Goals
(or "What You Should Expect to Learn in this Course")

This is a really important document. It tells you what I'm trying to do in this course.

In the first year of law school, we instructors are trying to teach you both the body of law reflected in the titles to our courses and some broader analytic and performance skills. Different teachers place different emphases on these two aspects of their courses. In my mind, the "skills" curriculum is somewhat more important than the "doctrinal" material, for two reasons. First, if you master the skills, you can use them to learn and use any legal subject matter. Second, the doctrine goes out of date very quickly, particularly in civil procedure.

So, for starters, as you think about this course, keep in mind that in my view, "civil procedure" is only partly (perhaps about 40%) about "civil procedure." Like some other first year courses, it is in larger measure an orientation to some of the most important professional skills that you will use throughout your career.

I have started this memorandum with this basic message because in the years before I started distributing it, some students erroneously focused all of their attention on the doctrine of civil procedure. They may have learned it well -- but they missed some of the of the professional skill development that constituted much of the course. Slightly too late -- that is, after their exam -- these students realized that training in these professional skills were also very important parts of the course. I wrote this memorandum partly so that you would not be misled by the title of the course (which really should be "Civil Procedure And Some Basic Professional Skills"), and partly because most educational experts say that adults learn a lot better when you tell them, straight out, what they should be learning and how to measure their own progress.

So here's what I'm trying to teach:

Part 1. Civil Procedure

Civil procedure is a study of how courts work and what lawyers do in "civil" cases: cases other than those in which people are accused of crimes. (The parallel first year course in "criminal justice" rounds out the story).

Another way to put it is that civil procedure is a course about litigation; that is, about lawsuits. Or about the nuts and bolts (including the rust) of our system of justice.

Like all courses, this one has some major topics, and they are outlined in the syllabus in this Supplement.
We begin with an overview of the whole course. The overview includes, among other things, an explanation of the structure of the court system, and the relationship between state and federal courts.

Then we study:

-- where (that is, in what geographical places) lawsuits can be brought

-- what kinds of suits can be brought in federal, as opposed to state, courts

-- what rules of procedure apply when cases based on state law are filed in federal courts

-- what kinds of remedies courts can grant

-- what lawyers must, may, and may not say in the initial papers (pleadings and motions) that they file in lawsuits.

-- who can sue and who can be sued in civil cases (including, particularly, the rules for handling cases with more than two parties)

-- the rules of "discovery," by which we mean the processes by which lawyers can force adverse parties to disclose information before trial

-- how cases can be terminated before trial, and the circumstances in which arbitration may be substituted for court adjudication

-- and some rules about trials, including when people have a right to trial by jury, and what things juries, as opposed to judges, can decide.

With respect to each of these topics, you eventually should understand what the rules currently are. (The word "rules," in the previous sentence, includes formal, written "Rules" promulgated by courts, but also rules that have been established by certain legislative acts, and other rules that have evolved as a result of the decisions of courts and are not written down except in judicial opinions).

You should also know a little bit about how the rules came to be what they are and, if they are controversial, what the controversy is about. You should be able to know when to use a particular rule to solve a problem arising in a lawsuit.

**Part 2. Professional Skills**

I will help to teach you a lot of professional skills as well -- skills that you need to acquire to be a lawyer, or (for those of you not planning to become lawyers yourselves) to understand what lawyers do. I can't speak for your other teachers, but I think that all of us who teach first year students have some or all of these goals.
I must note, however, that not every professional skill can be addressed in the first year curriculum. In particular, the human relations skills (such as empathetic listening, counseling, and organizing other professionals) are best taught in the upper-class clinical offerings, in most of which you will work in small groups on actual litigation. But we are able to orient you to a large number of legal skills even in the first year of law school.

Here are the professional skills that you will begin to learn in civil procedure and, I think, in your other first-year courses. Some of them are capable of being tested on examinations, and some are not, but all are of great importance:

-- how to read judicial opinions with great care, so that you can figure out which facts and which legal theories are really pushing the result of the decision and which ones are being mentioned just as "makeweight" or to rationalize a decision made on other grounds.

-- how to organize information about what you read. That is, how to write brief summaries of decisions for your own use, and how to make a useful outline from a mass of information. (There is no single right or best way to do either of these things, because different methods work for different people. I encourage you to experiment with different styles until you find what works best for you).

-- how to read and use a long and complicated statute. Most law that you study during your first year of law school is somewhat unrepresentative, because first year courses deal largely with the "common law"; that is, with judge-made law that is not codified in statutes. By contrast, most of the law that you will be dealing with in upper-class courses, and in practice, is based on enormous written codes such as the Internal Revenue Code, the Uniform Commercial Code, or smaller but still dauntingly long statutes such as the Federal Clean Air Act. The course in civil procedure provides an introduction to reading long and difficult statutes because the Federal Rules of Civil Procedure -- which we study more in the second half of the course than in the first half -- is a code, written in the same style as a typical technical statute. In this course, you should learn how not to be intimidated by a statutory provision or court rule, how to break it into pieces, and how to argue that because of its words or the other clues to its meaning, the court should rule in your client's favor.

-- how to analogize from a precedential case (Case A) to a new problem (Case B). Part of this task is pointing out that "In Case A, the court said that the rule was XYZ (e.g, 'a person who breaks a contract has to pay money damages'). If we apply XYZ to the facts of Case B, the plaintiff wins." But doing that is the easy part, and it skips a step. When the court in Case A said XYZ, did it really mean XYZ to apply to a case like Case B, or was it speaking more broadly than it intended? The XYZ rule from Case A will have the greatest force if Case B is very much like Case A. So the more difficult part of arguing by analogy is to show not only what the "rule" is, but also that the two cases are factually alike. That is, you must be able to find and show a court the facts that are common to Case A and Case B, and to show that the commonality is relevant to the applicability of Rule XYZ.
how to distinguish a supposedly precedential case. This is the opposite of the previous skill. Your opponent cites Case A against you in Case B and says that you lose because Case B is just like Case A. Your task is to show that although Case B appears on the surface to be just like Case A, in fact there are relevant factual differences between the two cases that should make Rule XYZ inapplicable.

-- how to identify, in a mass of facts, what legal issues are presented and which of the many facts are relevant to them. This skill is frequently tested on law school examinations; acquiring it early is very helpful to superior examination performance.

-- how to apply a legal theory to a set of facts. That is, once you identify a pertinent theory and the salient facts, what exactly is the nexus between them? How can you squeeze every significant detail out of the facts presented so as best to make the legal theory work for your client?

-- how to express yourself precisely yet completely. Words are the basic tools of our trade, and success in our profession often requires a more accurate use of words than we usually encounter outside of the realm of literature.

-- how to make multiple arguments. Good lawyers don't stop when they've found what may be a winning argument; they continue to analyze the problem from many perspectives. You should become able to identify and evaluate multiple arguments; e.g., those based on the words of a rule or statute, those based on the Constitution, those based on precedent, those based on justice to the parties in the case, and those based on public policy.

-- how to speak in public, before an audience of more than a hundred people. This is easy for some, harder for others, but most certainly an important skill for lawyers. Ours is a public profession, and we are constantly "on stage" in public places such as court rooms, legislative halls, and public meetings. Virtually all law school courses use a process of dialogue rather than straight "lecture," both because "active learning" is more effective than "passive learning" and because by speaking in class, you will be practicing an important legal skill.

-- how to work in small groups. Lawyers rarely work alone; they almost always work in small groups such as project task forces within firms or agencies. Learning how to collaborate with peers in order to study for this and other courses will help you to collaborate on larger projects in the future. I strongly encourage you to use study groups to prepare for and review class work; in addition, this course includes many problems that are best explored in small groups.

-- how to set professional standards for yourself and to measure your performance against your own standards. For example, you will decide how much studying to do, whether or not to form or join a study group, and how much to participate in class. For most people, becoming a law student or a lawyer requires much more personal discipline and self-motivation than is familiar from previous roles (such as the role of college student or the role of a closely supervised worker).
-- how to recognize and make some judgments about the many ethical issues that often arise during litigation (and in other aspects of legal practice). The state courts have promulgated some codes of ethical conduct for lawyers, but the codes don't answer many of the hard questions; they are silent on some tough issues, and they provide ambiguous or inconsistent answers with respect to others. You should be able to sense when to consult the written ethical codes. When the codes don't answer the question fully, you should be able to see all sides of the issue and reach a personally acceptable (or perhaps even satisfying) result.

-- how to look at a problem from a social or legislative perspective. Lawyers aren't only advocates for individual clients. They often work for governments, for or as legislators or judges, on bar or other advisory law reform committees, or for groups seeking a legislative solution to a problem. You should become able to evaluate whether a law or rule is a good one; what objectives it serves; what adverse consequences attend its operation; which groups it helps and which ones it hurts; how it might be altered; who has the power to alter it; and what might move that person or body to change it in various ways. In other words, you should never assume that a rule of law is permanent, and you should be constantly critical of its operation.

Note that the “skills” goals described in Part II may conflict with the “doctrine” goals of Part I. For example, you might learn more about the skill of applying your critical judgment by reading an opinion that was poorly reasoned—and wrongly decided—than by reading one that was well reasoned and correctly decided, and you might learn more about policy by reading a decision that was later overruled than by reading the latest word on the subject. Therefore, most textbooks, including ours, include some cases that are of pedagogical or historical importance but do not state the current law, or as to which courts in other jurisdictions have taken opposite approaches. Do not assume that all of the cases in your books are correct, currently applicable, or the law of every U.S. jurisdiction. After we have discussed doctrines that been supplanted, however, I will try to bring you up to date.

Despite my effort to update you, some of the rules or laws that you learn in this course and in other courses will be overturned or amended before you graduate, and a surprisingly high percentage of them will not be law by the time you are in your tenth year as a lawyer. As you will see, one measure of the pace of change is that just within the past five years, Supreme Court decisions and rules changes have made huge alterations in several of the doctrines we'll study in this course, including personal jurisdiction, pleading, discovery and class actions. Some of those decisions are themselves being distinguished in case law or are under attack in Congress and by certain agencies; others are being resisted by the court systems in certain states. The fact that the law is in a state of constant revision is just one of the reasons why only 40% of your task is to learn the ever-changing doctrine, and 60% is to obtain more durable professional skills such as those I have listed in this message.