

## PREFACE

As the authors write this preface during the early fall of 2013, there is new movement in Washington, D.C., to finally pass a federal shield law that would provide qualified protection for journalists from revealing their confidential sources and information in federal court proceedings (see Chapter 10 regarding shield laws). Known as the Free Flow of Information Act of 2013 and sponsored by a bi-partisan group of U.S. Senators, the bill also would codify as law the Department of Justice's recently revised policies on the surveillance, search and seizure of the records and activities of members of the news media. The revised guidelines were released in July 2013 by U.S. Attorney General Eric Holder, just two months after it was revealed that the Justice Department had secretly seized the phone records of multiple Associated Press reporters for several months in 2012 and seized the e-mails of Fox News reporter James Rosen. The records were taken by the government in both instances to determine who was leaking classified information to journalists. Many members of the news media, however, saw the tactic as a grievous and egregious intrusion into press freedom. These controversies are discussed in Chapter 10 of this new edition. Ultimately, they illustrate that the tension between the government and a free press in the United States remains high more than 220 years after the adoption of the First Amendment in 1791. Today, in brief, is a propitious and important time to be studying media law.

The 19th edition of the textbook is replete with updated information in every chapter, as new cases, controversies and statutes affecting media law arise on an almost daily basis. Among the new judicial rulings covered in this edition are three issued by the U.S. Supreme Court in 2012 and 2013:

- *United States v. Alvarez*, in which the Court declared unconstitutional part of the Stolen Valor Act that made it a crime to lie about having won a military medal of honor. This case, which is discussed in detail in Chapter 2, illustrates many important principles about both First Amendment and media law.
- *McBurney v. Young*, in which the Court faced the question of whether one state may preclude citizens of other states from enjoying the same rights of access to public records that the one state affords its own citizens. This case is addressed in Chapter 9.
- *Federal Communications Commission v. Fox Television Stations*, a high court ruling affecting the FCC's regulation of broadcast indecency and, in particular, its targeting of so-called fleeting expletives. This case, which is covered in Chapter 16, has far reaching implications, as the FCC was busy considering revamping its entire indecency enforcement regime and rules in fall 2013. Expect much more in this area from the FCC in 2014 and 2015.

This edition of the book eliminates from Chapter 3 a unit previously devoted to prior restraint and censorship during wartime. With U.S. military involvement winding down in both Iraq and Afghanistan, and with an eye toward comments from reviewers and keeping the size of the book manageable, the authors decided to cut this material.

The authors thank several individuals for their support. Clay Calvert thanks his undergraduates at the University of Florida for making mass communications law an awesome teaching experience. He also expresses gratitude to the multiple UF students who helped to read, review and edit new content for this edition of the textbook; their feedback and advice was invaluable. Clay Calvert furthermore appreciates Berl Brechner for continued support of his research and writing endeavors. Last but certainly not least, Clay Calvert thanks Don R. Pember for having him aboard the journey that is writing and assembling a timely and comprehensive book on mass media law. For the record, Clay Calvert worked on Chapters 1, 2, 3, 7, 8, 9, 10, 13, 15 and 16 for this edition, while Don R. Pember took on Chapters 4, 5, 6, 11, 12 and 14.

This is the last time you will see Don Pember's name on this book. After 19 editions and nearly 40 years it is time for me to pack it in. I am certain Clay Calvert will continue to do admirable work so the book will continue to stay alive. Many aspects of mass media law have changed during the past four decades, but more have stayed the same. The growth of the Internet has forced the most significant changes in the law, but the courts and legislatures have been adapting.

I want to use my portion of this preface to thank some people. I am very grateful to Clay Calvert for his work on the last six editions. After writing the book alone for about 25 years, his insights and enthusiasm were invaluable. I am also grateful to all the instructors who, over the years, chose to adopt this text for their classes. Support from peers is always appreciated. But there are several people who helped me as a journalist and journalism teacher that I want to especially thank.

Thanks goes to Lee Peel, who in 1955 introduced a high school junior to journalism. And to Bud Meyers and George Hough III who helped this same young fellow get through his undergraduate and early graduate studies at the Michigan State University School of Journalism. Thanks also to Ben Kuroki, a feisty newspaper publisher who taught me what a newspaper was supposed to do. And to Bill Hachten and Dwight Teeter who guided me through my doctoral studies at the University of Wisconsin School of Journalism. I am grateful that Henry Ladd Smith and Bill Ames were around when I got to the University of Washington to teach me how to be a journalism teacher. And finally, and most importantly, I want to thank my wife, Diann, for helping me get through the past 50 years of my life. Couldn't have made it without her.

## IMPORTANT NEW, EXPANDED OR UPDATED MATERIAL

- New examples of equity law, including restraining orders in 2013 affecting the Lifetime broadcast of the movie "Romeo Killer" and Gawker's posting of a Hulk Hogan sex tape and a porn parody of "50 Shades of Grey," pages 8–9
- New content on the U.S. Supreme Court's 2012 decision in *FCC v. Fox Television Stations, Inc.* regarding the void for vagueness doctrine, page 12
- New content on the U.S. Supreme Court's 2012 decision in *United States v. Alvarez* involving the Stolen Valor Act and regarding plurality opinions and the limited First Amendment right to lie, pages 23 and 65–66
- New content on the U.S. Supreme Court's 2012 decision in *American Traditional Partnership, Inc. v. Bullock* regarding corporate expenditures, pages 24 and 135

- New examples of self-censorship of violent media content following the December 2012 school shooting at Sandy Hook Elementary School, pages 40–41
- Multiple new examples of symbolic expression (when conduct constitutes speech) in political protest cases, pages 46 and 55
- Multiple new examples of school censorship, including censorship of newspapers, t-shirts and “I ♥ Boobies” bracelets in public schools, pages 84, 87–88 and 96
- Updates on Clery Act violations by universities, pages 102–103
- New examples of thefts of college newspapers across the country, page 104
- New examples of efforts to ban books in public schools and libraries, page 108
- New content on federal appellate court ruling in *Klen v. City of Loveland* regarding fighting words, pages 125–126
- New examples of true threats of violence using social media, pages 127–128
- New introduction to libel, pages 144–149
- New material on libel proof plaintiffs, page 151
- New material on Communications Decency Act libel defense, page 156
- New material on identification, page 158
- New material on limited purpose public figures, page 191
- New material on knowledge of falsity, page 201
- New material on single publication rule, pages 216–217
- New material on abuse of qualified privilege, page 229
- New material on facts vs. opinion, page 236
- All-new introduction to privacy, pages 250–252
- New discussion of 2013 federal appellate court ruling in *Hart v. Electronic Arts* involving publicity rights of college football players in video games, page 266
- New content on anti-paparazzi statutes, pages 284–286
- New content on federal appellate court ruling in 2012 in *Marsh v. County of San Diego* involving a familial constitutional privacy right over images of dead relatives, pages 298–299
- New content on the 2013 federal appellate court ruling in *Judicial Watch v. U.S. Secret Service* regarding FOIA access to White House visitor logs, page 350
- New discussion of the U.S. Supreme Court’s 2013 ruling in *McBurney v. Young* regarding state public records laws, page 373
- Discussion of the government’s seizure of the telephone records of Associated Press reporters, pages 393 and 429–430
- New and updated material on unmasking the identity of anonymous online posters, pages 413–415
- Updated information on state shield laws, including new numbers, pages 423–435
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- New material on gag orders on trial participants, page 461
- New material on press contact with jurors, page 464

- New material on closing a judicial proceeding, page 470
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- New material on cameras in federal courts, pages 491–492
- New material on the 2012 obscenity conviction of Ira Isaacs, pages 497–498
- New material on child pornography issues and cases, pages 509–512
- Updated material on sexting statutes, page 514
- All-new material on revenge pornography websites, page 529
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- New material on plagiarism, pages 540–542
- New material on what can't be copyrighted, pages 545–546
- New material on fair use, pages 555 and 567
- New material on copyright registration, page 570
- New material on copying and originality of plaintiff's work, page 571
- New material on copying and access to plaintiff's work, page 572
- New material on FTC regulation of privacy on social media and search engines, pages 602–603
- New material on the FTC's 2013 revisions to the Children's Online Privacy Protection Act (COPPA), pages 614–616
- New material on the FCC's regulation of broadcast indecency, including the 2012 decision by the U.S. Supreme Court in *FCC v. Fox Television Stations* and the FCC's decision to only target "egregious" cases of indecency, pages 653–663

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