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Lawrence M. Grosberg

New York Law School, lawrence.grosberg@nyls.edu

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The Buffalo Creek Disaster: An Effective Supplement to a Conventional Civil Procedure Course

Lawrence M. Grosberg

Gerald Stern's *The Buffalo Creek Disaster*¹ and the lawsuit which is the subject of his book provide an excellent vehicle to complement a conventionally taught civil procedure course. The lawsuit and the book provide the basis for a case study in federal procedure. As a supplement to a traditional civil procedure course (using any of the current procedure casebooks), there are a number of ways in which a civil procedure teacher might use this material.² All aim to enrich the student's learning experience and to foster better understanding of procedural doctrine.

The litigation Stern wrote about arose from a 1972 disaster when a dam collapsed on the Buffalo Creek in West Virginia causing 125 deaths, 1000 destroyed homes and hundreds of injuries. While there were many lawsuits arising from the tragedy, the one Gerald Stern litigated involved more than 650 of the victims or survivors who sued the owner of the coal mining company which constructed the dam. Claims were asserted that the disaster was caused by the defendant's negligence and gross negligence. Most interestingly, damages were sought for psychic trauma on behalf of on-site victims as well as residents absent from the scene of the disaster. The emotional damages claim was based on survival syndrome and arose out of the loss of homes, friends and family, and the entire community. Thus, in addition to raising numerous procedural questions, the lawsuit also raised challenging tort and remedies issues.

This essay proposes one way to use the Buffalo Creek materials, but it is a proposal which easily could be expanded or contracted depending on a

Lawrence M. Grosberg is Associate Professor of Law, New York Law School.

1. Gerald M. Stern, *The Buffalo Creek Disaster* (New York, 1976). The book is a paperback edition, and, despite its 1976 publication date, continues to be available.
2. I am neither the first nor the only teacher using Buffalo Creek materials to supplement a civil procedure course. See Part III, *infra*. Professor Philip G. Schrag (Georgetown University Law Center) who is using them as part of a procedure course, has identified Professor Janice Toran of the Cleveland Marshall College of Law, as the first person who suggested the idea. See also Elizabeth M. Schneider, *Rethinking the Teaching of Civil Procedure*, 37 J. Legal Educ. 41, 43 (1987).

teacher's needs and predilections.³ Most importantly, many of the suggestions here can be implemented with minimal effort. After discussing more specifically my pedagogical objectives, I describe the various kinds of materials and methods I use to achieve those aims. Finally, I report briefly on how some other procedure teachers are using the Buffalo Creek case to supplement their courses.

I. Pedagogical Objectives

By using the Stern book, videotapes of simulated aspects of the litigation, selected Buffalo Creek court documents, and problems, exam questions and student role-play exercises relating to the litigation, I try to achieve several objectives:⁴

A. Enhancing the coverage and understanding of particular procedural issues.

Through the study of an actual case from the pre-filing stage to its conclusion, students have an opportunity to consider and examine how specific rules and doctrine are actually applied. The Buffalo Creek materials offer different methods, beyond case law analysis, by which to learn and understand procedural doctrine. For example, observation and then analysis of a videotape of a lawyer-client or lawyer-lawyer interaction related to a procedural issue can often add a dimension to theoretical exploration which is absent from a traditional teacher-student dialogue. Similarly, observing two lawyers trying to resolve a dispute regarding disclosure of a document at a deposition can vividly demonstrate the limitations of a method of conflict resolution based on voluntary self-enforcement. Preparing a critique of the complaint drafted by Gerald Stern is a different way to analyze pleading rules, but perhaps as effective if not more so than a discussion of pleading cases and rules. Student observation of a client interview in which a lawyer accepts at face value everything a

3. Although the Buffalo Creek vehicle is quite open-ended in its potential use as a supplement to civil procedure, such use is a relatively modest endeavor when compared to the many more ambitious and comprehensive lawyering process courses which increasingly are finding a place in the first-year curriculum. Those efforts go beyond the goal of teaching procedural doctrine and often incorporate the goals of legal method, legal writing, professional responsibility and lawyering skills courses, as well as procedure or perhaps even torts or contracts. Buffalo Creek could also, I believe, easily be the core of such a broader-based lawyering process course. See generally Paul A. Brest, *A First-year Course in the Lawyering Process*, 32 *J. Legal Educ.* 344 (1982) (a discussion of the Stanford first-year lawyering process course which is based on materials developed by Professor Anthony Amsterdam and others); Gene R. Shreve, *Bringing the Educational Reforms of the "Cramton Report" into the Case Method Classroom—Two Models*, 59 *Wash. Univ. L.Q.* 793 (1981) (a description of the integration of skills learning into traditional courses, including a first-year legal method course); *Innovations in Legal Education* (1986) (a pamphlet published by Matthew Bender & Co. Inc. and distributed to the Association of American Law Schools Meeting, January, 1986, which describes the lawyering process course at University of San Francisco Law School and Professor Paul Spiegelman's efforts in the first-year procedure course at State University of New York at Buffalo); and William S. McAninch, *Experiential Learning in a Traditional Classroom*, 36 *J. Legal Educ.* 420 (1986) (discussion of the desirability of experiential learning techniques in traditional courses).
4. These goals are pursued in a one-semester four-credit civil procedure course which is taken in the first semester of the first year.

client says demonstrates the importance of complying with the recently amended Rule 11⁵ requirements that a lawyer not assert a client's claim unless it is "well grounded in fact" and based on the lawyer's knowledge, information and belief formed "after reasonable inquiry." Buffalo Creek offers a convenient and effective vehicle to illuminate these procedural issues.

B. Providing a cohesive, systemic view of procedure. One of the many student criticisms of first-year civil procedure is that it is difficult to understand early parts of the course without information presented later. Since it is impossible to teach all parts simultaneously, students often are frustrated. Student frustration is well based, for it is difficult to understand class actions without knowing *res judicata*, or burdens of pleading without understanding trial burdens of proof. Further, procedural rules and doctrine are more alien to new students than concepts of negligence or breach of contract. Nearly all of the standard casebooks address both of these problems by including introductory overviews of one sort or another or a summary of a hypothetical case.⁶ While neither as brief nor as comprehensive as the casebook summaries, Stern's book is much more fascinating, even inspiring, to the novice in its presentation of the problems of civil procedure. The lawsuit provides an excellent case study for viewing the procedural system as a whole. Moreover, the repeated references to Buffalo Creek throughout the course enable the students to examine later and in greater depth the various aspects of the procedural system to which they were previously exposed through an initial reading of Stern's book. The case becomes a useful bridge between an understanding of a piece of the system and the broader picture. This goal—to provide a "sense of context" for the study of procedure—was echoed by many of the teachers who responded to a questionnaire as a principal reason for using the Buffalo Creek case.⁷

C. Exposing students to lawyering skills not generally encountered in the first year. The purpose here is not to teach skills such as interviewing, counseling or cross-examination; that is not possible in the typical first-year procedure course or for that matter in an entire first-year curriculum which is traditional in nature. Rather, the intent is merely to acquaint law students at a much earlier point in their education with the reality that lawyering means more than an ability to analyze appellate opinions, critical though that skill is. And, again, by analyzing different dimensions of a problem

5. See Fed. R. Civ. P. 11, and accompanying Advisory Committee Notes, 97 F.R.D. 196-201 (1983).

6. See, e.g., Jonathan M. Landers & James A. Martin, *Civil Procedure* 1-60 (Boston, 1981); David W. Louisell, Geoffrey C. Hazard & Colin C. Tait, *Pleading and Procedure* 1-13 (Mineola, N.Y., 1983); and Robert Brousseau, *Civil Procedure* § 1.03 (New York, 1982). On a more ambitious level, the task of providing an in-depth cohesive treatment of a single case has been undertaken in separate procedure books to be used as a supplement to the traditional casebook. See Peter N. Simon, *Anatomy of a Lawsuit* (Charlottesville, Va., 1984); David Crump and Jeffrey B. Berman, *The Story of a Civil Suit: Dominguez v. Scott's Food Stores, Inc.* (1983). See also Lloyd C. Anderson & Clark Kirkwood, *Teaching Civil Procedure With the Aid of Actual Tort Litigation*, 37 J. Legal Educ. 215 (1987) (discussion of the desirability of using actual cases to enhance a procedure course).

7. See Part III, *infra*.

(e.g. videotape depiction of a client's confusion about why a class action is a less desirable route to follow than permissive joinder), the student begins the necessary recognition that there are critical components of good lawyering beyond an ability to analyze doctrine. In the example just given the students easily appreciate both the challenge of understanding the doctrinal differences between the two procedural devices and the equally difficult challenge of how to counsel a client on the same point, or indeed, whether to counsel the client on this procedural question.⁸ The Buffalo Creek litigation also gives the students an opportunity to evaluate or at least consider different styles and modes of lawyering.

D. Enlivening the course. Professor Janice Toran put it well in describing her use of Buffalo Creek as a means to ameliorate the bad press for civil procedure: "I wanted a kind of 'hook' for the much-maligned Civil Procedure course—some way of avoiding resistance of students to material they initially find dry and boring."⁹ Building on that premise, I proceed on the additional assumption that using a variety of teaching techniques generally is more effective pedagogically than using a single teaching method. By more effective, I mean that students will be more excited and, therefore, more engaged in the learning process. In a course which typically will have forty to sixty class hours, I believe variety is intrinsically valuable. The Buffalo Creek litigation makes it relatively easy to diversify one's methods because the materials are so dramatic in content and rich in the potential uses to which they can be put.¹⁰

E. Raising Ethical Questions. There are an extraordinary number of ethical issues arising out of the Buffalo Creek litigation. Although I never can spend as much time as I would like on these matters, nor even mention many of them, noting some of the key professional responsibility issues which this lawsuit raises can heighten students' awareness of the limits of the adversarial process. How did Stern influence or persuade his clients to accept both the aggregate amount of the settlement and the Arnold & Porter formula for dividing the amounts among the individual plaintiffs? Was the fee which Arnold & Porter received a fair and proper one?¹¹ Did

8. See, e.g., Shreve *supra* note 3, at 794 (discussing the desirability of pursuing these goals in a first year course such as civil procedure or legal method as well as later in lawyering skills or clinical courses). See generally, Section of Legal Education and Admissions to the Bar, *The Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools* (1979) ("Cramton Report").

9. Letter to author dated March 9, 1987.

10. Despite the fact that the book is ten years old, the general subject and the problems discussed (procedural and otherwise) in the Stern book remain timely. Indeed, if anything, the public is even more aware of the difficulties caused by mass disaster litigation. E.g., *In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India* in Dec. 1984, 809 F.2d 195 (2d Cir. 1987).

11. Cf. John C. Coffee Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 Colum. L. Rev. 669, 678, n. 26 (1986). In reviewing research on attorneys' fees in securities class actions, Professor Coffee notes that fees averaged 20-30% of recoveries less than \$1,000,000 and declined as recoveries went above that amount. In the Buffalo Creek case, Arnold & Porter received a fee (not including 5% of the recovery for "expenses") of 25% of each victim's recovery in the settlement up to \$100,000 and 20% of amounts in

defense counsel have anything to do with the initiation of the disciplinary committee's investigation of Stern and, if so, was that proper or did it constitute harassment? Could Stern properly represent all of the victims and avoid a conflict of interest? Did either side abuse the discovery process? These moral and ethical questions frequently engender heated responses from students, if not during class (where time may be short), then often among themselves before and after class.

II. Buffalo Creek Teaching Materials

A. The Book. Stern's account of the 1972 dam collapse and the follow-up federal litigation is very well written. From his perspective as plaintiffs' lead counsel, Stern effectively tells the story of the lawsuit he initiated on behalf of 650 victims of disaster. The book is exciting, easily read, and clear both as to the facts and the legal procedures. It provides a beginning law student with a refreshing and often positive view of how competent lawyers can use both the substantive law and civil procedure creatively. It also plants the seeds for questioning some of the lawyering, as the issues noted above suggest. Moreover, notwithstanding the tragedy underlying the book, it depicts a lawyer who obviously was enjoying his craft.

At best, however, the Stern book is an incomplete version of what happened. At worst, it may hide information necessary to a full and fair assessment of the competence and ethics of Stern's lawyering.¹² From the vantage point of a civil procedure teacher, however, this shortcoming is quite useful. Two examples will illustrate. Stern says nothing in the book about class actions, neither why he did not use this procedural device nor whether he even considered it. This gap in his story provides a wonderful point of departure for a comparative discussion of permissive joinder versus class actions. Stern also says very little about the Buffalo Creek residents he did not represent. His 600 clients were among 4000 victims of the disaster.¹³ The *res judicata* implications of these facts (as well as the ethical consequences alluded to earlier) usually stimulate good class discussion.

B. Court Documents. I distribute several of the actual Buffalo Creek court papers at appropriate points in the course.¹⁴ Some of the documents are

excess of that amount. The aggregate settlement amount was \$13,500,000. Letter to clients, dated July 15, 1974, from Gerald M. Stern.

12. See, e.g., Sims & Waitzkin, *The Fire Next Time* (1975), an unpublished essay [hereinafter cited as Sims & Waitzkin] by two Yale Law students which provides additional facts and a more balanced view of Stern's role in the aftermath of the disaster. A copy is on file with the author. See also Kai T. Erikson, *Everything in its Path* (New York, 1976) for a nonlegal description of the trauma suffered by the Buffalo Creek survivors. Cf. Robert L. Rabin, *Dealing with Disasters: Some Thoughts on the Adequacy of the Legal System*, 30 *Stan. L. Rev.* 281 (1978). Professor Rabin discusses generally the adequacy of the legal system in responding to the victims of the Buffalo Creek disaster.
13. See Sims & Waitzen, *supra* note 12 (regarding the representation by the law firm of Williams & Califano of 1500 children who were victims of the disaster).
14. While I usually distribute only ten or twelve of the documents to my procedure class, I have made available to other interested teachers particular documents if requested and an index of more than one hundred of the Buffalo Creek court documents which I have collected.

simply distributed without discussion (because of time limitations), while others are the focus of several classes. Taken together, the documents contribute to a greater appreciation of procedure by means of a deeper inquiry into a single case. The complaint, for example, enhances discussion of pleading requirements, as does defendant's motion for a more definite statement. Interrogatories and document requests are distributed with little or no discussion. Papers on one or more of the discovery motions can be used in class discussion, or even with student argument of the motion in class. For example, I used the plaintiffs' motion to compel production of the medical reports of defendant's experts. After distributing the litigants' accompanying memoranda of law, two students argued the motions in class, while I acted as the judge. This Buffalo Creek motion nicely dovetails with an opinion which addresses the limitations in the federal rules regarding disclosure of information by experts who are consulted by a party, but who will not be called to testify.¹⁵ For the students arguing such a motion, it can be the highlight of a semester. As for the observers, their concentration is generally so intense that loud applause for the student performances invariably occurs at the end of the full argument, which usually takes thirty to forty minutes.

Many other litigation documents also may be used as time and inclination permit. For example, I also distribute the final settlement papers and the accompanying Stern letter sent to all plaintiffs at the conclusion of the litigation. These papers could easily be a fertile basis for discussions on attorneys' fees, alternative dispute resolution,¹⁶ or professional ethics, should the usually constrained procedure teacher be inclined to delve into such matters.

C. Buffalo Creek Videotapes. I have prepared a series of videotapes to be used at appropriate points during a semester.¹⁷ They simulate the experiences of one of the plaintiffs represented by Stern in an initial interview, in a phone conversation with her lawyer, and in a deposition. A description of the content and objectives of each of the four vignettes follows.

Tape No. 1 consists of an eight minute excerpt from the first half of an initial one-hour interview of Claudia Ferguson¹⁸ that I conducted as one of

15. See *Ager v. Jane C. Stormont Hospital and Training School for Nurses*, 622 F.2d 496 (10th Cir. 1980).
16. Professor Marc Galanter uses the Buffalo Creek case as an integral part of his course on alternative dispute resolution. See Marc S. Galanter, *World of Deals: Using Negotiation to Teach About Legal Process*, 34 *J. Legal Educ.* 268, 271 (1984). Cf., Paul J. Spiegelman, *Civil Procedure and Alternative Dispute Resolution: The Lawyer's Role and Opportunity for Change*, 37 *J. Legal Educ.* 26 (1987); Bryant Garth, *ADR and Civil Procedure: A Chapter or an Organizing Theme*, 37 *J. Legal Educ.* 34 (1987).
17. While I have not produced the tapes commercially, I have made available to interested teachers a transcript of the tapes and the tapes themselves. The total viewing time is about 45 minutes.
18. Ms. Ferguson, a fictional character, is based on one of the actual plaintiffs in the Buffalo Creek litigation. Prior to showing the first tape, I distribute a memorandum which summarizes the client's biographical data, sets the context for the tapes, and raises some of the procedural issues which will be the focus of our discussions. Copies of photo reports of the disaster from *Time* and *Life* magazines are attached to the memo. Both the memorandum and the documents are available to interested teachers. The only reported decision in the case relates to a partial motion to dismiss which was denied. *Prince v.*

the plaintiffs' lawyers. The first portion shows a woman so distraught she can answer only leading questions on critical factual areas. At other points she regains her composure in response to questions regarding her emotional injury. The excerpt is divided into two four minute segments which stimulate useful discussions, first, of the Rule 11 constraints and, second, of the Rule 8 pleading requirements governing complaints. As a secondary matter, the two segments depict a lawyer using various interviewing techniques. If the procedure course is at all integrated into any lawyering process or skills components in the first-year curriculum, the tape would provide a solid basis for a skills discussion or further demonstrations of interviewing methods.

Tape No. 2 uses about nine minutes¹⁹ of the second half of the initial interview of Ms. Ferguson in which the focus is on the relief she might obtain from the lawsuit. The purpose is to highlight the scope of remedies theoretically available, and the challenge of translating what a client believes she is entitled to into an understandable verbal description of the possible legal remedies. In the context of an extremely short survey of remedies (only two or three classes are devoted to the subject), the tape proves a useful learning device. It also could be used for a fuller discussion of remedies, should the teacher be so disposed.

Tape No. 3 represents a ten-minute phone conversation between Ms. Ferguson, who initiated the call in West Virginia, and her lawyer in Washington concerning class actions. The call was prompted by a local newspaper article which suggested that it was a mistake not to bring the lawsuit as a class action. The lawyer tries to avoid dealing with the heart of the client's concerns, so that the tape provokes a class discussion of appropriate answers to her questions and also of the difficulty of explaining complicated issues to clients. With respect to the Rule 23 and claim-and-issue-preclusion questions in mass disaster or toxic tort litigation, the tape segment confirms that the Buffalo Creek litigation remains quite timely and effective as a teaching vehicle.²⁰

Tape No. 4 consists of ten minutes of excerpts from a deposition of Ms. Ferguson.²¹ There are three separate segments, each illustrating an abuse of the discovery process: a) overly aggressive lawyering bordering on harass-

Pittston Co., 63 F.R.D. 28 (S.D.W.Va. 1974). (This is the so-called "absent plaintiffs" motion in which the defendant sought to dismiss in their entirety the psychic trauma claims of residents who were absent from the scene at the time of the disaster. See Stern, *supra* note 1, at 244.)

19. After briefly experimenting with tapes of various lengths (one was forty minutes), I found that tapes eight to ten minutes in duration are the ideal length during any single class for the purposes discussed in this paper, i.e., to supplement and enhance the teaching of procedural doctrine. A colleague of mine, Professor Michael Botein, has experimented with using all of the tapes in a single 90- to 120-minute session with discussion between segments. As to the efficacy of short tapes, see Vincent R. Johnson, *Audiovisual Enhancement of Classroom Teaching: A Primer for Law Professors*, 37 *J. Legal Educ.* 97, 117 (1987).
20. See Roger H. Trangsrud, *Joinder Alternatives in Mass Tort Litigation*, 70 *Cornell L. Rev.* 779 (1985).
21. Professor Elizabeth Schneider of Brooklyn Law School acts as defense counsel on the tape. She also assisted in the production of the deposition vignette.

sment by the defense lawyer, while plaintiffs' counsel was too quick to use directions not to answer; b) lawyer improperly whispering to client; and c) lawyer improperly guiding a witness by means of an oral objection.²² The purpose here is to demonstrate the importance of lawyer self-restraint and self-governance in regulating the discovery process. Secondly, the tape is useful simply to portray lawyers performing a common task. Students particularly enjoy this segment because it seems to eliminate in a few minutes the mystery of what occurs at a deposition. Even those students who have seen a trial rarely have attended a deposition.

A brief word on the production of the tapes. As noted above, after experimenting with tapes of longer duration, I concluded that student interest tends to wane or wander if videotape segments exceed ten minutes. In addition, my objective is not to teach the skill of doing whatever it is that is being done (which would require different kinds and probably longer demonstration tapes), but rather to use a visual rather than verbal vehicle to provoke class discussion. For both reasons, I limited the length of each tape to not more than ten minutes. Although I chose the above four scenes to re-enact on videotape, there are several additional Buffalo Creek exchanges which could either be taped or demonstrated by one or more teachers or role players for purposes of facilitating doctrinal discussion of other civil procedure issues.²³ Ideally, the Buffalo Creek materials could be used most effectively by the largest number of teachers if their flexibility were maximized by developing a fuller selection of taped vignettes.²⁴

D. Buffalo Creek Problems, Simulations and Examination Questions. To extend the use of the Buffalo Creek litigation as a vehicle for learning civil procedure, I have used a number of problems and hypothetical variations based on Buffalo Creek, both during the semester for class discussion and student simulations as well as in final exams. Two or three examples will illustrate the potential use of these materials to test knowledge of procedural doctrine:

1. An *Erie* problem. I vary the Buffalo Creek facts and posit a West Virginia state statute which significantly limits the right to examine a plaintiff victim on the issue of emotional trauma. The statute was enacted for the purpose of avoiding exacerbation of the victim's trauma. The issue

22. The amelioration if not the elimination of these abuses is the objective of a set of rules promulgated by the United States District Court for the Eastern District of New York. See Standing Orders on Effective Discovery in Civil Cases: Eastern District, McKinney's New York Rules of Court 588 (St. Paul, Minn., 1987).

23. For example, an abbreviated excerpt from a negotiation session might be used to raise anti-injunction issues stemming from the fact there were numerous state court actions against the mining company which do not involve Stern. 28 U.S.C. § 2283. See, e.g., *In re Federal Skywalk Cases*, 680 F.2d 1175 (8th Cir., 1982). A similarly short excerpt from a negotiation discussion might raise issues about the necessity of judicial approval of class action settlements. Fed. R. Civ. P. 23(e). One of my colleagues, Professor Marjorie Silver, uses a live simulation of a deposition of a Buffalo Creek plaintiff to demonstrate the constraints imposed by the federal discovery rules. The students conduct the deposition in front of the class and I role-play the plaintiff.

24. With respect to the use of audiovisual techniques in the law school classroom generally, see Michael Botein, *Videotape in Legal Education: A Study of Its Implications and a Manual for Its Use* (New York, 1979), and Johnson, *supra* note 19, at 113-119.

is whether the West Virginia federal district court should follow a federal rule of procedure²⁵ which permits but does not require the judge to order such a psychological examination or the state statute (enacted as part of the Mental Health Law).

2. *Forum Non Conveniens*. By hypothesizing that the Stern suit was filed in state court in New York (where the defendant had its headquarters) I have had students argue a *forum non conveniens* motion.

3. Claim and issue preclusion. Hypothesizing that Stern went to trial on the agreed upon sampling of plaintiffs' cases, won (with varying amounts of damages) and then settled on behalf of all of his clients, I ask what preclusive effect those verdicts might have in a variety of situations for one or more of the many hundreds of disaster victims not represented by Stern.

Also, as I indicated above, I had students simulate motion arguments based on the actual legal memoranda and motion papers filed in the litigation.²⁶

III. Flexibility and Ease in Using Buffalo Creek

One of the best things about Buffalo Creek is that procedure teachers can use it as much or as little as they desire, and nearly all the various pedagogical uses to which the lawsuit might be put can be implemented relatively easily. By this I mean simply that a procedure teacher using any of the current casebooks can, with minimal preparation and intrusion into the scheme of a traditional procedure course, use Buffalo Creek as an effective supplement. Indeed, there seem to be an infinite number of possible combinations and permutations, ranging from assigning the book with no class discussion or further reference to Buffalo Creek to using a maximum number of simulations, perhaps even as a basis for a higher credit procedure course involving broader lawyering issues (e.g., skills learning or ethics).²⁷ The book, at a minimum, even with no additional assignments, provides a case to which reference can be made throughout most of the semester. Merely as a point of departure or basis for comparison, the Buffalo Creek case is valuable when used with other standard case materials.

I recently distributed to a number of civil procedure teachers a questionnaire seeking information about how Buffalo Creek is used as a teaching vehicle. The responses I received further verify both the flexibility and the open-endedness of the materials. Nearly everyone who uses the case assigns the Stern book, distributes some of the actual court documents and uses hypotheticals and problems based on the case. Beyond that, individual teaching tastes dictate different uses. A few examples are illuminating. Dean Paul Carrington has used a comprehensive four-page

25. Fed. R. Civ. P. 35.

26. I should also add that almost without exception, the level of performance by students on exams and in class discussions is higher on questions and problems relating to Buffalo Creek than on other questions.

27. See note 3, *supra*.

summary of lawyering and ethical issues arising out of Stern's litigation.²⁸ In addition to its use as a supplement to a procedure course, Carrington's study guide could, I believe, provide the core for an entire ethics course. Professor James Flanagan distributes a voluminous annotated set of the Buffalo Creek litigation documents. In this thoughtfully organized four-hundred-page supplement, he provides extensive commentary and questions relating the documents to a casebook, rules, and other materials used in his procedure course.²⁹ Professor Philip Schrag uses the materials for a complaint drafting assignment, while others use them for drafting assignments relating to interrogatories, discovery plans, etc.³⁰ Professor Elizabeth Schneider developed with a colleague for their civil procedure course an in-class simulation problem on alternative dispute resolution based on Buffalo Creek.³¹ All of these examples demonstrate the range and depth of the options for which the Buffalo Creek case can be used.

Conclusion

As noted above, I am neither the first nor certainly the only procedure teacher who has found the Buffalo Creek litigation to be a useful teaching vehicle. Many other teachers have been or will be using it in one way or another, and hundreds of students have been in classes where it was used. I have also distributed extensive questionnaires to students about the utility of the Buffalo Creek materials. The universal response from the students (and the teachers who have used it) is positive.³² The use of some or all of the materials I describe above can only improve the conventional casebook procedure course. From my own perspective, there is no question that use of Buffalo Creek heightens student interest, enhances student understanding of procedural doctrine, and generally makes the class session more enjoyable for both me and the students.

28. Dean Carrington (Duke University School of Law) attributes much of this review outline to Professor David Chambers (University of Michigan School of Law). Letter to author, dated March 16, 1987, from Dean Paul Carrington.

29. Letter (and attachments) from Professor James Flanagan (University of South Carolina School of Law) to author, dated March 5, 1987.

30. E.g., Professors Lawrence Dessem (University of Tennessee Law School) and Mariane Blair (University of Tulsa School of Law) use the Buffalo Creek materials as a basis for drafting assignments.

31. See Schneider, *supra* note 2, at 43, n. 8.

32. Professor Flanagan (*supra* note 29) also distributed questionnaires to students and obtained similar quite positive responses.