plaining speaker's own message was affected by the speech it was forced to accommodate." [1033] By contrast, the Court wrote, "Nothing about recruiting suggests that law schools agree with any speech by recruiters, and nothing in the Solomon Amendment restricts what the law schools may say about the military's policies." [1034] Finally, the Court found that the Solomon Amendment was not analogous to the New Jersey law that had required the Boy Scouts to accept a homosexual scoutmaster, and that the Supreme Court struck down as violating the Boy Scouts' "right of expressive association." [1035] Recruiters, unlike the scoutmaster, are "outsiders who come onto campus for the limited purpose of trying to hire students—not to become members of the school's expressive association." [1036]

Governmental Regulation of Communications Industries

As in the previous section, the governmental regulations here considered may have only the most indirect relation to freedom of expression, or may clearly implicate that freedom even though the purpose of the particular regulation is not to reach the content of the message. First, however, the judicially formulated doctrine distinguishing commercial expression from other forms is briefly considered.

Commercial Speech.—Starting in the 1970s, the Court's treatment of "commercial speech" underwent a transformation from total nonprotection under the First Amendment to qualified protection. The conclusion that a communication proposing a commercial transaction is a different order of speech underserving of First Amendment protection was arrived at almost casually in 1942 in *Valentine v. Chrestensen*.[1037] In *Chrestensen*, the Court upheld a city ordinance prohibiting distribution on the street of "commercial and business advertising matter," as applied to an exhibitor of a submarine who distributed leaflets describing his submarine on one side and on the other side protesting the city's refusal of certain docking facilities. The doctrine was in any event limited to promotion of commercial activities; the fact that expression was disseminated for profit or through commercial channels did not expose it to any greater

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[1033] 547 U.S. at 63.

[1034] 547 U.S. at 65.

[1035] 547 U.S. at 68, quoting Boy Scouts of America v. Dale, 530 U.S. 640, 644 (2000).

[1036] 547 U.S. at 69.

[1037] 316 U.S. 52 (1942). *See also* Breard v. City of Alexandria, 341 U.S. 622 (1951). The doctrine was one of the bases upon which the banning of all commercials for cigarettes from radio and television was upheld. Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582 (D.D.C. 1971) (three-judge court), *aff'd per curiam*, 405 U.S. 1000 (1972).