

Massachusetts Institute of Technology
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MIT 6.805/6.806/STS085: Ethics and Law on the Electronic
Frontier

Sample case brief

Cubby v. CompuServe, 776 F.Supp 135 (SDNY, 1991)

In common law systems (such as the United States and Great Britain), courts decide cases both in order to determine the just result of a particular dispute, and also to provide an evolving articulation of legal rules applicable to classes of controversies. Judges write legal opinions in a manner that explains the dispute before the court, and also to serve as a record of how the legal system understands the type of dispute in the case before the court. Lawyers read judicial opinions to understand the application of the law, and to use the arguments presented by judges in earlier cases in order to construct arguments about new cases.

When reading cases for this purpose, it is necessary to extract 5 key elements from the opinion. This style of reading and summarizing a judicial opinion is called *briefing* a case. Here's how you do it:

Key elements of a judicial opinion to include in a case brief:

- **Issue:** what is the legal question to be decided
- **Procedural History:**
 - Who are the Parties to the dispute?
 - Procedural Posture; what has happened in the court system before the case arrived at this court for decision?
- **Facts:** what are the key facts that the court finds as true and relevant to applying the legal rules to the dispute? (Resist the temptation to recite ALL facts. Instead, think about which facts are really important to the holding.)
- **Holding:** What is the result of the case -- an answer to question posed by the 'Issue' relative to the 'Parties'.
- **Reasoning:** Why did the court 'hold' as it did?

- **Dissent:** If there is a dissenting opinion (minority of judges who disagree with the result supported by the court), be sure to indicate reasoning behind the dissent.

Briefing Cubby

Cubby v. Compuserve is an important early case dealing with the legal standards governing the liability of Internet Service Providers for defamation. (If you don't know the meaning of legal terms like "liability" and "defamation" you should look them up. www.legal-definitions.com can be a useful resource here.)

- **Issue:** Can Compuserve (CIS) be held liable for the defamatory statements made in an online forum by an independent entity under contract with CIS?
- **Procedural History**
 - Parties:
 - Plaintiff: Cubby (Skuttlebutt)
 - Defendants: Compuserve, Don Fitzpatrick
 - Procedural Posture: Defendant Compuserve's motion for summary judgment
- **Facts**
 - Journalism Forum:
 - operated by CCI, subcontracted by CCI to DFA
 - CCI contracted to "create, edit, etc. content"
 - CIS gains no revenue for access to CCI as opposed to any other forum
 - CIS has no practical control over content given volume
 - content created by CCI is made available to subscribers 'instantaneously'
 - CIS has no employment relationship with CCI or DFA
 - Skuttlebutt = competing service
- **Holding:** CIS not liable as a publisher -- only responsible for defamatory material which it knew about or had reason to know about.
- **Reasoning**
 1. Legal standard/rule: An online service is only responsible for the defamatory content about which it knows or has reason to know
 2. Facts: There is no evidence that CIS knew of defamatory content given instantaneous upload, contract terms, large volume, overall lack of editorial control.

3. Policy argument: Traditional First Amendment protections for information distributors should apply here. If a heavier burden for policing content is put on online distributors, then the First Amendment rights of online speakers and authors would suffer.

Reading the case

Now read the [full opinion](#) in *Cubby*. Is the brief a useful guideline to reading the opinion? Think about how you could have started with the opinion and produced the brief.

Locating judicial opinions

The link to *Cubby* above is to the archive maintained by EPIC, the [The Electronic Privacy Information Center](#). Some of the cases we'll be looking at this semester - like this one -- are available online from many sources and you can find them with Google. As an example, try Googling "cubby compuserve" to what's available.

Other times, you'll need a more complete source of legal opinions and legal research. For this, you can use Lexis-Nexus Academic Universe, which is a non-public commercial, to which MIT has a license. You'll need to either be on campus, or have an MIT certificate in order to access it. For practice that will be useful throughout the semester, try finding the *Cubby* opinion now on Lexis-Nexus:

1. Go to MIT's *Vera* site for electronic journals, You'll want to bookmark this. MIT has an extensive collection of online journals, and you'll find Vera indispensable for pretty much any research you'll be doing in your MIT courses.
2. Use Vera to search for "Lexis", and then select "Lexis-Nexus Academic". At this point might be asked to accept the MIT site certificate, and you might be asked to provide your MIT certificate. This will bring you to the Lexis search form.
3. Search by the party names "Cubby" and "Compuserve" and you should find the opinion.
4. Go back to the Lexis search page and search for the same case by its legal citation, "776 F. Supp. 135". We'll explain the format of these citations in class.
5. Go back again to the search Lexis page and select "Legal Research" from the menu on the left, and then select "Law Reviews". This should bring you to the

law review search page. Fill in "cubby compuserve" under keywords, and set the drop-down menu to "all available dates". You should find more than a dozen law review articles that mention this case. This is an example of how you can do research for your papers over the semester.

6. Go back to the search page and search under the keywords "defamation and liability" with the additional search term "internet service provider". You should find almost 600 articles. The point of this exercise is not that you should read all (or any) of these now, but to help you appreciate that there are a lot of resources available to support your work this semester. When you write papers for the course, we expect you to take the initiative to locate resources and use them appropriately.