

COMMUNICATIONS LAW



*Liberties,
Restraints,
and the
Modern
Media*

JOHN D. ZELEZNY

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Liberties, Restraints, and the Modern Media

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In memory of John G. Zelezny

PREFACE

▼

Communications law is a fascinating, constantly evolving subject that literally permeates modern society. It is at the center of some of the most intriguing controversies of our time—from televised coverage of rape trials to flag-burning protests to computerized alteration of photographs to the use of sexually explicit lyrics in rap music.

Communications law affects the day-to-day, nuts-and-bolts operating decisions of the mass media and related communications industries. At the same time, this subject cuts right to the heart of our nation's most lofty constitutional ideals—and our most basic philosophical conflicts. Consequently, teaching communications law since 1985 has been an intellectual treat for me, and so has the preparation of this text.

Purpose and Approach

This book does not pretend to be an exhaustive treatise on communications law nor on any one topic within that vast and complicated field. It does, however, aim to (1) instill a greater appreciation for freedom of expression, (2) provide an overview of the diverse field of communications law, and (3) impart a functional understanding of the legal rules and principles that are generally most relevant to mass communications professionals in the United States. This book is concerned with the laws that directly shape communication—laws that determine the content and channels of expression. Rules concerning the routine business operation of the media, such as labor law and taxation, are left to courses in business law.

The communications professions today encompass increasingly varied yet overlapping methods of communication—from the traditional fare of newspapers, magazines, and broadcast stations to the blossoming use of company publications, specialized cable TV channels, and consumer video cassettes. Therefore, this book covers a broad swath of law. It includes some topics that have not traditionally been included in journalism-law courses—trademark protection, music licensing, regulation of corporate financial news, and cable TV franchising. To make room for this broader coverage, treatment of a few traditional news-oriented topics—such as protection of secret sources—is more streamlined here than in some other books.

Throughout the text, treatment is most extensive on topics that have the broadest professional relevance—such as libel and copyright law—and on topics that serve best to illustrate First Amendment doctrine and conflict.

The text includes discussions of history, ethics, social custom, and legal philosophy. The overriding focus, however, is on practical application of current legal principles. This book is written primarily for students who anticipate actually working as professional communicators in such varied capacities as TV news anchors, sports editors, photojournalists, radio program directors, advertising account executives, freelance magazine writers, public information directors, investigative reporters, cable programming producers, and even gossip columnists. Therefore, the book is designed as a kind of survival kit, in addition to providing a liberal arts perspective on the law. It is hoped this text will not only help students structure their thinking during a college course but also will serve as a useful aid in avoiding legal pitfalls on the job—and in knowing when to consult a lawyer.

By the very nature of the subject, any sincere study of law is a formidable task. Therefore, I have tried to stick to essentials and to fashion a relatively user-friendly text. Footnotes and case names are used in moderation, and the bulk of the text features a fairly informal, narrative style.

Special Features

To help promote learning, this book includes the following special features:

- ▲ a list of learning objectives and key terms on the first page of each chapter.
- ▲ an engaging hypothetical scenario near the beginning of each chapter that serves as a springboard into the discussions that follow.
- ▲ a case excerpt in all chapters but the first, so that students also get a taste of the intellectual self-discovery that comes from examining authentic judicial language.
- ▲ diagrams, boxed features, pictures, and sample documents, where appropriate.
- ▲ summary points and discussion questions at the end of each chapter.
- ▲ key terms highlighted in the narrative by boldface type, followed promptly by their definitions.

I hope this book will prove readable, useful, and stimulating and that it will prompt a lifelong interest in the First Amendment and communications law.

For students and instructors who desire a more thorough, firsthand look at judicial reasoning in communications law, I have also prepared a casebook

that may be used as a companion to this book. *Cases in Communications Law*, published by Wadsworth Publishing Company, contains edited versions of more than fifty actual cases, arranged in the same topical order as the chapters in this text.

Acknowledgments This project could not have been completed successfully without the contributions of many wise, creative, and understanding people. Some are people I talk with frequently; others I barely know. But the fact is that many knowledgeable people have helped shape this text.

I would like to thank my colleagues around the country who reviewed drafts of this book and offered extremely valuable suggestions. They include: Roy Alden Atwood, University of Idaho; Judith M. Buddenbaum, Colorado State University; Louis A. Day, Louisiana State University; William Hanks, Wright State University; W. Wat Hopkins, Virginia Polytechnical Institute; Allan D. Larson, Clarion University of Pennsylvania; Seong Lee, Appalachian State University; Val E. Limburg, Washington State University; Joan Lowenstein, University of Michigan, Ann Arbor; W. Robert Nowell, III, California State University, Chico; David Protess, Northwestern University; Robert D. Richards, Pennsylvania State University; Sara Capri Spears, Bowling Green State University; and Ruth Walden, University of Carolina, Chapel Hill. Professor Louis Day deserves special mention for his particularly thorough recommendations and insights, beginning with the earliest chapter drafts and continuing to the final diagrams.

I also appreciate the early contributions made by Martin Sommerness, a lawyer and journalism professor at Northern Arizona University. Professor Sommerness was instrumental in helping shape the basic approach and scope of this text.

Special thanks also go to DeAnna Reinhardt, my student research assistant, and to all the journalism faculty and staff members at California State University at Fresno, who offered ideas, encouragement, and other valuable assistance throughout the writing of this project.

I also am grateful to the highly professional team at Wadsworth Publishing Company. Editor Kris Clerkin, in particular, was a source of invaluable ideas and reassurance for three solid years.

Finally, I am beholden to my wife Lynnette and to my children, Serena, Reed, and Stephen, for their patience and encouragement.

I would appreciate readers' help, too. If you have any suggestions for improving this text, please write to me at the Journalism Department, California State University, Fresno, CA 93740.

John Zelezny

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CHAPTER ONE

The U.S. Legal System

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