California Western Law Review

Volume 22 | Number 2 Article 9

1986

Books in Brief

California Western Law Review

BOOKS IN BRIEF

CORPORATE AND COMMERCIAL FREE SPEECH: FIRST AMENDMENT PROTECTION OF EXPRESSION IN BUSINESS. By Edwin P. Rome and William H. Roberts. Quorum Books: Westport, Connecticut. 1985. Pp. 269. $39.95. The authors examine, in the context of current judicial decisions, the extent to which corporate communications are protected by the First Amendment. The authors assess the extent of constitutional protection of two basic kinds of business expression: corporate commercial speech, i.e., advertising, sales solicitation, as well as other forms of commercially oriented business expression; and corporate political speech, i.e., the expenditure of corporate general treasury funds for the purpose of communicating information, a viewpoint, or an opinion concerning public affairs.

Tracing the evolution and current status of the "commercial speech" doctrine, this volume contains an historical survey of federal and state legislation restricting corporate expenditures for publicizing viewpoints on issues of public concern. An analysis of the Supreme Court's decisions in the landmark cases of *First National Bank of Boston v. Ballotti* and *Consolidated Edison Co. v. Public Service Commission* is included. A detailed index, a bibliography, and a table of cases facilitate the use of this volume.

Providing important background and a current assessment of the law concerning First Amendment protection for corporate advertising and corporate political speech, this volume is a valuable resource for corporate counsel and chief executive officers. Personnel in advertising and communications firms as well as state and federal agencies charged with enforcing laws dealing with false advertising and consumer affairs will find this informational reading.

GOD SAVE THIS HONORABLE COURT: HOW THE CHOICE OF SUPREME COURT JUSTICES SHAPES OUR HISTORY. By Laurence H. Tribe. Random House: New York, New York. 1984. $17.95. This book examines how the choices of the Justices of the United States Supreme Court shape our lives and the destiny of the nation. The author argues for fuller involvement by the Senate and by the American public, in the process of selecting the Supreme Court Justices. The book examines nearly two centuries of Court decisions, wich reveal the crucial role each Justice plays. The author analyzes *Mapp v. Ohio* and *Miranda v. Arizona*,

landmark decisions which established basic rights for an accused. Additionally, the author discusses the *Bakke* case on reverse discrimination, which was decided by a single vote. Thus a single vote permitted social policy and the course of history to be changed.

The author also explores popular myths concerning how much it matters which individuals are selected as Justices. Among these ill-founded notions, discussed in fascinating detail, is "the myth of the surprised President," which holds that Justices often turn away from the policies of those who appoint them. Quite the contrary, says the author, presidents usually get exactly what they want from the persons they choose. Nor does "the myth of the spineless Senate" survive scrutiny. History demonstrates that, in fact, the Senate has not acted as a mere rubber stamp for the President; it has rejected almost one out of every five nominees to the Court.

Looking toward the future, the author emphasizes the importance of the Senate in maintaining a Court sensitive to the diverse cultures of the American people, and outlines those attributes necessary to fulfill the duties of a Justice. He discusses how the notion of a Court balanced along ethnic, geographical, or political lines has affected appointments. He warns against accepting the nomination of Justices who are tied to a single issue, such as abortion, showing through historical example how this is a recipe for a disastrous appointment.

WITNESS INTIMIDATION: THE LAW'S RESPONSE. By Michael H. Graham. Quorum Books: Westport, Connecticut. 1985. Pp. 317. $39.95. "I didn't see anything!" "I don't remember anything!" "Definitely wasn't him!" These phrases when spoken in court by an important witness often fill prosecuting attorneys and law enforcement officials with feelings of helpless frustration, for they are the signs of a "turncoat" or "flipped" witness: when the victim or witness to a crime is called to testify by the prosecution (if he or she is available at all), he or she offers testimony that differs from prior statements. Most such witnesses have been intimidated to change their testimony. Successful witness intimidation frequently changes the outcome of the trial. Whether successful or not, witness intimidation adversely affects people.

Can anything be done? The author in this book believes that there are things which can be done. He demonstrates that, historically, justice has been oriented to the offender: it has focused on apprehension, prosecution, and punishment of the criminal and has ignored the victim or witness. Today, however, local

assistance programs are helping victims by seeking to reduce the opportunities for intimidation, providing compensation and, in some cases, restitution for victims.

But this is not enough. To meet the problem squarely, the author argues, the system must eliminate the benefit derived from witness intimidation by preserving the victim's or witness' testimony in a form admissible at trial. To do this, the legal profession must broaden avenues currently available to preserve prior out-of-court statements and to admit such statements as substantive evidence when the prior statement is deemed sufficiently trustworthy. Finally, the author advances a new proceeding—the "preservation proceeding"—that would permit the prosecutor to bring a witness before a judge, magistrate, or specially appointed attorney for the express purpose of preserving the witness' testimony against the threat of intimidation.