

Remembering Cam DeVore

DAVID C. KOHLER

Being asked to reflect on someone's life is a daunting task. When that someone is a person as special as Cam DeVore was, the task becomes all the more formidable. Whatever I say will not be enough—it will never give a full picture of the man. So with that lawyer-like disclaimer, I'll try to say something that is worthy of the extraordinary person he was.

I start with the obvious. Cam was an incredibly accomplished lawyer—a leader of the national media bar, a builder of a successful and prestigious law firm, a pillar of the Seattle legal community. He handled or was integrally involved in any number of important media cases, including several before the U.S. Supreme Court. Many of us hired Cam and relied on his sage advice regularly. When engaged, he would work tirelessly on our behalf. I routinely arrived early in the morning at my office to find my voice-mail light already lit, and I knew there was a better than even chance that the message was from Cam—actually, it was more likely that there would be multiple messages, as Cam was pathologically incapable of finishing within the time allotted for a

single message by most of our voice-mail systems. And, of course, Cam was working on West Coast time whereas I was in the East.

Cam's ability to deliver exceptional legal services tells only a small part of the story—and for me it isn't even close to the most important part. He was more than a lawyer's lawyer to many of us—he was a mentor, a confidant, and a friend. But even if you weren't lucky enough to know Cam in these ways, I suggest that he likely has touched your life in a very personal way.

As members of the media bar, most of us would agree that we are incredibly lucky in what we get to do for a living. The work is interesting and challenging. Our clients may not always be right, but our cause is. And we work among the most collegial group of lawyers on the planet. This collegiality, which characterizes our bar, and which so enhances the quality of all our professional lives, is something for which Cam DeVore can fairly claim a good share of the credit. The organized media bar is a relatively recent phenomenon, having been conceived and nurtured by a select few—a short list of people whom I don't dare name for fear of leaving someone out, but Cam DeVore was chief among them. That our field has tended to attract people who like and respect each other—and treat each other well even when they

may disagree—is no accident. It was Cam DeVore, and others like him, who set the tone and who provided the model that we all strive to live up to. So even if you didn't know Cam personally, you have reason to be thankful that he was one of the first on the scene.

For those of us lucky enough to have known Cam well, our lives were enriched, and we will miss him so much. Personally, I will miss his unfailing cheerfulness and his infectious enthusiasm for everything he did in life. Whether it was rousting us out of bed to catch the first lift up the mountain (which of course didn't mean we could quit skiing early), extolling the virtues of yoga and step class, or savoring a good meal and a great bottle of wine, Cam threw himself into everything he did. He didn't hesitate. He committed. And for those of us lucky enough to have been pulled along in his wake—or perhaps more appropriately, his avalanche of fresh powder—our lives are the richer for it.

I recently attended Cam's memorial service in Seattle. Many nice things were said. One that particularly stood out for me was Bob Sack's simple, eloquent description. Cam, Bob observed, was just a lovely person. He was indeed that and so much more. We all miss you Cam, and you will always be with us in our memories. 

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Recollections of Cam DeVore, First Amendment Pioneer

BRUCE E. H. JOHNSON

As Judge Sack reminds us [page 20], Cam DeVore became a commercial speech pioneer purely by happenstance. In the early 1970s, a pioneering group of First Amendment lawyers led by Jim Goodale instituted the Practising Law Institute's annual Communications Law seminars. When topic areas were divided up among the PLI seminar's founders, Cam, with grace, accepted the commercial speech portfolio.

Commercial speech was, as it remains to a major extent, the "stepchild of First Amendment jurisprudence," according to Judge Alex Kozinski and Professor Stuart Banner in a 1990 law review article. "Liberals," they said, "don't much like commercial speech because it's commercial; conservatives mistrust it because it's speech." (As Kozinski and Banner noted in a 1993 article, the term "commercial speech" was a recent one. It had first appeared in a judicial opinion in 1971.)

At that time, the scope of First Amendment protections for commercial speech, Cam's chosen topic, did not offer much promise. The Supreme Court's holding in *Valentine v. Christensen* (1942) remained in place: the First Amendment, the Court held, imposed "no . . . restraint" on governmental restrictions on commercial advertising.

But Cam was a Montanan, born in Great Falls in 1932, and notwithstanding an education at such established institutions as Yale, Cambridge, and Harvard, probably still understood the important role of pioneers. Some lawyers who know Cam suggest that he

wanted to do commercial speech precisely because it was legal terra incognita. This is the same Cam DeVore, after all, who graduated from Harvard Law School in 1961 and then immediately headed to Seattle rather than an East Coast law practice. The analysis sounds accurate; I can hear some of Cam's voice when I read Huck Finn's comment: "But I reckon I got to light out for the Territory ahead of the rest . . ."

He leaped into the topic, and became not merely a casual commentator but also a nationally known advocate and legal evangelist. Cam quickly developed a consistent viewpoint about the inherent values of commercial speech and a vision of First Amendment policy which he pushed, in case after case, and which was eventually embraced by the U.S. Supreme Court. As a lawyer, he used every available forum to press these reforms, including a major treatise on commercial speech that he and Bob Sack co-authored in 1998.

One of Cam's earliest commercial speech cases, decided even before the Supreme Court's landmark decision in *Virginia Pharmacy Board v. Virginia Consumer Council* (1976), involved a Washington statute that made it unlawful to use any dairy terms in advertising margarine or other nondairy products. As a result of this peculiar rule, national margarine manufacturers had been forced to expunge all such references in any national advertising that was broadcast or published in Washington State.

In 1975, Cam persuaded the U.S. District Court in Seattle to toss out this restrictive law, with the court noting that, while the state could constitutionally restrict false or misleading advertising, the "proscriptions [of the statute] are so broad that even true, honest and nondeceiving comparative references to the dairy term 'butter' in informational advertisements . . . are made

criminal acts." (It was a sweet victory; two years earlier, in *State v. 28 Containers of Thick and Frosty*, Cam had failed to persuade the Washington Supreme Court that it was unconstitutional for the state to prohibit advertising a Bird's Eye high-protein drink as "thick and frosty," permitting dairy protectionist laws to limit such terminology to milk shakes.)

Cam spent the next two-plus decades deeply engaged with a series of U.S. Supreme Court cases that examined the scope of constitutional protections for commercial speech. He repeatedly urged the Court to develop a sensible and consistent commercial speech doctrine. Chapters in his treatise ("Age of Anxiety" and "Fits and Starts") aptly describe the Court's halting progress.

Cam was involved in several of these seminal cases, sometimes for the challenger (as in *Frank v. Minnesota Newspaper Association*, a 1989 decision concerning government attempts to crack down on news coverage and advertising about lotteries) but more often as attorney for media and advertising groups (as in *City of Cincinnati v. Discovery Network*, a 1993 case in which the Supreme Court struck down a municipal ban on commercial news racks, citing Cam's amicus argument) offering amicus briefs to the Court seeking to stabilize commercial speech law and promote free speech protections.

In each of his briefs, Cam remained true to the original consumer activism that had prompted the modern commercial speech doctrine, by stressing the liberty values inherent in consumer sovereignty and by attacking the paternalist view that government, not consumers, should determine what truthful commercial information Americans should be permitted to receive. Each November, lecturing at the PLI conference in New York, Cam summarized

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PROTECTION OF COMMERCIAL SPEECH

The amici brief on behalf of the petitioners in *Greater New Orleans Broadcasting Association v. United States* called upon the Supreme Court to prohibit “the Government’s paternalistic efforts to use public ignorance as a means of influencing citizens’ thoughts and behavior” through control of commercial speech. An excerpt appears below¹:

“[P]rotection for commercial speech [is] an important part of the marketplace of ideas, providing an unimpeded flow of truthful, nonmisleading speech about lawful products. The media are a major link between speakers (including advertisers and the businesses they represent) and their audience (consumers), and the First Amendment was intended to foster the interests of both. *Amici*, therefore, support First Amendment protection of truthful and nonmisleading commercial speech concerning lawful products, services, and activities[.] The ability of advertisers to disclose and consumers to receive information about such activities is instrumental to making fully informed decisions. Governmental restrictions on the public availability of that information . . . undermine not only the market for a particular product or service but also the discussion about public policy issues concerning that product or service.

“The continuing efforts of government at all levels—federal, state, and local—to advance social policy goals by suppressing speech and keeping citizens in ignorance demand constant vigilance, not only from the courts but from those individuals and organizations . . . who inform and educate the public and monitor First Amendment protections. Restrictions on truthful and nonmisleading advertising . . . are directly contrary to the theory of unfettered access to information on which our society is based. *Amici* urge the Court to provide unambiguous, prescriptive guidance to both the lower courts and governmental entities that will effectively prohibit the Government’s paternalistic efforts to use public ignorance as a means of influencing citizens’ thoughts and behavior.”

1. 525 U.S. 1097 (1999), Br. Amici Curiae in Support of Pet’rs.

the progress of the case law and urged the Court to strengthen constitutional protection for commercial speech.

Of course, some members of the Court remained resistant, with Justice Rehnquist pouring scorn (in his opinion in *Carey v. Population Services International*) on the notion that Union soldiers had died at Shiloh, Gettysburg, and Cold Harbor so that condom makers could “peddle” products to “unmarried minors” visiting “the men’s room of truck stops.” In a 1988 law review article, Cam reacted to Chief

Justice Rehnquist’s restrictive approach to commercial speech rights, gently noting that “it continues to be obvious to me” that his “opponents have the better argument” and pointing out that his 1986 *Posadas* opinion for the Court, which sought to undermine the developing consensus in favor of free speech, “cannot be squared with” existing precedent. Cam observed that *Posadas* reflected “a time of turbulence for commercial speech.”

By the mid-1990s, after a series of strengthening decisions, victory was

at hand, and Cam celebrated. As Cam noted in his treatise, strong pro-expression opinions such as *Rubin* and *44 Liquormart* (where he had participated as attorney for amici) showed that commercial speech protections were now “an integral part of First Amendment jurisprudence,” and he commented that the tone of judicial opinions had become “openhanded rather than grudging.” By 1999, with the unanimous *Greater New Orleans Broadcasting* case (again, with Cam acting as attorney for amici), this position solidified. It was confirmed in 2001 with the *Lorillard* ruling, in which Cam’s amicus brief urged the Court to strike down Massachusetts restrictions on tobacco advertising, because “no matter how justified the end, speech restrictions can be used, if ever, only as the regulatory tool of last resort.”

Cam was also involved in many lower court rulings testing application of the Court’s decisions establishing First Amendment protections for commercial speech, including cases such as *Association of National Advertisers, Inc. v. Lungren* (a 1992 federal district court case involving environmental advertising claims), and *Anheuser-Busch, Inc. v. Schmoke* (a 1996 Fourth Circuit case involving a prohibition on outdoor advertising by alcohol companies).

It is rare for a practicing lawyer to become intimately and consistently involved with the development of a major constitutional doctrine, especially over the course of three decades and involving many clients. Cam cheerfully embraced the unpromising topic choice he had been handed by his fellow

PLI participants and, despite the apparent lack of First Amendment case law confirming protections for commercial speech, made the subject his cause.

Even from the sidelines, with repeated briefs, lectures, and articles, and eventually with the Sack-DeVore treatise, Cam became a First Amendment pioneer, as he worked to cajole the courts into acceptance of ample constitutional protections for advertising and commercial speech. ☐

P. Cameron DeVore—“Such a lovely man”

ROBERT D. SACK

The Sack family met the DeVore clan in July 1972. We were on our way back from an Alaska vacation. Evan Schwab, with whom I was working on a now forgotten piece of litigation, thought I ought to meet Cam. It made sense. Cam was the lawyer for the *Seattle Times*; I represented the *Wall Street Journal*. We were in the same business. And all three families spent a lovely afternoon together on Vashon Island (if I've got my islands straight).

The following year, by pure happenstance, Cam and I were enlisted to speak at an inaugural seminar on media law being run by then-*New York Times* general counsel Jim Goodale and the Practising Law Institute in New York. The 36th annual incarnation of the event will be held next week. Cam would have been there. It was on my calendar: the two of us were going to have lunch together next Friday.

I did my thing in New York; Cam a California version of the same event. The topic assigned to us was the law of, primarily, constitutional protection for “Advertising and Commercial Speech.” Nice, we thought, but something of a booby prize. The governing law at the time was that there *was no* constitutional protection for commercial advertising. We joked that we got this “plum” assignment because I was the youngest participant—and he was the farthest away.

Then, though, the Supreme Court did the two of us a long string of favors. In the decade and more that followed, the Brethren and Sistren decided a series of cases establishing an extensive, if problematic, doctrine applying the First Amendment to advertising. Cam and I therefore continued to give updated

versions of the same lecture every year; we added to our program materials year by year, fueled by developments in the High Court. And about a dozen years ago, we incorporated all this into a treatise to establish the illusion of permanence.

Thus did we become experts, if by default, in a new field. But more important, thus did we—and our families—develop a friendship that lasted for both Cam and me half a lifetime.

An unusual friendship to be sure: he was in Seattle; I was in New York. With one exception, a week in and around Seattle and Lopez Island more than 25 years ago—think Ranier, ice caves, Suiattle River rafting (I've never been so cold in my life)—we spent no more than a widely separated few hours together at a time. Yet we became remarkably close.

Indeed, when Anne and I were married in San Francisco nearly twenty years ago, Cam was my best man. The choice wasn't hard: Cam was not *my* best man; he was *the* best man.

Scant hours after I heard the devastating news of Cam's death—as I was beginning the process of absorbing and assimilating the fact that he was gone—I received the first of several telephone calls from reporters writing about his life. I was bewildered. They persisted in asking me about his leadership of the bar, his great law firm, his community. What was his most important case? His most signal accomplishment? His standing amongst journalists and lawyers? Most difficult, they asked, “What on earth is ‘commercial speech?’”

Confused, I kept brushing off their questions. Instead, I repeated over and over, in one way and another, “He was such a lovely man.”

But then, in the few hours a year we had to spend in genuine conversation with one another, Cam and I had little time to talk of the law, or the bench, or even our beloved First Amendment. It was always about Bobbie, and about Jen and Andrew and Christopher. And about my children—Deb, Suzanne, and

David, who feel so close to the DeVores. Then about their husbands and wives. Later about our grandchildren. And always about our mutual friends and colleagues—in the firm he loved and took such pride in, and elsewhere. Where we had been; and whom we had seen. Occasionally, maybe a moment or two about, of all things, Shakespeare, Cam's all-around favorite playwright and poet. Typically—long before we got to talk of recent cases and controversies, the Constitution, of briefs written and clients represented—we parted. It would be months before we had the chance to pick up the thread of family and friends again.

A wonderful friendship between two lawyers. It has occurred to me many times in the last several days, though, that it was all the more remarkable for the fact that had I been, to coin a phrase, Bob the Builder and he Cam the Plumber, our friendship would have been no different. No less a privilege to be a part of.

Of course, I know the reporters had a job to do when they called. To write about Cam's stature, his career, his place in the world. But that wasn't what I was thinking when they called me. It's not what I'm thinking now.

Cam was unique, an extraordinary combination of complexity and simplicity. Cheerful, but with deep dark places. Relaxed, but thoroughly driven. The quintessential people-person, yet enchanted by ideas. Serious and funny. Urbane and countrified. A believer and a skeptic. But always, *always* dedicated to family and friends. Always loving. And always loved.

Our much beloved Bard might have been talking about Cam when he said, “His life was gentle, and the elements so mixed in him that Nature might stand up and say to all the world, ‘This was a man!’” And also when he said: “Take him for all and all, I shall not”—we shall not “look upon his like again.”

Thank you, Cam. Thank you all. 

The Hon. Robert D. Sack serves on the U.S. Court of Appeals for the Second Circuit. With P. Cameron DeVore, he wrote Advertising and Commercial Speech: A First Amendment Guide (1998). This tribute is based on Judge Sack's comments on November 6, 2008, at St. Mark's Cathedral in Seattle.