

Saint Louis University Law Journal

Volume 47
Number 1 *Teaching Civil Procedure (Winter
2003)*

Article 3

1-15-2003

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Missouri Supreme Court

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Recommended Citation

Michael A. Wolff, *The Most Important Course in Law School?*, 47 St. Louis U. L.J. (2003).
Available at: <https://scholarship.law.slu.edu/lj/vol47/iss1/3>

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THE MOST IMPORTANT COURSE IN LAW SCHOOL?

MICHAEL A. WOLFF*

Civil Procedure is the most important course in law school. I offered that immodest proposition nearly each Fall of the twenty-plus years I faced a room full of first-year students who had just read the introductory Civil Procedure materials and were probably wondering why business school had seemed like such a bad idea.

Why? Because, I explained, it's what clients pay for. Any reasonably literate fool can read about contracts, torts, property—to name just a few subjects randomly chosen—and figure out for himself or herself what is needed.¹ But to navigate the court system, one needs knowledge of procedure that cannot be obtained by solitary reading.

Civil Procedure, in short, is the foreign language in the law school curriculum. Nearly all first-year students come to the course illiterate. They lack not only the vocabulary but the mental pathways that allow them to process the concepts in a coherent way. This is hardly different from the average college freshman on the first day of Spanish I. The student may know some of the words, but is unable to converse intelligently.

Learning Civil Procedure is, like language, the learning of a culture. If the student comes to law school intending to be a “transaction lawyer, not a litigator,” as some of them say, learning Civil Procedure should be the student's most urgent goal. When the self-proclaimed transaction lawyer forgets the intellectual constructs of Civil Procedure, the result is a contract that does not specify procedural consequences.² This makes unraveling the contractual dispute more painful than necessary. Similarly in the public arena, statutes drafted without attention to procedural consequences leave to the courts the task of assigning burdens of pleading and persuasion. The

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1. The term “fool” is not intended to be unduly pejorative, but simply a reference to the old saw that “any man who represents himself has a fool for a client.”

2. An obvious example is the forum selection clause of a contract. *See* *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). For an example of contract drafting gone awry, see *Carroll v. United Airlines, Inc.*, 739 A.2d 442 (N.J. Super. Ct. App. Div. 1999).

procedure imposed by courts may produce outcomes that the drafter did not intend.³

When thinking of teaching Civil Procedure as language and culture, I am reminded of a story of my grandfather, an Irish-American tenant farmer whose rich vocabulary included an impressive range of profanity. On one occasion, in a moment of anger, his devoutly religious wife, my grandmother, used some of the words from the profane end of her husband's vocabulary. "Ah, you've got the words, Tillie," my grandfather observed. "But you haven't got the music."

To "get" the music of our professional discipline, learning mere words is not enough. The music is the structure of our thinking, an ability to grasp the meaning of concepts and the feel of strategy. This is the essence of "thinking like a lawyer," the phrase commonly used to describe what we are teaching. But the phrase does seem prosaic. "Getting the music" has a more poetic feel. And talking of our culture and its mental pathways seems infinitely more uplifting than merely thinking like a lawyer.

The articles gathered here are useful to thinking about how we impart the culture of our profession—concepts, principles and strategies—through its essential subject. From an accumulation of decades of experience, these teachers offer various perspectives on the cases, techniques and strategies that are effective in transmitting our culture.

The importance of the effort cannot be overstated. We hope these works will offer guidance, not just on how you teach the words, but how you bring your students to "get" the music.

3. For a discussion of the court's role in allocating burdens of pleading and proof under a statute whose procedural directions are unclear, see *Kinzenbaw v. Director of Revenue*, 62 S.W.2d 49 (Mo. 2001) (en banc): "In actuality, substantive statutes that are explicit in their procedural effects—such as allocating burdens of pleading and proof—are exquisite treasures. But they are rare." 62 S.W.3d at 53. Cf. *Gomez v. Toledo*, 446 U.S. 635 (1980) (allocating burdens for the good faith and qualified immunity defenses to a section 1983 action against a public official).