
5TH EDITION

**Mass Media Law
and Regulation**

WILLIAM E. FRANCOIS



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WILLIAM E. FRANCOIS

EMERITUS PROFESSOR OF JOURNALISM
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PREFACE

Mass Media Law and Regulation is written for journalism students by a journalist in the hope that it will be readable and enlightening—a textbook that newcomers to the complex field of mass media law can use without foreboding. Toward this end the minutiae of legal technicalities—important, no doubt, to law school students—frequently have been omitted or have received only brief attention. If, in the main, this has helped to give greater emphasis to the principal ideas, issues, and cases affecting the media, then the shortcomings caused by such omissions may be tolerable.

To those readers who begin a “law book” with the notion that they are entering a realm of quietude or equable monotony, such an idea should be short-lived. Many issues involving the media are explosive because of the “interests” that are in competition. For the most part the Bill of Rights represents consensus of the American people and jurisprudence. An exception is freedom of the press. It, above all others, is still being contested in the public opinion and in the branches of government. Laws are enacted that infringe upon that freedom; courts issue injunctions tantamount to prior restraint of the press; officers of executive branches of government frequently attack the press or contrive to make it impotent. The record will show that the press is not entirely free, nor left untrammelled. Injunctions, subpoenas, the jailing of journalists, “gag” orders, withholding of information, and White House “enemies” lists have had the effect, intentionally or otherwise, of inhibiting or cowing segments of the Fourth Estate. No other Bill of Rights guarantee is so hotly contested nor so transparently violated as the “First” freedom.

But the smoke of battle has not blown in one direction only. A momentous decision in 1964 helped to strengthen the backbone of timorous journalists who might otherwise refrain from publishing critical reports about government officials or public figures; a federal Freedom of Information Act, imperfect though it is, came into existence in 1967, and open-meeting and open-record laws have been enacted by all state governments.

Such issues and concerns are a part of this book. Many

others also are recorded. However, communication law is dynamic, requiring periodic revision of a textbook about such law.

This fifth edition includes a substantial number of new developments not included in earlier editions. Here are some “samplings”:

In Chapter 1, Professor Leonard Levy has modified his views about the extent of press freedom in early America. Chapter 2 includes information on Supreme Court appointments by President Reagan, including new Chief Justice William Rehnquist and Associate Justices Antonin Scalia and Anthony M. Kennedy. Only Justices Brennan and Marshall remain as the “old guard” liberals, and both are in their 80s. Further, President George Bush is likely to continue the Reagan practice of appointing “conservatives” to fill federal court vacancies.

In Chapter 3, a Supreme Court decision in 1988 gives public school officials considerable voice in what can or cannot be published in high school newspapers. The Court also has answered an earlier question by stating that information is property, thus equating the theft of information with the theft of property.

Whenever public officials or public figures sue the news media, they must show actual malice by “clear and convincing” evidence, as Chapter 5 points out. And in Chapter 6, the public interest/public concern test regains some vitality in cases decided by the U.S. Supreme Court. In addition, private figure plaintiffs must show falsity whenever the matter complained of is of public concern.

The list of new developments goes on and on, including the Federal Communications Commission repeal of the Fairness Doctrine in 1987.

These developments are some of the reasons why this new edition is necessary. But publication of a revised edition does not mean that students can “rest easy.” If they want to stay up to date with current developments, they should acquire the habit, if they have not already done so, of regularly

reading *Editor & Publisher*, *Advertising Age*, and *Broadcasting*, plus publications that deal exclusively with media law developments, such as *Media Law Reporter* or *The NEWS Media & The LAW*. In fact, *Media Law Reporter* and *The U.S. Law Week*, which are copyrighted by the Bureau of National Affairs, Inc., in Washington, D.C., have been frequent sources of information for this book.

I close now with a "confession" of my bias and perspective in regard to press-freedom issues. First, I am a journalist-turned-teacher who still thrills to the words of the late Supreme Court Justice Hugo L. Black and his unequivocal championing of First Amendment freedoms. Second, however, I have tried to present various viewpoints concerning major issues with the objective of providing balance among competing ideas, thereby lessening the impact of any bias. The reader will judge the success of this effort.

TABLE OF CASES

For the most complete information on a case, readers should first look at the page or pages referred to by italicized page numbers whenever there is more than one reference. Except in a few instances, court cases which involved the United States, a state or a federal agency are indexed so that if the name of the case, for example, is *U.S. v. Caldwell*, it will be listed Caldwell (U.S. v. ____). Any case adjudicated by the Federal Communications Commission (FCC) or Federal Trade Commission (FTC) will carry the parenthetical notation of the agency to distinguish it from one adjudicated by the courts. Thus, *KHJ-TV (FCC)* is a case decided by the FCC.

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