Bensinger says this simply involves labeling an exhibit as "1.1," entering "1.1" in the appropriate place in the trial outline, and then changing the font to "barcode." During a trial he waves a \$700 bar code scanner over his outline, and the software displays the document he wants on the screen.

Lawyers can start using the data from a deposition almost as soon as it's done. Most trial lawyers read transcripts in hard copy, make notes on a yellow pad, or even have an assistant digest the transcripts and index them. Lawyers at Bartlit Beck rely on real-time transcription technology. Special software translates court reporters' code into full sentences on the spot. Lawyers running the same software on their laptops get a rough transcript as the testimony is delivered. When the deposition is done, the lawyer can annotate the transcript and even e-mail clips to a client. Of course, Bartlit Beck also saves it in the case database, where it can be searched using text queries or recalled with a bar-code scanner.

"Instead of my asking a young lawyer to find the place where Mr. Smith talked about what happened at the November 11 meeting, because I vaguely remember that being in one of the transcripts, I can type in the search parameters and find it myself," adds Beck. "If I'm running down a wild goose chase, I can see that immediately rather than having a bunch of people waste a lot of time."

Technology On The Cross

Bensinger says technology has completely changed the look and feel of his work as well. When interviewing witnesses for the case, he uses what he calls the "multi-media deposition." He usually has real-time transcription running, a scanner loaded with images, and an LCD projector. "I'll hand a witness an exhibit, but display it on the screen so everyone can see it," he says. "I'll zoom in or highlight the sentence I want to focus on and say, 'Do you see that? I want to ask you a question about that.'"

With the rough transcript unfurling on his PC, he can instantly refer to it and even turn it into part of his presentation. "In the old days, you'd get a long narrative answer where the witness listed about five things and spent about 20 minutes on each," he says. "If you wanted to go back and ask about the second one, you might get an objection for mischaracterizing it."

This instant access shows witnesses, jurors, and opposing counsel exactly what was said, eliminating questions and some objections about mischaracterization of testimony. Beck says his lawyers can effectively stop much of the bickering that can stop trials in their tracks, and which many lawyers use to disrupt their opponent's argument. "In the courtroom, when somebody says something that doesn't ring true, instead of passing a note to somebody in the seat behind you and having them run off to thumb through transcripts, you just call up the transcript for that witness and do a quick search to see if they have said something inconsistent," Beck says.

Finally, Bensinger keeps a laserjet printer under the counsel table. "Instead of going to the back of the room to get exhibits we hadn't anticipated using, we just print from our digital images," Bensinger says. "That way we don't have to get up from counsel table, move to the other end of the room, and whisper and disrupt things. You just print out four copies right there, and bam! You're ready to go on the cross."

Choosing The Tools

Bartlit Beck doesn't just grab each new gadget or software package that comes along. "There's nothing fancy here, it's all stuff that's on everybody's desktop," Bensinger says about the firm's use of Microsoft Access, Word, PowerPoint, and Adobe Acrobat. "This isn't some specialized secret software. This is the same software that every lawyer in America has. It's just that we're using it in a way that adds a ton of value for the client."

Bensinger has a reputation as the firms' "beta tester"—whenever there's a new tool or upgrade to consider, he puts it through the steps and decides whether it is a worthwhile investment. Often he decides to stick with what he knows. Bartlit Beck recently considered replacing both its database and presentation software with more complex products, but concluded there was no need. "Being able to show some restraint, learn a particular application, use the hell out of it, find its strengths, and compensate for its weaknesses is a real skill in an organization," Bensinger says. "We looked at some of the prepackaged database programs and some of the more sophisticated vendor programs and experimented with them, but in the end concluded that, at least for today, we're happy sticking with our own homegrown Microsoft Access. It does what we want it to do and looks the way we want it to look."

Trying new tools and technologies has become part of the company's culture. Beck says that technology, while it was new to him in his forties, is something that younger lawyers expect. "There's never been a time when they weren't using computers and they're kind of stunned at how primitive most law firms are with their use of technology," he says. "It's refreshing for them to be at a firm where we make aggressive use of the technology."

Courtroom Drama

The first time the lawyers at Bartlit Beck walked into the courtroom with this new-to-the-profession display of technology, they were a little bit afraid that it might actually work against them. "We were concerned that we appeared the corporate hotshots, associated with a corporate defendant, and that the jury would hold the high tech stuff against us and feel sorry for the other guy," Bensinger says. "Instead, we found that jurors expect that, with a lot of money at stake, they're going to see a great show. They appreciate that we save a lot of time instead of shuffling through paper or passing stuff out."

"When we have debriefed jurors after the trials, we always find that they appreciate our use of technology," Beck says. "They understand that it means we are able to try the case more efficiently, and do a better job."

After all, average jurors, regardless of job or socioeconomic background, probably use more technology these days than average lawyers. Still, the myth of their technophobia persists, according to Beck. "It's like saying that jurors don't know how to use the telephone," Beck says. "Yet we have a generation of trial lawyers who are intimidated by computers and haven't bothered to learn how to use them, and they project their weaknesses onto the jury." Technology, used artfully, can impress the jury as well as intimidate the opposition. And in a tense corporate lawsuit, litigators need to look for every edge they can.

"Phil Beck and I worked together on a big case, and we heard something during the examination that we didn't expect," Bensinger says. "We searched the transcript, created a cross examination clip to deal with it, and printed it out to stick into our outline. When we debriefed the jury, they told us that when they heard that printer going under our counsel table they knew we had the witness cold."

The High-Tech Law School

It's not shocking that established law firms have been reluctant to adopt these new technologies. Most of today's law students are not taught to properly use it. Even some of the most prestigious law schools leave technology training to undergraduate "computer literacy" courses, which often do not cover specific technologies available to legal practitioners.

One exception is the Legal Skills Program at the College of William and Mary's School of Law. William and Mary and the National Center for State Courts teamed up to create Courtroom 21, an international demonstration and experimental project which seeks to determine how technology can best improve all components of the legal system.

With the most technologically advanced courtroom in the world as classroom, students go through a mandatory two-year Legal Skills Program that teaches ethics, legal research and writing, interviewing, and basic appellate practice. Third-year courses add trials before state and federal judges.

"As both a teaching facility and an active court, we are able to realistically evaluate new technology and technology-based procedures," says Fredric Lederer, who directs the project. "Our students leave with the knowledge and skills they will need to succeed as technology becomes a bigger and more important part of the litigation process."

Students are exposed to a wide variety of litigation technology tools, including court records systems, electronic document filing systems, and remote conferencing tools. They learn evidence presentation systems and use them in their practice trials.

"The benefits to this new technology are clear," Lederer says. "Not only is it easier for today's lawyers to find the information they need to put a case together, but it is also easier for them to store, access and present it."

Courtroom 21 is also a learning ground for lawyers from across the country and around the world who have decided they need to go back to school. Through video conferencing and web presentation tools, Courtroom 21 offers technology-augmented training for lawyers both on-site in law firms and in the McGlothlin Courtroom in

Williamsburg, Va. Lederer believes that technology will change the legal profession and that most lawyers are beginning to come around. There are some drawbacks to this new age, however. Lawyers long stuck with billable-hours quota that seemed impossible to fill may actually be able to. "Lawyers can literally do research into the night and file briefings up to the second they are due," Lederer says. "There is no longer an end-time to the workday."