Preface to the Fifth Edition

Sixteen years have passed since our first edition. We remain grateful to the dozens of professors who have adopted our book, many of whom have given us suggestions through the years that we have incorporated. Please continue to advise and question us. In particular, we seek your input as we begin to develop a set of online materials to enhance the teaching and learning of this subject.

With each edition of this book we return to the principles, insights, and goals that animated the first edition. An important part of the book’s origin story is set forth in Stephen N. Subrin, Teaching Civil Procedure While You Watch It Disintegrate, 59 Brooklyn L. Rev. 1155 (1993). Then, as now, we think it important to be honest (even if critical) about the state of the field of civil procedure. We believe that students cannot meaningfully learn doctrine without locating doctrine within its historical and socio-political context. This is not to say that there are always simple explanations for the evolution of these doctrines; to the contrary, the facts on the ground often defy the familiar and tidy ideological narratives. Yet whether complicated or straightforward, the context that we include here allows students to appreciate what animates the various doctrinal shifts. That context also conveys the importance of procedure as the backbone for the vindication of substantive rights.

Beginning with the first edition and continuing with each edition thereafter, we have looked for ways to help students learn-by-doing. We strongly believe that practice—engaging in how lawyers actually use procedure—is essential to understanding the doctrine and essential to becoming a successful ethical professional. We have added more practice exercises and improved others. We have also replaced one of the two main cases that is used in
practices exercises and in comments and questions throughout the text: We have removed the City of Cleveland firefighters employment discrimination case and replaced it with materials from the litigation challenging New York City’s stop-and-frisk policy. We made this change because we think that this new case is a better teaching tool for procedure; its high profile and its public nature offer a nice contrast to the jeep rollover case (the other case woven throughout the book), yet it is still an accessible set of trial documents. We thank Darius Charney at the Center for Constitutional Rights and our research assistants, Scott Garosshen and Kimberly Sharpe, for helping us create this set of materials. As we say farewell to the City of Cleveland firefighters case, we once again thank Jane Picker for her assistance creating that earlier set of materials.

In this edition we have updated and, where possible, streamlined the materials. The new case in the Case Files has already been mentioned. Additionally, Chapters 2, 4, and 6 were restructured. A teacher’s manual is available, and a set of online materials is forthcoming.

A few months ago, the principal founder of this casebook, Steve Subrin, retired after 45 years of teaching. A voluminous festschrift celebrating his contributions to the field of civil procedure is printed at Through a Glass Starkly: Civil Procedure Re-Assessed, 15 Nev. L.J. 1091-1692 (2015). Yet words fail to capture the mentorship, camaraderie, humor, grace, energy, knowledge, and genius that Steve brings to each personal relationship and to every scholarly project. Every page of this book reflects Steve’s vision, passion, and humanity, as well as his love of procedure. His co-authors are immensely grateful for the opportunity to work with him, and we are honored to share the book with you. His vision will continue to guide the production of this book even if he follows through on his threat to become less involved in its updating.

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