

This Week's Citation Classic

Emerson T I. *Toward a general theory of the First Amendment.* *Yale Law J.* 72:877-956, 1963. [Yale Law School, New Haven, CT]

This article analyzes the values underlying the First Amendment and the goals sought to be achieved by that constitutional guarantee; discusses the role of law and legal institutions in maintaining a system of free expression; and attempts to formulate a comprehensive legal doctrine by which the First Amendment can be applied in various concrete situations. [The *Social Sciences Citation Index*[®] (SSCI[®]) indicates that this paper has been cited over 360 times since 1966.]

Thomas I. Emerson
Yale Law School
New Haven, CT 06520

June 23, 1981

"When I first came to teach at Yale Law School, after 13 years in various legal posts in the federal government, I was very much interested in the relation of the individual citizen to the government. Together with David Haber, I began offering a seminar in political and civil rights. The central role played by the First Amendment in our system of individual rights soon became apparent and I began to concentrate in that area.

"At that time, no legal scholar had undertaken to write a general survey of the First Amendment since Zechariah Chafee's *Free Speech in the United States*, published in 1941.¹ I decided to fill this gap. In 1960, I had a sabbatical year and went to Washington to work on the project. I started at the beginning, that is, with the historical background of the First Amendment. After months of work, mainly in the Library of Congress, Leonard Levy's *Legacy of*

Suppression appeared in the bookstores.² The Levy book covered the same ground as my research, and I was clearly preempted. I went back to New Haven virtually empty-handed.

"Since my next sabbatical was not due for six years, I decided to prepare the introductory chapter of my magnum opus and publish it as a law journal article. The project kept expanding in the writing but I finally finished it during the summer of 1962. To my dismay, the student editors of the *Yale Law Journal* were at first reluctant to accept the article; they thought it was 'too bland,' by which they meant not sufficiently 'legal.' In the end, however, they relented.

"I think the reason the article has been cited so frequently is that it provides a useful survey of the functions served by the First Amendment in a democratic society and offers an understandable legal theory based upon a distinction between 'expression' and 'action.' In addition, as the misgivings of the *Journal* editors suggest, the article can be understood not only by lawyers but by the general reader.

"In 1966, the article was published as a book by Random House, and it has been cited frequently in that form.³ After another sabbatical in 1967-1968, I completed the original project, a book which treats the Supreme Court's First Amendment decisions in detail up to the end of the Warren Court. This has been published under the title *The System of Freedom of Expression*.⁴

"The original article remains current so far as the theoretical treatment of the First Amendment is concerned, but neither that article nor the System book keeps up with the Supreme Court decisions. For a current account of the Court's cases, the best source is Laurence Tribe's treatise, *American Constitutional Law*.⁵

1. **Chafee Z.** *Free speech in the United States.* Cambridge, MA: Harvard University Press, 1941. 634 p.

2. **Levy L W.** *Legacy of suppression.* Cambridge, MA: Harvard University Press, 1960. 353 p.

3. **Emerson T I.** *Toward a general theory of the First Amendment.*

New York: Random House, 1966. 245 p.

[The SSCI[®] indicates that this book has been cited over 150 times since 1966.]

4. *The system of freedom of expression.* New York: Random House, 1970. 754 p.

5. **Tribe L H.** *American constitutional law.* Mineola, NY: Foundation Press, 1978. 1204 p.