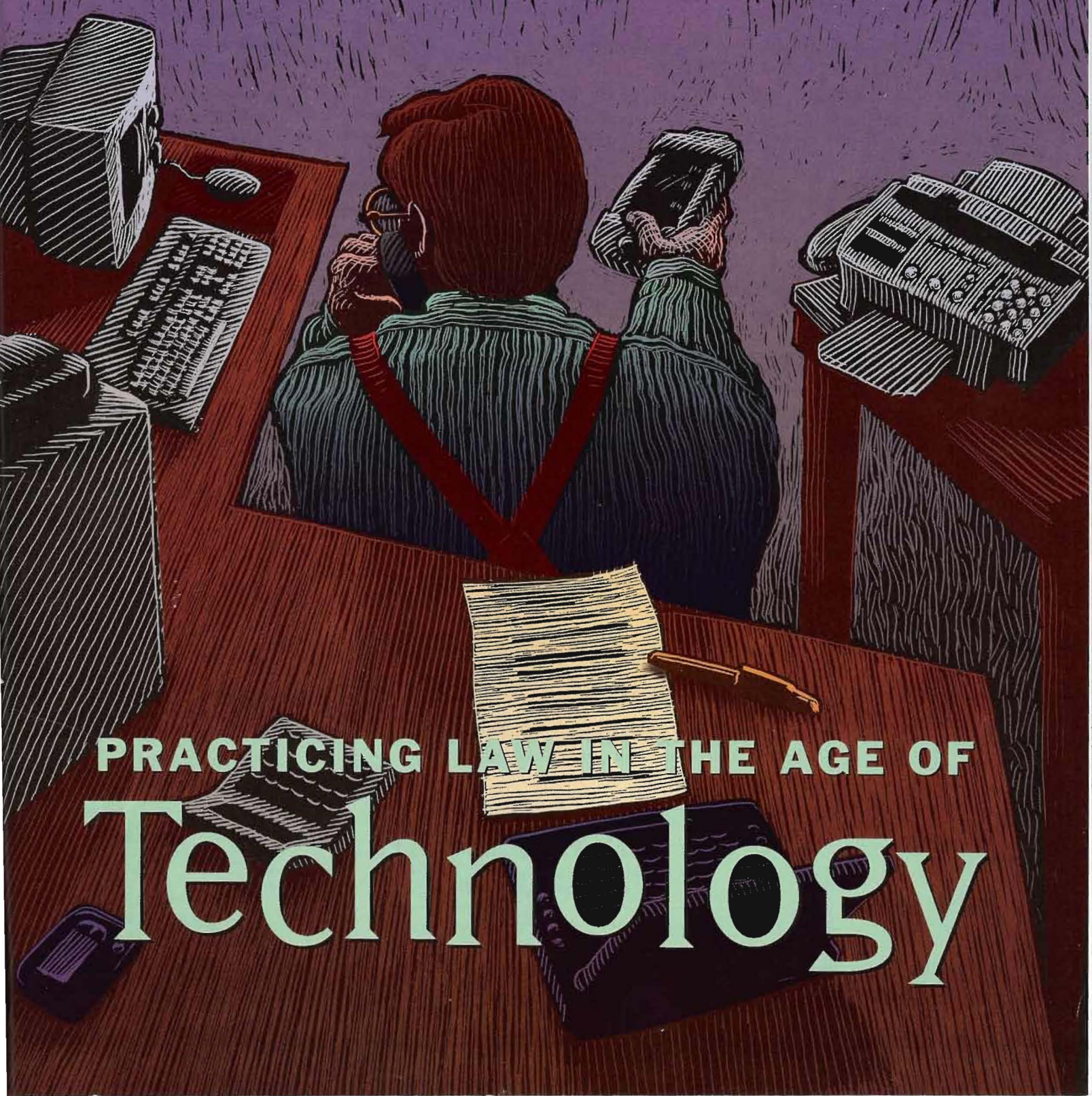


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PRACTICING LAW IN THE AGE OF  
**Technology**



# Low ost

by Michael D. Berman

This article highlights several types of technological solutions to litigation problems. Without endorsing any product, and staying at a novice level, this article will introduce you to a few litigation management tools.

There are several litigation practice management programs on the market. These programs will organize your calendar, keep file memoranda, and generate time sheets. Amicus, for example, can be used as a calendar, for timekeeping, and for managing a practice. The beauty of Amicus is that a single entry shows up in several places. For example, assume that in the XYZ case a deposition is scheduled on January 12, 2001, from 10 a.m. to noon. With a few keystrokes, that event can be entered on the calendar.

# Technology



At the same time that the event is placed on the calendar, however, it is also placed in a computer screen for the XYZ case itself. The user may click on the XYZ case and see all scheduled events for that case, such as the January 12, 2001 deposition; a February 12, 2001 discovery cutoff; a March 12, 2001 motions deadline; an April 12 pretrial conference; and, the trial date, as well as any other scheduled events. Thus, the event entered on the calendar shows up in two places because the calendar and "to do" lists are integrated with each other.

Another feature of Amicus integrates telephone calls, time sheets, and file memoranda. When opposing counsel in the XYZ case calls to discuss changing a deposition date, you can open a telephone call window, immediately review memoranda of prior telephone calls with that counsel, make a file memo of the current call, save the new memo in the XYZ phone log, make a time entry on your time sheet, and schedule a follow up call on the your "to do" list. While on the telephone, you can look at all other events in the case (such as the list of events that contains the deposition dates, discovery cutoff date, motions filing date, and trial date). If you agree to change the deposition date, you can then open another telephone window, call the deponent, inquire as to availability, make a time entry and save a file memo or schedule a reminder call to the deponent on another day. On the call to opposing counsel, confirming the new date, you can make a file memo, move the appointment for the deposition to a new day, and make a time entry with a few keystrokes. If opposing counsel is not available, a reminder to make a follow-up call can be added to the "to do" list. All of the file memoranda are instantly accessible in chronological order or by the name of the other person.

Amicus has a number of other features. It has a contact reminder that will notify you if you have not called a specific client in a specified period of time. It has a "do someday" list for those things that you never seem to get to. Amicus will also instantly report the value of your time entries to date so that, if a client asks for a rough estimate of the bill, you can

obtain it without interrupting your call.

When Amicus "opens" in the morning, it starts with a notepad showing critical events. The user may then go to the calendar and view the events for that day and the "to do" list items for the day, as well as those that were not finished from prior days. As each "to do" item is finished, a time entry can be generated. For example, if a "to do" reminds you to call Bob, you can go directly to a telephone window that contains Bob's telephone number – and even have Amicus dial the number, if it is set up to do so – call Bob, make a file memo, generate a time entry and a follow up "to do" item, and then go to the next item on your "to do" list. When networked, Amicus lets you review all events in a case, such as file memoranda written by other people who are working on the case. Amicus will also link up with other programs to generate and manage documents. As noted above, Amicus is illustrative of a number of programs that are on the market, each of which performs similar functions.

Amicus is compatible with the handheld "Palm Pilot." Again, the Palm Pilot is only one of many "personal digital assistants." See, D. Kennedy, "Technolawyer.com: How Lawyers Can Benefit From a Palm OS Device," 17 *The Lawyer's PC* 18 (2000). The Palm Pilot comes with a "Hot Synch" base that connects to your computer. At the end of the day, you can put the Palm Pilot in the base, press a button and all of your Amicus information will download into the Palm Pilot, while any changes made on the Palm Pilot upload to the computer. For example, if you go to court for a scheduling conference and the trial date is set for November 1, 2001, you can enter that on your Palm Pilot while you are at the scheduling conference. When you return to the office, that date will be transferred to the calendar on your computer, so that both devices have identical information. Similarly, if you scheduled the XYZ deposition for January 12, 2001, from 10 a.m. to noon, and entered it on your computer, that entry would be transferred to the Palm Pilot. This creates a portable calendar with all of your appointments, a contact list of the addresses and telephone numbers of everyone on your computer, and a current copy of your "to do" list – all that in a device that will fit into your pocket.

The combination of programs such as Amicus and devices such as the Palm Pilot are practice management tools. Neither, however, is designed to keep track of the nuts and bolts of a case, such as depositions or documents generated in discovery.

Summation is one of several programs that provide litigation support software that fills this need. At its most basic level, Summation manages and organizes deposition transcripts and documents generated in the discovery process so that important parts may be found when they are needed.

It is very simple and inexpensive to manage transcripts in Summation. Most court reporters will provide a floppy disk containing the entire deposition transcript, for a nominal fee. This transcript can easily be copied into Summation. Summation provides three general features for transcripts. First, you can search them. If, for example, there have been ten depositions and you are getting ready to depose "Bob," Summation gives you the ability to search every transcript and find every passage that contains his name. In short, you can instantly find out everything that any witness said about Bob. Second, you can digest the transcript on Summation and generate standard deposition summaries. The digests can also be searched on the computer. Third, Summation can be used for "real time" reporting. In a deposition, for a fee, you can hook directly to the court reporter's computer and obtain an unofficial copy of the transcript as the deposition is being conducted. If the witness testifies that he or she "never said that" earlier in the deposition, you can make an instant search of the unofficial transcript to see if, in fact, the witness did say "that."

Management of documents on Summation is more complex, although there are substantial advantages. There are several options. First, there is manual entry. You or other personnel can assemble a stack of "bates stamped" documents and summarize each document on a template. You would enter, for example, the bates number of the document, the author, the recipient, the date and type of document – such as letter, contract, promissory note, etc. – and a brief summary of the document itself. If the document relates to a specific issue, such as negligence, you can specify the related issue. The list of documents can then be searched or sorted. If,

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for example, you want to create a chronology, you may sort by date. If you want to know everything that Bob wrote or received, and every document that mentions him, you may search for documents that contain the word "Bob" and sort the results by date. If you want every document that relates to a single issue, you can search for that issue and create a chronology of facts related to that issue.

Alternatively, instead of manual entry, documents may be scanned through either Summation's optional scanning utility or commercial scanning services. A scanned document may be an image or it may contain the actual text of the document, or both. An image is an actual photocopy of the document. It looks just like the document itself, but the computer cannot "read" the text on the document. Imaging has a number of advantages. If you are traveling, you can carry a whole file cabinet full of documents on a single computer. If you are near a printer, you can generate an actual copy of the document wherever you are. The disadvantages are that imaging is somewhat costly, slow, and you cannot search the text to see, for example, if it refers to "Bob."

When optical character recognition (OCR) scanning is used, the text itself is entered into the computer. OCR scanning generates a document that the computer can read but the accuracy is sometimes questionable and it is not an actual "photocopy" of the document. Thus, blurry type may result in Bob being scanned as "Bab," or "Bub," or "B\*." Summation attempts to address this problem by "fuzzy searching." In short, a search for Bob can be made so that if a certain percentage of the characters match, there will be a "hit." Although it may be expensive, a combination of manual entry, imaging,

and OCR scanning is possible.

Summation lets you search both the transcripts and the document summaries simultaneously. Thus, you can, for example, look for every document and all testimony that mentions "Bob," using a single search. This can be very useful in preparing to depose or interview a specific person.

Summation can be used to generate "privilege logs" or lists of trial exhibits. It is very simple to make a note of whether a document is privileged by typing "P" in one field. You can then instantly generate a privilege log by searching that field and printing the results. It is equally simple to generate a list of trial exhibits. Documents may be prioritized "A," "B" or "C" in a separate priority field. "A" documents are those that will be used at trial. "C" documents are those that have no value. "B" documents are those that are in between. When it comes time to make a list of trial exhibits, you can search for all of the "B" documents, evaluate their value to the case, change the priority to either "A" or "C," and then print a list of the trial exhibits that contains their bates number, date, the type of document, author and recipient.

Summation also contains a trial notebook tool called the "Case Organizer." Essentially, this feature lets you perform a search and transfer the results of that search, in whole or in part, to a separate "page" where it can be revised, annotated, and edited. For example, if you were preparing to cross-examine "Bob," you could search the transcripts and document summaries and find all of the testimony and documents that relate to Bob. Instead of printing this or exporting this data to a word processor, you could then open a page named

"Bob" in the Case Organizer and drag and drop the search results onto that page. If you do not want to cross-examine Bob on some of the evidence, you can exclude it from the Case Organizer, without any impact on your database. Thus, if you asked Bob in deposition: "How fast were you driving?" and he said "70 M.P.H.," the actual question and answer, with the page reference and line numbers, would be copied into the Case Organizer. You could then rearrange this testimony in any order and type preliminary questions or comments. Finally, you may print the page for use at trial. If Bob changes his testimony at trial, you have the impeachment question and answer at your fingertips.

CaseMap is a program that performs related, but different functions. CaseMap is intended as a tool to organize and evaluate the facts in a case and link them to related issues and witnesses. It seems to have its greatest value where there are a number of people working on a case. Thus, each "object" in a case can be entered into the database. The program automatically creates a "short name" for that object. Facts can be entered and they become automatically related to the "object." For example, in a contract case, the basic contract would be entered as an object and given a short name such as "contract." Then, when the chronology is prepared, it will automatically be connected to the "object" as soon as the first few letters of the word "contract" are typed. Facts can be located in another program, such as Summation, and copied into CaseMap. CaseMap also supports imaging.

CaseMap has a separate table for questions. As people work on the case, they can generate questions. Questions can be prioritized and assigned to various team members. When they are answered, everyone can see the answer. Facts can also be designated as "disputed" or "undisputed" and evaluated by importance. Facts can be linked to issues so that, for example, all facts that are related to the issue of contributory negligence can be reviewed on a single screen. CaseMap can generate lists of undisputed facts, witness lists, document indices, and chronologies. It can create a list of unanswered questions and a list of facts linked to a particular witness. A companion program creates printed



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timelines for use at trial.

Presentation of digital images at trial ranges from simple and inexpensive systems, using programs such as Microsoft's Power Point (alone or supplemented with an add-on such as ANIX) or Corel Presentations plus a large television, to complex systems such as the DOAR Communications systems purchased by the United States District Court for the District of Maryland. The DOAR system is a state-of-the-art presentation system that permits a litigator to bring a personal computer into the courtroom, plug it into the Court's system, and show images of documents, charts, photos, or other evidence to the judge, the jury, a witness, and opposing counsel, simultaneously. The system has a "kill switch" so that the judge can instantly shut down the image that is going to the jury. It also permits electronic annotation of documents and videotapes, similar to the drawings made by sports announcers on televised games, and it has the capability to print photo-quality reproductions of the annotated images for the Court record. Documents

and other evidence can be placed below a video camera that is linked to monitors and shown to the entire courtroom while the witness is explaining them from the witness stand.

It is not possible in a short article to do justice to the variety of programs that are available on the market. There are alternatives to each program described in this article and this is not intended as an endorsement of any vendor. Practice management software can save time by using relational databases to make one entry show up in different ways: on a calendar or "to do" list and in a case folder. Personal digital assistants place this information in a portable device. Litigation support software can be used to organize the deposition transcripts and documents that could otherwise become overwhelming and it can assist in automating tasks such as preparing privilege logs. Presentation devices are available so that the information, once analyzed and organized, can be effectively displayed in the courtroom. ☺

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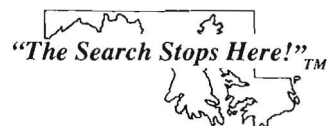
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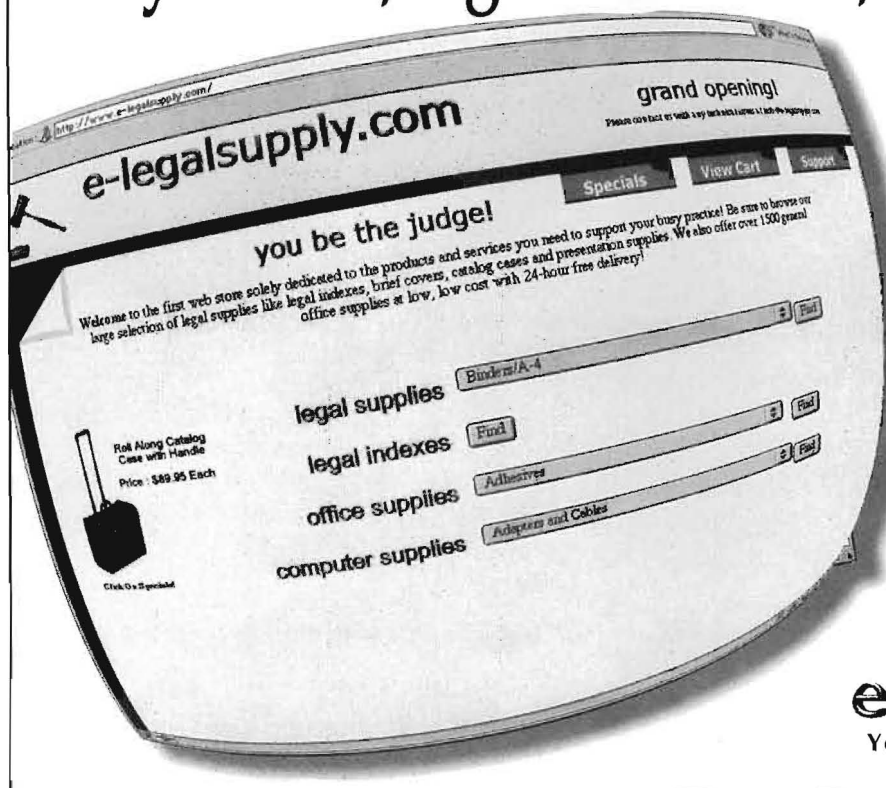
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