

ONE PROPOSED TOOL FOR LEARNING, PLAYING, AND REDUCING ANXIETY IN CIVIL PROCEDURE

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Teaching Civil Procedure is fascinating to me. It is challenging, it changes from year to year (either because the Rules have been amended or the courts have put a new gloss on their application), and every class has a different level of appreciation—as well as reactions—for the conceptual and doctrinal lessons we explore. I try, although not always successfully, to transmit my passion for the subject matter to my students. Although I cannot promise them on the first day of class that they will find themselves on a Saturday night curled up in front of the fireplace with a glass of wine and the Rules of Civil Procedure, I do try to engage the class in the importance of procedure for the fair administration of justice as well as for the realization of the goals of substantive law. A right without a remedy or a method for its vindication, I explain, is not of much value to our society.

The purpose of this essay is to present one example of a teaching tool I use to bring students closer to understanding complex concepts, in a fun environment, while receiving the feedback they so much crave. A thorough discussion of the different methods I use in class to help students put their hands around Civil Procedure is beyond the scope of this paper, although hopefully not beyond the scope of the next one.¹

Let's confess. Civil Procedure is not the most spellbinding course in the first-year curriculum. "What?" you say, startled that a proceduralist stated (or

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1. I tend to use an eclectic approach to teaching Civil Procedure. I usually begin with a healthy dose of legal process and method before I engage them in the "substance" of procedure. I am predisposed to change approaches depending on the dynamics of each class—which to my disbelief—is different every semester. I use overheads in almost every class to get the basic structure of the rules out of the way. I rely on problems, hypotheticals, the Socratic Method, theory, policy, and stories from practice to illustrate the context of a given rule's application. I also developed several role-playing exercises to illustrate negotiation, jury selection and appellate advocacy in the context of a discovery dispute. I am always in search of a better method or approach to convey a lesson plan.

worse—*wrote!*) such chicanery out loud. It may well be an unsettling confession for those of us who have a passion for the subject, but for many (indeed, too many) students, Civil Procedure is the cause of more than its fair share of headaches. They often find it counterintuitive and complain that it stretches the mind in uncomfortable and unfamiliar ways. Take this alien quality and add to it the standard feedback-at-exam-only format of most—though not all—law school courses, and it is not difficult to guess what professors see when they look out over their classes: dozens of trepidation-ridden faces, some wondering why they ever decided to become law students. As they stare at you while you present an impassioned lecture on the fascinating ins and outs of personal jurisdiction or joinder, they silently scream: “Someone please tell me what is going on in this course!” I assure them, often, that what they have just read is, indeed, English, and with patience they will come to recognize it as such. Still, many say: “Do we *really* need to know this to graduate?”

Given this course dynamic, I designed a Civil Procedure game with four major objectives in mind: (1) to integrate subject matter review at several stages throughout the semester; (2) to offer students a glimpse of what will be expected of them on the final exam; (3) to stimulate group thought and cooperation all in the context of self-directed feedback; and (4) to add a dash of fun to the course materials. Having tried it both in a large section of Civil Procedure (62 students) and a small section of Evidence (9 students), this game seems to work very well in accomplishing these objectives.

I. STRUCTURE

I first divide the class into ten groups of six or seven students each. This exercise also works very well—perhaps better—with smaller groups.² I then select ten or twelve multiple-choice questions within the thematic unit we are to review, and I type each of these questions onto an overhead. The questions themselves are designed to test the students’ understanding of the course material and to simulate the format and difficulty level of the questions the students will encounter on the final exam. I also let the students know ahead of time that we will be playing a Civil Procedure game, and I convey to them what I expect and what the game is intended to do. To encourage friendly competition, I offer the winning team a prize: the whole class is invited bowling, and I pay for the winning team’s costs. Of course, you should select

2. In the context of my classes, the groups are already formed at the beginning of the semester when I assign students, in alphabetical order, to an “expert panel” responsible for a predetermined number of assignments throughout the semester. I thank my colleague Catherine O’Neill for this valuable insight.

whatever incentive or activity is most suited to your particular taste, talents or tolerance, and that of your class.³

II. PROCESS

We start the game by posting the first question on the overhead, giving the first team forty-five seconds (or whatever time allotment you deem appropriate) to discuss the alternative answers. The students understand that if they give a correct answer, they are also expected to explain why the answer is the correct one, *as well as* why the other answers are incorrect. Each team has the opportunity to answer at least one question, and each correct answer is worth one hundred points. For each incorrect answer the team gives, it loses one hundred points. If a team chooses the correct answers, but fails to explain *why* it is correct or why the others are not, the team loses one hundred points.

When a team chooses an incorrect answer or cannot explain the answers adequately, the question is up for grabs by the rest of the class. This creates an incentive for *all* groups to discuss the questions and potential answers during the forty-five second period. I chose a method of “buzzing in” that worked very well in the small class, but disastrously in the large section. I gave each team a whistle, which they were required to sound as soon as I announced that a team gave an incorrect answer. With nine groups “buzzing in” at the same time, I was unable to determine which group buzzed first. A colleague,⁴ who observed the game, suggested an alternative method: put the group number in a hat. When a team gives an incorrect answer, pull out a number at random, and that group has the opportunity to answer the question or pass if they choose. I tried this method this past semester and it worked smoothly, efficiently and fairly. The students were happy with this approach. For each question asked, we pause to discuss the principles underlying the particular rule, standard or concept, and tie it into the relevant class meeting and/or case to which it pertains. This aspect of the game reinforced what the students had already learned and clarified what may have seemed unclear before the discussion.

We were able to discuss ten questions within a fifty-minute period, and notwithstanding the problem with the whistles, the class was good-natured about the game and had quite a bit of fun engaging the materials (and that is no easy task to accomplish).

3. The choice of bowling was not appealing to last year's class. We decided that I would have all the students over to my house this coming Fall semester, and the winning team would get rewarded with an actual trophy. For some reason, the winning team was very enthusiastic about this choice. Students have suggested a variety of field trips, some acceptable, while others not. Ultimately, this choice is not important as it is not the object of the game.

4. I thank Associate Dean Kay Kavanagh for this insight.

III. COMMENTS

At the heart of this game's effectiveness is its simplicity and its non-threatening structure: the students view it as a game rather than as another assignment for which they are responsible. While students view it as a much-needed break from the normal routine, it serves subtly to reinforce course material the students have already learned, while it also focuses students' attention on the issues they need to review.

The game also provides students with the opportunity to see how others analyze the problems and to reassure themselves that many have the same questions and concerns that they do. In this sense, the game serves to reduce anxiety and boost the confidence of students who may be worried that they are not catching on as quickly as they should. In addition, students who are not yet involved in group study efforts outside of class may be inspired by this game to try such an approach.

Civil Procedure Feud has shown itself to be superior to the usual end-of-the-semester review session. It accomplishes everything a review session does and much more. In fact, in looking back, it might not be advisable to call Civil Procedure Feud a "game" at all, so inadequate is the term for conveying the immense utility of this exercise. Perhaps it would be more accurate to call it a "Review and Self-Assessment Exercise," or a "Test Preparation Tool." Probably neither of these descriptions will catch on. But whatever appellation we use to place Civil Procedure Feud in the endless catalog of pedagogical tools, the bottom line is that it works and works very well.