CONTENTS

Preface	* * * * * Xi		
Bill of Rights *** ***	* * * * * Xiii		
1 THE AMERICAN	I LEGAL SYS	TEMPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPP	· · · 1
Sources of the Law	. 2	The Judicial System	14
The Common Law	3	Facts Versus the Law	14
The Law of Equity	7	The Federal Court System	16
Statutory Law	9	The State Court System	25
Constitutional Law	10	Judicial Review	26
Administrative Rules	12	Lawsuits	27
SUMMARY	13	SUMMARY	30
		Bibliography	32
2 THE FIRST AME	NIDAAENIT.		
		Mpppppppppppppppppppppppppppppppppppppp	* * 33
Historical Developme	nt 34	Alien and Sedition Acts	47
Freedom of the Press in		Sedition in World War I	48
England	34	The Smith Act	50
Freedom of the Press in		Defining the Limits of Freedor	n
America	35	of Expression	51
SUMMARY	38	SUMMARY	57
The First Amendmen	t 39	Taxation and the Press	58
The New Constitution	39	SUMMARY	61
Freedom of Expression		Prior Restraint	61
18th Century	41	Near v. Minnesota	62
Freedom of Expression		Austin v. Keefe	63
SUMMARY	46	Pentagon Papers Case	64
The Meaning of Freed	10m 16	Progressive Magazine Case	66
		SUMMARY	69
Seditious Libel and th	e Right to	Bibliography	69
Criticize the Governm	nent 46	Dibliography	09
3 THE FIRST AME	NDMENT:		
		5,0000000000000000000000000000000000000	» » 71
Prior Restraint Durin	g	Censorship of the High School	Į.
Wartime	72	Press	78
War in the Persian Gul	f 73	Censorship of College	
SUMMARY	76	Newspapers	83
Freedom of Expressio	n in	Book Banning	86
Schools	77	SUMMARY	90
SCHOOLS	/ /		

	Time, Place, and Manner		Prior Restraint and News	
	Restrictions	90	Gathering	102
	Forum Analysis	93	Prior Restraint and Protests	103
	Public Forums	93	SUMMARY	104
	Private Forums	99	Hate Speech	104
	SUMMARY	101	Fighting Words Doctrine	103
	Other Prior Restraints	101	University Speech Codes	108
	Son of Sam Laws	101	SUMMARY	11(
			Bibliography	110
1	LIBEL:			
1		CT		117
	E3 IADLI3FING A CA	SEPPP		* 112
	The Libel Landscape	113	Elements of Libel	119
	Nuisance or SLAPP Suits	113	Publication	121
	Winning and Losing Libel Suits	s 114	Identification	123
	Resolving the Problem	115	Defamation	126
	SUMMARY	117	Falsity	133
	Law of Defamation	117	SUMMARY	136
			Bibliography	136
5	TIRET.			
	PROOF OF FAIIT >>	, , , , , , , , , , , , , , , , , , , 	, , , , , , , , , , , , , , , , , , ,	129
	New York Times v. Sullivan	139	Businesses as Public Figures	155
	Rationale	140	Other Public Figures	157
	Public Persons versus Privat	e	SUMMARY	159
	Persons	142	The Meaning of Fault	160
	Who Is a Public Official?	142	Negligence	161
	All-Purpose Public Figures	145	Actual Malice	164
	Limited-Purpose Public		SUMMARY	172
	Figures	147	Bibliography	172
	Lower-Court Rulings	151		
6	LIBEL:			1
		AAGES,	, , , , , , , , , , , , , , , , , , ,	174
	Summary Judgment/Statute		Fair Comment and Criticism	196
	of Limitations	175	SUMMARY	199
	Statute of Limitations	176	Defenses and Damages	199
	SUMMARY	178	Consent	199
	Truth	179	Right of Reply	200
	Privilogod Communications	170	Damages	201
	Privileged Communications	0~	Retraction Statutes	203
	Absolute Privilege	179	SUMMARY	205
	Qualified Privilege Neutral Papartage	181	Criminal Libel	205
	Neutral Reportage Abuse of Privilege	185 186	Intentional Infliction of	
	SUMMARY	188	Emotional Distress	207
			SUMMARY	207
	Protection of Opinion	188		
	Rhetorical Hyperbole The First Amendment	188	Bibliography	209
	THE THIST AMERICANE	190		

INVASION OF PRIVA APPROPRIATION AI		RUSION	· 211
The Growth of Privacy Law	v 212	Life After Death	229
Appropriation	214	SUMMARY	230
Early Cases	216	Intrusion	230
Use of Name or Likeness	217	Publication of Material Obtai	ned
Advertising and Trade		Through Intrusion	231
Purposes	220	Possessing Stolen Property	232
News and Information		No Privacy in Public	232
Exception	221	The Use of Hidden Recording	
Other Exceptions	222	Devices	233
Consent as a Defense	225	SUMMARY	236
		Bibliography	237
INVASION OF PRIVA PUBLICATION OF P AND FALSE LIGHT	RIVATE	INFORMATION	238
Publicity About Private		False Light Privacy	255
Facts	239	Fictionalization	256
Publicity	240	Other Falsehoods	258
Private Facts	240	Highly Offensive Material	259
Offensive Material	245	The Fault Requirement	260
Legitimate Public Concern	247	SUMMARY	262
Recounting the Past SUMMARY	253 254	Bibliography	263
GATHERING INFOR RECORDS AND MEE News Gathering		N: State Laws on Meetings	264
and the Law	265	and Records	304
The Constitution and News		State Open-Meetings Laws	305
Gathering	266	State Open-Records Laws	307
Trespass and Other News-		SUMMARY	309
Gathering Problems	271	Laws That Restrict Access	
Failure to Obey Lawful Order	s 275	to Information	309
Other Laws Affecting News		General Education	
Gathering	276	Provisions Act	310
SUMMARY	278	The Federal Privacy Law	310
The Freedom of Information	n	Criminal History Privacy Law	
Act	278	State Statutes That Limit	
Agency Records	281	Access to Information	313
FOIA Exemptions	283	SUMMARY	313
Handling FOIA Requests	299	Bibliography	314
Federal Open-Meetings Law SUMMARY	302 303		

10	PROTECTION OF NE	WS SOURCE	CESPPPPPPPPPPPPP	316
	News and News Sources	318	Legislative and Executive	
	Promissory Estoppel	322	Protection of News Sources	337
	Constitutional Protection of		Shield Laws	337
	News Sources	325	Federal Guidelines	340
	Lower-Court Rulings	327	Telephone Records	340
	Nonconfidential Information ar	ıd	Newsroom Searches	341
	Waiver of the Privilege	334	How to Respond to a Subpoena	
	Telephone Records	335	SUMMARY	344
	SUMMARY	336	Bibliography	345
11	THE CONTEMPT PO	WER	T T T T T T T T T T T T T T T T T T T	347
	The Contempt Power	348	Collateral Bar Rule	355
	History of Contempt	348	SUMMARY	358
	Kinds of Contempt	349	Bibliography	358
	Limitations on Contempt Power	350		
12	FREE PRESS/FAIR TR	IAI:		
			STRICTIVE ORDERS > > >	359
	Prejudicial Crime Reporting	360	Sequestration of the Jury	367
	Impact on Jurors	361	SUMMARY	368
	The Law and Prejudicial News		Restrictive Orders to	
	SUMMARY	363	Control Publicity	369
	Traditional Judicial		Restrictive Orders Aimed	
	Remedies	363	at the Press	371
	Voir Dire	364	Restrictive Orders Aimed	
	Change of Venue	365	at Trial Participants	375
	Continuance	366	SUMMARY	379
	Admonition to the Jury	367	Bibliography	379
13	FREE PRESS/FAIR TR	IAL:		
			GS>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>	380
	Closed Proceedings and Seal	ed	Access and the Broadcast	
	Documents	381	Journalist	393
	Access to Trials	381	Recording and Televising	
	Closure of Other Hearings	385	Judicial Proceedings	396
	Presumptively Open Hearings	387	SUMMARY	400
	Presumptively Open		Bench-Bar-Press Guidelines	
	-Documents	389	SUMMARY	402
			Bibliography	402

14	REGULATION OF OF OTHER EROTIC MATERIAL		JD	403
	The Law of Obscenity	404	RICO Statutes	421
	Early Obscenity Law	406	Postal Censorship	423
	Defining Obscenity	406	Film Censorship	424
	SUMMARY	408	SUMMARY	426
	Contemporary Obscenity		Regulation of Nonobscene	
	Law	408	Erotic Material	426
	The Miller Test	409	Zoning Laws	426
	Other Standards	413	Meese Commission	429
	SUMMARY Controlling Observation	419	Attacks on the Arts SUMMARY	430 434
	Controlling Obscenity	420		
	Civil Nuisance Laws	421	Bibliography	434
15	COPYRIGHT	* * * * * * * * * * * * * * * * * * * *	• • • • • • • • • • • • • • • • • • •	436
	Immaterial Property Law	437	Nature of the Copyrighted	
	Patents	437	Work	454
	Trademarks	437	Amount of a Work Used	457
	Plagiarism	439	Effect of Use on Market	460
	Protecting Literary		SUMMARY	462
	Property	440	Copyright Protection and	
	Roots of the Law	440	Infringement	462
	What May Be Copyrighted	441	Copyright Notice	463
	News Events	446	Registration	463
	Misappropriation	447	Infringement SUMMARY	464 471
	Duration of Copyright	110		
	Protection SUMMARY	449 450	Free-Lancing and Copyright	4/1
			Damages	473
	Fair Use Purpose and Character of Use	450 452	Bibliography	474
16			Grrrrrrrrrrr	476
	Advertising and the First	VLICITOIT	False Advertising Defined	493
	Amendment	477	Means to Police Deceptive	
	Commercial Speech Doctrine	479	Advertising	496
	SUMMARY	484	SUMMARY	503
	The Regulation of		The Regulatory Process	503
	Advertising	484	Procedures	503
	Self-Regulation	484	Special Cases of Deceptive	501
	Lawsuits by Competitors and		Advertising	504 508
	Consumers	486	Defenses Advertising Agency/Publisher	200
	State and Local Laws	489	Liability	508
	Federal Regulation SUMMARY	489 491	SUMMARY	510
	Federal Trade Commission	491	Bibliography	510

7 BROADCAST REGUL HISTORY AND LICE			512
History of Regulation	513	Regulation Through	
Development of Radio	513	Licensing	521
Radio Act of 1912	513	Federal Communications	
Radio Act of 1927	515	Commission	521
First Amendment and Broadca	st	Licensing	523
Regulation	516	SUMMARY	531
Trusteeship Theory	517	Bibliography	531
Deregulation in the 1980s SUMMARY	518 520		
BROADCAST REGUL CONTENT CONTRO		BLE>>>>>>>	532
Regulation of Program		News and Public Affairs	552
Content	533	The Fairness Doctrine	553
Sanctions	533	Personal Attacks and Political	
Regulation of Children's		Editorials	555
Programming	535	The First Amendment	556
Obscene or Indecent Material	537	SUMMARY	558
SUMMARY	543	Regulation of New	
Regulation of Political		Technology	558
Programming	544	Cable Television	558
Candidate Access Rule	544	Federal Legislation Regulating	
Equal Opportunity/Equal Time		Cable Television	560
Rule	546	Other Broadcast Services	566
SUMMARY	552	SUMMARY	566
		Bibliography	567
			5 (0
ossary	, , , , , , , , , , , , , , , , , , ,	~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~	368
able of Cases,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	, , , , , , , , , , ,	<pre>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>></pre>	576
dex ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	> > > > > > > > > > > > > > > > > > >	, , , , , , , , , , , , , , , , , , ,	585