

WIRED LAWYERS: UP CLOSE WITH TWO TRAVELING ATTORNEYS



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Trials on the road are never easy. A lawyer is away from not only the comforts of home but also the comforts of the professional home base. Solo practitioners and members of boutique law firms without the benefit of big-firm resources and staff often face additional challenges in planning and executing a smooth out-of-town trial. Some turn to laptops, cell phones and portable fax machines for help. Others just prefer to do things themselves and, with the aid of hardware and software—both general and litigation specific—have found ways to do it. Whatever the motivation, technology is enabling more lawyers to single-handedly juggle everything from printing subpoenas on the courthouse steps to impeaching witnesses with their own testimony displayed on an oversized screen.

Wired Road Warrior

Peter Bensinger Jr. has been dubbed "The most Wired Lawyer in America" by *The American lawyer*. And that moniker is no exaggeration. When he travels out of town for a trial, deposition or meeting, Bensinger carries with him in excess of 100 pounds of electronic equipment: laptop, cell phone, portable scanner, digital camera, Palm Pilot and anything else he can drag behind him.

Bensinger, a partner in the 35-lawyer firm of Bartlit Beck Herman Palenchar & Scott LLP in Chicago, has always been a techie. As a new associate at New York City's Paul, Weiss, Rifkind, Wharton & Garrison in 1989, he asked for a computer. "I was told no lawyers had computers. The all used Dictaphones. I said, 'You don't understand. I work faster with a computer.' Nothing. I had to write a memo to the managing partner. Finally, I got a PC," he said. "It was considered radical. And when I got a headset, it was really radical. I took a lot of teasing about air traffic over Hoboken, [N.J.]"

Four years later, when Bensinger was approached to join Bartlit Beck, he knew right off he would fit in. "I walked into the office of the managing partner and he was on the phone wearing a headset. I thought, 'This is my kind of firm. These are headset guys.'"

Bartlit Beck handles primarily complex commercial litigation in the areas of intellectual property, patent infringement, antitrust and business tort and fraud. "There's a lot of money at stake and the fact patterns are complicated," Bensinger said.

Regardless of the case or location, Bensinger has his laptop in tow. "It doesn't matter whether I'm in trial or not, in town or out of town, I always use my IBM [ThinkPad] 770Z for everything," Bensinger said. And on that laptop, he has a hard drive big enough to handle thousands of documents (some of which have been scanned in), a document database, deposition transcripts and digital photographs, animations, drawings and rendering. He has an external A: drive, a Kanguru 35GB external drive to load video ("It takes up a lot of space") and a Zip drive.

The software loaded on that laptop is extensive. Besides the common programs the firm loads on all computers, such as Microsoft Word, Access, Outlook, PowerPoint, and Excel, Bensinger also has LiveNote, TrialMax, Adobe Acrobat, Smartpatent, CaseMap and TimeMap, as well as access to Westlaw and Lexis.

He uses Access as his litigation database, including scanned documents; Outlook for e-mail; Excel for spreadsheets, formulas and charts; and PowerPoint to build graphics for client and courtroom presentations. LiveNote is real-time software that automatically translates testimony from the court report's machine to his laptop and can be displayed on a screen with an LCD (liquid crystal display) projector. He finds it useful at both depositions and trials.

"If I want to follow up on a line of questioning, I can project a witness's prior deposition testimony onto the screen and ask, 'Do you remember this answer to this question?' It's right there in front of everybody," he said.

Like all attorneys at Bartlit Beck, Bensinger composes at the keyboard. Using MS Word, he writes his own briefs and types outlines of meetings with clients or interviews of witnesses. And, like his colleagues, he uses that headset, which leaves his hands free to type notes while on the phone.

"[Founding partner] Fred Bartlit taught himself to type in his 50s," he said. "He is very fast. In real-time, he will type an outline of a meeting with a witness, add what follow-up needs to be done, and project it up onto a screen for all to see. Then he can print it out and give everyone a copy.

Bensinger has developed what he calls a "magazine brief," a brief he creates himself in Word and turned into a PDF file with Adobe Acrobat.

"It looks like a magazine—it has text, high-resolution photographs and intense graphics," he said. "It's a very functional way of presenting the information to a judge. It's a huge help in patent cases. Without it, everybody would be lost. And it's not rocket science—lawyers can do it."

He said the magazine brief concept is so effective and has been so well received that the firm uses it regularly.

Bensingers makes the most of software in and out of court.

PowerPoint is a favorite for office and trial presentations alike. "We try to think visually and project on screen documents which are also presented in hard copy format," he said. But where others stop at PowerPoint Bensingers forges on with other litigation-based programs, some of which are designed specially for a complex business litigation practice. One example is TimeMap, which Bensingers calls "PowerPoint for timelines only."

Upon entry of dates and event descriptions, it automatically creates a timeline. Another is TrialMax, which allows him to call up a document, zoom in on it, split the screen to display another document or a photograph, and play video clips. SmartPatent generates the text of a patent in digital format so it's searchable and has hyperlinks to corresponding images and figures.

He uses TrialMax and TrialMap at trial, but emphasizes the need to get advance permission from the judge and agreement from opposing counsel before preparing any high-tech courtroom presentation.

In a fraud case he tried in Chicago, he obtained approval from the parties and court to use high-tech programs in the courtroom. "We set up the rehearsal so the judge could see our set up," he remembered.

"We asked whether he had any preference as to how the equipment was laid out. He said, 'All I care about is the jury being able to see. The witness and I will come off the bench and counsel can get up and come around.'"

In another case, Bensingers was cross-examining an executive, who believed the defendant, Bensingers's client, delayed the implementation of a marketing plan.

"I had a letter signed by the plaintiff that disputed his own contention. The last paragraph said something to the effect of 'We met our time schedule, everything's great, the problem now will be managing rapid growth.' In real-time, I pulled that letter up on the screen. It was big as life. And it has a devastating effect on the jury. It was palpable. Here I was showing the jury the truth at that point in time," Bensingers said. "It couldn't have been accomplished with a handout or a board exhibit. It was theater."

Theater is something Bensingers said he knows a little something about. Bensingers said he was an actor before becoming an attorney and has appeared on "Saturday Night Live" and the soap opera "All My Children."

Bensingers makes constant use of his Nokia 6160 cell phone, his Palm V and his Olympus digital camera. His office calls automatically roll over to his cell phone.

"Our firm prides itself on its responsiveness to clients," he said. "The No. 1 complaint about lawyers is that they're nonresponsive."

Not Bartlit Beck.

And definitely not Bensingers.

"One Wednesday at 5:30 p.m., general counsel for a client called and left a voice mail message on my office phone. It transferred to my cell phone, and I got it at 5:32 p.m. The message was, 'Peter, I love you like a brother, but I need Fred Bartlit for something. It's an emergency. I need it by Sunday night.' I forwarded the message to Fred's office phone, which forwarded it to his cell phone. He was at the gym and heard his phone ringing in his gym bag. He accessed my message and sent me one back at 5:35 p.m. I called general counsel and said, 'You've got whatever you need.' He later told us that we got back to him in five minutes and the other firm called five or six hours later."

Service and efficiency - that is what Bensinger's practice is all about.

ATTORNEYS

Peter B. Bensinger, Jr.