

# Technology

LAW PRACTICE

TECHNOLOGY IN PRACTICE. WHAT WORKS? WHO GETS IT?

TECHNOLOGY IN PRACTICE. WHAT WORKS? WHO GETS IT?

## TECH PROFILE

### Peter Bensinger, Jr.

Most lawyers are still asking the vendor to please call up Exhibit X. Few have real facility. Few can work on the fly without a net.

Learn how this litigator puts high-tech order in the court on page 26.



## TECHNOLOGY SNAPSHOT

### E-Discovery Digest

Check out the new electronic evidence case digest on the site of Sensei Enterprises, Inc., [www.senseient.com](http://www.senseient.com). It includes more than 300 cases, searchable by keywords, jurisdiction, case name and text searches. The digest is simple to use and entirely free. Suppose, for example, you're a divorce attorney who has a case involving the use of spyware by a spouse. You can search using the keyword "spyware" or do a text search for "divorce" to find cases that might apply from across the country. Just want to know the e-evidence case law in your state? Search by jurisdiction and you're an instant expert. Need more e-discovery resources? Check out [www.discoveryresources.org](http://www.discoveryresources.org) for up-to-date information on the many technological and legal challenges in this red-hot area.

### COLUMNS IN THIS ISSUE

#### NOTHING.BUT.NET

By Rick Klau | 20

#### HOT BUTTONS

By Sharon Nelson and John Simek | 24

#### TIPS & TRICKS

By Dan Pinnington | 28

Photo Credit: Michael Schmitt, Evanston, IL

# Technology

LAW PRACTICE

# Who Is ...

## Peter Bensinger, Jr.

### Q&A with Mark Tamminga

#### VITAL STATISTICS

- ➔ Peter B. Bensinger, Jr.
- ➔ Partner, Bartlit Beck Herman Palenchar & Scott LLP
- ➔ Chicago, IL
- ➔ [www.bartlit-beck.com](http://www.bartlit-beck.com)



**T**rial lawyer Peter Bensinger, Jr., early on gained a reputation for hauling a lot of gear to court. In fact, the *American Lawyer* once called him “the most wired lawyer in America.” These days he has lightened his load a bit, owing to new airport and courtroom restrictions, as well as the availability of smaller and lighter portable hardware and peripherals. But he’s still very much the heavy hitter in the use of presentation and litigation support technologies. Interestingly, he worked as an actor before law school, including appearances on *Saturday Night Live* and *All My Children*. Today, of course, it’s his performances with high-tech trial techniques that keep earning him accolades.

**Bartlit Beck is pretty hard-core about using technology to the fullest. Did you become a hotshot tech user there, or have you always been a convert?**

**PB:** After I graduated from NYU Law School in 1989, I went to a big New York firm, and after orientation, I asked for a computer. The firm administrator told me that lawyers did not type and I should use the Dictaphone. They scheduled remedial Dictaphone training,

I took the training but went back and told the firm administrator that I really needed the computer because I could type faster and better than I could take notes longhand and then dictate. He told me to write a formal request to the firm management committee. I did.

A week later, a desktop PC arrived. I bought a telephone headset and I was in business. Lots of teasing about air traffic over Hoboken, but from that moment on I was considered a geek, a nerd, a computer guy. Actually, I was just an English major who could type.

Then when I moved back to Chicago (my hometown) and joined Kirkland, I got a laptop and a new headset. Once again, I became known as a guy who was “high-tech.”

When Bartlit Beck split off from Kirkland in 1993, part of the firm’s vision was to use alternative fee billing—to get paid for results and not hours—and to use technology to enhance our quality and efficiency. From the outset, I was an early adopter and test pilot for new applications and efficient uses of existing technology.

Developing our cutting edge, I participated in a number of firm “firsts”: the first oral argument in court using PowerPoint and custom animation; the first jury trial using digital display technology (FTI’s TrialMax); the first multimedia deposition—using LCD while taking the deposition to display documents, witness sketches created and scanned on the fly, and the real-time

transcript on screen for follow-up questioning; the first deposition attended via the Internet using LiveNote with real-time reporting; and the first “magazine brief”—intensive use of photographs, diagrams and trial graphics in briefs.

In Bartlit Beck, I found a firm culture and business model that rewards the higher quality and efficiency that intelligent use of technology can generate.

**You used to have a lot of the courtroom technology razzle-dazzle pretty much to yourself. Is it turning into a fair fight? Do you find opposing counsel catching up?**

**PB:** I have found that most firms now realize they need to use multimedia in the courtroom. But I have also found that there are very few lawyers who live and breathe their tools from the get-go. Most are still hitting the space bar (or pushing the button on the wireless mouse) to advance their PowerPoints and are still asking the vendor to please call up Exhibit X. Few have real facility. Few can work on the fly without a net.

I also find that most lawyers are still stuck in bullet-point mode. They abuse PowerPoint by using its bullet-point presentation style to simply read their content off the bullets. That is a weak use of the medium. Most lawyers are not using PowerPoint to create juxtapositions that effectively compare and contrast, or to tell a story visually.

**What’s your single favorite piece of technology?**

**PB:** Today, it’s the Keyspan presenter wireless mouse operating with the Digital Media Remote (DMR) software ([www.keyspan.com](http://www.keyspan.com)). The DMR soft-

ware allows you to customize nine function keys on the wireless mouse. The functions are sensitive by application (so you can have one set of functions for PowerPoint and another set for TrialMax). This allows you to Alt+Tab (switch) between a PowerPoint presentation and TrialMax documents or video without going back to the podium to touch the laptop. You even have the ability to zoom in and do callouts or highlighting on the fly. The mouse is small, lightweight and fast. It has a built-in laser pointer. No more chopsticks in the courtroom.

**You've pulled a great deal of productivity from a few off-the-shelf packages, particularly Microsoft Office. Could new tools, like desktop search or litigation support tools, decrease your reliance on these workhorses?**

**PB:** Microsoft Office is still the backbone of our operation. Proficiency at Word, PowerPoint, Excel, Access and Outlook are requirements. It's like being able to drill, hammer, saw and measure. Imagine a carpenter who says, "I don't pound nails. You need a hammerer."

Desktop search has helped us find things on our laptops faster, but it's not a substitute for our other applications. And in litigation support, we still work with Access, TrialMax and Livenote as a basic trio. We have experimented with other applications but keep coming back to these core ones. We learn them and drive them into the ground, which has helped us maximize our efficiency.

**Where do you see presentation and litigation support technologies heading in the near- to medium-term?**

**PB:** I think we are going to see more mature use of presentation technology. Just as everyone overdid clipart when

PowerPoint first came into vogue, so too I think we are seeing an overindulgence in "high-tech" presentation techniques. Best practices rely on varied presentation media using the lowest-tech solution to any particular advocacy problem. Sometimes words are best. Sometimes it's the old flip chart. Sometimes handouts or the dry-erase board. Sometimes the magnet board. Sometimes digital document display or PowerPoint is the most effective way to get your information across. Presenters need to be disciplined and judicious.

In litigation support, I think we will see the biggest growth in concept search tools for electronic discovery. The industry is starting to develop more sophisticated analytical tools to help isolate responsive electronic information. Attorney review is expensive

and marginally reliable. The future is in better filtering technology and search algorithms. Such technology may present significant cost-savings.

However, efficiency can kill the bottom line for firms paid by the hour or by the .tif. Firms and vendors profit from the churn of e-discovery production and review. The Morgan Stanley fiasco, though, may have the adverse effect of causing firms to do more than is reasonable as they engage in CYA tactics that they could avoid through better communication and education and early court involvement. But eventually, I think the market will demand greater e-discovery efficiency and software that enables a trial team to get to the heart of the matter faster. <sup>1P</sup>

Mark Tamminga (mark.tamminga@gowlings.com) practices law at Gowling Lafleur Henderson LLP in Hamilton, ON. He is *Law Practice's* Technology Editor.