

## Preface

Brandt Goldstein's book *Storming the Court* tells a story that is significant both because it involves one of the most dramatic human rights cases of its time—*Haitian Centers Council v. McNary*—and because law students played an indispensable role in the litigation. Law students not only did much of the legal work in the case; they also dreamed up the idea of filing it, despite considerable skepticism from their professor and experienced litigators. The students' remarkable dedication was one of the inspirations behind *Storming the Court*, and Brandt hoped his book would be a case study about the extraordinary things law students can achieve even before they graduate.

What Brandt did not originally anticipate was that *Storming the Court*, together with litigation materials from the *McNary* case, might also serve as key components in an introductory civil procedure course. But in conversations with his Yale Law School classmate Rodger Citron, it became apparent that the book was remarkably well-suited to this purpose, for several reasons. First, the case covers almost every phase of civil litigation in the federal courts, from the filing of a complaint to appeal, in the astonishingly brief period of one year. Second, *Storming the Court* relies heavily on primary sources from the case—filings, transcripts, discovery documents—and Brandt and Rodger recognized that they could readily situate court filings and other documents in the context of the narrative, providing a rich background for each civil procedure concept presented to the reader. Third, and perhaps most important, while other narrative nonfiction books about civil litigation have served as the basis for teaching aspects of civil procedure (perhaps most notably, *A Civil Action* by Jonathan Harr), books in this genre rarely feature law students in such a major role. It seemed obvious to both Rodger and Brandt that students learning civil procedure would have a natural affinity for the protagonists in the book.

With these ideas in mind, Brandt and Rodger decided in early 2006 to write a civil procedure teaching text as a companion to *Storming the Court*. Along the way, they had the pleasure of welcoming aboard a third co-author, Molly Beutz Land. All three co-authors not only teach civil procedure, but also have a special connection to the *McNary* case and the individuals involved in it. In addition to researching and writing about *McNary* for over six years, Brandt Goldstein was Professor Harold Koh's civil procedure student. Rodger Citron was one of the law students who worked on *McNary*, and he appears "off-screen" in Chapter 4 of *Storming the Court*, as one of the people involved in the discovery process before the preliminary injunction hearing. Molly Land was a student director of the Lowenstein Clinic (some years after Brandt and Rodger) and later co-taught the Clinic with Jim Silk and International Human Rights

with Harold Koh at Yale. This documentary companion is the result of the co-authors' collective efforts over the past several years.

We had several aims in writing this book. First, we hoped to bring to life the topic of civil procedure by presenting it in the context of a fast-paced, high-stakes case in which law students played meaningful roles. It is one thing to read a casebook's edited version of an opinion about the sufficiency of allegations in a complaint for negligence. It is quite another to read the actual complaint from a case in which law students helped draft the document—with the lives of several hundred people hanging in the balance.

Second, we wanted to explore civil procedure in a single case from start to finish to show how strategic choices made based upon the rules of civil procedure play out over the course of a case. Too often in teaching, individual concepts of civil procedure are explored as part of a particular phase of litigation and then left behind as a course moves on to other issues. Yet every decision that litigants make at a particular point has potential consequences at later stages of the case, from the way the plaintiffs initially draft their allegations to the scope of the matters the judge allows into evidence. Casebooks also typically make litigation look quite tidy by presenting little more than an appellate opinion focused on a single issue, when the truth is that during a case, the outcome is usually very much in doubt and the litigants generally face great uncertainty about how best to proceed. The uncertainty about the best way forward often comes to the fore in this book.

Third, we wanted to use several distinctive features of the *McNary* case to investigate aspects of civil procedure that are often neglected in first-year courses, such as trial, appeal, and preliminary relief. We devote individual chapters to all three of these topics, in addition to exploring matters typically considered in more depth in a first-year course, such as pleading, Rule 11, and the principles of preclusion. We also wanted to emphasize not just doctrine but practice-based learning. To that end, we have incorporated a number of exercises that call for students to do practice-oriented work, such as taking a deposition or preparing an oral appellate argument. And at many junctures, we have described for the student how a practitioner actually goes about the day-to-day work of litigating.

Fourth, and finally, we simply wanted to make civil procedure more fun. We think *Storming the Court* tells a fascinating story—and that the pleadings from the case and the civil procedure issues that played out over the course of the litigation provide a rich, fascinating story of their own, posing manifold questions to the student about civil procedure, and, more generally, the work of litigation and representing clients. To further develop the story we tell here, we have conducted new interviews with key participants from the *McNary* case—people such as Michael Ratner, Lisa Dugaard, Robert Begleiter, and Judge Sterling Johnson, Jr. These interviews offer additional insight into the proceedings and the challenges and rewards of complex civil practice.

We hope the stories told in this companion will help in teaching law students the meaning and significance of our system of civil procedure. More broadly, we hope that *Storming the Court* and parts of the companion will find their way into other courses, from trial practice and advanced civil procedure to clinical practice and legal ethics. However *Storming the Court* and the companion are used, though, we do recommend one thing: The class should read *Storming the Court* itself *before the course begins*. It is a quick, easy—and inspiring—read, and it will give students in the course a common set of facts and a narrative to share and discuss from the first day of class forward.

We are eager to hear your thoughts about this book and welcome your comments, suggestions, and corrections for the second edition. Please send them to us at [stormingthecourt@gmail.com](mailto:stormingthecourt@gmail.com).

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