

Powerful New Software Makes Trial Preparation Better, Faster and Easier

BY MIKE TONSING, ESQ.

Looking both backward and forward as we roll into the new millennium, I realize that I learned many valuable skills as I began my service in the Civil Division of the United States Attorney's Office in San Francisco nearly two decades ago. I was there as a part of a conscious strategy to hone my proficiency as a trial lawyer. And hone them I did, among other things learning to use the case management tools of the early '80s. As the year ends, I reflect on the comparatively primitive tools we used just a few years ago and I look to the future with a renewed realization that litigation and technology are converging at warp speed. And, I embrace that future.

As a rookie Assistant U.S. Attorney, I attended the Justice Department's excellent "trial school," the Civil Advocacy Institute, in Washington, D.C. If I had not done so before, I learned to use those ever-present, government-issued legal pads they gave us to make a series of lists of the elements I would need to be able to prove to win each of my cases.

Back in San Francisco, as the matters assigned to me lasted beyond their infancy and began to look like Darwinian survivors (through a somewhat

The screenshot shows the CaseMap 3 software interface for a case named 'Hawkins'. The main window displays a table with columns for 'Full Name', 'Description', 'Jury Instruction', 'Eval by CA', 'LS: Facts', 'LS: Documents', and 'LS: Persons'. The table lists various legal issues and their associated evidence, such as 'Wrongful Termination', 'Age Discrimination', 'Retaliation', and 'Damages'. The interface includes a menu bar (File, Edit, View, Records, Table, Outline, Tools, Help) and a toolbar with various icons for navigation and editing.

Full Name	Description	Jury Instruction	Eval by CA	LS: Facts	LS: Documents	LS: Persons
1 Wrongful Termination	Hawkins claims that he was fired in		7	3	7	
2 Age Discrimination	Hawkins claims his age (52) was a	Age discrimination	22	4	10	
2.1 Age Discrim Against	There are a number of specific		18	2	9	
2.1.1 The Lang Memo			12	0	5	
2.1.2 Lang Verbal Threats			5	2	4	
2.2 Pattern & Practice			18	4	10	
2.2.1 Statistics	Statistical evidence shows a decre		10	0	4	
2.2.2 Old Wood Must Go Incident			6	2	2	
2.2.3 Claims of Other Employees	Other ex-ABI employees complain		2	1	3	
3 Retaliation	Hawkins claims Anstar Biotech		14	2	7	
3.1 Transfer	Hawkins claims his transfer to		5	1	5	
3.2 Demotion	Hawkins claims his demotion was		9	1	4	
4 Hawkins Deserved Termination	Even though Hawkins was not	N/A	17	4	9	
4.1 Harassed Female Staff Members	There are several staff members	N/A	8	3	5	
4.2 Poor Work Quality	This argument should be pretty	N/A	9	1	2	
5 Damages			7	1	6	
5.1 Failure to Mitigate	Hawkins has not made any effort	The plaintiff is	3	0	2	
5.2 Lost Wages	A rough estimate of his lost wage	If you find that Anstar	3	1	2	
5.3 Mental Anguish	Hawkins claims to be suffering from	If you find that Anstar	1	0	4	

CaseMap makes it easy to outline the issues in your case and to organize the facts, documents, witnesses, and demonstrative evidence that relate to each issue and sub-issue.

mysterious process of natural selection presided over by the judges of the Northern District), I would dedicate a portion of a filing cabinet, and eventually a more portable banker's box, to a series of manila folders bearing labels like "Opening Statement," "Plaintiff, cross of," "Damages, mitigation of," "Dr. Jones, Direct Exam," and the like. Into the folders I would pitch raw ideas written on scraps from those yellow pads, pithy excerpts from relevant decisions and occasional inspi-

rations written on napkins or telephone message pads. That passed for seriously early trial preparation in the early '80s.

It all worked pretty well in those days, too. Listing the elements of the various causes of action and affirmative defenses, then striking those elements that had been admitted by the plaintiff, I knew exactly what I had to prove to win. I would then figure out who in the cast of possible characters could best testify as to each item of

proof. I listed what was and was not admitted, what I had to prove and what I did not have to prove. Then, into the manila folders went handcrafted questions designed to elicit the needed testimony. Often, the question would be tied to a deposition response or to an answer to an interrogatory, so that if testimony changed on the witness stand I could impeach the witness directly from the earlier record.

Eventually, the unsorted stuff in those brainstorming folders became the highly organized stuff in my trial notebook.

My '80s approach, learned at the feet of career masters at DOJ and the chief of the Civil Division in San Francisco, now seems depressingly medieval when compared to what is available today in the way of support technology.

In this column, I will focus on the capabilities of CaseSoft/DecisionQuest's CaseMap™ program. (Visit www.casesoft.com). DecisionQuest has developed and refined a highly flexible relational database system that allows facts, legal issues and their sources (witnesses, depositions, documents, etc.) to be entered once and then queried again, again and again.

CaseMap, the leader in a new generation of "intelligent" computer applications for lawyers, enables Cyberian litigators of the '90s to enter data once, then examine and re-examine the relationships between the facts and their sources, the facts and the issues, or any other relationships that are important to their case. As any experienced litigator knows, examining and re-examining the relationships in a case are often a key to winning. That was a far more burdensome task in the early '80s than it is today.

The folks at DecisionQuest's CaseSoft division have not just built a better mousetrap; they have masterfully accomplished the more daunting task of replacing those seemingly ubiquitous legal pads with a much more powerful alternative. CaseMap does what my legal pads did, but it does it a whole lot better and faster—and, in the long run, it does it far cheaper.

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The First Step? *Déjà vu!*

The first step in using CaseMap? Just like twenty years ago. Record the pertinent facts. List the issues, the witnesses and the documents. *Déjà vu* all over again.

The Second Step? New Data Links

Associations (called "links" in CaseMap computer lingo) are then created between each material fact and its source. (How do we know the car was blue? The plaintiff said it was. Line 12, page 4 of her verified Complaint.) Document references also can be linked to scanned copies of the documents. (How did she put it exactly? A scanned copy of page 4 is but a mouse click away, viewable as a "pdf" file—that is, a file that retains all of the original's unique characteristics—from within the program. "Driving my blue Toyota, I was struck by...." Aha! You see the actual deposition transcript page, right on the computer screen.)

The Third Step? Powerful Data Manipulation

If an element of a cause of action is conceded in a response to a Request for Admissions, for example, and is also admitted by the defendant in her verified Answer and is also the subject of testimony by two percipient witnesses, CaseMap could create links between and among these data items. It could also link all of these items to the key element of the relevant cause of action or affirmative defense. By associating each fact with its sources and issues, an intrepid litigator can create a whole range of useful legal pad-like lists (called "reports" in CaseMap lingo) without risking carpal tunnel syndrome as I probably did twenty years ago.

CaseMap's main window contains four tabs headed "Fact, Object, Issue and Question." Facts are entered, modified and viewed under the "Fact" tab. Witnesses, depositions and other documents are entered, modified and viewed under what CaseMap calls the "Object" tab, and so on.

Each of the four tabs has a series of predefined columns beneath it. Though these predefined columns cover all of the obvious categories that I used to list on my manila folders, customized columns can be easily created if needed.

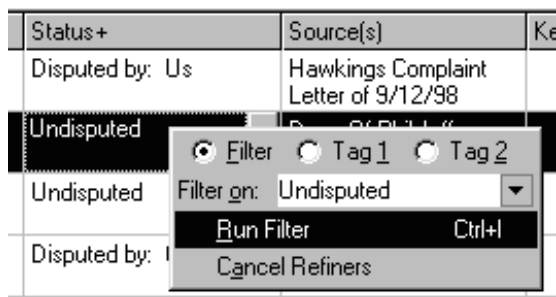
The Fourth Step? Everything Gets Graphic

In many of my present cases involving employment law, the sequence of events is crucial. The sequence often is a source of dispute, not surprisingly. (For example, in a recent whistleblower case, the linchpin of the case was whether the manager learned

that the plaintiff had reported safety violations before or after he fired him. Timing was the essence.) One of the features I find most useful and innovative in CaseMap is the ability it gives litigators to view data graphically. Whether the key facts took place over a period of minutes, days or years, an instantly available bar graph style representation of these facts—an instant timeline, if you will—depicts the entire sequence. Mouse-clicking on one of the bars on that graph instantly provides the details relating to the particular fact or facts it represents. Remarkable!

The Fifth Step? Team Members Compare Analyses

Another unique feature is the column that CaseMap includes that allows each trial team member to independently evaluate the quality of the data in the case's database. The team's degree of consensus as to each piece of evidence and each bit of testimony can then be viewed graphically. Obviously, if team members differ significantly in the value they assign to key facts, some dialogue—and, possibly some change in the “game plan”—is called for.



CaseMap makes it easy to filter your case knowledgebase down to the interest of the moment. For example, when you're preparing a Motion for Summary Judgment, you can instantly limit your fact chronology to undisputed facts.

CaseMap is truly a feature-rich tool for Cyberian litigators. It is not just a

tool for lawyer-geeks; it is a thinking lawyer's tool. It can win cases.

However, CaseMap's usefulness is not limited to litigation, by any means. It could be of enormous help in the negotiation of a complex contract or in any other situation where a lawyer would benefit from viewing multi-faceted facts and the relationships between and among them in new and different ways.

As programs go, CaseMap is not difficult to learn. Because facts, objects, issues and questions are entered only once, the data-entry process is literally and figuratively relatively painless. Manipulation of the data is extraordinarily easy after that. And, think of all those legal pads and manila file folders that will be saved! A “demo” version of CaseMap can be downloaded from a page on DecisionQuest's CaseSoft website, www.casesoft.com/freedown.htm. *Bon appetit!*

The full version of CaseMap is available for purchase for about \$500 in a single-license version. (Prices may have risen somewhat by the time of publication. Frankly, the above price is ridiculously inexpensive, given the quality and usefulness of the product.) CaseMap can also be purchased and installed in a network version. Database files can then reside on a law firm's server, so that litigation team members can review or manipulate the data at any time. A maturing case file can be easily copied onto a notebook computer and taken to witness interviews, settlement conferences, media-

tion efforts and court appearances.

As many regular readers of this column know, I am a big fan of *Summation*, the litigation support software that has captured a huge market share over the last several years. (Visit www.summation.com.) In fact, I was honored on *Summation's* website in one of the company's “litigator profiles” that featured innovative users of their product. (Visit www.summation.com/profiles/employ.htm.) I remain a very satisfied user. I do not see CaseMap as a replacement for *Summation*. On the contrary. I see the two programs as powerfully complementing each other.

In a future column, I will share my thoughts about how these two feature-rich programs can be used synergistically to produce extremely powerful results for Cyberian lawyers at very reasonable prices. In the meantime, see you in Cyberia!

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