Before the
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Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	**MB Docket No. 06-121**
	)	
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	)	
Cross Ownership of Broadcast Stations and Newspapers	)	**MB Docket No. 01-235**
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	**MM Docket No. 01-317**
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Definition of Radio Markets	)	**MM Docket No. 00-244**

A COMPENDIUM OF PUBLIC INTEREST RESEARCH ON MEDIA OWNERSHIP, DIVERSITY AND LOCALISM

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The opinions expressed in the papers are solely those of the authors of the individual studies.

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PART I:

LAW AND POLICY

STUDY 1:

SUPREME COURT JURISPRUDENCE SUPPORTS MEDIA OWNERSHP LIMITS

MARK COOPER

ABSTRACT

The goal of media ownership policy under the First Amendment is twofold, to promote vibrant debate and to prevent undue concentration and influence in media markets.

- The Courts have held that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare."
- Adding that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount…the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences… [T]he 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public."
- Limitations on media ownership are appropriate because "diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue concentration of economic power"

"the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial or programming sense, on public opinion at the regional level."

While competition and economic efficiency are considerations in media policy, the other goals of media policy, such as diversity, localism, and promoting vibrant debate take precedence over "merely commercial" considerations.

Because broadcast licenses give their holders powerful electronic voices that are not available to all citizens, the Courts have long accepted limitation on ownership of media outlets by those who hold broadcast licenses as "a reasonable means of promoting the public interest in diversified mass communications."

- In its recent media ownership order, the FCC concluded that "the balance of the evidence, although not conclusive, appears to support our conclusion that outlet ownership can be presumed to affect the viewpoint expressed on that outlet…"
- The FCC added that media owners "have the ability to affect public discourse" and "significant *potential* power in our system of government."

LAW AND POLICY: INTRODUCTION

Three times in the past half-decade Federal Appeals Courts have remanded Federal Communications Commission (FCC) ownership rules for lack of a coherent analytic approach or a sound empirical basis.[1] The first two cases, dealing with individual ownership rules, were decided by the Federal Appeals Court for the District of Columbia. In *Fox* the Court overturned the rule that limited the number of stations a network could own nationwide (the national cap). In *Sinclair* the same Court overturned an FCC rule that limited the number of markets in which one owner could hold two TV broadcast licenses (the duopoly rule).

The third case, heard by the Third Circuit in *Prometheus* was the first to involve the full array of media ownership rules at one time. In addition to the two TV rules that had been overturned earlier, it involved rules that banned the ownership of a TV station and a newspaper in the same market (newspaper-TV cross-ownership and newspaper-radio cross-ownership), as well as several rules affecting radio station ownership. This case was important, not only because it involved many rules, but also because it embodied the first attempt of the Commission to respond to the earlier remands of its rules. This was the first time that the Commission had endeavored to articulate and implement a full fledged empirical methodology for assessing the level of concentration in media markets as a basis for adopting ownership limits and merger policy.

The Third Circuit ruled that the FCC had failed miserably to meet the legal standard, not because the task is too difficult, but because the FCC made inconsistent and contradictory

[1] *Prometheus Radio Project. v. FCC* 373 F.3d 372 (3rd Cir. 2004) (hereafter *Prometheus)*; *Fox Television Stations, Inc., v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) (*Fox*); *Sinclair Broadcasting, Inc. v. FCC,* 284 F.3d 148 (D.C. Cir. 2002) (hereafter *Sinclair*).

arguments and unfounded, unrealistic assumptions in its analysis.[2] Building on the earlier criticism of the FCC approach by the D.C. Circuit Court of Appeals, the Court in *Prometheus* provides a comprehensive framework for analyzing media markets and writing rules that will pass legal and constitutional muster.

The terrain of media ownership policy is clear. Diversity and localism remain focal points of public policy. Ownership limits are a reasonable approach to promoting both. Television remains an important medium for news and information and a major influence on the political process because broadcast signals are still extremely scarce. The standards to promote democratic discourse under the Communications Act are higher than under the antitrust laws.

In order to grasp the framework that the *Prometheus* Court laid out, we must start from the foundation of media policy in First Amendment jurisprudence. None of the Appeals Court cases have been taken up by the Supreme Court on appeal. Each of them cited prior Supreme Court rulings on the nature of the media and FCC regulations that were upheld. In other words, the law is settled, here, notwithstanding repeated attempts by broadcasters to convince the court to break with prior Supreme Court rulings. Thus, the logical way to understand the legal context for this proceeding is to start from *Prometheus*, then to move to *Fox* and *Sinclair*, concluding with the broader body of Supreme Court jurisprudence.

CONTEMPORARY FIRST AMENDMENT JURISPRUDENCE ON MEDIA OWNERSHIP LIMITS

[2] Frank, Ahnrens. "'Soldier's Ethic' Guides Powell at the FCC." *Washington Post,* October 15, 2003 at E-4, quotes FCC Chairman Michael Powell complaining "The issue is very complex; have you heard the opposition express their criticism in a complex way? No. It's a lot easier to blast the messenger than deal with the substance of the issue."

The Recent Appeals Court Rulings

The *Prometheus* Court reiterated the principle that Congress and the FCC can impose limitations on ownership by holders of licenses to broadcast TV and radio signals. Using the broad language of the Supreme Court, the Third Circuit Court noted the long held view that "diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue concentration of economic power."[3]

These two central themes of Supreme Court jurisprudence – promoting diversity and preventing undue concentration and influence – were prominent in the other recent cases as well. In *Fox* the D.C. Circuit stated that public policies to promote a more diverse media landscape are constitutional, even if they reduce economic efficiency. The D.C. Appeals Court continues to articulate the proposition that "the Congress could reasonably determine that a more diversified ownership of television stations would likely lead to the presentation of more diverse points of view."[4] It went on to outline the logic of ownership limits. "By limiting the number of stations each network (or other entity) owns, the … Rule ensures that there are more owners than there would otherwise be."[5]

In *Sinclair* the D.C. Circuit concluded that in order to ensure that discourse is balanced it is permissible for policy to prevent undue concentration of economic power and excessive influence. The D.C. Circuit Court in *Sinclair* restated the broad purpose in promoting the public interest when it stated "the greater the diversity of ownership in a particular area, the

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[3] *Prometheus*, 373 F.3d at 383 (citing *FCC v. Nat'l Citizens Comm. for Broad.,* 436 U.S. 775,(1978)
[4] *Fox* . 280 F.3d at 1047.
[5] Id.

less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[6]

The Supreme Court

These rulings reflect a line of Supreme Court cases running through the middle half of the twentieth century, from roughly 1927 to 1978. In those cases, the Supreme Court articulated a *bold aspiration* for the First Amendment in the age of electronic media.

The unique characteristics of broadcast media were recognized by the Congress early in the century and the airwaves (radio spectrum) were defined as a public resource.[7] Public policies were repeatedly upheld by the Court to ensure that the immense power of the new media be utilized to promote democratic debate and the free flow of information.

The aspiration for the First Amendment was given its modern formulation by Justice Black in 1945 in the seminal case, *Associated Press v. United States*. He concluded that the First Amendment "**rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[8]**

In *Associated Press* Judge Learned Hand painted a picture of diversity that was properly complex, noting that a newspaper "serves one of the most vital of all general interests: the dissemination of news from many different sources, and with as many different

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[6] *Sinclair,* 284 F.3d at 160 .

[7] Bagdikian, Ben, 2000, *The Media Monopoly* (Boston: Beacon Press).; McChesney, Robert, 2000, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (New York: New Press, 2000); provide history and progressive critiques of the development of this policy.

[8] *Associated Press v. United States*, 326 U.S. 1, 20 (1945) (hereafter Associated Press).

facets and colors as possible" because "it is only by cross-lights from varying directions that full illumination can be secured."[9]

Since then, the Supreme Court has reaffirmed this view with respect to newspapers and has unflinchingly applied it to all forms of mass media, including broadcast TV[10] and cable TV.[11]

In *Red Lion* the Court ruled that discourse must be full and open because "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount…the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences…[T]he 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public."[12]

In *FCC v. National Citizens Committee for Broadcasting,*[13] a 1978 case, the court upheld limitations on cross-ownership of TV stations and newspapers "on the theory that diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power."[14]

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[9] *United States v. Associated Press*, Inc. 52 F.Supp. 362, 372 (S.D.N.Y. 1943).

[10] *Red Lion Broadcasting v. FCC*, 395 U.S. 367 (1969) (hereafter Red Lion); *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (hereafter NCCB).

[11] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 638-39 (1994) (hereafter *Turner I*); *Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001) (hereafter *Time Warner III*).

[12] *Red Lion*, 395 U.S. at 385 (1969).

[13] *NCCB*,.436 U.S. 775 (1978)

[14] *Id.*, at 780.

ECONOMIC EFFICIENCY IS A SECONDARY CONCERN

The D.C. Circuit decision in *Fox* highlighted the trade-off between diversity and efficiency. Economic efficiency is not the only, or even the primary, goal of policy affecting electronic media.

> An industry with a larger number of owners may well be less efficient than a more concentrated industry. Both consumer satisfaction and potential operating cost savings may be sacrificed as a result of the Rule. But that is not to say the Rule is unreasonable because the Congress may, in the regulation of broadcasting, constitutionally pursue values other than efficiency – including in particular diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy. Simply put, it is not unreasonable – and therefore not unconstitutional – for the Congress to prefer having in the aggregate more voices heard.[15]

This underscores a theme articulated by Justice Frankfurter in concurring in *Associated Press*,

> A free press is indispensable to the workings of our democratic society. The business of the press, and therefore the business of the Associated Press, is the promotion of truth regarding public matters by furnishing the basis for an understanding of them. Truth and understanding are not wares like peanuts and potatoes. And so, the incidence of restraints upon the promotion of truth through denial of access to the basis for understanding calls into play considerations very different from comparable restraints in a cooperative enterprise having merely a commercial aspect.[16]

SPEECH IS THE PRIMARY CONCERN AND BROADCAST VOICES ARE SCARCE

The distinction between the commercial marketplace and the forum for democratic discourse becomes readily apparent when we respond to the advice frequently given by the most ardent advocates of pure economics in the face of complaints about mediocrity in the media – "If you do not like what is on the tube, turn it off." This reply, which we can

[15] Fox, 280 F.3d at 1047(D.C. Cir. 2002).
[16] *Associated Press v. United States*, 326 U.S. at 28 (1945).

withstand from a consumer standpoint, is devastating for citizens. It may be perfectly acceptable to force consumers to vote with their dollars and turn off commercial entertainment, but it is not acceptable for citizens to be turned off by substandard civic discourse with no comparable alternative to which they can turn. As Justice Brandeis explained in his concurrence in *Whitney v. California*,

> Those who won our independence believed that the final end of the State was to make men free to develop their faculties; . . . that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government.[17]

The desire for active participation and the duty to discuss have important implications. Justice Brandeis' admonition against turning citizens into passive 'couch potatoes' reinforces the distinction between citizen and consumer suggested by Justice Frankfuter.[18] It reminds us that citizens must enter the debate not simply as passive consumers (listeners or viewers), but also as active speakers. One goal is to ensure that they are well informed, receiving good, diverse information; but an equal if not higher goal is that citizens must have the opportunity to speak and be heard.[19]

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[17] *Whitney v. California,* 274 U.S. 357, 375 (1927).

[18] Sunstein, Cass, *Republic.Com* (Princeton, Princeton University Press, 2001), pp. 46-47 cites this passage in a discussion that notes that

> "with respect to a system of freedom of speech, the conflict between consumer sovereignty and political sovereignty can be found in an unexpected place: the great constitutional dissents of Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis… Note Brandeis's suggestion that the greatest threat to freedom is an "inert people," and his insistence, altogether foreign to Holmes; the public discussion is not only a right but a "political duty"… On Brandeis's self-consciously republican conception of free speech, unrestricted consumer choice is not an appropriate foundation for policy in a context where the very formation of preferences, and the organizing processes of the democratic order, are at stake.

[19] Id., p. 115, "A principle function of a democratic system is to ensure that through representative or participatory processes, new or submerged voices, or novel depictions of where interests lie and what they in fact are, are heard and understood."

In *Red Lion*, the seminal television case, the Court expressed a similar sentiment, noting that "speech concerning public affairs is more than self-expression; it is the essence of self-government."[20] The desire for active participation and the duty to discuss have important implications. In particular, citizens must enter the debate not simply as listeners or viewers, but also as speakers. One goal is to ensure that they are well informed, receiving good, diverse information. But an even higher goal is to have them engage actively as participants in civic discourse. The First Amendment implications of policies should not only be about how much citizens have to listen to, but also about their opportunities to speak and be heard.

The *Prometheus* Court notes the dilemma that broadcasting poses from the point of view of the speaker's orientation of the First Amendment. Even in a 500-channel world, spectrum, and therefore broadcast voices are scarce from the speakers' point of view. The increase in alternative media does not reverse that fact.

> Even were we not constrained by Supreme Court precedent, we would not accept the Deregulatory Petitioners' contention that the expansion of media outlets rendered the broadcast spectrum less scarce. In *NCCB*, the court referred to the 'physical' scarcity of the spectrum – the fact that many more people would like access to it than can be accommodated. The abundance of non-broadcast voices does not render the broadcast spectrum any less scarce.[21]

The need to license spectrum is one of the bases on which public obligations can be imposed on the holders of licenses. Starting with a 1943 radio case, *National Broadcasting Co. v. United States,*[22] and continuing through the most recent cases, the Supreme Court found that "where there are substantially more individuals who want to broadcast than there

[20] Red Lion, 395 U.S. at 390 (1969).
[21] *Prometheus*, 372 F.3d at 402 (3rd Cir. 2004)..
[22] *National Broadcasting Co. v. United States,* 319 U.S. 190 (1943).

are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish."[23]

Opponents of a bold aspiration for the First Amendment would like to see this scarcity as the sole basis for public policy so that they can declare an abundance of cable and satellite channels available and escape their public interest obligations. The claim is wrong because it is a listener/viewer analysis, not a speaker analysis. Even if hundreds of channels are available to citizens as listeners, this does not empower them as speakers. Broadcasting is still a powerful electronic voice granted by government license.

In fact, cable and satellite owners control all of the channels, so they are a single powerful voice. It is not the scarcity of spectrum that matters, but the scarcity of voices. In a nation of almost 300 million people, the number of channels is still far exceeded by the number of persons wishing to broadcast. The number of holders of broadcast licenses and cable franchises is minuscule compared to the total population. The possession of this government granted rights to speak confers an immense advantage on the holder of the license.

OWNERSHIP PLAYS A CRITICAL ROLE IN DIVERSITY POLICY

In *Fox,* the D.C. Circuit noted the connection between ownership and diversity, opining that in attempting to promote "diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy," it is not unreasonable

[23] *Red Lion*, 395 U.S. at 388 (1969).

– and therefore not unconstitutional – for the Congress to prefer having in the aggregate more voices heard.[24]

This proposition has been central to limitations on media ownership by holders of broadcast licenses for well over half a century. Indeed, the Supreme Court upheld ownership limits even before the landmark case in which it articulated the aspiration of the "widest possible dissemination of information from diverse and antagonistic sources." In upholding the ban on cross-ownership of different types of media, the Supreme Court concluded it was "a reasonable means of promoting the public interest in diversified mass communications."[25]

In the recent media ownership order the FCC restated its commitment to this fundamental principle, concluding that

> the balance of the evidence, although not conclusive, appears to support our conclusion that outlet ownership can be presumed to affect the viewpoint expressed on that outlet…. A larger number of independent owners will tend to generate a wider array of viewpoints than would a comparatively smaller number of owners."[26]

Although the FCC expressed some uncertainty about the empirical relationship between ownership and viewpoint diversity, it went on to offer two important additional observations that reinforced its conclusion. The FCC noted that taking a point of view is to be expected, declaring

> we do not pass judgment on the desirability of owners using their outlets for the expression of particular points of view… we have always proceeded from the assumption that they do so and that our rules should encourage diverse

[24] *Fox*, 280 F.3d at 1047(D.C. Cir. 2002)..

[25] *NCCB*, 436 U.S. at 802 (1978).

[26] Federal Communications Commission, *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* 18 FCC Rcd 13620, 13711-47 (2003), ¶27. (hereafter Order)

> ownership precisely because it is likely to result in the expression of a wide range of diverse and antagonistic viewpoints.[27]

This combined with the importance of media outlets in democratic discourse pushes public policy to lean towards policies that take extra precautions in regard to media ownership limits.

> Further, owners of media outlets clearly have the ability to affect public discourse, including political and governmental affairs, through their coverage of news and public affairs. Even if our inquiry were to find that media outlets exhibited no apparent "slant" or viewpoint in their news coverage, media outlets possess significant *potential* power in our system of government.[28]

CONCLUSION

In each of the Appeals Court rulings that have struck down the FCC's media limits the Courts have restated the Supreme Court jurisprudence. The Supreme Court has not taken up any of these decisions. The bold aspiration for the First Amendment, that seeks vigorous debate that draws citizens in and recognizes the powerful voice that a broadcast license conveys to its holder remains firmly in place.

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[27] Id., ¶30.
[28] Id., ¶28.

STUDY 2
THE LEGAL AND SOCIAL BASES FOR LOCALISM ARE STRONGER THAN EVER

MARJORIE HEINS AND MARK COOPER

ABSTRACT

Localism has been central to broadcast policy since the inception of the industry, recognized in legislation and Supreme Court jurisprudence for over three quarters of a century. The increasing power and reach of broadcast stations and emergence of national media only reinforces the importance of policies to promote localism because the fundamental political, cultural and social needs that local media serve remain the same. Moreover, America has become a much more diverse nation over the past thirty years, increasing the need for local media to reflect the changing composition of our local communities.

- **Local government is the core institution of our federal system.** We reserve a host of public policy decisions that are vital to the quality of life and the fabric of our society – police, emergency services, education, land-use – for 80,000 units of government. We elect the national government on a state and local basis.

- **We dispense justice with local juries of our peers.** Local courts and juries decide a wide range of civil and criminal issues based on what are essentially community understandings of what a "reasonable man" would think or do, depending on local conditions.

- **We define many of our social and aesthetic values in local terms.** Participation in political, cultural and social activities is very much a matter of local "mobilization" and community involvement. Personal, face-to-face social relations in our communities are the crucible of personality and identity formation.

LOCALISM REMAINS CENTRAL TO BROADCASTING

Broadcasting is by its nature a local phenomenon, and serving the diverse needs of local communities has long been an intrinsic part of American broadcast policy. The importance of localism as a core policy goal can be traced to the 1927 Radio Act.[29] Over the years, not only the Federal Communications Commission but the Supreme Court and Congress have recognized the importance of local broadcast stations serving local communities, "'as an outlet for local self-expression.'"[30] As the Supreme Court explained in 1994, "Congress designed this system of allocation to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern. … [T]he importance of local broadcasting 'can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the nation's population.'"[31] Here as elsewhere in U.S. broadcasting policy, "the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."[32]

More recently, the D.C. Circuit Court in the case of Sinclair *v. The FCC* restated the broad purpose and the local focus in promoting the public interest when it stated "the greater the diversity of ownership in a particular area, the less chance there is that a single person or

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[29] See, e.g., Napoli, Philip. *Foundations of Communications Policy: Principles and Process in the Regulation of Electronic Media.* Cresskill, NJ: Hampton Press, 2001, p. 203.

[30] *United States v. Southwestern Cable*, 392 U.S. 157, 174 (1968) (quoting H.R. Rep. No. 1559, 87th Cong.., 2d Sess., 3).

[31] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (quoting in part *U.S. v. Southwestern Cable*, 392 U.S. at 177).

[32] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[33]

The goal of localism is inseparable from the other pillar of American broadcast policy: diversity. Diversity does not just mean programming from different corporate producers; it means diversity in the *content* and *viewpoint* of programming.[34] Thus, ten or even twenty newscasts that all serve up the same superficial, if-it-bleeds-it-leads sound bites do not constitute diversity. Serving local interests is meaningless if the diverse elements in a community – cultural, social, and political – are not represented on the airwaves.[35]

It is important also to define the geographic parameters of localism. The Commission has long equated localism with broadcast markets. But as these markets expand through increased power levels and other technological advances, the needs of local communities get lost. There are more than 80,000 government units in the U.S., including school districts, town districts, and county districts, and what happens at these local levels of governance is

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[33] *Sinclair Broadcasting, Inc. v. FCC*, 160 F.3d 148 (D.C. Cir. 2002).

[34] See *Red Lion*, 395 U.S. at 389-95. .

[35] Huffington, Arianna, "Blog Heaven." *The American Prospect*, July 1, 2004. See also Leanza, Cheryl. 2004. "Monolith or Mosaic: Can the Federal Communications Commission Legitimately Pursue a Repetition of Local Content at the Expense of Local Diversity?" 53 *American U. L. Rev.* 597, 603, 610 (faulting the Commission's 2003 media ownership proceedings for ignoring "diversity at the local level"; "[f]uture analysis of this question cannot rightly consider diversity and localism as two separate goals that are analytically distinct"). Evidence that increasing the number of outlets does not necessarily increase diversity can be found in Dejong, A.S. and B. J. Bates 1991. "Channel Diversity in Cable Television." *Journal of Broadcasting and Electronic Media* 35: 159-66; Grant, A. E. 1994. "The Promise Fulfilled? An Empirical Analysis of Program Diversity on Television." *The Journal of Media Economics* 7:1: 51-64; Hellman, Heikki and Martin Soramaki, 1994. "Competition and Content in the U.S. Video Market." *Journal of Media Economics* 7 ; Lin, C. A. 1995. "Diversity of Network Prime-Time Program Formats During the 1980s," *Journal of Media Economics 8:* 17-28; Kubey, Robert, *et al. 1995.* "Demographic Diversity on Cable: Have the New Cable Channels Made a Difference in the Representation of Gender, Race, and Age?" *Journal of Broadcasting and Electronic Media 39:* 459-71.

not often considered newsworthy to commercial broadcasters operating in large metropolitan areas.

THE FEDERAL SYSTEM DEPENDS ON LOCALISM

While courts have repeatedly affirmed the constitutional and legal basis for policies promoting localism and diversity, the political commitment to these policies is constantly under attack. Moreover, because broadcasters have First Amendment rights, which are affected by policies to promote localism and diversity, it is important that there be an evidentiary basis to conclude that these policies are necessary and actually do promote the public interest.

Localism and diversity remain critically important to our democracy and the commercial mass media have not fulfilled, and are not likely to fulfill, these fundamental goals of communications policy.

In spite of three quarters of a century of Congressional policy to promote localism in the broadcast media and Supreme Court acceptance of these policies, in the recent media ownership proceeding, the chief expert witness for the national broadcast networks declared localism to be an unjustified preoccupation of the Commission that lacks a coherent basis. In his words:

> The Commission's preoccupation with localism is difficult to explain or justify. Why should the government seek to promote local content as opposed to, and especially at the expense of, any other category of ideas? Once can readily imagine categories of ideas more central to the political, social, educational, aesthetic or spiritual lives of Americans. Further, to fasten on any

> category of ideas readily runs afoul of First Amendment values. In short, a focus on local content or local outlets appears to lack a coherent policy basis.[36]

This statement is wrong on every count. To begin with, a policy of promoting localism does not run afoul of the First Amendment. The Supreme Court has rejected this claim repeatedly over the past seventy-five years. Second, given our federal system, local government is in fact our central political institution. Third, we define many of our social and aesthetic values in local terms. For example, local courts and juries decide a wide range of civil and criminal issues based on what are essentially community understandings of what a "reasonable man" would think or do, depending on local conditions. Having vibrant local media outlets to promote good local government and strong social ties in local communities is an essential part of our democracy.[37]

Congress has adhered to the localism principle. The legal precedent remains strong because the political and social reality of life in America continues to demand strong local media institutions. No matter how strongly national and international issues affect our society, or how prominent they become, there is much truth to the saying that all politics in America is local. This is because of the fundamental federal structure of our national government.

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[36] Owen, Bruce N. "Statement on Media Ownership Rules." Attachment to Comments of Fox Entertainment Group and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Group, Inc., and Viacom, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets*, MB Docket No. 02-277, MM Dockets 02-235, 01-317, 00-244, 2 January 2003, p. 10.

[37] Alexis de Tocqueville's well known celebration of local associations started with "the permanent associations which are established by law under the names of townships, cities, and counties, a vast number of others are formed and maintained by the agency of private individuals." cited in Terchek, Ronald J. and Thomas C. Conte. (Eds.), *Theories of Democracy* (Lanham, MD: Rowan & Littlefield, 2001), cited in p. 27.

Even national elections are essentially local. The extreme concentration of the 2004 presidential election in so-called "battleground" states reminds us that we elect the President on a state-by-state basis. We elect Senators on a state-wide basis and our Representatives on the basis of small single-member districts.[38] These are local races.

More importantly, we reserve a host of public policy decisions that are vital to the quality of life and the fabric of our society – police, emergency services, education, land-use – for local units of government. Only defense is solely national policy and even here the national defense has come to rely significantly on the National Guard, which is a state level institution.

Three-quarters or more of spending on education, police, and parks and recreation is accounted for by state and local governments, mostly at the local level. About two-thirds of all government spending on community development and natural resources are spent by state and local governments, equally divided between state and local.[39] Personal transfer payments – social and income security and welfare – are also largely federal, but income security and welfare too have many state and local variations.

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[38] Keyssar, Alexander. *The Right to Vote*. New York: Basic Books, 2000.

[39] U.S. Census Bureau, *Statistical Abstract of the United States: 2002* (Washington, D.C.: U.S. Department of Commerce, 2002), Tables 414-416, 453.

SOCIAL BASES OF LOCALISM

A host of social processes are grounded in the local community. The primary referent for identity and community has traditionally been, and remains, significantly local.[40] A primary focus on political participation and mobilization captures the most critical aspect for media policy. There are both sociological and psychological reasons why local ties support participation.

Being embedded in networks where one can influence or be influenced by action is psychologically gratifying and a spur to action. Social identity is defined, and political activity is instigated, on the basis of group identity and affiliation.[41] Groups are defined by the permeability and permanence of their boundaries and their location in the social hierarchy.[42] The social context helps to determine which organizations and messages are effective. Some contexts provide greater credibility and opportunities to persuade voters. Segmentation, separation, or sorting of organizations facilitates the garnering of commitment and support and makes message management easier.

The salience of the organization's identity to the members is defined by several factors-- the clarity and strength of the shared understanding of the organization's location in society and the motivation to act on that shared social identity are paramount. Sociological

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[40] Rifkin, Jeremy. *The Age of Access.* New York, Jeremy P. Tarcher/Putnam, 2000, pp. 7-9. Dewey, John. *The Public and its Problems.* Athens, Ohio: Swallow Press, 1954; Sirianni, Carmen and Lewis Friedland. *Civic Innovation in America: Community Empowerment, Public Policy, and the Movement for Civic Renewal.* Berkeley: University of California Press, 2001, especially Chapter 5.

[41] Hechter, Michael. 2004. "From Class to Culture." American Journal of Sociology 110:2; Wright, Stephen C., Donald M. Taylor and Fathali M. Moghaddam. 1990. Responding to Membership in a Disadvantaged Group: From Acceptance to Collective Protest. *Journal of Personality and Social Psychology* 58.

[42] Id.

theories stress the importance of the interaction between the members of the organization to create solidarity.[43] Intervening social processes affect participation[44] since "frequent discussion of politics and the partisan composition of an individual's network influence participation."[45]

"For a community, frequent cooperation by its members leads to tighter social linkages and increased trust in one another – a 'virtuous circle' of participation and trust."[46] Repetition[47] and connection between the speaker and listener make messages more effective. Personal familiarity, positive feelings and respect for the speaker increase thought about the

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[43] The impact of conversational networks in church and work settings on participation is to a significant degree mediated by the different viewpoints that individuals are exposed to when they discuss politics in these settings." Scheufele, Dietram A., et al. 2004. Social Structure and Citizenship: Examining the Impacts of Social Setting, Network Heterogeneity, and Informational Variables on Political. Political Communication 21: 315; Mutz, Diana C. 2002. "Cross-Cutting Social Networks: Testing Democratic Theory in Practice." *American Political Science Review* 96.

[44] Huckefeldt, Robert and John Sprague. *Citizens, Politics, and Social Communication: Information Influence in an Election Campaign.* New York: Cambridge University Press, 1995; McLeod, Jack M., Dietram A. Scheufele and Patricia Moy. 1999. Community, Communications, and Participation: The Role of Mass Media and Interpersonal Discussion in Local Political Participation. *Political Communication* 16; Scheufele, Dietram A., Matthew C. Nisbet and Dominique Brossard. 2003. Pathways to Participation? Religion, Communication Contexts and Mass Media, *International Journal of Public Opinion Research* 15.

[45] Scheufele,et al. 2004. p. 317; Knoke, David. 1990. "Networks of Political Action: Toward Theory Construction." *Social Forces* 68; Knoke, David, *Organizing for Collective Action: The Political Economies of Associations* (New York: Aldine de Gruyter, 1990b).

[46] Scheufele, et al., 2004: 318; Brehm, John and Wendy Rahn. 1997. Individual Level Evidence for the Causes and Consequences of Social Capital. *American Journal of Political Science*; Putnam, Robert D. *Making Democracy Work: Civic Traditions in Modern Italy.* Princeton: Princeton University Press; Scheufele, Dietram A. and Dhavan V. Shah. 2000. Personality Strength and Social Capital: The Role of Dispositional and Informational Variables in the Production of Civic Participation. *Communication Research* 27.

[47] Weiss, R. F. and B. Pasamanick. 1964. Number of Exposures To Persuasive Communication in The Instrumental Conditioning of Attitudes. *Journal of Social Psychology* 63; Verba, Sidney, Lehman Schlozman and Henry Brady. *Voice and Equality: Civic Volunteerism in American Politics.* Cambridge: Harvard University Press, 1995.

message and its overall persuasiveness.[48] Face-to-face interactions are particularly well suited to benefit from these conditions for persuasion.[49]

From a practical point of view, for example, getting out the vote thrives on local connections.[50] Knowledge of the local area and local individuals are vastly superior as resources for mobilizing participation. The sociability of the political participation – working together, voting together – provides social reinforcement, trust and psychological gratification.

Local media that focus on local issues, cultures, and interests are a critical part of this equation. As law professor and media scholar Edwin Baker points out, for the media to meet the diverse needs of the public, they must

> perform several tasks. First, the press should provide individuals and organized groups with information that indicates when their interests are at stake. Second, the media should help mobilize people to participate and promote their divergent interests… Third, for pluralist democracy to work information about popular demands must flow properly - that is, given the practical gap between citizens and policymakers, the press should make policymakers aware of the content and strength of people's demands.[51]

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[48] Scheufele, Dietram A., Matthew C. Nisbet. Dominique Brossard, and Erik C. Nisbet. 2004. Social Structure and Citizenship: Examining the Impact of Social Setting, Network Heterogeity, and Informational Variables on Political Participation. *Political Communications* 21, Huckfeldt, R., Johnson E. and J. Sprague. 2002. Political Environments, Political Dynamics and the Survival of Disagreement. *Journal of Politics* 62.

[49] Niven, 2004; Green, Donald P. and Alan S. Gerber. 2000. *Getting Out the Vote in Youth Vote: Results for Randomized Field Experiments.* New Haven: Institution for Social and Policy Studies, Yale University; Green, Donald P. and Alan S. Gerber. 2001. The Effect of a Nonpartisan Get Out the Vote Drive: An Experimental Study of Leafleting. *Journal of Politics* 62:3; Kilgard, 1999; Reams and Ray, 1993; Jason, 1984.

[50] Hanson, John Mark. "The Majoritarian Impulse and the Declining Significance of Place." in Gerald M. Pomper and Marc D. Weiner. (Eds.), *The Future of American Democratic Politics.* New Brunswick: Rutgers University Press, 2003.

[51] Baker, C. Edwin. "Giving Up on Democracy: The Legal Regulation of Media Ownership." Attachment C, Comments of Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights and Media Access Project. *In the Matter of Cross Ownership of Broadcast Station and*

The broadcast media cannot fulfill this critical role if they are not rooted in local communities. Broadcast television has an immense impact because of its key role in the social and psychological processes of democratic discourse. Broadcast television is a primary source of information, particularly for local issues.[52] Television is also the premier medium for advertising[53] and efforts to influence public opinion.[54] Visual images are particularly powerful in conveying messages.[55] The dictates of the television news production process also affect the process of issue formation and debate.[56]

Newspaper/Radio Cross-Ownership Waiver Policy: Order and Notice of Proposed Rulemaking, MM Docket No. 01-235, 96-197, December 3, 2001, p. 16 (hereafter, CFA/CU Comments).

[52] Cooper, Mark. "When Law and Social Science Go Hand in Glove." in Philip Napoli (Eds.), *Media Diversity: Meaning and Measurement.* Mahwah, NJ: Lawrence Earlbaum, 2006.

[53] Hansen Glenn J. and William Benoit, 2002. Presidential Television Advertising and Public Policy Priorities, 1952 –2002. *Communications Studies* 53: 285; Patterson, Thomas E. and R.D McClure, *The Unseeing Eye: The Myth of Television Power in National Politics*. New York: Putnam, 1976; Kern, M. *30 Second Politics: Political Advertising in the Eighties*. New York: Praeger, 1988; Brians, C. L. and M. P. Wattenberg, Campaign Issue Knowledge and Salience: Comparing Reception for TV Commercials, TV News, and Newspapers. *American Journal of Political Science* 40: 172-93, 1996.

[54] Kim, Sei-Hill, Dietram A. Scheufele and James Shanahan. 2002. Think About It This Way: Attribute Agenda Setting Function of the Press and the Public's Evaluation of a Local Issue. *Journalism and Mass Communications Quarterly 79:7,* 2002; Chaffee, Steven and Stacy Frank. 1996. How Americans Get Their Political Information: Print versus Broadcast News. *The Annals of the American Academy of Political and Social Science* 546; McLeod, Jack M., Dietram A. Scheufele, and Patricia Moy. 1999. Community, Communications, and Participation: The Role of Mass Media and Interpersonal Discussion in Local Political Participation. *Political Communication* 16. For a fuller explanation of the impact of television, see the separate Comments of the Consumer Federation of America and Consumers Union filed in this NOI.

[55] Domke, David, David Perlmutter and Meg Spratt. 2002. The Primes of Our Times? An Examination of the 'Power' of Visual Images. *Journalism*3:2: 131-59. The authors present a detailed social psychological and even neurological discussion of the reasons why and ways in which visual images have a greater impact, but the politically oriented research that they cite as consistent with their findings include Krosnick, J. A. and D. R. Kinder. 1990. "Altering the Foundation of Support for the President Through Priming." *American Political Science Review 84:* 497-512; Pan Z. and G. M. Kosicki, "Priming and Media Impact on the Evaluation of the President's Performance," 24 *Communications Research* 3-30*,* 1997; Just, M.R., A. N. Crigler and W. R. Neuman. Cognitive and

CONCLUSION

Localism is intrinsically related to diversity in media sources, media outlets, media institutions, and the actual content of media programming. In this section, we describe these various forms of diversity and emphasize why all are needed to advance the fundamental goal of communications policy – to provide the widest possible public access to and participation in a rich and vibrant marketplace of ideas.

Diversity and antagonism in civic discourse are neither easy to achieve nor easy to measure. Opponents of policies to enrich civic discourse complain that the imprecision of the outcome makes it difficult, if not impossible, to measure success. This merely reflects the fact that the goal of having an informed citizenry is inherently qualitative and complex. Most social and psychological relationships have numerous highly intertwined causes; there is no reason that knowledge and participation in public policy formation should be otherwise.

Affective Dimensions of Political Conceptualization. in A. N. Crigler (eds.), *The Psychology of Political Communications.* Ann Arbor: University of Michigan Press, 1996.

[56] Graber, Doris. *Mass Media and American Politics.* Washington, D.C.: Congressional Quarterly, 1997; Gans, Herbert J. *Democracy and the News.* Oxford: Oxford University Press, 2003.

STUDY 3:
A BROAD, POSITIVE VIEW OF THE FIRST AMENDMENT

BEN SCOTT

ABSTRACT

First Amendment principles deeply influence the media ownership regulations. In the FCC's analysis there is an unquestioned assumption that the First Amendment's role in this proceeding is merely to negatively prohibit the abridgement of speech. More specifically, negative freedom (the absolute protection of individual speakers from interference) has pushed out positive freedom (the provision of a public sphere in which the public has a right to hear all speakers) as the central right protected by the law.

The Commission cites the history of First Amendment thought to justify its conclusions. However, an accurate account of the intellectual foundation of the First Amendment and its implications for the history of journalism point to different conclusions with regard to the standards and thresholds of public service, diversity, localism, and competition. The majoritarian view of the First Amendment is a more appropriate framework for protecting democratic values in the marketplace of ideas.

This analysis demonstrates that the mechanism of market-based regulation in the media system is a poor solution for the protection of First Amendment rights. This follows from a fundamental contradiction between the goals of democracy and those of market competition. It is consent and consensus through informed debate, not competition and submission through Darwinian dogfights, which is sought by the public spirited intent of the Constitution and the affirmative freedom of expression provided for the American public. The only way to claim the public right to a deliberative discussion about common affairs with guaranteed access for all citizens is to temper private control over the media system with public policies that promote a diversity of voices.

The Commission should base its rules governing media ownership on an affirmative, majoritarian view of the First Amendment. Limits on media ownership should be maintained and policies undertaken to expand ownership of media outlets and viewpoint diversity.

INTRODUCTION

The bold aspiration for the First Amendment that we have articulated in earlier studies has a direct link to a more fundamental debate over the nature of the First Amendment. The narrow, negative view advocated by the broadcasters, and adopted by the Federal Communications Commission (FCC), stands in sharp contrast to the broad positive view taken by the Supreme Court. The view taken of the First Amendment deeply influences the policy that is pursued in consideration of limits on media ownership.

In the FCC's analysis of the cross-ownership regulations outlined in the 2003 Rule & Order (R&O),[57] we believe that fundamental attributes of public First Amendment rights were not sufficiently considered, if indeed they were brought to the attention of the Commission at all. There is an unquestioned assumption that the First Amendment's role in this proceeding is merely to negatively prohibit any abridgement of any one speaker, as opposed to a positive responsibility to expand the diversity of voices from all speakers. It is of critical importance that the Commission now take up a serious intellectual inquiry into the constitutional basis that supports its interpretation of which policies best serve the goals of the First Amendment.

The absence from the ruling of these essential ideas concerning the public's constitutional rights provided by the free press contributes to a general misunderstanding of the historical development of commercial journalism in the United States and its relationship to citizenship and public service. To correct this problem, these comments will question the Commission's assumptions about constitutional rights and make broad arguments that point to profoundly different policy goals and ends. It is of necessity an historical argument. An

[57] Federal Communications Commission, 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620, 13711-47 (2003),

accurate account of the composition of the First Amendment in the early Republic and its implications for the history of journalism point to radically different conclusions with regard to the standards and thresholds of public service, diversity, localism, and competition than those espoused by the Commission in its Rule and Order.

These conclusions require a thoroughgoing reevaluation of the analytical, constitutional, economic and legal premises upon which the 2003 ruling is based and upon which the current proceeding is conducted. In short, policies that favor the dominant market interests in the local news media are not commensurate with either the public interest needs of a locality or the First Amendment responsibilities of the government. The mechanism of market-based regulation in the media system is a poor solution for the protection of First Amendment rights. Survival of the fittest in oligopoly markets is hardly a recipe for providing a free, fair, and comprehensive public debate. We require here a positive view of the First Amendment which goes beyond simply guarding the speech rights of any given speaker. Protecting the free speech of the few does not provide it for the many—on the contrary, it may well impede it. This follows from a fundamental contradiction between the goals of democracy and those of market competition. Markets logically produce winners and losers and function most efficiently when inequality between players is wide. Democracy functions best when all speakers have the opportunity to be heard and inequality in debate is narrow. An analysis of public rights to a free press as conceived by the Founding Fathers and the first generations of American government bears out this argument. The history of journalism further reinforces the point by persuasively demonstrating that regulation through the marketplace is a relatively new phenomenon in American journalism that has been disputed from its inception as neither free nor commensurate with First Amendment ideals.

In an effort to specify our concerns as much as possible, we shall respond to instances in the 2003 ruling that we believe require reconsideration in light of a more comprehensive review of historical and theoretical analyses. Listed below are three statements from the R&O that we feel capture the concepts we wish to address. In particular, we would like to draw attention to principles supporting the Commission's understanding of the marketplace of ideas, the market as the arbiter of public political communication, the First Amendment, and the relationship of these ideas to the history of commercial journalism.

¶ 352 "Nor it is particularly troubling that media properties do not always, or even frequently, avail themselves to others who may hold contrary opinions. Nothing requires them to do so, not is it necessarily healthy for public debate to pretend as though all ideas are of equal value entitled to equal airing….Indeed, the very notion of a marketplace of ideas presupposes that some ideas will attract a following and achieve wide currency, while others quietly recede having failed to conquer the hearts and minds of the citizenry. Our Constitution forbids government action to pre-select the winners in this competition or to guarantee the circulation of any particular set of ideas."

¶ 353 "Nor is it troubling that media properties may allow their news and editorial decisions to be driven by "the bottom line." Again, the need and desire to produce revenue, to control costs, to survive and thrive in the marketplace is a time honored tradition in the American media. Indeed, it was not until newspaper publishers learned to market their papers as tools of commerce that the press became a force in the public debate that lead to the framing of our Constitution."

¶ 354 "In short, to assert that cross-owned properties will be engaged in profit maximizing behavior or that they will provide an outlet for viewpoints reflective of their owner's interests is merely to state truisms, neither of which warrants government intrusion into precious territory bounded off by the First Amendment. To the contrary, we are engaged in this exercise precisely because we seek to encourage the airing of diverse and antagonistic viewpoints. It would be odd indeed if our rules were structured to inhibit the expression of viewpoints or to promote only an accepted set of ideas."

These statements all appear in the R&O in the section concerning cross-media ownership. We feel that this is the most important rule at issue, and so we have chosen to focus our discussion here. Further, within these statements are clearly displayed the positions

and assumptions guiding the Commission with regard to the First Amendment, the nature and history of commercial journalism, and the marketplace of ideas.

From ¶352, it appears to us that the Commission interprets the First Amendment as primarily, if not exclusively a negative right—i.e. the government will protect free speech from being abridged, but it has no responsibility to promote diversity. From ¶353, it appears to us that the Commission understands the First Amendment to have been conceived and shaped in an explicit environment of commercial media operating in a self-defined marketplace of ideas. Moreover, the implication is that the Founders understood the media system in this way, a smaller and yet formally similar version of the system we currently have. It is this ongoing system of commercial journalism that the Commission refers to as the "time honored tradition" of the American media marketplace.

Finally, from ¶354, we understand the Commission to be arguing that the market is the primary, exclusive, and best mechanism to govern the output of the public media system. By promoting efficiency in the marketplace, the Commission appears to believe that it is promoting the degree of diversity, localism, and competition demanded by the public through their patterns of consumption. By removing regulation and allowing the fittest voices to survive in the media market, the Commission states that it has most firmly guaranteed that the government plays no role in either inhibiting or promoting any particular viewpoint.

In the following, we argue that these understandings of the marketplace of ideas, the First Amendment, the circumstances of the Founders, and the history of journalism are seriously flawed and lead to unjustified conclusions. We will argue that the commercial mass media system is not a time honored tradition of American journalism dating from the 18th century, but rather a more recent development. Further, we will demonstrate that the Founders

certainly did not understand commercial journalism and the marketplace of ideas in the way that we do now. Finally, we will couch all of these arguments in a discussion of the First Amendment which asserts an alternative understanding of its principles which we believe are a more appropriate reading of the legacy of the Bill of Rights – a positive view of the First Amendment. It is this positive view which should guide the Commission's analysis of public interest limits on media ownership.

THE NARROW, NEGATIVE VIEW OF THE FIRST AMENDMENT

The Well-Oiled Marketplace Assumption

The starting point for developing a balanced view of how the First Amendment should guide communications policy is a deconstruction of the prevailing concept of negative rights and the concomitant conception of the relationship between the press, its public, and their common government. [Here we should understand press to refer to the media system as a whole]. The pillars around which these relationships are built are the First Amendment and the marketplace of ideas.

The conventional position on the relationship between the press, the public, and the government mirrors the model of laissez-faire economics. The press is seen as a marketplace of information providers dependent upon consumer interest to survive and flourish. The public is seen as a group of political consumers each in search of the best presentation and interpretation of facts and ideas to assist in his or her political decision making on public affairs, i.e. how they should vote every two to four years (or increasingly, whether they should bother), and which social and political institutions warrant support and which antipathy. The press provides the raw materials for debate, and each viewpoint is given a fair hearing. The

public readership follows and engages the battle in a “marketplace of ideas” by selecting and advocating particular positions. The result is the truth, or what the majority of the public has ordained as the people’s opinion of the truth. This informed consensus then forms the foundation of representative democracy, the sentiment that elects officials and guides the formulation of public policy between elections.

Conventional wisdom provides that the system is a well-oiled machine. The role of the government is merely to make sure none of the voices in the marketplace of ideas are prevented from speaking. The public is served by a large array of media channels, all of which are dependent for market success on their degree of relevance to public interest. From this vantage point, the best any good regulator can do is stay out of the way and let the competition of ideas provide for a free and fair public debate and ultimately a truthful representation of public opinion. Any government intervention merely amounts to a politically motivated intent to suppress and influence developments in the public sphere. This simplistic but powerful model of the mass media and the government’s First Amendment responsibilities begins to fall apart under scrutiny.

A marketplace works best when it is unfettered, guided only by the invisible hand of efficiency and competition. The government’s role, in this view, is to stay out of the conditions of production and see to it that the health of the marketplace is nurtured and perpetuated. Any degradation of public service is due to market inefficiency and can be corrected through economic measures. In this model, the marketplace of ideas is conflated with the marketplace for media content. Citizens are treated as consumers. The primary concern is what an individual may buy in the media marketplace, not what public services are offered by the media system to the citizenry. When consumer and civic behavior are blended

into a single set of marketplace transactions between political ideas (where public interest is determined competitively rather than deliberatively), the FCC has made a very specific move in conceiving the nature of the relationship between press, public, and government.

Beneath this portrait of the current administration of the media marketplace and the government's regulatory apparatus lies the First Amendment. Every understanding of the interrelationship between press/public/government assumes an interpretation of the freedom of speech and the press. These liberties have historically proven hard to define. The understanding of how free speech and a free press should be deployed in society has always been influenced by the current assumptions of contemporary policy makers about history, legal theory, and democracy's relationship with media. Despite these historical vagaries, the core values of press and speech freedom are woven into the fabric of the American political system.

The model of the press regulator as marketplace facilitator rests on a solid base of case law that has consistently focused on First Amendment rights as negative freedom, i.e. the freedom from interference, which applies primarily to the individual. It is a legal philosophy of the mold shaped by John Milton, John Locke, and John Stuart Mill. The central premise is that the absolute protection of every individual's political speech will naturally provide for a free and full public debate—as no one with a mind to speak will be prevented from doing so and the rational merits of each individual statement will determine its fate. Conventionally, the portrait of constitutional thinking about the First Amendment ends there, although there is much more to consider.

This concept of free speech for the individual has fed and been fed by the popular conflation of the market and American democracy as interlocking (if not interchangeable)

ideals. Competition in the marketplace, the de facto impropriety of government interference, and blind faith in the natural forces of an unencumbered market system to yield only the best outcomes—these are values that have come to stand astride Adam Smith's economic legacy as well as Thomas Jefferson's political tradition of free speech.

The Reality of Contemporary Commercial Mass Media

However, we make a grave mistake when we unreflectively assume a fit between 18th century political thought and 21st century media economics. The relationship between democracy and media markets has changed over time, and the ideal of negative speech rights in the marketplace of ideas has been used to paper over the obvious economic conditions that now inhibit the diversity of viewpoints the public requires. The ideals of the freedom of the press become shibboleths that mask dysfunction when the marketplace of ideas is neither fair nor diverse. There is nothing in the Constitutional tradition of the marketplace of ideas that would suffer the dominant market power of the firms that controls our media system today. The notion that we have a media system that gives equal treatment to all voices is no longer defensible.

Conceptually, the highly concentrated, oligopoly markets for the mass mediation of modern political communication has been squashed into a town-meeting hall in colonial Massachusetts. This is a gross misrepresentation of Jefferson's political thinking, the historical development of free speech rights, and the structure of the modern political economy. The Founders could not have conceived the media in the form it currently holds, and they would almost certainly have framed the debate over the free press in different ways had they the slightest notion of what was to come. Nonetheless, the historical resonance of the "marketplace of ideas" as a political philosophy associated with the Founding Fathers and the

judicial edicts of the First Amendment titans of the libertarian bench—most notably Justices Holmes and Black—has caused these ideas to seep into the political culture as dogmatic constitutional interpretations. Moreover, the contemporary political rhetoric merging the market and democratic government has blended with this tradition to produce a powerful bloc of blind support for libertarian speech and press rights. Despite the depth of entrenched fortification beneath these doctrines, they are badly flawed. We have essentially applied a political philosophy of the free press designed to accommodate one historical period and its media economics and applied it into a totally different future context without considering the ensuing problems. In this uncritical ideological zone, the idea of the government as the market facilitator makes perfect sense. In practice, the American public urgently deserves a thoroughgoing review of how the legacy of the First Amendment can regain its position as the champion of viewpoint diversity rather than the handmaiden of the marketplace.

THE BROAD, POSITIVE VIEW OF THE FIRST AMENDMENT

What do we mean by First Amendment rights? The key analytical problem here is to identify the central purpose of the Amendment. What rights and liberties follow from forbidding Congress to interfere with speech? What are the conditions sufficient to provide free speech and which are merely necessary?

Our belief is that the conventional wisdom about the First Amendment mistakes a necessary condition for a sufficient one in the guarantee of free speech rights, and in so doing elides the very foundation of its intention and importance. More specifically, negative freedom (the absolute protection of individual speakers from interference) has pushed out positive freedom (the provision of a public sphere in which the public has a right to hear all

speakers) as the central right protected by the law. It is necessary for all individuals to have the right to speak freely, but that is not sufficient to guarantee that the public may hear all voices. A prohibition on interference does not account for the social, economic, and political conditions in society which structurally impede certain voices while amplifying others. Whereas an active responsibility to provide for free speech would demand that public power remove these obstructing conditions whenever possible. “Freedom from” has distracted us from “freedom for”.

Among the most damaging results of this misunderstanding have been further misconceptions embedded in the primary one. For example, the protection from public censorship (government power), a necessary condition for complete negative freedom but not a sufficient one (as there are substantial forms of private power which have the power to censor), has also been mistaken for a sufficient condition for complete negative freedom of speech. And worst of all, the positive freedom which guarantees to promote and sustain the structure of public hearings has been dismissed as neither a necessary nor a sufficient condition, but rather an automatic result of negative freedom. In its most widely understood form, then, the First Amendment means merely the protection of individual speech from government interference. By this reasoning, private entities may lawfully disrupt the public’s ability to hear the full spectrum of social speakers by self-interestedly gate-keeping the primary forums for public speech.

The over-commitment to a negative view of the First Amendment to the exclusion of a positive view stems from a simplification of history. By this reading, the Founding Fathers inaugurated the great experiment in self-government by breaking with the traditions of English common law which protected speakers and printers from prior restraint, but

prosecuted them subsequently if their utterances were found objectionable. American law would protect all speech from prior restraint and from subsequent prosecution, the idea being that the benefits of completely free speech would outweigh the damages of the occasional libel and pernicious falsehood. These libertarian thinkers recognized that a free society depended upon free, fair, and open discussion in the public sphere in order to formulate a well deliberated public opinion to guide representatives in the government. A law which expressly prohibited Congressional interference with public speech would make this public sphere of deliberation sacrosanct.

However, recent historical inquiry has shown the 18th century roots of the libertarian tradition to be questionable. There is evidence to suggest that the libertarian tradition was not particularly prevalent among the Founders. Moreover there is evidence to suggest that they understood and valued positive freedom with an equal, if not greater passion than negative freedom. The unearthing of an alternative tradition of First Amendment thinking among the Founders has begun to topple the theoretical scaffolding holding up much of more contemporary libertarian legal and social thinking on the issue. The alternative tradition allows for a profoundly different understanding of the First Amendment with impressive implications.

To begin with, no one knows exactly what the Founders had in mind when they drafted the First Amendment. Like much of the Constitution, the Framers were blessed, in Leonard Levy's apt phrase, with a "genius for studied imprecision."[58] In other words, there is good reason to believe they did not precisely commit to one interpretation or another because they expected subsequent generations to require room for maneuver. The documented context

[58] Leonard W. Levy. *Emergence of a Free Press.* New York: Oxford University Press, 1985, p. 348.

of the writing of the First Amendment is murky and leaves few clues. It is not at all clear what they thought, and it seems most likely that they were not all that sure themselves. In such a case, it would seem critical for historians to explore the record to search for alternative or complementary understandings of the First Amendment to broaden our perception of original intent as well as its historical legacy.

In his recent study of the period, legal scholar Akhil Reed Amar argues that "[t]he essence of the Bill of Rights was more structural than not, and more majoritarian than counter."[59] Or in other words, the first ten amendments to the Constitution were less about protecting minority rights—less a foundation for a libertarian tradition—than they were a positive plan for promoting majoritarian rights. He argues that even though the Bill of Rights has traditionally been read as a list of inalienable rights guarding minorities from the tyranny of the majority, its original intent was quite different. He makes a powerful case that structural concerns, i.e. those dealing with the sanctity of the public's collective right to self-government, were foremost in the minds of the Founders, not the inalienable rights of individuals. The great concern was protecting the public and the means of self-government from they tyranny of ruling elites. This majority protection, he argues, was the driving principle behind the Bill of Rights in its original historical setting.

With regard to the First Amendment, this means that the freedom of expression should be broadly conceived as the protection of the public's right to hear all points of view in a free, fair, and full sphere of deliberation. It is only secondarily an edict protecting the speech of all individual speakers. Minority rights to expression are thus a function of the majoritarian principle. By prohibiting the power of government from interfering with public speech in

[59] Akhil Reed Amar, *The Bill of Rights*. (New Haven: Yale University Press, 1998), xiii.

general, the structural integrity of the public sphere would be preserved. This is not to say that the Founders would have countenanced private power (economic, political or religious) disrupting the public sphere. Quite simply, in the late 18th century the only power strong enough to curb the freedom of expression in the public sphere was the government. If a law was created to forbid that interference, the possibility of minority power corrupting self-government would be thwarted.[60] The Founders saw the dire necessity of keeping the public informed, engaged, and active in political society. Jefferson's warning of the consequences of a de-politicized public resonates with the primary threat of elite usurpation of power: "If once they [the people] become inattentive to the public affairs," he wrote his friend Edward Carrington, "you and I, and Congress and Assemblies, Judges and Governors, shall all become wolves."[61]

If the First Amendment is seen as a law protecting majoritarian rights to self-government through free expression, the idea that it is limited to the prohibition of government interference with individual speech is clearly inadequate. For example, if the integrity of the public sphere were to be threatened by a private power, the First Amendment would have jurisdiction. Or if the public sphere could be promoted, maintained, or empowered through government action, this also would fall under First Amendment principles. The law forbids the government from abridging free expression, but it says nothing

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[60] Amar, 18-21. Amar argues that it was the 14th Amendment which turned the tide of First Amendment thinking into a libertarian camp. This is a persuasive claim, but it does not change the original intent of majoritarian rights nor the validity of the theoretical tradition, which hails from it.

[61] Adrienne Koch and William Peden, ed. *The Life and Selected Writings of Thomas Jefferson.* New York: Modern Library, 1944, 412. Quote taken from a letter to Edward Carrington, January 16, 1787.

about a prohibition on government promotion of free expression. Moreover, a majoritarian interpretation implies that it is not only *not* forbidden, but that it is positively obliged.[62]

THE HISTORICAL CONTEXT OF THE FIRST AMENDMENT

Recent scholarship on the character of the press in Revolutionary America grants us a very important insight with regard to the public sphere and the freedom of expression. Newspapers at the founding of the nation functioned like a town meeting on paper, to be circulated throughout educated society.[63] This notion is very helpful in the assessment of what early Americans perceived that the press ought to be. Recalling that the revolution and the nascent republican policies of the government greatly expanded the press system and its role in public life, we can expect that the institution experienced a kind of social redefinition as more people came into frequent contact with it. As might be expected, the society thought of the new in terms of the old, i.e. the burgeoning press was conceived in relation to a well-understood form of public political communication, public meetings in the town hall. It was to be a forum for deliberative democracy located between civil society and the state wherein all citizens (defined quite strictly in the 18th century) could contribute as anonymous equals (free of the biases and encumbrances of economic fortunes and social entanglements) to the crafting of public policy which aimed at producing the common good. The idea of a rational discourse among citizens who have discarded their personal interests to collectively pursue the common good pervaded the thinking of the Revolutionary generation—even if such an ideal could never actually manifest itself. Thus there is a strong, idealistic foundation for understanding

[62] Amar, 41. Amar also suggests that Article IV of the Constitution supports this position.
[63] Kevin Barnhurst and John Nerone, *The Form of News: A History* (New York: Guilford Press, 2001).

the free press as the majoritarian, structural right to participate in this forum which draws on this burgeoning self-conception of the Founders. "Printers thought of their newspapers as the infrastructure to the public sphere and presented them as common carriers for the information and deliberations of a rational citizenry."[64]

Far from using the newspapers as "tools of commerce" to engage the political sphere, as the R&O interprets this historical period (¶353), the media system of the early Republic was explicitly non-commercial and explicitly public, political, and regulated by the state. Colonial newspapers were begun as quasi-governmental organs: they characterized themselves as "public prints" and often bore the phrase "Printed by Authority" on their mastheads. Their printer/editors were often postmasters, and a major source of income for colonial printers was printing the laws and other government documents.[65] In the years leading up to the Revolution, and in the period that followed printers understood themselves as part of a movement and as having a special responsibility to represent the public. Both printers and political leaders viewed the press as the structure of the public sphere, as providing a neutral forum for public deliberation. They contrasted the "liberty of the press" with "licentiousness," by which they meant the pursuit of private political or commercial goals at the expense of the common good. They understood that licentiousness would undermine the republic.[66]

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[64] Barnhurst and Nerone 46-48, quotation on 48.

[65] Charles E. Clark. The public prints: the newspaper in Anglo-American culture, 1665-1740. New York: Oxford University Press, 1994.

[66] Stephen Botein. 1975. "Meer Mechanicks' and an Open Press: The Business and Political Strategies of Colonial Printers." *Perspectives in American History* IX: 127-225; Stephen Botein, "Printers and the American Revolution." in Bernard Bailyn and John B. Hench, (eds.) *The Press & the American Revolution.* Worcester: American Antiquarian Society, 1980; Leonard Levy. *Emergence of a Free Press*. New York: Oxford University Press, 1985; John

Indeed, the press of the early Republic was overwhelmingly political and explicitly driven by public resources and guidelines. Public policy, both official and unofficial, supported the press. Officially, local, state, and national governments all subsidized the press by paying for the printing of the laws and other public documents.[67] Later, one of the first official acts of the federal Congress was to pass postal legislation which included heavy subsidies for newspapers.[68]

Meanwhile, unofficially, politicians subsidized printers to support their political positions and candidacies.[69] As a result of the integration of the press into the political and governmental system, the press in the US grew far faster than market forces would have allowed. The press in turn became an engine of growth for other sectors of the economy. Until the second half of the nineteenth century, the press understood itself as political more than commercial.[70]

Although printers were often canny entrepreneurs, they were simultaneously citizens and political leaders. Moreover, they understood commerce and politics to be in tension, and insisted on moral and ethical guidelines to prevent their commercial interests from overcoming the common good. Until the second half of the nineteenth century, the First Amendment guarantees of freedom of speech and press were understood to be limited by the concerns of the public good and the health of the public sphere. The press did not come to be

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Nerone. *Violence against the Press: Policing the Public Sphere in US History* New York: Oxford University Press, 1994.

[67] For more on this, see Culver Smith. The press, politics, and patronage : the American government's use of newspapers. 1789-1875. Athens: University of Georgia Press, 1977.

[68] Richard R. John. *Spreading the News.* Cambridge: Harvard University Press, 1995.

[69] Jeffrey L. Pasley. "The tyranny of printers": newspaper politics in the early American republic. Charlottesville: University Press of Virginia, 2001.

[70] Barnhurst and Nerone, chapters 1-4.

understood as a singular institution in a common commercial marketplace until the mid-nineteenth century.

Saul Cornell, in his study of the Constitutional debates, gives special emphasis to the relationships between the press and the public sphere. "Not only was the debate over the Constitution an important phase in the evolution of the public sphere in America, but the contest over it focused unprecedented attention on the politics of the public sphere itself."[71] The ideal of free and full public access to a rational debate over the common good—stripped so far as possible from the pursuit of private advantage—emerges in the writings of many of the early republic's best editorialists (who of course wrote anonymously in keeping with the spirit of the public sphere). Cornell notes that Philadelphia editorialist, "Centinel" (probably Samuel Bryan) "envisioned the public sphere of print as an important means of cementing the nation together. Print afforded a means of achieving social cohesion without a strong coercive authority."[72] Far from an economic marketplace, the press in its finest form would embody its function as the basis for deliberative self-government. Of course, there were a handful of papers that published scandal and pitched their content at sales rather than service. These were a substantial minority with small influence. Jefferson blasted these papers, referring to them as "polluted vehicles."[73]

We can see these understandings in action in the postal policy of the new federal government which reflected the Founders commitment to the right of the citizenry to as a wide a circulation of public information as possible. Richard John describes what he calls the "educational rationale for postal policy" adopted into the Post Office Act of 1792. Essentially,

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[71] Saul Cornell. *The Other Founders*. Chapel Hill: University of North Carolina Press, 1999, p. 21.
[72] Cornell, 104.
[73] Koch and Peden, 581. These lines are taken from a letter to John Norvell, June 11, 1807.

it was the intent of the Framers to create a postal system that best facilitated the distribution of public information to the citizens active in the self-governing of the society. Were it not for considerations of local markets and delivery guarantees, newspapers would likely have been distributed for free as a matter of principle. Lawmakers certainly considered it before opting to grant newspapers full access to the postal system with extremely favorable rates. These low rates ensured the feasibility of wide distribution and resulted in a huge expansion of the press system. The policy acted as a public subsidy for the promotion and circulation of public information for the purposes of cultivating the values of self-government.[74]

The Postal Act represented a government regulation designed to promote majoritarian rights to free speech by expanding and enriching the public sphere. Similarly the Founders supported public libraries and educational institutions. The public right to have access to, and the capacity to know, the truth were a critical part of the Enlightenment understanding of the public sphere.[75] The government could certainly sponsor a free press, i.e. make laws to positively enhance it, even as, conversely, it could not negatively curtail it.

The expansion of the press system after the Revolution elevated newspapers into "the matrix of the function of popular government and the protection of civil liberties."[76] That is, public opinion embraced the free circulation of public information and the freedom of expression as an important part of governmental society. Newspapers were evolving into the 4th Estate, "an informal or extra constitutional fourth branch that functioned as part of the intricate system of checks and balances that exposed public mismanagement and kept power

[74] John, 30-37.
[75] Smith, 44-46.
[76] Levy, 273. See also Barnhurst and Nerone, 43-5.

fragmented, manageable, and accountable."[77] The importance of public engagement and participation in the ongoing debates in the press was not only a central legal right but a functional, practicable goal.

The number of papers in proportion to the number of eligible voters (defined rather strictly in those days) was impressive, and access for speakers and readers alike was not a problem. Jefferson eloquently summarizes the principles at stake: "The basis of our governments being the opinion of people," he wrote, "the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers, and be capable of reading them."[78] This is an oft-quoted passage; but its final sentence, often omitted, warrants special attention here. The implication is that it is not enough to negatively protect the press system. It must be actively promoted to ensure universal distribution of all public information to all citizens. In other words, the public's right to hear all voices and properly digest their messages is the central platform of a democracy.

In the history of the First Amendment, then, the key question is not where and when strict libertarian concepts of free expression were adopted, nor where the boundaries of the public sphere or the 4th Estate were drawn. The important conclusion is that this arena of public discourse was of central importance to the Framers of a democratic experiment. The structural integrity of the press system, the institutions of town hall meetings and public assemblies, and the ability of anyone with an opinion to set up a soap box on a street corner

[77] Levy, 273. See also John Nerone. *The Culture of the Press in the Early Republic* (New York: Garland Publishing,1989), 19.

[78] Koch and Peden, ed., 411-12. Quote taken from a letter to Edward Carrington, January 16, 1787.

were all generally recognized as the true meaning behind the freedom of expression. The important thing for them was not the specifics of protecting each individual speaker, but rather ensuring that the system as a whole remained operational and effective in the dissemination of all ideas to all citizens. This analysis highlights the contention that for the Framers of the freedom of the press, the structural issues were more important than the individual ones.

THE CONTEMPORARY LOGIC OF A POSITIVE VIEW OF THE FIRST AMENDMENT

Given this review of history which qualifies and revises traditional accounts of First Amendment origins, it follows that the development of legal and theoretical ideas about the freedom of the press should also reflect a different logic. The theoretical postulate which we may take from the identification of majoritarian rights as primary to individual rights can be directly mapped onto the idea that positive freedom or affirmative freedom assumes and precedes negative freedom or prohibitive freedom. That is to say, the protection and sustenance of the majority's right to a free, fair and full public sphere is not guaranteed simply by prohibiting government from interfering with individual speech.

First Amendment scholar Zechariah Chafee eloquently explained why negative freedoms are insufficient: "To us this policy is too exclusively negative. For example, what is the use of telling an unpopular speaker that he will incur no criminal penalties by his proposed address, so long as every hall owner in the city declines to rent him space for his meeting and there are no vacant lots available?" Chafee argues that the public must make available to all willing speakers the means to speak their mind, "for otherwise the subjects that most need to be discussed will be the very subjects that will be ruled out as unsuitable for discussion…We

must do more than remove the discouragements to open discussion. We must exert ourselves to supply active encouragements."[79]

In a more recent treatment of this negative/positive freedom debate, Owen Fiss distinguished two primary treatments of the First Amendment, the "autonomy principle" and the "public debate principle." The "autonomy principle" is the libertarian tradition which holds that individual speech rights, properly protected, will automatically yield a full and free public debate if left unencumbered. The "public debate principle" is the majoritarian tradition which denies that autonomy is fully instrumental in providing for the public's rights and authorizes an active state to cultivate and promote the structural conditions of an "uninhibited, robust, and wide-open" public debate, to quote from Justice Brennan's ruling in *New York Times Co. v. Sullivan* (1964).[80]

The positive freedom which obliges the state to make laws that aid rather than abridge free expression rejects the adequacy of purely negative rights. Moreover, it recognizes the corollary responsibilities of the state that are not questioned as "infringements" on First Amendment freedoms though they unquestionably aid in its promotion. Alexander Meiklejohn's position on this distinction is worth quoting at length:

> "First, let it be noted that, by those words [the text of the First Amendment], Congress is not debarred from all action upon freedom of speech. Legislation which abridges that freedom is forbidden, but not legislation to enlarge and enrich it. The freedom of mind which befits members of a self-governing society is not a given and fixed part of human nature. It can be increased and established by learning, by teaching, by the unhindered flow of accurate information, by giving men health and vigor and security, by bringing them together in activities of communication and mutual understanding. And the federal legislature is not forbidden to engage in that positive enterprise of

[79] Zechariah Chafee. *Free Speech in the United States* (Cambridge: Harvard University Press, 1941), p. 559.

[80] Owen M. Fiss. "Why the State?" *Harvard Law Review* 100, no. 4 (1987): 785.

> cultivating the general intelligence upon which the success of self-government so obviously depends. On the contrary, in that positive field the Congress of the United States has a heavy and basic responsibility to promote the freedom of speech."[81]

In this interpretation, flouting the legitimacy of affirmative government action in the realm of public speech on the grounds that it violates the speech rights of individuals misunderstands the priority of majority over minority rights and the structural basis of the First Amendment.

Paul Stern defines the Meiklejohnian "political interpretation of speech" further, writing "that our protection of free speech is grounded in its function of sustaining a framework of unconstrained public discourse in which agents can deliberately define their purposes by reciprocally weighing the merits of opposing positions."[82] The "framework" must retain its structural integrity, must adhere to the "public debate principle" of Owen Fiss, because it is the foundation of deliberative self-government. Without it, democracy falls apart, and public power devolves to private speakers whose liberties are permitted to corrupt the majoritarian right to a full public sphere.

To the extent that private speech (or more to the point, private control of the systems of communication) does not serve or contradicts a public function, it is not protected by the First Amendment, and in some cases must be actively resisted to preserve the forms of speech which are constitutionally mandated. This resistance does not come in the form of suppressing speech, but rather in the form of empowering more speech to match the advantage gained by a disproportionately amplified private speaker in the public sphere.

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[81] Alexander Meiklejohn, *Political Freedom* (New York: Harpers, 1960), pp. 19-20.

[82] Paul G. Stern. "A Pluralistic Reading of the First Amendment and Its Relation to Public Discourse." *Yale LawJournal* 99, no. 4 (1990): 925.

This is an absolutely central point with regard to the modern press. Gone are the days when the town meeting and the community forum could stand for the public debate. The mass media is the general arena of deliberation. The press, once conceived as a part of the public sphere and a player in the public debate, has become the mediator of that debate as well as its primary player. When that mediator, using its accumulated economic power, volume and control, begins to advocate from a position of private interest, the principles of the First Amendment's structural protections, its majoritarian rights, are weakened.

CONTEMPORARY COMMERCIAL MASS MEDIA

Moving out into the realm of the political culture, if the intent of a media channel is not primarily to serve the public, but rather to sell papers, increase ratings, scoop rivals, or deliver up content which draws the audiences most desirable for sale to advertisers—or more controversially, if the intent is to push a particular political position or omit a particularly political position—the majoritarian principles of the First Amendment are undermined.

We are not arguing that the government should take an overly intrusive hand in the editorial rooms of commercial media, but rather that the commercial media system itself is at odds with the principles of the First Amendment in important ways. Either the government must take a hand in expanding speech to include that which is excluded by the private masters of the public debate, or it must regulate the structural administration of the public sphere to facilitate entry into the marketplace of underrepresented voices. More to the point, we can no longer be satisfied with a definition of the First Amendment that rests exclusively with the forms of negative freedom universally applied.

Arguing that the press has turned away from its public mission does not mean that it should be muzzled or censored. It means that the media must bear the burden of regulation due a system of public debate institutionalized into a commercial system for private gain. The public rights stripped out by market forces must be reinstated by public policy. The spirit of the First Amendment would indicate that the solution lies in re-publicizing the public sphere. Private control of the system and its major voices can only be countered by the public protection of the system through the advocacy and subsidy of more speech, specifically from those speakers who are not permitted or able to gain access to the current media.

Congress and the FCC have the responsibility to positively protect the right to public speech by ensuring a free, full, fair, and deliberative space for public debate. William Hocking described his proposals to "provide presumptive but not prescriptive routes" to a satisfactory public sphere as "means to freedom" not obstructions to it.[83] Therefore, they must open up the media to ensure that all opinions may be heard. That this cannot easily be done in a commercial system does not make it less necessary. As famously put by the Hutchins Commission in 1947 whose report reads just as relevantly today as it did half a century ago: "Freedom of the press means freedom from and freedom for…The freedom of the press can remain a right of those who publish only if it incorporates into itself the right of the citizen and the public interest."[84]

Given the importance of the structure of the media system to the guarantee of the First Amendment, we must investigate the structure of the commercial marketplace of ideas. There

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[83] William Ernest Hocking. *Freedom of the Press*. Chicago: University of Chicago Press, 1947, p. 96.
[84] Robert M. Hutchins. *A Free and Responsible Press*. Chicago: University of Chicago Press, 1947, p. 18.

are major problems with mapping an exchange model of marketplace competition onto the public sphere of political communication.

The concept of the marketplace of ideas did not exist in the 18th century. The Founders had another structural model in mind: the public sphere. It sounds a lot like the marketplace of ideas, but there are key differences. To get at these differences, we must understand early American thinking on organized power and free expression. In the libertarian tradition of First Amendment thought, the prohibition of organized public power from activity in the arena of public speech is the foundation of the right. Perhaps because of this beginning, this tradition has rarely considered other forms of organized power which might threaten the public's right to free expression, such as privately organized power. It seems a logical move to make, but it has not often been made in mainstream legal theory. Yet we should take note that the Founders argued against public power not to explicitly exempt private power, but because no privately organized power then existed that had the capacity to topple free and full public debate.

Of course, in modern times, this is no longer the case. There are many seats of privately organized power with the ability to topple free expression. But the theory of the structure of public speech has not taken this fully into account. In large part, this is because the marketplace of ideas has replaced the public sphere as the ideal type at the center of theory on the First Amendment. The public sphere demands protection from all organized power, internal and external. No minority interests may control the system of communication and no voice within the public sphere should have a structural advantage over another. In the marketplace of ideas, it is only the external intervention of public power which is prohibited.

No restrictions are placed on internal private power. Hence the private censor may replace the public censor without breaking the rules.

This strikes us as a bitter irony. Essentially, the zeal of the First Amendment defenders of the private right to uninhibited speech has led directly to the ability of minority speakers to distort the marketplace of ideas, box out unwanted speakers in the most mainstream channels to which everyone has access, and defend their actions as inalienable constitutional rights. It is the direct result of the conflation of individual, negative speech rights with the marketplace model—to the exclusion of public, affirmative speech rights and the ideal of the public sphere. In today's media marketplace, dominated by a handful of mega-corporations, a group of organized private interests can gate-keep the marketplace, determine the parameters of public debate, and marginalize unprofitable or politically undesirable speakers by denying them access to the high-impact, mainstream media. The marketplace has no rules and no theoretical problems with a homogenous bloc of political communication in the center of public communication, banishing the bulk of diversity to low traffic media like small circulation print publications and little known websites. When we grant absolute freedom to private media operators to do as they choose with their channels, we give them the constitutional right to ignore their constitutional duty—to give all public ideas a public hearing. Why should we fear public tyranny and embrace its private form? Owen Fiss laments precisely: "Autonomy provides the proponents of deregulation with a constitutional platform that is ill-deserved."[85]

There have been occasional legal attempts to recognize and rectify this state of affairs. For example, in *Associated Press v. United States* (1945), the Supreme Court ruled that AP

[85] Fiss, 790. Perhaps the best statement of this irony is in Jerome A. Barron. 1967. "Access to the Press--a New First Amendment Right." *Harvard Law Review* 80:8: 1641-78.

could not withhold news from public media channels who wished to take advantage of the wire service. Justice Black writing for the Court ruled: "Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests."[86] Justice Frankfurter affirmed this sentiment: "A public interest so essential to the vitality of our democratic government may be defeated by private restraints no less than by public ownership."[87] This is a clear vindication of public over private rights to freedom of expression, affirmative structural rights trumping negative individual rights. By implication, any private media organization's actions (despite falling under First Amendment protection) which infringe upon the full and free public debate are subject to public regulation by virtue of the higher law of public rights to a free and full debate.

Scholars have subsequently wondered with astonishment how a precedent failed to be set in this case to protect the public interest from private appropriation.[88] The much cited Hutchins Commission Report (1947) on the press is replete with instances and warnings about the contradiction of preventing government from hindering the press even while endorsing the very same tyranny in the form of private media companies with a stranglehold on the marketplace.

The Hutchins Commission reflected on new broadcast technology, market forces, and the nature of the modern press and came to ominous conclusions. Essentially, the public importance of the press was increasing as the mass media increased the range and depth of market penetration. Yet the nature of mass communication meant fewer speakers and vastly

[86] Quoted in Barron, 1654.
[87] Quoted in Hocking, 172
[88] See for example, Hocking, 172 and Lee C. Bollinger. *Images of a Free Press*. Chicago: University of Chicago Press, 1991, p. 111.

fewer operators of the major media due to the apparent necessity of economies of scale in these industries. Further, the vast majority of the speakers were engaged in commercial service, not public service, rendering the public interest a distant second as a priority.[89]

In large part, this should not have been surprising, as the common knowledge about freedom of the press allowed for absolute freedom for media channels and the guaranteed provision of public service through the invisible hand of the marketplace. Without overturning, or at least troubling, these two pillars of First Amendment orthodoxy, no progress would be made. The Hutchins Commission came to precisely this conclusion—although their recommendations fell far short of implementing their critique in any meaningful way. "Since the consumer is no longer free not to consume, and can get what he requires only through existing press organs," the Commissioners wrote, "protection of the freedom of the issuer is no longer sufficient to protect automatically either the consumer or the community. The general policy of laissez faire in this field must be reconsidered."[90]

Reconsidered in reference to what, we might ask? The expansive definition of First Amendment rights has historical roots, legal theory, and political currency to back it up. The "polluted vehicles" of the early republic have become the polluted system of modern times. Gone is even the pretense of the public sphere as the Founders envisioned it.[91] A few points of

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[89] See Bollinger, 28-29; Hutchins, 1.

[90] Hutchins, 125.

[91] See for example, C. Wright Mills. *The Power Elite*. New York: Oxford University Press, 1956.; Jerome Barron. 1967. "Access to the Press--a New First Amendment Right." *Harvard Law Review* 80:8: 1641-78; Edward Herman and Noam Chomsky. *Manufacturing Consent*. New York: Pantheon Books, 2002 [1988].; Robert W. McChesney. *Rich Media, Poor Democracy*. New York: New Press, 2000; Leonard Downie Jr. and Robert G. Kaiser. *The News About the News*. New York: Alfred A. Knopf, 2002; and Robert W. McChesney and John Nichols. *Our Media, Not Theirs*. New York: Seven Stories, 2002.

summary will suffice to connect the major arguments with the current discussion on the history, theory, and political conceptions of the First Amendment.

CRITIQUE OF MARKET-PRIMARY IN FEDERAL POLICY

Essentially, there is a dangerous fallacy in assuming that the marketplace of ideas is commensurate with the public sphere of deliberative democracy. The idea that a laissez-faire regulatory scheme that cedes all control of mass mediated public debate to commercial media concerns will somehow magically yield a representative sample of public ideas and interests is bankrupt. Perhaps one could equate the two in a town hall meeting in an 18th century Massachusetts farming community whose citizens had access to a dozen different mainstream newspapers of varying partisan stripes; but no longer. Not only does the current system invite corruption and the distortion of public representation for private gain, it absolutely ignores the imperative at the foundation of the First Amendment that the freedom of the press is the public right not only to contribute to the public debate, but also to consume and consider a free and representative variety of public opinion. The market will naturally favor some voices over others, some topics over others, and transform citizens into political consumers. This process has proceeded blithely apace for so long that we appear to have forgotten our roots. In this context, we note that the very apathy of disillusion is now held up as proof of satisfied customers, or rather, citizens.

The critique follows two central tracks. First, as media firms consolidate and concentrate ownership in the marketplace, the number of voices in the public sphere diminishes. This phenomenon is the direct result of federal deregulation based on libertarian, free market conceptions of First Amendment duties. Diversity gives way to homogenized

content calculated for the economic and political benefit of minority interests at the expense of the majority. Market power is based on the idea of reducing competition, streamlining production, leveraging pre-existing market advantages, and selling for the maximum price what may be produced for the minimum cost. Any public benefit that accrues from this process is largely incidental. The market is simply a poor mechanism for arbitrating public debates. Jerome Barron's savage explanation is a handy blueprint: "There is inequality in the power to communicate ideas just as there is inequality in economic bargaining power; to recognize the latter and deny the former is quixotic. The 'marketplace of ideas' view has rested on the assumption that protecting the right of expression is equivalent to providing for it."[92] The failure of that postulate to deliver is manifest in the continued de-politicization of modern society and the deep-seated problems we face from under-representation of minority viewpoints in the mainstream media.

The second track of the critique addresses a product of this system and represents its most visible form: the content of the media system. At the most basic level, mainstream media has homogenized to an unprecedented extent. Standardized fare is cheaper to produce and more easily manipulated politically than a diverse marketplace. Moreover, even if a political motive is not immediately apparent, the drive to place profit before public service inevitably produces content that satisfies the minimum threshold of the lowest common denominator of public taste.

The First Amendment is not meant to sanctify the marketplace of ideas, it is meant to ensure to every citizen "the fullest possible participation" in the working through of social problems. "When a free man is voting, it is not enough that the truth is known by someone

[92] Barron, 1647-8.

else, by some scholar or administrator or legislator. The voters must have it, all of them. The primary purpose of the First Amendment is, then, that all the citizens shall, so far as possible, understand the issues which bear upon our common life. That is why no idea, no opinion, no doubt, no belief, no counter belief, no relevant information, may be kept from them."[93]

It is consent and consensus through informed debate, not competition and submission through Darwinian dogfights, which is sought by the public spirited intent of the Constitution and the affirmative freedom of expression provided for the American public. The social contract is not an invitation to a Machiavellian power struggle but a commitment to the common good. Federal regulation that ignores this reality and commits itself to the service of market forces is doing the public a profound disservice. As Jerome Barron puts it: "As a constitutional theory for the communication of ideas, laissez faire is manifestly irrelevant."[94] The era when the First Amendment could be seen primarily as a defender of personal liberties in an unfettered public sphere is long gone (if it ever existed). The only way to claim the public right to a deliberative discussion about common affairs with guaranteed access for all citizens is to temper the private control over the media system with public policies that promote a diversity of voices. The only way to reinstall an affirmative right to the structural integrity of public communications systems is to expose the marketplace as an inadequate method of producing fair treatment for all.

In a marketplace, individual rights (property rights) have precedence over public rights (assets commonly held). In a public sphere, the reverse is true. Though the manifestations of

[93] Meiklejohn, 73-75.
[94] Barron, 1656.

this debate are complex, the basic questions are very simple. To which victor go the spoils of public policy? The private interest or the common good?

CONCLUSION

We set out to describe and critique the status quo of libertarian First Amendment thinking which lies at the base of the FCC's R&O on media ownership and to offer an alternative set of possibilities. The overarching conclusion is that this paradigm does exist, is easily within reach, and requires only the will of public consideration to find purchase in a regulatory regime. It is neither esoteric nor impractical, but draws from relatively common sense approaches to history, legal traditions, and public policy.

The public interest was always the primary concern. The Founders understanding and discussion of these legal rights are sometimes easy to misread, not because their reasoning is unclear, but because the historical situation in which it was applied is so different from our own. Proceeding with the intent of untangling the specificities of historical moments, we begin to see that the balance of public and private interests in the First Amendment corresponds to a balance of negative and affirmative liberties. The prohibition on government power to abridge speech does not prohibit, and in fact obliges, a complementary policy of support and enhancement of the public sphere. From this position, we may then see the inadequacy of the marketplace to achieve the ideals the Founders intended and which we aspire to sustain. On the contrary, the marketplace of ideas, when taken to its modern context of oligopoly commercial mass media, produces a scenario which tends toward the exact opposite of the public rights the Founders intended and democratic society demands.

The Commission should base its rules governing the public interest limits on media ownership on an affirmative, majoritarian view of the First Amendment. The consumer media marketplace is no substitute for the citizens' public sphere. Public policy should seek to expand the marketplace to include all voices, to protect the common good in the public sphere to deliberate with all viewpoints. The private power to interfere with these common rights must not be ignored, but must be vigilantly curtailed. Limits on media ownership should be maintained and policies undertaken to expand ownership of media outlets and viewpoint diversity.

PART II:
THE PILLARS OF MEDIA OWNERSHIP LIMITS REMAIN FIRM: THE CONTINUING IMPORTANCE OF LOCALISM, MEDIA OWERSHIP AND TELEVISION

STUDY 4
LOCALISM AND DIVERSITY

MARJORIE HEINS AND MARK COOPER

ABSTRACT

The continuing importance of localism is supported by extensive qualitative and quantitative evidence.

- Concentration of local markets, consolidation of media into national chains and conglomeration across media types undermines localism and diversity.
- Where programming content is controlled locally, it is more responsive to community needs.
- Pooled news services reduce the ability of local stations to present local stories. Conglomerates reduce local-oriented content.
- Recent studies also show that providing programming that is relevant increases voter turn out.

The commercial mass media have not provided a great deal of content on local public affairs.

- Studies of the period leading up to elections show a dearth of news coverage of local issues.
- Studies of local public affairs programming show that most local stations do none whatsoever and those that do provide a paltry amount.

America has become much more diverse over the past thirty years, which suggests that the needs of the public have changed, increasing the importance of diversity.

- The number of households has increased by 67 percent in the past two decades. This is twice as fast as the increase in the population.
- The number of married families has declined, while single parent households have increased sharply.
- The racial/ethnic diversity of the population measured at the state level has increased by over 50% in the past thirty years and the difference between the least and most diverse states has doubled.

THE CONTINUING IMPORTANCE OF LOCALISM

The important role of the media in informing citizens about local affairs is well documented.[95] The link between localism and de-concentration of the media seems obvious. Changes in electronic media distribution technologies have not significantly altered this fundamental relationship.[96]

Waldfogel finds important localism effects operating in the media that support this view. He finds that the preference externality operates in non-prime time programming because it is subject to greater local control and therefore can be more responsive to local

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[95] Kim, Sei-Hill, Dietram A. Scheufele and James Shanahan. 2002. Think About It This Way: Attribute Agenda Setting Function of the Press and the Public's Evaluation of a Local Issue, *Journalism and Mass Communications Quarterly* 79: p. 7; Chaffee, Steven and Stacy Frank. 1996. How Americans Get Their Political Information: Print versus Broadcast News. *The Annals of the American Academy of Political and Social Science* 546; McLeod, Jack M., Dietram A. Scheufele, and Patricia Moy 1999. Community, Communications, and Participation: The Role of Mass Media and Interpersonal Discussion in Local Political Participation. *Political Communication* 16.

[96] Krotoszynski, Ronald J., Jr. and A. Richard M. Blaiklock. 2000. Enhancing the Spectrum: Media Power, Democracy, and the Marketplace of Ideas *University of Illinois Law Review* 813: 866:"The Commission historically has placed a high value on local control of broadcasting on the theory that local control would result in the provision of programming that better meets the needs of the community of license…"A quick perusal of cable programming practices demonstrates the veracity of the proposition. With the exception of PEG channels and leased-access channels, cable programming presents very little programming responsive to the needs, wants, and desires of local communities. If you want the prized hog competition at the state fair covered live, you need a local media presence. Elections for city, county and even state officers might go uncovered if left to the networks or national cable news channels. Although alternative sources of information exist, including the Internet and local newspapers, most Americans continue to rely upon local and network television for their news programming. With respect to local news, local broadcasters are effectively the only game in town."

market conditions.[97] Concentration of national and local markets into national chains reinforces the tendencies of media owners to ignore local needs.[98]

Waldfogel's findings on localism, derived from the basic economics of the media, cut across each of the major products.

> The local data indicate, to a greater extent than the national prime time or cable data, both the distance between black and white preferences and the fact that local programming, far more than national programming, caters to those preferences.[99]

While the economics of television give rise to strong concerns about localism,[100] Waldfogel sees indications of similar localism effects in newspaper markets as well, supporting the conclusion that "content origin matters." He describes localism's effect on behavior in the findings of a study on the entry of a national newspaper into local markets as follows:

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[97] Waldfogel, 2001b, p. 13; Waldfogel, 2001a, p. 9.

[98] Krotoszynski and Blaiklock, pp. 871…875-876: "The Commission's efforts to preserve localism as a feature of the broadcast media will be effectively thwarted if large, corporate entities are permitted to amass large station holdings and use central programming techniques to achieve economies of scale and scope… "Common ownership of media outlets is not conducive to competition in news and other local content programming. Consolidated news departments, like consolidated marketing departments, are a common feature of multiple station groups. Divided control of media outlets within a community creates a healthy competition among news and programming sources."

[99] Waldfogel, 2001b, p. 13.

[100] Krotoszynski and Blaiklock, pp. 866: "Given economies of scale, it might be inefficient to cover the hog competition at the state fair. Perhaps Jerry Springer or Montel Williams would generate higher ratings or cost less to broadcast. From a purely economic point of view, covering a debate between candidates for local office might be a complete disaster. Many local television and radio stations nevertheless provide such coverage on a voluntary basis. Perhaps local commercial television broadcasters do not provide such coverage solely out of the goodness of their hearts or a keen sense of civic responsibility. Nevertheless, the fact remains that a national television channel generally would not cover the lieutenant governor's race in South Dakota absent the most extraordinary and unlikely of circumstances."

> How does national news media affect local news sources and local political participation?
> Preliminary results- Increased circulation of national daily affects:
> Local paper circulation – reduces targeted audience readership
> Local paper positioning – toward local content
> Local political participation – reduces voting, less so in presidential years.

Gee and Waldfogel have recently examined the impact of localism on voter turnout by studying the effect of the availability of Spanish language television on Hispanic voting. This ties the media directly to the most important political outcome -- participation.

> Many questions about localism in media remain unanswered. But it is clear from the results of this study that at least one aspect of localism – the availability of local news – is important….
>
> Television bears a mixed relationship with political participation. Historically, the spread of television has been linked with declining political participation. But it is important to distinguish the message and the medium. Television carries both local and national news. The spread of television, like other national information sources, can attract people away form local products and local affairs. But television can also include local content, chiefly local news, and we find that the availability of Spanish-language local television news significantly boost Hispanic voter turnout.[101]

CONCENTRATION, CONSOLIDATION AND CONGLOMERATION UNDERMINE LOCALISM AND DIVERSITY

Several recent studies based on FCC data show that localism and diversity are harmed by concentration of local markets, consolidation into chains and conglomeration across media types.[102] These studies confirm much earlier research.[103] The dictates of mass audiences

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[101] Oberholzer-Gee, Felix and Joel Waldfogel. "Media Markets and Localism: Does Local News en Espanol Boost Hispanic Voter Turnout?" *Rethinking the Discourse on Race: A Symposium on How the Lack of Racial Diversity in the Media Affects Social Justice and Policy*, April 28-29, 2006, pp. 13-14.

[102] Anonymous, *Do Local Owners Deliver More Localism? Some Evidence from Local Broadcast News* (Federal Communication Commission, draft dated June 17, 2004), p. 14; Alexander, Peter J. and Brendan M/Cunningham. 2004. Diversity in Broadcast Television: An Empirical Study of Local News. *International Journal of Media Management* 6; Alexander, Peter J. and

create a largest market share/lowest common denominator ethic that undercuts the ability to deliver culturally diverse programming,[104] locally-oriented programming,[105] and public interest programming.[106] News and public affairs programming are particularly vulnerable to

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Brendan M. Cunningham. *Same Story, Different Channel: Braodcast News and Information.* (October 4, 2004).

[103] Waldfogel, Television; Waldfogel and George; Waldfogel. Comments on Consolidation and Localism.

[104] Stone, V. A. 1987. "Deregulation Felt Mainly in Large-Market Radio and Independent TV," *Communicator*, April: 12; Aufderheide, P. 1990. "After the Fairness Doctrine: Controversial Broadcast Programming and the Public Interest." *Journal of Communication,* pp. 50-51; McKean, M. L. and V. A. Stone 1991. Why Stations Don't Do News *RTNDA Communicator* June: 23-24; Stone, V. A., "New Staffs Change Little in Radio, Take Cuts in Major Markets TV, *RTNDA Communicator*, 1988; Slattery, K. L. and E. A. Kakanen. 1994. Sensationalism Versus Public Affairs Content of Local TV News: Pennsylvania Revisited. *Journal of Broadcasting and Electronic Media*, 1994; Bernstein, J. M. and S. Lacy. 1992. "Contextual Coverage of Government by Local Television News." *Journalism Quarterly* 69:2: 329-341; Carroll, R. L. 1989. "Market Size and TV News Values." *Journalism Quarterly 66: 49-56*; Scott, D. K. and R. H. Gopbetz. 1992. "Hard News/Soft News Content of the National Broadcast Networks: 1972-1987." *Journalism Quarterly* 69:2: 406-412; Ferrall, V. E. 1992. "The Impact of Television Deregulation" *Journal of Communications*; pp. 21... 28... 30.

[105] Slattery, Karen L., Ernest A. Hakanen and Mark Doremus. 1996. "The Expression of Localism: Local TV News Coverage in the New Video Marketplace." *Journal of Broadcasting and Electronic Media* 40; Carroll, Raymond L. and C.A. Tuggle. 1997. "The World Outside: Local TV News Treatment of Imported News." *Journalism and Mass Communications Quarterly* Spring; Fairchild, Charles. 1999. "Deterritorializing Radio: Deregulation and the Continuing Triumph of the Corporatist Perspective in the USA." *Media, Culture & Society* 21; Layton, Charles and Jennifer Dorroh. 2002 "Sad State." *American Journalism Review* June; Olson, Kathryn. 1994. "Exploiting the Tension between the New Media's "Objective" and Adversarial Roles: The Role Imbalance Attach and its Use of the Implied Audience." *Communications Quarterly* 42:1: 40-41; Stavitsky, A. G. 1994. "The Changing Conception of Localism in U.S. Public Radio." *Journal of Broadcasting and Electronic Media.*

[106] Bagdikian, Media Monopoly, pp. 182...188; Clarke, P. and E. Fredin. 1978. "Newspapers, Television, and Political Reasoning." *Public Opinion Quarterly* Summer; Pfau, M. 1990. "A Channel Approach to Television Influence." *Journal of Broadcasting and Electronic Media* 34: 17-36; Cundy, D. T., "Political Commercials and Candidate Image." in Lynda Lee Kaid (eds.), *New Perspectives in Political Advertising.* Carbondale, IL: Southern Illinois University Press, 1986; O'Keefe, G. J. 1980. "Political Malaise and Reliance on the Media" *Journalism Quarterly* 57:1: 133-128; Becker, S. and H. C. Choi. 1987. Media Use, Issue/Image Discrimination. *Communications Research* 14: 267-290; Robinson, J. P. and D. K. Davis. 1990. Television News and the Informed Public: An Information Process Approach.

these economic pressures.[107] As market forces grow, these types of programming are reduced.[108] Unfortunately, the coverage that disappears tends to deal with schools, localized government affairs, and other community-strengthening materials that enable people to live more secure and educated lives.[109]

The central fact that all of these discussions share is that market forces provide neither adequate incentives to produce the high quality media product, nor adequate incentives to distribute sufficient amounts of diverse content necessary to meet consumer and citizen needs.

Journal of Communication 40:3: 106-119.; Voakes, Paul S., Jack Kapfer, David Kurpius, and David Shano-yeon Chern. 1996. Diversity in the News: A Conceptual and Methodological Framework. *Journalism and Mass Communications Quarterly*, Autumn 1996; Bishop, Ronald and Ernest A. Hakanen. 2002. In the Public Interest? The State of Local Television Programming Fifteen Years After Deregulation. *Journal of Communications Inquiry* 26.

[107] McManus, J. H. 1992. "What Kind of a Commodity is News?" *Communications Research*, 19:6:787-805.

[108] Bagdikian, pp. 220-221; Paletz, D. L. and R. M. Entmen. *Media, Power, Politics*. New York: Free Press, 1981; Postman, Neil, *Amusing Ourselves to Death: Public Discourse in the Age of Show Business*. New York: Penguin Press, 1985.; Lacy, Stephen. 1992. "The Financial Commitment Approaches to News Media Competition." *Journal of Media Economics* 5:2: 5-21.

[109] Bass, Jack. "Newspaper Monopoly." in Gene Roberts, Thomas Kunkel, and Charles Clayton (eds.), *Leaving Readers Behind*. Fayetteville: University of Arkansas Press, 2001; Gish, Pat and Tom Gish, We Still Scream: The Perils and Pleasures of Running a Small-Town Newspaper. and Shipp, E. R. "Excuses, Excuses: How Editors and Reporters Justify Ignoring Stories." in William Serrin (eds.), *The Business of Journalism*. New York: New Press, 2000. Complaints about the failure to cover larger national and international stories also abound (see Phillips, Peter and Project Censored, *Censored 2003*. New York: Seven Stories, 2002; Borjesson, Kristina. *Into the BUZZSAW*. Amherst, New York: Prometheus Books, 2002.

THE LACK OF LOCALISM AND DIVERSITY IN THE COMMERCIAL MASS MEDIA

The growing impact of homogenization in the TV industry, stimulated by the lifting of both national ownership limits and restrictions on vertical integration, is unmistakable.[110] Local programming has been restricted or eliminated.[111] Stories of local importance are driven out of the high-visibility hours or off the air.[112] Pooled news services reduce the ability of local stations to present local stories and eventually erode the capability to produce them.[113]

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[110] McChesney, Robert. *The Problem of the Media.* New York: Monthly Review Press, 2004; Ben H. Bagdikian. *The New Media Monopoly.* Boston: Beacon Press, 2004; Meyer, Thomas. *Media Democracy.* Cambridge: Polity Press, 2002; Meyerowitz, J. 1985. *No Sense of Place: The Effect of Electronic Media on Social Behavior.* New York: Oxford; Kunkel, Thomas and Gene Roberts. 2001. The Age of Corporate Newspapering, Leaving Readers Behind. *American Journalism Review* May. On coverage of the 1996 Telecommunications Act see, Gilens, Martin and Craig Hertzman. "Corporate Ownership and News Bias: Newspaper Coverage of the 1996 Telecommunications Act." paper delivered at the Annual Meeting of the American Political Science Association, August, 1997, p. 8; Network Affiliated Stations Alliance. "Petition for Inquiry into Network Practices" *Federal Communications Commission*, 8 March 2001).

[111] Layton, Charles, 1999. "What do Readers Really Want?" *American Journalism Review* March. reprinted in Gene Roberts and Thomas Kunkel, *Breach of Faith: A Crisis of Coverage in the Age of Corporate Newspapering.* Fayetteville: University of Arkansas Press, 2002.

; McConnell, Bill and Susanne Ault. "Fox TV's Strategy: Two by Two, Duopolies are Key to the Company's Goal of Becoming a Major Local Presence." *Broadcasting and Cable,* July 30, 2001; Trigoboff, Dan, "Chri-Craft. Fox Moves In: The Duopoly Marriage in Three Markets Comes with Some Consolidation." *Broadcasting and Cable,* August 6, 2001; Trigoboff, Dan. "Rios Heads KCOP News." *Broadcasting and Cable,* October 14, 2002; Beam, Randal A. 1995. "What it Means to Be a Market-Oriented Newspaper." *Newspaper Research Journal* 16, Beam, Randall A. 2002. "Size of Corporate Parent Drives Market Orientation." *Newspaper Research Journal* 23; Vane, Sharyn. 2002. "Taking Care of Business." *American Journalism Review* March; Neiman Reports. 1999. *The Business of News, the News About Business,* Summer.

[112] E.*g.,* Lacy, Stephen, David C. Coulson and Hugh J. Martin. 2004. Ownership Barriers to Entry in Non-metropolitan Daily Newspaper Markets. *Journalism & Mass Communications Quarterly* 81, Summer; Wimmer, K. A. 1988. "Deregulation and the Future of Pluralism in the Mass Media: The Prospects for Positive Policy Reform." *Mass Communications Review*

[113] Alger, Dean. *MEGAMEDIA: How Giant Corporations Dominate Mass Media, Distort Competition and Endanger Democracy.* Lanham, MD: Rowan and Littlefield, 1998.

, Chapter 6, *The Media and Politics* NY: Harcourt Brace College, 2nd edition, 1996; Media Studies Center Survey, University of Connecticut, Jan. 18, 1999; Public Interest." *Journal of Communication,* 40.Auletta, Ken. 1998. "The State of the American Newspaper." *American*

A recent study from the Project for Excellence in Journalism affirms these conclusions. Among its findings were that smaller station groups overall tended to produce higher quality newscasts than stations owned by larger companies—by a significant margin; and that network affiliated stations tended to produce higher quality newscasts than network owned and operated stations—also by a large margin. The Project concluded that "overall, the data strongly suggest regulatory changes that encourage heavy concentration of ownership in local television by a few large corporations will erode the quality of news Americans receive."[114]

Additional evidence gathered by the Commission demonstrates how the current structure of media ownership ill-serves the intertwined goals of localism and diversity.[115] Martin Kaplan described a survey of more than 10,000 late news broadcasts that aired during the seven weeks before the 2002 election in the top fifty U.S. markets. Campaign ads outnumbered campaign news stories by nearly 4:1. Almost 60% of the broadcasts contained no election coverage. Nearly half the coverage that did exist focused on horserace or strategy, not issues. Stations owned by large media corporations carried a lower percentage of local campaign news than the national average. Stations owned by small or medium-sized companies carried a consistently higher percentage of local news.

Updating this research in October 2004, Kaplan found similarly troubling patterns in the 2004 election. In battleground states, campaign ads have outnumbered campaign stories during local news shows – six minutes to three minutes. In non-battleground states, campaign

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Journalism Review June; Rabasca, Lisa. 2001. "Benefits, Costs and Convergence." *Presstime* June: p. 3.

[114] Project for Excellence in Journalism. *Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality*. Executive Summary,17 February 2003.

[115] Kaplan, Martin. Testimony. FCC Broadcast Localism Hearing. Monterey, CA. 21 July 2004, www.localnewsarchive.org.

ads occupied about 1.5 minutes, while election news stories took up just over two minutes. Even more troubling for localism, the presidential race received far more attention than local races. While 80 percent of the news stories were devoted to the presidential campaign, only 5 percent were devoted to local elections. Even where senators were running, the presidential election got 75 percent of the news coverage – 68 percent in those states where the senate races are considered a toss-up. Campaign issues (as opposed to campaign strategy and the horserace) were covered in 42 percent of the stories about local elections, but 29 percent of the stories covering the presidential election.[116] Doing the math, we find that about one-quarter of the campaign stories on the local news covered issues in the presidential campaign, but only about one-fiftieth covered local campaign issues.

A recent re-analysis of FCC data on TV news found an average of 24 hours of local public affairs programming and an average of 19.93 hours combined local news and local public affairs programming during a one-month period.[117] That is, separating public affairs from news, TV stations averaged less than ¼ hour of local public affairs programming in a month. New analysis also indicates a broad failure of commercial TV stations to present local public affairs programming.[118] In a two week sample period, only 41 percent of the commercial stations aired any local public affairs programming. In sharp contrast, over 90 percent of public stations aired such programming. Commercial stations aired just 45 minutes

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[116] Interim Report *Local TV News Ignores Local and State Campaigns* (Lear Center Local News Archive, Oct. 21, 2004), http://www.learcenter.org/pdf/LCLNAInterim2004.pdf

[117] Napoli, Philip. 2003. *Television Station Ownership and Local News and Public Affairs Programming: An Expanded Analysis of FCC Data*. paper presented at Annual Meeting of International Communication Ass'n, May: 13-14, re-analyzing data in Thomas C. Spavins, Loretta Denison, Scott Roberts and Jane Frenette. *The Measurement of Local Television News and Public Affairs Programs*. Washington, D.C.: Federal Communications Commission, 2002.

[118] Yan, Michael and Philip Napoli, "Market Structure, Stations Ownership, and Local Public Affairs Programming on Local Broadcast Television," paper presented at the Telecommunications Policy Research Conference, October 2004.

of such programming in the two week period. Local stations owned by the major national networks aired just over 37 minutes of local public affairs shows, while independently owned stations aired 110 minutes.[119] Public (noncommercial) stations aired over 6 hours.

The Public Interest Coalition recently presented specific examples of how radio industry consolidation has eviscerated localism and diversity in news reporting:

> Radio personalities pretend to discuss local news, make commentary on local events, and critique local nightlife and hot spots, all without ever setting foot within a thousand miles of the transmitter. … Clear Channel audiences in Toledo and Lima, Ohio receive newscasts produced in Columbus. And Corpus Christi residents heard news of a hurricane from a Clear Channel bureau located at least a hundred miles away. … Most disturbingly, national group owners have practiced deceptions to make programming appear local while in fact distributing a national service. … References to time, date and location are stripped from guest interviews so that they can appear to be "live" when aired in distant locales. Listeners are urged to "call in" to pre-recorded shows.[120]

In essence, the radio industry, which has been subject to the most unfettered process of national consolidation, demonstrates how local content can be homogenized off the air.[121]

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[119] The finding of greater responsiveness of local media to local needs in program variety has been well documented in recent years in a series of studies of "preference externalities." see Waldfogel, 2001b; Joel Waldfoge and Siegelman, 2000; Waldfogel and George, 2000; See also "Survey Shows Solid Growth in TV News and Staffing." *RTNDA Communicator*, September 2004, p. 6 (only 759 TV stations in the U.S. offer any local news at all).

[120] Comments of the Alliance for Better Campaigns *et al.* in *Digital Audio Broadcasting Systems*, MM Docket No. 99-325 (June 16, 2004), pp. 20-21, and sources cited. See also Leon Lazaroff. "Media Firm Accused of Dodging FCC Rules." *Chicago Tribune* 16 Oct. 2004, http://www.freepress.net/news/5009 (Sinclair Broadcasting, which owns more TV stations than any other company, uses "distance-casting" from company headquarters to broadcast local news, sports, and weather).

[121] Fairchild, Charles. 1999. "Deterritorializing Radio: Deregulation and the Continuing Triumph of the Corporatist Perspective in America." *Media, Culture and Society* 21: 557-559; Bachman, Kathy. "Music Outlets Tune in More News Reports." *MediaWeek,* 29 October 2001.

The industry is focused on "perfecting the art of seeming local" without actually being local.[122]

In the cultural realm, the situation is equally disturbing. A survey by the Future of Music Coalition in 2002 reported that virtually every radio music format is now controlled by an oligopoly. Consolidated control combined with shorter play lists means "few opportunities for musicians to get on the radio," and "deprives citizens of the opportunity to hear a wide range of music." Supposedly distinct formats have as much as 76% overlap in content, even though listeners say they want to hear longer play lists, more variety, and more local musicians.[123]

Additional evidence of the parlous state of local broadcasting comes from research on how well the mass media are serving racial and ethnic minorities. Greater concentration has resulted in less diversity of ownership, and diversity of ownership – across geographic, ethnic and gender lines – is correlated with diversity of programming. Studies by Joel Waldfogel and others show that overall African-American and Hispanic audiences are under-served, and that communities without African-American-oriented media have lower rates of African-American participation in elections.[124] That is, minority owners are more likely to present

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[122]Wilde Anne Mathews. "A Giant Radio Chain is Perfecting the Art of Seeming Local." *Wall Street Journal*, 25 February 2002, p. A1; Staples, Brent. "The Trouble with Corporate Radio: The Day the Protest Music Died." *The New York Times, 20* February 2003 p. A30.

[123] Future of Music Coalition. *Radio Deregulation: Has It Served Citizens and Musicians?* (Ric Dube and Gillian Thomson, eds.) (18 Nov. 2002), pp. 3-5.

[124] Oberholzer-Gee, Felix and Joel Waldfogel. Electoral Acceleration: The Effect of Minority Population on Minority Voter Turnout. *NBER Working Paper 8252*. Cambridge, MA: National Bureau of Economic Research, 2001. Available from http://papers.nber.org/papers/w8252.pdf; Siegelman and Waldfogel, "Race and Radio: Preference Externalities, Minority Ownership, and the Provision of Programming to Minorities." *Advertising & Differentiated Products* 73:10 (Michael R. Baye & Bon P. Nelson eds., 2001). See also *Whose Spectrum is it, Anyway? A Historical Study of Market Entry Barriers, Discrimination, and Changes in Broadcast and Wireless Licensing.* study prepared for the

minority points of view just as females are more likely to present a female point of view, in the speakers, formats and content they put forward.

DEMOGRAPHIC CHANGE AND THE INCREASING NEED FOR DIVERSITY AND LOCALISM

While it is certainly true that there is a great deal more information available to more educated citizens today than thirty years ago, it is also true that they need more information. Over the past 30 years, the makeup of the population that the media serves has grown in size and diversity. Mobility, globalization of the economy, internationalization of communications, and social fragmentation place greater demands on the communications network to enable citizens to be informed about increasingly complex issues, to express their opinions more effectively in civic discourse and to remain connected to their communities.

Counting the number of outlets without reference to the population they serve or the issues they must deal with ignores the needs of the citizenry for information. It also ignores the growing mismatch between huge corporate conglomerates that produce and distribute news and individual citizens that consume it.

The broad parameters of change in American society over the past three decades have been so profound that we can safely conclude that a much more diverse set of media institutions and outlets is needed to disseminate information. We focus on the past three decades because many of the rules governing the structure of media ownership were adopted

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FCC by the Ivy Planning Group, Dec. 2000, http://www.fcc.gov/opportunity/meb_study/historical_study.pdf; Christine Bachen, *et al.,* 1999. *Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming?* (study prepared for the FCC), http://www.fcc.gov/opportunity/meb_study/content_ownership_study.pdf; Christopher Yoo. Architectural Censorship and the FCC *Vanderbilt U. Law School Public Law & Legal Theory Working Paper No. 04-10*, undated, http://ssrn.com/abstract=555821.

in the early 1970s. For the purposes of this analysis, we start with the household as the consumption unit (see Exhibit 1). TV markets are defined in terms of households. The bulk of newspaper distribution is home delivery.

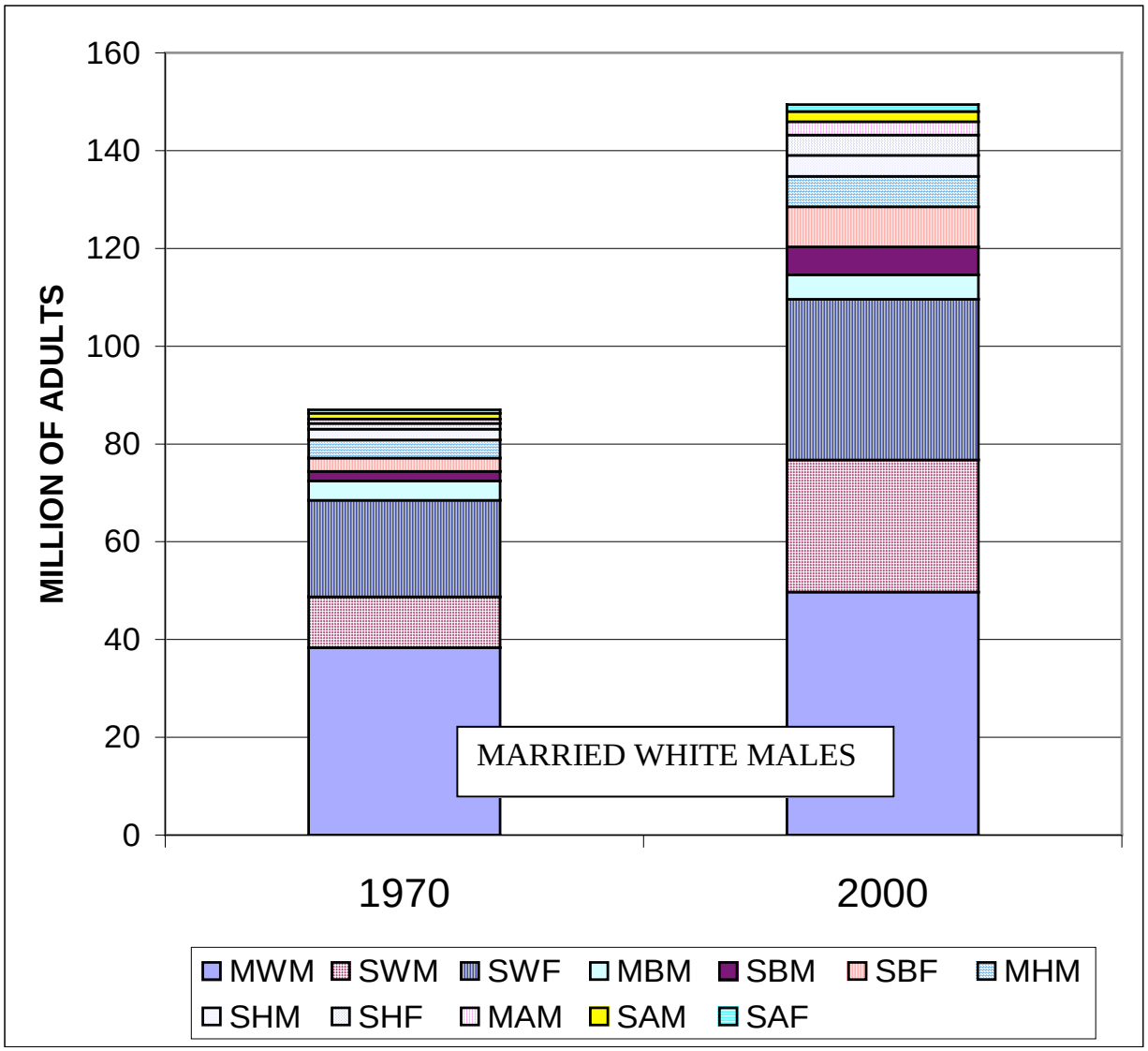
The number of households has increased by 67 percent in the past two decades. This is twice as fast as the increase in the population. This reflects a dramatic change in the composition of households units. The number of married families has declined, while single parent households have increased sharply.

At the same time, there has been a dramatic change in the racial and ethnic make-up of the population. The share of Hispanics and Asian/Pacific Islanders has doubled. Combining these two trends produces a stunning increase in the diversity of the population.

While the population has become increasingly diverse, it has been drawn more tightly into a more complex world. In 1970, exports and imports equaled about eight percent of gross national product. In 2000, the figure was twenty percent. Global financial markets, in which the U.S. is the leading actor, have grown dramatically. In 1970, the goods and services produced by the U. S. economy equaled about fifteen percent of global financial transactions. By 2000, they equaled only two percent.

Exhibit 1:

Growing Diversity Of The U.S. Population: Gender, Race and Marital Status



Sources: U.S. Bureau of the Census, *Statistical Abstract of the United States: 2001* (U.S. Department of Commerce, 2001), Table 50. *Statistical Abstract of the United States: 1986,* p. 35. Hispanic and Asian household make-up is held constant between 1970 and 1980.

The increase in diversity is even larger when measured at a local level (see Exhibit 2). It shows a measure of the racial/ethnic diversity within each state. It uses five categories,

White non-Hispanic,

Hispanic,

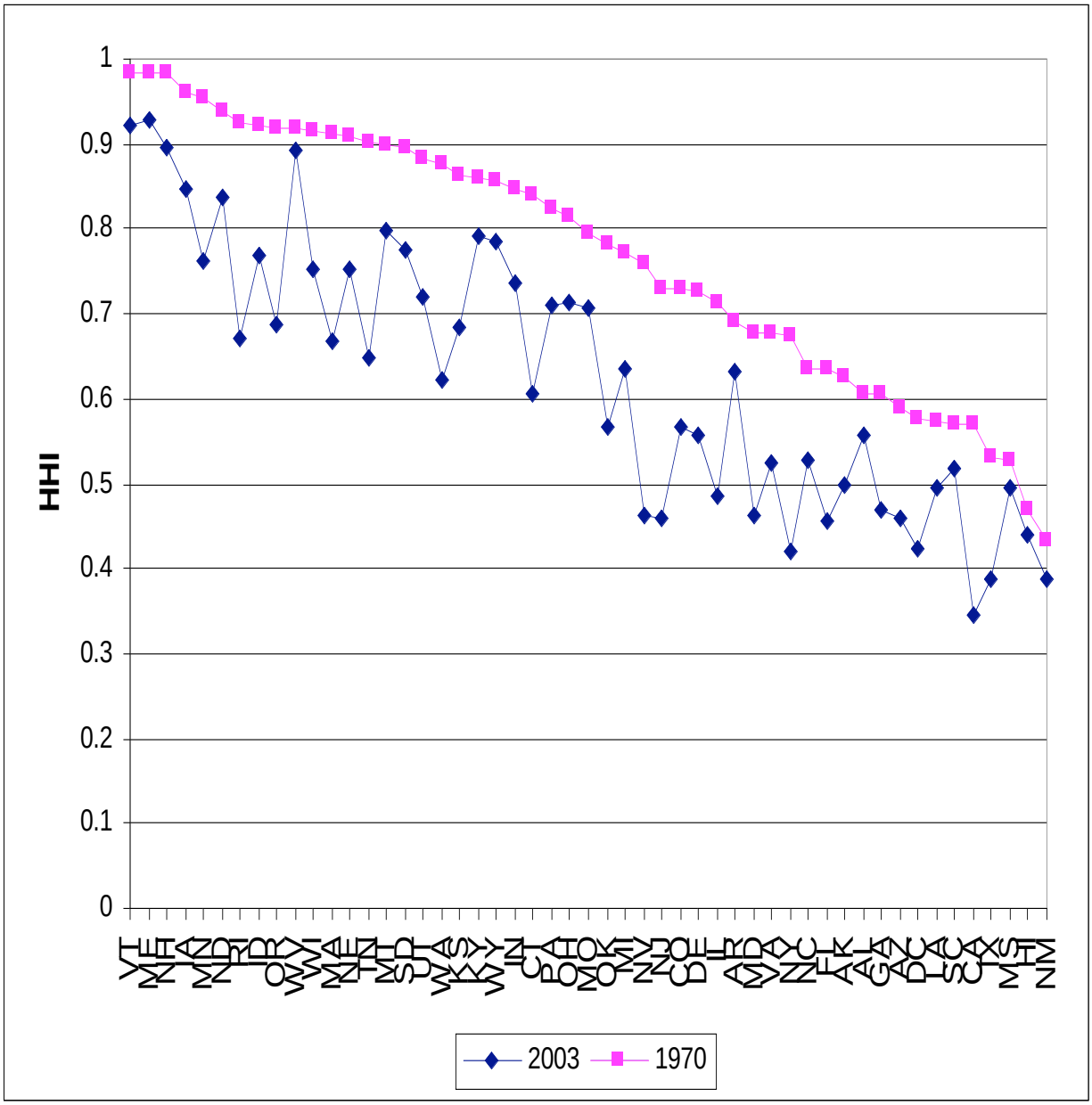
Black,

Asian and Pacific Islander, and

American Indian, Eskimo and Aleut.

To describe the racial/ethnic diversity of the population we calculate the Herfindahl Hirschmann Index. The HHI takes the share of each group in the total, squares it, and sums across all groups. If everyone in a state fit in the same group, the HHI would be 1. If the population were evenly divided across all five groups, the HHI would be .2 ($.2^2 + .2^2 + .2^2 + .2^2 + .2^2 = .2$). Thus, the lower the HHI the more diverse the population. The great differences in population across the states are clear, even in 1970. Several states were almost perfectly homogenous, with an HHI almost equal to 1, while several others were much more heterogeneous, with an HHI equal to .5. At the same time, there has clearly been an increase in heterogeneity in the past three decades. The number of states with an HHI of .5 or less has increased from 1 to 15. On average, the HHI declined by 30 percent.

Exhibit 2:
Increasing Population Diversity in States: HHI



Source: U.S. Bureau of the Census, Population Division, Historical Census Statistics on Population Totals by Race, 1790 to 1990, and Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States, Working Paper No. 56 for 1970, database for 2003.

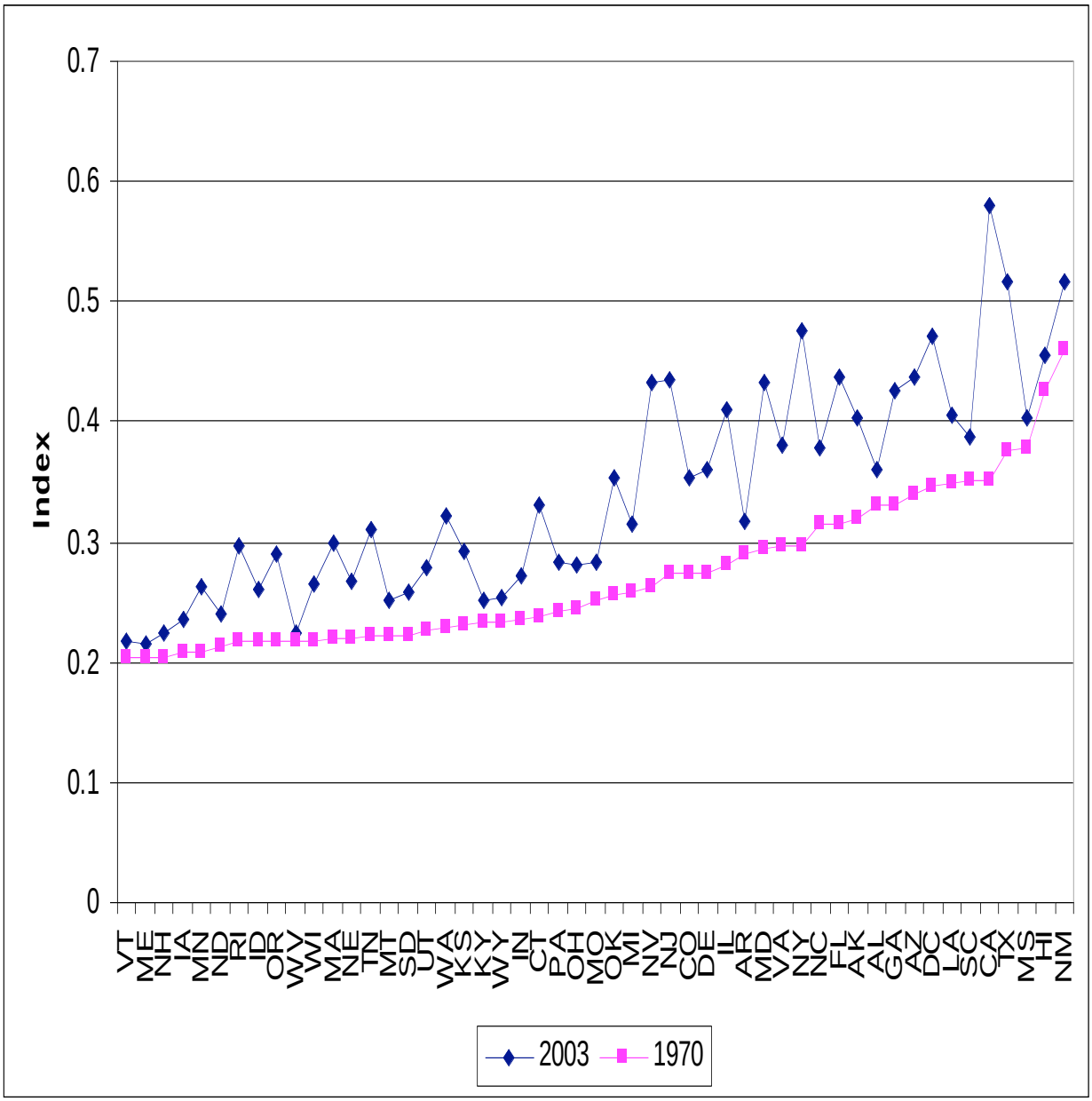
The HHI can be converted to a standard measure of diversity used by biologists to describe the distribution of species or families in a population. This measure relies on the reciprocal of the HHI (1/HHI). Dividing the reciprocal of the HHI by the number of categories yields a measure of the Equitability or Evenness Index (see Exhibit 3). If the population were evenly spread across the groups, the Evenness Index would be equal to 1. If the population were entirely concentrated in one group, it would be .2 (because there are five groups). We observe small changes in evenness at the extremes (low heterogeneity and high heterogeneity) and large changes in the middle. The increases vary from a low of .01 to a high of .17. Overall, the index increased from .28 in 1970 to .4 in 2003, a 43% increase.

Another way to measure the diversity in a population that has been used in the analysis of media is subtract the HHI from 1, this yields a statistic called Simpson's D (D= 1- HHI). This has a useful interpretation.

The diversity value obtained is equivalent to the probability that two of the objects of classification (the elements), chosen at random, would be in a different category. If all of the objects are in one category, then the probability is 0, as is the diversity measure; if all of the objects are in different categories, the Simpson's D is 1.0, which corresponds to the probability that all the objects are in different categories.[125]

[125] McDonald, Daniel G. and Shu Fang Lin. 2004. "The Effect of New Networks on U.S. Television Diversity." *Journal of Media Economics* 17: 2.

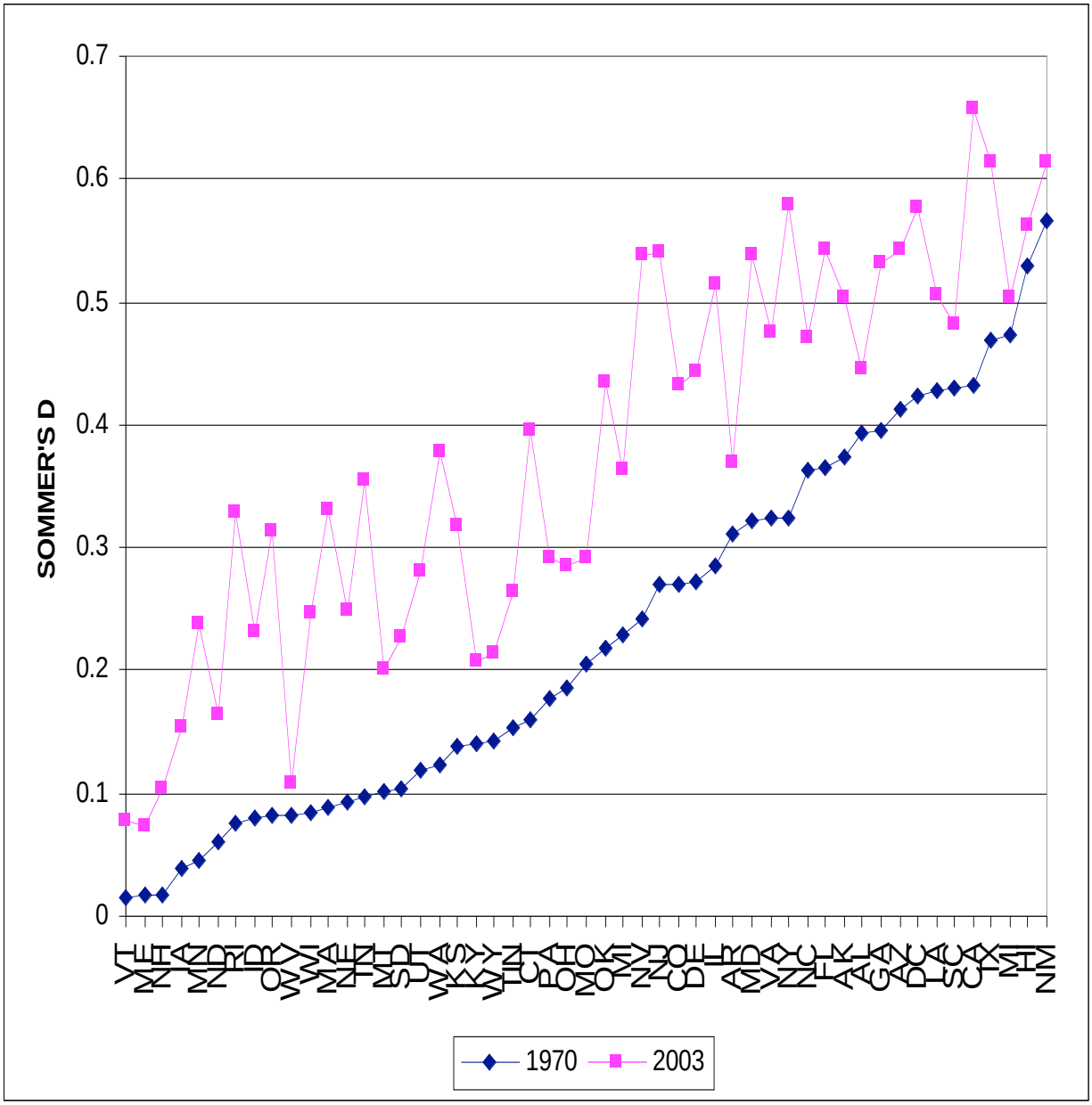
Exhibit 3:
Evenness Index of Population in States



Source: U.S. Bureau of the Census, Population Division, Historical Census Statistics on Population Totals by Race, 1790 to 1990, and Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States, Working Paper No. 56 for 1970, database for 2003.

Exhibit 4 shows the results of this calculation. Of course, the pattern is the same as for the earlier calculation. There is a wide dispersion of diversity across the states and diversity increased over the period. On a weighted average basis, the probability that any two people chosen randomly from any given state would be members of the same group increased from just under 29 percent in 1970 to just under 46 percent in 2003. Measured at the state level, the average American in 2003 lived in a state that was 60 percent more diverse than the state in which the average American lived in 1970.

Exhibit 4:
Increasing Population Diversity in States: Simpson's D



Source: U.S. Bureau of the Census, Population Division, Historical Census Statistics on Population Totals by Race, 1790 to 1990, and Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States, Working Paper No. 56 for 1970, database for 2003.

STUDY 5:
MEDIA OWNERSHP AND VIEWPOINT

MARK COOPER

ABSTRACT

Academic and anecdotal evidence since the FCC order was written erases any doubt that media ownership matters in dictating viewpoints and influencing public discourse. Recent evidence strongly supports the conclusion that ownership of media outlets is extremely important and properly the object of public policy to promote diversity because owners

- influence what and how event are covered,
- may seek to influence policy processes,
- may exhibit "slant or bias," and
- may not serve the needs of all members of the community.

A review of recent academic studies of bias or slanting and loud disputes in the nation's leading media over bias leads to the important and unavoidable lesson is that editorial preferences are deeply embedded in commercial mass media not only on the editorial pages, but also on the news pages. In a sense, this is the essence of the concept of antagonism. Rather than claim that many outlets owned by a single entity will present a neutral, objective, or balanced picture, public policy should recognize that diversity and antagonism of viewpoints comes from diversity of ownership.

Slant or bias is measured not only in the tone of coverage, but also in the quantity of coverage or the subjects on which media outlets choose to editorialize.

- The study of slant in reporting has been applied to a number of topics beyond campaign coverage and endorsements, with a consistent finding of bias. The topics include coverage of the president, political campaigns at all levels of government, economic events, important political issues, and calling states on election night.
- Studies show that a change in ownership, from a local family to a chain, resulted in "reduced emphasis on local issues" a change in the quality and quantity of coverage, with local stories suffering most in the shift from local family ownership to large chain ownership.

Theory links concentration to bias through a number of mechanisms. The supply-side theories of bias are the most familiar. They launch from a variety of factors – the ideological beliefs of owners/editors, the career interests of journalists, or the economic interests of advertisers.

On the demand side, one approach is to ask whether pandering is profitable, or more delicately put whether outlets "cater to the prejudices of their readers." The motivation is to maximize profits by telling readers what they want to hear.

Competition may discipline media outlets, or advertisers on the supply-side. It may provide conscientious readers a richer field in which to form opinions. It may do all of these things. In any case, these models fit within the paradigm articulated in Supreme Court jurisprudence that relies on the "cross-lights" of "diverse and antagonistic sources." Owners have significant control over the color, direction and intensity of the lights that are shined on public policy issues.

OWNERSHIP POINT OF VIEW REMAINS AN IMPORTANT CONCERN IN THE MEDIA

With the incessant and fierce debate and finger pointing about bias in the media, there would seem to be little reason for the FCC to doubt the fact that media outlets have a point of view, whether or not it rises to the level of slant or bias. The evidence in the record did not justify the FCC's hesitation on this point and evidence continues to mount to suggest that media outlets definitely have a point of view. To the extent that the FCC cited uncertainty about the relationship between ownership and points of view to make policy, as in the cross-ownership rulemaking,[126] it erred.

The FCC cited one poorly done study that argued there is no relationship between ownership and viewpoint, but acknowledged that the flaws in the research were substantial. [127] On the other side it acknowledged several academic studies cited by the Consumer Federation of America (CFA) that demonstrated the connection between ownership and viewpoint, one a case study of a major piece of legislation, the second a statistical study of campaign coverage.[128] This point is so central to the undertaking of media ownership limits, we feel

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[126] Federal Communications Commission. *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* 18 FCC Rcd 13620, 13711-47 (2003), ¶361.

[127] The FCC's minimal effort to address the issue of bias, Pritchard, David. September, 2002. Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign. Federal Communications Commission, involved a very small number of observations and no effort to introduce a comparison group. It found that half of the newspapers and television stations that were cross-owned shared a bias. On re-examination, Baker, Dean. December 2002. Democracy Unhinged: More Media Concentration Means Less Public Discourse, A Critique of the FCC Studies on Media Ownership Washington, DC: Department of Professional Employees, AFL-CIO, p. 6, concluded that "seven of the ten combinations had a common slant, and only three had a different slant in their coverage." This is a remarkably high bias and, in our view, only underscores the problem of ownership across the media.

[128] Order, ¶34.

compelled to revisit the issue here to erase any doubt that the connection between ownership and viewpoint is real and must be the basis for policy.

It is interesting to note that the episode of charge and counter of bias that CFA put in the record was the early stages of finger pointing in an ongoing episode that has been cited in a number of recent academic articles as the animus to bring a more rigorous approach to the subject.[129] The very dispute CFA cited is the origin of a cottage industry of both anecdotal accounts and academic scholarship that demonstrates how central viewpoint is to the media landscape.[130] We recall that analysis because it links to so much more detailed evidence on the importance of ownership and viewpoint that has come to light since.

Bias-Bashing (among the Most Prominent American Journalistic Icons)

The "biases" of owners are frequently known, as a flap about Rupert Murdoch's news operations at Fox television attests. The close political connection between Fox's Roger Ailes and the Republican Party was underscored by his admission that he had sent a public policy memo to the Bush Administration.[131] The response from Fox to these "charges" of bias were

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[129] Shiffer, Adam, J. 2006. "Assesing Partisan Bias in Political News : The Case(s) of Local Senate Election Coverage." *Political Communications* 23; Lee, Tien-Tsung. 2005. "The Liberal Media Myth Revisited: An Examination of Factors Influencing Perception of Media Bias" *Journal of Broadcasting and Electronic Media* 49:1; Gentzow, Matthew and John M Shapiro, *Media Bias and Reputation*, (2004); Mullainathan, Sendhil and Andrei Shleifer. 2004. The Market for News. *American Economic Review* 95.

[130] The CFA discussion launched from Goldberg, Bernard, *Bias: A CBS Insider Exposes How the Media Distort the News*. Washington, D.C.: Regnery, 2002. The set of popular press books cited in literature includes this as the earliest and then adds Coulter, Ann. *Slander: Liberal Lies about the American Right*. New York: Three Rivers Press, 2003, on the conservative side and Alterman, Eric. *What Liberal Media? The Truth About Bias and the News* New York: Basic, 2003 and Franken, Al. *Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right*. New York: EP Dutton, 2003.

[131] The story "broke" in the *Washington Post* with the publication of a segment of Bob Woodward's *Bush At War*. New York: Simon and Schuster, 2002, p. 207, which Ailes disputed (see Grove, Lloyd, "The Reliable Source," *Washington Post*, 19 November 19 2002). The incident reinforced the perception of Fox News as "The Most Biased Name

explained in a 2002 best seller by Bernard Goldberg says mountains about the slanting of TV news and commentary across the board.

> This is how Roger Ailes… explained it in a *New York Times Magazine* piece in June 2001: "There are more conservatives *on* Fox. But we are *not* a conservative network. That disparity says far more about the competition." In other words, if Fox is alleged to have a conservative bias, that's only because there are so few conservative voices on the air at ABC, CBS, NBC, CNN and MSNBC. There certainly *is* a conservative "attitude" at Fox, a conservative sensibility.[132]

The affinity between the network and the Republican Party had a historical base. In a paper entitled "The Fox News Effect: Media Bias and Voting" Della Vigna and Kaplan have "analyzed the entry of Fox News."

> Between October 1996 and November 2000, the conservative Fox News Channel was introduced in the cable programming of 20 percent of US towns… We investigate if Republicans gained vote share in towns where Fox New entered. We find a significant effect of the introduction of Fox News on the vote share in Presidential elections between 1996 and 2000. Fox News also affected the Republican vote share in the Senate and voter turnout.[133]

They go on to note "the effect was smaller in towns with more cable channels which is consistent with the moderating effect of competition."[134] The effect was also smaller in more homogeneous environments – "In addition, Fox had a smaller effect in rural areas and in Republican congressional district, possibly because in these town the share of non-Republicans at risk of being convinces was smaller."[135] Both of these effects – competition

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in News: Fox Channel's Extraordinary Right-wing Tilt." Ackerman, Seth. *The Most Biased Name in News.* (FAIR, August 2002), a bias that is embodied in the "format, guests, expertise, topic and in-house analysts." *Cable News Wars: Interviews* (PBS, Online Newshour, March 2002), p. 2.

[132] Goldberg, Bernard. *Bias.* Washington, DC: Regnery, 2002, p. 190.

[133] Della Vigna, Stefan and Ethan Kaplan. "The Fox News Effect: Media Bias and Voting." *NBER Working Paper 12169.* Cambridge, MA: National Bureau of Economic Research, 2006, p. i.

[134] Id., p. 1.

[135] Id., p.2-3.

and heterogeneity – play an important role in the academic research on bias as discussed below.

Goldberg ends his discussion of bias in the TV media, which begins with and focuses on an op-ed piece about liberal bias in the TV media he had published in the *Wall Street Journal*, with a discussion of bias in the print media in a second op-ed on the editorial pages of the *Wall Street Journal*.

> Consider this: In 1996 after I wrote about liberal bias on this very page, Dan [Rather] was furious and during a phone conversation he indicated that picking the *Wall Street Journal* to air my views was especially appalling given the conservative views of the paper's editorial page. "What do you consider the *New York Times*?" I asked him, since he had written op-eds for that paper. "Middle of the road," he said.
>
> I couldn't believe he was serious. The *Times* is a newspaper that has taken the liberal side of every important social issue of our time, which is fine with me. But if you see the *New York Times* editorial page as middle of the road, one thing is clear: You don't have a clue.[136]
>
> There are many who would debate the "liberal" bias of the *New York Times,* but it is clear that there is little love lost between the *New York Times* and Mr. Ailes and Fox's supporters. Within a week of the revelation of Mr. Ailes' memo to the White House, the *New York Times* chastised Ailes in an editorial, pointing out that giving advice to the President would be fine, were Mr. Ailes still in the business of advising political candidates, but as a top executive of a news organization he should know better than to offer private counsel to Mr. Bush.
>
> Mr. Ailes' action seems especially hypocritical for someone who has spent years trumpeting the fairness of Fox and the partisanship of just about everybody in the news business. Fox's promotional slogan is: "We report, you decide." But the news channel has a Republican tilt and a conservative agenda.[137]

The academic evidence on the slant of the *New York Times* is mixed. One study examined the prominence of issues given emphasis during presidential years from 1946 to 1997, controlling for the party of the incumbent president. Prior to 1960,

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[136] Goldberg, 2002. p. 222, citing "On Media Bias, Network Stars Are Rather Clueless," *Wall Street Journal,* 24 May, 2001.

> the *New York Times* gives more emphasis to topics that are owned by the Democratic Party (civil rights, health care, labor and social welfare), when the incumbent President is a Republican. This is consistent with the hypothesis that the *New York Times* has a Democratic partisanship, with some "watchdog" aspects, in that during the presidential campaign it gives more emphasis to issues over which the (Republican) incumbent is weak. In the post-1960 period the *Times* displays a more symmetric type of watchdog behavior, just because during presidential campaigns it gives more coverage to the typically Republican issue of Defense when the incumbent President is a Democrat, and less so when the incumbent is a Republican.[137]

This analysis reminds us that slant may consist of a number of factors, the most commonly studied of which are tone and frequency of reporting, with tone being more difficult to measure than frequency.

The friction between the *New York Times* and *Fox,* can be understood in light of the results of a study entitled "A Measure of Media Bias."[138] The study used ADA rankings of members of Congress to estimate the "conservative/liberal" bias of the newspapers and think tank reports that the Congressmen cited in their statements. *Times* and *Fox* were at the opposite ends of the spectrum on every measure. *Fox* was about 15 points more conservative than the mean and the *New York Times* being about 15 points above it on the preferred measure of bias, which was an adjusted measure of the number of sentences devoted to think tanks. This points to another important measure of point of view – the amount of space devoted to an issue.

In the dispute that played out in the press, Paul Krugman (certainly a Democrat, if not a liberal) writing in the *New York Times,* repeated Al Gore's complaint that the "liberal media" had gone very conservative.

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[137] Puglisi, Ricardo. *Being the New York Times.* Political Economy and Public Policy Series, Suntory Centre, April 2006.

[138] Groseclose, Timothy and Jeff Milyo. 2005. "A Measure of Media Bias." *Quarterly Journal of Economics* 120.

> This week Al Gore said the obvious. "The media is kind of weird these days on politics," he told The New York Observer, "and there are some major institutional voices that are, truthfully speaking, part and parcel of the Republican Party.
>
> The reaction from most journalists in the "liberal Media" was embarrassed silence. I don't quite understand why, but there are some things that you're not supposed to say, precisely because they are so clearly true.[139]

The treatment of the Gore campaign by the press is the subject of a Kennedy School of Government Case study that seeks to qualitatively examine some of the major stories that played prominent roles in the campaign,[140] which also cites a quantitative study by the Committee of Concerned Journalists and the Project for Excellence in Journalism.[141] Both suggest that there was something to the complaint. One of the interesting observations that has implications for understanding the structural causes of bias is the concern that

> the meta-narrative tended to "trump the reporters' judgment," making it "difficult for an individual reporter to write a story that differs from the popular meta-narratives." For another, it led to problems with "what to do with facts that betray the meta-narrative."[142]

Michael Kelly, a conservative columnist, could not let the Gore/Krugman complaint pass without comment.[143] He cites about a dozen "major surveys on the political beliefs and voting patterns of mainstream print and broadcast journalists" from 1962 to 2001, which show about a three-to-one ratio (46 to 15) of liberals to conservatives. He answers the rhetorical question, "Does a (still) largely liberal news media (still) exhibit a largely liberal bias?" with a

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[139] Krugman, Paul. "In Media Res." *New York Times,* 29 November 2002, p. A39.
[140] Scott, Ester. Al Gore and the "Embellishment" Issue:Press Coverage of the Gore Presidential Campaign. *Kennedy School of Government Case Program, c15-02-1679.0*, October 2003.
[141] *The Last Lap: How the Press Covered the Final Stages of the Campaign, 31* October 2000.
[142] Scott, p. 26, citing *The Last Lap.*
[143] Kelly, Michael. "Left Everlasting." *The Washington Post, 11* December 2002, p. A33.

resounding "Sure."[144] He cites S. Robert Lichter, president of the independent Center for Media and Public Affairs, who observes that,

> [J]ournalists tell the truth – but like everyone else, they tell the truth *as they see it*. Even the most conscientious journalists cannot overcome the subjectivity inherent in their profession, which is expressed through such everyday decisions as whether a topic or source is trustworthy.[145]

A study by Lee documents the flip side of this statement.[146] Just as journalists tell the truth *as they see it*, consumers hear the truth as they see it. According to this study,

> People are more likely to believe the media cannot be trusted if they are male and conservative, disagree that most people are honest, but believe that honest people cannot be elected to high office. Cynicism at both the personal and political levels is the strongest predictor of a media bias perception, according to the Life Style data. Further, according to the NES data, media distrust is predicted by being conservative and Republican, partisanship extremity, and political cynicism.[147]

An Annenberg study found the "Public and Press Differ About Partisan Bias, Accuracy and Press Freedom."[148] Eighty six percent of journalists think news organizations get their facts straight, compared to 45 percent of the public. Only 16 percent of journalists think it is "a good thing if some news organizations have a decidedly political point of view in their coverage of news," compared to 45 percent of the public.

The attitudes the audience brings into the media market, called priors in the academic literature, and the incentives journalists have, both play a part in the expanding analysis of media bias.

The important and unavoidable lesson is that editorial preferences are deeply embedded in commercial mass media not only on the editorial pages, but also on the news

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[144] Kelly, Michael. "Left Everlasting (Cont'd)." *The Washington Post,* 18 December 2002, p. A35.
[145] Id.
[146] Lee, pp. 51-52.
[147] Id., p. 51.
[148] May 24, 2005.

pages. In a sense, this is the essence of the concept of antagonism. Rather than claim that many outlets owned by a single entity will present a neutral, objective, or balanced picture, public policy should recognize that diversity and antagonism of viewpoints comes from diversity of ownership. Indeed, Lichter entered the fray with a letter to the editor pointing out,

> In some cases, the coverage of social and political issues clearly coincides with the perspectives of journalists. But such correspondence is not guaranteed, and it cannot be reliably predicted to operate in particular instances.[141]

Systematic Empirical Evidence

There is a growing body of research that demonstrates the tendency of media outlets to take a point of view. The CFA analysis put forward two different types of analysis. The first was quantitative assessments. CFA cited an article from the June 2002 *American Political Science Review* that makes it clear that ownership (embodied in the editorial position of the outlet) matters in reporting the news.[149]

> One of the essential elements of an impartial press in the United States is the "wall of separation" between the editorial pages and the pages devoted to the news. While the political beliefs of newspaper owners and editors are clearly articulated on opinion pages, their views are not supposed to infiltrate the reporting of the news. The analysis presented in this paper raises questions about this claim. We examine newspaper coverage of more than 60 Senatorial campaigns across three election years and find that information on news pages is slanted in favor of the candidates endorsed on the newspaper's editorial pages. We find that the coverage of incumbent Senators is most affected by the newspaper's endorsement. We explore the consequences of "slanted" news coverage by showing that voters evaluate endorsed candidates more favorably than candidates who fail to secure an editorial endorsement. The impact of the endorsement decision on voters' evaluations is most powerful in races

[149] Kahn, Kim Fridkin and Patrick J. Kenny. 2002. The Slant of News: How Editorial Endorsements Influence Campaign Coverage and Citizens' Views of Candidates. *American Political Science Review* 96: 381.

> receiving a great deal of press attention and among citizens who read their local newspapers on a daily basis.[150]

This article provided a methodology that was followed by others. Druckman and Parkin use the same approach to content analysis to evaluate relative slant focusing on a single senate race and tied the reporting to electoral behavior.[151]

> Combining comprehensive content analysis of the newspapers with an Election Day exit poll, we assess the slant of campaign coverage and its effect on voters. We find compelling evidence that editorial slant influences voter's decisions. Our results raise serious questions about the media's place in democratic process.[152]

In short, slant in the media affected voting.

Systematic studies of coverage of local issues found that "objectivity violations in all 20 stories were classified as serving the self-interest of the news organization or its parent corporation."[153] Additional studies in this vein have documented the extent and impact of point of view in a variety of types of media and covering a wide range of subjects. Shiffer distinguishes between partisan bias and structural bias and finds both in the coverage of 95 senatorial campaigns.[154] Structural bias is defined as follows: "some things are selected to be reported rather than other things *because* of the character of the medium or because of the incentives that apply to commercial news programming instead of partisan prejudices held by

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[150] Additional sources cited in support of this proposition include Page, Benjamin I. *Who Deliberates.* Chicago: University of Chicago Press, 1996; Rowse, Edward. *Slanted News: A Case Study of the Nixon and Stevenson Fund Stories.* Boston: Beacon, 1957.

[151] Druckman, James N. and Michael Parkin. 2005. The Impact of Media Bias: How Editorial Slant Affects Voters. *Journal of Politics,* 67:4.

[152] Id., p. 1030

[153] McManus, J. 1991. How Objective is Local Television News? *Mass Communications Review* 18:3:21-30.

[154] Shiffer, Adam, J. 2006. "Assesing Partisan Bias in Political News: The Case(s) of Local Senate Election Coverage." *Political Communications* 23.

newsmen."[155] Moreover, some of the structural factors may be non-ideological ownership factors, such as the case of market forces where newspapers slant the news to "reflect the ideology of their states."[156]

The dynamics of the newsroom relationships between editors and reporters create a tendency to produce stories that are unbalanced.

> While partisan balance may have existed over the course of the entire coverage, individual stories were seldom balanced. In fact, the viewer had only a one in four chance of seeing an approximately balanced story, while 40 percent of the time the viewer was likely to see a story that was structurally imbalanced in every measured way. But this research also indicates that this would vary depending on the station and the day the viewer was watching.[157]

Slant or bias is measured not only in the tone of coverage, but also in the quantity of coverage or the subjects on which media outlets choose to editorialize. Thus, Hallock found that a change in ownership, from a local family to a chain, resulted in "reduced emphasis on local issues."[158] Maguire found a change in ownership resulting in a change in the quality and quantity of coverage, with local stories suffering most in the shift from local family ownership to large chain ownership.[159]

The study of slant in reporting has been applied to a number of topics beyond campaign coverage and endorsements, with a consistent finding of bias. The topics include

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[155] Id,, p. 29.
[156] Id., p. 31.
[157] Carter, Sue, Frederick Fico, and Joycelyn A. McCabe. 2002. Partisan and Structural Balance in Local Television Election Coverage. *Journalism and Mass Communications Quarterly* 79.
[158] Hallock, Steve. 2005. "Acquisition by Gannett Changes Paper's Editorials." *Newspaper Research Journal* 25: 2.

[159] Maguire, Miles. 2005. "Change in Ownership Affect Quality of Oshkosh Paper." *Newspaper Research Journal* 26: 4

coverage of the president,[160] economic events,[161] important political issues,[162] and calling states on election night.[163]

The second type of studies picks a single issue and examines how it was handled in the media. The example CFA chose was particularly relevant, a study of the reporting of coverage of the Telecommunications Act of 1996, in which the media had a direct stake. This study by James Snider and Benjamin Page looked at the decision to allow TV stations to have additional digital spectrum without paying for it, while other parts of the spectrum were being auctioned for other commercial uses.[164] The editorial positions of media corporations that owned newspapers and had significant TV station ownership (at least 20% of revenues from that source) were compared to the editorial stands on the spectrum give-away/auction issue of newspapers owned by companies having little or no TV station ownership. The findings were striking:

> The results on editorials are very strong and highly significant [statistically]; in fact, among newspapers that editorialized on the subject, every one whose owners got little TV revenue editorialized against the spectrum 'giveaway,' whereas every one with high TV revenues editorialized in favor of giving broadcasters free use of spectrum.[165]

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[160] Groeling, Tim and Samuel Kernell. 2005. Is Network News Coverage of the President Biased? *Journal of Politics* 60:4

[161] Lott, John R., and Kevin A. Hassett. *Is Newspaper Coverage of Economic Events Politically Biased?* Washington, D.C.: American Enterprise Institute, 2004; Dyck, Alexander and Luigi Zingales. 2003. The Media and Asset Prices. *University of Chicago, NBER & CEPR.*

[162] Ansolabehere, Stephen, Erik C. Snowberg, and James M. Snyder, Jr. 2005. Unrepresentative Information: The Case of Newspaper Reporting on Campaign Finance Reform. *Public Opinion Quarterly* 69: 2

[163] Mixon, J. Wilson, Amit Sen, and E. Frank Stephenson. 2004. Are the Networks Baised? 'Calling States in the 2000 Presidential Election. *Public Choice* 118.

[164] Snider, James H., and Benjamin I. Page. 1997. "Does Media Ownership Affect Media Stands? The Case of the Telecommunications Act of 1996." Paper delivered at the *Annual Meeting of the Midwest Political Science Association*, April.

[165] Id., pp. 7-8.

CFA provided other examples of self-interested action by media owners in several case studies of cross-owned papers including examples in of promotion of projects or local initiatives in which the owner had a stake[166] and cases in which criticism of the co-owned outlet was dampened or eliminated.[167] The 2004 election produced a bevy of incidents that were debated as examples of slant, driven by the point of view of the outlet owner. Among the most prominent were Sinclair's on-again, off-again airing of "Stolen Honor,"[168] and the effort of a broadcaster to donate free air time to one candidate as a personal contribution.[169]

Theory Links Concentration to Bias

The intense study of bias in the media has spawned a second development of note – the development of theoretical models to explain the persistence of bias. The theoretical approach has sought to understand the structural conditions of media bias. There are both supply-side and demand-side theories of why viewpoints permeate the media space.

The supply-side theories of bias are the most familiar. They launch from a variety of factors – the ideological beliefs of owners/editors,[170] the career interests of journalists,[171] or

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[166] Consumer Federation of America, Consumers Union, Center for Digital Democracy and the Media Access Project, "Initial Comments" *In the Matter of 2002 Biennical Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopeted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets and Definition of Radio Markets,* Docket Nos. MB 02-277, MM 01-235, MM 01-317' and MM 00-244, January 2, 2003, pp.231-234.

[167] Id., pp. 227, 230

[168] For a flavor of the controversy, contrast the editorial in the *Wall Street Journal,* Sinclair and a Double Standard, October 13,2004 to the *Boston Globe, Sinclair's Slander,* October 15, 2004. It should come as no surprise that this became bound up in more than Presidential politics, as Legg Masson's *Telecom & Media Insider* pointed out that "Sinclair Move Risks Backfiring by Complicating Company's (and Industry's) Deregulatory Agenda," October 15, 2004.

[169] Pappas Communications in Los Angeles. The FCC required the time be considered a personal contribution.

[170] Bagdikian, Ben. *The Media Monopoly*. Boston: Beacon, 2000; McChesey, etc.

the economic interests of advertisers.[172] Here we focus on the implications of this research on consolidation and competition in media markets. The theory supports the concern about consolidation. While these are theoretical papers, they cite empirical research that comports with and therefore validates their models.

An examination of potential merger impact reached the following conclusion:

> The cleanest result about the effect of mergers on the *amount* of persuasion… says that if, in then no-merger equilibrium, both outlets are owned by the same type, and if there will in fact be a merger when mergers are permitted, then total persuasion (all of it of the type preferred by owners) will increase. That is, if there is a dominant media ideology when mergers are prohibited, and if permitting mergers will actually lead to a merger, then the dominant ideology will become stronger.[173]

An examination of how competition would impact reporting bias caused by advertisers reached the following conclusion:

> First and foremost, it shows how media competition can prevent harmful effect of advertising on news reporting.[174]

An examination of reporting on company financial performance reached the following conclusion:

> Interestingly, we find that media spin tends to follow the spin promoted by the company. This is more so the fewer alternative source of information about a company are available, the more demand for information there is, and the less reputable a newspaper is.[175]

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[171] Dyck and Zingales.

[172] Ellman, Mathew and Fabrizio Germano. 2004. What Do Papers Sell? *UPF Economics and Business Working Paper No. 800;* Reuter, J. and Zitzwitz. 2006. Do Ads Influence Editors? Advertising and Bias in the Financial Media. *Quarterly Journal of Economics* 121; Hamilton, James T. *All the News That's Fit to Sell.* Princeton: Princeton University Press, 2003; Baker, C. Edwin. *Advertising and a Democratic Press.* Princeton: Princeton University Press, 1994.

[173] Balan, David J., Patrick DeGraba, and Abraham L. Widkelgren. 2003. Media Merges and the Ideological Content of Programming. *Bureau of Economics FTC* .

[174] Ellman and Germano, p. 25.

[175] Dyck and Zingales, p. 1.

The demand-side theories are less familiar. On the demand side, one approach is to ask whether pandering is profitable, or more delicately put whether outlets "cater to the prejudices of their readers."[176] The motivation is to maximize profits by telling readers what they want to hear. The conclusion is that "on topics where reader beliefs diverge (such as politically divisive issues), newspapers segment the market and slant toward extreme positions."[177] "Powerful forces motivate news providers to slant and increase bias, rather than clear up confusion," so "greater competition typically results in more aggressive catering to such prejudices as competitors strive to divide the market."[178] In the presence of heterogeneous, conscientious readers, however, "the biases of individual media sources tend to offset each other, so the beliefs of the conscientious reader become more accurate than they are with homogeneous readers…. Greater partisanship and bias of individual media outlets may result in a more accurate picture being presented to a conscientious reader."[179] Heterogeneity interacts with competition in this view to produce the outcome.

Others start from the demand side proposition that "firms will tend to distort information to make it conform with consumers' prior beliefs"[180] but factor in supply side considerations.

> When a media firm is concerned with maintaining a reputation for accuracy, this force tends to produce slanting towards the preexisting beliefs of the firm's customers. Even if the firm believes that the truth contradicts these beliefs, it will be reluctant to report contradictory evidence because consumers may infer that the firm has inaccurate information. The more priors favor a given

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[176] Mullainathan, Sendhil and Andrei Shleifer. 2004. The Market for News. *American Economic Review* 95, p. 1.
[177] Id., p. 1.
[178] Id., p. 6…20.
[179] Id. p. 5
[180] Gentzkow, Matthew and Jesse M. Shapiro. "Media Bias and Reputation." University of Chicago, Graduate School of Business and NBER, 14 September 2005, p. 3.

position, the less likely the firm becomes to print a story contradicting that position.[181]

This is the problem of coping with the meta-narrative identified by the Project on Excellence in Journalism's analysis of the reporting on the 2000 campaign.

The key dynamic in this model, at the level of firms, is that as the likelihood of *ex-post* feedback about the state of the world improves, the amount of bias occurring in equilibrium decreases."[182] In this view, "independently owned outlets can provide a check on each others' coverage and thereby limit equilibrium bias, an effect that is absent if the outlets are jointly owned."[183]

Competition may discipline media outlets, or advertisers on the supply-side. It may provide conscientious readers a richer field in which to form opinions. It may do all of these things. In any case, these models fit within the paradigm articulated in Supreme Court jurisprudence that relies on the "cross-lights" of "diverse and antagonistic sources." Owners have significant control over the color, direction and intensity of the lights that are shined on public policy issues.

[181] Id., pp. 3-4.
[182] Id., p. 4.
[183] Id. p. 33.

STUDY 6:
TELEVISION REMAINS A DOMINANT MEDIUM IN DEMOCRATIC DISCOURSE

MARK COOPER

ABSTRACT

The influence of media on policy and politics has been extensively studied and documented over the past several decades. The media play a critical roll in shaping public opinion and public action in a variety of ways in both routine situations and especially during election campaigns.

- The most recent studies show strong impacts. The issues covered in the studies that find strong effects in recent years involve the major policy concerns of the past couple of decades including economic issues like jobs, taxes, inflation and economic growth, public health, crime, education, foreign affairs, and environmental issues like global warming.

The impact of the media on elections and the interaction between the media and political campaigns have been a particular field of study.

- The heightened focus of the public during elections, the additional time spent by the media on policy and politics during elections, and the intense flow of information between campaigns and the media, magnify the role of the media.
- The media affect public opinion and action directly by taking a point of view and indirectly by agenda setting and priming, which flows from the selection of issues on which to focus.
- Media have been shown to have a particular effect on those who decide during campaigns.

Television is the premier medium that affects politics and the policy process. As television replaced newspapers and radio as the dominant media, the nature of political participation and processes changed.

- Television absorbs huge amounts of resources as the vehicle for advertising. .
- The journalists and spinmeisters engage in an intense “dance” in which influence and information flow back and forth. The news production cycle affects the pace of the political process, shortening time for deliberation and debate. At the same time, control over access to candidates and information gives the spinmeisters bargaining power over with the press.

The linkages between ownership and media point of view and media and public opinion and public action in policy and politics underscore the continuing importance of media policy for democratic discourse.

MEDIA INFLUENCE AND POLICY

If a cottage industry has grown up around the study of bias in the media in the past few years, a full blown industrial sector has existed for a couple of decades in the study of the importance of media, in general, and television, in particular, in the policy and political process.

Writing in 2000, Mille and Krosnick pointed out that

> During the last two decades, however, it has become clear that the media do indeed shape public opinion. Not only have investigations used improved methods to document persuasion, but new media effects have been identified as well, including agenda setting and news media priming. Agenda setting occurs when extensive media attention to an issue increases its perceived national importance. Priming occurs when media attention to an issue causes people to place special weight on it when constructing evaluations of overall presidential job performance.[184]

Walgrave and Aelst note that the ability of the media to influence public opinion has been studied and varies in two broadly different situation – "routine times" and during elections.[185] Exhibit 1 summarizes the finding of 19 major studies they identified dealing with the media's impact during routine times. It distinguishes the level of impact, time period of the study and nation of the study. The most recent studies show strong impacts. The issues covered in the studies that find strong effects in recent years involve the major policy concerns of the past couple of decades including economic issues like jobs, taxes, inflation and economic growth, public health, crime, education, foreign affairs, and environmental issues like global warming.

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[184] Miller, Joanne and Jon A. Krosnick. 2000. News Media Impact on the Ingredients of Presidential Evaluations: Politically Knowledgeable Citizens are Guided by Trusted Sources. *American Journal of Political Science* 44:2: 295.

[185] Walgrave, Stefann and Peter Van Aelst. 2006. The Contingency of the Mass Media's Political Agenda Setting Power: Toward a Preliminary Theory. *Journal of Communications* 56.

Exhibit 1: Media Impact Studies

	Prior to 1990s	1990 to 1995	1996 to present
All Nations			
Impact			
None	**1**	**0**	**0**
Hardly any	**2**	**2**	**0**
Weak	**0**	**2**	**4**
Strong/Considerable	**3**	**3**	**6**
All Nations			
Impact			
None	**1**	**0**	**0**
Hardly any	**2**	**0**	**0**
Weak	**0**	**2**	**0**
Strong/Considerable	**3**	**3**	**4**

The branch of the literature that focuses on politics and political campaigns is even larger and generally just as strong in its findings. Not only is "Mass media coverage… generally believed to affect public opinion indirectly through phenomena such as agenda setting and priming," but there is growing evidence that "media coverage directly influences the vote intention of campaign deciders."[186]

Walgrave and Aelst argue that "the short campaign period of several weeks before Election Day is fundamentally different from routine periods: the behavior of political actors, their reaction on media coverage, and even the dynamic of media coverage itself follow

[186] Fournier, Patrick, Richard Nadeau, Anre Blais, Elisabeth Gidengil and Neil Nevitte. 2004. Time-of-voting Decision and Susceptibility to Campaign Effects. *Electoral Studies* 23:4: 12. The more recent studies that the authors cite in support of the direct effect include , Miller, J. M. and J. A. Krosnick. "News Media Impact on the Ingredients of Presidential Evaluations: A Program of Research on the Priming Hypothesis." In D.C. Mutz, P.M. Sniderman, and R.A. Brody. *Political Persuasion and Attitude Change.* Ann Arbor: University of Michigan Press, 1996; and Zaller, J. "The Myth of Mass Media Impact Revived: New Support for a Discredited Idea." In D.C. Mutz, P.M. Sniderman, and R.A. Brody, *Political Persuasion and Attitude Change.* Ann Arbor: University of Michigan Press, 1996

different logics in both periods."[187] They argue that the forceful efforts of political parties and candidates who "have daily press briefings, stage their own (pseudo) events, incessantly flood the media with press releases, and continuously make provocative statements… make it more difficult for the media to set the political agenda."[188] They add that "the media devote more attention to politics," and that the media is "more balanced in election times."[189] They add that media can affect the outcome by

> following the agenda of party A more closely than that of party B, give more attention to issue X than to issue Y. The agenda setting power of journalist in election times lies more in their discretion to include or exclude information of political actors than in their autonomous selection of issues. To be sure, besides agenda setting, the media can influence politics in many other ways during the campaign.

The different ways in which the media may influence the political process, depending on the context is underscored by recent findings from a study of primaries. Barker and Lawrence argue that "given that nomination campaigns are one-party contests, journalists may be less paranoid regarding accusations of partisan or ideological favoritism, which may lead to more interpretive coverage."[190] They argue that the importance ideological differences, which are strong factors in most studies of media influence, are diminished in one party primaries, so voters are more "receptive to other cues."[191] Sequential votes also allow the media to play up "momentum" as a factor to influence public opinion. They find "considerable support for a direct effects model of influence, in that news consumption is

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[187] Walgrave and Aelst, 2006, p. 96.
[188] Id., p. 97.
[189] Id., pp. 97-98.
[190] Barker, David, C. and Adam B. Lawrence. 2006. Media Favoritism and Presidential Nominations: Reviving the Direct Effects Model. *Political Communications* 23: 42.
[191] Id., p. 42.

predictive of perceived value congruence."[192] They also found that "bombastic, unabashedly biased 'new media' can have a significant impact over the attitudes of *even those consumers who are predisposed to disagree with the message source.*"[193] The "new media" they have in mind, is talk radio. Thus, we observe the mix of partisan and general media that interacted in the discussion of bias in Study 5.

THE DOMINANT ROLE OF TELEVISION

The importance of TV rests on more than its role as an important source of information, as discussed earlier. TV has come to dominate mass media in political discourse[194] by influencing on attitudes and behaviors,[195] especially in election campaigns. Television and radio have long been recognized as occupying different product spaces[196] although radio's role may yet be changing.[197] Generally, radio is seen as having less of an

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[192] Id., p. 48.

[193] Id., p. 48.

[194] Albarran, Alan B. and John W. Dimmick. 1993. An Assessment of Utility and Competitive Superiority in the Video Entertainment Industries. *Journal of Media Economics* 6; Bennett, W. Lance and Regina G. Lawrence. 1995. News Icons and the Mainstreaming of Social Change. *Journal of Communications* 45; McLeod, Douglas M. 1995. "Communicating Deviance: The Effects of Television News Coverage of Social Protests." *Journal of Broadcasting & Electronic Media* 39; Dimmick, John B. 1997. "The Theory of the Niche and Spending on Mass Media: The Case of the Video Revolution." *Journal of Media Economics* 10; Sparks, Glenn G., Marianne Pellechia, and Chris Irvine. 1998. Does Television News About UFOs Affect Viewers' UFO Beliefs?: An Experimental Investigation. *Communication Quarterly* 46; Walma, Julliete H., Tom H. A. Van Der Voort. 2001. The Impact of Television, Print, and Audio on Children's Recall of the News. *Human Communication Research* 26.

[195] Wilkins, Karin Gwinn. 2000. "The Role of Media in Public Disengagement from Political Life." *Journal of Broadcasting & Electronic Media* 44.

[196] Clarke, Pere and Eric Fredin. 1978. Newspapers, Television and Political Reasoning. *Public Opinion Quarterly* Summer; Robinson, John P. and Mark R. Levy. 1996. New Media Use and the Informed Public: A 1990s Update. *Journal of Communications* Spring

[197] The role of radio talk shows is the new development. Johnson, Thomas J., Mahmoud A. M. Braima, and Jayanthi Sothirajah. 1999. Doing the Traditional Media Sidestep: Comparing

impact than television.[198] The difference between TV and radio may be in citizen exposure to political advertising on TV, while radio talk shows have a different, more intimate impact.[199] Still, broadcast does not compete effectively with newspapers in the news function.[200]

The ascendance of television as the premier political medium can be seen in a number of recent studies. For example, in the Baker and Lawrence study that found both a direct effect of media on voting and a partisan media effect, the general "nonpolitical news exposure factor score" that was used in the analysis was overwhelmingly defined by television, with local news networks the most important.[201] Local network news had a factor loading of .91; national network news had a factor loading of .57, and politics in newspapers has a loading of

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Effects of the Internet and Other Nontraditional Media with Traditional Media in the 1996 Presidential Campaign. *Journalism & Mass Communication Quarterly* 76, find that nontraditional media do not have an impact on a variety of measures of knowledge and perceptions about the 1996 presidential campaign and to the extent they do, it was specifically radio talk shows, influencing views of Clinton negatively (see also Moy, Patricia, Michael Pfau, and LeeAnn Kahlor. 1999. Media Use and Public Confidence in Democratic Institutions. *Journal of Broadcasting & Electronic Media* 43).

[198] Berkowitz, D., and D. Pritchard. 1989. Political Knowledge and Communication Resources. *Journalism Quarterly* 66; Chaffee, Steven H. Xinshu Zhao and Glenn Leshner. 1994. Political Knowledge and the Campaign Media of 1992. *Communications Research* 21, Spring; Drew, Dan and David Weaver. 1991. Voter Learning in the 1988 Presidential Election: Did the Media Matter? *Journalism Quarterly* 68.

[199] Johnson, Braima and Sothirajah, 2000, juxtapose the earlier finding of a lack of influence for radio with more recent findings that radio talk shows have an impact. See also, Johnson, Braima and Sothirajah, 1999, and Stamm, K., M Johnson and B. Martin. 1997. Differences Among Newspapers, Television and Radio in their Contribution to Knowledge of the Contract with America. *Journalism and Mass Communications Quarterly* 74.

[200] Stepp, Carl Sessions. 2001. "Whatever Happened to Competition." *American Journalism Review* June."Wasn't it television and radio that were going to kill newspapers? "I don't really consider them competition in that old-school way," stresses Florida Sun-Sentinel editor Earl Maucker. "They reach a different kind of audience with a different kind of news…Publisher Gremillion, a former TV executive himself, seconds the point, "I don't believe people are watching TV as a substitute for reading the newspaper…" …Many newspapers are increasingly writing off local TV news as a serious threat, treating local stations instead as potential partners who can help spread the newspapers' brand name to new and bigger audiences."

[201] Baker and Lawrence, 2006, p. 59.

.17. Of course, this was a national issue, played out sequentially in state primaries, so that it is likely to get attention in all the media.

Similarly, a study of the 2004 presidential election found that "attention to television news, televised debates, and now Internet news are important predictors, or at least correlates, of voter learning of candidate issue positions and voter interest in the election campaign."[202] The effect of TV news attention on campaign interest was almost as large as exposure to the Presidential debates and over three times as large as attention to newspapers or the Internet. Reviewing a number of studies, they conclude that television news viewing has the largest and most consistent effects on various measures of engagement with the presidential election.[203]

Similarly, the influence of broadcast television on the New Hampshire primary, which plays a pivotal role in selecting presidential candidates, has been well documented. One recent study "found powerful network news effects, particularly with respect to "horse race" reports on which candidate gained and fell back but also with respect to televised evaluations

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[202] Drew and David, 2006, p. 25.

[203] Id., pp. 26-27, citing Jun, Son Youn and Kim, Sung Tae. 1995. "Do the Media Matter to voters? Analysis of Presidential Campaigns, 1984-1996." Paper presented to the *Political Communication Division of the International Communication Association*, Washington, D.C.; Zhao, Xinshu and Steven Chaffee. 1995. Campaign Advertisements versus Television as Sources of Political Issue Information. *Public Opinion Quarterly* Spring 59; Chaffee, Steven H. Xinshu Zhao and Glenn Leshner. 1994. Political Knowledge and the Campaign Media of 1992. *Communications Research* 21, Spring; Weaver, David and Dan Drew. 1995. Voter Learning in the 1992 Presidential Election: Did the 'Nontraditional' Media and Debates Matter? *Journalism & Mass Communication Quarterly* 72, Spring; Sotirovic and Jack M. McLeod. "Knowledge as Understanding: The Information Processing Approach to Political Learning." in Lynda L. Kaid (eds.), *Handbook of Political Communications Research.* Mahwah: NJ, Erlbaum, 2004.

of more substantive matter such as character and issue positions."[204] There remains a debate over which media has the greatest impact and whether different types of media have different effects,[205] but there is general agreement that television has a significant influence on public opinion and perception of issues. For example, Romer, Jamieson, and Aday, in a study more recent than the 19 reviewed by Walgrave and Aelst, found "strong support for the television-exposure hypothesis."[206] Riffe, in a study of perception of environmental risk, which also post-dates the Walgrave and Aelst note that that "respondents who most frequently read and view media reports about the environment are more likely to rate their own environmental

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[204] Farnsworth, Stephen J. and S. Robert Lichter. 2003. The 2000 New Hampshire Democratic Primary and Network News. *American Behavioral Scientist* 46:5: 588. The authors cite support for the importance of television in the New Hampshire Primary Moore, D.W. 1984. "The Death of Politics in New Hampshire." *Public Opinion* 7; Farnsworth, Stephen J. and S. Robert Lichter. 1999. No Small Town Poll: Network Coverage of the 1992 New Hampshire Primary. *Harvard International Journal of Press/Politics,* 4; Buhr, T. "What Voters Know About Candidates and How they Learn It: The 1996 New Hampshire Republican Primary as a Case Study in W.G. Mayer (Eds.), *In Pursuit of the White House 2000: How We Choose Our Presidential Nominees,* Chatham: NJ, Chatham House, 2001; and Farnsworth, Stephen J. and S. Robert Lichter. 2002. The 1996 New Hampshire Republican Primary and Network News. *Politics and Policy* 30.

[205] Sotirovic, Mira. 2003. "How Individual Explain Social Problems The Influences of Media Use." *Journal of Communications* March, p. 122 finds "active processing of national television public affairs content increases, while active processing of newspaper public affairs content decreases the likelihood of individualistic explanations" of crime and welfare. The authors cite Iyengar, S. *Is Anyone Responsible.* Chicago: University of Chicago Press, 1991 and Mcleaod, J. M., S. Sun, A. Chi, and Z. Pan. 1990. "Metaphor and Media." *Association for Education in Journalism*, August, as demonstrating the differential impact of media types.

[206] Romer, Daniel, Kathleen Hall Jamieson, and Sean Aday. 2003. Television News and the Cultivation of Fear of Crime. *Journal of Communications* March 2003, p. 99. The frame the issue as follows (p. 88): "Why has the public persisted in believing that violent crime is a widespread national problem in the U.S. despite declining trends in crime and the fact that crime is concentrated in urban locations?...The results indicate that across a wide spectrum of the population and independent of local crime rates, viewing local television news is related to increased fear of and concern about crime.

risks as higher,"[207] although in this study, newspapers had a slightly larger effect than television.

Gentzkow has looked at the impact of the spread of television on elections. He argued that as television displaced newspapers and radio, it had the effect of lowering voter turn out.

> The estimated effect is significantly negative, accounting for between a quarter and a half of the total decline in turnout since 1950. I argue that substitution away from other media with more political coverage provides a plausible mechanism for linking television to voting. As evidence from this, I show that the entry of television in a market coincide with sharp drops in consumption of newspapers and radio, and in political knowledge as measured by election surveys. I also show that both the information and turnout effects were largest in off-year congressional elections, which receive extensive coverage in newspapers but little or no coverage on television.[208]

Interestingly, using a similar data set on the introduction of television, Gentzkow and Shapiro do not find a generally negative effect of preschool television exposure on standardized test scores latter in life.[209] This suggests that it is not the medium, but the message that matters. The failure to devote attention to coverage of politics is the key. Waldfogel and George have reached a similar conclusion with respect to national newspaper outlets.[210] As national outlets siphon readers away from local outlets, turnout in local elections declines much more than turnout in national elections (which are covered in national outlets).

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[207] Riffe, Dan. 2006. "Frequent Media Users See High Environmental Risks." *Newspaper Research Journal* 27:1: 48.

[208] Gentzkow, Matthew. "Television and Voter Turnout." University of Chicago Graduate School of Business, 28 October 2005,p. 1.

[209] Gentzkow, Matthew and Jesse M. Shapiro. 2006. Does Television Rot Your Brain? New Evidence From the Coleman Study. *NBER Working Paper 12021*, February.

[210] Waldfogel, Joel. *Who Benefits Whom in Local Television Markets?* Philadelphia: The Wharton School, November 2001.

Framing and Agenda Setting

The broadcast media play a special role in influencing the agenda of public policy issues and the public's perception of those issues.[211] The agenda setting and influence of perception that takes place during election campaigns frames issues.[212] There is a fierce struggle, a dance, between candidates and the media over the agenda of the campaign, because setting the agenda has an impact on how people perceive the candidates and vote.[213]

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[211] Kim, Sei-Hill, Dietram A. Scheufele and James Shanahan. 2002. Think About It This Way: Attribute Agenda Setting Function of the Press and the Public's Evaluation of a Local Issue. *Journalism and Mass Communications Quarterly* 79:7 Chaffee, Steven and Stacy Frank. 1996. How Americans Get Their Political Information: Print versus Broadcast News. *The Annals of the American Academy of Political and Social Science* 546; McLeod, Jack M., Dietram A. Scheufele, and Patricia Moy. 1999. Community, Communications, and Participation: The Role of Mass Media and Interpersonal Discussion in Local Political Participation. *Political Communication* 16; Scheufele, Dietram A. 2000. "Agenda-setting, Priming and Framing Revisited: Another Look at Cognitive Effects of Political Communications." *Mass Communications & Society* 3; and Macomb, Maxwell. 1972. The Agenda-Setting Function of Mass Media. *Public Opinion Quarterly* 36.

[212] Valentino, Nicholas A., Vincent L. Hutchings and Ismail K. White. 2002. Cues that Matter: How Political Ads Prime Racial Issues During Campaigns. *American Political Science Review* 96: 75; Edsall, Thomas B. and Mary D. and Edsall. *Chain Reaction: The Impact of Race, Rights and Taxes on American Politics*. New York: Norton, 1991; Jamieson, Kathleen Hall. *Dirty Politics: Deception, Distraction and Democracy*. New York: Oxford University Press, 1992; Gilens, Martin. 1996. "Race Coding and White Opposition to Welfare," *American Political Science Review* 90; Mendelberg, Tali, "Executing Hortons: Racial Crime in the 1988 Presidential Campaign," *Public Opinion Quarterly,* 61, 1997, *The Race Card: Campaign Strategy, Implicit Messages and the Norms of Equality*. Princeton: Princeton University Press, 2001; Valentino, Nicholas A. 1999. "Crime News and the Priming of Racial Attitudes During the Evaluation of the President." *Public Opinion Quarterly* 63.

[213] Tedesco, John, C. "Issue and Strategy Agenda Setting in the 2004 Presidential Election: Exploring the Candidate-Journalist Relationship." *Journalism Studies* 6:2;Norton, Michael I. and George R. Goethais. 2004. Spin (and Pitch) Doctors: Campaign Strategies in Televised Debates. *Political Behavior* 26:3; Granato, Jim and M.C. Sunny Wong. 2004. Political Campaign Advertising Dynamics. *Political Research Quarterly* 57; Damore, David. 200. "The Dynamics of Issue Ownership I Presidential Campaigns." *Political Research Quarterly,* 57:3; Herrson, Paul, S. and Kelly D. Patterson. "Agenda Setting and Campaign Advertising in Congressional Elections." in James A. Thurber, Candace Nelson (eds.), *Crowded Airwaves: Campaign Advertising in Elections*. Washington D.C.: Brookings, 2000.

The most intense agenda setting battles have frequently revolved around issues like crime[214] and race. Studies have shown that subtle race cues in campaign communications may activate racial attitudes, thereby altering the foundations of mass political decision-making.[215] While race may be a particularly prominent case of influence over attitudes and agenda-setting, the media plays a powerful role across a broad range of issues.[216]

The importance of visual images in *priming* the audience has been affirmed, while the understanding of the mechanisms through which the effect operates grows.

> Findings suggest that visual news images (a) influence people's information processing in ways that can be understood only by taking into account individual's predispositions and values, and (b) at the same time appear to have

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[214] Holian, David B. 2004. "He's Stealing My Issues! Clinton's Crime Rhetoric and the Dynamics of Issue Ownership." *Political Behavior* 26:2.

[215] The references cited in support of this proposition include Mendelberg, 2001; Coltrane, Scott and Melinda Messineo. 1990. The Perpetuation of Subtle Prejudice: Race and Gender Imagery in the 1990's Television Advertising. *Sex Roles* 42; Entman, Robert M., and Andrew Rojecki. *The Black Image in the White Mind: Media and Race in America.* Chicago: University of Chicago Press, 2000; Gray, Herman. *Watching Race Television and the Struggle for Blackness.* Chicago: University of Chicago Press, 1995; Dixon, Travis, L. and Daniel Linz. 2000. Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News. *Communications Research* 50; Gilliam, Franklin D. Jr. and Shanto Iyengar. 2000. "Prime Suspects: The Influence of Local Television News on the Viewing Public." *American Journal of Political Science* 44; Peffley, Mark, Todd Shields and Bruce Williams. 1996. The Intersection of Race and Television. *Political Communications* 13.

[216] Kim, Sheufele and Shanahan, p. 381. Graber, Doris. *Mass Media and American Politics.* Washington, DC: Congressional Quarterly, 1997;Paletz, David L. *The Media in American Politics: Contents and Consequences.* New York: Longman, 1999; Just, Marion, R., Ann N. Crigler, Dean F. Alger, Timothy E. Cook, Montague Kern, and Darrell M. West. *Crosstalk: Citizens, Candidates and the Media in a Presidential Campaign.* Chicago: University of Chicago Press, 1996; Kahn, Kim F. and Patrick J. Kenney. *The Spectacle of U.S. Senate Campaign.* Chicago: University of Chicago Press, 1999; Iyengar, Shanto and Donald R. Kinder. *News That Matters: Television and American Opinion.* Chicago: University of Chicago Press, 1987; McCombs, Maxwell E. and Donald Shaw. 1972. The Agenda-Setting Function of the Mass Media. *Public Opinion Quarterly* 36.

> a particular ability to trigger consideration that spread through one's mental framework to other evaluations.[217]

The special role of television in providing information and influencing elections is well recognized. Research attention now focuses on how television affects election campaigns and public opinion. "[V]oters do learn about candidates and their position on issues (policy) from candidate advertising."[218]

Advertising

> The impact of television is pervasive throughout all elections.[219]
>
> Television has become society's primary source of information, and local television news is more likely to be used by viewers than national news broadcasts. Therefore, how such election news is relayed on local television is increasingly important in our political system.
>
> Candidates and campaign consultants believe that television advertising is pivotal to winning a state-level campaign…
>
> Research confirms that television spots influence election outcomes at all levels.[220]

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[217] Domke, David, David Perlmutter and Meg Spratt. 2002. The Primes of Our Times? An Examination of the 'Power' of Visual Images. *Journalism* 3: 131. The authors present a detailed social psychological and even neurological discussion of the reasons why and ways in which visual images have a greater impact, but the politically oriented research that they cite as consistent with their findings include Krosnick, J. A. and D. R. Kinder. 1990. Altering the Foundation of Support for the President Through Priming. *American Political Science Review* 84; Pan, Z. and G. M. Kosicki. 1997. Priming and Media Impact on the Evaluation the President's Performance. *Communications Research* 24; Just, M. R., A. N. Crigler and W. R. Neuman. "Cognitive and Affective Dimensions of Political Conceptualization." in A. N. Crigler (eds.), *The Psychology of Political Communications.* Ann Arbor: University of Michigan Press, 1996; Iyengar and Kinder.

[218] Hansen, Glenn J. and William Benoit. 2002. Presidential Television Advertising and Public Policy Priorities, 1952 –2002. *Communications Studies* 53: 285. The studies cited in support of this proposition include Patterson, T. E., and McClure, R. D. *The Unseeing Eye: The Myth of Television Power in National Politics.* New York: Putnam Books, 1976; Kern, M. *30 Second Politics: Political Advertising in the Eighties.* New York: Praeger, 1988; Brians, C. L. and M. P. Wattenberg. 1996. Campaigns Issue Knowledge and Salience: Comparing Reception for TV Commercials, TV News, and Newspapers. *American Journal of Political* Science 40.

[219] Brazeal, LeAnn M, and William L. Benoit. 2001. A Functional Analysis of Congressional Television Spots. *Communications Quarterly* 49: 346-437.

The impact of television is not only in news coverage, but also, and perhaps even more importantly, in advertising and the interaction between advertising and news. TV in general, and network TV in particular, has become the premier vehicle for political advertising. The differential impact of television advertising is clear.

> Clearly, television is a unique communications medium unlike any other, including print, radio, and traditional public address. Unlike most other media, television incorporates a significant nonverbal component, which not only serves to suppress the importance of content but also requires little deliberative message processing…
>
> A number of empirical studies have concluded that reliance on information from television leads to less understanding of policy issues than newspapers. Studies also indicate that when people use television for political news, they emerge less informed than those of equal education and political interest who avoid the medium.[221]

Certainly the huge amounts spent on TV advertising by candidates attests to its importance. The audience that is most susceptible to advertising and news coverage by this account is precisely the audience on which general elections focus – the undecided middle – thereby justifying the spending. Whereas candidates must focus on the committed, active party base in primaries, they must shift their attention to the less aware, less committed middle of the political spectrum to get elected.[222]

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[220] Carter, Fico and McCabe, 2002, p. 42.. In support of this statement the authors cite Joslyn, R. 1981. "The Impact of Campaign Spot Advertising Ads." *Journalism Quarterly* 7; Mulder, R. 1979. "The Effects of Televised Political Ads in the 1995 Chicago Mayoral Election." *Journalism Quarterly* 56; and Pfau, M. and H. C. Kenski. *Attack Politics.* New York: Praeger, 1990.

[221] Sinclair, Jon R. 1995. "Reforming Television's Role in American Political Campaigns: Rationale for the Elimination of Paid Political Advertisements." *Communications and the Law* March.

Gwiasda, Gregory W. 2001. "Network News Coverage of Campaign Advertisements: Media's Ability to Reinforce Campaign Messages." *American Politics Research* 29: 461 Kaid, L. L., et al. 1993. Television News and Presidential Campaigns: The Legitimation of Televised Political Advertising. *Social Science Quarterly* 74; Ansolaehere, S and S. Iyengar. 1995. "Riding the Waive and Claiming Ownership Over Issues: The Joint Effect of Advertising

TELEVISION AND THE POLITICAL PROCESS

There is yet a more fundamental manner in which television affects political dialogue. Many media critics across the political spectrum have argued that hyper commercialism, combined with the expansion of media outlets, deeply affects the news reporting process, particularly as it relates to politics. The media ownership proceeding does not directly address the question of hyper commercialism. However, media ownership rules should be cognizant of the underlying forces that affect the media. We believe that the negative effect that media processes have on political discourse reinforces the case for diversity of institutions and sources. Hyper commercialism will not go away with a more concentrated media market, but its negative effects will be heightened if the market becomes more concentrated and institutional diversity withers.

The News Production Cycle of Commercial Mass Media

On the one hand, there are more television outlets needing to fill more space than ever before.[223] On the other hand, these outlets need to attract more viewers than ever to be profitable. The media's schedule and perpetual news cycle become the driving force,

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and News Coverage in Campaigns." *Public Opinion Quarterly* 58; Lemert, James B. William R. Elliott, and James M. Bernstein. *News Verdicts, the Debates, and Presidential Campaigns.* New York: Praeger, 1991; Hansen and Benoit, p. 284. While Zaller, J. R. *The Nature and Origins of Mass Opinion.* New York: Cambridge University Press, 1998 is cited as the origin of the hypothesis on effect, the author does note that Joslyn, M. and S. Cecolli. 1996. "Attentiveness to Television News and Opinion Change in the Fall of 1992 Election Campaign." *Political Behavior* 18, find that the most attentive are most influenced. Benoit, William L. and Glenn Hansen. 2002. Issue Adaptation of Presidential Television Spots and Debates to Primary and General Audiences. *Communications Research Reports* 19.

[223] Kovach, Bill and Tom Rosenstiel. *Warp Speed: America in the Age of Mixed Media.* New York: The Century Foundation Press, 1999.

emphasizing speed, simplicity and routinization.[224] The news production process is transformed.

> The problems stem largely from the very nature of commercially supplied news in a big country. News organizations are responsible for supplying an always-new product to large numbers of people, regularly and on time. As a result, news must be mass-produced, virtually requiring an industrial process that takes place on a kind of assembly line.[225]

The tight schedules and competition for attention put their stamp on the newsgathering and reporting process.[226] Reporting becomes highly condensed and selective.[227] Planned events and personalities are the easiest to cover. Short pieces require extreme simplification. Stories become stylized so they can be easily conveyed. Time pressures create a tendency to not only run quickly with a story but to uncritically pass through manufactured news.[228] Entertainment and aesthetic values dictate the nature of the picture and getting good video images becomes a critical need.[229] Staging gives the news the predictability it needs, but results in typecasting and posing.[230]

Competition drives news outlets to seek blockbuster scoops and to play the big story more intensely and longer, to hold the larger audiences that have been attracted.[231] The search to find and maintain the audience's attention drives the media towards exaggeration and emotionalism at the expense of analysis.

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[224] Gans, Herbert J. *Democracy and the News.* Oxford: Oxford University Press, 2003, p. 50; Kovach and Rosentsteil, 1999, p. 6.
[225] Gans,2003, p. 49.
[226] Street, John. *Mass Media, Politics and Democracy.* New York: Palgrave, 2001, pp. 36-52.
[227] Graber, Doris A. 2003. "The Rocky Road to New Paradigms: Modernizing News and Citizenship Standards." *Political Communication 20,*113-114.
[228] Kovach and Rosentsteil, 1999, p. 21, 44.
[229] Meyer, Thomas. *Media Democracy.* Cambridge: Polity Press, 2002, p. 32-35.
[230] Meyer, 2002, p. 67; Graber, 2003, p. 112-114; Jones, Nicholas. *Soundbites and Spindoctors: How Politicians Manipulate the Media – and Visa Versa.* London: Cassel, 1995.
[231] Kovach and Rosentsteil, 1999, p. 7-8.

Four types of news are ideally suited to perform this function. Celebrity personalities become a centerpiece because of the easy point of focus on highly visible individuals.[232] Scandal attracts audiences so the personal travails of prominent figures in titillating circumstances are grist for the media mill, attracting attention without threatening the audience. This news may not be happy, but it fills the preference for happy news because it involves someone else's troubles of no direct relevance to public policy or the public's welfare. The horse race and hoopla – the game frame – is another easy way to frame the news and to produce constant updating of who is ahead.[233] Who wins and loses is much easier to portray than the complexity of what is at stake. Verbal duels[234] and loud, often one-sided arguments find audiences more easily than reasoned, balanced debates.[235] Talk show pundits grab attention with extreme positions, usually negative attacks on targets that are not in the room to defend themselves.

The Impact on Journalism and Politics

Both journalism and politics suffer as a result of this process. Pressures to submit to heavy profit-maximizing strategies that foster financial gain at the expense of journalistic values prevail. As a result, "There has been an enormous increase in expenditure on public relations by both government and business… these powerful institutions subsidize the cost of

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[232] Street, 2001, p. 47-49; Meyerowitz, J. *No Sense of Place: The Effect of Electronic Media on Social Behavior.* New York: Oxford, 1985.

[233] Street, 2001, p. 47; Graber, p. 111-112; Gitlin, T. "Bits and Blips: Chunk News, Savvy Talk and the Bifurcation of American Politics." in P. Dahlgren and C. Sparks (eds.), *Communications and Citizenship: Journalism and the Public Sphere.* London: Routledge, 1991, p. 119-136.

[234] Meyer, 2002, p. 35; Kovach and Rosenstiel, 1999, p. Ch. 7; Street, 2001, p. 44

[235] Barker, David, C. *Rushed to Judgment.* New York: Columbia University Press, 2002.

gathering and processing the news in order to influence positively the way they are reported."[236]

Politicians conform and cater to the demands of the media, while they leverage their ability to manipulate their public image. The politicians acquiesce in a Faustian bargain. "In exchange for their 'tactical' submission to the media rules, political actors gain a well-founded expectation that they will be invited to help shape the way the media portray them."[237] Their interaction with the media becomes a form of extracted publicity as photo-ops and other premeditated activities that place them in the most favorable theatrical light serve their interests. Political entities submit to the media's dictatorship over the depiction of parties and personalities, "in which both politics and the media recognize only images of themselves, thereby losing sight of the real world."[238]

Journalism degenerates into a dance[239] between reporters and political handlers in which the spinmeisters have the upper hand. Spinmeisters become gatekeepers who can punish or reward with access to politicians and who control the scheduling of events. They can stonewall some or give exclusives to others. As a result, "top-down news turns journalists into messengers of the very political, governmental, and other leaders who are… felt to be untrustworthy and unresponsive by significant numbers of poll respondents."[240] The media produces a blend of news and free advertising for the candidates.[241] As with all advertising,

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[236] Levine, Peter. "Can the Internet Rescue Democracy? Toward an On-Line Commons." In Ronald Hayuk and Kevin Mattson (eds.), *Democracy's Moment: Reforming the American Political System for the 21st Century.* Lanham, ME: Rowman and Littlefield, 2002, P. 124.
[237] Meyer, 2002, p. 58.
[238] Meyer, 2002, p. 133; Gans, 2003, p. 47-48.
[239] Sparrow, Bartholomew H. *Uncertain Guardians: The News Media as A Political Institution.* Baltimore: Johns Hopkins University Press, 1999: 28-38.
[240] Gans, 2003, p. 49.
[241] Meyer, 2002, p. 53; Dorner, A. *Politainment.* Frankfurt/Main: Surhkamp, 2001.

the point may be to give a misimpression rather than convey accurate information. Hence, journalistic values are marred.[242] Dependence on well-connected sources and pressures to get a story out first short-circuit the application of traditional standards of reporting. Discourse degenerates into a stream of stage-managed, entertainment-oriented, issueless politics.[243]

The watchdog function is short-circuited by close relationships.[244] This awards too much attention to too few political figures and views and sets the stage for politicians to manage their public identities through manipulation of the media's tendencies. Parties and ordinary group affiliations recede, as individuals and lead institutions become the center of attention.

The fashion in which stories are selected and the time-frame within which these stories are developed, in accordance with mass media's pursuit of big headlines and profits, have undercut politicians' ability to realize legitimate political agendas.[245] Instead, parties and political players shape their decisions and actions within the framework of how the media will present them.[246]

Without an ongoing dialogue of the conditions that enable the reported events to take place, the public cannot adequately formulate opinions; hence, they cannot act or mobilize in an educated manner. Public involvement in policy formation suffers not only because of the shift in focus fostered by the media, but also because of the short time-frame demanded by the media. The recognition of the news as being reported 'outside of time' highlights the

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[242] Graber, 2003, p. 88.
[243] Gans, 2003, p. 50-51.
[244] Curran, James. *Media and Power.* London: Routledge, 2002, p. 150.
[245] Street, 2001, p. 57-58, 83, 90.
[246] Gans, 2003, p. 83; Cook; Cook, Timothy E. *Governing with the News: The News Media as a Political Institution.* Chicago: University of Chicago Press, 1998

troubling difference between the media's timeline and the timeline necessary for political agendas to be carried out.[247]

The critical elements of responsibility, causality and connectedness between events are lost. "Abbreviating the time interval normally demanded by the political process down to what the media's production schedule permits means abridging the entire process by deleting the procedural components that qualify it as democratic."[248] Insisting that politicians' rush to get their views to their constituents before they can be swayed in an opposing direction further truncates debate.[249] The rapid-fire sequence of simple, emotional snapshots staged to increase popularity replaces discourse as the basis of politics.

Implications

Institutional diversity can play an important role. To most media analysts in our democracy, institutions play a critical role in mediating between individuals and the political process. Some draw the link between the institution and the investigative role.

> Democratic governance requires a free press not just in the sense of a diversity of expression. It requires the *institution* of a free press. It requires media with the financial wherewithal and political independence to engage in sustained investigative journalism, to expose the errors and excesses of government and other powerful political and economic actors…
>
> Our best hope for democratic governance in this world is far messier than the ideal republic of yeomen. It requires mediating institutions and associations, private and public concentrations of wealth and power, and varied mechanisms to maintain multiple balances of power within government, within civil society, and between government and civil society.[120]
>
> One of the central benefits of promoting deconcentrated and diverse media markets is to provide a self-checking function on the media. The media needs to be accountable to the public, but that function cannot, as a general matter, be provided by government action in our political system. It can best be provided

[247] Meyer, 2002, p. 24.
[248] Meyer, 2002, p. 106.
[249] Meyer, 2002, p. 104.

by the media itself, as long as there is vigorous antagonism between sources of news and information.[121]

Institutional diversity reflects the special expertise and culture of certain media, such as the newspaper tradition of in-depth investigative journalism. Institutional diversity is grounded in the watchdog function.[250] The quality of investigative reporting and the accessibility of different types of institutions to leaders and the public are promoted by institutional diversity. Institutional diversity involves different structures of media presentation (different business models, journalistic culture and tradition) and these institutions often involve different independent owners and viewpoints across media. To promote institutional diversity, like other forms of diversity, the institutions must be independently owned. Yet even in independently owned conglomerates, the journalistic ethic can be overwhelmed. Institutional diversity is impacted by conglomeration. Institutional diversity is also extremely important for the broader public policy issue of noncommercial sources of news.

CONCLUSION

The extreme importance of television as a source of information for citizens and influence on public opinion and voting behavior has been demonstrated strongly over the past decade in the social science literature. Study 7, documents that the public still relies on television as its primary source of news and information. The loop has been closed by adding

[250] Baker, C. Edwin. *Media, Markets and Democracy*. Cambridge: Cambridge University Press, 2001, p. 85: argues as follows: "To perform these, different societal subgroups need their own media. Admittedly, these subgroups (or their members) may not *necessarily* need to own or control their own independent media. Avenues of regular and effective media access might suffice. Still, much greater confidence that the media will serve the democratic needs of these groups would be justified if ownership or control was so distributed."

the link between media and politics to the link between media ownership and point of view. The dramatic interaction between political campaigns, political process and the media underscores critical importance of media policy.

PART III:
LOCAL TELEVISION STATIONS AND DAILY NEWSPAPERS REMAIN THE DOMINANT SOURCES OF LOCAL NEWS

STUDY 7
MEDIA USAGE:
TRADITIONAL OUTLETS STILL DOMINATE LOCAL NEWS AND INFORMATION

MARK COOPER

ABSTRACT

In considering media ownership limits to promote the goal of the "widest possible dissemination of information from diverse and antagonistic sources," the Congress and the courts have instructed the Federal Communications Commission to focus attention on local media and assess the manner in which people gather news and information. This study shows the concern is well placed.

- Sources of local news and information are quite different than sources of national news.
- The traditional local media – television and newspapers – are the dominant sources of local news and information.
- The small number of people who go online for local news and information are likely to go to the websites of traditional media.

The study demonstrates these patterns by reviewing recent studies of media usage. It also reports the results of two surveys conducted to explicitly distinguish the use of media for local news and information from the use of the media for national news and information. The survey instrument also distinguishes between the frequency of use and importance of news sources. It distinguishes between source mentioned first and sources mentioned second. The study is designed to correct flaws in the methodology used by the FCC in examining the media usage.

Newspapers and Television are by far the most frequent and important source of news and information, followed by local weeklies and radio.

- These four traditional sources – local TV, local dailies and weeklies and radio – dominate the local news landscape mentioned by 88 % of the respondents as the most frequently used source and 72 % for second most frequent.
- Theses sources are cited as most important by 82 % of the respondents and second most important by 71 %. Local newspapers and local TV are about equal, each accounting for about one-third of the mentions. Radio and local weeklies are about equal, each accounting for about 10 % of mentions.

CORRECTING THE FLAWS IN THE FCC APPROACH

In establishing new standards for when a local broadcaster may own newspapers in a community, the FCC highlighted the need to understand what media people actually use the most[251] to obtain local news and information,[252] to ensure that its rules accurately reflect the influence of each medium in local markets. Unfortunately, the Commission never conducted or found a survey that asked the most important question: which media people ***rely on most*** for **local** news and information. This unfortunate lack of data was a correctible error that the FCC chose to ignore.

Therefore, in January of 2004, a national random sample survey was conducted to assess the relative importance of media sources for news and information about national and local events.[253] The survey was designed in part to address the critical methodological flaw in the FCC's analysis of media sources[254] which was conducted as one of the Media Ownership

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[251] Federal Communications Commission. 2003. *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* 18 FCC Rcd 13620, 13711-47¶409. (hereafter Order). "We have concluded that various media are substitutes in providing viewpoint diversity, but we have no reason to believe that all media are of equal importance. Indeed the responses to the survey make it clear that some media are more important than others, suggesting a need to assign relative weights to the various media,"

[252] Order, at ¶32, "Although all content in visual and aural media have the potential to express viewpoints, we find that viewpoint diversity is most easily measured through news and public affairs programming. Not only is news programming more easily measured than other types of content containing viewpoints, but it relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media. Accordingly, we have sought in this proceeding to measure how certain ownership structures affect news output."

[253] The survey instrument was administered by the Opinion Research Corporation as part of their Caravan Survey, which consisted of a national sample of 1011 respondents.

[254] Cooper, Mark. 2003. *Abracadabra! Hocus Pocus! Making Media Market Power Disappear with the FCC's Diversity Index*. Washington, D.C.: Consumer Federation of America, Consumers Union.

Working Group (MOWG) projects.[255] In our surveys, we correct this and other major errors in the FCC's survey approach to media weights.[256]

Distinguishing Between Local and National News and Information

In its effort to identify the most important sources of news, the FCC asked a question that combined both national and local news. "What single source do you use most often for local or national news and current affairs?" This, of course, destroys the possibility of using this question to specifically assess the importance of local media. Instead, the FCC fell back on a much weaker question about local sources of news. "What source, if any, have you used in the past 7 days for local news and current affairs?"[257] This question does not necessarily tell us anything about what people use or rely upon the most for local news and information in the broad sense. It belittles the importance of the local news question by not only shrinking the scope of consideration for respondents ("in the past 7 days"), but also by being itself dismissive of the question altogether ("What source, if any…").

We corrected this problem in our surveys. In the first survey we used the identical wording of the FCC, but we ask separate questions about national and local sources of news. To distinguish the national from the local object of the question, we gave examples.

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[255] Nielsen Media Research. 2002. "Consumer Survey On Media Usage." *Media Ownership Working Group Study* No. 8, September.

[256] More technical and detailed discussions of the survey flaws addressed in this paper as well as other technical flaws in the FCC approach can be found in Cooper, Mark N. 2003. *Media Ownership and Democracy in the Digital Information Age.* Palo Alto: Center for Internet and Society, Chapters 7 and 8.

[257] The FCC also asked the question in an unbalanced manner. That is, it directly asked all the respondents who mention a given media in response to the first question, whether they had gotten any news from each of the other sources. The fewer the respondents who gave a medium in response to the first question, the greater the number who were directly prompted about it on the second round. The FCC then gave equal weights to the first and second responses. This has the effect of artificially increasing the weight of the lesser sources (since more people are prompted) especially when the question is about weak exposure to a source.

Furthermore, because the criticism of the FCC approach stems in part from its reliance on a "weak" question about frequency of use that failed to directly address the importance of sources, we asked a second question about each source that was intended to pinpoint the importance of the sources in determining public opinion.[258]

Handling Multiple Responses

The FCC compounded the problem by mishandling the responses to its weak question. This was an open-ended question in which respondents were allowed multiple responses. Sources they mention first clearly came to their minds. One might infer that what they recall reflects the importance of the sources to them. Unfortunately, the FCC did not simply accept these responses. It followed up with a prompted question directed only at those who did not mention a specific source. The FCC asked those people who failed to mention a source whether they had used it. The FCC then combined the answers to the two questions, giving them equal weight. This approach was certain to overweight the less prevalent and important sources by asking many more people about those sources a second time with a prompted question.

In order to accommodate multiple sources of information, we adopted the approach used by the Pew Research Center for People and the Press.[259] The Interviewer reads a list of

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[258] Moy Patricia, Marcos Torres, Keiko Tanaka, and Michael R. McCluskey. 2005. Knowledge or Trust? Investigating Linkages between Media Reliance and Participation. *Communications Research* 32:1, p. 62 note that in describing "the construct of media dependency and its operationalization… reliance [is] grounded in intensity (whether and how much an audience member relies on a particular medium for a specific political issue) and exposure as frequency (how often an individual watches or reads about politics)." They cite Miller, M.M. and S.D. Reese. 1982. Media Dependency as Interaction: Effects of Exposure and Reliance on Political Activity and Efficacy. *Communications Research* 9.

[259] Pew Research Center Survey. 2004. "Perception of Partisan Bias Seen as Growing—Especially by Democrats." 11 Jan. Available from http://people-press.org/reports/display.php3?ReportID=200.

potential sources and records the sources cited first and second as most frequent and as most important. The resulting list of questions is as follow:

> Now thinking about national issues, like the Presidential election or the war in Iraq, what single source do you use most often for news and information?
>
> And what do you use second most often?
>
> Which single source is most important in determining your opinion about national issues?
>
> And what source is second most important?
>
> Now thinking about local issues, like the a city council election or school, police and fire department services, what single source do you use most often for news and information?
>
> And what do you use second most often?
>
> Which single source is most important in determining your opinion about local issues?
>
> And what source is second most important?

Identifying Media Types

The FCC survey also failed to properly distinguish between the different types of TV delivery. The FCC asked about broadcasting v. cable, but with over 80% of all households subscribing to cable or satellite and receiving the broadcast networks in the subscription, the broadcast/cable distinction becomes confusing. The FCC acknowledged that it had problems with the responses to these questions on its survey instrument, noting that

> [a]lthough the responses to one survey question in MOWG [Media Ownership Working Group] study No. 8 suggests that cable is a significant source of local news and current affairs, other data from the study casts some doubt on this result… Our experience suggests that the local cable news response is too high."[260]

The problem was their failure to distinguish national from local sources.

[260] Order, ¶¶413-414.

In our first survey, we used a question similar to the FCC that distinguished cable from broadcast, allowing the national v. local issues to cut through the confusion. Having shown that the public does distinguish between national and local TV sources of news and information, when given separate questions, as discussed below, we changed the wording in the second survey to reflect the underlying distinction – national v. local TV and daily newspapers. This follows the Pew wording in TV choices. The choice sets for media sources in the two surveys are as follows:

Broadcast TV channels	Local TV news
Cable or satellite news channels	National TV news
A daily newspaper	A local daily newspaper
	A national daily newspaper
A local weekly newspaper	A local weekly newspaper
Radio	Radio
The Internet	The Internet
Magazines	Magazines
OTHER [SPECIFY]	OTHER [SPECIFY]
NONE	NONE
DON'T KNOW	DON'T KNOW
REFUSED	REFUSED

The ultimate goal of this exercise is to produce the most highly refined and cautious estimate of local sources of news. Ultimately, in our analysis of local media market structure, we base our media weights on local TV, local dailies, local weeklies, and radio, which are the dominant sources of local news by far, but we also treat national news outlets and the Internet as additional news sources. However, as the results show, they have little weight in local news.

TRADITIONAL SOURCES OF LOCAL NEWS DIFFER DRAMATICALLY FROM SOURCES OF NATIONAL NEWS

We begin the analysis by reviewing the evidence that was at the core of the remanded rules. We then bring in the results of our most recent survey.

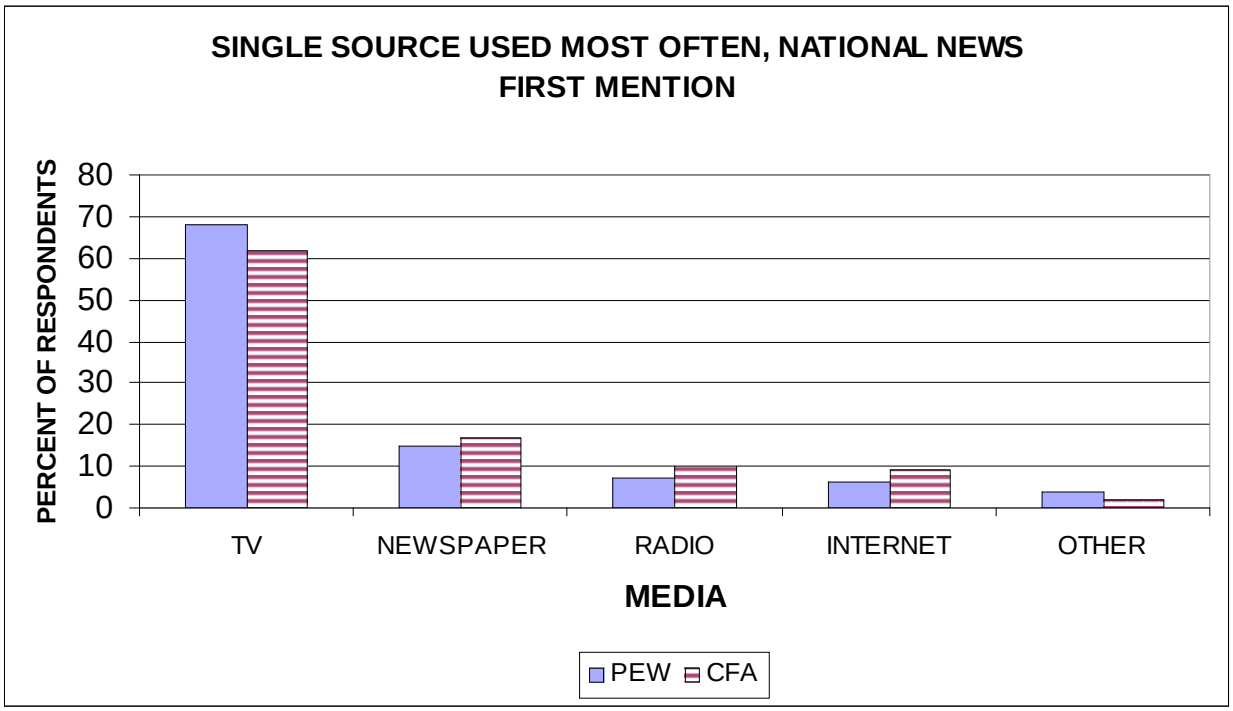
The 2002-2004 Surveys

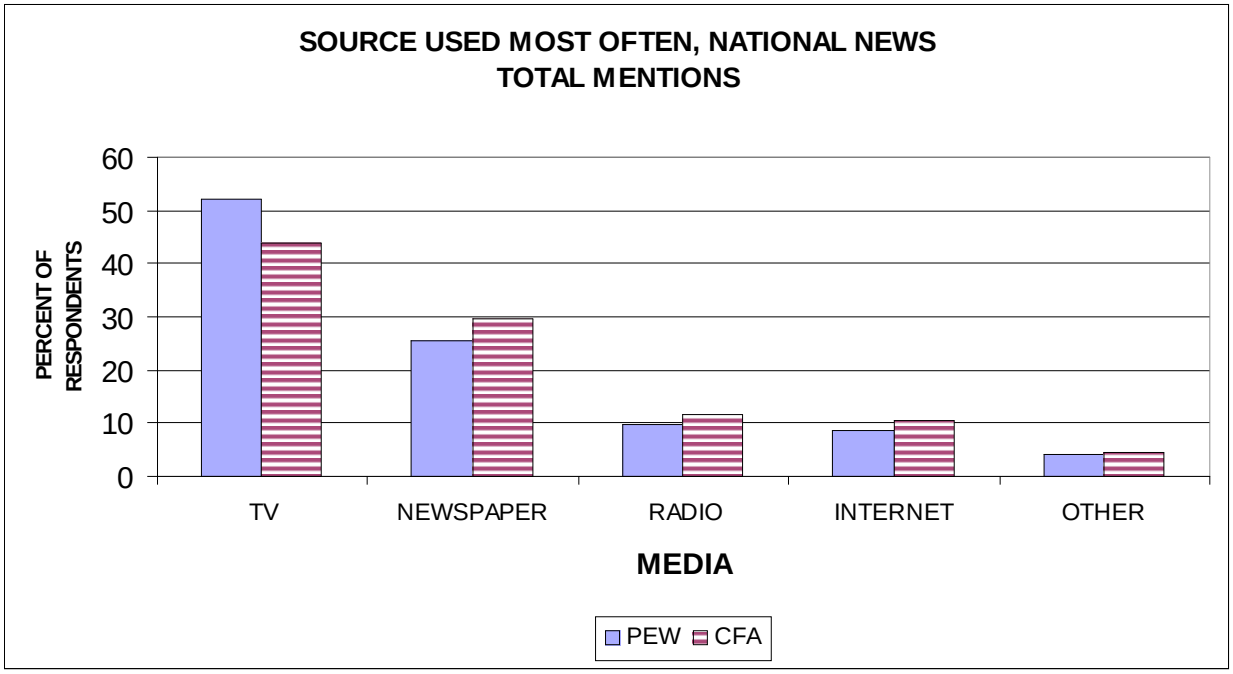
To begin the analysis, we compare our wording and approach to the Dec. 19, 2003 – Jan. 4, 2004 survey results obtained by The Pew Research Center for The People & The Press.

For national issues the results for both the first mentions and the total mentions are very similar in the two surveys. For national news, television (cable plus broadcast) dominates in both surveys, getting the first mention over 60% of the time (see Exhibit 1). Newspapers are next, with first mentions in the mid-teens. Radio and the Internet garner approximately 10%, sometimes slightly less.

In both surveys, newspapers move up as a percentage of total mentions, to the mid-twenties, while TV declines to around or slightly below 50%. Throughout this analysis, whenever we show the sum of first and second mentions, we present them as a percentage of the total mentions. This is essentially what the FCC did by creating an index that summed to 100%. Radio and the Internet remain at around 10%.

Exhibit 1:
National Sources of News – CFA Compared to Pew

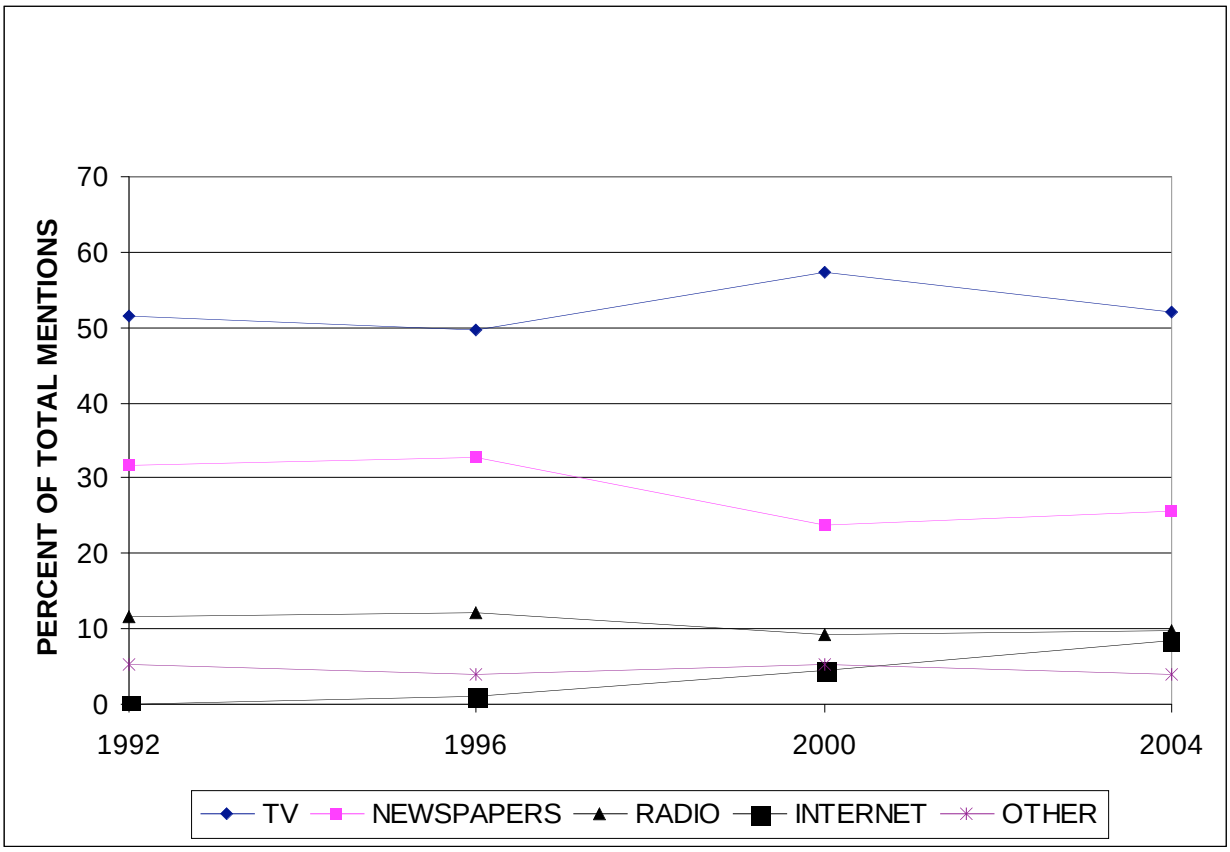




Source: Consumer Federation of America/Consumers Union Poll, January 2004; Pew Research Center For The People & The Press. 2003. "Cable and Internet Loom Large in Fragmented Political News Universe." *Pew Research Center*. 11 January 200, 3The Pew Research Center For The People & The Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, January 11, 2003.

In fact, these national results have been quite stable for over a decade (see Exhibit 2). Over the course of the past dozen years, the Internet appears to have reduced newspapers, radio and other sources by a few percentage points.

Exhibit 2:
Trends of Most Used Media: Early in Presidential Election Years



Source: Sources: Graber, Doris A., *Graber, Doris. Processing Politics. Chicago: University of Chicago Press, 2001Processing Politics: Learning from Television in the Internet Age* (Chicago: University of Chicago Press, 2001), p. 3; Nielsen Media Research. 2002. "Consumer Survey On Media Usage." *Media Ownership Working Group Study* No. 8, September Nielsen, *Consumer Survey on Media Usage* (Federal Communications Commission, Media Ownership Working Group, September 2002). Pew Research Center For The People & The Press. 2003. "Cable and Internet Loom Large in Fragmented Political News Universe." *Pew Research Center*. 11 January 2003The Pew Research Center For The People & The Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, January 11, 2003; Source: Consumer Federation of America/Consumers Union Poll., January 2004 Pew Research Center For The People & The Press. 2003. "Cable and Internet Loom Large in Fragmented Political News Universe." *Pew Research Center*. 11 January 2003; The Pew Research Center For The People & The Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, January 11, 2003.

However, a careful analysis of major sources for local news and information tells a very different story (see Exhibit 3). Our survey shows that the difference between sources of national and local news is quite dramatic and consistent with widely recognized patterns of media usage.

Newspapers are a much more important source of local news. Local newspapers (dailies plus weeklies) are the first mentions of 57% of the respondents compared to only 15% for national news. Television drops from 62% (for national news) to 27% (for local news). Note, however, that broadcast television remains quite important. The Internet drops from

Exhibit 3:
2004 Survey, Frequency of Use and Importance of Sources of Local and National News and Information
(% of Respondents)

	FIRST MENTION		TOTAL MENTIONS	
	Local	National	Local	National
MOST OFTEN USED				
Dailies	35	14	30	21
Weeklies	22	3	20	6
Broadcast	21	27	24	23
Cable	6	35	9	25
Internet	2	10	4	12
Radio	7	9	13	11
Magazines	0	1	0	2
MOST IMPORTANT				
Dailies	34	16	29	22
Weeklies	18	3	17	6
Broadcast	21	24	24	20
Cable	6	30	10	23
Internet	3	10	5	9
Radio	8	9	14	10
Magazines	0	2	0	1

Source: Consumer Federation of America/Consumers Union Poll. January 2004Consumer Federation of America/Consumers Union Survey, Poll, January 2004.

10% (for national news) to 2% (for local news). Radio is constant at just under 10% for both national and local news.

For total mentions we found the same pattern. Newspapers are much more frequently mentioned for local news, TV and the Internet less so. Broadcast TV is cited at roughly the same level for both local and national news. Radio is relatively constant.

The results for the responses to the question asking about "the most important news source" track the results for the responses to "the most often used news source" quite closely. For national news, TV is most frequently cited, followed by newspapers, radio and the Internet. Note that television is somewhat less likely to be cited as important (54% of first mentions) than most used (62% of first mentions). For local news, the pattern of first mentions is almost identical to that for most used. Broadcast television is the second most often cited source on influence. It is relatively constant across local and national.

The ability of respondents to distinguish between different media for different types of news is reinforced by their nuanced responses to the television question. The cable/broadcast difference is critical for understanding the role of the media in civic discourse. Repeated claims about the abundance of programming available affected the framework in which media ownership rules were written by the FCC. Our survey shows that the FCC's references to an abundance of national entertainment channels – "hundreds of choices" – are largely irrelevant to the Commission's central obligation to promote diversity and competition in local sources of news and information.

Approximately 35% of respondents listed cable as their first mention for national news, but only 6% listed it as their first mention for local news. In contrast, broadcast TV was given as the first mention for national news by 27% of the respondents and 21%

mentioned it first for local news. This is consistent with the evidence in the FCC's media ownership record that cable does not provide a significant independent source of local news, while broadcast remains a very significant source of local news.

The 2005-2006 Surveys

The results of the 2006 survey parallel those of the 2004 survey closely (see Exhibit 4). For example, the sum of TV in the national question on first mentions is 59 percent,

Exhibit 4:
2006 Survey, Frequency of Use and Importance of Sources of Local and National News and Information
(% of Respondents)

	FIRST MENTION		TOTAL MENTIONS	
	Local	National	Local	National
MOST OFTEN USED				
Local Dailies	37	10	31	16
National Dailies	1	3	1	5
Local Weeklies	12	31	11	4
National TV	2	38	4	30
Local TV	33	21	33	20
Internet	3	14	5	14
Radio	6	10	12	10
Magazines	0	14	1	3
Other	2	1	2	1
MOST IMPORTANT				
Local Dailies	34	12	29	16
National Dailies	2	5	2	5
Local Weeklies	10	2	10	3
National TV	6	35	6	30
Local TV	30	14	31	17
Internet	4	13	6	13
Radio	8	10	12	11
Magazines	1	2	1	3
Other	2	1	2	1

Source: Consumer Group Survey., August 2006.

compared to 62 percent in the earlier survey. There is also a sharp difference between the source and importance of different media types depending on the type of news being addressed. TV plays a much more prominent role in national news, primarily because of national TV. The main impact of changing the wording of the questions appears to have been to increase the relative importance of local TV, perhaps because of the earlier wording of "broadcasting" or "cable and satellite" did not clearly identify local TV.

Local newspapers have a much larger role in local news, as in the earlier survey. Dailies were 35 percent of first mentions for local in 2004; they are 37 percent in 2006.

Local dailies and weeklies have a much smaller role in national issues than in local issues. The reliance on and importance of local daily newspapers is about the same in the 2006 survey as they were in the 2004 survey. The reliance and importance of weekly newspapers and their importance is much lower in the 2006 survey.

The other major finding from the prior earlier survey that is replicated here is that the Internet is a much less frequent or important source of local news than national news. These results will be examined in detail in the section on the Internet.

The results for importance of the media track those for frequency of use quite closely in the aggregate (see Exhibit 5). The sources rank in the same order as for use and the percentages are similar. It is also notable that the dailies are cited as the most used and most important source of local news, surpassing TV by 4 % for both use and importance, but that TV gets many more second mentions. Similarly, local weeklies exceed radio in first mentions, but radio gets more second mentions.

Exhibit 5:
Most Frequent Source Compared to Most Important Source (Percent of Respondents)

MOST IMPORTANT	MOST FREQUENTLY USED									
National Issues	Local TV	National TV	Radio	Internet	Magazines	Local Daily	National Daily	Local Weekly	Other	Total
Local TV	44	28	5	4	2	9	2	3	0	100
National TV	6	64	4	6	1	7	4	2	1	100
Radio	3	7	65	8	2	4	2	1	2	100
The Internet	2	12	2	64	2	6	5	1	1	100
Magazines	13	27	0	0	33	0	0	0	0	100
Local Daily	6	16	6	3	2	53	6	4	1	100
National Daily	5	10	6	3	6	15	48	2	0	100
Local Weekly	39	13	4	9	0	4	4	13	4	100
Other	11	29	11	0	0	0	6	0	28	100
Off Diagonal Avg.	11	18	5	4	2	6	4	2	1	
Local Issues	Local TV	National TV	Radio	Internet	Magazines	Local Daily	National Daily	Local Weekly	Other	Total
Local TV	59	6	6	4	1	17	1	4	6	100
National TV	42	29	6	0	2	13	4	2	0	100
Radio	22	2	43	5	1	12	3	7	2	100
The Internet	30	2	8	39	0	6	5	1	1	100
Magazines	50	13	0	13	0	25	0	0	0	100
Local Daily	14	4	4	3	0	65	2	4	2	100
National Daily	6	11	0	0	0	39	39	6	0	100
Local Weekly	15	5	5	3	0	15	4	51	1	100
Other	0	16	3	0	0	10	0	3	42	100
Off Diagonal Avg.	22	7	4	4	1	17	2	6	2	

Source: Consumer Group Survey, August 2006.

While there is great similarity in the overall mentions of more frequent and most important sources of news, it should be noted that there are differences at the individual level, as predicted by the political science literature, which sheds some light on the local sources. Exhibit 5 shows the sources cited as most important within for each medium that was cited as most frequent. The diagonals show the consistent responses. For example, 44 percent of the respondents who said local TV was their most frequent source of news on national issues also said local TV was the most important source. In contrast, 59 percent of those who said local TV is their most frequent source of local news also said it was the most important. For newspapers, 53% of those who said national newspapers were the most frequent source of national news also said they were the most important. For local news, 65% of those who said local newspapers were the most frequent source also said they were the most important.

The diagonals are substantial, especially for the TV and newspapers. However, note that the diagonals are larger for national issues than for local issues primarily because local TV and local dailies get a lot more off diagonal mentions. For example, 42% of those who said national TV was the most frequent source of local news said local TV was the most important source. For newspapers, 39% of those who said national papers were the most frequent source of local news said local papers were the most important.

The four traditional sources – local TV, local dailies and weeklies and radio – dominate the local news landscape mentioned by 88 % of the respondents as the most frequently used source and 72 % for second most frequent. They are cited as most important by 82 % of the respondents and second most important by 71 %. Local newspapers and local TV are about equal, each accounting for about one-third of the mentions. Radio and local weeklies are about equal, each accounting for about 10 % of mentions.

The Internet is at best a supplement for local news and information that is relied upon by a very small percentage of the population (4 % first mention, 7 % second mention).

- Even those who rely on the Internet, overwhelmingly go to web sites of traditional media, local TV and daily newspapers and national TV.

- Among the 11% of respondents who say that the Internet is their first or second most frequent source of news, the websites of local TV and daily newspapers account for about half (51%) of the primary sites they visit most frequently. Sites not affiliated with a traditional media outlet (blogs, list serves, alternative news sites and others, including aggregators) account for only 17% of the sites visited most and second most.

A recent survey by the Radio-Television News Directors Foundation (RTNDF) reaches similar conclusions to the surveys discussed above.[261] Unfortunately, it does not distinguish between national and local news. However, it finds that local TV news and local newspapers are "people's major sources of news."[262] Exhibit 6 compares the percentage of

Exhibit 6:
Comparison of RTNDF and Consumer Group Surveys on Major, Most Important Sources of News

	RTNDF	**Consumer Groups Most or Second Most**		
	3 Choices	**National**	**Local**	**Average**
Source of New				
Local TV	66	39	61	50
Local Newspaper	28	31	57	44
National TV	28	57	8	33
Local Radio	15	20	22	21
Internet	11	28	10	19
National Newspaper	4	8	2	5

Sources: Radio-Television News Directors Foundation, *2006 Future of News Survey*, September 2006; Consumer Group Survey, August 2006.

people who identified a medium as a major source of news in the RTNDF study identified it as the most important sources in our survey. The RTNDF gave respondents three choices, we

[261] Radio-Television News Directors Foundation. *2006 Future of News Survey*. September 2006.
[262] Id., p. 7.

allowed only two. We also distinguished local from national news, which the RTNDF did not. We include the average of the responses to the local and national questions in our survey to the RTNDF results. The rank order of the source is identical and the importance of distinguishing national from local news is underscored.

STUDY 8:
THE INTERNET AND LOCAL NEWS AND INFORMATION

MARK COOPER

ABSTRACT

The *Prometheus* Court emphasized the importance of independent sources of local news and information. It questioned the relevance of the Internet as such a source. The empirical evidence shows that it's doubts about the Internet as a source of local news and information were well founded.

- Reliance on the Internet for national and international news and information is much greater than for local news and information.
- Even for national and international news, it is primarily younger respondents who use it.
- For local news and information, even among the young the Internet makes, at most, a small contribution.

The Internet is at best a supplement for local news and information that is relied upon by a very small percentage of the population (4 % first mention, 7 % second mention).

- Even those who rely on the Internet, overwhelmingly go to web sites of traditional media, local TV and daily newspapers and national TV.
- Among the 11% of respondents who say that the Internet is their first or second most frequent source of news, the websites of local TV and daily newspapers account for about half (51%) of the primary sites they visit most frequently. Sites not affiliated with a traditional media outlet (blogs, list serves, alternative news cites and others, including aggregators) account for only 17% of the sites visited most and second most.

A review of the functions provided by traditional media, analyzed by the court and used to analyze Internet activities shows that much of the activity on the Internet lacks the attributes of journalistic enterprise.

- The most prominent and predominant examples, portals like Google, involve pure aggregation and little or no reporting, editing, or allowance for response.
- Analysis of blogging activity, which is certainly a vigorous arena of speech, also shows that it is not primarily a journalistic undertaking. It involves personal statements and accounts that do not involve reporting, fact checking or editing.
- About half of all bloggers see it as a form of personal expression to people that the blogger knows.

THE INTERNET AS A SOURCE OF NEWS AND INFORMATION

In both of our surveys we have noted that the Internet is cited much less frequently as a source of local news and information than for national news. The impact of the Internet on the dissemination of news and information was a central issue in the Court case. The Court drove home the critical factor that diversity comes from independent sources of information, something the Internet, which carries very little independent news, hardly provides.

> There is a critical distinction between websites that are independent sources of local news and websites of local newspapers and broadcast stations that merely republish the information already being reported by the newspaper or broadcast station counterpart. The latter do not present an "independent" viewpoint and thus should not be considered as contributing diversity to local markets.[263]

The distinction between local and national sources was also emphasized in the Internet discussion.

> The Commission does not cite, nor does the record contain, persuasive evidence that there is a significant presence of independent local news sites on the Internet… And the examples the Commission does cite – the Drudge Report and Salon.com – have a national, not local, news focus.[a/]
>
> [a/] Moreover, the Drudge Report is an "aggregator" of news stories from other news outlets' websites and, as such, is not itself normally a "source" of news, national or local.[264]

These survey results provide strong support for the Court's lengthy discussion of the Internet. They confirm that the Internet is not a major source of local news, a fact that was repeatedly demonstrated in the FCC proceeding, but ignored by the FCC when it created its Diversity Index. We examined this in detail.

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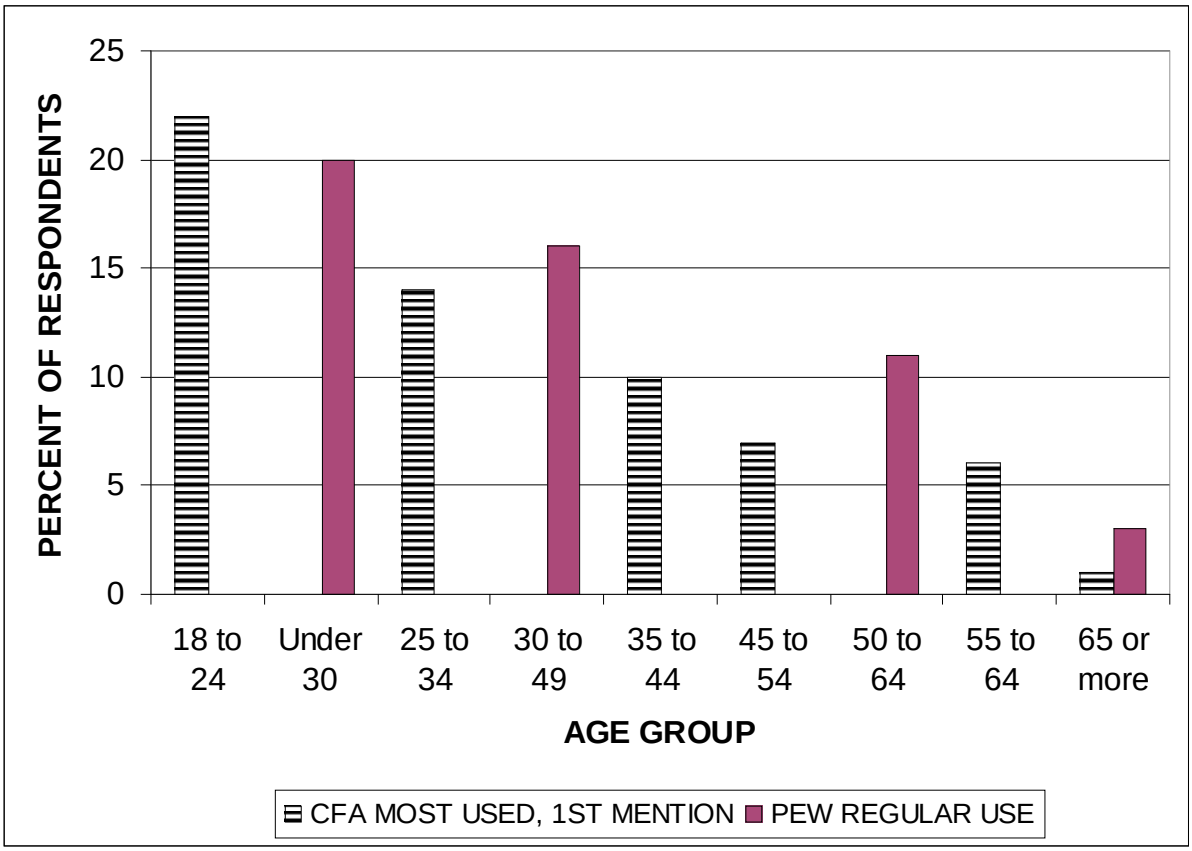
[263] *Prometheus Radio Project v. FCC,* 373 U.S. 372, 406 (3rd Cir. 2004).
[264] *Id.,*at 406, n.34.

The 2002-2004 Surveys

While the Internet is much more likely to be a source of national news, that is only true of younger respondents (see Exhibit 1). We find that the Internet is about three times as likely to be cited as a source of national news by younger respondents as by the remainder of

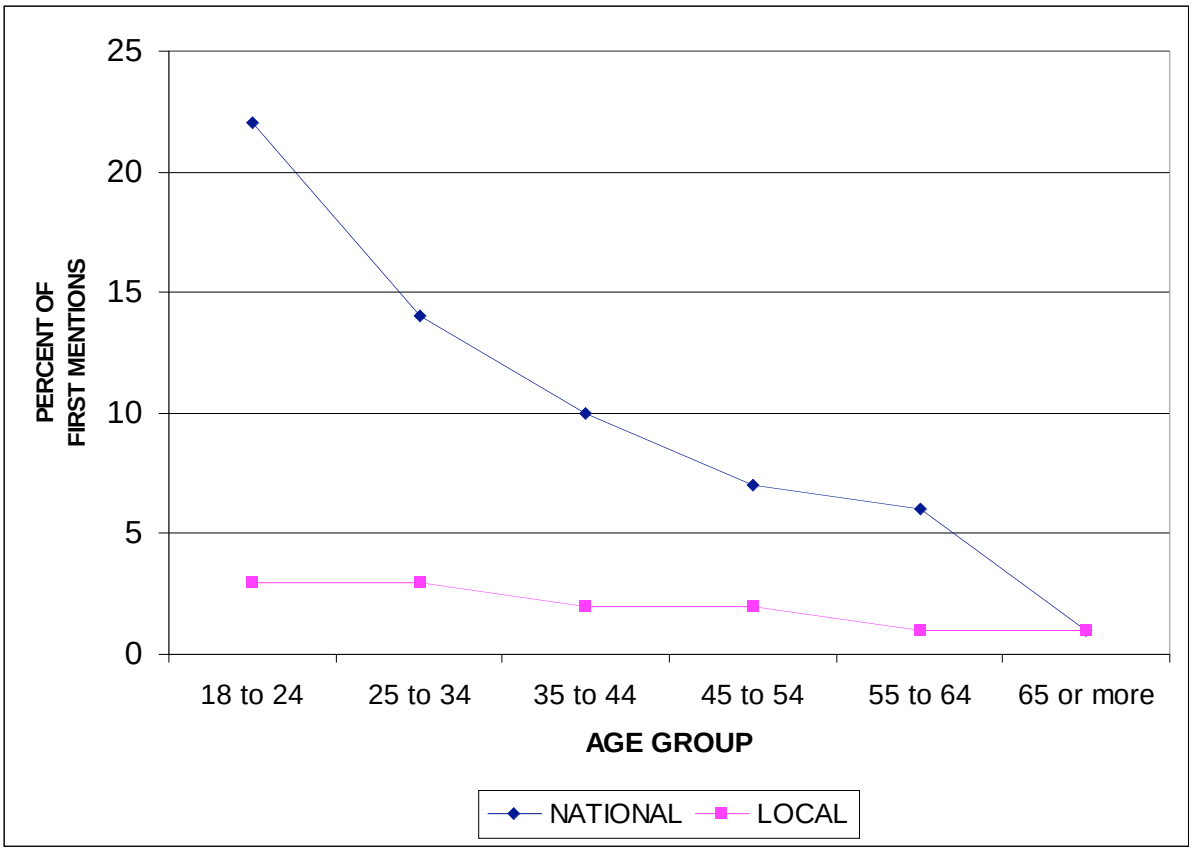
Exhibit 1:
Internet Use for National News Varies Strongly By Age Group



Source: Consumer Federation of America/Consumers Union Poll. January 2004; Pew Research Center For The People & The Press. 2003. "Cable and Internet Loom Large in Fragmented Political News Universe." *Pew Research Center*. 11 January 2003.The Pew Research Center For The People & The Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, January 11, 2003.

respondents – about three times as often. A contemporaneous Pew survey also found that the Internet was a particular source of national news for younger respondents. However, the Internet drops off dramatically as a source of local news even among this younger age group (see Exhibit 2). The percentage of respondents age 18-24 who mentioned the Internet first drops from 23% for national news to 3% for local news.

Exhibit 2:
Internet Use for Local News Is Uniformly Low Across Age Groups

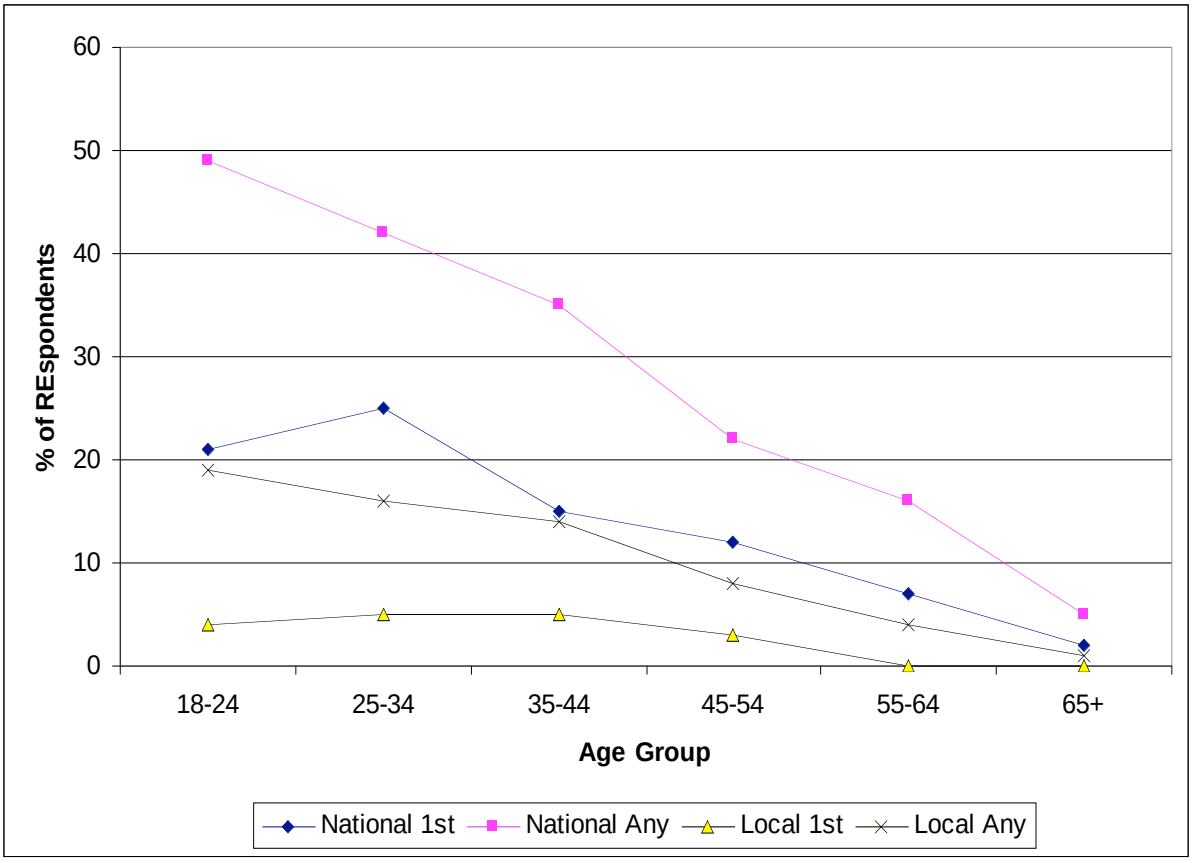


Source: Consumer Federation of America/Consumers Union Poll, January 2004.

The 2005-2006 Surveys

The 2006 survey shows a similar pattern (see Exhibit 3). The Internet plays a much larger role on national issues and younger respondents exhibit a much greater reliance on the Internet for national than local news. For the local issues, there is little difference between the age groups because there is not much local information on the Internet.

Exhibit 3:
Internet Usage by Type of News, Frequency of Use and Age Group



Source: Consumer Group Survey, August 2006.

When they go online, respondents tend to go to the web sites of traditional media. National media are very strong on national issues (see Exhibit 4). For those who go on the

Exhibit 4:
Where Users Frequently Get News Online
(Percent of those who Get News Online;
Usage: Pew is Yesterday, CFA is 1st Mention Most Often)

Type of Site	All Online Users				Heavy Users			
	Pew	CFA Nat'l	Local 1	Local 2	Pew BBand	CFA 1st or 2nd Mention Nat'l	Local 1	Local 2
Traditional Media								
National TV	16	56	19	36	21	52	26	55
Local TV	8	5	15	17	21	3	27	14
National Daily	6	7	2	4	8	7	3	13
Local Daily	9	3	15	12	11	6	25	20
Radio	2	3	2	3	3	2	2	7
New Media								
Portal/Other	14	13	10	27	17	15	10	39
Int'l News Site	3	6	1	2	3	6	3	8
Alternate News	2	4	1	2	2	6	3	3
List serves	2	3	1	1	2	5	2	1

Sources: Horrigan, John B. "For Many Home Broadband Users, the Internet is a Primary News Source." *Pew Internet and American Life Project*, 22 March 2006Horrigan, John B., *For Many Home Broadband Users, the Internet is a Primary News Source*, Pew Internet and American Life Project, March 22, 2006, p. 12; Consumer Group Survey., August 2006.

Internet for information, web sites of traditional sources still dominate, especially for local issues. Even those who rely on the Internet as their first or second most frequent source of local information overwhelmingly go to web sites of traditional media, local TV and daily newspapers and national TV. Among the 11% of respondents who say they that the Internet is their first or second most frequent source of news, the websites of local TV and daily newspapers account for almost half (51%) of the primary sites they visit most frequently. SCites not affiliated with a traditional media outlet (blogs, list serves, alternative

news cites and others, including aggregators) account for only 17% of the sites visited most and second most.

The Pew analysis shows that although people have expanded their use of online distribution, the source data remains the same. Almost everyone relies on the traditional outlets – TV, newspapers, radio. When people go online, they are much more likely to go to the website of a traditional media outlet. While aggregation service or portals are also popular online, these portals simply redistribute stories from other sources. They are not independent sources of news. The genuine alternatives, blogs, alternative news sites and list serves, have a much lower level of usage.

The bottom line for Pew is striking.

> The web serves mostly as a supplement to other sources rather than a primary source of news. Those who use the web for news still spend more time getting news from other sources than they do getting news online. In addition, web news consumers emphasize speed and convenience over detail. Of the 23% who got news on the internet yesterday, only a minority visited newspaper web sites. Instead, websites that include quick updates or major headlines, such as MSNBC, Yahoo, and CNN, dominate the web-news landscape.
>
> The rise of the internet has also not increased the overall news consumption of the American public. The percent%age of Americans who skip the news entirely on a typical dcay has ahs not declineds since the 1990s. Nor are Americans spending any more time with the news than they did a decade ago, when their choices were much more limited.[265]

Exhibit 5 demonstrates the basis for this conclusion in dramatic fashion. It shows the frequency with which respondents use offline traditional and online sources, as well as the destinations to which they go online. Traditional offline outlets still are still vastly more

[265] Kohut, Andrew, et. al. "Maturing Internet New Audience – Broader than Deep." The Pew Research Center for the People & the Press, 20 July 2006, p. 2.

Exhibit 5:
Traditional Media Still Dominate As the Source of News and Information

Do your ever get news or information from…?
Did you happen to get news or information from this source YESTERDAY?

	% OF RESPONDENTS	
	EVER	YESTERDAY
OFFLINE:		
Traditional Outlet (National or local TV, Newspaper or Radio)	100%	95.4%
ONLINE:		
Web site of a Traditional Outlet	43.1	16.5
Web portals (Google news, Yahoo news)	25.4	10.5
Alternative web site (Blog, Alternative News, List serve)	10.2	3.7

Source: Pew Internet and American Life Project. 2005. RDD Tracking Study, Nov/Dec.Pew Internet and American Life Project Nov/Dec 2005 RDD Tracking Study

important and the online outlets of those sources dominate the online destinations. Recognizing that portals are not independent sources of news, but simply aggregate existing source, which are generally from traditional sources, there is very little independent content accessed. To the extent that portals make sources that would not have been available in the offline world available, they do increase availability. However, for local news the amount of such content is slim.

The Belo Survey

A survey of online users conducted by the Dallas Morning News strongly reinforces these observations (Exhibit 6). First, web sites affiliated with traditional news organizations are the overwhelming favorites for online news users. Almost 9 out of 10 respondents give the web site of a local TV station or newspaper as the preferred destination. Web portals garner only 3 %, while the other/don't know category garners 7 %. The younger respondents, who are generally considered the most web savvy, exhibit the same tendencies.

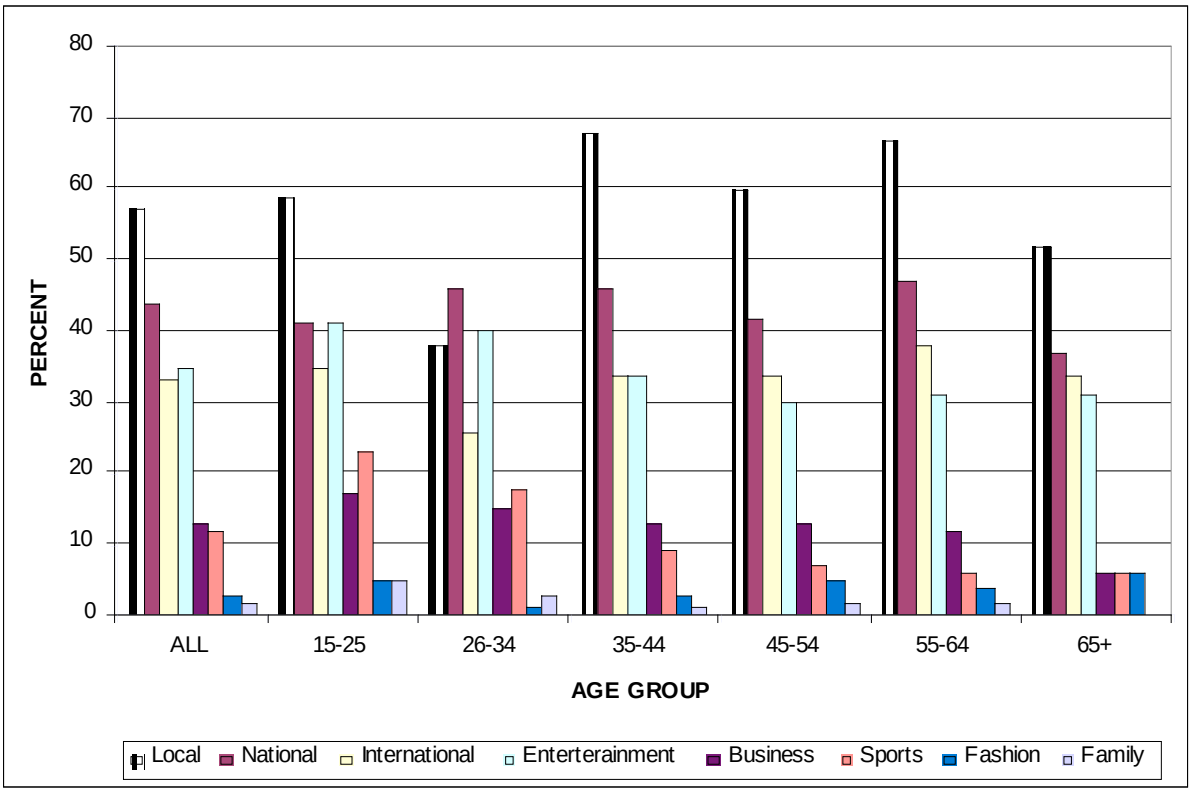
Exhibit 6:
Web Sites Affiliated With Traditional News Organizations are the Preferred Source for Local News
(Internet web site would go to first for details about local news story)

Age	Local TV	Local Paper	National TV	National Paper	News Mag.	Portal	DK/ Other
15-25	43	41	6	2	1	3	4
26-34	48	39	3	0	0	2	8
35-34	55	29	2	1	0	5	8
45-54	59	29	1	1	0	3	7
55-64	61	21	4	1	0	5	9
65+	68	16	6	0	3	4	3

Source: Belo Interactive. *Online Credibility Survey.* 9-19 July 2004Belo Interactive, *Online Credibility Survey,* conducted July 9-19, 2004.

Second, respondents were asked about their interest in news about various topics (see Exhibit 7). The strongest interest was expressed in news "about where you live." It was the only category that exceeded 50 % saying (~57%) this news is very important. Second was national news (~44). International news and entertainment news were generally cited by 30 to 40% of respondents. The other types of news have much lower percentages. Only in the 26-34 age group did national news have a higher percentage of respondents saying it was very

Exhibit 7:
Interest in News about Various Topics



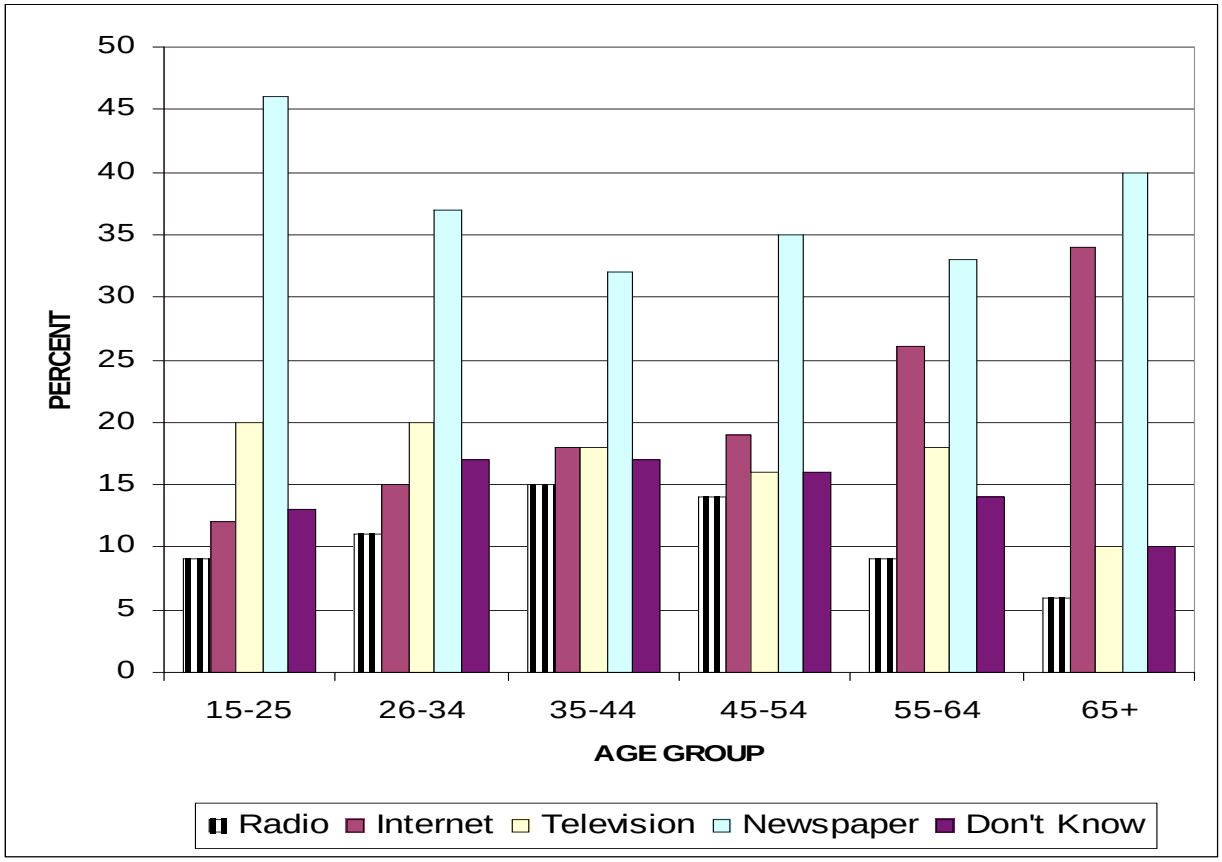
Notes: Interest in News about: Where you live = Local, From Around the Country = National, From Around the World = International, In Entertainment and Personalities = Entertainment, About Business and Careers = Business, In Sports = Sports, About Fashion, Lifestyles & Health = Fashion, In Relationships, Family and Friends = Family

Source: BeBelo Interactive. *Online Credibility Survey.* 9-19 July 2004lo Interactive, *Online Credibility Survey,* June 2004.

important. This is primarily because of a lack of interest in local (not a heightened interest in national) news.

Third, in this survey newspapers have a huge advantage in credibility over other sources (see Exhibit 8). The Internet is generally second in credibility in this survey, interestingly, with much lower levels of credibility among the younger respondents. The respondents were also asked about the impact of an association between a web site and a

Exhibit 8:
Newspapers Have an Advantage in Credibility
(Which Medium Provides the Most Credible Information?)

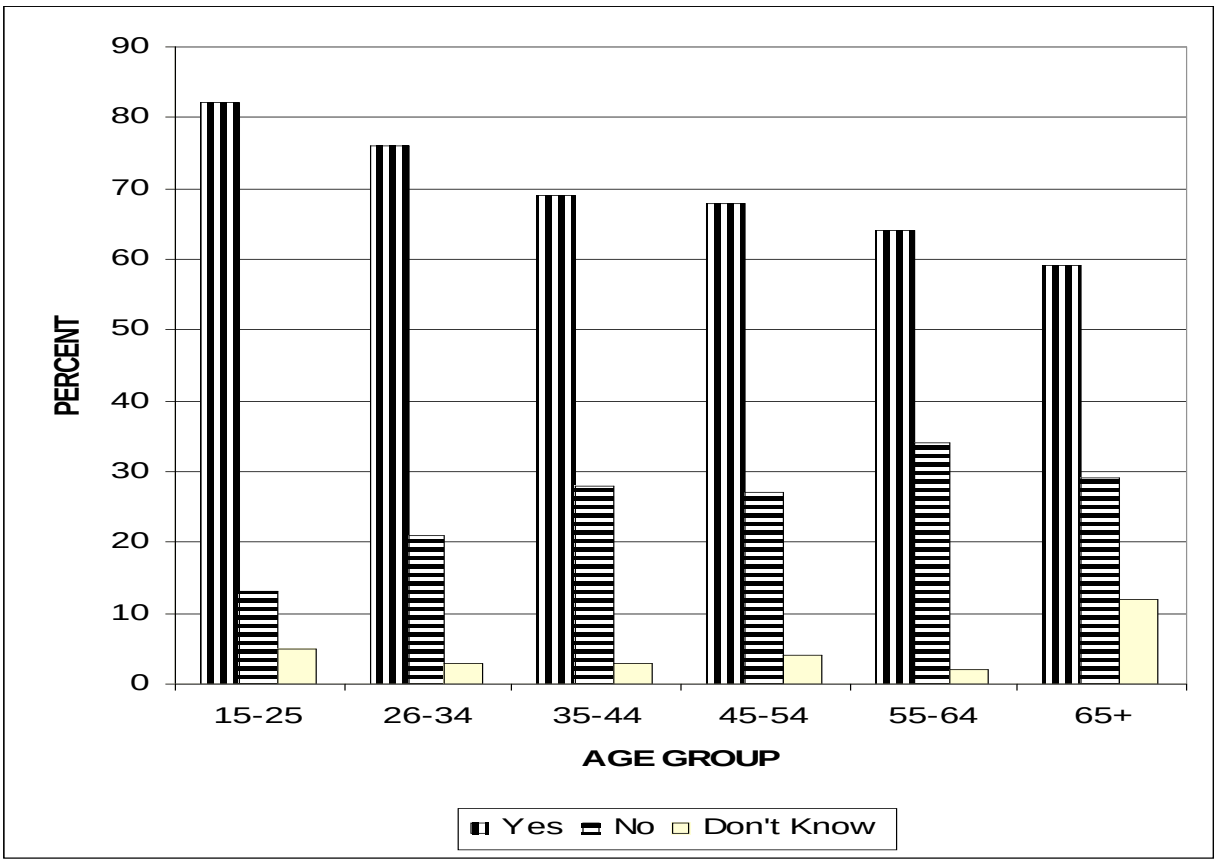


Source: Belo Interactive. *Online Credibility Survey.* 9-19 July 2004Belo Interactive, *Online Credibility Survey,* June 2004.

traditional source of news (see Exhibit 9). The overwhelming majority of respondents (about 70%) said this would make the web site more credible. Interestingly, the younger respondents were more likely to respond in the affirmative than the older respondents.

This evidence on the preferences for web sites and the complementarity and linkages between traditional outlets and Internet sites supports the *Prometheus* Court's reasoning on the treatment of the Internet in the determination of the Diversity Index.

Exhibit 9:
A Link Between a Traditional Source and an Internet Site Boosts Internet Credibility (An Internet news site is more credible if associated with a familiar print or television organization)



Source: Belo Interactive. *Online Credibility Survey*. 9-19 July 2004Belo Interactive, *Online Credibility Survey*, June 2004.

A NOTE ON WORDING AND SEQUENCING OF THE SOURCE AND INTERNET QUESTIONS

The analysis presented in this study and the study on Internet use for national and local information is based on the sequence of questions described in Study 7. That is, we asked people where they go for national and international news and information first and which sources influence their opinion national and international news second. Then we asked the questions about local news and information. The distinction between the subjects – national

vs. local is important because the media ownership proceeding is focused on local news. We also asked the question about where people go on the Internet for news and information for anyone who had the Internet at home. We provided a list of independent sources and did not include pure aggregators. This, too, is consistent with the framework of the Court ruling. To the extent that respondents only go to aggregator sites, they would have said "other."

To examine the impact of these choices on the analysis, we asked the questions in a different way one a different date of another national random sample survey. We did not ask the national/international questions first, we asked only those who said they went online for news (as opposed to everyone who has the Internet) and we included the aggregators in the list of web sites that were visited. The respondents move in the direction that would be expected (see Exhibit 10). Without being asked about national and international news and information first, more respondents say they go to national sites for local news.

Exhibit 10:
Major Sources of News Under Different Approaches to Questioning
(Percent of Total Respondents and Mentions)

	With Prior Question About National News		Without Prior Question About National News	
Source	1st	1st or 2nd	1st	1st or 2nd
Local TV	33	61	33	59
National TV	2	8	10	23
National Daily	1	2	2	5
Local Daily	37	57	26	46
Local Weekly	12	21	14	14
Radio	7	22	10	24
Internet	3	10	8	21

Source: Consumer Group Survey., August 2006, September 2006.

Turning to the web sites that those who go online for news visit, we find that the local sites have the largest increase – reflecting the fact that the national news question was not asked first (see Exhibit 11). National dailies increase. Given the option of aggregators, a larger number of respondents say they went to those sites first. Combining aggregators and other, we observe an increase from 5 percent of the total population to 7 percent on first mentions and a 7 to 13 for first or second mentions.

Exhibit 11:
Different Approaches to Questions Result in Small Differences in Responses
(Percent of Total Respondents and Mentions)

Web Sites Visited	**All Internet at Home/ Aggregators not Identified**		**Internet News Users/ Aggregators Identified**	
	1st	1st or 2nd	1st	1st or 2nd
National TV	12	19	9	14
Local TV	13	22	2	4
National Daily	1	4	1	3
Local Daily	10	18	3	5
Radio	3	5	1	2
Other/Portals	5	7	7	13
Blogs	0	1	1	2
Alternative News	1	1	1	1
International News	1	2	1	2
List Serves	1	1	0	2

Source: Consumer Group Survey, August 2006, September 2006.

This difference would have little impact on the general conclusions about the frequency and importance of various media outlets, certainly with respect to the role of the Internet. Because the percentage of respondents who give the Internet as a source is so

small, the shift between traditional sources and aggregators would have little effect on the overall media map that was drawn.

THE INTERNET AND JOURNALISM

Media Functions in the Production and Dissemination of News and Information

Although the Internet has provided an expanded arena for discussion, the traditional mass media still dominate the gathering, editing and dissemination of information about local events and public affairs. The Court gave a nuanced framework for analyzing the importance and impact of alternative media.

The other Internet issue that receives a great deal of attention is the relationship between the Internet as a news medium and the production of news and information. The *Prometheus* court did not use the term blogs, but it addressed the heart of the issue with a lengthy and nuanced discussion of the unique characteristics of the "information" that is the object of First Amendment policy in the case. The role of the media in creating and protecting the integrity of this information is substantial.

> In terms of content, "the media" provides (to different degrees, depending on the outlet) accuracy and depth in local news in a way that an individual posting in a chat room on a particular issue of local concern does not. But more importantly, media outlets have an entirely different character from individual or organizations' websites and thus contribute to diversity in an entirely different way. They provide an aggregator function (bringing news/information to one place) as well as a distillation function (making a judgment as to what is interesting, important, entertaining, *etc.*) Individuals… and entities… may use the Internet to disseminate information and opinions about matters of local concern… but … are not, themselves… "media outlets" for viewpoint-diversity purposes. Like many entities, they just happen to use a particular media outlet – the Internet – to disseminate information. Similarly,

advertiser-driven websites such as hvnet.com… hardly contribute to viewpoint diversity."[266]

The Court's view of the difference between the Internet as a distribution medium and the production of news and information is right on and can be linked directly to recent analyses of alternative media (see Exhibit 12). If we distinguish three functions – reporting, editing and response – and three different ways of implementing each function – not doing it, using a closed approach , or using an open approach – we can classify the various types of media. We then get into the debate about whether the new media are providing the functions of the old. They give a great deal of response, but not that much reporting and editing.

Blogging

Our surveys did not address this issue, except in asking whether respondent used blogs as primary or secondary sources of information. For national news, fewer than 3% of all respondents (5% of those who get online news) mentioned blogs as a first or source of information. For local news only 1% of all (2% of those who get online news) mentioned blogs as a first or second source.

Pew conducted a recent study[267] that addresses some of these issues and they support the view of the *Prometheus Court.* Both from the point of view of what, why and how they blog, there is clearly a difference between media/journalism as defined by the court and blogging.

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[266] *Prometheus* , 372 F.3d at 407 (3rd Cir. 2004)..

[267] Lenhart, Amanda and Susan Fox. "Bloggers: A Protrait of the Internet's New Storytellers." Washington, D.C.: Pew Internet & American Life Project, 19 July 2006.

Exhibit 12:
The Emerging News Media Space

EDITING:	NONE			CLOSED			OPEN		
RESPONSE:	NONE	CLOSED	OPEN	NONE	CLOSED	OPEN	NONE	CLOSED	OPEN
REPORTING:									
NONE	GOOGLE NEWS	CHAT GROUP	PUNDITRY BLOG		GROUP BLOG				
CLOSED	HOMEPAGE, PODCAST		WITNESS BLOG W/ FEEDBACK		TRADITIONAL MEDIA				
OPEN			METABLOG		MEDIA CHANNEL			SLASHDOT	INDYMEDIA, WIKIPEDIA, GATHER

MEDIA/JOURNALISM with all three functions present

Categories adapted from Bruns, Alex. *Gatewatching*. New York: Peter Lang Publishing, 2005 Bruns, Alex, *Gatewatching* (New York: Peter Lang Publishing, 2005) and Rogers, Richard. *Information Politics on the Web.* Cambridge: MIT Press, 2004.Rogers, Richard, *Information Politics on the Web (*Cambridge:MIT Press, 2004)

The predominant reasons for blogging, stated by about half of the bloggers, are self-expression and sharing of personal experiences. Next most frequent reasons about (one-third) are to stay in touch with friends and family. In fact, about half the bloggers believe most of their readers are people they know. This is an extension of the water cooler and backyard fence aspect of civic discourse.

"Three in four bloggers (77%) told us that expressing themselves creatively was a reason that they blog."[268] Other matjor reasons given were to document personal experiences (76%), share practical knowledge (64%) motivate people to action (61%) and keep in touch with family and friends (60%).

"The largest percentage of bloggers... (37%) say that "my life and personal experiences"[269] was the main topic. Next was political and government (11%), followed by entertainment (7%), sports (6%) news and current events (5%), and business (5%).

About one-third of bloggers define themselves as journalists, but only about one third-of bloggers responding to the survey say they often "spend extra time trying to verify facts," and just over one-third include links to original source material. Only 15% say they "quote other people/media directly."

In sum, on both the demand side (where people go for news) and on the supply-side, what bloggers do, it seems clear that blogging does not meet the *Prometheus* Court's definition. This is not to say that blogging does not provide valuable communications and networking functions, it is just not local news and information for the vast majority of citizens.

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[268] Id., p. 7.
[269] Id., p. 9.