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Mass Media and the Transformation of American Politics

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MASS MEDIA AND THE TRANSFORMATION OF AMERICAN POLITICS

I. INTRODUCTION

The importance of the mass media[1] in today's society cannot be overestimated. Especially in the arena of policy-making, the media's influence has helped shape the development of American government. To more fully understand the political decision-making process in this country it is necessary to understand the media's role in the performance of political officials and institutions. The significance of the media's influence was expressed by Aleksandr Solzhenitsyn: "The Press has become the greatest power within Western countries, more powerful than the legislature, the executive, and the judiciary. One would then like to ask: By what law has it been elected and to whom is it responsible?"[2]

The importance of the media's power and influence can only be fully appreciated through a complete understanding of who or what the media are. The purpose of this Comment is to provide an analysis of the synergetic effect of the mass media in American politics. Part II of this Comment explores the economic interests and political ideologies that affect media corporations and personnel. Part III presents an overview of the predominant perception of the media in modern American society. Part III explores how the media are both responsible participants in the development of public policy as well as commercial forces in a competitive market. Part IV examines how the media define reality through their interpretation of issues and events. In addition, this section analyzes how various inherent aspects of the industry dictate news coverage and how different mediums affect an audience. Part V addresses the influence that the media have on the political agenda. The media's impact on both individual government officials and the decision-making process itself is also discussed. Finally, Part VI presents an overview of how the government manipulates the media through the use of deceptive tactics and authorized regulations.

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1. For purposes of this Comment, the term "media" signifies enterprises involved in reporting, printing, publishing, or broadcasting news. These entities consist of reporters, managers, editors, producers, and owners, each of whom influence the final product—information.

2. WILLIAM R. RIVERS, THE OTHER GOVERNMENT: POWER AND THE WASHINGTON MEDIA 7 (1982).

II. THE INTERESTS OF THE MEDIA

A. A Commercial Industry with Economic Interests

The industry of mass media is big business. Ownership of the primary mass media in this country is generally in the hands of giant corporate conglomerates that are engaged in various media and noncommunication business ventures.[3] The majority of national news coverage comes from only a few sources, known as the "Big Media," consisting of ABC, NBC, CBS, PBS, CNN, *The New York Times*, *The Washington Post* (which also publishes *Newsweek* magazine), *The Wall Street Journal*, Gannett (which publishes various papers, including *USA Today*), *Time* magazine, Associated Press (AP), and United Press International (UPI).[4] Most local newspapers receive national stories from the AP and UPI wire services.[5] Since the Big Media are widely considered to be the determining factor in what is given national attention, many stories are ignored by editors until they are covered by a member of the Big Media.[6]

Albeit subtly, the business interests of a media conglomerate often dictate its news coverage. In effect, broadcasters sell audiences to advertisers. National television advertisers consist of large corporations such as Philip Morris, Procter & Gamble, General Motors, Sears, and RJR Nabisco, who generally select politically conservative broadcasts.[7] Many

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3. The mass media are no longer owned and controlled by individual companies. Today, large corporations own the largest papers, networks, and stations. "The twenty-five biggest [newspaper] chains own 31 percent of all dailies and account for 52 percent of circulation." Walter Powell, *The Blockbuster Decades: The Media as Big Business*, *in* AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES 53, 55 (Donald Lazere ed., 1987). "The six largest [newspaper chains], Knight-Ridder, Newhouse, Chicago Tribune, Gannett, Scripps-Howard, and Times-Mirror, alone control more than a quarter of total circulation." *Id.* Regarding broadcast ownership, "Capital Cities/ABC controls three of the largest basic cable services (ESPN, with Nabisco; Arts and Entertainment, with Hearst and RCA; and Lifetime, with Hearst and Viacom)." JEFFREY B. ABRAMSON ET AL., THE ELECTRONIC COMMONWEALTH: THE IMPACT OF NEW MEDIA TECHNOLOGIES ON DEMOCRATIC POLITICS 281 (1988). NBC's parent company, RCA (which is owned by General Electric), controls large amounts of the satellite transponder space used to distribute cable signals and is part owner of the Arts and Entertainment cable network. *Id.* Turner Broadcasting owns the Cable News Network (CNN), the CNN Headline News Network, and Atlanta superstation WTBS. *Id.* Time-Warner Inc. owns American Television and Communications (the second-largest cable system), Home Box Office (HBO), Cinemax, and portions of the USA Network and Black Entertainment Television (BET). *Id.*

4. Steven Allen, *Introduction* to AND THAT'S THE WAY IT IS(N'T): A REFERENCE GUIDE TO MEDIA BIAS 1, 2 (L. Brent Bozell III & Brent H. Baker eds., 1990).

5. *Id.*

6. *Id.* at 2-3.

7. Edward Herman, *Media in the U.S. Political Economy*, *in* QUESTIONING THE MEDIA:

fear that the media companies will ignore the interests of their public audiences in order to attend to their stockholders.[8] This in turn forces editorial decisions to be ultimately based upon making a profit, rather than informing the public.

Many commentators are concerned that the wealthy and politically powerful of society dominate or monopolize dialogue. Critics contend that a class of "media elites," composed of owners, producers, and managers, has emerged to determine which messages reach the public.[9] Access to the media is essential to effectively communicate a political belief to a significant number of viewers, listeners, or readers. However, the present state of the mass media, consisting of a few large monopolies, makes it nearly impossible for unpopular views to be heard in the marketplace.

B. A Politically Biased Ideology

Bias in the news is often difficult to ascertain because journalists and editors are likely to claim that they are objective in reporting events. Entirely objective journalism is impossible because it requires reporters and editors to report issues and events wholly uninfluenced by values. Media personnel, however, are individuals with preconceptions and attitudes about the world they are reporting. In addition, economic concentration of the media results in private interests controlling the dissemination of information. One author points out that such concentration of control over the message has generated negative reactions from both the industry and the liberal and conservative sides of the political sphere.[10] Liberal commentators claim that big business hampers political diversity by advancing corporate interests.[11] They contend that the media cover only established views and conventional perspectives in order to uphold the status quo.[12]

A CRITICAL INTRODUCTION 75, 81 (John Downing et al. eds., 1990). Furthermore, advertisers provide approximately 75% of a newspaper's revenue, approximately 50% of a newsmagazine's revenue, and nearly 100% of a broadcaster's revenue. *Id.* at 80.

8. Powell, *supra* note 3, at 54.

9. *See id.* at 53-63.

10. *Id.* at 53-54.

11. *Id.*

12. One critic asserts that the purpose and function of the media is determined by its relationship with the government. JOHN C. MERRILL, THE IMPERATIVE OF FREEDOM: A PHILOSOPHY OF JOURNALISTIC AUTONOMY 23 (1974). He further claims that "[s]ince the total society is influenced most significantly by its political system, this means that journalism relates well to, or functions properly in, a society only if it is compatible with its political philosophy." *Id.*

On the other hand, this elite group of individuals is considered by many to favor the liberal perspective on political issues.[13] Conservatives claim that the concentration of corporate power has created a media that further the liberal cause by predominantly focusing on the negative aspects of society.[14] Former President George Bush often criticized the media for their liberal bias and their unfavorable focus on the Republican Party.[15]

In essence, the mass media appear committed to the presentation of mainstream political, economic, and cultural values. There are, of course, debates in this country centered on such values; however, these debates are typically among established groups arguing over the same values.[16] One commentator warned that the media are in "grave danger of becoming one vast, gray, bland, monotonous, conformist spokesman for some collectivity of society."[17] This situation is compounded by the fact that unpopular interests often lack the resources to be heard in the public marketplace.[18]

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13. *See* Donald Lazere, *Conservative Media Criticism: Heads I Win, Tails You Lose, in* AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES, *supra* note 3, at 81. According to the author, critics who assert a "liberal bias" in the media consider media personnel as "part of a powerful 'new class' or 'adversary culture' of intellectuals, artists, and professionals allegedly hostile to America and capitalism." *Id.* at 82. Lazere claims that conservatives use the media as scapegoats for their own shortcomings (e.g., Watergate, Vietnam) and states that the leftist perspective of the media is not biased, but "factual." *Id.* at 83. Furthermore, any "liberal bias" of the media is reflective of a "higher level of professionalism compared to earlier generations of journalists and producers." *Id.*

14. *See generally* Powell, *supra* note 3.

15. During his 1992 Republican Party nomination speech, President Bush said, "You don't hear much about this good news because the media also tends to focus only on the bad. And when the Berlin Wall fell, I half expected to see a headline: WALL FALLS, THREE BORDER GUARDS LOSE JOBS. And underneath, it probably says, CLINTON BLAMES BUSH." Christopher Hanson, *Media Bashing*, COLUM. JOURNALISM REV., Nov.-Dec. 1992, at 52, 53. For a conservative perspective of the media's liberal bias, see AND THAT'S THE WAY IT IS(N'T): A REFERENCE GUIDE TO MEDIA BIAS, *supra* note 4.

16. A study of *The Washington Post* and *The New York Times* concluded that, although the press may be skeptical of government action, the "news media keep their 'criticisms within the bounds of institutional debate.'" Sandra H. Dickson, *Press and U.S. Policy Toward Nicaragua, 1983-1987: A Study of the* New York Times *and* Washington Post, 69 JOURNALISM Q. 562, 570 (1992) (footnote omitted). A different agenda-setting study found that the media's purpose may be to provide a *limited* set of public issues around which political discussion revolves. Donald L. Shaw & Shannon E. Martin, *The Function of Mass Media Agenda Setting*, 69 JOURNALISM Q. 902, 902-03 (1992).

17. MERRILL, *supra* note 12, at 3. The author further stated that "[m]ost American journalists think they are free. Actually, they are giving up their freedom, adapting to institutionalism and professionalism, and demeaning their individuality and rational self-interest." *Id.* at 4.

18. One author has compiled various interviews, speeches, articles, and political documents to show that many legitimate alternative parties are completely ignored by the media.

III. The Role of the Media in Today's Society

A. *The Media as a Fourth Branch of Government*

Views of the media's role as presenters of values range from neutral transmitter to active participant.[19] However, a commonly held view is that the media were actually intended as one of the many checks against injustice. Supreme Court Justice Hugo Black remarked that "[t]he Government's power to censor the press was abolished so that the press would remain forever free to censure the Government."[20] Also, former United States Senator Robert Kasten said that "[t]he free flow of information ensures that our citizens are fully informed about the issues of the day . . . and it ensures that misrepresentation can be uncovered in the give and take of full and robust debate."[21] Under this view, the media theoretically serve as the eyes, the ears, and the conscience of the public. They can promote justice or cause injustice.

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[22] However, in many respects the original meaning attributed to this document is neither knowable nor relevant.[23] The complexity of the modern world has transformed the field of communication to an extent unimaginable to our forebears.

The debate continues, nonetheless, over the proper interpretation of "freedom of the press." One author, John C. Merrill, believes that the freedom of the press belongs solely to the press.[24] If freedom of the

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Jeffrey Gale, "Bullshit!" The Media as Power Brokers in Presidential Elections (1988).

19. Martin Linsky, Impact: How the Press Affects Federal Policymaking 13-14 (1986).

20. New York Times Co. v. United States, 403 U.S. 713, 717 (1971) (Black, J., concurring) (the Pentagon Papers case).

21. Robert Kasten, *Preface* to The Diversity Principle: Friend or Foe of the First Amendment? at ix (Craig R. Smith ed., 1989).

22. U.S. Const. amend. I.

23. Early in United States history, the media were considered a common component of the government. Linsky, *supra* note 19, at 5. Newspapers were official announcements of new legislative rulings during the late eighteenth century. *Id.* Furthermore, politicians such as Alexander Hamilton and Thomas Jefferson created the *Gazette of the United States* and the *National Gazette*, respectively, to proclaim their ideologies. *Id.* Arguably, such a press-government relationship is no longer deemed desirable or acceptable by most citizens.

24. Merrill, *supra* note 12, at 64.

press was intended to belong to the people, he asserts, then there would have been no need for a freedom of expression.[25] Furthermore, Merrill stresses that there is no mention of freedom of *access* to the press in the Constitution.[26] The author claims that "press freedom is related to, or restricted to, people, of course, but only those who might be considered *press people*."[27] However, another author believes the opposite:

> The truth about freedom of the press is that it stands for freedom of the people. . . . It is not a special right of cloistered virtue. . . . To deserve its freedom a press should strive daily to be reasonably responsible. . . . Freedom of the press is not a press freedom but a public freedom, a public possession and right, and in some ways its stoutest weapon.[28]

In this respect, the media also fulfill the public's right to know.[29] In *New York Times Co. v. Sullivan*,[30] the Supreme Court recognized that the primary purpose of the First Amendment was to protect and promote an "unfettered interchange of ideas for the bringing about of political and social changes."[31]

Given the significance of the media in our society, it is only natural that the media are considered by several commentators as a "fourth branch of government."[32] According to this view, the media have *at least* the same amount of power in setting public policy as do the executive, judicial, and legislative branches of the United States government. It could even be argued that the media have more power in setting the political agenda than the national government. This view is entertained,

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25. *Id.*

26. *Id.*

27. *Id.* at 65.

28. Norman Smith, *Freedom of the Press Is a Public Freedom, Not Just a Press Freedom*, SEMINAR Q., Sept. 1972, at 15, 21-22.

29. *But see* MERRILL, *supra* note 12, at 99-104. Merrill asserts that the American public wrongly assumes that they have a "right to know" what the government is doing. *Id.* at 99-101. He claims that the First Amendment ensures a free press, but does not place any obligations on the press. *Id.* at 101. Freedom of the press, therefore, is constricted by the notion of a "right to know" because the press is no longer free to *not* publish something. *Id.* at 107. The right is also problematic because the *press* determines what the public has a "right to know" about the government. *Id.* at 107-08. Furthermore, according to Merrill, if the public does have a right to know, that right should be fulfilled by the government. *Id.* at 103.

30. 376 U.S. 254 (1964).

31. *Id.* at 269 (quoting Roth v. United States, 354 U.S. 476, 484 (1957)). Justice Brennan, writing on behalf of a unanimous Court, stated that the First Amendment reflected the country's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.* at 270.

32. *See, e.g.*, Walter H. Annenberg, *The Fourth Branch of Government*, *in* IMPACT OF MASS MEDIA: CURRENT ISSUES 235 (Ray E. Hiebert & Carol Reuss eds., 2d ed. 1988).

in part, because the media have the power to directly contact the public, and furthermore, are protected by the First Amendment from responsibility for what they report.[33]

The media also are able to maintain respectable public debate and effectively check government abuses.[34] The fulfillment of such purposes has led many to believe that the media *should* be powerful.[35] However, most critics are quick to point out that the media should not be regarded as interveners in government issues, but rather as intermediaries between the government and its citizens.[36]

Regardless of the weight and meaning given to press freedom, it is essential to remember that the right to free speech and free press does not promote fairness. One scholar stated that the First Amendment does not demand press responsibility, and "the framers knew a partisan and scurrilous press, not a fair one."[37] Therefore, how those involved in reporting issues and events view themselves is an important factor in the news product. Many journalists believe that adversarial reporting is a necessity of the profession. Sam Donaldson of ABC News illustrates his concept of journalism:

> If you send me to cover a pie-baking contest on Mother's Day, I'm going to ask dear old Mom why she used artificial sweetener in violation of the rules, and while she's at it, could I see the receipt for the apples to prove that she didn't steal them. I maintain that if Mom has nothing to hide, no harm will have been done. But the questions should be asked. Too often, Mom, and presidents—behind those sweet faces—turn out to have stuffed a few rotten apples into the public barrel.[38]

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33. *Id.*

34. *But see* MERRILL, *supra* note 12, at 115-19. Merrill states that the press may at times perform the function of a check on government abuses, "but the concept of the whole press as being a 'fourth branch of government' is no more than a fine-sounding myth." *Id.* at 117. Furthermore, he asserts that the press cannot be the public's "watchdog" because the public does not own the media. *Id.* at 118.

35. One author remarked that "media power is not a curse but a blessing. The enduring foe . . . is [the] government. A powerful enemy merits a worthy foe. In this view, the press *should* be powerful because the purpose of press power is to curb the rising power of government." JEROME A. BARRON, PUBLIC RIGHTS AND THE PRIVATE PRESS 183 (1981). However, Barron stated that "more is to be feared from government than from the corporate media, but this does not mean that First Amendment theory cannot be made sufficiently eclectic to guard against abuse by the corporate media as well." *Id.* at 184.

36. Leonard R. Sussman, *Introduction* to MERRILL, *supra* note 12, at xii, xiv.

37. LUCAS A. POWE, JR., THE FOURTH ESTATE AND THE CONSTITUTION: FREEDOM OF THE PRESS IN AMERICA 278 (1991).

38. Jonathan Alter, *Newsman as Predator*, NEWSWEEK, Mar. 2, 1987, at 58, 59. *But see* MERRILL, *supra* note 12, at 118. Merrill points out that if the media view their relationship

B. The Media as Common Commercial Entities

It is well established that the media operate in the commercial realm. Thus, under the "marketplace" approach, market forces determine what is broadcast.[39] In order to be successful, the broadcaster must supply the consumer with goods of value.[40] According to one view, in order to survive in the commercial market, broadcasting should serve the interests of its audience.[41] Thus, satisfying the "public interest" often results in forgoing the ideals of diversity to accommodate the business demands of the industry.

Theoretically, a "marketplace of ideas" emerges within the commercial context. This theory asserts that truth can be discovered only through a process of conflicting views and public debate.[42] Therefore, free expression is justified because of its benefit to society. However, the theory breaks down when imposing social factors become too complex. Sophisticated communication advances the marketplace model, but unequal allocations of resources make it an unattainable ideal.

IV. The Media Define Reality

"If a tree falls in the forest, and the media are not there to cover it, has the tree really fallen?"[43] The preceding caption emphasizes the significance of experiencing the world through the eyes of the mass media. By deciding what is "news," the media create their own definition of

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with the government as adversarial, then the government has the right to view *its* relationship with the media as adversarial, as well. *Id.* This concept would allow the government to "preserve its secrets." *Id*; *see* Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 492 (1975) ("With respect to judicial proceedings . . . the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice.").

39. Richard R. Zaragoza et al., *The Public Interest Concept Transformed: The Trusteeship Model Gives Way to a Marketplace Approach*, *in* Public Interest and the Business of Broadcasting: The Broadcast Industry Looks at Itself 27, 30 (Jon T. Powell & Wally Gair eds., 1988). Under the marketplace approach, the right of the broadcaster to speak overrides the right of the public to be informed. *Id.*

40. *Id.*

41. *Introduction* to Public Interest and the Business of Broadcasting: The Broadcast Industry Looks at Itself, *supra* note 39, at 1. Unfortunately, determining just what serves the "public interest" is difficult, if not impossible. *See* Thomas C. Sawyer, *The Evolving Public Interest*, *in* Public Interest and the Business of Broadcasting: The Broadcast Industry Looks at Itself, *supra* note 39, at 77. Sawyer points out that public interest is composed of "many different values, interpretations, and objectives, depending upon one's prejudices, goals, and predispositions." *Id.*

42. Zaragoza et al., *supra* note 39, at 31.

43. Gary R. Orren, *Preface* to Linsky, *supra* note 19, at 1 (caption from a *Saturday Review* cartoon).

"reality" for the public.[44]

A. *Inherent Aspects of the Industry Dictate How Issues and Events Are Covered*

Since the media could not possibly present all information to the public, the media select what the public will know. The media must necessarily determine which issues and events are considered important and how they will be presented to the public. More important, however, the media determine what is *not* considered newsworthy.[45] Therefore, the dissemination of information is determined by what the media elite leave *out* of a news story.

Many factors affect what is broadcasted to the public.[46] Foremost, an issue receives media attention by being "newsworthy."[47] The criteria for newsworthiness are "sensation, conflict, mystery, celebrity, deviance, tragedy, and proximity."[48] However, to receive mass media attention, an issue must also be timely.[49] In that sense, "[t]he mass media's need for constantly new information partially explains why it is so unusual for a public issue to stay on the evening news and on the front page for very long."[50] In fact, an issue usually stays on the media agenda for less than a month.[51] Also, the format requirements of the particular medium,

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44. *See* THE MANUFACTURE OF NEWS: SOCIAL PROBLEMS, DEVIANCE, AND THE MASS MEDIA 27 (Stanley Cohen & Jock Young eds., 1981). A study that focused on the media's creation of "crime waves" concluded that "[n]ews is constructed reality, . . . a product which is pre-constituted by the powerful." *Id.*

45. To illustrate this point, a study of presidential speeches during a 10-year period discovered that only eight percent of the broadcast coverage actually included the president speaking. Maxwell E. McCombs, *Explorers and Surveyors: Expanding Strategies for Agenda-Setting Research*, 69 JOURNALISM Q. 813, 819 (1992).

46. *See* Sawyer, *supra* note 41. Sawyer points out that:

> [W]hile many of us have the luxury of speculating about what influences the public interest and what it *should* be, there are several thousand people who help define it in everyday practice—the broadcasters, their managers, programmers, newspersons, and others. They are at the center of all the influences—government regulations, the public interest, local needs, economic success, the ratings, individual audience member's complaints and compliments, and so on. Here lies one of our system's greatest strengths. Each broadcaster must assess all these influences and set priorities in terms of the locale in which he or she operates.

Id. at 80-81.

47. Everett M. Rogers et al., *AIDS in the 1980s: The Agenda-Setting Process for a Public Issue*, JOURNALISM MONOGRAPHS, Apr. 1991, at 1, 2.

48. *Id.* (footnote omitted).

49. *Id.*

50. *Id.*

51. *Id.*

namely time and space, dictate what becomes the news.[52]

Journalists recognize that they are forced to interpret the facts of a story and inform the public based upon that interpretation.[53] Journalists are also pressured for speed and brevity in reporting.[54] Consequently, reporters often trivialize the issues, events, and people they cover. Complex legal arguments and technical debates compound the inherent difficulties associated with accurate coverage of a political issue. As a result, the media often oversimplify the issue.

Although mass media provide the necessary elements for the presentation of assorted views, they do not ensure equal participation. The sources from which the media get their news have perhaps the greatest impact on the news item. A study based on 2850 articles in *The New York Times* and *The Washington Post* showed "that 46% [of media sources] originated with United States federal government officials or agencies and 78% with government officials in general, domestic or foreign."[55] The point of origin of a story may connote that the media merely reflect the views of another significant power interest, most often

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52. RICHARD V. ERICSON ET AL., REPRESENTING ORDER: CRIME, LAW AND JUSTICE IN THE NEWS MEDIA 21 (1991). The authors stress that "[c]ontent must always fit the format, and it is therefore always secondary to the format." *Id.*

53. CHARLES PRESS & KENNETH VERBURG, AMERICAN POLITICANS AND JOURNALISTS 2 (1988). While covering wars, journalists have the most difficulty reporting events objectively. Understandably, they tend to portray the news in a light most favorable to their own country's interests. Tamar Liebes, *Our War/Their War: Comparing the* Intifadeh *and the Gulf War on U.S. and Israeli Television*, CRITICAL STUDIES IN MASS COMMUNICATION, Mar. 1992, 44, 44-55. According to the author, American journalists' portrayal of the Gulf War depersonalized the Iraqis, sanitized the suffering of victims, and demonized Saddam Hussein. *Id.* at 48-53. On the other hand, coverage of a foreign war, the Palestinian *intifadeh*, was reported with less bias toward a particular side. *Id.* at 50.

54. A report in the evening news is typically only one minute and 15 seconds long—about 100 to 120 words. PRESS & VERBURG, *supra* note 53, at 79.

55. Herman, *supra* note 7, at 77; *see also* Jeane Kirkpatrick, *Foreword* to AND THAT'S THE WAY IT IS(N'T): A REFERENCE GUIDE TO MEDIA BIAS, *supra* note 4, at xi, xv. Kirkpatrick points out the ramifications of the media's pool of sources:

> I think that a kind of self-indulgence has arisen in our media along with the concentration of media power, and that the self-indulgence relates especially to the use of anonymous informants—"highly placed sources," "officials," "well-informed persons," "diplomats," "State Department officials,"—all those anonymous categories of people whom we read quoted day in and day out. They are not accountable for the accuracy or inaccuracy of what they say either, but somehow the cumulative impact of the accounts of all of these very self-interested, anonymous persons is very large, shaping the conception of political reality, which in turn shapes the responses of American voters.

Id. Furthermore, one author points out that approximately 63% to 76% of executive branch members are concerned with "leaks" of information, while 37% to 52% of congressional leaders regularly leak information. LINSKY, *supra* note 19, at 136.

the government.[56]

The final editing phase of the reporting process can have considerable influence on news coverage. Although the individual reporter has considerable control over the news story, former Federal Communications Commissioner Nicholas Johnson has illustrated the process of editorial influence over the journalist:

> The story is told of a reporter who first comes up with an investigative story idea, writes it up and submits it to the editor and is told the story is not going to run. He wonders why, but the next time he is cautious enough to check with the editor first. He is told by the editor that it would be better not to write that story. The third time he thinks of an investigative story idea but doesn't bother the editor with it because he knows it's silly. The fourth time he doesn't even think of the idea anymore.[57]

B. The Media's Effect on Their Audience

As with most communication, it is difficult, if not impossible, to determine which words and what sources have the greatest effect. One commentator asserts that "[p]eople bring to their encounters with the mass media a formidable array of established habits, motives, social values and perceptual defenses that screen out, derail the intent or limit the force of media messages."[58]

Many believe that the media are *not* that influential. One author takes the position that the media do not determine political development, but instead merely *reflect* the nation's growth.[59] Others have argued that the media are not dangerously influential. Former CBS television commentator Eric Sevareid stated:

> I have never quite grasped the worry about the power of the press. After all, it speaks with a thousand voices, in constant dissonance. It has no power to arrest you, draft you, tax you, or even make you fill out a form, except a subscription form if you're agreeable. It is the power of government that has in-

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56. *See infra* notes 141-50 and accompanying text.

57. Mark Schulman, *Control Mechanisms Inside the Media*, *in* QUESTIONING THE MEDIA: A CRITICAL INTRODUCTION, *supra* note 7, at 113, 117 (citation omitted). In essence, the journalist adopts the ideology of those in power. *Id.* Furthermore, "institutional practices in the media constrain a worker's imaginative impulses by exerting controls that encourage conformity." *Id.* at 119.

58. Albert E. Gollin, *Media Power: On Closer Inspection, It's Not That Threatening*, *in* IMPACT OF MASS MEDIA: CURRENT ISSUES, *supra* note 32, at 41, 43.

59. MERRILL, *supra* note 12, at 53. In the alternative, Merrill argues that the media may function *simultaneously* with other social forces to bring about change. *Id.*

> creased. Politicians have come to power in many countries and put press people in jail. I can't think of any place where the reverse has occurred.[60]

Although some studies conclude that the media can change people's attitudes, other research questions this notion. Instead, many consider the media to be most effective when they reinforce rather than challenge established views.[61] Bernard Cohen, in a much quoted statement, asserted that:

> [The press] may not be successful much of the time in telling people *what to think*, but it is stunningly successful in telling its readers what to think *about* . . . . the world looks different to different people, depending . . . on the map that is drawn for them by the writers, editors, and publishers of the papers they read.[62]

Nonetheless, it is strongly held that "[i]nfluence or power over the decisions of others is a function of one's ability to manage their intake of information."[63] As a result, it is suggested that the media possess the power to both shape what and how the masses think.[64]

In assessing the effect of the media upon justice, the context and format of the news are even more important than the amount of space allocated to the issue.[65] The *type* of news can be relevant with regard to its effect on the recipient of that news. Different qualities of communication affect how information is perceived.[66] Economist Harold Innis stated that "the materials on which words were written down have often counted for more than the words themselves."[67] Technological advances in communications, such as storage and accessibility of information, effi-

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60. PRESS & VERBURG, *supra* note 53, at 61.

61. *See* William C. Canby, Jr., *The First Amendment Right to Persuade: Access to Radio and Television*, 19 UCLA L. REV. 723, 739-41 (1972).

62. BERNARD C. COHEN, THE PRESS AND FOREIGN POLICY 13 (1963) (first emphasis added).

63. OSCAR H. GANDY, JR., BEYOND AGENDA SETTING: INFORMATION SUBSIDIES AND PUBLIC POLICY 198 (1982). Gandy further argues that "[c]orporate, political, and bureaucratic sources have greater resources and greater incentives to utilize information subsidies in the production of influence over public-policy decisions. Citizen consumers are greatly disadvantaged, and changes in the technology of communication promise to exacerbate the problems." *Id.* at 199.

64. McCombs, *supra* note 45, at 820.

65. ERICSON ET AL., *supra* note 52, at 21. The authors point out that "[t]he news reality of each medium is a matter of *how* it presents knowledge in its established formats, rather than of *what* it presents." *Id.*

66. M. ETHAN KATSH, THE ELECTRONIC MEDIA AND THE TRANSFORMATION OF LAW 12 (1989).

67. DAVID RIESMAN, THE ORAL TRADITION, THE WRITTEN WORD AND THE SCREEN IMAGE 12-13 (1956).

ciency and ease of use, and visual and audio imaging, affect the audience independently of the content being communicated.[68] The *modes* of communication "influence our individual thoughts and actions, and shape the organization, operation, and perception of our institutions as well."[69] One study concluded that the following have a tremendous impact on public opinion about foreign policy: (1) news commentary from anchorpersons, reporters, and editorial critics; (2) news from experts or research studies; and (3) news from the opposition party.[70] Also, various studies have suggested that an individual's assessment of media credibility is based upon whether the person has been personally involved in the reported issue.[71]

C. *The Medium Is the Message*

William T. Coleman, Jr., Secretary of Transportation during the Ford Administration, asserted that the government and the literate public are best served by the print medium, as opposed to other mediums.[72] Television, however, is our most prevalent communication medium.[73] Some would even argue that television is the most important medium.[74] Television is, in fact, the main source of information for the majority of the

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68. KATSH, *supra* note 66, at 21-22.

69. *Id.* at 12.

70. Donald L. Jordan & Benjamin I. Page, *Shaping Foreign Policy Opinions: The Role of TV News*, 36 J. CONFLICT RESOL. 227, 234 (1992). Furthermore, popular presidents have a significant impact on public opinion, whereas unpopular presidents have practically no effect. *Id.* at 235.

71. Albert L. Gunther, *Biased Press or Biased Public?: Attitudes Toward Media Coverage of Social Groups*, 56 PUB. OPINION Q. 147, 150 (1992). An individual involved with a social group that receives considerable media attention (i.e., Democratic or Republican groups) scrutinizes the media more closely and is more skeptical of the source of the story. *Id.* at 161.

72. William T. Coleman, Jr., *A Free Press: The Need to Ensure an Unfettered Check on Democratic Government Between Elections*, 59 TUL. L. REV. 243, 244 (1984). According to Coleman, the press educates public officials, provides for a channel of information between the branches of government and the federal agencies, and allows for a system of checks and balances among the branches. *Id.* at 252.

73. There are more than 1300 television stations in this country. THE DIVERSITY PRINCIPLE: FRIEND OR FOE OF THE FIRST AMENDMENT?, *supra* note 21, at 51. Two-thirds of all homes have access to cable and 95% of all homes receive five or more television stations. *Id.* It also appears that local television news is increasing in market size and in viewer credibility. *See* John McManus, *How Objective Is Local Television News?*, 18 MASS COMM. REV. 21, 21 (1991). Local broadcasting provides special service programs to its audience, and thus, may best satisfy the public interest. *See* Edward O. Fritts, *Broadcasters and the Public Interest*, *in* PUBLIC INTEREST AND THE BUSINESS OF BROADCASTING: THE BROADCAST INDUSTRY LOOKS AT ITSELF, *supra* note 39, at 53-55.

74. Larry King of CNN's *Larry King Live* stated that "[t]elevision is the most important media in the world." Christopher Lydon, *A Walk Through the Garden*, COLUM. JOURNALISM REV., Sept.-Oct. 1992, at 9, 13.

public.[75] The U.S. Supreme Court has characterized the electronic mediums of television and radio as comprising a "uniquely pervasive presence" in our society.[76] This may suggest that the public views radio and television as more powerful than the print medium.[77] Surveys conducted in the United States, Great Britain, and Canada show that the public finds news on television more believable, unbiased, and influential than the news from radio or newspaper.[78]

The significant distinctions between television and newspaper coverage stem from the fundamental differences in the broadcast and print media. Electronic forms of communication, such as television and radio broadcasts, differ from other conventional forms of communication by the speed in which information can be transmitted, reproduced, or revised.[79] Newspapers attract the public based on the news itself. Television news, however, is less pivotal to the network's operation. Since ratings competitions[80] pressure producers, editors, and reporters, entertainment is a central focus of network television news.[81]

Furthermore, criticism from the public that the media are too biased has forced networks to focus on entertaining, rather than educating,

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75. The average high school graduate has spent approximately 12,000 hours in class and about 15,000 hours watching television. *Introduction* to IMPACT OF MASS MEDIA: CURRENT ISSUES, *supra* note 32, at 1, 3; *see* LINSKY, *supra* note 19, at 10 (stating that the media is the main, if not only, source of the public's information about the government).

76. FCC v. Pacifica Found., 438 U.S. 726, 748 (1978).

77. LUCAS A. POWE, JR., AMERICAN BROADCASTING AND THE FIRST AMENDMENT 211-12 (1987).

78. ERICSON ET AL., *supra* note 52, at 24. *But see* Joseph W. Ostrow, *A No Fault Perspective on Public Interest*, *in* PUBLIC INTEREST AND THE BUSINESS OF BROADCASTING: THE BROADCAST INDUSTRY LOOKS AT ITSELF, *supra* note 39, at 163, 165 (stating that television does not influence society, but merely "mirrors" what society is and what it is becoming).

79. KATSH, *supra* note 66, at 21.

80. "Each television rating point represents 1.4 million viewers and is worth $30 million in annual advertising revenues." PRESS & VERBURG, *supra* note 53, at 42.

81. *See* Arthur C. Nielsen, Jr., *Television Ratings and the Public Interest*, *in* PUBLIC INTEREST AND THE BUSINESS OF BROADCASTING: THE BROADCAST INDUSTRY LOOKS AT ITSELF, *supra* note 39, at 61, 62. Nielsen, chief executive officer of the A.C. Nielsen Company, stated that the Nielsen ratings were not intended to be used by broadcasters as a programming determiner. *Id.* at 62. However, in order to sell an audience to advertisers, the broadcaster must satisfy the public. *Id.* Nielsen further asserted:

> I believe that the system of broadcasting that has evolved here in the United States is the best for us. It is based upon the democratic principle of free choice that is so fundamental to our way of life. With the help of ratings, broadcasters know what we find most appealing and desire to view. Broadcasters have every incentive to please the public. Each of us votes every day by the simple process of turning our dials. What could be more democratic?

Id. at 63.

their audience.[82] As a result, television coverage of government issues is limited to issues best covered within the commercial context of the medium.[83] Television has the unique ability to portray events with realism and drama.[84] One study found that a person's concept of social reality is influenced by the amount of time spent watching television.[85]

Cable technology has changed broadcasting by removing the restraint of a limited airwave spectrum. Thus, cable may ultimately provide the means for diverse communication in this country.[86] CNN's *World Report*,[87] for example, offers unedited news stories contributed by broadcasters from other countries.[88] Unlike the coverage of international events by networks in the United States, these stories are reported from the perspectives of journalists from the country of origin.[89] Although *World Report* avoids prejudicial coverage by American jour-

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82. Carl S. Stepp, *Access in a Post-Social Responsibility Age*, *in* DEMOCRACY AND THE MASS MEDIA 186, 192-93 (Judith Lichtenberg ed., 1990). Stepp cites a Gallup study in which 53% of respondents said media "favor one side," and 45% stated that the media are "politically biased in their reporting." *Id.* at 192 (citing *The People and the Press*, TIMES MIRROR 28-30 (1986)).

83. *See* Judith Lichtenberg, *Foundations and Limits of Freedom of the Press*, *in* DEMOCRACY AND THE MASS MEDIA, *supra* note 82, at 102, 123 (asserting that although the networks compete, their main objective is to survive, resulting in nondiverse programming).

84. *See* Donald Lazere, *Introduction: Entertainment as Social Control*, *in* AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES, *supra* note 3, at 1-23. The author claims that "[f]or the television generation, the lines have become blurred between reality and make-believe, between news, drama, and advertising." *Id.* at 11; *see also* Kirkpatrick, *supra* note 55, at xi. Kirkpatrick, a former United States Ambassador to the United Nations, stated that "[w]ith the rise of electronic media, the possibility of deliberate manipulation of culture has been magnified ten zillion fold." *Id.* at xii. She further asserted that "[t]he electronic media are many times more useful because they manipulate images as well as ideas. Images are very easily manipulated—pictures speak a thousand words and all that. People are more readily manipulated through images than just with words." *Id.* at xiii.

85. George Gerbner, *Introduction* to SUSANNA BARBER, NEWS CAMERAS IN THE COURTROOM: A FREE PRESS-FAIR TRIAL DEBATE at xii, xiv (1987). Persons who rely on the image of reality presented by television tend to blame the court system for crime and approve of various violations of due process, including the use of illegally obtained evidence. *Id.*

86. One commentator has stated, however, that if cable is to become a unique form of communication, the ownership of cable should be kept separate from broadcast ownership. BARRON, *supra* note 35, at 180.

87. Since CNN's *World Report* began in October 1987, 7000 news items from 120 countries have been distributed over the network. Charles Ganzert & Don M. Flournoy, *The Weekly "World Report" on CNN, An Analysis*, 69 JOURNALISM Q. 188, 188 (1992). The program is viewed in more than 50 million households and approximately 100 countries. *Id.* at 190.

88. Turner Broadcasting guarantees that all stories submitted will be broadcast as long as they are no longer than three minutes and are narrated in English. *Id.* at 188.

89. One reason *World Report* was created was in response to criticism by developing countries that the United States news media presented a biased perspective of their countries. *Id.* at 189.

nalists, it does not avoid biased reporting by foreign journalists.[90]

Public access channels may provide an additional means of communication for local government or education, and they are also free of charge. Unfortunately, public access channels are ineffective forums in which to present views to a large, diverse audience.

Generally, interactive communication is considered superior to the one-way communication of most mediums. This preference for an exchange of information and ideas is exemplified by the advent of talk or news format radio shows. Talk radio is increasing in the number of programs and listeners.[91] Commenting on the success of talk radio, radio personality Rush Limbaugh[92] remarked that "[i]t is the portion of the media that the people trust the most."[93] Many contend that talk radio reflects the diversity of society.[94]

According to the politically conservative view, talk radio reflects the "grass-roots" segment of society.[95] Often the subjects range from traffic congestion and the local sports team to proposed tax increases and government inefficiency. Depending upon the topic, listener call-in shows can rouse the hostility of an audience. However, evidence suggests that the influence of talk radio is overestimated.[96] Furthermore, the same problems that affect objective network broadcasting, namely ratings competitions and the necessity of entertainment, have impacted talk radio.[97] These considerations question the appropriateness of the talk radio format for the political development of the country.

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90. The majority of stories reported on *World Report* were conveyed from a positive point of view. Even while covering disastrous events, the emphasis was on positive resolutions of the crisis, making the reports, at times, little more than tourism advertisements. *Id.* at 194.

91. Out of the 75 top markets in the country in 1990, news or talk radio ranked second behind the Adult Contemporary music format and in front of the Top 40 programs. Mike Hoyt, *Talk Radio: Turning up the Volume*, COLUM. JOURNALISM REV., Nov.-Dec. 1992, at 45, 46. There are approximately 850 all-talk or news-talk stations in the United States. *Id.*

92. Rush Limbaugh's syndicated radio show is carried on approximately 500 stations. *Id.* Limbaugh's audience is approximately 15 million people. Howard Fineman, *The Power of Talk*, NEWSWEEK, Feb. 8, 1993, at 24, 26.

93. Hoyt, *supra* note 91, at 45.

94. However, many critics assert that the audience is "older and slightly better off than the average citizen." *Id.* at 50.

95. Fineman, *supra* note 92, at 27.

96. Approximately only two or three percent of radio show audiences ever call in to express their views. *Id.* Rush Limbaugh further states that "[t]alk shows didn't get rid of Zoe Baird [Attorney General nominee]. She got rid of herself." *Id.* at 28.

97. *Id.*

V. MEDIA INFLUENCE ON POLITICS

Because of various social and personal variables, it is difficult to gain precise insight into the extent of the media's impact on national development.[98] However, according to one critic, the media have as much power and incentive as the government to manipulate public debate.[99] "Terror comes in many forms. The powers of the FCC and CBS differ—one regulates whereas the other edits—but there is no reason to assume that one kind of power will be more inhibiting or limiting of public debate than the other."[100] Journalists influence government policy-making in the following ways: (1) by creating the reality in which government leaders act, (2) by playing the role of public opinion representatives, (3) by giving attention to particular issues, and (4) by acting as a link between governmental bureaucracies.[101] Some journalists will even admit that they are "active participants in the political process itself."[102]

A. Media Effect on the Political Process

News stories can have political consequences for the policy-making *process*.[103] By deciding which issues and events gain coverage, editors and producers inadvertently affect the workings of our political institutions.[104] At no time is this more apparent than during the election of a President. Commenting on the incredible power of the media during the campaign process, Larry King said, "You still wouldn't a heard of Bill Clinton! Bill Clinton is a product of television."[105] Furthermore, "[t]elevision encourages a public-relations style of politicking—exploit-

98. One critic, Rowland Evans, stated that the influence of the media is "so intangible, so difficult to define, that it is like catching grains of dust in a sunbeam." LINSKY, *supra* note 19, at 20 (footnote omitted).

99. Owen M. Fiss, *Why the State?*, *in* DEMOCRACY AND THE MASS MEDIA, *supra* note 82, at 136, 142. Fiss claims that "owners and managers of the media [could] use their power to protect themselves," as well as the government officials who favor their interests. *Id.*

100. *Id.* at 142-43.

101. ROBERT E. DRECHSEL, NEWS MAKING IN THE TRIAL COURTS 14 (1983).

102. PRESS & VERBURG, *supra* note 53, at 4. Many journalists cover politics in a way that will most enhance their professional career—by getting a good or exclusive story. *Id.* at 15. However, most politicians recognize the influence of the press. Often, a politician actively seeks out the journalist to help bolster his or her career. *Id.* at 5.

103. Many commentators believe that the media assist in setting the political agenda for the public and government officials. *See* Dickson, *supra* note 16, at 562. Dickson's study of various newspaper stories led her to conclude that media portrayal of a country or government policy can influence the perceptions of legislators and the public. If the coverage is distorted, negative stereotypes may be formed that, in turn, affect United States foreign policy.

104. ABRAMSON ET AL., *supra* note 3, at 158.

105. Lydon, *supra* note 74, at 13.

ing the presidential personality and creating other gimmicks and stunts."[106]

It is not always apparent whether the media are influencing the public or vice versa. Nonetheless, many political leaders recognize that the media can encourage public opinion about certain issues.[107] That perception, in turn, can affect how public officials view the media and how they approach highly publicized issues.

C-SPAN provides an example of how the media can influence the political process. C-SPAN began as a public service by the cable television industry to provide coverage of the House of Representatives floor sessions.[108] When C-SPAN is not covering House sessions, it broadcasts committee hearings, important political events, call-in shows with government officials, newspaper and magazine editorial board meetings, and meetings of political organizations and interest groups.[109]

C-SPAN coverage has had an obvious effect on Congress. Since the implementation of C-SPAN coverage, members of Congress have offered more amendments in meetings and made more speeches.[110] One critic, Dean Rusk, believes that television coverage of Congress has had

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106. PRESS & VERBURG, *supra* note 53, at 200. The authors suggest that the public has come to expect political leaders to be entertaining as well as effective. *Id.* at 200-01. This is, in part, due to the media's emphasis on images and personalities of politicians instead of portraying reality. *Id.* at 201.

107. Many critics believe that the media have become an essential, albeit negative, component in the presidential election process. *See, e.g.*, *Introduction* to AND THAT'S THE WAY IT IS(N'T): A REFERENCE GUIDE TO MEDIA BIAS, *supra* note 4, at 8. According to one point of view, the media greatly influence the political campaign process:

> By exercising control over the nation's agenda—picking and choosing which issues are fit for public debate, which news is "fit to print"—the news media can greatly influence the political direction of the country. They can ignore or ridicule some ideas and promote others. They can wreck a politician's career by taking a quote or two out of context or by spotlighting a weakness in his background. They can make winners look like losers and vice versa, knowing that, in the political world, appearance easily supplants reality.

Id.

108. ABRAMSON ET AL., *supra* note 3, at 142. The Senate is now covered on C-SPAN II. *Id.* While the network remains a not-for-profit cooperative, its programming budget has grown to $6 million. *Id.* at 143. Although its effect on policy is not readily determinable, the authors contend that President Reagan watched C-SPAN. *Id.* at 145.

109. *Id.* at 143. Incidentally, 98% of C-SPAN viewers voted in the 1992 presidential election. Fineman, *supra* note 92, at 24, 26. Unfortunately, for every exciting Anita Hill-Clarence Thomas-style committee hearing, there are 200 uninteresting ones. Still, it is a valuable service for those interested in viewing unedited coverage of congressional debates.

110. PRESS & VERBURG, *supra* note 53, at 225. The authors also noted that members have become more conscientious of their image, which was manifested in colorful dressing, more makeup, blow-dried hair, and attempts at deepening their voices. *Id.*

a negative impact on the quality of the dialogue between government officials.[111] He stated that "[w]hen the television cameras are there . . . half of the [Senators] had pancake makeup on, all ready for the show. And that kind of a scene is not a real exchange. . . . They're talking over each other's heads to a wider audience."[112] Furthermore, coverage can increase pressure for faster action. This can increase government expediency, but it can also magnify the risk of mistakes by policy-makers.[113]

B. Media Effect on the Legislative and Executive Agenda

Government officials need information, regardless of the form or the source, to make important decisions.[114] Arguably, issues and events that are made public have a greater potential for influencing public policy. Therefore, it is reasonable that the majority of coverage is of the President. Whenever the networks cover the President making a speech or holding a press conference, they usually follow with commentaries explaining what the President said.[115] The media address the issues that they deem most important, explain what the words actually mean, and what the counter arguments are.[116]

Although a substantial amount of media coverage is of the executive branch, legislative policy-making is a complicated operation with numerous occasions for media influence.[117] According to a survey of senior federal policy-makers, ninety-six percent said the media have an effect on federal policy, and over half considered the influence to be substantial.[118] Former Secretary of Transportation William T. Coleman, Jr. as-

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111. LINSKY, *supra* note 19, at 64.

112. *Id.*

113. *See id.* at 10-11. Linsky claims that by reducing the time in which government leaders can respond to issues, the media have contributed to political risk-taking and mistakes. *Id.*

114. To a great extent, government officials must depend on the media for information about issues regarding policy decisions. RIVERS, *supra* note 2, at 11. Because presidents are insulated from their administrations, they must rely on the media for significant information. *Id.* at 12. "Many believe that the fall of Richard Nixon was foreordained by his hatred of and isolation from the media." *Id.* One author even contends that information, itself, does not influence public policy. Instead, "[m]oney and power drive this system and information merely guides the way. [Decision-makers] in the policy system use information to develop policies that will ensure more votes, greater security, higher profits, and the maximum utility attainable within the limits of their resources." GANDY, *supra* note 63, at 48.

115. Annenberg, *supra* note 32, at 236.

116. *Id.*

117. GANDY, *supra* note 63, at 37.

118. LINSKY, *supra* note 19, at 69. The federal policy makers interviewed were Howard Baker, Robert Ball, Richard Bolling, Zbigniew Brzezinski, Arthur Burns, Joseph Califano, Clark Clifford, Wilbur Cohen, Stuart Eizenstat, Gerald Ford, John Gardner, Phillip Hughes, Henry Kissinger, Melvin Laird, Russell Long, Robert McNamara, Wilbur Mills, Richard

serted that he relied upon the information from the press when considering recommendations from within and without the Department.[119]

The media have their greatest impact at the earliest stages of the policy-making process.[120] Government officials generally believe that the media influence how the policy agenda is set by initiating stories *before* it has been determined which issues will be addressed.[121] Policy-makers often turn to the network news as a means of determining what the public is learning.[122]

Aside from determining which issues get placed on the political agenda, media coverage can affect whether policies get adopted and implemented.[123] Obviously, positive coverage can increase the chances for attaining policy acceptance by other officials and the general public.[124] Negative media reporting on a policy, however, often forces the policy-makers to reassess and reshape their options.[125] Unfortunately, as many journalists will admit, good news is not news.[126] Since most news coverage of political issues and events is skeptical, government policy-makers become constantly aware of how their issues will be reported. This, in turn, can affect how a proposal is presented.

Apart from its overt activity, the media exert considerable influence merely by existing. Officials are conscious of the possibility that they may have to explain their conduct to the questioning media.[127] Social

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Nixon, Peter Peterson, Elliot Richardson, Walt Rostow, Dean Rusk, James Schlesinger, George Schultz, Theodore Sorensen, Elmer Staats, David Stockman, and Cyrus Vance. *Id.* at 233. Officials in the executive branch were less likely than members of Congress to view the media as very influential. *Id.* at 85. Furthermore, those involved in public affairs were more apt to believe that the media had significant influence. *Id.* Linsky points out that those officials whose jobs were less political, less glamorous, and less covered by the media were less likely to view the media influence as substantial. *Id.* at 84.

119. Coleman, *supra* note 72, at 245.

120. LINSKY, *supra* note 19, at 87.

121. *Id.* at 92.

122. *Id.* at 61. Former Secretary of State Henry Kissinger noted, "I almost never watch the evening news . . . because the things I am interested in are covered in too superficial a way. I was only interested in what they covered and for what length of time to learn what the country was getting." *Id.*

123. *Id.* at 114.

124. *Id.*

125. *Id.* at 116.

126. *Id.* at 142 (arguing that "it is not news that people are doing their jobs well, or that government is working, or that most of the houses did not burn to the ground last night").

127. DRECHSEL, *supra* note 101, at 14. Drechsel states that media influence on policy makers functions in both a "reactive and anticipatory sense." *Id.*

> [T]he press can influence policy making because officials react to what they see and hear in the media or because they act on the basis of anticipated media attention.

pressure is an unavoidable and intangible factor. Of course, other factors such as interest group advocates influence policy-making as well.[128] However, the media are one of the channels through which the influence of the public is brought to bear on the governmental process.[129] In order to be effective, government officials must be aware of public opinion and be able to communicate to the public.[130]

C. *Media Effect on the Judicial Branch*

> Trial courts can also change public policy. One observer stated: The most dramatic way in which a trial court case can lead to widespread policy change is by its role in the process of agenda building. A controversial trial, particularly with extensive media coverage, can lead to the identification of an important public issue and propel its consideration onto the agenda of political decision makers.[131]

The media, in turn, can provide the public with a case different from the courtroom version by presenting the evidence in a biased fashion or stressing the sensational aspects of the case.

One possible detrimental effect of media scrutiny of the trial court system is the implication of the defendant's Sixth Amendment right to a fair trial by an impartial jury.[132] A fair trial may be impossible where a publicized case has elicited an emotional response from the community. Publicity in notorious cases, however, will occur regardless of whether the courtrooms are closed to the media.[133] Justice Frankfurter once observed that judges strive not to be "influenced *consciously*" by what is inappropriate; "[h]owever, judges are also human, and we know better

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> Thus, even if the media ultimately pay no attention to a source, the source may still act on the premise that attention might be forthcoming.

Id.

128. One author has noted that "social processes other than mass communication also affect the public's judgment of an issue or person as important. For one thing, people talk to one another about social issues, and these conversations may play an important part in their judgments." R. GEORGE WRIGHT, MASS COMMUNICATION: A SOCIOLOGICAL PERSPECTIVE 155 (3d ed. 1986).

129. LINSKY, *supra* note 19, at 11.

130. *Id.*

131. Lynn Mather, *Policy Making in State Trial Courts*, *in* THE AMERICAN COURTS: A CRITICAL ASSESSMENT 119, 141 (John B. Gates & Charles A. Johnson eds., 1991).

132. The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. CONST. amend. VI.

133. Commentators have suggested that cameras in the courtroom would neutralize any journalism incompetence or bias. *See generally* BARBER, *supra* note 85.

than did our forebears how powerful is the pull of the unconscious and how treacherous the rational process."[134] It is doubtful, for instance, that a defendant could receive a fair trial when a particular verdict could incite riots.[135]

The Supreme Court has enjoyed a relative lack of attention by the media.[136] In general, media influence on judicial policy-making is more subtle and indirect than on other forms of government.[137] However, it is arguable that the Justices have become less insulated from the media and are aware of public opinions. Therefore, if the media slant their coverage of the Court's caseload, the public may develop unsound opinions of the Court's impact on the law. For instance, one study showed that the cases given the most media coverage were not necessarily those considered by experts to be the most legally significant.[138] The tendency to focus on the Court's most important decisions could have a significant effect on public opinion toward the Court's influence on various areas of public policy.

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134. Pennekamp v. Florida, 328 U.S. 331, 357 (1946) (Frankfurter, J., concurring) (emphasis added). Frankfurter further stated that "[f]reedom of the press, however, is not an end in itself but a means to the end of a free society." *Id.* at 354-55 (Frankfurter, J., concurring).

135. Sergeant Stacey C. Koon of the Los Angeles Police Department is particularly skeptical of the media's ability to remain objective during coverage of a controversial event. Stacey C. Koon & Robert Deitz, *Presumed Guilty: The Media's Responsibility*, NIEMAN REP., Winter 1992, at 29. Sergeant Koon was involved in the March 3, 1991 beating of Rodney King. Riots ignited in Los Angeles in late April 1992 when a jury acquitted four officers involved in the beating. Koon, a defendant in the case, claims that "the riots were prompted by the media's unwillingness or failure to report facts during the Simi Valley trial that would have cast legitimate clouds of doubt over a presumption of guilt. But these facts would have intruded upon a good story and they were not reported." *Id.* at 30.

136. The Justices of the Supreme Court have life tenure and thus do not depend upon journalists to further career goals. *See* DRECHSEL, *supra* note 101, at 19-20. Much of the information that the judicial branch uses is not obtained by way of the media. Information is often obtained by way of common and statutory law, as well as scholarly literature. *Id.* at 21.

137. *Id.* at 19.

138. M. Ethan Katsh, *The Supreme Court Beat: How Television Covers the U.S. Supreme Court*, 67 JUDICATURE 6, 10-11 (1983). Another study has indicated that the media, especially television and news magazines, gave extensive coverage to civil rights and First Amendment cases. Jerome O'Callaghan & James O. Dukes, *Media Coverage of the Supreme Court's Caseload*, 69 JOURNALISM Q. 195, 195-203 (1992). This is in disproportion to how often the issues were on the Court's docket; civil rights cases were actually decided the least by the Court. *Id.* at 198. The authors pointed out that "the media frequently neglect the Court's contribution to the development of *many diverse areas* of American law" and that this "act of agenda setting by the media encourages a very limited appreciation of what the Court" has done. *Id.* at 203.

VI. GOVERNMENT MANIPULATION OF THE MEDIA

A. Policy-Makers Use the Media to Fulfill Their Objectives

The media and government officials are involved in a struggle to control the perception of reality presented to the American public. In many respects, "[l]aw does not simply consume or produce information; law structures, organizes, and regulates information. The effectiveness and operation of law depends on controlling access to some information and highlighting or directing attention to other information."[139] Thus, government officials employ various means to control the information the media receives. Although the media are able to exercise significant discretion in determining which issues receive attention, much of what is reported is dependent upon the subject. Therefore, government officials have learned how to manipulate the images of issues and events before they even reach the media.[140]

Government typically "manages" the flow of information through the means of public relations. Some critics believe that the media are manipulated by government officials to further public opinion in the latter's favor.[141] According to one author, the Reagan Administration practiced acute media deception:

> The extensive public relations apparatus assembled within the Reagan White House did most of its work out of sight—in private White House meetings each morning to set the "line of the day" that would later be fed to the press; in regular phone calls to the television networks intended to influence coverage of Reagan on the evening news; in quiet executive orders imposing extraordinary new government secrecy measures, including granting the FBI and CIA permission to infiltrate the press.[142]

The public affairs staff is responsible for assessing the media response to an issue and communicating messages from government officials to journalists.[143] It is an integral part of any policy implementation program; how the policy is presented can affect whether it is positively received by the public and other officials.[144] However, often the government censors the media merely by censoring itself—in effect controlling what informa-

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139. KATSH, *supra* note 66, at 8.

140. *See supra* note 55 and accompanying text.

141. *See* Cedric J. Robinson, *Mass Media and the U.S. Presidency*, *in* QUESTIONING THE MEDIA: A CRITICAL INTRODUCTION, *supra* note 7, at 88.

142. *Id.* at 97 (citation omitted).

143. LINSKY, *supra* note 19, at 125.

144. *Id.* at 124-25.

tion it divulges during press conferences and congressional hearings.[145]

Nearly half of senior government officials surveyed spent at least five hours a week interacting with the media, and there is a clear trend toward politicians spending more time with the media.[146] More than seventy-five percent of government policy-makers stated that they attempt to influence news coverage of their office or agency.[147] Presidents in particular attempt to manipulate the media.[148] This may, in part, be due to their substantial experience with the media while campaigning and while in office.[149] A court, on the other hand, may try to influence the media portrayal of its policies by the use of more subtle tactics. Often reporters are heavily reliant upon court personnel for information about a pending case. This, in turn, can provide the court with considerable control over the coverage of an event. In efforts to ensure an orderly and fair trial, a judge can employ various judicial actions, such as sealing documents and issuing gag orders. All methods attempt to limit the access of the media to information.[150]

B. Government Regulation of the Media

"The temptation remains to kill the messenger when the message is unwelcome."[151] The most obvious type of media manipulation is regulating the dissemination of information. When the media are considered instruments of power, the rationale for regulating them becomes clearer.[152] Thus, Congress and the U.S. Supreme Court have placed various controls and restraints on the media in an effort to regulate reporting.

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145. *See* IMPACT OF MASS MEDIA: CURRENT ISSUES, *supra* note 32, at 245-78. Several articles illustrate how the media are managed by governments during war and are at times manipulated to bring about the governments' desired ends. *Id.*

146. LINSKY, *supra* note 19, at 83; *see also supra* note 118 and accompanying text.

147. LINSKY, *supra* note 19, at 83.

148. *See* Ron Nessen, *Always on Saturday?*, *in* IMPACT OF MASS MEDIA: CURRENT ISSUES, *supra* note 32, at 241; George E. Reedy, *The Press and the President, There They Go Again*, *in* IMPACT OF MASS MEDIA: CURRENT ISSUES, *supra* note 32, at 237.

149. LINSKY, *supra* note 19, at 131 (noting that the White House has rather intimate and regular contact with the media).

150. *See* Herbert Jacob, *Decision Making in Trial Courts*, *in* THE AMERICAN COURTS: A CRITICAL ASSESSMENT, *supra* note 131, at 213. Jacob asserts that "[m]any courts are not simply passive onlookers as journalists come and go. Rather they actively seek to mold media portrayals by guiding reporters to some stories while attempting to keep others hidden in obscurity." *Id.* at 225.

151. *Introduction* to PUBLIC INTEREST AND THE BUSINESS OF BROADCASTING: THE BROADCAST INDUSTRY LOOKS AT ITSELF, *supra* note 39, at 1, 13.

152. For a view that supports state regulation and supplementation of the media, see Fiss, *supra* note 99, at 142-43.

Defamation laws allow public figures and officials to hold the media liable for unsubstantiated and reckless reporting.[153] As a consequence, the media may be more cautious, and thus less effective, as a result of their efforts to avoid lawsuits.[154]

Judges often utilize a wide assortment of mechanisms in an effort to ensure a fair trial. The means used most frequently in highly publicized cases are gag orders that prohibit extrajudicial statements by trial participants and orders that prohibit media coverage of the trial.[155] The media are also restricted from broadcasting obscene material[156] and information that would threaten national security.[157]

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153. Wisconsin media libel law provides in part:

> The proprietor, publisher, editor, writer or reporter upon any newspaper published in this state shall not be liable in any civil action for libel for the publication in such newspaper of a true and fair report of any judicial, legislative or other public official proceeding authorized by law or of any public statement, speech, argument or debate in the course of such proceeding. *This section shall not be construed to exempt any such proprietor, publisher, editor, writer or reporter from liability for any libelous matter contained in any headline or headings to any such report, or to libelous remarks or comments added or interpolated in any such report or made and published concerning the same, which remarks or comments were not uttered by the person libeled or spoken concerning him in the course of such proceeding by some other person.*

WIS. STAT. § 895.05(1) (1991-92) (emphasis added); *see also* Hugh J. O'Halloran, Comment, *Journalistic Malpractice: The Need for a Professional Standard of Care in Defamation Cases*, 72 MARQ. L. REV. 63, 72-77 (1989).

154. Robert G. Picard, *The Might of the Media: Media Self-Censorship*, *in* IMPACT OF MASS MEDIA: CURRENT ISSUES, *supra* note 32, at 52 ("The attorneys on media staffs are not only handling legal defenses for their employers—they have also moved into the editorial decision-making process and are encouraging self-censorship and making decisions on whether articles will be printed or broadcast . . . .").

155. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 570 (1976), held that orders restraining media coverage of a case bear a heavy presumption against constitutionality; *see* Mark R. Stabile, Comment, *Free Press-Fair Trial: Can They Be Reconciled in a Highly Publicized Criminal Case?*, 79 GEO. L.J. 337 (1990).

156. *E.g.*, 18 U.S.C. § 1464 (1988) ("Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more that $10,000 or imprisoned not more than two years, or both."); *id.* § 1468(a) ("Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.").

157. The following government information is eligible for classification:

> (1) military plans, weapons or operations; (2) the vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security; (3) foreign government information; (4) intelligence activities (including special activities), or intelligence sources or methods; (5) foreign relations or foreign activities of the United States; (6) scientific, technological, or economic matters relating to the national security; (7) United States government programs for safeguarding nuclear materials or facilities; (8) cryptology [i.e., secret code construction or breaking]; (9) a confidential source; or (10) other categories of information that are related to the national security and that

Some commentators have suggested that because of the power of the media, the government should develop regulations requiring media owners to provide others with access to their technology.[158] Congress enacted the Equal Opportunities Rule[159] to prevent broadcasters from discriminating between competing candidates. The Equal Opportunities Rule requires equal treatment of public office candidates who are sold or given air time outside of regular news programs. Equal time does not simply mean that candidates can obtain identical amounts of airtime; they have the right to obtain time in a period likely to attract about the same size audience as the opposing candidate obtained. The rule also prohibits the station from censoring candidates who appear on the air in paid commercials or free appearances.

The government has attempted to force equal presentation of controversial issues of public importance through the Fairness Doctrine.[160] The

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require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President.

Exec. Order No. 12,356, 3 C.F.R. 166 (1982 comp.), *reprinted in* 50 U.S.C. § 401 (1988).

158. BARRON, *supra* note 35, at 176. Section 312(a)(7) of the Communications Act provides the necessary protection to freedom of expression. *Id.*

159. The Equal Opportunities Rule provides in part:

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any-

(1) bona fide newscast,

(2) bona fide interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. *Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on the spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.*

47 U.S.C. § 315(a) (1988) (emphasis added).

160. In Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), a unanimous Court upheld the Fairness Doctrine. *Red Lion* upheld government regulation of broadcasting when it furthered "the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences." *Id.* at 390. The Federal Communications Commission voted to abolish the Fairness Doctrine in 1987. When Congress attempted to make the doctrine law, President Reagan vetoed the act. Critics of the doctrine say it did not always ensure

Fairness Doctrine, abolished in 1987, was distinct from the Equal Opportunities provision because the former deals with *issues* instead of candidates. The Fairness Doctrine required that a broadcaster devote time to the discussion of important issues and that the coverage be balanced among contrasting viewpoints.

C. *The Ineffectiveness of Regulating the Media*

The Supreme Court has warned against the dangers of overregulation. Chief Justice Burger stated, "For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors—newspaper or broadcast—can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided."[161]

Aside from the impracticality of injunctions due to the almost instantaneous conveyance of information, there are also potential ramifications associated with forcing stations to air whatever federal candidates want to say. Various commentators have been critical of regulation, especially regarding the right of access.[162] Laurence Tribe recognizes three dangers of imposing access laws on the media:

> the danger of deterring those items of coverage that will trigger duties of affording access at the media's expense; the danger of inviting manipulation of the media by whichever bureaucrats are entrusted to assure access; and the danger of escalating from access regulation to much more dubious exercises of governmental control.[163]

Furthermore, regulation has been inconsistent within the industry because the Supreme Court has bifurcated the media into two subdivisions—broadcasting and the press. The broadcast media have undergone considerable regulation, while the press is afforded greater First Amendment protection.[164]

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equal opportunities for differing political views. Often, the networks would not present a certain view in order to avoid broadcasting the opposing side. PRESS & VERBURG, *supra* note 53, at 49-50. For a critical analysis of the Fairness Doctrine, see THE DIVERSITY PRINCIPLE: FRIEND OR FOE OF THE FIRST AMENDMENT?, *supra* note 21, at 9-24.

161. CBS v. Democratic Nat'l Comm., 412 U.S. 94, 124-25 (1973).

162. *See* MERRILL, *supra* note 12, at 113 ("When any group—even Government seeking to remedy certain suspected evils in the press—tells a publisher what he must print, it is taking upon itself an omnipotence and paternalism which is not far removed from authoritarianism.").

163. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 697 (1978).

164. *See* Judith Lichtenberg, *Introduction* to DEMOCRACY AND THE MASS MEDIA, *supra* note 82, at 3.

Classical free press theory views less government regulation as better because regulation would suppress interests that threaten the government. In accord with this view, the Federal Communications Commission (FCC) began deregulation in 1981 to relieve program directors of former broadcasting regulations.[165] However, deregulation of the media poses a different threat to equal dissemination of viewpoints. When access to information is controlled by private interests who convert economic power into political power through the purchase of access, diversity is not ensured to any greater extent. The First Amendment value of free communication must also protect society from private power. Otherwise, only "those willing and able to pay have the ability to spread their messages. Those who lack the money lack the access to do the same; their principal First Amendment right is to listen."[166]

Nonetheless, the government has attempted to ensure information access to the media. The original Freedom of Information Act (FOIA),[167] enacted in 1967, imposed an affirmative duty on federal agencies to make available information about their procedures, excluding classified documents and confidential business records.[168] The FOIA was toughened in 1974 due to government misbehavior such as Watergate.[169] In theory, agencies are supposed to respond to requests within ten working days. However, in practice, the response time is much longer. For example, the Central Intelligence Agency regularly takes up to two years to respond.[170] Furthermore, government agencies were given permission by the Reagan Administration to classify information retroactively.[171] While the Freedom of Information Act is theoretically sound, the press receives the greatest benefit from such laws because of the difficulties of access and even knowledge of what is available.[172]

The bottom line is that regulations have not worked. Therefore, it is essential for those within the media to practice professional judgment and maturity when covering a news story. Within the context of eco-

165. Zaragoza et al., *supra* note 39, at 31.

166. Stephen L. Carter, *Technology, Democracy, and the Manipulation of Consent*, 93 YALE L.J. 581, 582 (1984).

167. 5 U.S.C. § 552 (1988).

168. Donna A. Demac & John Downing, *The Tug-of-War over the First Amendment*, *in* QUESTIONING THE MEDIA: A CRITICAL INTRODUCTION, *supra* note 7, at 100, 102-03.

169. *Id.* at 102.

170. *Id.* at 102-03.

171. *Id.* at 103; *see also supra* note 158 and accompanying text.

172. Actually, the most extensive users of the Freedom of Information Act are corporations searching for information on their competitors. Demac & Downing, *supra* note 168, at 103.

nomic well-being, the media depend too much on the support of an audience. Excessive abuse by the media would likely generate more criticism than journalists and producers could ignore.[173] Attorney and communications professor Don R. Le Duc noted that "[n]ot too long ago, enlightened politicians viewed regulation as the proper remedy for all inequities created by the marketplace. Today equally enlightened politicians see the marketplace as the proper remedy for all inequities created by regulation. As usual the truth appears to lie somewhere in between."[174]

VII. CONCLUSION

Technological advances in communication are transforming the political process. Whether, at any particular time, the government is influencing the media or the media are influencing the government, public policy is affected. This interaction between the government and the media may suggest that public policy is developing in an ad hoc way. However, if utilized correctly, mass communication can allow citizens a direct voice in setting public policy.[175] The current popularity of talk radio is just one example of the public's desire to contribute to the decision-making process.[176]

Ideally, the media should—and occasionally do—contribute to the search for truth in the political process. When they do, they complement and aid the search for truth within the system itself. When they do not, they magnify the degree of error in justice, because their audience is so wide and their voice is so powerful. Therefore, the public must be the

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173. *See* Neil D. Swan, *Who's Watching the Watchdog?*, *in* IMPACT OF MASS MEDIA: CURRENT ISSUES, *supra* note 32, at 109, 111 (*New York Times* media reporter Jonathan Friendly stated that "[p]ublic opinion is the watchdog of the American media.").

174. DON R. LE DUC, BEYOND BROADCASTING: PATTERNS IN POLICY AND LAW v (1987).

175. JOHN NAISBITT, MEGATRENDS: TEN NEW DIRECTIONS TRANSFORMING OUR LIVES 160 (1982). Naisbitt recognized the possible significance of technological advances on the political process:

> We created a representative system two hundred years ago when it was the practical way to organize a democracy. Direct citizen participation was simply not feasible, so we elected people to go off to the state capitals, represent us, vote, and then come back and tell us what happened . . . .
>
> But along came the communication revolution and with it an extremely well-educated electorate. Today, with instantaneously shared information, we know as much about what's going on as our representatives and we know it just as quickly.
>
> The fact is we have outlived the historical usefulness of representative democracy and we all sense intuitively that it is obsolete.

Id.

176. *See supra* notes 91-97 and accompanying text.

ultimate check on the media in order for truth to ultimately prevail. This requires that citizens take a more active role in the actual political development of this country. If the media are truly free, they will not be completely fair. However, the political process will not be fair, either, if it is free from the scrutiny of the media *and the public.*

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