

Labor Law

Labor Law

A Problem-Based Approach

SECOND EDITION

Paul M. Secunda

PROFESSOR OF LAW AND DIRECTOR
LABOR AND EMPLOYMENT LAW PROGRAM
MARQUETTE UNIVERSITY LAW SCHOOL

Jeffrey M. Hirsch

ASSOCIATE DEAN FOR STRATEGY AND
GENEVA YEARGAN RAND DISTINGUISHED PROFESSOR OF LAW
UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW

Michael C. Duff

CENTENNIAL DISTINGUISHED PROFESSOR OF LAW
UNIVERSITY OF WYOMING COLLEGE OF LAW



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2017
Carolina Academic Press, LLC
All Rights Reserved

Print ISBN: 978-1-5310-0136-0
e-ISBN: 978-1-53100-137-7
LCCN: 2017939774

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

DEDICATION

*PMS: For Mom-Mom, Edith B. Godick, for her compassion, love,
and belief in me; may her memory be for a blessing*

JMH: With love to Lynn, Noah, and Naomi

MCD: For Victoria, Isabel, and Daniel

Contents

Table of Principle Cases	xv
Preface	xix
Chapter 1 · The Struggle for Control Over the Employment Relationship	3
What Is Labor Law and Is It Still Relevant?	3
Problem #1: Is Labor Law Still Relevant?	4
Wilma Liebman, <i>Decline and Disenchantment: Reflections on the Aging of the National Labor Relations Board</i>	5
<i>The Dunlop Commission on the Future of Worker-Management Relations—Final Report</i>	8
A Brief Overview of the American Labor Movement	13
The Roots of American Labor Law	13
Events Leading up to the Enactment of Modern Labor Laws	15
The First Attempts at Federal Labor Legislation	17
Modern Day Labor Legislation	19
The Global Workplace, Intra-Union Disputes, and Present Day Campaigns Against Unions	22
Unionization and Collective Bargaining: Justification and Critique	25
Problem #2: Should I Seek Unionization?	25
Chapter 2 · The Organization, Procedures, and Jurisdiction of the NLRB	29
The NLRB's Organizational Structure	29
Office of General Counsel	30
Division of Judges	32
NLRB Members	33
NLRB Procedures	35

Representation Questions	35
Unfair Labor Practices	38
Jurisdictional Limits of the NLRB	41
Who Is an “Employer” Under the NLRA?	41
Private-Sector Employers	42
Railway and Airline Exclusion	42
Monetary Threshold	42
Religion Exception	43
Problem #1: Grand Lakes University Law School Faculty	44
<i>Pacific Lutheran University</i>	45
Joint Employers	52
<i>Browning-Ferris Indus. of California, Inc.</i>	52
Who Is an “Employee” Under the NLRA?	57
Employee or Independent Contractor?	58
Problem #2: “Freelance” Software Engineers	58
<i>Roadway Package System, Inc.</i>	59
Employee or Student?	68
Problem #3: Law Students Unite!	69
<i>Boston Medical Center Corp.</i>	70
<i>The Trustees of Columbia University</i>	75
<i>Northwestern Univ. & College Athletes Players Ass’n</i>	90
Union Salts	95
<i>NLRB v. Town & Country Electric, Inc.</i>	96
Excluded Employees	101
Managers	101
Problem #4: Compuware’s Purchasing Controller	101
<i>NLRB v. Yeshiva University</i>	102
Supervisors	110
Problem #5: Restaurant Captains	110
SECTION 2(11) OF THE NLRA	111
<i>Brief of the NLRB General Counsel, In Oakwood Healthcare, Inc.</i>	112
<i>Oakwood Health Care, Inc.</i>	113
Confidential Employees	125
Foreign Jurisdictions and Extraterritoriality	126
Problem #6: A Bad Business Trip	126
<i>Asplundh Tree Expert Co. v. NLRB</i>	127
Chapter 3 · Protected Concerted Activities Under Section 7	137
Concertedness of the Employee Conduct	138
Problem #1: Facing the Music, with a Buddy	138
<i>NLRB v. City Disposal Systems, Inc.</i>	138
<i>NLRB v. J. Weingarten, Inc.</i>	145
<i>IBM Corp.</i>	150
Legitimate Purpose for Concerted Activity	164
Problem #2: Politics as Usual?	165

<i>Eastex, Inc. v. NLRB</i>	166
Legitimate Means for Concerted Activity	170
Problem #3: The Six-Foot Inflatable Rat	171
<i>NLRB v. Local 1229, IBEW (Jefferson Standard Broadcasting Co.)</i>	171
Matthew W. Finkin, <i>Disloyalty! Does Jefferson Standard Stalk Still?</i>	177
Chapter 4 · Domination and Discrimination	187
Employer Domination of a Labor Organization	187
Problem #1: There's No Such Thing as a Free Lunch	188
<i>Electromation, Inc.</i>	189
Michael H. LeRoy, <i>Employee Participation in the New Millennium: Redefining a Labor Organization Under Section 8(a)(2) of the NLRA</i>	200
Anti-Union Discrimination	209
What Section 8(a)(3) Is Not: Contrasting Section 8(a)(3)'s Prohibition on Unlawful Intent with Section 8(a)(1)'s Prohibition Against Interference with Employees' Labor Rights	210
What Section 8(a)(3) Is: Prohibition Against Union-Based Discrimination	211
The <i>Wright Line</i> Test	212
Problem #2: Boing Trampolines and Pogo Sticks	212
<i>NLRB v. Transportation Management Corp.</i>	213
<i>Textile Workers Union of America v. Darlington Manufacturing Co.</i>	217
Refusal-to-Hire Cases	226
Problem #3: The Electric Company	226
NLRB, <i>Office of the General Counsel Guideline Memorandum Concerning Toering Electric Company</i>	227
Michael C. Duff, <i>Union Salts as Administrative Private Attorneys General</i>	230
Remedies for Section 8(a)(3) Violations (and Section 8(a)(1) Too)	236
Problem #4: Career Opportunities	238
Jeffrey M. Hirsch, <i>NLRB Reverses Backpay Burden</i>	239
<i>Hoffman Plastic Compounds, Inc. v. NLRB</i>	241
Chapter 5 · Organizing a Union	251
The Right to Communicate v. Employers' Property Rights	253
Problem #1: Food Court Meeting	253
Employee Communications at the Workplace	254
<i>Republic Aviation Corp. v. NLRB</i>	254
Non-Employee Access to the Workplace	261
<i>Lechmere, Inc. v. NLRB</i>	261
Electronic Communications	272
Problem #2: Union E-Mails	272
Jeffrey M. Hirsch, <i>Communication Breakdown: Reviving the Role of Discourse in the Regulation of Employee Collective Action</i>	273
<i>Purple Communications, Inc.</i>	278

<i>Guard Publishing Co. (Register-Guard)</i>	297
Employer Speech	308
Problem #3: The Election Campaign: The Mall’s Captive Audience	
Meetings	308
Captive Audience Meetings	309
Livingston Shirt Co.	309
<i>NLRB v. United Steelworkers of America</i>	
<i>(Nutone Inc. & Avondale Mills)</i>	312
Threats or Predictions?	317
<i>NLRB v. Gissel Packing Co.</i>	317
Factual Misrepresentation	322
Problem #4: The Election Campaign: Altered Sample Ballots	322
<i>Midland National Life Insurance Co.</i>	323
Providing Or Promising Benefits	329
Problem #5: The Election Campaign: A Visit	
from the Corporate President and a Union Raffle	329
<i>NLRB v. Exchange Parts Co.</i>	330
<i>NLRB v. Savair Manufacturing Co.</i>	332
Surveillance	340
Problem #6: I Always Feel Like Somebody’s Watching Me	340
<i>F.W. Woolworth Co.</i>	341
Interrogation and Polling	344
Problem #7: The Election Campaign: Questions from a Supervisor	344
<i>Struknes Construction Co.</i>	345
<i>Sunnyvale Medical Clinic</i>	347
Chapter 6 · Selecting and Deselecting the Bargaining Representative	353
The Election Process	354
Problem #1: To Vote or Not to Vote?	354
Jeffrey M. Hirsch, <i>NLRB Elections: Ambush or Anticlimax?</i>	355
Grounds for Not Holding an Election	358
Lack of Support from Employees for Union	358
The Commission of an Unremedied ULP:	
The Blocking Charge Policy	359
The Election Bars: Certification Bar, Voluntary Recognition Bar, and	
Contract Bar	359
Certification Bar	359
Election Bar	359
Contract Bar and Its Exceptions	359
Voluntary Recognition Bar	360
The Meaning of “Appropriate Bargaining Unit”	364
Problem #2: Holy Appropriate Bargaining Unit, Batman!	366
<i>NLRB v. Chicago Health & Tennis Clubs, Inc.</i>	367
Representation Proceeding Review	375
Gissel Bargaining Orders	376

Problem #3: Non-Majority Bargaining Orders	376
<i>NLRB v. Gissel Packing Co.</i>	377
<i>Linden Lumber Division, Summer & Co. v. NLRB</i>	381
<i>Gourmet Foods, Inc. v. Warehouse Employees of St. Paul</i>	382
Withdrawal of Union Recognition	388
Problem #4: Boxing Out the Union	388
Douglas E. Ray, <i>Withdrawal of Recognition After Curtin-Matheson:</i> <i>A House Built on Sand</i>	389
<i>Allentown Mack Sales and Services, Inc. v. NLRB</i>	393
<i>Levitz Furniture Co.</i>	398
Chapter 7 · Exclusivity and the Duty to Bargain in Good Faith	405
Direct Dealing	406
Problem #1: Are You Ready for Some Kickball?	406
Section 9(a) of the NLRA	407
James J. Brudney, <i>A Famous Victory: Collective Bargaining Protections</i> <i>and the Statutory Aging Process</i>	407
<i>Emporium Capwell Co. v. Western Addition Community Organization</i>	410
Bargaining Tactics	418
Economic Pressure	419
Problem #2: By-the-Book	419
<i>NLRB v. Insurance Agents' Union</i>	419
Surface Bargaining	426
Problem #3: Do You Want Ketchup with That?	426
<i>NLRB v. American National Insurance Co.</i>	427
<i>Garden Ridge Management, Inc.</i>	432
Duty to Provide Information	442
Problem #4: A Note from Your Doctor	442
<i>NLRB v. Truitt Manufacturing Co.</i>	443
<i>Detroit Edison Co. v. NLRB</i>	446
Impasse	454
Problem #5: I'm Going to Take My Ball and Go Home!	454
<i>NLRB v. Katz</i>	455
Chapter 8 · Subjects of Collective Bargaining	461
Mandatory v. Permissive Subjects of Bargaining	461
Problem #1: Testing the Mandatory-Permissive Distinction	463
<i>NLRB v. Wooster Division of Borg-Warner Corp.</i>	463
<i>Johnson-Bateman Co. v. International Association of Machinists</i>	469
Duty to Bargain Over Subcontracting and Partial Closings	474
Problem #2: When the Lights Go Out in Milwaukee	475
<i>Fibreboard Paper Products Co. v. NLRB</i>	475
<i>First National Maintenance Corp. v. NLRB</i>	481
Theodore J. St. Antoine, <i>Legal Barriers to Worker Participation</i> <i>in Management Decision Making</i>	487
Runaway Shops	498

Problem #3: Sweet Home Missalabama, Where the Skies Are So Blue	498
<i>United Food & Commercial Workers, Local 150-A v. NLRB (Dubuque Packing Co.)</i>	499
<i>Dorsey Trailers, Inc. v. NLRB</i>	505
Chapter 9 · Strikes, Lockouts, and Employer Responses to Union	
Concerted Activity	513
Strikes and Permanent Replacements	513
Problem #1: Is the Right to Strike in the U.S. Illusory?	514
<i>NLRB v. Mackay Radio & Telegraph Co.</i>	515
<i>Laidlaw Corp.</i>	519
Paul M. Secunda, <i>Politics Not as Usual: Inherently Destructive Conduct, Institutional Collegiality, and the National Labor Relations Board</i>	523
Super-Seniority and Lockouts	526
Problem #2: Keep on Knockin', But You Can't Come in	526
<i>NLRB v. Erie Resistor Corp.</i>	527
<i>American Ship Building Co. v. NLRB</i>	532
Paul M. Secunda, <i>Politics Not as Usual: Inherently Destructive Conduct, Institutional Collegiality, and the National Labor Relations Board</i>	538
The Great Dane Framework and Inherently Destructive Conduct	
Under Section 8(a)(3)	543
Problem #3: The 30% Rule	543
Paul M. Secunda, <i>Politics Not as Usual: Inherently Destructive Conduct, Institutional Collegiality, and the National Labor Relations Board</i>	543
<i>Local 15 IBEW v. NLRB</i>	547
Chapter 10 · Picketing, Boycotts, and Union Secondary Activity	555
Constitutional Limitations on the Right to Strike and Picket	556
Recognitional Picketing Under Section 8(b)(7)	558
Problem #1: Can I Get Some Recognition Here?	558
Lee Modjeska, <i>Recognition Picketing Under the NLRA</i>	559
<i>Hod Carriers Local 840 (Blinne Construction Co.)</i>	566
Secondary Boycotts Under Section 8(b)(4)	576
Problem #2: Secondary Boycotting Bradgelina	577
<i>NLRB v. Denver Building & Construction Trades Council</i>	577
<i>Sailors Union of the Pacific (Moore Dry Dock Co.)</i>	580
<i>Douds v. Metropolitan Federation Of Architects</i>	583
<i>Local 761, International Union of Electrical, Radio and Machine Workers v. NLRB</i>	586
Consumer Appeals	592
Problem #3: "Ocean Gasoline Made by Scabs"	593
<i>NLRB v. Fruit & Vegetable Packers & Warehouseman, Local 760 (Tree Fruits)</i>	594
<i>NLRB v. Retail Store Employees Union Local No. 1001 (Safeco Title Insurance Co.)</i>	597

<i>Edward J. Debartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council</i>	602
Corporate Campaigns	609
Problem #4: “Unconventional” Dealings at the Hotel	609
<i>Storer Communications, Inc. v. National Association of Broadcast Employees and Technicians, AFL–CIO</i>	611
Chapter 11 · Labor Law Preemption Doctrines	615
Mandatory Preemption: <i>Garmon</i> Preemption	617
Problem #1: Worker Freedom Laws and Captive Audience Meetings, Take 1	617
<i>San Diego Building Trades Council v. Garmon</i>	618
Paul M. Secunda, <i>Toward the Viability of State-Based Legislation to Address Workplace Captive Audience Meetings in the United States</i>	622
Permissive Preemption: <i>Machinists</i> Preemption	625
Problem #2: Worker Freedom Laws and Captive Audience Meetings, Take 2	625
<i>Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission</i>	626
<i>Chamber of Commerce of the United States v. Brown</i>	630
<i>Brief of Law Professors as Amicus Curiae in Support of Defendants’ Opposition to Motion For Summary Judgment, Associated Oregon Industries v. Avakian</i>	635
Section 301 Preemption	643
Chapter 12 · Worker Rights in a Union	645
The Duty of Fair Representation	646
Problem #1: The Tale of the Deceitful Motel Clerk	648
<i>Vaca v. Sipes</i>	649
<i>Air Line Pilots Association International v. O’Neill</i>	654
Union Security Clauses and State Right-to-Work Laws	662
Problem #2: Safeguarding the Rights of a Dissenting Actress	663
<i>NLRB v. General Motors Corp.</i>	665
<i>Communication Workers v. Beck</i>	669
Harry G. Hutchison, <i>Compulsory Unionism as a Fraternal Conceit? Free Choice for Workers: A History of the Right to Work Movement</i>	679
The Union’s Right to Discipline Its Members	692
Problem #3: I Don’t Walk the Line	693
<i>NLRB v. Allis-Chalmers Manufacturing Co.</i>	694
<i>Scofield v. NLRB</i>	701
Roger Hartley, <i>National Labor Relations Board Control of Union Discipline and the Myth of Nonintervention</i>	705
Chapter 13 · Advanced Issues in Labor Law	719
The Grievance and Arbitration Process	719
Problem #1: Layoffs, Up on the Roof	721

Why Have a Grievance and Arbitration Process?	722
Martin H. Malin, <i>The Evolving Schizophrenic Nature of Labor Arbitration</i>	722
The Arbitration-Court Relationship	727
Section 301, <i>Labor Management Relations Act, Suits By and Against Labor Organizations</i>	727
<i>United Steelworkers of America v. Warrior & Gulf Navigation Co.</i>	727
The Arbitration-NLRB Relationship	733
Harry T. Edwards, <i>Deferral to Arbitration and Waiver of the Duty to Bargain: A Possible Way Out of Everlasting Confusion at the NLRB</i>	733
<i>Babcock & Wilcox Construction Co.</i>	738
Successorship	748
Problem #2: Apples and Oranges	748
Keith N. Hylton & Maria O'Brien Hylton, <i>Rent Appropriation and the Labor Law Doctrine of Successorship</i>	749
Mid-Term Bargaining and Contract Expiration	755
Problem #3: Fighting Against Extra Pay	756
<i>Milwaukee Spring Division (Milwaukee Spring II)</i>	756
Antitrust	762
Problem #4: Kickball Lockout	762
<i>Brown v. Pro Football, Inc.</i>	763
Index	775

Table of Principle Cases

A

Air Line Pilots Association International v. O’Neill, 654
Allentown Mack Sales and Services, Inc. v. NLRB, 393
American Ship Building Co. v. NLRB, 532
Asplundh Tree Expert Co. v. NLRB, 127

B

Babcock & Wilcox Construction Co., 738
Boston Medical Center Corp., 70
Brief of Law Professors as Amicus Curiae in Support of Defendants’ Opposition to Motion For Summary Judgment, Associated Oregon Industries v. Avakian, 635
Brief of the NLRB General Counsel, In Oakwood Healthcare, Inc., 112
Browning-Ferris Indus. of California, Inc., 52
Brown v. Pro Football, Inc., 763

C

Chamber of Commerce of the United States v. Brown, 630
Communication Workers v. Beck, 669

D

Detroit Edison Co. v. NLRB, 446
Dorsey Trailers, Inc. v. NLRB, 505
Douds v. Metropolitan Federation Of Architects, 583

E

Eastex, Inc. v. NLRB, 166
Edward J. Debartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council, 602
Electromation, Inc., 189
Emporium Capwell Co. v. Western Addition Community Organization, 410

F

F.W. Woolworth Co., 341
Fibreboard Paper Products Co. v. NLRB, 475
First National Maintenance Corp. v. NLRB, 481

G

Garden Ridge Management, Inc., 432
Gourmet Foods, Inc. v. Warehouse Employees of St. Paul, 382
Guard Publishing Co. (Register-Guard), 297

H

Hod Carriers Local 840 (Blinne Construction Co.), 566
 Hoffman Plastic Compounds, Inc. v. NLRB, 241

I

IBM Corp., 150

J

Johnson-Bateman Co. v. International Association of Machinists, 469

L

Laidlaw Corp., 519
 Levitz Furniture Co., 398
 Linden Lumber Division, Summer & Co. v. NLRB, 381
 Local 15 IBEW v. NLRB, 547
 Local 761, International Union of Electrical, Radio and Machine Workers v. NLRB, 586
 Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission, 626

M

Midland National Life Insurance Co., 323
 Milwaukee Spring Division (Milwaukee Spring II), 756

N

NLRB, Office of the General Counsel Guideline Memorandum Concerning Toering Electric Company, 227
 NLRB v. Allis-Chalmers Manufacturing Co., 694
 NLRB v. American National Insurance Co., 427
 NLRB v. Chicago Health & Tennis Clubs, Inc., 367
 NLRB v. City Disposal Systems, Inc., 138
 NLRB v. Denver Building & Construction Trades Council, 577
 NLRB v. Erie Resistor Corp., 527

NLRB v. Exchange Parts Co., 330
 NLRB v. Fruit & Vegetable Packers & Warehouseman, Local 760 (Tree Fruits), 594
 NLRB v. General Motors Corp., 665
 NLRB v. Gissel Packing Co., 377
 NLRB v. Insurance Agents' Union, 419
 NLRB v. J. Weingarten, Inc., 145
 NLRB v. Katz, 454
 NLRB v. Local 1229, IBEW (Jefferson Standard Broadcasting Co.), 171
 NLRB v. Mackay Radio & Telegraph Co., 515
 NLRB v. Retail Store Employees Union Local No. 1001 (Safeco Title Insurance Co.), 597
 NLRB v. Savair Manufacturing Co., 332
 NLRB v. Town & Country Electric, Inc., 96
 NLRB v. Transportation Management Corp., 213
 NLRB v. Truitt Manufacturing Co., 443
 NLRB v. United Steelworkers of America (Nutone Inc. & Avondale Mills), 312
 NLRB v. Wooster Division of Borg-Warner Corp., 463
 NLRB v. Yeshiva University, 102
 Northwestern Univ. & College Athletes Players Ass'n, 90

O

Oakwood Health Care, Inc., 113

P

Pacific Lutheran University, 45
 Purple Communications, Inc., 278

R

Roadway Package System, Inc., 59

S

Sailors Union of the Pacific (Moore Dry Dock Co.), 580
 San Diego Building Trades Council v. Garmon, 618
 Scofield v. NLRB, 701

SECTION 2(11) OF THE NLRA, 111
Section 9(a) of the NLRA, 407
Storer Communications, Inc. v. National
Association of Broadcast Employees
and Technicians, AFL–CIO, 611
Struknes Construction Co., 345
Sunnyvale Medical Clinic, 347

T

Textile Workers Union of America v.
Darlington Manufacturing Co., 217
The Trustees of Columbia University, 75

U

United Food & Commercial Workers,
Local 150-A v. NLRB (Dubuque Pack-
ing Co.), 499
United Steelworkers of America v.
Warrior & Gulf Navigation Co., 727

V

Vaca v. Sipes, 649

Preface

At the time of this book’s publication in 2017, American private-sector labor law is likely entering another period of change. With the election of Donald Trump as the 45th President of the United States, private-sector labor law policy is expected to take a conservative, management-oriented turn after several years of more employee-friendly interpretations of the National Labor Relations Act (NLRA) by a Democratic-majority National Labor Relations Board (NLRB). More fundamentally, over 80 years after its enactment, both employers and unions are seriously questioning the continuing viability of the Wagner model of labor relations embodied by the NLRA.

Come what may, it is crucial for students and other utilizing this book to have a model of learning that mirrors the type of problems that labor attorneys face in practice. The problem-based approach we take in this book, which moves beyond lectures, the Socratic teaching model, and the case-book method, is meant to develop critical reasoning skills meant required to be a successful attorney. We also believe strongly that the problem-based pedagogical method will directly help students in their eventual practice of labor law by synchronizing the way labor law is taught with the way it is tested in the law school environment.

A typical chapter in this book commences with a clear synopsis of the materials to be covered in the chapter. Second, introductory materials relate the basic thrust of the materials about to be covered. Third, in most sections, a problem is presented based on scholarly articles in the area, recent case law, and current events. Fourth, students are given problem materials to work through to solve the hypothetical presented; these materials include case excerpts, public documents, and law review articles and other secondary materials. Fifth, and finally, the students are presented with a section entitled, “Post Problem Discussion.” This section seeks to highlight important areas in the primary and secondary materials, while providing additional materials for consideration of the problem. We hope that professors will engage in classroom teaching based on the problem(s) assigned for class. Indeed, this material lends itself well to classroom role-playing exercises and other experiential learning techniques.

To be clear, *Labor Law: A Problem-Based Approach* still features the most important cases, documents, and articles for students, updated through the end of 2016, to study in order to become proficient in the practice of American private-sector labor law. But rather than attempting to have students glean the important facets of the law solely through the traditional case method, this book’s problem-based

approach requires students to act like attorneys. In short, this book provides a pedagogical alternative that we believe many professors and students will embrace as more compatible with the challenges that labor law practitioners will face in the coming decades. In our view, engagement with both the theoretical foundations and practical implications of labor law is essential for any labor law student who wishes to think critically about these issues and become a more effective advocate for their clients.

Throughout this book, we also hope to bring to bear our familiarity with the Internet, blogs, and social media to make our book one of the most interactive for students. In this vein, students will find relevant links to government websites, links to the Workplace Prof Blog (which Professor Hirsch co-edits), and links to other relevant information on the Internet.

We offer thanks to all who helped us with this project, especially to the law professors who gave us permission to reproduce their works and to our families, for putting up with our long hours in bringing this book to publication yet again. A special thanks goes to Julia Mader, Marquette University Law School Class of 2017, for her exceptional and tireless research editorial assistance on the second edition of this Casebook. It would not have been possible to complete this book without her.

PAUL M. SECUNDA
Milwaukee, Wisconsin

JEFFREY M. HIRSCH
Chapel Hill, North Carolina

MICHAEL C. DUFF
Laramie, Wyoming

June 2017