

CIVIL PROCEDURE I
Spring 2012
R. Marcus

Assignment Sheet No. 1

This assignment sheet introduces how I will approach this course and indicates the assignments for the first few weeks of class. These daily assignments are listed at the end of this long initial memo on how the class will be conducted. By the time we complete the material indicated on this assignment sheet, I will hand out another. It will not be nearly as long as this one.

A general word about assignments: I will usually try to predict in writing what we will be covering in each class session over a three- or four-week period. It is important to understand that the pace of coverage is somewhat difficult to predict, particularly early in the semester. If we get ahead or fall behind my predictions, we will proceed in the sequence indicated below. This means that it is not wise to skip material we have not finished covering in class in order to read "today's assignment" unless I have clearly told you that you should skip material. Unless otherwise announced by me, we will not skip assigned material even though we have not covered everything indicated for a given day. You will need to gauge our actual rate of progress as we move through the material. I expect students to be prepared for class; if for some reason you are not able to be prepared for a given class, please tell me so before that class.

The page references below are to Marcus, Redish, Sherman & Pfander, Civil Procedure: A Modern Approach (5th ed. 2009). The new edition includes significant changes from the fourth edition, particularly in Chp. III. As a consequence, getting ahold of a copy of the fourth edition is not likely to work. (I say this because in the past people have asked whether prior editions would be substitutes for the current one.)

In certain assignments, I have also indicated that you should read specified Federal Rules of Civil Procedure (FRCP) or sections of the California Code of Civil Procedure (CCP) along with the casebook assignments. These items are contained in the current edition of Kane & Levine, Civil Procedure in California, which is also assigned for this course. The Advisory Committee Notes to certain of the FRCP are included in the pamphlet. These are explanatory statements about the rules prepared by the committee that drafts amendments to the rules. They serve as a sort of legislative history for the rules. On occasion I will ask you to read these as well.

On occasion I refer as well to parts of The Buffalo Creek Disaster. I have asked you to read this book for the first class

as a background introduction to litigation. Parts of the book seem to me to be particularly pertinent to certain portions of the course, and I have noted these to remind you of parts of the book that relate to what we are discussing in class. In 2008, the publisher came out with a new edition, including a Foreword from Bill Clinton. The Hastings bookstore has both versions for sale, and I will try to indicate where in each edition you will find that material I ask you to review for given assignments. The first page numbers (not underlined) should be references to the 1976 edition, and the second set (underlined) to the 2008 edition.

Absences from class and make-up sessions: Unfortunately, I sometimes have to attend meetings or out-of-town events that prevent me from being here for class at the usual time. Presently, the first such occasion I know about is on March 22-23, although I also have another on Jan. 27 (a Friday). I am uncertain whether I can get to those meetings without leaving early enough the day before to require me to miss our class. I intend to make up those classes, and will notify you about when those makeups will occur as that date draws near. It may happen that other things come up that require my attendance out of town, but I hope not.

Recap sessions: When we finish a block of material, I plan to schedule a "recap" hour outside regular class time. Attendance is entirely voluntary at these events, which are designed to provide insights for those who want them about the block of material we have covered. There is no additional reading for these sessions. Since I don't know for sure when we will actually finish given blocks of material, I have not tried to pick times for these sessions. The assignment sheet therefore lists them as what might be called "floaters," with general predications on about when they will occur. I will try to provide notice when they do occur, and may try to have them recorded if some who want to attend are unable to do so.

Assigned court visit: Along with your other assignments, I am requiring each student to make one visit to an actual court proceeding during the semester. This assignment will not be graded in the sense that I will assign letter grades to it, but failure to comply with this requirement will result in lowering your grade. To give you plenty of lead time, I have set the due date for this assignment as Thursday, Feb. 16, 2012.

Each of you is to select, visit, and report about one law and motion session regarding civil cases in a court of general jurisdiction. Courts of general jurisdiction (as distinguished from specialized ones like probate court, juvenile court, etc.) include the Superior Court of each California county and the U.S. District Court for the Northern District of California. Law and motion hearings in federal court may include pretrial motions in

criminal cases as well as civil cases, but make sure your session includes some civil cases. You don't have to go far from Hastings to find a lot of courts. Most or all the civil departments of the S.F. Superior Court are located at 400 McAllister, a little more than a block away. Most of the judges on the U.S. District Court hold court at 450 Golden Gate Ave., a block from Hastings. There are Superior Courts in all adjoining counties, such as Alameda, Contra Costa, Marin, San Mateo and Santa Clara. There are also U.S. district courthouses in Oakland and San Jose, but there are fewer judges in them than at 450 Golden Gate Ave.

This court visit will often take a couple of hours. Try to make sure that you have enough time to stay to the end of the session. I have asked you to attend a Law & Motion session (which would, in S.F. Superior, include Writs & Receivers). My reason is that most of the things we will cover in this course are likely to be raised by pretrial motion. It would probably be helpful to defer your court visit until we have covered a fair amount of material, and the due date should make that possible.

Part of your task is to identify the session you want to attend and find the courthouse. (This is something lawyers have to do also.) Good sources for that are the two legal newspapers for S.F., the Recorder and the Daily Journal. These should be available in the Library. Both list the calendars of the various courts so that you can see in advance when there are law and motion hearings and, to some extent, what they are about. S.F. Superior Court, for example, usually has two sets of law and motion sessions at 9:30 and 10:40 each weekday, as well as a Writs and Receivers session each day. The U.S. District Court maintains a website -- www.cand.uscourts.gov -- through which you can view each judge's individual calendar, including law and motion sessions. For different judges, those sessions occur at different times, which may be helpful in scheduling to avoid conflicts with other classes, etc. I note that the S.F. Recorder and S.F. Daily Journal have online editions, but to access those you need some sort of password given to those who subscribe. Hard-copy versions of the papers are in the Library. Another source is Courttime, which is available through the Hastings website and features calendar information on local courts.

You may, if you wish, go in a group including classmates, subject to the request that you not make such a large group as to startle the judge or interfere with the operation of the court.

After your court visit, you are each to prepare and turn in to me a memorandum concerning your visit. That memorandum is what is due on Feb. 16. It should be brief (two or three pages) and describe what you observed and what you learned from the visit about the way courts function and the quality of lawyering. I am looking for a relatively straightforward factual piece (not

a "mood" essay) that identifies the court and proceedings you observed, describes what happened, and explains any insights you obtained from the trip to court. This should be more than a rote recitation of the names of the cases and the issues raised (although these are worthwhile topics), and include also some reflection on how the lawyers and the judge handled the hearings. The one or two page directive is not a straightjacket, but suggests the dimension of the memo that I expect. I want you to hand in hard-copy versions of your memos because otherwise I would probably encounter problems printing many of them off, and also find it difficult to keep track of them all. Be sure to keep a copy of your memo when you turn it in.

Class attendance: Lest there be any uncertainty about it, attendance in this class is not optional. The American Bar Association insists that law schools certify that students attend class, and we cannot do so if we pay no attention to attendance. This does not mean that nobody can ever miss a single class, or that I will be taking attendance. I will, however, be on the lookout to see if there are instances of regular or prolonged absence and will attempt to respond to any I notice. If for some reason it appears that you will be missing a significant number of classes, please see me at your earliest opportunity.

Laptops: Laptops can provide valuable assistance to law students in law school, but they also possess the capacity to divert students from what they should be doing. Obviously, using them in class to cruise the Web or exchange e-mail is likely to be a distracting waste of time from the perspective of learning the material covered in class. We hope that, as adults, law students realize that such diversions are counterproductive. Particularly when students are paying considerable sums of money to attend school, it seems odd that they would use this device to be mentally absent. Maybe the reason there are no windows in most law school classrooms is to keep students from staring out the window rather than paying attention to what's going on in class. But now that Windows[™] is available, there's a much greater opportunity to stare into space. Students are going to need to learn to overcome this temptation to waste time throughout their daily lives to become effective in their profession. Learning to resist the temptation during class is even more important.

Laptops also pose a different temptation -- mindless "stenographic" transcription. Until laptops came along, very few students could have tried to write down everything that was said in class. With these devices, it's probably true that many can do so. The problem is that doing so is not worth it and probably deprives the student of an important feature of the learning experience. It's not worth doing because an unedited transcript of a class is not particularly useful. It detracts from the classroom learning experience because it defers or avoids the

task of distilling the information being covered. Ultimately (perhaps under the heading "outlining"), this process of distillation is the core learning experience for law students. It starts in the classroom when they evaluate what they hear and decide what to write down. To write down everything, therefore, can mean that you are failing to begin this crucial part of the learning process.

Finally, keep in mind that laptop use may actually be disturbing to other students who are trying to concentrate on what's going on in class. On that, consider the report of a federal judge who sat on a jury in state court and wrote about the experience:

One behavior was unanimously disliked at one point or another during the trial: Every juror mentioned being distracted and annoyed by the noise of lawyers typing notes into their laptop computers. Interestingly, no comments were made during the many weeks of trial about the lawyers who took notes the old-fashioned way, with a pen or pencil and yellow legal pads. One juror was very outspoken about a lawyer's "clanking away" on his laptop while she was trying to listen to important testimony.

Boyle, A Judge on the Jury, 32 Litigation No. 4 at 3, 6 (Summer 2006). Web surfing can probably be a bigger distraction than that. So be considerate of others in the class.

Office hours: My office is Room 316 in the 200 McAllister building. I am generally there, and usually happy to talk to students when I am there unless it is the hour just before I have a class. I also post "official" office hours, but that does not mean that you can only come around at those times. If I am not in my office when you try to find me, you can leave me a note attached to my door or contact me by phone (565-4829) or by e-mail (marcusr@uchastings.edu).

Examination format: There will be an examination in this course at the end of the semester at a time set by the Administration. It will be in essay style, generally in the format I have used in the past. Some of my old examinations (and my memos to the students about the exams) should be on file in the Library. The examination will be closed book. This means that you may not bring with you or consult the book or any notes you have made. Although you may not see it this way, I have this rule partly for your benefit because time you spend searching through materials you bring to the exam. is time taken from analyzing and composing answers to the questions on the exam. The only exception to this rule is that you should bring with you, and may consult, the Kane & Levine pamphlet. Based on past experience, I am announcing the following rules for notations in the pamphlet: Students may write anything they please in the

rules pamphlet, but it is not permissible to use "white-out" to "create" more space for notes in the Kane & Levine pamphlet. You may not attach any additional papers to the pamphlet. This prohibition on attachments includes tabs or pasted-in outlines produced on your computer. If anyone is at all uncertain about what any of these rules means, please ask me for a clarification.

Grammar and related issues: In many of what we used to call grammar schools, it has been out of fashion to teach grammar in recent years, and many of you may not have been asked to adhere to the rules of grammar in prior schooling. As lawyers, you will be measured by the persuasiveness of your written work. If it has grammatical errors (even very common ones), they will weaken it. In this class, there is no direct relationship between grammatical errors and grades, but I thought it worthwhile to mention common errors that grate on my nerves. My nerves may not matter, but judges' (and clients') nerves do and many of them went to school before the new relaxed attitude toward grammar came into fashion.

Just to prove that I'm not the only fuddy-duddy who cares about such things, I offer a few examples of judges who do. In *Lohrenz v. Donnelly*, 187 F.R.D. 1 (D.D.C. 1999), the judge began discussing defendants' motion for the imposition of sanctions on plaintiff's attorney as follows: "The bulk of plaintiff's misconduct is due purely to sloppiness. First, plaintiff's counsel averages approximately four typographical, grammatical, or stylistic errors per page." *Id.* at 10. Despite these failings, the judge eventually declined to impose sanctions. On the other hand, a federal judge in Philadelphia cut an attorney's hourly billing rate in half in ruling on a fee request due in part to the mistakes the lawyer made in filings with the court. See Liptak, *Judge Finds a Typo-Prone Lawyer Guilty of Bad Writing*, N.Y. Times, March 14, 2004, at A14. Another judge wrote about similar problems in a magazine for lawyers:

We see some truly great written advocacy in our court. We also see some of the most astonishingly incompetent writing imaginable. You might think that sloppy grammar or other abuses of the English language do not count and that glaring deficiencies in writing ought to be ignored. The problem is that these failures may be outcome-determinative because they can defeat communication of the message itself.

* * *

I would sum up a view held by most judges on the subject of poor grammar: The sloppy writer and his or her cause lose credibility and respect, as well as the reader's concentration. There is simply no excuse for it.

Gettleman, *We Can Do Better*, *Litigation Magazine* (Summer 1999) at

3, 62 (emphasis added).

As professionals, you should start cultivating good grammatical habits now. I have some pointers based on experience with law students. Try to avoid the following problems:

1. *Singular v. plural*: You should be aware whether the subject of a sentence is singular or plural and make any predicate references correspond. Thus: "The company is reviewing its standards for promotion." Many of you might substitute "their" for its. That would be wrong.

2. *Organizational entities*: As suggested by the example in point 1, an organizational entity (company, union, city) is singular. Don't refer to such an entity as "them." If you really meant that, you should change the number for the verb. Thus, do you really feel comfortable with: "The company are reviewing their standards for promotion." (Note that Gerald Stern makes this mistake several times in the Buffalo Creek Disaster. The fact that others make this error will not excuse you.)

3. *Misuse of words*: Some words used in ordinary language have special meanings in legalese; these are often called terms of art. You need to master them. Some are not so obvious. One that recurs in this course (and is particularly important on your report of the court visit) is "motion." In this course, it is a noun meaning a request to the court for an order. See Fed. R. Civ. P. 7(b). As used in court, it is not a verb; used as a verb it refers to a physical gesture, like waving. Thus, you can say "She made a motion to dismiss." You cannot properly say "She motioned to dismiss." The correct thing to say is "She moved to dismiss."

There are other words that are often misspelled, or that are similar in sound but actually different, and you need to attend to the differences. A common mistake (even in the New York Times) is to mix up *principal* and *principle*. *Principal* means "main," and can also be used to describe assets held (v. interest). Thus: "Our principal objective is to maintain our principal." *Principle* means theory or idea. Thus: "The principle by which we organize our financial affairs is to maintain our principal." Misusing these words should be embarrassing, and will be in some instances. Learn the differences.

Another common mistake is to mix up "effect" and "affect." Either word can be a verb or a noun, but they have different meanings. As a verb, effect means to bring about and affect means to have an effect upon. As a noun, effect means the impact of something and affect means the outward manifestation of an inner emotional state. Thus: "To effect change requires work."

"Changes in organization will affect the output." "The changes had the desired effect." "Because he was taking his medication, he had an altered affect." Probably you could go through life without using affect as a noun.

Yet another is an alternative for lawyer -- *counsel*. This word can be used as a noun or a verb ("She was counseled by counsel"), but it is not the same word as *council*. That word refers to a body of people such as a city council that is charged with overseeing some organization. Don't treat counsel and council as interchangeable.

4. *Apostrophes*: Some time ago people began using apostrophes to pluralize. This is flat wrong. Don't do it. Thus: "Many lawyers speak sloppily." If you wrote "Many lawyer's speak sloppily" that would have no meaning because "lawyer's" is possessive (as in "the lawyer's briefcase"). Keep in mind that there is also such a thing as a plural possessive: "The lawyers' universal view (as distinguished from the doctors') was favorable." Accordingly, "Many lawyers' speak sloppily" is wrong also.

5. *Hyphens*: As with apostrophes, there has been an unfortunate proliferation of hyphens. In general, you should put a hyphen between nouns only if they form an adjectival phrase and the hyphen would help make your meaning clear. Thus, you might say "state-court jurisdiction." But you don't normally put a hyphen between two nouns that are related. Thus: "The case was in state court" is correct, and to say "state-court" there would be wrong.

PLEASE REVIEW THESE ADMONITIONS BEFORE YOU WRITE YOUR COURT VISIT REPORT AND ADHERE TO THEM. I have not decided whether I will require people who make these errors to submit corrected memos, but I'm considering that measure. More generally, try to overcome your temptation to fall into these common mistakes. Even though they won't hurt your grades here, they will (sometimes) weaken the credibility of your presentations when you are a lawyer.

Outside reading: Most students find civil procedure difficult. Do not assume that you are the only person for whom this is true. Many believe that useful insights can be found in outside reading. It is not true, however, that professors try to make the material difficult and that the easy answers are contained in other books. For the first few weeks it is probably pointless to consult outside sources for they may compound rather than reduce your uncertainty. Some outside materials are cited in the casebook itself, and going beyond them should probably await completion of a major block of material (such as the pleading materials in Chapter III). Nevertheless, for those who insist on some indication right now about where else they might

look, I offer the following. All of these books should be in the Library.

One-volume treatises

There are several one-volume treatises on civil procedure and related areas. The best-known include the following. Please consult the most recent edition:

Friedenthal, Kane & Miller, Civil Procedure

James, Hazard & Leubsdorf, Civil Procedure

Wright & Kane, Law of Federal Courts

Glannon, Civil Procedure

Teply & Whitten, Civil Procedure

There is also now an anthology of leading articles on a variety of civil procedure topics that may prove helpful to you:

Levine, Doernberg & Nelken, Civil Procedure Anthology

In addition, there is a book with in-depth examinations of several of the cases we will read in this course that some might find informative:

K. Clermont (ed.), Civil Procedure Stories (2d ed. 2008)

Multi-volume treatises

Multi-volume treatises appear more daunting due to their size, but since they are usually keyed to specific rules and have a good table of contents, they can be quite accessible. The leading treatises are:

Federal Practice & Procedure ("Wright & Miller"): This Treatise is now about 30 volumes long and covers almost the whole landscape of civil procedure and evidence. On the spine of each volume is an indication what rules or statutes are discussed within.

Moore's Federal Practice: This Treatise also indicates on the spine which topics are covered in the volume. There was an entirely new edition in 1997.

Commercial outlines

I do **not** recommend commercial outlines. Some of them I have looked at contain dramatically wrong statements. Overall they

are not a substitute for anything else, although they may provide insights late in the semester about how to organize the material as you prepare for examinations. They are not likely to prove of much use until you begin reviewing for examinations. At that time, you might want to examine some of them to see how they put the pieces together.

NEED TO TAKE CIVIL PROCEDURE II: Civil Procedure is more than half the basic civil procedure course, but leaves out a lot that matters a lot, as suggested at pp. 25-26 of Chp. I. We will do a brief "introduction" to issues of jurisdiction, but it is only a sketch. We have another course -- Civil Procedure II -- that can be taken after the first year and covers jurisdiction and related topics in suitable detail. **Taking Civil Procedure II is critical to getting a full introduction to this subject.** For what it matters in addition, Civil Procedure II deals with many subjects that frequently come up on the bar examination. You should make a point of taking it unless you don't want to be a lawyer and are attending law school purely for its entertainment value.

Goals of this course

It seems useful to set out goals for the course at the outset. The assignments below and the class discussion are designed to address these goals. As in other classes, consideration of the topics in Civil Procedure often involves integrating casebook coverage, rules or statutes from the Kane & Levine supplement, concepts about the "substantive" law that you may have encountered in other courses (such as Torts or Contracts), and tactical considerations like those discussed by the author of The Buffalo Creek Disaster. For lawyers, these multiple tasks often come combined in one overall challenge.

Overall, the following summarizes what I hope you take away from this course:

(1) Developing doctrinal understanding: The readings and in-class discussion will emphasize the topics covered in the course. Most of these topics depend on the provisions of a specific constitutional provision, statute, or rule. Topics will include:

Pleading -- the method of putting a case "at issue" so that the court can address the parties' contentions

Discovery -- the judicially assisted effort to gather evidence for use in deciding the case

Adjudication -- the centrality of the right to jury trial, and the means by which cases can be decided by

the judge

Appeal -- the need to wait until the entire case is over (the "final judgment") before appellate review

Preclusion -- the binding effect of a final judgment, preventing the presentation of claims in later cases on the ground that they are controlled by an earlier decision

Jurisdiction -- an introduction to the rules governing whether a court can compel a defendant to appear before it (personal jurisdiction) and whether a case can be handled by a federal court (subject matter jurisdiction)

(2) Gaining an appreciation of professional obligations: Lawyers must master the doctrinal subjects enumerated in (1) above, but that is only a baseline for their activities. They must also appreciate that they owe obligations to their clients and to the judicial system that affect the extent to which they "push to the limit" under these rules. In-class discussion will sometimes involve consideration of whether it is ethical to pursue certain courses in litigation.

(3) Focusing on strategic judgments: A related and important focus of lawyers' activities is to make strategic judgments about the consequences of possible actions in litigation. In-class discussion will often raise questions about those judgments. "Thinking ahead" is an important quality of an effective lawyer. Therefore, we will reflect on why the lawyers in the cases we study did what they did, and whether another course of action might have been more effective.

(4) Building skills in making legal arguments: Lawyers must try to employ the facts available to them to support their position under the pertinent rules. The casebook and in-class discussion will often emphasize ways in which the facts might be marshalled to support one argument or another. Hypotheticals may sharpen this analysis.

(5) Reflecting on systemic policy choices: Besides honing your skills as a lawyer, this course introduces you to a variety of key policy questions that will remain important throughout your professional career. Another goal is to prompt reflection on these policy choices, such as:

Pleading: Should the showing necessary to get a case "into court" be made more demanding, or should all who want to pursue claims be permitted to do so without much challenge at the outset?

Discovery: Should parties be required to undertake disruptive and expensive efforts to provide evidence for their opponents, or should those who want information often have to compensate others for taking the effort to provide it?

Adjudication: Should judges defer to jury decisions in all cases except those in which one side's position is almost crazy, or should they take a more active role in scrutinizing the sufficiency of the parties' evidence? This inquiry can be viewed as involving the jury as a fundamental foundation of our democracy.

Preclusion: Should courts resist "second tries" by litigants who already had one "day in court," or should they be receptive to new evidence or different grounds for relief?

Jurisdiction: Should courts make it easy for plaintiffs to sue distant defendants, or protect defendants from having to defend cases far from home?

Daily assignments:

- Jan. 9 The Buffalo Creek Disaster and this assignment sheet.
 If it is of interest to you, the State of West Virginia maintains a website on the disaster:
 www.wvculture.org/history/buffcreek/bctitle.html
- Jan. 10 pp. 1-19. Try to focus on the sequence of events in the case and the bottom line rulings made by the appellate court (e.g., who really won the case), so that we can walk through them at the beginning of class. We will also consider why the court deems what the judge did inappropriate.
- Jan. 11 pp. 19-26; FRCP 16 and Advisory Committee Notes on Rule 16 (starting on p. 38 of Kane & Levine); Buffalo Creek pp. 94-97 (86-88); 213-17(192-96); 240-43 (216-18); 275-99 (247-70)
- Jan. 12 Introduction to pleading the claim: pp. 114-32; FRCP 7, 8(a), (d), and (e), 10 and 12(b), (c), (d), (e), and (f); Form 11 (p. 177 in Kane & Levine -- this was formerly Form 9); CCP §§ 430.10-430.80, 431.10, and 436; Buffalo Creek pp. 104-05 (94): The focus here will be on the two cases in the assigned reading and how pleading rules should be applied to determine which cases are allowed to proceed, and on which terms. In the background is

the question what consequences flow for allowing the case to proceed -- principally the cost and intrusiveness of discovery for the defendant. As you may deduce from the listing of rules to be examined, this is also a point when we begin to have lots of them to learn. Whether or not you like it, from here on in there will be rules for you to learn, and eventually to master.

- Jan. 16 MLK Holiday
- Jan. 17 Consistency and honesty in pleading: pp. 133-51; FRCP 11; CCP §§ 128.5; 128.7; Buffalo Creek pp. 56-63 (51-58): This session examines the general receptivity to "inconsistent" pleading, and the extent to which honesty and/or the rules preclude such inconsistency. We will focus in particular on the specifics of Rule 11.
- Jan. 18 Applying the rules: pp. 151-58
- Jan. 19 More particularized pleading requirements: pp. 158-74; FRCP 9(b): This will introduce the question of more particularized pleading requirements than those applicable to all cases. We will consider both whether there are reasons for applying such rules in certain cases, and why those cases should be subject to special requirements. In addition, we will consider the importance of private enforcement of rules like the securities fraud provisions involved here.
- Jan. 23 pp. 174-98: Iqbal Handout. We will consider the way in which the "new" Bell Atlantic v. Twombly pleading standards should be applied, including the approach in Iqbal. The question how to apply these "new" standards is a topic on which the lower courts are still debating. Many academics think that action should be taken to change the rules so as to alter what the Supreme Court did.
- Jan. 24 Defendant's response -- pre-answer motions, default, and contents of answer -- and plaintiff's voluntary dismissal: pp. 198-215; 220-22; FRCP 8(b) and (c); 12(a), (g), and (h); 41(a); 55; CCP 431.20; 431.30.
- Jan. 25 Amendments to pleadings: pp. 222-27; Krupski v. Costa Crociere Handout; FRCP 15; 16(b)(3)(A); 16(e); CCP § 474; Buffalo Creek, chp. 21 ("The Statute of

Limitations")

Recap

Chp. III Recap.: I intend to schedule a Chp. III recap outside regular class time but around this point in the semester. As with all recaps, it will involve no new reading or material and attendance will be entirely voluntary.

Jan. 26 Discovery overview: pp. 343-68; skim (this does not mean skip) FRCP 26, 30, 33, 34, and 35; Buffalo Creek pp. 138-86 (124-67): I intend to introduce this material in lecture format, and will invite any questions anyone has about the assigned reading or about what I say in class.

Jan. 30 Managing the scope of discovery: pp. 368-76; FRCP 26(b)(1); F.R.Evid. 401 (p. 372 n.2)

Jan. 31 pp. 377-87; FRCP 26(b)(2); 33(d)

Feb. 1 Complete Section C of Chp. V. This entry represents a guess that we will by this point actually be using this time to complete what was already assigned; if that's not necessary we can use some of this hour to move on into work product, the next topic.

Feb. 2 Work Product, pp. 387-99; FRCP 26(b)(3)

Feb. 6 Experts and Investigation, pp. 409-22; FRCP 26(a)(2), and 26(b)(4) [as amended in Appendix to this assignment sheet]; Buffalo Creek pp. 230-31 (207), 237-39 (213-15), chp. XXVIII

Feb. 7 Enforcement of discovery obligations: pp. 422-29; FRCP 26(a)(1)(A)(iii); 26(e); 37.

Recap

Chp. V Recap.: I intend to schedule a Chp. V recap outside regular class time but around this point in the semester. It will occur after we complete the discovery material.

[An assignment sheet for further coverage will be handed out by the time we finish this material.]