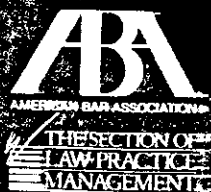


WINNING WITH COMPUTERS

TRIAL PRACTICE IN THE 21ST CENTURY

JOHN C. TREDENICK, JR., EDITOR



Cudgel—My Litigation Companion

Daniel L. Kegan

Dan Kegan developed the Cudgel case management system while keeping up with the demands of a busy trial practice. The article not only offers an in-depth look at another good case management system, but also shows you how a case management system works on a Macintosh.

I am still amazed at how quickly motion practice, briefs, and discovery fatten a litigation file. Even before a single deposition, the same document may appear as an exhibit in several briefs. Casual notes from the client's history, taken before the complaint was filed, become important guidelines for information streaming into discovery. Then there are the simple questions. What are the fax number and the phone number of adverse local counsel? Which courtroom holds the judge?

Several years ago, I started a prototype litigation database using the ThinkTank outliner on the Macintosh computer. I knew I would want data on Evidence: exhibits, witnesses, and depositions; and on Law: issues, elements to prove, cases, citations, and statutes. I quickly set up my outlined database . . . and waited for a dispute big and long enough to use it. In the meantime, I kept skimming the ads for litigation support and case management floating across my desk, reading the Law Practice Management computer division newsletters, and recording in my notebook ideas of data fields and reports to include in the litigation system.

Outliners can be a big help in organizing data. This is particularly true given the power of current outliners with cloned data fields where one item of data can be in multiple places such as listing evidence by date, by author, and by exhibit number. Nonetheless, I found limitations in the essentially one-dimensional outliner. A relational database seemed the heavy-duty

foundation I wanted for a computerized litigation system.

During 1989, I had the incentive to accelerate the program development from rustic outliner to powerful litigation companion. What should have been a simple trademark dispute was growing into a multi-party, multi-district litigation. I had planned on using a quiet week in August to work on another project. My priorities shifted, however, and after some afternoons and evenings, I had the framework and key programming of a relational database completed. I called it the Cudgel litigation companion.¹

I first wanted to track filed pleadings. In our precomputer days, our firm typed a table of contents for each pleadings book. When we first purchased computers, we shifted to word processing. We sometimes had clean contents sheets, alternating with handwritten updates when it seemed too much trouble to go back to the computer for just one or two items.

The major areas I wanted to entrust to the computer were evidence and cases. What information had we already obtained from the defendant? How did that square with the current denials in its discovery reply? What had we already produced? How should we support our claim of discovery abuse if the defendant again requested information it already had from prior discovery?

Those were my early questions. Commuting to and from work, I would muse on the best structure for putting data into the computer and

the final reports I wanted. The program evolved as the litigation enlarged. As the case grew, associates and law clerks joined me in using Cudgel to control the litigation and their experience indicated which interface features and reports were not yet clear and intuitive.

Having others input data required that I make explicit the data entry conventions I had developed over the years, such as putting most important words first in data fields, avoiding passive constructions, and using consistent abbreviations. These general principles and other specific conventions for particular data fields were articulated and memorialized in both the program manual and on-screen help. You could probably attach a computerized notation in some database programs for on-line assistance.

When we needed an updated estimate of litigation costs, we included a set of financial reports. We still use Timeslips for the Mac for our daily time accounting and monthly billing, but our litigation-support database puts the key monthly litigation expenses into focus.

When the defendant infringed a second trademark of plaintiff, the program was again expanded to include a multi-case ability. The ability to handle two separate cases involving related parties also allowed the program to be used in cases with unrelated parties but similar legal issues. In that instance, you could copy the existing database, retain the legal citations and facts needing to be proved, and delete the old case-specific evidence.

Cudgel is not a litigation-support free-text retrieval system. Sonar provides that function on the Macintosh fairly well. Free-text retrieval is appropriate where much text and many depositions are involved. Our litigation needs required a more structured and flexible approach. I wanted to incorporate each of the following items into a workable system:

1. exhibits to support all my claimed facts,
2. facts to support all my points of law,
3. law to support each issue in dispute,
4. a clear listing of how many outstanding matters were pending in the case,
5. when the due dates were,
6. which matters we were responsible for,
7. a list of our key citations, with the dates they were last checked in Shepard's,
8. an account for multiple occurrences of the same piece of evidence,

9. a simple way to include logos and other graphic evidence in the system, and
10. a docket calendar system attuned to litigation.

CUDGEL'S LOGIC

In litigation, everything is connected to everything else, with frequent time deadlines. I consider myself fairly organized. Yet, to preserve some order when one's adversary and the increasing entropy are creating chaos, the litigator must organize, retrieve, and analyze the information funneling into the case.

Much litigation focuses on statements of law and proving facts. Witnesses introduce evidence, evidence supports facts, facts and points of law support issues, issues define matters to be decided by the court, and papers are filed to influence the decision on various matters (Figure 3.50).

With a powerful relational database environment, you can build a litigation system where you usually enter an item of data only once. The data appear on any lists to which they are generally related. Of course, you still have to decide what should be related to what; the computer simply makes relating and clean list making easier.

CUDGEL'S STRUCTURE

Data in any relational database, including Cudgel, are stored in several "relations." A relation is a group of similar data records that can be related by at least one data field in common. Cudgel relations are alphabetically titled.

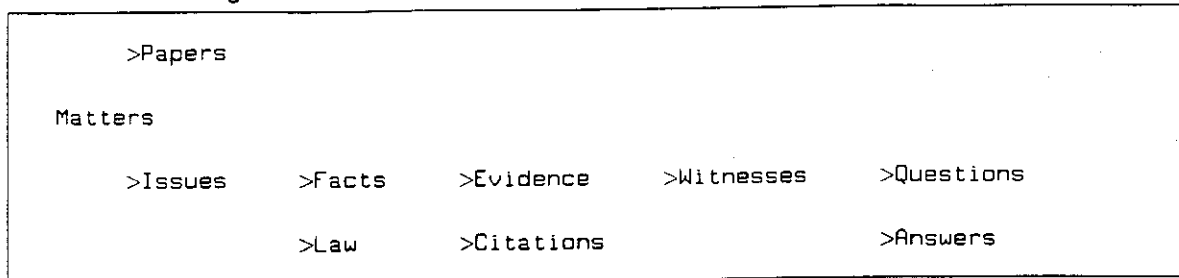
Actors. This relation covers people, parties, counsel, and witnesses; names, addresses, and phone numbers.

Bench. This is the control center for Cudgel. Bench has only one data record, but it controls which case is dealt with, the titles for reports, and other key parameters.

Cites. Full case citations, with comments, are in this relation.

Dup. This relation keeps track of duplicate evidence—the same item given different exhibit numbers, or appearing as an exhibit in different motions.

FIGURE 3.50: Litigation Flowchart



Evidence. This relation keeps track of the smoking gun, the bullet, the product label, admission 17, document production 314. Graphics may be readily included.

Exhibits. A subset of Evidence, only the exhibits to be used in court, at a hearing, or trial are in this relation.

Fact. Facts prove or disprove, e.g., plaintiff first used the trademark Dickens in Illinois on January 7, 1947.

Gage \$. This relation keeps track of litigation expenses, both for services and other costs.

History. Chronological data of the case are in this relation. It is helpful in taking an early case history from the client, or later for refreshing memory for key dates and events. This is also the relation in which Docket entries are made.

Issues. This relation covers such items as whether the plaintiff has priority in trademark use.

Jury. (In development.) Space is provided in Cudgel for jury-specific data. However, since I have not participated in many jury trials, I have not yet implemented this section. I would like to hear from litigators what data and reports would be helpful.

Key. This relation covers key word, date, number, and time searching.

Law. Statements of the law are connected to a record in the Cites relation for a full citation.

Matter. Matters pending decision are included here, e.g., trademark infringement, copyright counterclaim, or Rule 11 sanction.

Notes. Free-form notes go in this relation.

Orders. Court orders are a subset of the Papers relation.

Papers. Pleadings, motions, briefs, and discovery documents are in this relation.

Questions. List questions and expected or actual answers here for depositions, direct, or cross-examination.

Refract. This relation co-ordinates related records in different relations.

Users. Specialized menus for different tasks, with differing commands, and variable access permission are here, depending on the User selected.

Witnesses. This relation keeps close track of exhibits expected to be introduced and facts to prove. Witnesses are a subset of the Actors relation.

X. This symbol is used for one or more of the alphabetic relations or commands.

Z. A special relation is for the demonstration version of Cudgel.

COMPUTER AND PAPER USES

Cudgel was designed to make optimum use of today's powerful, portable computers. I also use a paper trial notebook. Sometimes, the paper version seems easier than the electronic.

I have not taken this program into the courtroom yet (my seminal case settled), but fond as I am of my Macintosh computer, I still do not trust electrons without backup. I would use Cudgel on-line in court to log exhibits and to review questions, but I would want a second chair to maintain the paper records. I hope I would not need the paper. The computer lists are always clean, updated, and faster. But if needed, we could ask for a recess and revert to mechanical aids.

USERS AND MENUS

In developing Cudgel, I began with a master menu, which has access to everything. (See Figure 3.62 at the end of this article.) When a law clerk began entering data, I created the fill menu set, which can fill in and revise data, but cannot delete records. I wanted to be able to edit the clerk's work, and was concerned about inadvertent deletions. (See Figure 3.51.)

FIGURE 3.51: Fill Menu Set Screen



FIGURE 3.52: Docket Menu Set Screen

Enter	Make Docket
Title/Date	Due Date/H
Actor	Past Due/H
History	Month
Note	Week
Paper	Day
.....	Who
Cudgel@s	Who Backup
Feedback	Where
	Case

	HistoriesQ

The docket menu set has limited commands. The docket user can enter report titles, key actors, dates, notes, and pleadings and papers, and provide feedback for Cudgel improvements. The docket user can list due dates for a given case, for all pending cases, due the next day, the next week, due the next month, ordered by date, by responsible lawyer, by backup lawyer, by location, and by case. (See Figure 3.52.)

A sample docket listing shows due dates, times, expected completion times, unusual locations, the event and case, responsible person, and backup. (See Figure 3.53.)

For trial use, I wanted a set of menu commands geared for use under pressured time demands. I removed commands unlikely to be needed in court. Of course, the information still resides within Cudgel and a fast change to another user's menu set could access it. The ability to actually change menu command sets is very convenient. The focus for the trial user is on witnesses, exhibits, and facts: elements needed to prove your case and to disprove your opponent's case. (See Figure 3.54.)

The key commands provide searches of previously identified text, dates, numbers, and times, and can link to exhibits, witnesses, questions, or anything else in Cudgel.

The final command set is for the import and export of Cudgel data. Eventually even the largest disk drive fills with data. Today's hot litigation cools to tomorrow's ash and cinders. The import/export menu set provides the way to import and export any defined subset of data. The data can be saved in the archived case file, printed, or simply deleted and database storage recovered.

The fix menu provides commands focused on Cudgel software, rather than on the case. Cudgel provides a list of all focal litigation cases, together with the responsible lawyer, the court docket number, and related information. (See Figure 3.55.)

Several of the key relations are provided with three boxes, as shown in the lower right of Figure 3.56.

These boxes provide a consistent and convenient place to temporarily group data. The "Name Box" command provides a place for retaining the descriptions for these temporary groupings. The temporary groupings can then be listed by restricting the list using a query.

The query data form looks similar to the data entry form, except that rectangles are replaced by ovals. In the examples below, the query for evidence has been restricted to showing only evidence where the author's last name starts with "Frid." Figure 3.62 was provided by Joe Friday, in the Alpha-Zed case. A more complex search restriction would be—evidence after 1987, written by Friday, sent to Columbo, regarding San Francisco. Both the query oval and the evidence data screen are shown. Helix readily accepts graphics too, shown in Figure 3.57, scaled to fit a 1½" square.

Citations are another key focus of brief writing. Cudgel accepts citations, which can be used simply to identify a case or to pinpoint a holding or a nice quote. Entering the data separately field by field permits efficient database searching. Helix's calculation tiles put the pieces together for a *University of Chicago Maroon Book* style citation. The same data entry screen can be used for pending cases, LEXIS cases, statutes, periodicals, and books. All critical information is preserved, although strict ordering for *Blue Book* style isn't. It could be programmed but I do not think it is needed. (See Figure 3.58.)

FIGURE 3.53: Sample Docket Listing Screen

Due Date/H				Dec 18, 198
Cudgel Manual & Tutorial		GreenLight Software/ Elan Associates		
Docket, Listed by Cudgel®			Elan (GreenLight)	
Time Start/Stop	Date/ Where	Event/Case	RecH	Responsible
02:00 PM	Oct 27, 1993	Settlement Conference with Magistrate Solomon		Webster II, L
04:00 PM		Elan (GreenLight)	2	Kent, R
09:30 AM	Feb 29, 1996	Pretrial conference with Judge Davids		Webster II, L
12:15 PM		Elan (GreenLight)	3	Kent, R
09:30 AM	Feb 3, 1999	Deposition: Michael Smith		Kent, Robin
05:30 PM	Northampton, MA	Elan (GreenLight)	4	Webster

FIGURE 3.54: Menu Commands Screen

File Edit Set View Enter List Qry Make	
	<p>E<Witnesses Facts<E W<Exhibits</p>
	<p>Key Text Key Date Key Numbr Key Time</p>
	<p>Title/Date Name Boxes FeedBack Order NDIL</p>

FIGURE 3.55: Fix Menu Commands Screen

File Edit Set View Qry Port Fix	
	<p>Title/Date Cudgels Name Boxes Tally Recs FeedBack</p>

FIGURE 3.56: Boxes on Evidence Screen

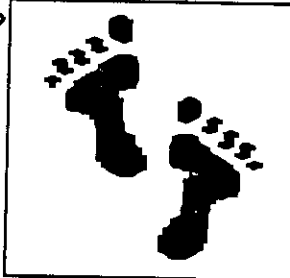
Evidence		GreenLight Software/ Elan Associates	
Line E	Footprints, under balcony, Plaster casts.		
Exhibit/Q#	10	Marked As	10
Date E	Dec 7, 1994	OfferedBy	π
Status E	Offered	Admitted?	Y
Confidntl?		Series	Preliminary Injunction
Multi E		Trial	NDIL
Source	NYPD	Pic>	
AuthorLst	Tracy II		
FirstAuthr	Richard		
RecipLst			
FirstRecip			
Location.			
Hot(±%)	75		
F Rec#	8	A journey of a thousand leagues begins with but a single step	
		Alpha-Zed	
10	Dec 3, 1989 00:00	dlk	13
Rec E	Revised	By	CaseRec Box1 2 3

FIGURE 3.57: Query Data Form Screen

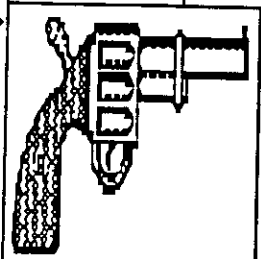
QyE		Evidence	
GreenLight Software/ Elan Associates		GreenLight Software/ Elan Associates	
Line E		Marked As	11
Exhibit/Q#		OfferedBy	π
Date E		Admitted?	Y
Status E		Series	Preliminary Injunction
Confidntl?		Trial	NDIL
Multi E		Pic>	
Source			
AuthorLst	AuthorLast starts		
FirstName			
ReciepLst			
First Rcpt			
Location.			
Hot(±%)			
F Rec#			
		Alpha-Zed	

FIGURE 3.58: Citations Screen

Cite	
Cudgel Manual & Tutorial GreenLight Software/ Elan Associates Dec 9, 1989	
Line C	Of course, little is required to confuse a person who is desirous of being confused for sui
π Party	Taylor Instrument Cos.
Δ Party	Fawley-Brost Co.
ShortCase	Taylor
Vol	139 59 ParallelCite
Reporter	F 2d USPQ
Start P	98 384
At Page	103
Publisher	West BNA
Number	cert denied 321 US 785 (Mar 13, 1944).
Date Opn	Nov 15, 1943
JudgeLast	Major
JudgeFirst	
JComment	
Court	7th Cir
Ct Rank	
Shep'ed	Jan 29, 1989

Prior/Subsequent Case History, with full Cite.

FIGURE 3.59: Cudgel's Actor Relation Screen

Actor	
π Δ/ Nick	W Michael
Last Name	Smith
First	Michael Heinlein
	Smith, Michael Heinlein
Title/ Talk	President 1
Address	Groking Endeavors
PO Box	31416 Mars Drive
City	Waterville
State, Zip	CA 94607
Phone	415-555-0101
Fax	
County	Alameda
Deposition	1 Dec 17, 1989
Witness?	Y
Rec#	7
Revised	Nov 11, 1989 0:00
By	dik
CaseRec	1
	Elan (GreenLight)

Cudgel's Actor's relation keeps track of parties, counsel, witnesses, judges, judges' clerks—all those names, facsimile numbers, and notes you want sometime. (See Figure 3.59.)

All Cudgel data entry screens keep track of the date each record was last revised and who revised it. Cudgel assigns each record a unique identifying number. These fields make database management and maintenance efficient.

Data entry screens show how to neatly input data. From the simple docket calendar previously shown to a listing of the moving papers filed for a given matter or a list of exhibits, all information is entered only once. (See Figure 3.60.)

The program will also list the exhibits about which each witness is expected to testify. (See Figure 3.61.)

Our case management program reflects our litigation philosophy and helps me keep order in the fray. It can help to keep your evidence and cases in order. Figure 3.62 shows the full set of master menu commands for the program.

FIGURE 3.60: Data Entry Screen

Cudgel Available		GreenLight Software/ Elan Associates	
Box	1 2 3	π/Δ Matter Title	
		Ball	Ball Due StatusM
			DateM Served/TabP Re
		π	Complaint: Trademark Infringement, Misappropriation, Correct TM Register
		Δ	June 17, 1989 Filed
			Mar 27, 1989 Mar 27, 1989 1
π			Complaint Mar 27, 1989 1.0
π			Summons Receipt & Complaint Acknowledgment Mar 31, 1989 2.0
Ct			Order: Setting preliminary pretrail status hearing Apr 13, 1989 3.0
Ct			Preliminary Pretrial Scheduling Order May 16, 1989 5.0

FIGURE 3.61: Exhibits Screen

Cudgel Manual & Tutorial		GreenLight Software/ Elan Associates		Nov 14, 198
Witnesses with Exhibits, by Cudgel			Elan (GreenLight)	
Witness's Name	Party			LastDe
RecA				
Marked	Evidence Line		OffdBy	Admitt
Smith, Michael Heinlein	W		Dec 17, 198	
001	GREENLIGHT Federal Trademark Registration ⊗ 1,480,540	π	Y	3
002	Specimen, First Use	π	N	4
003	Current Product Label: GreenLight	π	Y	5
A	Defendant's Infringing Product Label	Δ	Y	6

Remembering the meaning of Cudgel, we try to speak softly and carry our Cudgel companion.

PRODUCTS MENTIONED

Cudgel, GreenLight Software, 79 West Monroe No. 1320, Chicago, IL 60603-4959, phone 312-782-6496.

Double Helix, Odesta Corporation, 4084 Commercial Avenue, Northbrook, IL 60062, phone 708-498-5615.

Macintosh Computers, Apple Computer Inc., phone 800-538-9696.

Microsoft Word, Microsoft Corporation, 16011 N.E. Thirty-Sixth Way, P.O. Box 97017, Redmond, WA 98073-9717.

Sonar, Virginia Systems Software Services Inc., 5509 West Bay Court, Midlothian, VA 23112, phone 804-739-3200.

SuperPaint, Aldus Corporation, 411 First Ave. South, Seattle, WA 98104-2871.

Timeslips III for the Mac, Timeslips Corporation, 239 Western Avenue, Essex, MA 01929, phone 508-768-6100.

FIGURE 3.62: Full Set of Master Menu Commands

Apple	Enter	List	Org	Make	Fix
About Helix...	Actor	Actors	ActorsQ	Order NDIL	Title/Date
Get Info...	Cite	Cites	CitesQ	E<Witnesses	Cudgel@s
Why?	Duplicate E	Dups	EvidencesQ	W<Exhibits	Name Box
Help	Evidence	Evidences	FactsQ	.....	Tally Recs
Custom Help	Exhibit	Exhibits	Gages \$Q	Due Date/H	Feedback
.....	Big Pic	Facts	HistoriesQ	Past Due/H	.....
	Fact	Gages \$	IssuesQ	.....	A Clear
	Gage \$	Histories	LawsQ	Facts<E	C Clear
	History	Issues	MattersQ	Issues<L	E Clear
	Issue	Laws	NotesQ	Laws<F	F Clear
	Key	Matters	PapersQ	Matters<P	G Clear
	Law	Notes	QuestionsQ	.....	H Clear
	Matter	Orders/P	ReMatchesQ	Key Text	I Clear
	Note	Papers	.....	Key Date	L Clear
	Paper	Questions	Shep Any	Key Numbr	M Clear
	Question	ReMatches		Key Time	N Clear
	Re Match	.....			Q Clear
	ReREFNQ	Shepardize			

ENDNOTE

1. The Cudgel litigation companion was developed for use with Apple's Macintosh computer and Odesta's Double Helix database environment. The same design principles incorporated into Cudgel also

apply to MS-DOS, Unix, or other hardware platforms and to other relational database programs for those environments. The actual program implementation would be different, but the simple principles that I used to construct Cudgel transcend any particular hardware or software platform.

Daniel Kegan's software development grows from his national trademark and computer law practice with Kegan & Kegan, Ltd.