



Making Magic with Courtroom Technology

By Kathleen Balthrop Havener

The suggestion that it's easy to pull a rabbit out of your hat will bring a hearty laugh to anyone who has learned a magic trick and convincingly carried it off before an audience. As we learned from Harry Potter and friends, Hogwarts Academy is anything but a walk in the park, and succeeding in witchcraft and wizardry takes years and years of training—not only in the magical arts, but in wisdom, age, and grace.

Similarly, to those of us who—in years past—have put countless hours into preparing and trying a case using operational trial technology to present evidence to persuade a jury, suggesting that such a feat is easy will bring at least a low chuckle and perhaps an ungracious groan. But with the right mind-set and the newest tools, any lawyer with an ounce of interest in technology

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I have often dreamed of a web-based application that can do it all. Let's call it "WIZARD."

can prepare and flawlessly try a case without once uttering an oath or resorting to a magic spell.

I have often dreamed of an application or program that can do it all. In this article, we shall make believe that such a product exists and is on the market. I'm calling my imaginary web-based product WIZARD—although there's nothing magical about it. For all the tasks I describe WIZARD performing in this article, if we take each task one at a time (and for many in combination), there is, in fact, already an "app" for that. And with every version these programs become easier to use and more intuitive.

Wizard World

No case actually *starts* with a trial. In the beginning, there is a complaint. To generate or respond to this complaint in today's pre-WIZARD world, every law office of any size needs Adobe Acrobat (as well as the free Adobe Reader; www.adobe.com) on every desktop, laptop, tablet, and netbook it owns. Acrobat's ability to create and manage PDF files is simply that indispensable, regardless of the case management software you use—Sanction (www.verdictsystems.com), TrialDirector (www.indatacorp.com), Summation/AD Summation iBlaze (<http://accessdata.com>), TrialPad for iPad (www.trialpad.com), West Case Notebook (<http://store.westlaw.com>), LexisNexis CaseMap (www.lexisnexis.com), or any of the many products that perform these functions today. You will open a folder called "Pleadings" in whatever platform you're using and send a PDF file of the complaint to the folder. And so it will go for every task you need to complete.

But imagine that we're living in my WIZARD world when a complaint against your client comes through the mail slot. That complaint would go immediately into a scanner. You (or your employee) would open a new matter in your totally secure WIZARD platform and send the scanned version of the complaint to the magic box (i.e., folder) that WIZARD automatically creates—what is now called a "Pleadings Bible." For to open a new case in WIZARD is to wave your wand and start a breathtaking process

that—because of the way it's designed—will take you from this moment through the completion of your case. And it will, sometimes, seem like magic.

Start a new case in WIZARD, and it performs the following tasks:

- Opens the necessary magic boxes (folders) within your new case (e.g., Contacts, Correspondence, E-Discovery Review, Expert Reports, Motions in Limine, Trial Exhibits, Case Law, Issues for Appeal, etc.). Don't worry—WIZARD will add or subtract magic boxes throughout the life of the matter at your instruction. WIZARD's a pleasant fellow, anxious to oblige.
- Prompts you to designate the professionals you've chosen to work with on the new matter and to set the appropriate level of security for each.
- Sends e-mails to your chosen staff on the case, informing them that they have been assigned to the matter with you. You will set the level of security and control—contributions, modifications, replacements, deletions—each person on your team has to the magic boxes. They may see part or all of a matter.
- Initiates a case calendar and—after you input the jurisdiction and court—calendars your deadlines according to the applicable rules of procedure and the judge's standing order. Of course, after the case management conference, you will need to inform WIZARD of the court's scheduling order and make modifications as appropriate. This same calendar is where you input the deposition schedule and other dates important to the matter.
- Sets up a time keeper, prompting each assignee at the close of the day to enter the hours spent on this new matter.
- Sets up an online, real-time discussion, continuously open and updated, that's visible (if you want it to be) vertically at the right-hand side of the computer screen. This is the equivalent of the "Facebook page" for your case: Everyone updates his

or her status on an ongoing basis in real time. Sally checks in from a deposition in Anchorage. Harry enters his status as “researching precedent re: economic loss rule.” Maria reports that she’s preparing the portion of the summary judgment motion based on the statute of limitations. Every member of the team is aware in real time of what the other members of the team are doing. Sally’s deposition can be streamed live from Anchorage—and the second chair can remind Sally from the second chair’s desk in South Carolina about a follow-up question Sally’s forgotten. You can immediately see what your associates are doing and query or comment instantly, which can save hours of wasted time when someone has missed an important point.

- Tags each piece of knowledge you input, be it obtained from investigation, discovery, or something you overheard on the subway and keeps it at your fingertips.
- Permits clients and senior partners to see the status of the case instantly and in real time.

The true magic is that WIZARD keeps track of each and every individual kernel of knowledge that you and your team develops about every facet of the case in a running narrative. WIZARD is developing your opening statement and closing argument as you proceed in real time, from the very onset of the case. Every “mere scintilla” of evidence, and the source from which that knowledge was acquired, can be linked in the narrative. At any point, regarding any point, you can instantly “click through”—drilling down to the source of that “knowledge.”

WIZARD is linked to an online search engine (Google, let’s say) so that you can use the search function at any time to pull up information on whatever you might need to research at the moment—the credentials of an expert witness, the average length of use of the tire your client manufactures, the tolerable level of resonance on the suspension bridge your client designed, or the backgrounds of the members of your jury pool.

WIZARD can be linked—if you so choose—to an online research tool such as LexisNexis (www.lexisnexis.com), Westlaw (www.westlaw.com), or Casemaker (www.lawriter.net), with the client number automatically entered, so that any member of your team can log in to do whatever legal research project is required, small or large.

Incidentally, WIZARD will—when instructed—invite new members of the team to join. Clients, co-counsel, experts, and investigators will have whatever level of access (total or individually limited) that you give them. After you hire an expert witness, you tell WIZARD exactly how much of the case website you want the expert to be able to see. Never again will there be copying or shipping costs when the expert needs to see documents. Instead, she logs in and sees what you’ve made available to her on WIZARD. Have I said enough about what WIZARD can do for you in trial preparation?

No—there’s one more thing. Your briefs, in WIZARD, will be hyperlinked. In other words, when you cite a case at a certain pinpoint cite, clicking on that hyperlinked case in the brief (if viewed on your screen) will take you to the pinpoint citation. And not just the bit of helpful language but the whole case is there for you or the judge to peruse. Are you citing to interrogatories or to a certain page of a deposition transcript? Is there an exhibit mentioned? All of these documents are immediately visible to the judge. (Saving a hyperlinked document is a trick of its own, but one that’s fairly easy to pull off.) Hyperlinking your opponent’s briefs is a task you must do yourself, but with WIZARD on hand the task is an easy one.

But where WIZARD really shines is in the courtroom.

In some courts—sensible ones—the attorneys are provided the names, addresses, and occupations of the members of the jury pool in advance. When you enter their names and numbers into WIZARD, you can obtain what is publicly available using Google. You can learn more using LexisNexis or Westlaw or other paid services. WIZARD will create a virtual “sticky note” or “knowledge folder” containing as much information as you have gathered

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about each potential juror. On the verge of jury selection, WIZARD will update your previous searches on each member of the jury pool. When voir dire begins, WIZARD puts the sticky notes of the first 12 jurors in the virtual jury box. As voir dire proceeds, a WIZARD attendant continues to input relevant information provided by all the potential jurors. When a juror is dismissed for cause, the applicable sticky note is removed and replaced by the appropriate one for the replacement juror. And so it continues until it's time to exercise your peremptory challenges. By that time you will make your choices based on more information about each potential juror than you (and your human assistants) could ever have gathered and assimilated without the help of WIZARD. Your peremptory challenges can be made more wisely.

Next, let's say you're going through the deposition designations with the judge. You've used WIZARD (or Sanction or other existing management programs) to highlight the portions of the depositions your side has designated in yellow and those the other side has designated in blue. Where both sides have designated the same testimony, because the highlighting is superimposed, the designations are green. (Green for "go"—get it? If both sides designated that testimony, there's no argument so no need to scour it for objections.) You only need to examine and argue your objections made in the blue portion as designated by opposing counsel. Your opponent looks only at its objections marked in yellow. When the judge rules on the objections as to what testimony can be used and not used, WIZARD—with someone waving the magic wand—redacts from the transcripts any testimony concerning which the judge has sustained the objections.

Even more astounding is what can result from WIZARD linking every bit of evidence and every document to everything else. In particular, the videos of the depositions are synced with the transcripts. When the stricken testimony is translated into a load file, it is deleted—either en masse or line by line—from the video of that testimony as well. Do you use video deposition testimony to impeach your

opposing witnesses? What's more intimidating than a witness hearing and seeing himself on a 60-inch monitor saying in his deposition precisely the opposite of what he just said on the witness stand, right? The painstaking task of syncing the video with the transcripts and deleting from your video clips testimony that the judge has prohibited—what used to take us or our subordinates hours and hours overnight—is now performed by WIZARD in a matter of seconds.

While you're examining a witness, you want her to focus on a very specific part of a document. Pull up the document from your "Trial Exhibits" magic box and display it on your 60-inch monitor or on the tablet computers you've supplied to the judge and each of the jurors. WIZARD allows you to highlight a particular line, draw a circle around a portion of a diagram, zoom in on a signature to examine the detail. Every exhibit is at your fingertips and malleable.

If you've ordered daily transcripts as the trial goes on, they can be loaded into WIZARD as well. Exhibits will be linked to the testimony. Every word in any document, brief, pleading, or transcript is searchable. A surprise witness is called? WIZARD will search Google, all documents, videos, and comments in WIZARD and the case law as well. Because every word in the matter is searchable, anything about the new witness, or about the subject of his testimony, is retrievable within seconds. And here's the best part: Conflicting testimony is highlighted. WIZARD also "recommends" other information based on your search criteria.

Magic for the Real World

Is WIZARD only a dream? An integrated program or platform that performs all the functions I've described above is not yet on the market. But the various technologies needed to assemble your own WIZARD are readily available right now. Anyone who is creative enough, brave enough, and willing to make the investment in technology can build his or her own WIZARD. Many of the necessary components are available right out of the box. Remember how WIZARD synced videos of depositions to their transcripts?

Or how WIZARD let you highlight a detail on the tablet computers of the judge and jury? According to Theresa Stefanich, an electronic discovery specialist who was once a paralegal in my former law firm, Sanction can perform these functions right now.

And some fully integrated solutions will soon be available. In researching this article, I visited Chris Hoyer at the 16-lawyer Tampa, Florida, firm of James, Hoyer, Newcomer & Smiljanich, P.A., where Hoyer has implemented his own proprietary system of integrated technologies. I watched as Hoyer showed me what his system can do, and I watched him perform all the tasks described in this article.

I also interviewed Dan Copfer Sr., founder of Visual Evidence/E-Discovery LLC (soon to be known as VE|Discovery) in Cleveland, Ohio. For years VE has had proprietary software for preparing interactive time lines. Until recently, a VE guru operated the program in the courtroom. While the lawyer talks about an event on the time line, a “blowup” window appears listing (or actual showing in pictorial form) the event that occurred on a particular date. I used VE’s time line in trying a medical malpractice case a few years ago. That jurors could see—on the time line—enlarged images of X-rays and CT scans and then contrasted the images with the doctor’s notes on particular dates was powerfully persuasive. After the time line was built, it operated from a laptop computer with the click of a mouse. The time line alone demonstrated beyond question the doctor’s failure to diagnose the plaintiff’s illness. I could never have made the same impression using paper, an overhead projector, or any other method. Now VE is adapting a 60-inch television screen with an overlay that turns it into a touch screen. The lawyer can go where she wants when she wants, pulling up the events on the time line at the touch of a finger.

Imagine the trees we will save by not creating trial notebooks for every juror, the judge, opposing counsel, and ourselves. Imagine not having to physically lug the boxes and boxes of hard copies of exhibits into the courtroom. Imagine opening your trial by providing preprogrammed

iPads to each juror, the judge, and opposing counsel, on which you can show every exhibit, every video, every quotation from a brief or interrogatories.

Individual programs on the market now will perform every one of the tasks I’ve written about in this article. Study the technology. Look at legal technology websites, blogs, and publications and pick your programs—choose them cafeteria-style. (And after you invest in them, *read the directions*. It’s unbelievable what functionalities we miss because we don’t bother to study our own programs!)

I am not a computer expert. I certainly am not wealthy. But I am creative and I am brave. And I’ll try most anything that I think will make me a better lawyer. I hate the moments spent scrambling to find that exhibit when I need it now. I hate saying, “begging the court’s indulgence” while I put the evidence boards in the proper order. In fact, I hate evidence boards! Instead, I want to pull off every trial seamlessly, smoothly, gracefully, as if I wielded a magic wand. And by studying and using the various technologies and implementing them in the courtroom, I have learned to make it look as if I do. **GPSOLO**

Make your own WIZARD by choosing the necessary programs cafeteria-style.

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