

[77] From: cemnet@mcfeeley.cc.utexas.edu at SMTP-po 4/23/96 3:11PM (3770 bytes: 64 ln)  
To: cemnet@mcfeeley.cc.utexas.edu at SMTP-po  
bcc: fgg  
Subject: EB: Re: 1st Amendment

----- Message Contents -----

Text item 1: Text Item

Received: by ccmil from mcfeeley.cc.utexas.edu  
From owner-cemnet@mcfeeley.cc.utexas.edu  
X-Envelope-From: owner-cemnet@mcfeeley.cc.utexas.edu  
Received: from localhost (localhost [127.0.0.1]) by mcfeeley.cc.utexas.edu (8.6.11/8.6.11/mcfeeley.mc-1.11) with SMTP id OAA12625; Tue, 23 Apr 1996 14:08:33 -0500  
Received: from mail.utexas.edu (mail.utexas.edu [128.83.126.1]) by mcfeeley.cc.utexas.edu (8.6.11/8.6.11/mcfeeley.mc-1.11) with ESMTTP id NAA11767 for <cemnet@mcfeeley.cc.utexas.edu>; Tue, 23 Apr 1996 13:51:09 -0500  
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Reply-To: cemnet@mcfeeley.cc.utexas.edu  
Sender: owner-cemnet@mcfeeley.cc.utexas.edu  
Precedence: bulk  
From: cmbg@CCWF.CC.UTEXAS.EDU (Cynthia Bock-Goodner)  
To: cemnet@mcfeeley.cc.utexas.edu  
Subject: EB: Re: 1st Amendment  
Mime-Version: 1.0  
Content-Type: text/plain; charset="us-ascii"  
X-Sender: cmbg@mail.utexas.edu  
X-Listprocessor-Version: 7.2 -- ListProcessor by CREN

Sender: ebaker@oyez.law.upenn.edu (Ed Baker)  
Subject: Re: 1st Amendment

The dominant approach to the first amendment in the US courts has been some version of a market place of ideas theory. The U.S. Supreme Court explained in several decisions in the 1970s that the source of information in advertising did not take away its relevance to people's use in their trying to understand issues, including issues of consumption but also issues of politics, with which they were confronted. On this basis, the Court protected commercial speech. Since then the Court has upheld numerous restrictions, leading some to think that the protection is at best minimal.

Since the early 1970s, I have opposed the notion that commercial commercial speech should be protected at all by the Constitution. My primary arguments are developed in: Human Liberty and Freedom of Speech, ch. 9 (Oxford, 1989), also available in paperback. I also have a shorter (it was a maybe ten page speech), somewhat less scholarly summary of the six main arguments developed in legal literature against protecting commercial speech that I could send to anyone interested by E-mail.

While I am online, I might comment on some of the recent first amendment discussion on cemnet. There has been a suggestion that the first amendment primarily (or only) protects political speech. This is, I think, a disastorous view (I critique the Bork and Meiklejohn version of this in chapter 2 of the book noted above). It has little support in US Constitutional law or notions of freedom of expression internationally. Free

speech is most centrality an aspect of liberty that people use to come to  
terms with and to create their world - which in some broad sense of political

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(which I endorse) is inherently political. However, all people who have suggested the political speech focus have done it to sharply limit the category. For example, Justice Frankfurter (in a view also to a significant extent advocated Judge Bork) argued that the speech of communists in the United States about their ideology was not political speech but rather speech about law breaking which should count low on the priorities of protection.

Ed Baker, U of Penn Law School