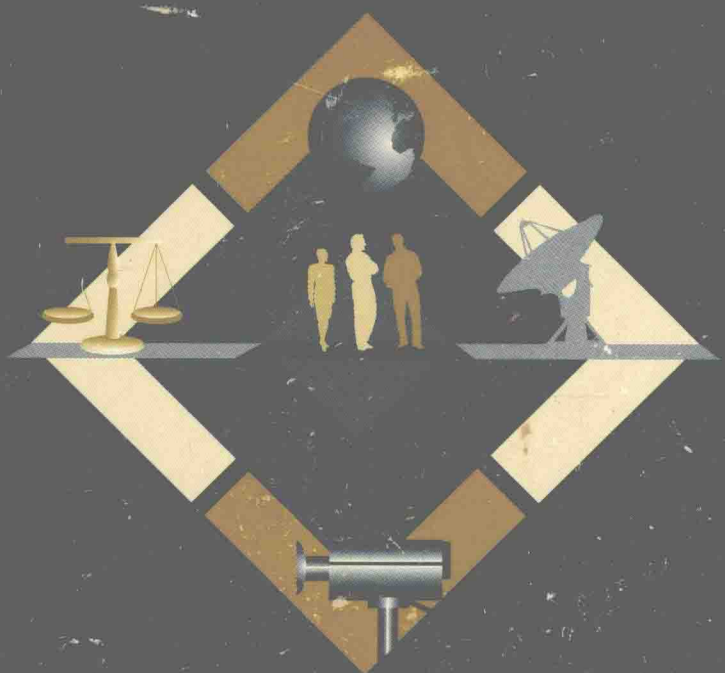
Cases in Communications Law

Second Edition



John D. Zelezny

CASES IN COMMUNICATIONS LAW

SECOND EDITION

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PREFACE

The primary object of this book is to present cases that will familiarize communications students with authoritative judicial reasoning on key principles of communications law. Most of the cases are from the Supreme Court of the United States, and these cases stand as precedent that all other courts in the nation must follow. The Supreme Court, however, has not rendered decisions on all important aspects of communications law. Furthermore, trends in the law sometimes are fueled by the rulings of other courts long before those trends are validated by the Supreme Court, if ever. Therefore, this book also contains carefully selected cases from the state courts and lower federal courts in order to provide a more complete and up-to-date picture of communications law.

Because this book is intended for students in journalism, telecommunications and other communications fields — not law school students — the judicial opinions have been thoroughly edited to focus only on substantive points of communications law. Judicial discussion pertaining to technical issues of legal procedure has been eliminated. As a result, the edited cases in this book typically are only half the length of the original versions as they are found in a law library.

Furthermore, in order to improve readability most of the formal legal citations have been summarily omitted from these cases. Only those citations pertaining to other highly instructive or "landmark" cases have been retained. For the same reason, judicial footnotes also have been summarily edited out of the cases.

This book is intended as a companion to a narrative textbook or outline on communications law. The organization of sections follows the chapter arrangement in the textbook published by Wadsworth Publishing Company, *Communications Law: Liberties, Restraints and the Modern Media, 2nd edition.* But most of the cases in this book would be referred to by name, in one order or another, in virtually any textbook on communications law.

CONTENTS

CHAPTER ONE

Introduction

■ WHY STUDY CASES?

The heart and soul of American law is found in court decisions — the decisions rendered on a case-by-case basis to resolve real-life legal disputes. Other sources of law are more readily recognized, such as the U.S. Constitution. And the laws enacted by legislative and administrative bodies are organized more neatly, codified and typically arranged by subject. But ultimately the law boils down to case decisions.

Constitutional provisions, statutes, regulations — all these combine to make up the skeletal framework of American law. Court decisions give the framework life. The case-by-case rulings of judges ultimately determine how the other forms of law will be interpreted and applied. Even the U.S. Constitution — ingenious and eloquent document that it is — is only as powerful as the judicial interpretations of its provisions.

Court decisions influence the future because of the "doctrine of precedent." In appellate courts and some trial courts the judges' rulings are routinely embodied in written opinions that are published in sets of bound volumes. These published rulings serve as precedent that must be followed by that court and all lower courts in the same jurisdiction. If a future case presents the same legal problem, the doctrine of precedent dictates that the later case be decided in the same manner as the earlier case. Rulings of the U.S. Supreme Court are particularly significant because they serve as precedent for all other courts, state and federal. But Supreme Court cases aren't the only ones worth reading. The Supreme Court decides only a handful of communications law cases each year. Therefore, lower court decisions can add valuable insights to key trends and principles in the law.

In this book you will find a selection of case opinions from the U.S. Supreme Court, lower federal courts and a few state courts. The 60 cases in this volume have been selected to add depth to the principles of law discussed in a communications law textbook. These cases will help bring some of the principles to life and make them more memorable. Reading these cases also will provide scholarly insights into judicial reasoning and legal history.

■ HOW TO FIND CASES

More than 50,000 cases are published each year in the United States, most of them by appellate courts. The case opinions are published in sets of bound volumes called *court reports*, sometimes also referred to as *reporters*. Some of these publications are directly sanctioned by courts, in which case they are called *official* reports. But most of the court reports in the United States are published by private, commercial publishers.

Sets of case reports are published for decisions of particular courts, for all state-court decisions within a particular state, and for state court decisions within designated regions of the country. Also available are some specialized reporters that publish only cases within broad categories of law. One of these is the *Media Law Reporter*, which contains cases pertaining to the mass communications media. Sometimes a single judicial opinion may be found in several different sets of court reports.

Published cases are easy to find if you have a formal citation. Every published case has at least one citation, or *cite*, indicating where the case may be located within a set of court reports. For example, the following is a citation for a U.S. Supreme Court case:

Hustler Magazine v. Falwell, 485 U.S. 46 (1988).

The first part of the citation is the name of the case. It reflects the names of the principal parties involved in the dispute, separated by the abbreviation *v.* for *versus*. At the trial level the name of the suing party, the plaintiff, is always listed first. But at the appellate level some courts will alter the original case name, if necessary, so that the appealing party is listed first — even though the appealing party might have been the defendant. In the foregoing example, defendant Hustler Magazine brought the appeal to the Supreme Court. The first number in the cite, *485*, is the volume number of the court reporter. The *U.S.* abbreviation refers to the title of the reporter, in this case the *United States Reports*. The number *46* is the page number. And finally, *1988* is the year in which the case was decided.

Decisions of the U.S. Supreme Court are reported in several publications. Libraries are most likely to subscribe to one of the following: the *United States Reports* (cited *U.S.*), which is the official publication; the *Supreme Court Reporter* (*S. Ct.*); and the *United States Supreme Court Reports, Lawyers' Edition* (*L. Ed.*).

Sometimes you will see a case name followed by two or more *parallel citations*. For example, the full *Hustler Magazine* citation might look like this:

Hustler Magazine v. Falwell, 485 U.S. 46, 108 S. Ct. 876, 99 L. Ed. 2d 41 (1988).

Decisions of the intermediate federal courts, the U.S. courts of appeals, are published in the *Federal Reporter* (cited *F. F.2d*, or *F.3d*, depending on the series).

Decisions of the federal district courts, when written opinions are issued, are published in the *Federal Supplement* (*F. Supp.*).

Most states have their own bound sets of reports for the opinions of state court judges. In some states separate reports are published for different levels of courts. For example, decisions of the Illinois Supreme Court are published in *Illinois Reports*, and decisions of the intermediate appellate courts are contained in *Illinois Appellate Court Reports*. However, rather than subscribe to all of these state reporters, particularly from distant states, libraries are more likely to house the regional reporters published by West Publishing Co. The regional reporters contain decisions by the states' highest courts and most states' intermediate courts of appeal for a particular multistate geographical area. All of the regional reporters have a first and second series. In a second series, volumes are numbered beginning again at 1. The reporters and their second-series cite abbreviations are as follows:

Southern Reporter (*So.2d*)
South Eastern Reporter (*S.E.2d*)
South Western Reporter (*S.W.2d*)
North Eastern Reporter (*N.E.2d*)
North Western Reporter (*N.W.2d*)
Atlantic Reporter (*A.2d*)
Pacific Reporter (*P.2d*)

It's easy to look up a case for which you have a citation and access to the proper set of case reports. However, suppose you have no case citations but you want to locate some court cases that have addressed a particular problem in communications law. This process is more complicated and time-consuming because cases are arranged in the reporters chronologically, not by subject.

One way to find cases is to consult a legal digest. A digest is a topical compilation of case references — essentially a giant index to cases. Digests, like court reports, are published for particular jurisdictions and sometimes for individual courts within a jurisdiction. For example, if you wanted to find U.S. Supreme Court decisions on a given topic, you might consult the *U.S. Supreme Court Digest*.

Another way to find cases is by consulting a legal encyclopedia. Unlike digests, which are simply topical compilations of case citations, legal encyclopedias summarize entire fields of law in narrative form. The narrative is extensively footnoted with references to cases, and the encyclopedias are updated with periodic supplements. The two main encyclopedias are *Corpus Juris Secundum* and *American Jurisprudence 2d*. Each contains about 100 volumes, with the textual content organized alphabetically under hundreds of broad topics, such as "libel and slander" or "copyrights." Within each of these topics may be dozens or even hundreds of headings for particular legal principles or problems. One of the difficulties of finding cases through legal encyclopedias or digests is that you must first learn the organizational nomenclature used by the publishers.

Still another way to locate cases on particular issues of law is to conduct a computer database search. Legal research is becoming increasingly computerized, and the most widely used computer research services are WESTLAW and LEXIS. Each of these services offers hundreds of different databases, such as databases for U.S. Supreme Court decisions, for court decisions of a particular state, or for court decisions relating to copyright law, trademarks or interstate commerce. An advantage of this research method is that the computer quickly retrieves cases by searching for whatever words or phrases that you specify. For example, you might ask the computer to find all Supreme Court cases in which *New York Times* appears in the case name. Or, you might retrieve all cases in which the words *hidden* and *camera* appear together in a court opinion. Professional users of legal database services must pay substantial hourly search fees. However, these computer services are available on some college campuses, without hourly fees, for academic research purposes.

■ LEGAL TERMS

Considerable legal terminology necessarily is encountered when reading court cases. Following is a guide to some common and important legal terms.

Trial courts / appellate courts. A *trial court* is the first court to handle a legal dispute. In this court evidence is presented to determine the facts of the case, and the trial judge applies the law to those facts. In an *appellate court* a panel of judges determines whether the court below made any errors in its application of the law and whether those errors warrant a different result.

Plaintiff / defendant. The *plaintiff* is the party who initiates a civil lawsuit. The party against whom a legal remedy is sought is the *defendant*.

Complaint / answer. A *complaint* is the initial court document filed by a plaintiff. It identifies the alleged legal violation and formally requests a legal remedy, such as monetary compensation. An *answer* is a defendant's formal legal response to a complaint. The answer might deny facts alleged by the plaintiff, or it might claim certain legal defenses or privileges.

Cause of action. A *cause of action* is a particular factual occurrence or circumstance that entitles a person to sue. Some cases involve multiple causes of action. For example, in the Falwell case the plaintiff alleged causes of action for libel, invasion of privacy and intentional infliction of mental distress.

Summary judgment. *Summary judgment* is a common procedure for ending a lawsuit prior to trial. A party to a lawsuit is entitled to summary judgment in his favor if there is no disputable issue of fact and established legal rules clearly dictate that he would prevail at trial.

Appellant / respondent. The party which appeals a court judgment to a higher court is the *appellant*, sometimes also called the **petitioner**. The party against whom the appeal is made is the *respondent*, sometimes also called the **appellee**.

Damages / injunction. The most common form of legal relief sought by plaintiffs is *damages* — an award of money. Another common legal remedy is an

injunction — a court order that a defendant act, or refrain from acting, in a particular manner.

Judgment of the court. A *judgment* is the final decree of a court — the disposition of the case, the determination of which side "wins." At the appellate level, the judgment of the court usually is to **affirm** (uphold) or **reverse** (overturn) the judgment of the court below.

Opinion of the court. An *opinion* is an official, written explanation of the reasons behind the court's judgment. Opinions are generally issued for publication only by appellate courts, though some trial courts also issue written opinions. When a panel of appellate judges cannot reach agreement in a particular case, then the prevailing view is stated in a **majority opinion**. The judges who agree with the final disposition of a case, but for different reasons, may write **concurring opinions**. Judges who disagree with the final outcome of the case may write **dissenting opinions**.

U.S. District Court. The main trial court in the federal judicial system is *U.S. District Court*. At least one of these courts is located in every state.

U.S. Court of Appeals. The *Court of Appeals* is the intermediate appellate court in the federal judicial system — the next step up from district court. The nation is divided into 12 geographic *circuits*, each with one of these intermediate courts.

U.S. Supreme Court. The *Supreme Court*, with its nine justices in Washington, D.C., is the top court in the federal judicial system and the final authority on the meaning of the U.S. Constitution.

Writ of certiorari. A *writ of certiorari* is a kind of discretionary order commonly used by the U.S. Supreme Court to indicate which cases the Court will hear on appeal. If the writ is denied, this means the Court refused to hear an appeal, and the judgment of the lower court therefore stands as the final word. If the writ is granted, this means the Supreme Court has decided to hear the appeal, and the court below is ordered to send the case record up to the high court. This is also referred to as granting "cert."

■ HOW TO READ AND BRIEF CASES

To enhance your understanding of communications law it is important to read cases critically. This means reading carefully and analyzing each paragraph a court has written until you're sure you understand the rationale behind it. Speed reading and skimming are techniques of relatively little benefit when it comes to reading cases. Rather, it is methodical, thoughtful reading that pays the greatest dividends.

To help make sure that you truly understand the cases you are assigned read, and that you're prepared to discuss them in class, you may want to prepare a written "brief" of each case. A case brief is a concise summary, usually no longer than a single page, in which a judicial decision is broken into its key elements. In order to effectively brief a case, you must organize your thoughts and hone in on the facts and legal principles that were most determinative of the court's decision.

There are many methods for briefing cases. Here is a streamlined format that should prove useful for class preparation and review purposes:

Heading: First, write the case name, the court that issued the decision, and the year of the decision.

Facts: Summarize in your own words the essential facts that initially led to the legal conflict. Also state, in an additional sentence or two, how the case was decided in the court(s) below.

Issue: State the legal issue or issues raised on appeal. For example, in the *Hustler* case noted earlier the issue might be stated as follows: "Whether public figure Jerry Falwell may recover damages for emotional harm allegedly caused by the publication of an offensive parody about him."

Decision: State the disposition of the case on appeal and summarize the court's rationale for its ruling. This is the heart of your brief; you must accurately and concisely explain *why* the court arrived at its decision.

Rule of law: In one final sentence, state the legal rule or principle that can be derived from the case to guide future conduct. For example, the rule from the *Hustler* case might be stated as follows: "The First Amendment prohibits public persons from recovering damages for intentional infliction of mental distress via publication unless the plaintiff can show that the publication contained false statements of fact that were made with actual malice."

CHAPTER TWO

The First Amendment

This chapter contains six cases that speak to important, general principles of First Amendment law. By no means do these cases illustrate all the guidelines that courts use in applying the First Amendment. However, from the standpoint of modern communicators, these selected cases do illustrate some of the judicial precepts that are employed over and over again to resolve First Amendment conflicts.

Near v. Minnesota, the first case presented, is a landmark U.S. Supreme Court case from 1931. The case established the doctrine against prior restraints on speech.

Doe v. University of Michigan is a recent federal District Court case that represents the general proposition that speech does not lose its First Amendment protection simply because the speech may be highly offensive to the majority of listeners. The case also illustrates how lower courts follow Supreme Court precedent in free-expression cases.

Simon & Schuster v. Crime Victims Board is a 1992 case in which the Supreme Court made it clear that financial burdens may amount to abridgments of speech, within the meaning of the Constitution.

Miami Herald v. Tornillo posed the interesting question of whether it is constitutionally permissible for government to require that newspapers carry certain kinds of speech in the interest of balance and fairness. Does such a requirement further First Amendment ideals, or abridge them?

Heffron v. Int. Soc. for Krishna Consciousness is one of the leading precedents concerning "time, place and manner" restrictions and the extent to which they are more likely to be upheld than restrictions on the content of speech.

Finally, *Cincinnati v. Discovery Network, Inc.* is a 1993 case that is instructive to compare with *Heffron*. This case illustrates why most regulations cannot qualify as "time, place and manner" restrictions.

Near v. Minnesota

Supreme Court of the United States, 1931
283 U.S. 697

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Chapter 285 of the Session Laws of Minnesota for the year 1925 provides for the abatement, as a public nuisance, of a "malicious, scandalous and defamatory newspaper, magazine or other periodical." Section one of the Act is as follows:

> "Section 1. Any person who, as an individual, or as a member or employee of a firm, or association or organization, or as an officer, director, member or employee of a corporation, shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away
> (a) an obscene, lewd and lascivious newspaper, magazine, or other periodical, or
> (b) a malicious, scandalous and defamatory newspaper, magazine or other periodical,
> is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined, as hereinafter provided...."

Under this statute, clause (b), the County Attorney of Hennepin County brought this action to enjoin the publication of what was described as a "malicious, scandalous and defamatory newspaper, magazine and periodical," known as "The Saturday Press," published by the defendants in the city of Minneapolis. The complaint alleged that the defendants, on September 24, 1927, and on eight subsequent dates in October and November, 1927, published and circulated editions of that periodical which were "largely devoted to malicious, scandalous and defamatory articles" ....

Without attempting to summarize the contents of the voluminous exhibits attached to the complaint, we deem it sufficient to say that the articles charged in substance that a Jewish gangster was in control of gambling, bootlegging and racketeering in Minneapolis, and that law enforcing officers and agencies were not energetically performing their duties. Most of the charges were directed against the Chief of Police; he was charged with gross neglect of duty, illicit relations with gangsters, and with participation in graft. The County Attorney was charged with knowing the existing conditions and with failure to take adequate measures to remedy them. The Mayor was accused of inefficiency and dereliction. One member of the grand jury was stated to be in sympathy with the gangsters....

....

The District Court made findings of fact, which followed the allegations of the complaint and found in general terms that the editions in question were "chiefly devoted to malicious, scandalous and defamatory articles," concerning the individuals named. The court further found that the defendants through these publications "did engage in the business of regularly and customarily producing, publishing and circulating a malicious, scandalous and defamatory newspaper," and that "the said publication" "under said name of

The Saturday Press, or any other name, constitutes a public nuisance under the laws of the State." Judgment was thereupon entered adjudging that "the newspaper, magazine and periodical known as The Saturday Press," as a public nuisance, "be and is hereby abated." The judgment perpetually enjoined the defendants "from producing, editing, publishing, circulating, having in their possession, selling or giving away any publication whatsoever which is a malicious, scandalous or defamatory newspaper, as defined by law," and also "from further conducting said nuisance under the name and title of said The Saturday Press or any other name or title."

....

From the judgment as thus affirmed, the defendant Near appeals to this Court.

This statute, for the suppression as a public nuisance of a newspaper or periodical, is unusual, if not unique, and raises questions of grave importance transcending the local interests involved in the particular action. It is no longer open to doubt that the liberty of the press, and of speech, is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property. Gitlow v. New York, 268 U.S. 652, 666.... Liberty, in each of its phases, has its history and connotation and, in the present instance, the inquiry is as to the historic conception of the liberty of the press and whether the statute under review violates the essential attributes of that liberty.

....

.... The object of the statute is not punishment, in the ordinary sense, but suppression of the offending newspaper or periodical. The reason for the enactment, as the state court has said, is that prosecutions to enforce penal statutes for libel do not result in "efficient repression or suppression of the evils of scandal." Describing the business of publication as a public nuisance, does not obscure the substance of the proceeding which the statute authorizes. It is the continued publication of scandalous and defamatory matter that constitutes the business and the declared nuisance. In the case of public officers, it is the reiteration of charges of official misconduct, and the fact that the newspaper or periodical is principally devoted to that purpose, that exposes it to suppression. In the present instance, the proof was that nine editions of the newspaper or periodical in question were published on successive dates, and that they were chiefly devoted to charges against public officers and in relation to the prevalence and protection of crime. In such a case, these officers are not left to their ordinary remedy in a suit for libel, or the authorities to a prosecution for criminal libel. Under this statute, a publisher of a newspaper or periodical, undertaking to conduct a campaign to expose and to censure official derelictions, and devoting his publication principally to that purpose, must face not simply the possibility of a verdict against him in a suit or prosecution for libel, but a determination that his newspaper or periodical is a public nuisance to be abated, and that this abatement and suppression will follow unless he is prepared with legal evidence to prove the truth of the charges and also to satisfy the court that, in addition to being true, the matter was published with good motives and for justifiable ends.

This suppression is accomplished by enjoining publication and that restraint is the object and effect of the statute.

.... The statute not only operates to suppress the offending newspaper or periodical but to put the publisher under an effective censorship. When a newspaper or periodical is found to be "malicious, scandalous and defamatory," and is suppressed as such, resumption of publication is punishable as a contempt of court by fine or imprisonment. Thus, where a newspaper or periodical has been suppressed because of the circulation of charges against public officers of official misconduct, it would seem to be clear that the renewal of the publication of such charges would constitute a contempt and that the judgment would lay a permanent restraint upon the publisher, to escape which he must satisfy the court as to the character of a new publication. Whether he would be permitted again to publish matter deemed to be derogatory to the same or other public officers would depend upon the court's ruling. In the present instance the judgment restrained the defendants from "publishing, circulating, having in their possession, selling or giving away any publication whatsoever which is a malicious, scandalous or defamatory newspaper, as defined by law." The law gives no definition except that covered by the words "scandalous and defamatory," and publications charging official misconduct are of that class....

If we cut through mere details of procedure, the operation and effect of the statute in substance is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous and defamatory matter -- in particular that the matter consists of charges against public officers of official dereliction -- and unless the owner or publisher is able and disposed to bring competent evidence to satisfy the judge that the charges are true and are published with good motives and for justifiable ends, his newspaper or periodical is suppressed and further publication is made punishable as a contempt. This is of the essence of censorship.

The question is whether a statute authorizing such proceedings in restraint of publication is consistent with the conception of the liberty of the press as historically conceived and guaranteed. In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication. The struggle in England, directed against the legislative power of the licenser, resulted in renunciation of the censorship of the press. The liberty deemed to be established was thus described by Blackstone: "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity."

The criticism upon Blackstone's statement has not been because immunity from previous restraint upon publication has not been regarded as deserving of special emphasis, but chiefly because that immunity cannot be deemed to exhaust the conception of the liberty guaranteed by [*715] state and federal constitutions. The point of criticism has been "that the mere exemption from previous restraints cannot be all that is secured by the constitutional provisions"; and that "the liberty of the press might be rendered a