

The More Things Change

By Brian D. Wassom

Wednesday, October 26, 2022, began like many of David Anderson's mornings had for the past 25 years—with a stop at the Coney Island five minutes away from his Bloomfield Hills colonial. There was still an hour to kill before motion call began at the Oakland County Circuit Court, but there was no point in reviewing the file again. Trevor Layne, the second-year associate assisting him, had done a fine job with the briefing.

A device resembling a glass-domed endtable on wheels whirred into view and paused beside David's booth. He swiped his ID wrist-strap across the SmartWaiter®'s sensor to pay, and the dome obediently retracted. David retrieved his order of coffee and dry toast. Trevor, here to observe David's argument, gladly filled his side of the booth with an omelet, energy drink, and various side dishes. Its job complete, the SmartWaiter® returned to the kitchen. David eyed his associate's smorgasbord warily as he blew lightly over his cup. "Listen," he said, "rather than distract you from the formidable task ahead of you, I'm going to catch up on that seminar from yesterday."

"The v-discovery thing?" said Trevor. "Yeah, that's worth watching." The associate removed from his satchel a silver pair of wraparound glasses, slipped them on, and cracked his knuckles. Over both hands he wore thin black gloves laced with hair-thin silver threads. "Don't worry about me, I'll find something to do."

"Great." David sat down and produced his own slightly larger, and decidedly less-stylish, version of the device his associate was wearing. The Visual Interlink Sensor and Optical Readout, or "VISOR," still looked to David more like something he should wear on the Boyne Mountain slopes

than the cutting-edge communications device that his kids, his colleagues, and—from what he could tell—half of those in the restaurant insisted that they were.

The basic idea behind the VISOR was straightforward enough. The “glass” in these “glasses” consisted of the same flexible, video-projecting fabric from which all computer screens had been fashioned for the past decade. Instead of the dusty computer monitor he had toiled in front of as an associate, this material allowed two-way interaction with digital images on walls, magazines . . . even clothing. Then someone figured out how to make the screen transparent and wrap it around your head, and *voilà!* The VISOR became the next must-have gadget.

“Just when I’d gotten used to videophones,” said David—mostly to himself, although Trevor had apparently taken no notice anyway. David arched an eyebrow as Trevor, behind his VISOR, stared off into the space somewhere over David’s shoulder, occasionally making odd gestures with the gloved fingers on his non-fork-holding hand.

David shook his head. Wondering for not the first time what he was getting himself into, he slipped his own VISOR on, snaked the slender audio fibers on either side around and into his ears, and turned the power on. Various menu options appeared on the screen, creating the illusion that they were floating in the air in front of him. These adjusted automatically as David spoke terse commands into the air: “Seminars. V-discovery. Play.”

His surroundings became only dimly visible behind the recorded video presentation that began to play on his VISOR screen. The image was of Michael Hannigan, another partner in his firm’s litigation department. He and a few others, including Trevor, had been tasked to bring the rest of the department up to speed on the courts’ new “virtual discovery” rules.

The v-discovery amendments to Michigan’s discovery rules take effect January 1, Michael said, along with the new Federal Rules they were modeled after. Some of us remember what it was like the last time the Federal Rules were amended to deal with electronic information, when the state courts took so long to catch up. A murmur passed

through the assembled attorneys. *Fortunately, mostly due to the WikiRules drafting process, the state courts have been very proactive this time.*

As you know, more and more litigation nowadays involves data and images from virtual reality—“VR,” “v-space,” the metaverse, or whatever you want to call it. The rules we’re used to were fine when the only “metadata” to be discovered was how many edits had been made to a word processing document. And a request to produce e-mail was okay when there was just one “Internet” that everyone used. Today, just about everyone has their own private network. Messages aren’t just text and still pictures anymore. Now electronic conversations take place in three-dimensional, “virtual” environments with fully interactive objects, sights, sounds . . . even touch. Every user is going to experience that virtual environment differently.

*So we can’t get away anymore with just producing transcripts, stills, or even videos from online conversations. Today it’s all about the P.O.V.—what the individual user perceives from his or her virtual “point of view.” Even before v-discovery rules started going into effect, some courts began to figure this out. For example, in *HyundaiChrysler v Fanning*, 38 F. Supp.4th 369 (S.D.N.Y. 2021)*

The recording ended 15 minutes later. David grimaced as he removed his VISOR.

Trevor, nearly finished eating, eyed him carefully. “What? Is it the sausage?” he said, his voice unsure if it was apologetic or sardonic. His partner was not a big fan of breakfast.

“No, it’s this ‘V’ . . . stuff,” David said, staring out the window. “This may have been a cliché line since before you were born, but I am definitely getting too old for this.”

“Nonsense,” said Trevor, decidedly more upbeat. “The whole point of the virtual world is to make things easy. Easy to actualize your imagination, to unlock the potentials of technology by making it adjust to your senses, instead of forcing you to conform to it. It lets you take any artificial reality you can conceive of, and drape it over the real world,” he said, gesturing for emphasis. He took hold of his VISOR. “And *this* is the gateway to those new worlds.”

David gave Trevor a deadpan look. “Do you get a commission when people buy these?”

“Nah, you just tend to talk about what you love, y’know?” He smiled.

“Yeah, but that’s ‘cause you’re one of those role-playing guys, right? Running around town shooting aliens or something?”

“Well, basically, yeah,” said Trevor, shifting his weight in his seat. “But I mean, can you blame me? You used to have to buy a special box that let you play video games on a 2-D screen. Now, all my friends and I have to do is log our VISORs into the same network, and we actually *see* each other *as* our characters. The VISORS project each person’s avatar, their 3-D character, on top of their physical selves.”

David affected a yawn. “I’m sure the firm will be thrilled to know its rising star is running down the street playing Buzz Lightyear.” Trevor’s silence confirmed that this reference was lost on him. “But what do these things do for us in the real world? Other than give us more interrogatories to draft?”

“Well, for example,” said Trevor, who by now had slipped his wraparound glasses back on, “if I wasn’t sitting here with you, I might be talking to that blonde in the corner booth.” He nodded towards a slender, college-age woman chatting amiably with a group of friends—all of whom wore pink, purple, or aquamarine VISORs of their own.

“And say what,” said David in a dry tone, “Hi, I’m Bono?”

“Is he that oldies rock guy?”

“Don’t talk to me.”

“No, seriously, I mean because apparently she and I are both logged into the same DateMatch network. I look over there with these on, and I see a big icon bobbing over her head, telling me she’s a 92 percent match with my interests and personality.”

The girls turned toward Trevor in unison, saw him gesturing in their direction, and turned away again, giggling. David couldn't resist. "I can only imagine what's 'bobbing' over you." Trevor gave a wan grin, but said nothing.

"Alright, dreamboat, tell me what this thing does for *me*," David said. "I know it's complicating the law; how does it help me *practice* it?"

"Well, how many times do you run into someone and forget their name?"

David didn't hesitate. "Every day of my life."

"Sure. But if you're logged into the firm's Contacts network, whenever you encounter someone in the database, your VISOR displays a pop-up with their name, their wife's and kids' names, and anything else you've entered about them."

David chewed on this. "Okay, that's useful."

"Yeah, like the boss says, 'Better conversations equal better business development.'"

"Right, but the glasses record those conversations too, right?" David asked. "That's what this whole 'P.O.V.' thing is about?"

"Exactly. Your VISOR can record everything you see, real or otherwise. Depending on how much memory you pay for, you can store minutes, or even hours, of footage from your own personal point of view. Reporters and cops use it for investigations, and it helps for personal safety . . . but mostly people upload it to their 'POV-logs,' where the whole world can see life from your perspective."

David scoffed. "Which is endlessly fascinating, except to the people that get recorded. They may as well call it 'voyeur-reality.'"

"Yeah, obviously there has to be a line somewhere . . . but personally, I don't see what the big deal is with most of the privacy arguments."

“Of course not, you grew up on MySpace.” David returned to his coffee, but it had grown cold. “What else?”

“Well, for one thing, I keep a little clock open in the corner of my P.O.V. that’s saying we should probably hit the road.” David checked his watch and agreed. They stood up and pulled on their trenchcoats.

As Trevor raised a gloved hand to push the door open, David asked, “So what’s with the gloves, anyway?”

“These,” said Trevor, lifting his palms to the overcast sky, “are some very cutting-edge innovations in VR technology. If the VISOR is a gateway to other worlds, then these are how one opens the door.”

“Are you sure they don’t pay you?”

“You’ll see. You should’ve gotten a basic version of these with your VISOR. A little nub that goes on your finger?”

David fished around in his trenchcoat pocket. “I got a little thimble-looking thing, something like . . . this?” He held it up.

“Yeah. Put your VISOR on, then clip that over the tip of your index finger.” David gave a mild scowl, but complied. Through his VR glasses, the tip of his finger glowed blue, and left residual traces of light when he swayed it back and forth.

Trevor continued. “Think of that nub on your finger as a 3-D computer mouse. See that circle on the door?”

David looked back towards the door they had just passed through. Sure enough, a large, neon-green circle hovered there. He tugged his VISOR down and peeked over its edge. No circle. It was a virtual projection that only the VISOR allowed him to see.

“It’s a geo-tag,” Trevor said. “The whole building is networked, just like pretty much everything is nowadays. Now try clicking it.”

David paused, but he followed Trevor’s analogy to 2-D computing quickly enough. Twenty-five years of litigating had taught him to think on his feet. David reached out his hand and aligned the finger-nub with the green circle. It got brighter. He motioned his fingertip forward, and heard a soft click in his ear. The circle expanded. A white background and text appeared inside it, listing the restaurant’s contact information, hours, menu, and further links for ordering. When David withdrew his hand, the circle retracted to its green, transparent state.

“I feel like I’m walking inside the World Wide Web,” he mused. “So your gloves are what, super-mice?”

“Basically. They let me use my whole hand to interact with virtual objects. So while I sat at the booth, for example, I checked my mail, wrote a motion with a virtual pen, and played half a game of chess with pieces that, from my P.O.V., looked like they were on the table right in front of me.”

David retrofitted this explanation to his memory of Trevor’s odd gestures. “Y’know, when I started at the firm, all I needed to be cutting-edge was a BlackBerry. Now before you start offering me blue and red pills, we’d better get to court.” David turned toward the parking lot, glanced at the car next to his . . . and jerked backwards with a reflexive start. “*What the . . .*”

In reality, the only thing next to David’s 2021 Cadillac was Trevor’s antiquated, slightly rust-bitten Chevy Volt. But through his VISOR he saw a furry, car-sized head of a wolverine, wearing a football helmet and a nasty snarl. Maize and blue M’s bedecked either side.

“Pretty cool, eh?” asked Trevor from behind. “I downloaded that for the State game this weekend.”

David again pulled his VISOR down to compare the virtual image to the far more mundane reality. “Are those things legal?”

Trevor shrugged. “Sure . . . for now.” He opened David’s passenger door. “Wanna see how to get 3-D directions superimposed on the road as you drive?”

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Standing in the security line, David noticed a sign that read “No Avatar Usage in Courthouse.” He shook his head.

Trevor reached the checkpoint first. “You an attorney, sir?” asked the guard.

“Yep, P100831,” said the associate, reciting his bar number. Trevor removed his VISOR long enough to peer into the retina scanner. He glanced back to David and explained, “New local rule . . . only lawyers can use VISORs in court.” Then he passed through the backscatter x-ray scanner.

“Doesn’t matter,” David said to the guard, patting the coat pocket where his was safely stowed. “You won’t catch me wearing this thing in a courtroom.” He turned to Trevor. “And I don’t want you wearing yours in there, either.”

“You’d be surprised, sir,” said the guard with a dry laugh. “I hear even some judges are starting to use them.”

David and Trevor took the stairs to the third floor, bypassing the swell of lawyers and clients waiting for an elevator. They entered the courtroom of Judge Darling, one of David’s law school classmates, and took a seat in the gallery. A video display along the far wall listed each case with a motion up for hearing that day. Within seconds, the name of David’s client blinked from red to green, signifying his presence. The opposing party’s name was still red, meaning that its lawyer was in another of the building’s courtrooms.

“I suppose they put the same GPS chips in VISORs that are in everyone’s phones?” David asked Trevor in a whisper, since the judge was already on the bench. His associate nodded while he fished through his satchel for his and David’s touchpads. No larger than the yellow legal pads that some of the older partners still used, these devices stored in electronic form all of the documents in each of David’s case files.

The arguments ahead of theirs were typical. In one, an out-of-town attorney appeared via video link, his face projected by the video wall opposite the docket display. David had used videoconferencing for the occasional status conference, but was still of the opinion that nothing could substitute for the lawyer’s physical presence in the courtroom.

Opposing counsel Steve Hermon finally arrived near the tail end of the motion call. He wore a wraparound VISOR identical to Trevor’s. Judge Darling called the case moments later.

“Mr. Hermon, welcome,” said the judge. Smirking, he added, “We were about to start, *with or without you.*”

“Apologies, your Honor, my other motion ran late,” said Hermon, missing the judge’s bemused allusion to the classic U2 song. David, however—his own opinion of the VISOR’s appearance vindicated—took note.

Judge Darling continued. “This is Wysiwyg’s motion to amend its defamation complaint. I’ve read the briefs. Mr. Hermon, what’s the harm in letting them add a count?”

Wysiwyg—among the few manufacturing businesses left in the area—was David’s client. Its sales had dipped when the defendant, a competitor, issued press releases questioning Wysiwyg’s quality standards and business practices. David sued for defamation, and now sought to add an additional count based on his recent discovery that the defendant’s comments had been published in a POV-log as well. Hardly a dispositive motion, but he’d take all the damages he could get.

Predictably, Herman stressed that the videos underlying the original complaint and their 3-D versions contained identical statements. He therefore argued that they collectively gave rise to only one cause of action under defamation law's "single publication rule."

"Concededly," said David in response, "the virtual world is still a place where, from the law's point of view, *the streets have no name.*" The song reference again eluded Hermon, but Judge Darling's eyes lit up. David continued, "But publishing the statements in virtual form adds significant content that is also defamatory. For example, the speaker is seen holding a part allegedly from Wysiwyg. A virtual viewer can pause and examine that object in three dimensions, gaining a significantly poorer impression of my client's workmanship. And someone wearing v-gloves . . ." he gestured to Trevor at counsel's table, who caught on and raised his hands, "could even pick the thing up and examine it. Virtual actions, in this case, speak louder than words."

Judge Darling stroked his chin and nodded. After a few additional questions, he granted David's motion.

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Trevor met David in the hallway. "I guess this means old dogs can even learn virtual tricks, eh?"

"Nah, no new tricks today," said David. "Know the facts, know the law, know the judge. For the rest, that's why God made associates." He chuckled at his own joke. "At least some things about this job never change."