

"ADVOCACY ADVERTISING AND THE FIRST AMENDMENT"

Johns Hopkins University
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REMARKS

Mr. Sidney W. Dean, Jr.:

Moderator Shayon: Our first speaker is Sidney W. Dean, Jr., a businessman and consultant in marketing and communications. Sidney Dean moved from the advertising field in 1960 in order to establish his own business. During his 25 years in advertising, he served on the Four A's committees on government relations, marketing, and magazines. He was Chairman of the latter, and later served as a Director of the Audit Bureau of Circulation as nominee of the Advertising Agency Division. He has no conflicts of interest in this issue. It is my pleasure to present Sidney Dean.

Mr. Dean:

I am honored to appear here, and particularly honored because I am not one of those with a verbatim script. I am speaking entirely for myself out of my own experience and viewpoints. Therefore, I offer certain premises that govern the dimension and the shape of this issue that is before us; you are entitled to know what they are.

I am a civil libertarian. I will defend the right of anyone to say anything legal, meaning not fraudulent or libelous or obscene by legislative standards. I will defend the right of anyone to have his communication unabridged or uncensored by either the government or a medium, and I personally deplore the extent to which pre-censorship has been introduced into our mass broadcast media. I speak as a businessman and as an entrepreneur. I believe, like other members of the marketing and advertising professions, that until the 1950's the American business system was dominated by free competitive enterprise; that free and fair competition between products and services, between ideas and candidates for public office, are essential to a self-regulating economy and a self-governing democracy.

I believe in the republican form of government, by democratic principles. I detest the coupling of economic doctrine with political doctrine, such as "democratic socialism" or "republican capitalism," because it is my conviction that our economic processes--the production and

marketing of goods and services--and our economic values exist only to serve human and social purposes. They do not possess end-use values and truths of their own.

The institution of private property is a privilege conferred upon people by their society in exchange for general public benefits. I question whether the privileges of private property extend to undue concentrations of ownership of the means of production and wealth when many in the same society lack for necessities. As a businessman and as an entrepreneur, I believe that business is socially responsible when it is not in conflict institutionally with human and social objectives. A new book "The Sponsor," by Dr. Erik Barnouw, the definitive historian of broadcasting, contains a novel condensation of the philosophy of Adam Smith, the patron saint of private competitive enterprise. Until the past 19-20 years the rubric of American business has been "free, fair, competitive enterprise." Only recently, the terms "fair and competitive" have disappeared. I question whether either societies or individuals will be best served by enterprises which do not honestly and vigorously compete for public patronage, whether of ideas or of products and services.

According to Dr. Barnouw:

Adam Smith, who published The Wealth of Nations the year Jefferson drafted the Declaration of Independence, is regarded by many business men as a patron saint of free enterprise. He saw national wealth springing primarily from the merchant's exercise of self-interest--or rather, from the competitive impact of many self-interests. Thus he gave self-interest an almost theological sanction.

But there is more... He observed that the merchant is so perceptive in discerning his self-interest that he is often credited with large wisdom and given a role of authority. But this seemed to Smith a mistake. The merchant's alertness to his own interest is likely to blind him to the public interest, thought Smith. Merchants should therefore not have monopolistic or governmental power. It would produce the worst of all governments for any country whatever.

The sponsor, the merchant, has been living at the summit of our communication system. He has had things largely his way, and we are in trouble. He himself is aware of it. Impending change is in the air.

... While we make our media, our media makes us.

In today's popular discussions of the deregulation of economic enterprise as a goal for its own sake, it is clear that if the self-regulating effects of free and fair market competition are not operative then fundamental human and social goals may be irreparably injured.

"Advocacy advertising" is certainly a form of speech which is wholly protected by the First Amendment... As such, it should not be abridged by government, the media or other private entities. But is advocacy advertising funded by private institutions for private purposes consistent with the higher public purpose of insuring free and fair competition between ideas for public policies and candidates for public office?

Is not the central public issue "What public policies should govern private and public corporations, labor unions, trade associations and other institutions which have limited liability and accountability to their owners and the public, in the conduct of advocacy advertising and other forms of paid communications for the purpose of influencing public policies, legislation, elections, general tax policies, judicial review, regulation, appointments of public officials and public administration... which go beyond usual short-term and specific operating and profit objectives of the institution? When such outlays are made should they be treated for tax and accounting purposes as current expenses or as capital investments for the protection and enhancement of capital assets, and thus be paid out of capital and earned surplus?

If, in fact, such "policy communications" are designed to protect and enhance the capital values of the institution in the interest of future income and profits, should they be subject to the approval of stockholders or

members by referendum?

It should not be assumed that the issue of tax-deductibility is primary to public policies for advocacy communications. Tax administration is a de facto fourth branch of government, with the power to destroy free expression as well as to nourish it. In this context, the regulatory agencies of government have become a fifth arm of government, sometimes the more formidable because of their accountability to the executive or legislative branches is often obscure and seemingly immune to appeal except to the courts.

Finally, the American media system itself has evolved from the "Fourth Estate" to a functional sixth branch of government. Few policy actions are taken by any arm of government without prior planning and considerations of their media dimensions. Few media owners take a forthright First Amendment position on the carriage of advocacy advertising: print media are concerned with conflicts between editorial and advertising positions; the broadcast media question whether the FCC may not award gratis reply-time under the Fairness Doctrine to positions in opposition to those advertised.

Free and fair competition in ideas and information throughout the media of communications is the only ultimate safeguard of democratic due process in public policy elections. To permit the managers of the giant economic institutions of business, labor and vocational organizations to employ their funds with little or no accountability to their constituents in order to control these processes would, in effect, establish government by public auction.

It is my personal belief that the determination of public policies and the election of public-makers is an exclusive privilege of private citizens. When citizens delegate these sovereign powers, as for example to political parties and elected representatives, the delegation must be subject to democratic due process and personal accountability. The corollary of this principle is that private institutions, whether corporations, labor unions or trade associations may not employ their economic resources to influence public policies (beyond those with immediate and direct effect on their economic interests) without the explicit authorization of stockhold-

ers or members. It is a further corollary that no "non-citizen" institution be permitted to employ its resources, directly or indirectly, to influence public elections.

In conclusion, I submit that the central issue posed by the subject of this symposium is not whether advocacy advertising should be protected by First Amendment freedoms. Unquestionably, it should be. The underlying issue is to what degree and under what conditions should the management of corporations, labor unions and trade associations be permitted to employ their revenues or capital funds to overbalance free and fair competition of ideas in public policy-making?

Should the First Amendment assertion of unconstrained rights of speech outweigh the political benefits from free and fair competition in speech which may determine public policy? The Supreme Court decision on the financing of Presidential election campaigns accepted the general proposition that the right to spend money was a form of right to speech. But the Court did not find it inconsistent that limitations be placed on the amount of money that an individual could contribute to a specific candidate or in the general election.

This symposium will doubtless consider many of the proposals that have been made to redress the obvious gross imbalance between the expenditure capabilities of economic organizations and the countervailing expenditures of individuals, consumer and civic groups. For example, the proposed Federal chartering of corporations doing business in two or more states might more narrowly define their activities to specific areas of direct, current economic concern. In the media, the extension of the principles of the Fairness Doctrine into the print media might either help balance advocacy expression or reserve it for unregulated debate. The question needs to be raised as to whether advocacy expenditures for basic public policies should be tax-deductible to organizations but generally not to individuals.

I have two further critical concerns that resist simple analysis. This issue is clearly concentrated on questions of economic policy which are of primary concern to labor as well as to business and professional organizations. Yet, our lives are affected by social, cultural, political

and international issues of even greater magnitude. Further domination of the media by economic and materialistic issues through unrestrained authorization of institutional expenditures may have serious consequences for the values and priorities which we and our children absorb from the media.

To an increasing extent, this imbalance in the communications environment from which our values and political beliefs are drawn is further influenced by trends in the ownership and control of the media themselves. The individual or family controlled newspaper, magazine or broadcast station is now likely to be a unit in a communications conglomerate, an industrial holding company, or third or fourth generation absentee ownership. To such ownerships, economic considerations of market position, labor and material stabilization and tax status become paramount. In the total communications mix of content and advertising there is an already existing bias toward economic interests.

My personal commitment, as both a business and a communications professional, is to work with all deliberate speed toward equitable and practical methods for the public funding of both political campaigns and the presentation of issues of public policy. The movement is well under way in campaign financing. There are indications, although still in pilot stages, that public participation in policy development can be broadened by public funding, insulated from special or partisan interests.

The processes of decision-making in public policies and publicly elected leadership are far too important to be funded wholly by private interests. The alternative is an unacceptable government by public auction.

EXPENDITURE SHOULD BE TREATED AS A TAX-DEDUCTIBLE EXPENSE OR TREATED AS AN OUTLAY FROM CAPITAL OUTLAY COULD BE SOLVED.

FINALLY, THERE ARE MANY OTHER WAYS IN WHICH THE CORPORATION OR THE LABOR UNION OR THE TRADE OR PROFESSIONAL INSTITUTION COULD HAVE ITS SAY ON POLICIES THAT DON'T RELATE IMMEDIATELY AND INSTANTLY TO ITS PROFITS AND ITS STABILITY. IT CAN ORGANIZE AD HOC POLICY GROUPS, IT CAN MOBILIZE THE VOLUNTEER WORK OF ITS EMPLOYEES, ITS FRIENDS, ITS SUPPLIERS AND CUSTOMERS WHO BELIEVE IN ITS PURPOSE TO WORK FOR THEM, AND IT CAN DO WHAT THOUSANDS OF OTHER PUBLIC INTEREST CIVIC GROUPS ARE NOW DOING: ATTEMPTING TO FUND THEIR OWN WAY INTO THE FREE AND COMPETITIVE MARKETPLACE OF IDEAS AND ATTEMPT TO PLACE THEM ON A PARITY IN DOLLARS AND A PARITY OF RESOURCES WITH OPPOSING POINTS OF VIEW.

THANK YOU.

(APPLAUSE)

MODERATOR SHAYON: THANK YOU, MR. DEAN.

DR. S. PRAKASH SETHI, OUR NEXT SPEAKER, IS A PROFESSOR OF INTERNATIONAL BUSINESS AND BUSINESS POLICY AS WELL AS DIRECTOR OF RESEARCH AND BUSINESS POLICY AT THE UNIVERSITY OF TEXAS AT DALLAS. HE IS THE AUTHOR OF ADVOCACY ADVERTISING AND LARGE CORPORATIONS, WHICH UP TO NOW IS THE DEFINITIVE TEXT