"Props" in the Law School Classroom: A Calendar for the Civil Procedure Course

Charles A Rees
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A CALENDAR FOR THE CIVIL PROCEDURE COURSE

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Shakespeare for Law Teachers:

All the school’s a stage,

And the students and teachers merely players.

See William Shakespeare, As You Like It act 2, sc. 7, lines 139-40.¹

The props in my collection

’R how I’ll catch the attention of my section.

See William Shakespeare, Hamlet, Prince of Denmark act 2, sc. 2, lines 633-34.²

The first thing we do,

Let’s skill all the lawyers.

See William Shakespeare, The Second Part of King Henry the Sixth act 4, sc. 2, 83-84.³

Introduction

The first reference to the use of “props” in the law school classroom that I remember was a story about Professor Arthur R. Miller’s “Erie day” spectacular in Civil Procedure at Harvard Law School. Miller played Darth Vader in a version of “Star Wars” commemorating Erie.⁴ In putting on his production, Miller was supported by students from earlier years' classes, who remembered
other productions on “Erie day.”

The second reference to the use of props in the law school classroom I remember was hearing from a student about Professor Charles Alan Wright's wearing a railroad engineer's hat in class at the University of Texas to teach Erie.

This more simple approach seemed more manageable to me and less likely to detract from the lesson itself than more elaborate productions, however memorable they might be.

My use of props in law school grew from that simple start, teaching Erie in a railroad engineer's hat, purchased in a novelty store. Later, a student gave me a T-shirt, manufactured under the label, “Judicial Gloss,” which celebrated Erie. I added a box of pasta, which by shaking could simulate the sound of a train starting—slowly, then faster and faster, until punctuated by a blast from a train whistle. I also added a dark blue, patterned handkerchief to tie around my neck. Another student provided an engine and coal car from a model railroad train (the Erie line, of course) to exhibit.

Using props was so much fun, that I developed props for use in Civil Procedure classes other than Erie and for courses other than Civil Procedure.

This article defines “props” and tells where to find them, describes the purposes for using props, particularly in getting students involved in the class, provides a brief annotated bibliography, and sets forth a “calendar” of props I have used during a two-semester course in Civil Procedure. The calendar of props shows the variety of items that may be used in connection with many different topics. Of course, the calendar is only illustrative. Props can be used in any course and depend upon the instructor's interests, abilities, and resources.

What are “props” and where can you get them?

The Oxford English Dictionary defines “props” as slang for “stage properties” (in a
theatrical production), perhaps because they help to support (“prop up”) the drama.5

Here, I use “props” broadly, to include not only portable (hand-held) “properties,” but “stage” settings, costumes, such as hats, wigs, clothing, and shoes, and other visuals and audios of a theatrical nature.

As any “Props” (prop man [or woman])6 knows, props are often readily available, e.g., that box of pasta for the Erie class might be found in the kitchen or pantry and the blue handkerchief found in the bedroom chest of drawers. If not, props can be obtained from a gift store, e.g., that train whistle, or from a costume, novelty, party, or toy store, e.g., that train engineer's hat. Generous students may also supply props, e.g., that Erie T-shirt and those Erie line model railroad cars.

Why use props?

Perhaps, it is too simple just to say that using props is fun.

If “[a]ll the school’s a stage, [a]nd all the students and teachers merely players,”7 there should be “parallels between teaching and the stage.”8 Many of the following reasons for using props in the classroom do seem to be reasons why props are used on the stage.

The use of props can reduce stress (“performance anxiety”)9 in the teacher and in students, who know they may be called on to recite during the class period.

Props can create a dramatic opening for class, one that catches the attention of students,10 “breaks the ice” and “warms up” both the teacher and students, and motivates the students to engage in learning.

In a day when law schools pride themselves on the diversity of their student bodies,11 a
well-timed prop can provide a “center” or focus for a diverse class of students. Too, props can help a teacher “connect” with students.

Students have different learning styles—some tend to be “visual learners” and others “auditory learners.” A prop, a kind of picture, “may be worth a thousand words.”

Props can provide a cue for students to remember material studied in class. Indeed, at a student's suggestion, I occasionally give a “prop quiz,” a visual and oral review exhibiting props used throughout the year, as a culminating activity for the course.

Teachers may be professional role models for students. Thus, a teacher's use of props may be followed by students when they do their own lawyering and teaching. So, “let’s skill all the lawyers.”

**Student Involvement**

Most teachers earnestly hope for student involvement in class. My use of props has provided another dimension to student involvement, that in the process of learning.

I already mentioned how a student, who told me about Professor Wright wearing a railroad engineer’s hat to teach *Erie*, helped spur my interest in props, and how other students provided an *Erie* T-shirt and Erie line model railroad cars for my *Erie* class. I also mentioned how another student suggested a “prop quiz” as a review of the course.

There have been many other student contributions, two very notable.

One was a “show-stopper.” As we shall see, with the *International Shoe* case [in Class # 11], I play the role of a shoe salesman, bringing to class a suitcase full of shoes, which I spread out on the teacher’s desk in the front of the classroom. One year, I was rendered speechless (only
temporarily, of course) when I arrived in class to find that the students, apparently “tipped off” about my prop for the day, had already filled the desk with their shoes!

Another student contribution was literally global. One Halloween, several students secretly “appropriated” a wreath, hanging on the outside of the front door of my home. Later, using a computer-generated melange of letters, they wrote me a ransom-type note. In the months following, other notes appeared, citing cases and mentioning personal jurisdiction concepts, together with pictures of scenes from places near and far prominently displaying my wreath! The wreath was pictured in Seattle, with a note discussing *International Shoe*; in an automobile showroom, *Volkswagen*; in front of a fast-food store, *Burger King*; on a “Welcome to North Carolina” sign, *Harris*; and a “Welcome to Delaware” sign, *Shaffer*; and in Toronto, *Geelhoed* (a Maryland long-arm case). That wreath was also pictured in places, and delivered to me with notes citing and discussing cases about other concepts—in Mississippi, mentioning *Mas* (diversity subject matter jurisdiction); in Virginia, *Livingston* (venue); in England, *Societe* (discovery sanctions); elsewhere abroad, *Day & Zimmerman* (choice of law); and in front of another fast-food store, *Dairy Queen* (right to jury trial). But “All's Well That Ends Well”; the wreath arrived safely back in my classroom the last day of class.

**Props Bibliography**

Talking about Shakespeare, the parallels between the stage and higher education teaching are explored in William M. Timpson & Suzanne Burgoyne, *Teaching and Performing: Ideas for Energizing Your Classes* (2d edition, Atwood Publishing 2002). That work has some discussion of props and an extensive, annotated bibliography.


**A Calendar of Props for the Civil Procedure Course**

Now, here is the “calendar” of props, including costumes, settings, and other visuals and audios of a theatrical nature, organized by day, topic, and, usually, principal case, that I have used during a two-semester course in Civil Procedure, meeting 28 times each semester.

In the first semester I introduce the course with the “story” of a lawsuit, then consider briefly the overarching concept of procedural due process, before taking up subject matter jurisdiction, personal jurisdiction, service of process, venue, remedies, joinder of claims and parties, and pleadings. In the second semester, moving through the remaining stages of litigation, I teach discovery, choice of law, federal common law, pretrial conference and summary disposition, trial (particularly, the right to jury trial), alternative dispute resolution, appeal, res judicata, comparative adjudication systems, and a retrospective look at the stages of procedure.

Of course, the calendar is only illustrative of how an instructor might use props in the Civil Procedure or other course. The props used depend upon the instructor's interests, abilities, and resources, as well as the course and its content.
1. The story of a lawsuit, e.g., Jonathan Harr's *A Civil Action*:30

   The instructor can assume a *role* in the story, such as Charles Anderson, husband of Anne and father of Jimmy, by using a *costume* (e.g., hat, wig, glasses/not, informal clothing), briefly setting the stage, then asking students, “Can you help me? Who can sue whom for what where and why?” (These questions introduce most of the first semester's topics.)

   Later, back in his own *role* the instructor can use a home-made *prop*, a “what I did on my Summer vacation” chart of places and things in Woburn, Massachusetts, including candid photographs and original drawings. (This chart helps motivate the students to take an interest in the story, which furnishes a context for problems to use throughout the year.)31

2. Procedural due process, *Fuentes*:32

   The professor can use a *prop*, a sheriff’s star. (If a star can't be found in a novelty or toy store, one can be made from cardboard and foil.) She can remind students of the old Texaco advertising jingle, “You can trust your car to the man who wears the star,”33 but briefly describe why you may not be able to trust your car to a law enforcement officer who is executing court-ordered seizure remedies.


   The teacher can wear part of a *costume*, a railroad engineer's hat (saving the rest of the railroad paraphernalia for *Erie*).35 A singer may wish to burst into a few bars of “I've been

The lecturer can bring in a *prop*, a “narc kit”–“shades” (sunglasses), credential (fold-up wallet with an old driver's license or other picture identification) or badge, “equalizer” (plastic automatic gun), hidden weapon (plastic derringer or knife), substance or “bait” (tea bag without the string), and “stash” (wad of play money). The lecturer is advised to be careful with those guns, even though they are toys!

5. Subject matter jurisdiction–diversity, *Mas*:38

The pedagogue can wear a *prop*, a pair of two-way sun glasses, telling students that they operate on the same principle as the two-way mirrors used in the Mas' bedroom and bathroom.


The educator can announce that the class has a special guest, then either go outside or get down behind the desk, and reappear wearing a *costume*, a Nixon mask, dark suit, and white shirt, then wave his arms in the air, and make V's with each hand, using his index and middle fingers.

7. Subject matter jurisdiction–supplemental, *Gibbs*:40

The faculty member can wear a *prop*, the biggest pendant she can find, then have a *spelling game*, asking the students to spell the word P-E-N-D-A-N-T with her, as she uses her *body language*-- arms, legs, and body--to make letters. Then, she can repeat the spelling of the
P-E-N-D-E-N-T in *Gibbs*.

Alternatively, she may change the setting or lighting of the classroom by switching off the lights, then use a *prop*, a lighted flashlight held atop her head, and walk around the room like a coal miner in a cave.

8. Subject matter jurisdiction—removal, *Twentieth Century-Fox*:41

The instructor can wear a *costume*, a long, black wig, then play a *guessing game*, asking:

Who am I?

I'm a famous movie star.

I starred in Cleopatra. (Here, he can make Egyptian hand-motions.)

I married Richard Burton ... several times.

9. Subject matter jurisdiction—state courts, *Pollokoff*42 (a Maryland case, deciding in which court to bring many, small claims by owners of bank passbook savings accounts to underpaid interest):

The professor can bring in *props*, several old bank “passbooks" and briefly explain how they functioned.

She can preface the explanation by saying that she brought a dinosaur to class. Many students will think of “Barney." However, showing the bank passbooks, she can explain that they are the “dinosaurs." (Indeed, most banks are becoming “dinosaurs," because of mergers.)


The teacher can wear a *costume*, a farmer's straw hat (and any available Oregon memorabilia, such as an “I love Oregon" T-shirt.)
He reviews the fact that, not long ago, the class had a spelling test and that, now, it is time for a pronunciation [deliberately, mispronouncing the word, for emphasis] test. He holds up a paper with “Oregon” printed on it. He asks, “How do you pronounce this state—OREGUN [making a gun with his hand] or OREGONE [waving goodbye]?” He explains that Oregon natives prefer the former pronunciation. It takes only a moment longer for him to ask how to pronounce that river in Oregon—WILL-A-METTE’ or WILL-A’-METTE? He explains that natives prefer the latter.

11. Jurisdiction of the person—contacts, International Shoe:44

The lecturer can take a prop, a suitcase full of shoes, one of each pair, and play a guessing game, asking:

What’s in the bag?
What am I?
In what state do I work?
For whom do I work?
Where is its home office?
Where is it incorporated?
Is it subject to suit in Washington?

The lecturer may also emphasize the two-step (first, state law and then, due process) approach of the case, by using other props, two cardboard cut-outs of shoe soles, which can be stuck to the chalkboard using rolled or balled masking or cellophane tape.
12. Jurisdiction of the person–long arm statute:

The pedagogue can use a prop, a lower arm in a white shirt with a hand attached (one that in the old days occasionally could be seen hanging out of locked automobile trunks). By crouching down behind the desk, and pushing the long arm across the desk, she can demonstrate the long arm.

The principle can also be demonstrated geographically by a drawing on the chalkboard. E.g., if the Gray case is used, the pedagogue can draw Illinois and Ohio on the board, label them, then draw an arm reaching out from the forum state (Illinois, which resembles a sleeve) to grab Titan in Ohio. If the Buckeye Boiler case is used, California makes an even better sleeve for a long arm.

13. Jurisdiction of the person–long arm/contacts, Burger King:  

The educator can use props—bag, hamburger wrapper, fries package, pie or turnover wrap, soft drink cup, and paper crown—to introduce the case.

14. Jurisdiction of the person–contacts, Asahi:  

The faculty member can use a prop, a pretzel, to introduce two new “twists” in the case. First, California’s long arm statute is coextensive with due process, collapsing the two steps (state law and due process) into one. Second, jurisdiction is exercised over a foreign defendant, raising additional questions about the reasonableness of an assertion of jurisdiction.

15. Jurisdiction of property, Harris:
The instructor can use a *guessing game*:

What word did Vice President Dan Quayle misspell? Potato[e].

With what does potato rhyme? Tomato.

What was that old song about the pronunciation of tomato?

Singing: “You like to-ma-to and I like to-mah-to.”

What is the name in today's case raising a similar question? Epstein.

You say Epsteen. I say Epstine.

Neither of us says it very much.

Epstein's department store has been closed 12 or 14 years.


The professor can use some *props*, stock certificates (and insurance policies), to demonstrate the nature of intangible personal property.

17. Service of process:

The teacher can do a dramatic *reading*, summarizing the *Mayo* case,52 along these lines:

Plaintiff, a prisoner, alleged that Satan had caused him misery, placed deliberate obstacles in his path, and caused his downfall. The court dismissed the case. First, there was doubt about whether any cause of action existed for the wrongs alleged. Second, there was a question about jurisdiction of the person. In an old New Hampshire case, Daniel Webster had argued that defendant was a foreign prince, not present in the United States, but there was overwhelming evidence to the contrary. Third, important
for us today, plaintiff failed to include instructions to the marshal for service of process.


The lecturer can get in *costume* (a white wig), briefly set the stage, then use a *guessing game*:

He wants to sue me in Virginia for something that happened in Louisiana.

I don't think he can do that. He can't sue me in Louisiana, either, because I never left the East during my two terms as President and, of course, now I would never leave my beloved Monticello.

   Who am I?

   Who wants to sue me?

   Why can't I be sued in Virginia?

   Local to where?

   Why can't I be sued in Louisiana, then?

   Where would suit be proper, then?

19. Remedies:

The pedagogue can use a *prop*, a paper bag full of medicine and pill bottles and play a *guessing game*:

   What's in the bag?

   What's another word for remedies?

   How do you spell RELIEF?

The pedagogue uses *body language*—arms, legs, and body—to spell out R-O-L-A-I-D-S (from the
advertising jingle).54

20. Joinder—introduction:

The educator can use props—party hat, noise-makers, blow-out paper toys—to introduce every civil procedure student's favorite subject—parties!

21. Joinder—class action, Eisen:55

The faculty member can use a prop, a yo-yo, to illustrate the chronology of the Eisen case (listed on the chalkboard), which went up-and-down among the federal district court, Court of Appeals, and Supreme Court for eight years without getting anyplace.

Too, the faculty member can use a costume, a mask, to illustrate what Judge Lumbard of the Second Circuit in "Eisen II" called the "Frankenstein monster" nature of the class action.56

22. Joinder—interpleader, Tashire:57

The instructor can use props, a wooden stake and a potholder. He can feign ignorance by holding up the props and asking students for help in naming the role of an insurance company (or bank, escrow agent, or finder) which holds property subject to the claims of others.

23. Pleading—introduction, Carmen:58

The professor can use props, white gloves, to illustrate the "clean hands" doctrine of Equity.

Alternatively, she may use rubber gloves and a container or bar of soap to illustrate the doctrine.
24. Pleading–plaintiff, Leatherman:59

The teacher can use a costume–dressed in leather from head-to-toe–and ask students who they think he is. He is “Leatherman,” a kind of super-hero, who struts around the classroom. The class period is punctuated by the teacher's question, “What do you want Leatherman to do next?” (E.g., give a lecture, answer questions.)

Alternatively, the teacher may bring in a prop, a multipurpose knife manufactured by the Leatherman company, and demonstrate its functions.

25. Pleading–defendant:

The lecturer can use a prop, a stuffed dog (or three), to act out the “three dog defense” in a dog bite case–deny ownership, deny any bite, allege contributory negligence.60

26. Pleading–defendant:

The pedagogue can use a prop, a “Clue” board game,61 to elaborate the “negative pregnant, ” the pleader's problem that, by denying in the conjunctive the allegations of a pleading, the pleader's negative might be “pregnant” with admission of one or more of the allegations.62 In the game of Clue an “accusation” is correct, only if completely correct, e.g., Colonel Mustard did commit the murder (of Mr. Boddy) in the Library with a rope; an incorrect accusation leaves open the possibility that only one or two of the elements of that accusation, but not all, were correct--the murderer was Colonel Mustard or that the crime was committed in the Library or that the murder weapon was a rope. On the other hand, a “suggestion” may require another player to show any one
of the cards for Colonel Mustard, Library, or rope; however, the other player's "denial" (that Colonel Mustard committed the murder in the Library with a rope) is not pregnant with the admission of one or more of the allegations—that the murderer was Colonel Mustard or that the crime was committed in the Library or that the murder weapon was a rope.

27. Pleading–amendments:

The educator can use a prop, a copy of the Bill of Rights, and ask what the most famous amendments were. She can point out that amendments of pleadings may be necessary; even the Founding Fathers didn't get it right the first time!

28. Pleading–practical exercise

The students are asked to prepare for filing in the local federal court an initial pleading alleging, e.g., that certain aspects of their experiences in law school violate the law. After they turn in that assignment, the faculty member can pull out a prop, an old-style pleading or other paper on legal-sized paper with blue backing to show them what the formalities of pleading once required.

Civil Procedure II

1. Discovery–introduction, devices:

The instructor can introduce discovery with a prop, a large magnifying glass, and a costume, a double-billed hat, evoking that master of discovery, Sherlock Holmes.

2. Discovery–scope, Hickman:63
The professor can wear a *costume*, a blue sea captain's hat, such as one that might have been worn by the captain of the tug, J.M. Taylor.

3. Discovery–sanctions, *Societe*:64

The teacher can bring in a *prop*, one of the recent books dealing with “the unfinished business of World War II,”65 and describe some current issues. He can also point out that the Trading with the Enemy Act still limits relations with Burma (Myanmar), Cuba, Iran, North Korea, Syria, and a few other nations.66


The lecturer can use the *props*, described above68—railroad hat, T-shirt, box of pasta, train whistle, handkerchief, and model railroad cars.

The lecturer can also use *props*, a pair of flip-flops, to show the changes in the law in 1938 caused by *Erie* and the adoption of the Federal Rules of Civil Procedure. First, she writes the following on the chalkboard (F stands for federal law and S is for state law):

<table>
<thead>
<tr>
<th></th>
<th>Pre-1938</th>
<th>Post-1938</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantive</td>
<td>F or S?</td>
<td>F or S?</td>
</tr>
<tr>
<td>Procedure</td>
<td>F or S?</td>
<td>F or S?</td>
</tr>
</tbody>
</table>

Then, the lecturer asks a student to demonstrate the flip-flop.


The pedagogue can play a *guessing game*, to introduce the case:
What was the lawyer's name who represented the tugboat owners in *Hickman*?70

In what Shakespeare play was there a character with a name like Fortenbaugh?71

What were Hamlet's words in the graveyard scene?72

Here, he can use a *prop*, a toy plastic human skull or a medium-sized white globe (of the kind that fits over an electric light bulb) with black markings so that it resembles a skull.


The educator can use a *guessing game* with *hand plays*:

What is the name of our first case today, class?

Here, he can hold up his hands, with his thumbs interlocked, flapping upward and making a *bird*.

What is the name of our second case today, class?

Here, he can hold up one *hand* with his fingers moving slightly.

7. Choice of law–horizontal:

The faculty member can put on the chalkboard boxes (one for each letter) for a *crossword puzzle*. The clues are: “Down”–vertical choice of law; “Across”–horizontal choice of law. The completed puzzle words follow:

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E
R
C O N F L I C T S
E
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The faculty member, eerily (alright, *Erie*-ly) intoning “oooooooh,” can also draw a picture of a ghost on the chalkboard to illustrate the *Sampson* concept of “the ghost of Swift v. Tyson” and ask students to explain that concept.

8. Choice of law—“converse-*Erie,*” *Dice:*77

The instructor can introduce the case with a *prop*, a pair of dice, which he can roll across the desk.

9. Federal common law:

The professor can use a *prop*, a law dictionary, and do a reading of selected definitions of “common law”78 to provide a context for the topic.

10. Summary disposition:

The teacher can draw and label two *pictures* on the chalkboard: first, a pie chart, showing that (less than) 10% of cases go to trial and (more than) 90% settle or are otherwise disposed of; and second, a three dimensional view of a book, labeled, “Civil Procedure,” with only a small section of page edges darkened, corresponding to the casebook’s materials on adjudication before trial. The teacher writes over the pictures the heading, “What's wrong with this picture?” That is, why is so little of the course directly related to so much of what happens in practice?

11. Trial–burdens of proof:

The lecturer can draw a simplified version of Wigmore's famous *diagram*79 on the
Then, the lecturer asks two [small groups of] students to role play, one [group] being plaintiff and one [group] being defendant. They answer the following questions about the burden of production or going forward, using the diagram:

1. Where does P meet the burden of production? If P fails to meet the burden, what happens?
2. Where does P shift the burden of production? If P shifts the burden, what happens?
3. What happens in between?
4. (Consider the same questions for D.)

12. Trial–right to jury trial, *Beacon*:80

The pedagogue can use a prop, that flashlight again, change the setting (or lighting) by switching off the lights, then switch on the flashlight and turn slowly around to simulate the beacon on a lighthouse, waiting for students to blurt out the name of the case.

13. Trial–right to jury trial, *Dairy Queen*:81

The educator can draw a picture on the chalkboard of an ice cream cone with the characteristic curlicue on top, waiting for students to blurt out the name of the case.

Alternatively, the educator emphasizing *Parklane*82 can hold up stockings, waiting for students to identify the case.
14. Trial—right to jury trial, *Curtis:* 83

To introduce the case, Title VIII of the Civil Rights Act of 1968, and the problem of fair housing, the faculty member can ask students to tell their own *stories* of housing discrimination.

My own story relates to my stay in a southern city in 1966-67. Gradually, I became aware that my large apartment building rented only to a single race; later in the year, apparently to keep tenants from leaving, rents were reduced. At a well-attended public hearing on proposed open housing laws, the first speaker talked about the advantages of legislation mandating equality; polite applause followed. The second speaker talked about the values of tradition and, euphemistically, segregation; wild applause and other signs of approval almost "brought down the house."

15. Trial—right to jury trial—the nature of a jury trial:

The instructor can use a *prop,* a small black box, to discuss the nature of the jury: we know what goes into the black box (the jury room)—evidence, lawyers' arguments, and the judge's instructions; we know what comes out of the black box—the verdict; however, we don't know what goes on inside the black box. 84

The instructor can use a *joke,* whose provenance I don't remember, 85 which illustrates why lay people, not experts (or, at least, not lawyers), are used on the jury:

A jury, made up entirely of lawyers, was impaneled. After the trial the jury deliberated for the remainder of the day and the entire next day. Near the end of the following day, the third day of deliberations, the judge, becoming impatient, sent a message to the jury, asking for a report on its progress. The jurors sent back word
that they were making excellent progress—they were almost finished with the seconding speeches on the vote for a foreman!

16. Trial—judgment as a matter of law, *Sioux City*\(^{86}\) (coach driver negligence hypothetical):

The professor can draw a *picture* on the chalkboard of a stagecoach and team of horses on a mountain road with a precipice on one side. Parallel lines can be drawn, near the precipice side and nearer the mountain side, outside of which lines lie questions of law for the judge (judgment for plaintiff near the precipice and judgment for coach driver nearer the mountain) and inside of which lines lies a question of fact for the jury (judgment reasonably for either party). [Note the relation of this picture to Wigmore's diagram in Class #11 above.] The professor may use *props*—cowboy hat, whip, and handkerchief—to play the *role* of the coach driver, as she introduces the hypothetical.

17. Trial—new trial, *Dimick*:\(^{87}\)

The teacher can write the following on the chalkboard:

In _________ the _________ moves for a new trial, because the verdict is too _________. The court grants the motion unless the _________ agrees to _________ the damages.

Then, the teacher asks two [small groups of] students to *role play*, one [group] for additur and one [group] for remittitur. The first one ready, can fill in the blanks. Then, the other one can fill in the blanks.
18. Trial–jury decision-making devices:

The lecturer can use some *props*—coin (to flip, for heads or tails) and broom straws (to pick, one of two) to illustrate some possible “chance” devices for a jury to select plaintiff or defendant as the verdict-winner. To contrast, the lecturer can demonstrate the quotient verdict at the chalkboard, after asking a student to describe that kind of verdict.

19. Alternative dispute resolution:

The pedagogue can ask what the acronym is for extrajudicial processes and use *body language*—arms, body, and legs—to spell out A-D-R.

20. Appeal–procedure:

While showing the path of appeals through the courts, the educator can emphasize the rule of thumb in both federal and (Maryland) state courts, that there is one appeal of right after which review is discretionary, by using *props*, two cardboard cut-outs of shoe soles (one plain and one with thick dotted lines around the edge), which can be stuck to the chalkboard using rolled or balled masking or cellophane tape.

I also do a *dramatic reading*, paraphrasing a 1998 newspaper article about the Maryland appellate courts.88

A proposed constitutional amendment would change the name of Maryland's highest court, to address the befuddling state of affairs here. The supreme court is named the Court of Appeals, not the Supreme Court. The Court of Appeals handles only special appeals and the intermediate appellate court, the Court of Special Appeals, handles appeals that aren't so special.
Maryland is one of only two states (New York is the other) that calls its highest court something other than supreme court. Backers of the proposed amendment argued that out-of-state attorneys, law students, and others are often misled into thinking that Court of Appeals decisions are those of an intermediate court. Opponents argued that the name, Court of Appeals, dates to Maryland's 1776 constitution and should be preserved.

21. Appeal–final judgment rule and exceptions:

The faculty member can use a prop, that yo-yo again, with a third dimension, this time. The first two dimensions, up-and-down as in Eisen [first semester Class # 21], show a case going up on appeal and back on remand. But, the faculty member can add a third dimension by walking across the room, showing the progress of a case from start to finish, which progress generally stops for interlocutory appeals (yo-yoing), of which there might be several, before the final judgment, from which there may be another appeal (more yo-yoing). In comparison, the faculty member, by walking all the way across the room before yo-yoing, can demonstrate an appeal only from a final judgment.

22. Res judicata–introduction:

The instructor can wear a costume, a toga.

He can also give a dramatic reading of Latin phrases used in the course:

[Ave (greeting)]

Ex parte

Sua sponte
In personam, in rem, quasi in rem
Subpoena duces tecum
Non obstante verdicto
De novo
In banc
Mandamus

Then, the instructor asks, “What is today's foray into legal Latin?” (Res judicata.)

[Vale (farewell)]


The professor can use a *prop*, a goose cut out of blue paper [saving for future use, during Class #26, the blue paper from which the goose was cut] and mounted on white paper, asking students for the name of the case, “Little Blue Goose.”


The teacher can wear a *costume*, a motorcycle helmet and “biker” clothes. She can also make *sounds*, like those of a motorcycle revving up.

25. Res judicata–issue preclusion:

The lecturer can introduce the quality of the “same issue” being “necessary to judgment” by doing a *dramatic reading* and playing a *guessing game*:

Sometimes the choices in Civil Procedure seem like characters out of Lewis
Carroll's adventures. Who was the girl who had the adventures? Yes, Alice.

What was the book? Yes, Alice in Wonderland.92

Alice also had other adventures. What was this book? [Hold up a prop, a hand mirror.] Yes, Through the Looking-Glass.93 [Hold up another prop, the book, if available.]

In a memorable chapter [IV] in that book, Alice meets two brothers that look alike. What are their names? Yes, Tweedledum and Tweedledee.

Fortunately, their nicknames are embroidered on their collars, so she can tell them apart. What are their nicknames? Yes, Dum and Dee.

Unfortunately, deciding which of two or more issues, actually decided, is “necessary to judgment” isn't as easy.


The pedagogue can use props, placing on the chalkboard chalk tray that blue goose, mounted on white paper, used earlier [in Class # 23] and the blue paper, from which the goose was cut, also mounted on white paper. The pedagogue can put a small sauce bottle, e.g., soy sauce, in front of each goose. The pedagogue can then ask for volunteers. First, a student to identify the general principle—“what is sauce [good] for the goose is sauce [good] for the gander.” Then, a student to explain how that principle relates to mutuality (and due process).

The pedagogue can use another prop, a coin, to cue a student to explain the “heads I win, tails you lose”94 nature of a plaintiff’s choice after the erosion of mutuality.

27. Res judicata–full faith and credit:
The educator can use a *prop*, a framed judgment, and do a *dramatic reading* of one casebook editor’s commentary on the enforcement of judgments:

A judgment is a handsome legal document, suitable for framing. It is a binding determination of the rights and liabilities of the parties with respect to the controversy which was the subject of the suit. Assuming [plaintiff] won, ... the judgment will merely recite that [defendant shall pay plaintiff the sum of $______].

The court will not actually order [defendant] to do so.95

### 28. Perspective:

In comparing the ordinary civil justice system with other adjudication systems, including small claims courts, the faculty member can use *props*, a brochure about the local small claims court and “fill-in-the-blank” forms for pleading in that court.

### Conclusion

This calendar of props for the Civil Procedure course illustrates how a law school teacher may use audio and visual materials to improve learning and make class more fun.

Some props, suggested here, are traditional “stage properties”–settings, hand-held items, and costumes. The props also include things of a dramatic nature–role-playing, dramatic readings, story-telling, songs, games, pictures, jokes, body language, hand plays, and sounds. Thus, props can be almost any audios and visuals that support (prop-up) learning.

Many props are available at home or in the office. Others can be purchased at novelty, party, toy, or gift stores. Students often contribute. Indeed, props can involve students in the learning process in ways both planned and unforeseen.
This calendar of props gives specific suggestions about how props may be used in the Civil Procedure course. However, the calendar is only suggestive. That is, props can be used in any course and may vary with the instructor's interests, abilities, and resources.

I hope that other teachers can have as much fun with props as I have.

To invoke Shakespeare, "Lay on, MacProf...."96

ENDNOTES

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1. Shakespeare's version was:

   All the world's a stage,

   And all the men and women merely players....


2. Shakespeare had it:

   The play's the thing
Wherein I'll catch the conscience of the King.

_Id._ at vol. 2, 29, 46 in _Great Books of the Western World_ vol. 27.

3. Shakespeare:

   The first thing we do,

   [L]et's kill all the lawyers.


6. _Id._

7. See text accompanying _supra_ n. 1.


9. _Id._ at 43-44, 111.

10. See text accompanying _supra_ n. 2.


14. See two substantially similar articles—James R. Lucas, *Props*, 55 Inter Alia 2 (July, 1990);


15. See text accompanying *supra* n. 3.

16. See Timpson & Burgoyne, *supra* n. 8, at 121-56.

17. See *infra* n. 44.
18. See id.


20. See *infra* n. 47.

21. See *infra* n. 49.

22. See *infra* n. 51.


24. See *infra* n. 38.

25. See *infra* n. 53.

26. See *infra* n. 64.


28. See *infra* n. 81.


Other stories of lawsuits, commonly used in the Civil Procedure course, are Gerald M. Stern, *The Buffalo Creek Disaster: The Story of the Survivors' Unprecedented Lawsuit* (Random House 1976), and Nan D. Hunter, *The Power of Procedure: The Litigation of Jones v. Clinton*


35. See infra note 67.


38. *Mas v. Perry*, 489 F.2d 1396 (5th Cir. 1974).


54. Simpson, supra n. 33, at 108 ¶ 33.


65. E.g., Stuart E. Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished*

66. United States Department of the Treasury, Office of Foreign Assets Control, Sanctions Program


(accessed July 26, 2004).


68. See text following supra n. 4.


70. See supra n. 63.

71. William Shakespeare, Hamlet, Prince of Denmark. “Fortinbras, Prince of Norway,” is listed in the Dramatis Personae, is described in act 1, scene 1, and appears in act 4, scene 4, and act 5, scene 2.

72. Alas, Poor Yor[ic]k!

I knew him....


75. Sampson v. Channell, 110 F.2d 754, 761 (1st Cir. 1940).


89. Cf. Maine and Massachusetts ("Supreme Judicial Court"); West Virginia ("Supreme Court of Appeals"). Association of Legal Writing Directors & Darby Dickerson, *ALWD Citation*


92. Lewis Carroll, Alice’s Adventures in Wonderland (Modern Lib. undated) (originally published 1865).

93. Lewis Carroll, Through the Looking-Glass 208 (Modern Lib. undated) (originally published 1872).


96. Paraphrasing William Shakespeare, Macbeth act 5, sc. 8, line 33:

   Lay on, Macduff....

The Plays and Sonnets of William Shakespeare vol. 2, 284, 310 in Great Books of the Western World vol. 27.