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# The Media, A Polarized America & ADR Tools to Enhance Understanding of Perspectives

Ginsey Varghese Kramarczyk\*

## I. INTRODUCTION

In today's political climate, the U.S. media reports to a disillusioned and polarized American audience and is driven largely by news outlets capitalizing on "conflict" to determine "newsworthiness."<sup>1</sup> With the additional preeminence of social media and algorithms promoting self-reinforcing media, each person's news appetite is limited by confirmation bias.<sup>2</sup>

The media's influence and ability to enhance the public's understanding of varying perspectives is important to promote civil discourse with "the other side."<sup>3</sup> The media has the unique "power to identify, name, and shape issues," and serves as the "gatekeeper" that decides what is "news" and *how* it will be spun.<sup>4</sup> The media mediates information to the public, and its role should thus be considered and guarded purposefully.<sup>5</sup>

"Media," as used in this paper, refers to "news media" or the "press" that delivers news to the public and practices journalism via various mediums—television, radio, magazines, and newspaper, both print and online.<sup>6</sup> More

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<sup>1</sup> *Political Polarization in the American Public*, PEW RESEARCH CENTER (June 12, 2014), <http://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/> [hereinafter *Pew, Polarization in America*]; Carol Pauli, *News Media as Mediators*, 8 CARDOZO J. CONFLICT RESOL. 717, 717 (2007).

<sup>2</sup> See Maeve Duggan & Aaron Smith, *The Political Environment on Social Media*, PEW RESEARCH CENTER (Oct. 25, 2016), <http://www.pewinternet.org/2016/10/25/the-political-environment-on-social-media/>.

<sup>3</sup> *15.7 Media Influence on Laws and Government*, M LIBRARIES, <http://open.lib.umn.edu/mediaandculture/chapter/15-7-media-influence-on-laws-and-government/> (last visited Sept. 29, 2018); see also DIANA C. MUTZ, HEARING THE OTHER SIDE: DELIBERATE VERSUS PARTICIPATORY DEMOCRACY 125 (2006) (discussing the consequences of interaction between people who have different political views).

<sup>4</sup> Lorie M. Graham, *A Right to Media?*, 41 COLUM. HUM. RTS. L. REV. 429, 429 (2010); see also Pamela J. Shoemaker, *News and Newsworthiness: A Commentary*, 31 EUR. J. COMM. RES. 105, 109 (2006).

<sup>5</sup> BILL KOVACH & TOM ROSENSTIEL, THE ELEMENTS OF JOURNALISM: WHAT NEWSPEOPLE SHOULD KNOW AND THE PUBLIC SHOULD EXPECT 166 (Three Rivers Press ed., 2d ed. 2007).

<sup>6</sup> "Media," "Journalist," and "Press" will be used interchangeably throughout the article. STEPHANIE CRAFT & CHARLES N. DAVIS, PRINCIPLES OF AMERICAN JOURNALISM: AN INTRODUCTION 11 (Erica Wetter ed., 2013).

specifically, “news media” refers to “organizations in the business of gathering and disseminating news, and to reporters, editors, and others who are professional news gatherers and disseminators, primarily at the national level differentiat[ing] the news function from the entertainment function.”<sup>7</sup>

This article will survey: (1) the intended role of the media in a democracy; (2) the current polarized political climate in the United States; (3) the challenges facing the twenty-first century with the growth of technology, cable news, and online platforms; (4) the media’s role in perpetuating conflict; and (5) propose that media professionals use Alternative Dispute Resolution (ADR) tools and processes to increase the public’s understanding of differing perspectives in our conflict-laden political discourse.

#### A. *Potential Objections*

The First Amendment states, “Congress shall make no law . . . abridging the freedom of speech, or of the press.”<sup>8</sup> Proposing a regulatory framework for the media or limiting any form of speech is not in the scope of this article. This article will survey the intended role and responsibilities of the media, analyze current contextual challenges, and provide ADR insights to empower news media professionals who are cognizant of their responsibility to facilitate a public forum to better serve the citizenry in today’s polarized political climate.

Movements in the media toward using ADR techniques, such as “peace journalism” and “civic journalism,” have faced resistance due to conflicts of interest for reporters.<sup>9</sup> Journalists are expected to maintain a sense of detachment and neutrality to ensure “factual reporting” and ADR “problem-solving” approaches do not pose the risks of agenda pushing.<sup>10</sup> As such, this article will not suggest that “problem-solving” techniques should take priority over “factual reporting.”

Predominant today, divisive “reporting” is fueled by interests in higher ratings and financial pressures, likely incentivizing journalistic impropriety.<sup>11</sup> The press was created to serve as “responsible members of the community with a full stake in public life and thus ‘concerned’ with whether genuine citizen deliberation occurs when needed, and whether communities come to

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<sup>7</sup> CRAFT & DAVIS, *supra* note 6, at 92.

<sup>8</sup> U.S. CONST. amend. I.

<sup>9</sup> Carol Pauli, *Transforming News: How Mediation Principles Can Depolarize Public Talk*, 15 PEPP. DISP. RESOL. L.J. 85, 100 (2015).

<sup>10</sup> See generally EUROPEAN CENTRE FOR CONFLICT PREVENTION, THE POWER OF THE MEDIA: A HANDBOOK FOR PEACEBUILDERS (2003); Annabel McGoldrick & Jake Lynch, *Peace Journalism: What Is It, How to Do It?*, REPORTING THE WORLD (2000), [https://www.transcend.org/tri/downloads/McGoldrick\\_Lynch\\_Peace-Journalism.pdf](https://www.transcend.org/tri/downloads/McGoldrick_Lynch_Peace-Journalism.pdf).

<sup>11</sup> Jürgen Krönig, *A Crisis in the Fourth Estate*, THE GUARDIAN (Aug. 16, 2004), <https://www.theguardian.com/media/2004/aug/16/mondaymediasection.politicsandthemedial> (concluding that the media are driven by commercial and market pressures).

grips with their problems.”<sup>12</sup> This article submits that journalists should have an inherent interest in sound reporting and the psychology of conflict and communications. This entails understanding how “packaging” and “messaging” ultimately impact the audience,<sup>13</sup> but nevertheless the article does not propose regulating journalistic freedom in any manner. ADR techniques would only serve to supplement newsmen’s toolkits as they inform and educate the public on relevant issues, while providing for the differing perspectives of fellow citizens.<sup>14</sup>

## II. MEDIA IN PUBLIC LIFE

### A. *Media as the Fourth Branch of Government*

Many scholars regard the media as the “fourth branch” of government, fulfilling a necessary “check” function in a democracy over the standard three branches of government: legislative, executive, and judicial.<sup>15</sup> The First Amendment captures this fundamental ideal by providing for the “freedom of press” as distinct from the freedom of speech.<sup>16</sup> The founders explicitly created a *free press* to prevent tyrannical rule.<sup>17</sup> The press would serve as a protector against “abuse of official power” and “an educator of the people” by informing the people about government action and policies, as well as possible repercussions and options.<sup>18</sup> A free press, by design, would serve as a conduit between governmental institutions and the public: requiring accountability in government actions.<sup>19</sup>

*NY Times Co. v. U.S.* states this proposition clearly: “The Founding Fathers gave the free press the protection it must have to fulfill its essential

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<sup>12</sup> Tanni Haas & Linda Steiner, *Public Journalism as a Journalism of Publics*, 2 SAGE JOURNALS 123, 132 (2001), <http://journals.sagepub.com/doi/pdf/10.1177/146488490100200202>.

<sup>13</sup> Peter du Toit, *Conflict Sensitive Reporting: A Toolbox For Journalists*, RHODES UNIVERSITY 43–44 (Mar. 2012), [https://www.internews.org/sites/default/files/resources/ConflictSensitiveReporting-Peter\\_du\\_Toit\\_2012-03.pdf](https://www.internews.org/sites/default/files/resources/ConflictSensitiveReporting-Peter_du_Toit_2012-03.pdf) (providing guidance on how journalists can use the psychology of conflict and communication in reporting).

<sup>14</sup> See Rukhsana Aslam, *The Role of Media in Conflict: Integrating Peace Journalism in the Journalism Curriculum*, 8 (Nov. 4, 2014) (unpublished Ph.D. thesis, Auckland University of Technology) <http://aut.researchgateway.ac.nz/bitstream/handle/10292/7908/AslamR.pdf?sequence=3> (arguing for the implementation of conflict analysis, resolution, and development in journalistic education).

<sup>15</sup> This article holds the premise that media is the unofficial fourth branch of government. Rachel Luberda, *The Fourth Branch of Government: Evaluating the Media’s Role in Overseeing the Independent Judiciary*, 22 NOTRE DAME J.L. ETHICS & PUB. POL’Y 507, 508 (2008); William T. Coleman, Jr., *A Free Press: The Need to Ensure an Unfettered Check on Democratic Government Between Elections*, 59 TUL. REV. 243, 243–44 (1984).

<sup>16</sup> Coleman, *supra* note 15, at 243.

<sup>17</sup> *Id.* at 243–44.

<sup>18</sup> *Id.* at 247, 252.

<sup>19</sup> *Id.* at 244, 252.

role in our democracy. The press was to serve the governed, not the governors.”<sup>20</sup> Justice Stewart highlights in a dissenting opinion that because “[e]nlightened choice by an informed citizenry is the basic ideal upon which an open society is premised . . . , the [independent] press . . . is a precondition of government.”<sup>21</sup> In a democracy where government is to be by the consent of the governed, the media is *how* the public learns about the government.<sup>22</sup> Therefore, the media’s role cannot be overlooked, downplayed, or misunderstood. The media controls the news it reports to the public and directly influences public opinion: holding a crucial, tremendous power in facilitating public life.<sup>23</sup>

### B. *Media’s Responsibility to the Citizenry*

Media and the field of journalism have evolved over the years with the prevalence of Facebook, personal blogs, and Google, alongside major changes in culture, politics, and technology.<sup>24</sup> Part III of the article will discuss the challenges of twenty-first century technology and social media influences. Despite the recent evolution, the objectives of news media remain unaffected: “[T]o provide people with the information they need to be free and self-governing . . . amplifying the conversation of people themselves.”<sup>25</sup> The media maintains a responsibility to provide independent, reliable, and comprehensive information for citizens to formulate opinions and to properly engage in the democratic process.

However, the difficulty is that journalism *needs* to make money in order to survive, and conflict sells.<sup>26</sup> Kovach, a prominent voice in journalism, outlines the ten principles of journalism for news people amidst the changing environment:

- 1) Journalism’s first obligation is to truth.
- 2) Its first loyalty is to citizens.
- 3) Its essence is a discipline of verification.
- 4) Its practitioners must maintain

<sup>20</sup> *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971).

<sup>21</sup> See Christa Corrine McLintock, *The Destruction of Media Diversity, or: How the FCC Learned to Stop Regulating and Love Corporate Dominated Media*, 22 J. MARSHALL J. COMPUTER & INFO. L. 569, 571 n.21 (2004) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 727 (1972)) (Stewart, J. dissenting).

<sup>22</sup> RICHARD DAVIS, *THE PRESS AND AMERICAN POLITICS* (Beth Mejia ed., Prentice Hall 3rd ed. 2001); see KOVACH & ROSENSTIEL, *supra* note 5, at 11 (noting how journalism evolved to create democracy in countries like Poland and Czech Republic—“journalism was for citizenship. Journalism was for democracy.”).

<sup>23</sup> KOVACH & ROSENSTIEL, *supra* note 5, at 11–12 (“The principles and purpose of journalism are defined by something more basic: the function news plays in the lives of people.”); Diana C. Mutz & Paul S. Martin, *Facilitating Communication Across Lines of Political Difference: The Role of Mass Media*, 95 AM. POL. SCI. REV. 97, 109–10 (2001); see William L. Rivers, *The Media as Shadow Government*, in *IMPACT OF MASS MEDIA: CURRENT ISSUES* 279, 282 (1985) (emphasizing that the media sets the agenda for public discussion by controlling access to what the public reads).

<sup>24</sup> KOVACH & ROSENSTIEL, *supra* note 5, at ix.

<sup>25</sup> *Id.* at 3, 5–6, 11–12.

<sup>26</sup> Corporate, financial, and rating pressures will be discussed in Part IV.

independence from those they cover. 5) It must serve as an independent monitor of power. 6) It must provide a forum for public criticism and compromise. 7) It must strive to make the significant interesting and relevant. 8) It must keep the news comprehensive and in proportion. 9) Its practitioners have an obligation to exercise their personal conscience. 10) Citizens, too, have rights and responsibilities when it comes to the news.<sup>27</sup>

The importance of such tenants cannot be understated considering the unique challenges of the political climate today. Kovach warned that independent news could be overrun by rumors and self-interested commercialism posing as news.<sup>28</sup> He added, “[i]f that occurs, we lose the press as an independent institution, free to monitor the other powerful forces and institutions in society.”<sup>29</sup> This is the situation in America today. The public is steadily losing trust in the press as independent and unbiased, with the prevalence of rhetoric about “fake news” and general cynicism dominating political discourse.<sup>30</sup>

### III. POLARIZATION IN THE UNITED STATES

Polarization occurs when the judgment of individuals in a group regarding an issue becomes more extreme after discussing that issue with others in the group.<sup>31</sup> While there is markedly increased hostility in the U.S. political environment, there is disagreement amongst researchers as to whether there is a “polarization of ideologies” in the United States.<sup>32</sup> One group of researchers reason that Americans have become more extreme in their policy beliefs, leading to a strong “ideological polarization,” while another group of researchers contend that most Americans’ views have remained mostly stable over time.<sup>33</sup> Despite mixed findings regarding

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<sup>27</sup> KOVACH & ROSENSTIEL, *supra* note 5, at 5–6.

<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> 57% of people in the US believe the media does a poor job of reporting on politics fairly. Amy Mitchell, Katie Simmons, Katherine Eva Matsa & Laura Silver, Pew Research Center, *Publics Globally Wanted Unbiased News Coverage But Are Divided Whether Their News Media Delivers* (Jan. 2018); Michael Barthel & Amy Mitchell, Pew Research Center, *Americans’ Attitudes About the News Media Deeply Divided Along Partisan Lines* (May 2017); Art Swift, *Americans’ Trust in Mass Media Sinks to New Low*, GALLUP NEWS (Sept. 14, 2016), <http://news.gallup.com/poll/195542/americans-trust-mass-media-sinks-new-low.aspx>; Pauli, *News Media As Mediators*, *supra* note 1, at 717.

<sup>31</sup> DOUGLAS KENRICK, STEVEN L. NEUBERG & ROBERT B. CIALDINI, *SOCIAL PSYCHOLOGY: GOALS IN INTERACTIONS* 392 (6th ed. 2015).

<sup>32</sup> Matthew Gentzkow, *Polarization in 2016*, STAN. U. 1, 2 (2016), <https://web.stanford.edu/~gentzkow/research/PolarizationIn2016.pdf>.

<sup>33</sup> See generally M. P. Fiorina & S. A. Abrams, *Polarization in the American Public*, 11 ANN. REV. OF POL. SCI., 563, 563–88 (2008); Alan I. Abramowitz & Kyle L. Saunders, *Is Polarization a Myth?*, 70(2) J. OF POL., 542, 542–55 (2008); Edward L. Glaeser, & Bryce A. Ward, *Myths and Realities of American Political Geography*, 20 J. OF ECON. PERSP., 119, 119–44 (2006).

ideological polarization, researchers agree that Americans are experiencing “affective polarization.”<sup>34</sup>

“Affective polarization” can be defined as the tendency of people to view “in-group” members positively while viewing “out-group” members negatively.<sup>35</sup> It is the inclination of people to assess the opposing partisans negatively and co-partisans positively.<sup>36</sup> As a result, Americans feel distant from members of the opposite party and even dislike those on the other side of the political spectrum.<sup>37</sup> In the current political climate, many Americans who identify with a particular party hold extreme biases against the opposing party members for simply identifying as a “Democrat” or “Republican,” even if associated policies or ideologies are not, in reality, extreme.

This type of behavior, while not suggestive of ideological polarization, highlights that many voters have become polarized by “the mere act of identifying with a political party . . . [triggering] negative evaluations of the opposition, [with] exposure to prolonged media-based campaigns only reinforc[ing] these predispositions.”<sup>38</sup> Seyle and Newman, both prominent social psychologists, speculate that the majority of America remains ideologically moderate, but the “red” versus “blue” emphasis drowns moderate voices and divides voters into two opposing camps represented by the loudest extremists on both sides.<sup>39</sup> These distortions, according to experts in social psychology, “increase group conflict, decrease intergroup contact, and contribute to many problems in social interaction across groups.”<sup>40</sup>

The public sphere is becoming increasingly polarized. A recent 2017 Pew survey revealed that on the eve of Trump’s inauguration, 86% of Americans believed that the United States was more politically divided than in the past.<sup>41</sup> Only 46% of Americans held such conviction when Barack Obama became President of the United States in 2009.<sup>42</sup> This statistic reflects that 40% of the American public has recognized this shift within the past eight years.<sup>43</sup>

A 2014 Pew study on polarization in America revealed that politically active Americans, 27% of Democrats and 36% of Republicans, increasingly saw their opponents as “so misguided that they threaten the nation’s

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<sup>34</sup> Shanto Iyengar & Sean J. Westwood, *Fear and Loathing Across Party Lines: New Evidence on Group Polarization*, 59(3) AM. J. OF POL. SCI., 690, 690–707 (2015).

<sup>35</sup> *Id.* at 691.

<sup>36</sup> *Id.* at 691.

<sup>37</sup> *Id.* at 691.

<sup>38</sup> Shanto Iyengar, Gaurav Sood & Yphtach Lelkes, *Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76(3) PUB. OPINION Q. 405, 407 (2012).

<sup>39</sup> D.C. Seyle & M.L. Newman, *A House Divided? The Psychology of Red and Blue America*, 61(6) AM. PSYCHOLOGIST 571–80 (2006).

<sup>40</sup> *Id.* at 574.

<sup>41</sup> Pew Research Center, *On Eve of Inauguration, Americans Expect Nation’s Deep Political Divisions to Persist* (Jan. 2017), <http://www.people-press.org/2017/01/19/on-eve-of-inauguration-americans-expect-nations-deep-political-divisions-to-persist/> [hereinafter Pew, *On the Eve of Inauguration*].

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

wellbeing.”<sup>44</sup> Nearly half of politically active Americans, deemed as “active” because of voting patterns and attention to political news, regarded the other side as a danger to the nation.<sup>45</sup> It flows naturally that more than one-fifth of the respondents in the same survey indicated they would be displeased if one of their children married someone of the opposite party.<sup>46</sup> Compared to 1960, where very few people (5%) indicated this sentiment, the affective polarization, or rather “personalization,” of politics is apparent.<sup>47</sup> Polarization appears to be getting worse under Trump’s presidency.

Two key shifts have occurred within each party: (1) people’s connection with their party is deeper and (2) consistency of people’s views has increased.<sup>48</sup> The first shift is apparent in the numbers, but the shocking change is that politics have become incredibly personal.<sup>49</sup> Party affiliation has evolved to be a part of our self-concept in profound ways.<sup>50</sup> This connection of party and “self” extends to how individuals judge politics and new information.<sup>51</sup> People do not view the other party as made up of competent individuals who espouse a different viewpoint or hold a different value system.<sup>52</sup> Instead, the other side is perceived as selfish and stupid, with intolerable views or, at the very least, precarious motives.<sup>53</sup> The other side is seen as a threat to the nation.<sup>54</sup>

The negative sentiment is captured perfectly in party favorability ratings presented in an October 2017 Pew report.<sup>55</sup> It reflects that “about eight-in-ten Democrats and Democratic-leaning independents (81%) have an unfavorable opinion of the Republican party.”<sup>56</sup> This includes 44% holding a “very unfavorable view” of the Republicans.<sup>57</sup> The data is the same amongst Republicans: 81% view Democrats unfavorably, with 45% holding a “very unfavorable view.”<sup>58</sup> Twenty years ago, a little over half of Democrats (57%) viewed the Republican party unfavorably and only 16% very unfavorably,

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<sup>44</sup> Pew, *Polarization in America*, *supra* note 1, at 8, 11; Pauli, *Transforming News: How Mediation Principles Can Depolarize Public Talk*, *supra* note 9; Gentzkow, *supra* note 29, at 15.

<sup>45</sup> Pew, *Polarization in America*, *supra* note 1, at 8, 11; Gentzkow, *supra* note 29, at 15.

<sup>46</sup> Pew, *Polarization in America*, *supra* note 1, at 12.

<sup>47</sup> *Id.* at 12.

<sup>48</sup> *Id.* at 11; Gentzkow, *supra* note 32, at 17.

<sup>49</sup> See Gentzkow, *supra* note 32, at 1.

<sup>50</sup> Alexander George Theodoridis, *The Hyper-Polarization of America*, SCI. AM. (Nov. 7, 2016), <https://blogs.scientificamerican.com/guest-blog/the-hyper-polarization-of-america>.

<sup>51</sup> Theodoridis, *supra* note 50.

<sup>52</sup> Gentzkow, *supra* note 32, at 17.

<sup>53</sup> Gentzkow, *supra* note 32, at 17; see Pew Research Center, *The Partisan Divide on Political Values Grows Even Wider* (Oct. 2017) [hereinafter Pew, *Divide on Political Values Grows Wider*].

<sup>54</sup> Pew, *Polarization in America*, *supra* note 1, at 8, 11; Theodoridis, *supra* note 50.

<sup>55</sup> See Pew, *Divide on Political Values Grows Wider*, *supra* note 53, at 65–66.

<sup>56</sup> *Id.* at 66.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*



while 68% of Republicans viewed the Democratic Party negatively and only 17% very unfavorably.<sup>59</sup> Today, negative opinions are commonplace and more strongly felt than in the past.

On the second point, Americans divide more easily into two separate camps of Republican and Democratic views.<sup>60</sup> This considers independents, who actually outnumber both Republicans and Democrats today, because independents ideologically lean to one party or another.<sup>61</sup> Americans might not be extreme in their overall ideology, but they hold extreme positions on specific issues.<sup>62</sup> In the past, it was more common to find a conservative democratic or liberal Republican.<sup>63</sup> Today, there are fewer people who hold such hybrid views—liberal on some issues and conservative in other areas.<sup>64</sup> Apparently, an individual's choice of presidential candidate increasingly represents how the person regards a spectrum of issues: gun control, abortion, welfare, taxes, racial issues, Islam, the environment, and so on.<sup>65</sup>

According to the ten indices that Pew Research Center have measured via the same questions since 1994, the average partisan gap has increased from fifteen percentage points to thirty-six percentage points on each issue.<sup>66</sup> Never before has the disparity been this large. For example, in 2011, “twice as many Democrats as Republicans said the government should do more for the needy (54% vs. 25%). Today, nearly three times as many Democrats as Republicans” hold this view (71% vs. 24%).<sup>67</sup> The widening partisan gap exists on other issues like gun control and racial discrimination as well.<sup>68</sup> It should be noted, however, as a result of greater acceptance of homosexuality and more favorable views on immigrants (as less of a burden on the country at least), the center has shifted in a liberal direction overall.<sup>69</sup>

Evidence indicates that polarization is a growing concern in America today.<sup>70</sup> There is disagreement about how far apart Americans are on the issues, but the divide is undeniably more personal.<sup>71</sup> People no longer politely disagree because they believe the other side must be stopped.<sup>72</sup> The news

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<sup>59</sup> *Id.*

<sup>60</sup> Gentzkow, *supra* note 32, at 17; Pew, *Divide on Political Values Grows Wider*, *supra* note 53, at 11–12.

<sup>61</sup> Pew Research Center, *Partisanship and Political Animosity in 2016*, 6 (June 2016) [hereinafter, Pew, *Political Animosity*].

<sup>62</sup> Gentzkow, *supra* note 32, at 17.

<sup>63</sup> *Id.* at 17.

<sup>64</sup> *Id.*

<sup>65</sup> Pew, *Divide on Political Values Grows Wider*, *supra* note 53, at 3, 7–12.

<sup>66</sup> *Id.* at 3, 12.

<sup>67</sup> *Id.* at 2.

<sup>68</sup> *Id.* at 2.

<sup>69</sup> *Id.* at 11.

<sup>70</sup> Gentzkow, *supra* note 32, at 20.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*; Pew, *Political Animosity*, *supra* note 61, at 6.

media, especially the growth of partisan cable news and confirmation bias perpetuated by technology and online platforms, likely played a role in this outcome, as discussed in the next section.<sup>73</sup>

#### IV. CHALLENGES OF THE TWENTY-FIRST CENTURY

##### A. *Rise of Technology & Social Media*

The way Americans consume the news has changed with the rise of technology and social media platforms. Nearly all adults in America (99%) own at least one electronic device (including a television).<sup>74</sup> According to a Pew study in 2015, 68% of U.S. adults own a smartphone, 73% own laptops or desktop computers, and 45% own tablets (up from 4% in 2010).<sup>75</sup> The American Psychological Association estimated even higher numbers in 2016, with 86% computer ownership, 74% smartphone ownership, and 55% tablet ownership.<sup>76</sup> Among young adults between the ages of eighteen and twenty-nine in both surveys, ownership of smartphones with internet access reached almost 90% of the population.<sup>77</sup>

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<sup>73</sup> Gentzkow, *supra* note 32, at 20.

<sup>74</sup> Am. Psychological Ass'n, *Stress in America: Coping with Change, Stress in American Survey*, 1 (2017), <https://www.apa.org/news/press/releases/stress/2017/technology-social-media.pdf>.

<sup>75</sup> Pew Research Center, *Technology Device Ownership* 3 (Oct. 2015).

<sup>76</sup> Am. Psychological Ass'n, *supra* note 74, at 1.

<sup>77</sup> Pew, *Technology Device Ownership*, *supra* note 75, at 3; Am. Psychological Ass'n, *supra* note 74, at 1.

The number of American adults on social media increased to 65% in 2015, compared to 7% in 2005.<sup>78</sup> Among young adults, social media is approaching market saturation with over 90% young adult social media users reported in 2015.<sup>79</sup> Facebook and Instagram today celebrate over 2 billion combined monthly users.<sup>80</sup> Compared to figures in the last decade, these are substantial increases in electronic device ownership and social media adoption, both of which lead to an increase in news media exposure.<sup>81</sup>

### B. Trends in Technology Usage

On a typical day, 44% of Americans report constantly checking their social media.<sup>82</sup> An American adult generally looks at their phone once every twelve minutes, or eighty times a day,<sup>83</sup> and, collectively, Americans check their phones over eighty billion times a day.<sup>84</sup> A mobile consumer survey conducted by Deloitte found that “reading the news” was ranked as the “most regularly used daily activity” in smartphone additional uses.<sup>85</sup>

The modern audience consumes news on a screen. Television remains dominant with 57% of Americans relying on television-based news and 38% relying on online news via websites, apps, social media or all three.<sup>86</sup> On the other hand, the portion of American adults who have *ever* accessed news on a mobile device increased from 54% in 2013, to 72% in 2016, to 85% in 2017.<sup>87</sup> While a majority of Americans, especially the older demographics of ages fifty to sixty four (72%) and over the age of sixty-five (85%), chiefly depend on and prefer television, the impact of online platforms cannot be discounted because adults under age forty-nine (94%) increasingly rely on news via their mobile devices and online platforms.<sup>88</sup> Older adults are transitioning to smartphones as well, with about two-thirds of older Americans (67%), ages

<sup>78</sup> Andrew Perrin, *Social Media Usage: 2005–2015*, PEW RESEARCH CENTER, (Oct. 8, 2015), <http://www.pewinternet.org/2015/10/08/social-networking-usage-2005-2015/>.

<sup>79</sup> *Id.* at 4–5.

<sup>80</sup> Am. Psychological Ass’n, *supra* note 74, at 1.

<sup>81</sup> Perrin, *supra* note 78; Pew, *Technology Device Ownership*, *supra* note 75, at 3; see Lisa Eadicicco, *Americans Check Their Phones 8 Billion Times a Day*, TIME (Dec. 15, 2015), <http://time.com/4147614/smartphone-usage-us-2015>.

<sup>82</sup> Am. Psychological Ass’n, *supra* note 74, at 4.

<sup>83</sup> SWNS, *Americans Check Their Phones 80 Times a Day: Study*, NY POST (Nov. 8, 2017, 4:08 PM), <https://nypost.com/2017/11/08/americans-check-their-phones-80-times-a-day-study>.

<sup>84</sup> Eadicicco, *supra* note 81.

<sup>85</sup> *Global Mobile Consumer Survey: US Edition*, DELOITTE, <https://www2.deloitte.com/us/en/pages/technology-media-and-telecommunications/articles/global-mobile-consumer-survey-us-edition.html>; See Eadicicco, *supra* note 81.

<sup>86</sup> Amy Mitchell, Jeffrey Gottfried, Michael Barthel & Elisa Shearer, *Modern News Consumer*, PEW RESEARCH CENTER (July 7, 2016), <http://www.journalism.org/2016/07/07/pathways-to-news/>.

<sup>87</sup> *Id.* at 5; Kristine Lu, *Growth in mobile news use driven by older adults*, PEW RESEARCH CENTER (Jun. 12, 2017), <http://www.pewresearch.org/fact-tank/2017/06/12/growth-in-mobile-news-use-driven-by-older-adults>.

<sup>88</sup> Mitchell et al., *supra* note 86, at 5 (finding that 50% of 18–29 year olds and 49% of 30–49 year olds turn to online platforms for news).

sixty-five and over using a mobile device for news – this represents an increase of 24% since 2016 alone.<sup>89</sup> The growth in the usage of devices—TV, computer, mobile phones, and tablets—to consume the news, raises concerns about the impact on the American public. Does the news media play a role in the polarization and personalization of politics in America today? If so, what can be done?

### C. *Fragmented Media & Echo Chambers*

Four decades ago, most Americans watched daily news from one of three newscasts in a standard and homogeneous “point-counterpoint” style.<sup>90</sup> However, today’s news media is highly fragmented with 24-hour cable news, newspapers, bloggers, online platforms, talk-radio, and other outlets simultaneously competing for the public’s attention.<sup>91</sup> With a plethora of news outlets and platforms at the public’s fingertips via their devices, the news media must compete to stay relevant.

People generally feel strongly about their positions or policy preferences and seek out information consistent with their paradigms.<sup>92</sup> Kovach warned that “the ability of almost anybody to produce and disseminate text, video, and audio . . . [increases] user demand to personalize the content they consume from other sources.”<sup>93</sup> This type of selective exposure produces the “echo chamber” effect where news reinforces one’s beliefs and attitudes; this creates what psychologists call “confirmation bias” — the tendency of people to embrace information that supports one’s beliefs and attitudes and rejects contradictory messages.<sup>94</sup>

To demonstrate, if a person believes people who live on the coasts are liberal, confirmation bias means that a person gravitates towards evidence that the belief held is true. Therefore, when that person encounters one individual who leans liberal who lives on the coast, the person is likely to believe the data is correct because it reinforces an existing belief. However, if the person encounters a conservative who lives on the coast, the individual easily dismisses the information as a fluke. Confirmation bias occurs when a person encounters information that supports an existing belief, and that person subconsciously place greater importance on that “evidence.”<sup>95</sup> The bias

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<sup>89</sup> Lu, *supra* note 87 (noting that those between the ages of 50–64, 79% now use mobile for news).

<sup>90</sup> Shanto Iyengar & Kyu S. Hahn, *Red Media, Blue Media: Evidence of Ideological Selectivity in Media Use*, 50 J. COMM. 19, 20 (2009).

<sup>91</sup> *Id.* at 20.

<sup>92</sup> *Id.* at 20.

<sup>93</sup> KOVACH & ROSENSTIEL, *supra* note 5, at xi.

<sup>94</sup> Iyengar & Hahn, *supra* note 91, at 34; Elizabeth Kolbert, *Why Facts Don’t Change our Minds*, NEW YORKER (Feb. 27, 2017), <https://www.newyorker.com/magazine/2017/02/27/why-facts-dont-change-our-minds>.

<sup>95</sup> See Kolbert, *supra* note 94.

explains why anti-vaccine narratives persist across the internet even though the link to autism has been repeatedly debunked.<sup>96</sup>

According to researchers, “[o]nce formed, . . . impressions are remarkably perseverant.”<sup>97</sup> In a famous Stanford experiment, students were given two studies about capital punishment — one supporting its ability to deter crime while the other claimed it had no effect on crime.<sup>98</sup> Half of the selected participants supported capital punishment while the other half opposed it.<sup>99</sup> Despite the reality that both studies were fictitious, at the end of the experiment, each set of students found the data supporting their viewpoint to be compelling and deemed the opposing study unconvincing.<sup>100</sup> The experiment demonstrates the staying power of a belief that an individual holds. In a separate experiment, it was *revealed* to participants that information originally given was fabricated, but individuals failed to make appropriate revisions in their beliefs.<sup>101</sup> Researchers are fascinated by the confounding nature of confirmation bias in repeated experiments and how even a proven false impression can persist.<sup>102</sup>

In another experiment, people were asked to rate their understanding of how everyday items like toilets and zippers function.<sup>103</sup> Often, their rating of their true understanding reduced drastically after they were asked to write step-by-step explanations.<sup>104</sup> This phenomenon is labeled the “illusion of explanatory depth,” where people believe that they know more than they do *and* if other individuals agree, their belief grows.<sup>105</sup>

How toilets flush is trivial compared to political questions that impact a community; yet, confirmation bias and the illusion of explanatory depth are at play. To illustrate, in a survey considering U.S. military intervention in a particular foreign country, the respondents who were least likely able to identify the country in question were most likely to favor military intervention.<sup>106</sup> This is particularly alarming.

To understand the “political brain,” a neuroimaging study was conducted of a group of strong Republicans and strong Democrats.<sup>107</sup> In the study,

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<sup>96</sup> David Grimes, *Echo Chambers Are Dangerous*, GUARDIAN (Dec. 4, 2017), <https://www.theguardian.com/science/blog/2017/dec/04/echo-chambers-are-dangerous-we-must-try-to-break-free-of-our-online-bubbles>; Luke E. Taylor, Amy L. Swerdfeger & Guy D. Eslick, *Vaccines are not Associated with Autism*, VACCINE 3623 (2014).

<sup>97</sup> Kolbert, *supra* note 94.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *See id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Michael Shermer, *The Political Brain*, SCI. AM. (July 1, 2006), <https://www.scientificamerican.com/article/the-political-brain/?print=true>.

subjects were critical of the opposing presidential candidate while repeatedly letting their own candidate off the hook.<sup>108</sup> This is how confirmation bias works. Most disturbing was that the MRI revealed that the dorsolateral prefrontal cortex, the part of the brain associated with *reasoning*, was inactive.<sup>109</sup> But the orbital frontal cortex, the part of the brain associated with processing emotions, and other parts of the brain associated with conflict resolution and moral accountability, the anterior cingulate and posterior cingulate respectively, were stimulated.<sup>110</sup> Once participants arrived at a conclusion with which they were emotionally comfortable, the ventral striatum, the reward and pleasure center, was found to be active.<sup>111</sup> Basically, people experience a rush of dopamine when processing information that supports their beliefs.<sup>112</sup>

The study emphasized two learnings: (1) partisans “twirl the cognitive kaleidoscope” to obtain the conclusions *they want*, and (2) brain circuits trigger rewards for these selective behaviors.<sup>113</sup> Many individuals’ opinions frequently are baseless, and generally, “strong feelings about issues do not emerge from deep understanding” as these studies have shown.<sup>114</sup> Moreover, when people with baseless opinions agree, they reinforce one another while readily dismissing any contradictory evidence.<sup>115</sup> Subsequently, these groups feel empowered in their resistance or for “stick[ing] to [their] guns.”<sup>116</sup> Ultimately, groups become oblivious to their tribalism, creating an “echo chamber” of confirmation bias. The key concern is whether the rise of partisan news and online algorithms perpetuate this “echo chamber” effect, and thereby bear responsibility for the growing polarization.

#### D. *Partisan News & Online Algorithms*

In our modern world, cable news is more partisan, online algorithms personalize information to cater to individual tastes, and people aggregate into communities of interest both socially and geographically.<sup>117</sup> People choose

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Kolbert, *supra* note 94.

<sup>113</sup> Shermer, *supra* note 107.

<sup>114</sup> Kolbert, *supra* note 94.

<sup>115</sup> *See id.*

<sup>116</sup> *See id.*; Shermer, *supra* note 107 (noting that the MRI study hypothesized that skepticism may be the antidote for the confirmation bias).

<sup>117</sup> *See* Kolbert, *supra* note 94; Levi Boxell, Matthew Gentzkow & Jesse Shapiro, *Is Media Driving Americans Apart?*, N.Y. TIMES (Dec. 6, 2017), <https://www.nytimes.com/2017/12/06/opinion/is-media-driving-americans-apart.html>; Am. Press. Inst., *Partisanship and News Behavior* (July 13, 2017), <https://www.americanpressinstitute.org/publications/reports/survey-research/partisanship-news-behavior>.

what to read or watch based on their own brand of politics, and as a result, the “media becomes background noise . . . [and] the journalism of affirmation [becomes] more appealing.”<sup>118</sup>

As mentioned earlier, television is the medium by which a majority of Americans (57%) consume the news.<sup>119</sup> The American Press Institute (API) reported that cable news is the most popular news source among Americans, while broadcast news is a close second.<sup>120</sup> API’s study found that Republicans are more likely to tune into Fox News and Democrats are more likely to rely on CNN and MSNBC.<sup>121</sup> A study of “large-scale data [pinpoints] cable television news as a major contributor to polarization.”<sup>122</sup> This analysis is consistent with the growth in interparty hostility and the rise in polarization in groups like the elderly, who have “limited internet use but high rates of television viewing.”<sup>123</sup>

On average, 57% of people in the U.S. believe the media does a poor job of reporting on politics fairly.<sup>124</sup> The debate between left and right-wing media bias spans several decades.<sup>125</sup> However, there is no agreement on what qualifies as media bias.<sup>126</sup> In fact, when two people with different viewpoints review identical content, even their perceptions of the “bias” differ.<sup>127</sup> On rudimentary review, the parties speak different languages, as seen in televised news rhetoric—Democrats’ lingo routinely incorporates “undocumented workers” and the “estate tax” while Republicans use “illegal aliens” and “the death tax.”<sup>128</sup>

Some researchers contend most news media outlets are centrist, and perhaps only slightly slanted, but provide a balanced mix of views—although some talk show radios and websites offer more extreme news and opinion.<sup>129</sup> Markus Prior, from Princeton University, argues that the culprit of increased partisan voting is not Fox News, but rather ESPN, HBO and other cable channels that lure the moderate voter away from the news.<sup>130</sup> Matthew Gentzkow, an economist and professor at Stanford University, agrees stating that the rise of television provided a medium to share political information, but it also offered Americans new ways to distract themselves in their free

<sup>118</sup> KOVACH & ROSENSTIEL, *supra* note 5, at 48–49.

<sup>119</sup> Mitchell, *supra* note 86, at 5; Boxell, *supra* note 117.

<sup>120</sup> Am. Press. Inst., *supra* note 117.

<sup>121</sup> *Id.*; Bharat N. Anand, *The U.S. Media’s Problems Are Much Bigger than Fake News and Filter Bubbles*, HARV. BUS. REV. (Jan. 5, 2017).

<sup>122</sup> Boxell, *supra* note 117.

<sup>123</sup> *Id.*

<sup>124</sup> Mitchell, *supra* note 30, at 5; see Markus Prior, *Media and Political Polarization*, 16 ANN. REV. POL. SCI. 100, 101–27 (2013).

<sup>125</sup> Anand, *supra* note 121; see Am. Press. Inst., *supra* note 117.

<sup>126</sup> Anand, *supra* note 121.

<sup>127</sup> *Id.*

<sup>128</sup> See Boxell, *supra* note 117.

<sup>129</sup> Prior, *supra* note 124, at 103–04.

<sup>130</sup> *Id.* at 107.

time, crowding out the median's political engagement.<sup>131</sup> This suggests that the choice between "partisan or centrist" news may not be at issue if moderates avoid the news all together.<sup>132</sup> More study is needed on the moderate voter. For other individuals, selective exposure to news is simply a cognitive response to resist information that is inconsistent with their own views.<sup>133</sup>

Politically active voters, in particular, are less likely to be moved by counter-messaging because they collect a litany of information to contradict and neutralize disagreeable messaging.<sup>134</sup> Markus Prior agrees there is evidence that some individuals will gravitate toward like-minded news when given a choice between news reports, but other criteria will often supersede such partisan uniformity.<sup>135</sup> Researchers like Gerber, Karlan, Bergan, and others nevertheless maintain that media sources influence the public by the slant of a report, and more so, by the *choice* of news stories covered in a broadcast.<sup>136</sup>

Online platforms and social media also create division by their personalization of newsfeeds and search results. Among millennials, 61% claimed Facebook is a common source for political news.<sup>137</sup> Facebook, with almost half of U.S. adults getting their news from individual newsfeeds, is complicit in creating "filter bubbles" that personalize content using algorithms to accommodate individual subscribers' preferences.<sup>138</sup> Facebook's algorithm calculates one's preferences by analyzing a person's liked videos, recent conversations, frequent contacts, and content reviewed in order to provide more of the same content.<sup>139</sup>

This became apparent after the 2016 presidential election, when individual newsfeeds highlighted these personalized filters.<sup>140</sup> Identified Democrats *only* saw mourning of the presidential race while identified Republicans saw *only* celebration of the Trump victory despite having varied

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<sup>131</sup> Matthew Gentzkow, *Television and Voter Turnout*, Q. J. ECON. 931, 970 (2006).

<sup>132</sup> Prior, *supra* note 124, at 120.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 108.

<sup>135</sup> *Id.* at 110.

<sup>136</sup> Alan S. Gerber, Dean Karlan & Daniel Bergan, *Does Media Matter?*, 1 AM. ECON. J. 35 (2009).

<sup>137</sup> Amy Mitchell, Jeffrey Gottfried & Katerina Eva Matsa, Pew Research Center, *Facebook Top Source for Political News Among Millennials*, PEW RESEARCH CENTER (June 1, 2015), [www.journalism.org/2015/06/01/facebook-top-source-for-political-news-among-millennials/](http://www.journalism.org/2015/06/01/facebook-top-source-for-political-news-among-millennials/).

<sup>138</sup> Duggan & Smith, *supra* note 2; KOVACH & ROSENSTIEL, *supra* note 5, at 160; Sally Adee, *How Can Facebook and its Users Burst the 'Filter Bubble'?*, NEW SCIENTIST (Nov. 18, 2016), <https://www.newscientist.com/article/2113246-how-can-facebook-and-its-users-burst-the-filter-bubble/>.

<sup>139</sup> Selena Larson, *Facebook Shows You What You Want to See Post-Election*, CNNTECH (Nov. 9, 2016), <http://money.cnn.com/2016/11/09/technology/filter-bubbles-facebook-election/index.html>.

<sup>140</sup> *Id.*



friend groups.<sup>141</sup> While this concept and its impact raises questions on Facebook's civic responsibility, it is not the subject of this article.<sup>142</sup> This overt steering prevents individuals from evaluating various news sources and differing opinions objectively.<sup>143</sup> Personalized filters can also induce poor decisions based on faulty understanding.<sup>144</sup>

Moreover, aggregators of news clips and interviews from other sites have arisen as major "news source" players, including U.S. Uncut, Occupy Democrats, Addicting Info, Make America Great, and The Other 98%.<sup>145</sup> "Occupy Democrats, a far-left page popular with supporters of [ ] Democratic presidential candidate Bernie Sanders, has 3.8 million likes on its Facebook page. MSNBC . . . a mere 1.6 million."<sup>146</sup> This Facebook phenomenon underlines the missing dialogue between the opposing parties because of "echo chambers" and filter bubbles.<sup>147</sup>

The same data collection and configuration occurs with Netflix, Pandora, Google, and other social media platforms.<sup>148</sup> A thumbs-up on a site indicates one's preference and that data is captured by the algorithm.<sup>149</sup> If a person searches for almost anything on Google, the data is fed into an algorithm and begins to predict what an individual would like or would not like online.<sup>150</sup> This data collection directly impacts the news a person consumes because algorithms begin to predict what a person prefers, making conflicting and disagreeable voices disappear.<sup>151</sup>

Eli Pariser, the author of *The Filter Bubble: What the Internet is Hiding from You*, contends that many people are unaware of the voices that are missing.<sup>152</sup> Tailored recommendations categorically divide people into groups and limit their options and exposure.<sup>153</sup> Personalization of online news

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<sup>141</sup> *Id.*

<sup>142</sup> Facebook is treated as a platform where news media is distributed by individuals or organizations. Michael Barthel, Elisa Shearer, Jeffery Gottfried & Amy Mitchell, *The Evolving Role of News on Twitter and Facebook*, PEW RESEARCH CENTER (July 14, 2015), <http://www.journalism.org/2015/07/14/the-evolving-role-of-news-on-twitter-and-facebook/>. This article does not treat Facebook as news media, and discussion on the issue is outside of the article's scope.

<sup>143</sup> Shermer, *supra* note 107, at 3.

<sup>144</sup> *Id.* at 3.

<sup>145</sup> Scott Bixby, 'The End of Trump': How Facebook Deepens Millennials' Confirmation Bias, THE GUARDIAN (Oct. 1, 2016), <https://www.theguardian.com/us-news/2016/oct/01/millennials-facebook-politics-bias-social-media>.

<sup>146</sup> *Id.*

<sup>147</sup> See Natasha Singer, *The Trouble with the Echo Chamber Online*, N.Y. TIMES (May 28, 2011), <http://www.nytimes.com/2011/05/29/technology/29stream.html>.

<sup>148</sup> Twitter is different because posts are unfiltered, but individuals must sign up for a range of feeds to expand their exposure. Singer, *supra* note 147.

<sup>149</sup> Singer, *supra* note 147.

<sup>150</sup> *Id.*

<sup>151</sup> *See id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

steers people to affirming content because the algorithms screen out news reports that individuals are likely to disagree with and creates a comfortable bubble of like-minded information.<sup>154</sup> The impact could be detrimental for a democracy because if people only receive affirming narratives, there is a lack of deliberation and understanding of varied interests in the public forum.<sup>155</sup>

On the other hand, some researchers argue that online filter bubbles are a myth because people do not receive their news from only one source.<sup>156</sup> In fact, individuals with particularly extreme views are more likely to consume a variety of news sources, including sites with conflicting ideology.<sup>157</sup> Pew Research reports that almost half of those who learned about the 2016 presidential election used five or more sources to gather their information.<sup>158</sup>

Like most issues, the polarization of America cannot be linked to any one change, but the convergence of many factors simultaneously.<sup>159</sup> This section discussed significant changes in the last decade, including the growth of devices, digital media, twenty-four-hour cable news, social media, online filter bubbles, and party tribalism. While not in the scope of this article, the lived experiences of Americans should not be disregarded—people are impacted by their self-sorting communities and socio-economic realities in a recovering economy. However, arguably, the most severe result of the many changes is that the digital world has undermined the business model that supports quality journalism.<sup>160</sup> The news media is struggling to stay relevant, which raises questions about the never-ending conflict narrative and the commercialization of the news as will be discussed in the next section.

## V. MEDIA'S ROLE IN PERPETUATING CONFLICT

### A. *Sensationalism & Commercialization of News*

When the public is more polarized, “news with an edge” garners market success.<sup>161</sup> At a White House press briefing about a successful economic plan with Ukraine during the Clinton presidency, one reporter expressed the ideology of mainstream journalism plainly: “Look, we have a rule here. ‘No

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<sup>154</sup> *Id.*; Gentzkow, *supra* note 32, at 18; Boxell, *supra* note 117.

<sup>155</sup> Singer, *supra* note 147.

<sup>156</sup> Matthew Gentzkow & Jesse Shapiro, *Ideological Segregation Online and Offline*, 126 Q. J. ECON. 1799 (2011).

<sup>157</sup> *Id.* at 1802.

<sup>158</sup> Jeffrey Gottfried, Michael Barthel, Elisa Shearer & Amy Mitchell, *The 2016 Presidential Campaign—A News Event That's Hard to Miss*, PEW RESEARCH CENTER (Feb. 4, 2016).

<sup>159</sup> Anand, *supra* note 121.

<sup>160</sup> Gentzkow, *supra* note 32, at 18.

<sup>161</sup> Iyengar & Hahn, *supra* note 94, at 19.

conflict, no story.”<sup>162</sup> The media does not set out to be sensationalist, but its business model over the last few decades has anchored itself there.<sup>163</sup>

Since the 1990s, about six to eight media giants have controlled 90% of what we read, watch, or listen to.<sup>164</sup> This handful of corporations include Vivendi/Universal, AOL/Time Warner (CNN), The Walt Disney Co. (ABC), News Corporation (FOX), Viacom (CBS), General Electric (NBC), and Bertelsmann.<sup>165</sup> Traditional news outlets honored their civic responsibility to report on facts and provided important analysis by spending the money on field journalists to provide direct coverage on the ground.<sup>166</sup> Today, news channels bring in local experts and pundits to yell at each other on live broadcast because it attracts more viewers and advertisers, promoting sensational news over substantial news.<sup>167</sup> To the disappointment of committed journalists, sensationalist reporting and “entertainment” talk-shows or opinion news have proven to be highly popular according to the ratings.<sup>168</sup>

Big media conglomerates view large audiences as commodities for sale to advertisers.<sup>169</sup> The traditional model of news has been overrun by ad-revenue-driven news media and most Americans are prey to addicting sensationalist news or political disengagement.<sup>170</sup> Media professionals argue that *conflict captivates* the public,<sup>171</sup> just like when drivers slow down to observe a traffic accident even though it causes more unwanted traffic.<sup>172</sup> This style of conflict reporting indicates that people’s news knowledge consists of episodic and fragmented accounts of dramatic moments,<sup>173</sup> which produces the “illusion of explanatory depth” discussed earlier in the article.<sup>174</sup> Instead of unwanted traffic, people suffer from a faulty understanding of surrounding causes and consequences on complex policy issues.<sup>175</sup>

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<sup>162</sup> J. FALLOWS, *BREAKING THE NEWS: HOW THE MEDIA UNDERMINE AMERICAN DEMOCRACY* 164 (Pantheon 1996).

<sup>163</sup> Anand, *supra* note 121.

<sup>164</sup> Ashley Lutz, *These 6 Corporations Control 90% of the Media in America*, BUS. INSIDER (Jan. 14, 2012), <http://www.businessinsider.com/these-6-corporations-control-90-of-the-media-in-america-2012-6>.

<sup>165</sup> Alan B. Albarran & Terry Moellinger, *The Top Six Communication Industry Firms: Structure, Performance, and Strategy*, in *MEDIA FIRMS: STRUCTURES, OPERATIONS, & PERFORMANCE*, 102, 102–03 (2002).

<sup>166</sup> See Jacob W. Roberts, *The Tragedy of Media Sensationalism in America*, SOUTHERN CAL. INT’L REV. (May 20, 2014), <http://scir.org/2014/05/the-tragedy-of-media-sensationalism-in-america>.

<sup>167</sup> *Id.*

<sup>168</sup> *See id.*

<sup>169</sup> Phil Barker, *Large-Scale Communication*, BEYOND INTRACTABILITY (Mar. 2005), <https://www.beyondintractability.org/essay/large-scale-communication>.

<sup>170</sup> *See id.*; Prior, *supra* note 124, at 107.

<sup>171</sup> It is what people want.

<sup>172</sup> Barker, *supra* note 169.

<sup>173</sup> *Id.*

<sup>174</sup> Kolbert, *supra* note 94.

<sup>175</sup> *See* Barker, *supra* note 169.

Ratings also determine the messages that are amplified.<sup>176</sup> The chase for ratings creates an argument culture of “debate shows” and blockbuster stories, and the needed element of a public forum to address the important concerns facing the nation continues to be missing.<sup>177</sup> The news media thrives on conflict precisely because conflict attracts viewers, listeners, and readers to the media; the more intense the conflict, the greater the audience; the greater the audience, the higher the ratings, and high ratings represent enormous financial success for media companies and their advertisers.<sup>178</sup> Moreover, the rise of digital technologies and news aggregators is turning everyone into a media company, which fosters more extreme competition to gain followers.<sup>179</sup>

This extreme commercialism proliferates dangerous politics.<sup>180</sup> To illustrate, CNN and other stations obsessively covered Flight 370 because of Americans’ addiction to conflict-style reporting.<sup>181</sup> In the meantime, serious global and domestic issues were poorly reported, including the Russia-China oil trade deal that threatened American’s petrodollars in the Ukraine crisis.<sup>182</sup> As Kovach stressed, a journalist’s *first* loyalty must be to the citizens because poor coverage by journalists produces an unformed citizenry.<sup>183</sup>

### B. *Democracy in Danger*

With growing polarization and mistrust, problems begin to seem unsolvable and compromise is not presented as a legitimate option.<sup>184</sup> The commercial media’s profit motives must be decoupled from the news because it harms America’s fundamental democracy.<sup>185</sup> The policy intervention and structural overhaul needed, like creating safeguards for responsible and informative media, is not within the scope of the article. Sensationalist and personalized news only perpetuate polarization in America.<sup>186</sup> The polarized debate online and on television screens disenfranchises people from authentic public discussion, and cynicism corrodes the quality of civil discourse in the country, threatening the foundation of democratic institutions.<sup>187</sup>

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<sup>176</sup> Jennifer Akin, *Mass Media*, BEYOND INTRACTABILITY (Mar. 2005), <http://www.beyondintractability.org/essay/mass-communication>.

<sup>177</sup> See generally KOVACH & ROSENSTIEL, *supra* note 5.

<sup>178</sup> Akin, *supra* note 176.

<sup>179</sup> Anand, *supra* note 121; see also Bixby, *supra* note 146.

<sup>180</sup> Victor Pickard, *The Problem with Our Media Is Extreme Commercialism*, THE NATION (Jan. 30, 2017), <https://www.thenation.com/article/the-problem-with-our-media-is-extreme-commercialism>.

<sup>181</sup> Roberts, *supra* note 166.

<sup>182</sup> *Id.*

<sup>183</sup> See KOVACH & ROSENSTIEL, *supra* note 5, at 5.

<sup>184</sup> *Id.* at 174–75.

<sup>185</sup> Pickard, *supra* note 180.

<sup>186</sup> See Anand, *supra* note 121.

<sup>187</sup> Robert Berdahl, Speech Delivered to American Society of Newspaper Editors Credibility Think Tank (Oct. 15, 2004).

Sensationalism in news media prevents the public from being knowledgeable participants in policy conversations, and a democracy depends on informed citizens that deliberate and determine the best policy solutions.<sup>188</sup> While electoral politics naturally creates conflict with embedded “winners” and “losers” of a political race, public life and government do not have to be conflict-ridden.<sup>189</sup> Legislation may entail “maneuvers and showdowns but the most important steps often come when people find areas where they can agree.”<sup>190</sup> Progress can be made.

As the fourth branch of government, media professionals have an opportunity to mediate progress by carefully choosing *what* they report and *how* they perform and conduct their reporting duties. America needs honest, factual stories, and reporters who can give us the news in a responsible and trustworthy manner. ADR techniques used by mediators, in the next section, provide an understanding about the psychology of conflicts and recommendations to manage conflict to foster an understanding of perspectives in our polarized climate. In the words of Seth Godin:

Giving the people what they want isn’t nearly as powerful as teaching people what they need. There’s always a shortcut available, a way to be a little more ironic, cheaper, more instantly understandable. There’s the chance to play into our desire to be entertained and distracted regardless of the cost. Most of all, there’s the temptation to encourage people to be selfish, afraid, and angry. Or you can dig in, take your time, and invest in a process that helps people see what they truly need. When we change our culture in this direction, we’re doing work that’s worth sharing. But it’s slow-going. If it were easy, it would have happened already. It’s easy to start a riot, difficult to create a story that keeps people from rioting. Don’t say, ‘I wish people wanted this.’ Sure, it’s great if the market already wants what you make. Instead, imagine what would happen if you could teach them why they should.<sup>191</sup>

## VI. RECOMMENDATIONS ON MEDIA’S USE OF ADR TO ENHANCE UNDERSTANDING

### A. *Media as Mediators*

Today, political dialogue is full of emotion instead of respectful debate, sensationalism instead of honest reporting. The media can use its power to increase polarization and extremism by marginalizing certain groups and only

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<sup>188</sup> David F. Ransohoff & Richard M. Ransohoff, *Sensationalism in the Media: When Scientists and Journalists May Be Complicit Collaborators*, 4 EFFECTIVE CLINICAL PRAC. 185, 185 (2001).

<sup>189</sup> FALLOWS, *supra* note 163, at 163.

<sup>190</sup> *Id.* at 163.

<sup>191</sup> *Cartographer of Meaning in a Digital Age*, ON BEING (Jan. 5, 2017), <https://onbeing.org/programs/maria-popova-cartographer-of-meaning-in-a-digital-age-jan2017/> (quoting Seth Godin, *Give the People What They Want*, SETH’S BLOG (Feb. 4, 2015), <https://seths.blog/2015/02/give-the-people-what-they-want/>).

quoting extreme members and positions.<sup>192</sup> Or the media can be a catalyst for a change.

With polarization in America at its zenith, media professionals have a unique opportunity to use their role as news people, daresay as mediators,<sup>193</sup> to create knowledgeable participants in policy conversations with an understanding of diverse perspectives. As the fourth branch of government, the media's role is to check on the abuses of power and be an educator of the people.<sup>194</sup>

To educate a polarized public, journalists and news reporters should develop skills to be better mediators and adapt to the challenges facing the twenty-first century. Principles of sound mediation mirror principles of sound journalism.<sup>195</sup> A mediator facilitating dispute resolution between parties and a journalist in the public eye uncovering the truth are alike in many ways and different in other ways.<sup>196</sup> Mediation is an intense process "where parties, counsel, and the mediator often spend hours locked in conference rooms attempting to hash out the details of a proposed settlement."<sup>197</sup> In this process, the mediator becomes aware of private details of each party's position.<sup>198</sup> Similarly, in the process of news gathering, a journalist becomes aware of the detailed accounts of each side and must determine how to frame the information into the news the public consumes.<sup>199</sup>

Like a mediator, journalists listen to both, if not multiple, sides of a conflict while maintaining detachment and neutrality.<sup>200</sup> Like a journalist, a mediator brings parties together, gains information, and provides realistic evaluation while refereeing the process.<sup>201</sup> On the other hand, mediation is different from journalism in that mediations are held in private with the parties' consensus to work towards a settlement, whereas a media professional's work is generally in the public purview with the goal of uncovering truth (although confidential interviews or informant conversations may be in private) with no such agreement.<sup>202</sup> Perhaps, movement towards a resolution and "truth-finding" for the news are sometimes incompatible objectives; nevertheless, meditation techniques can help uncover citizens'

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<sup>192</sup> Melissa Baumann & Hannes Siebert, *The Media as Mediator*, NIDR FORUM 28, 28 (Winter 1993).

<sup>193</sup> The media unavoidably, necessarily mediates conflicts. Baumann & Siebert, *supra* note 192, at 28.

<sup>194</sup> Coleman, *supra* note 15, at 247, 252.

<sup>195</sup> Baumann & Siebert, *supra* note 192, at 28.

<sup>196</sup> Pauli, *News Media as Mediators*, *supra* note 1, at 719.

<sup>197</sup> LEAH M. QUADRINO, COMPLEX US MEDIATION: KEY ISSUES AND CONSIDERATIONS, Practical Law Practice Note 1-575-6667 (2014).

<sup>198</sup> *Id.*

<sup>199</sup> See Shoemaker *supra* note 4, at 109.

<sup>200</sup> Pauli, *News Media as Mediators*, *supra* note 1, at 719.

<sup>201</sup> *Id.* at 720.

<sup>202</sup> *Id.* at 721–22; KOVACH & ROSENSTIEL, *supra* note 5, at 5–6, 167.

underlying interests to facilitate accurate and honest reporting and develop understanding for all parties involved.<sup>203</sup>

Techniques of ADR professionals who facilitate high-conflict mediations and negotiations can equip journalists in the impossible task of presenting the truth and educating a polarized public. There are a litany of training manuals, articles, and books on the principles of ADR and on the art of negotiation and mediation. This article will focus on only three areas: (1) a mediator's presence and growing self-awareness, (2) understanding conflict and cognitive biases, and (3) managing an impasse.

#### B. *A Mediator's Presence & Growing Self-Awareness*

*"Real experts ... are intellectually honest and brutally self-critical with themselves. They examine their mistakes squarely, deconstruct them, and relentlessly search for the impeccable."*

– Peter Adler<sup>204</sup>

As many experienced mediators will agree, mediation is more than a "bag of tricks" or techniques.<sup>205</sup> The interplay of one's psychological, intellectual, and spiritual qualities has a direct impact on mediation, and by extension, the effectiveness of news reporting.<sup>206</sup> As mediators Daniel Bowling and David Hoffman assert, "this impact may be one of the most potent sources of the effectiveness of mediation."<sup>207</sup>

Career growth for a mediator (or newsperson) is a process of evolution. At the start, the mediator's goal is to study and practice techniques; next, the mediator tries to gain a deeper understanding of how mediation (or the news) works; lastly, the mediator strives to deepen an "awareness of how his or her personal qualities—for better or worse—influence the mediation [or news reporting] process."<sup>208</sup> A "mediator presence," as experienced by the parties, communicates a message.<sup>209</sup> Similarly, news personalities exert personal influence by their mere presence in disputes, such as in a dispute between party pundits or representatives.<sup>210</sup> When media professionals are at peace with themselves and the world, they subtly carry that peace into the room,

<sup>203</sup> See generally Pauli, *Transforming News*, *supra* note 9.

<sup>204</sup> Peter Adler, Chapter 2 in Daniel Bowling & David Hoffman, *Bringing Peace into the Room: The Personal Qualities of the Mediator* (2003), <http://www.eyeofthestormleadership.com/pg16.cfm>.

<sup>205</sup> LAURENCE J. BOULLE, MICHAEL T COLATRELLA JR., & ANTHONY P. PICCHIONI, *MEDIATION: SKILLS AND TECHNIQUES* 11 (2008).

<sup>206</sup> See DWIGHT GOLANN & JAY FOLBERG, *MEDIATION: THE ROLES OF ADVOCATE AND NEUTRAL* 98 (Wolters Kluwer eds., 3d ed. 2016) (quoting Daniel Bowling & David Hoffman's article *Bringing Peace into the Room*).

<sup>207</sup> *Id.* at 99.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 99–100.

<sup>210</sup> *Id.* at 100.

interview, or live broadcast and can orient parties in a positive direction.<sup>211</sup> Self-awareness is key.<sup>212</sup>

What does this mean for a media professional reporting the news? Principally, it requires considering and managing personal biases—the lenses through which one sees the world—because bias impacts objectivity in news narratives and impairs the ability to understand the parties’ perspectives.<sup>213</sup> Second, it demands a strong emotional intelligence, or EQ, because knowing one’s emotions and managing them, as well as recognizing strong emotions and managing relationships with others, is inseparable from balanced reporting.<sup>214</sup>

Strong emotions can sometimes lead to ill-advised conclusions that are counterproductive or even harmful, such as (1) a distorted view, (2) validation of only supporting evidence, or (3) negative reactions to suggestions or evaluations from the other side.<sup>215</sup> A media professional’s personal reactions to an issue and ability to manage the responses of others in a news context unequivocally sends a message to the journalist’s audience. This is the core of the “mediator’s presence” or “newsperson’s presence.”

Bowling and Hoffman explain that “[u]ntil we develop emotional self-awareness, we will project our own unrecognized emotions onto others.”<sup>216</sup> Knowing oneself is to understand one’s impulses in a heated debate or disagreeable interview: whether to control the process, react against the people, or rescue the underdog.<sup>217</sup> It is to be aware of identity: views of self, values, culture, and attitude.<sup>218</sup> It is to know if one holds strong convictions against an idea, experience or people, and guard against an unwarranted response.<sup>219</sup>

Lastly, self-reflection, before, during, and after the process of news reporting will be critical in the effort to curb the individual biases that taint objectivity and balance.<sup>220</sup> Consistently evaluating one’s “practice” in gathering and reporting the news will develop greater EQ competency.<sup>221</sup>

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<sup>211</sup> *Id.* at 98, 100.

<sup>212</sup> See CRAIG E. RUNDE & TIM A. FLANAGAN, *BECOMING A CONFLICT COMPETENT LEADER* 4 (2007).

<sup>213</sup> See GOLANN & FOLBERG, *supra* note 206, at 99–100.

<sup>214</sup> See Louise Phipps Senft, *The Interrelationship of Ethics, Emotional Intelligence and Self Awareness*, ACRESOLUTION (Spring 2004), [https://www.baltimoremediation.com/articles/ACR\\_Ethics.pdf](https://www.baltimoremediation.com/articles/ACR_Ethics.pdf).

<sup>215</sup> See Yona Shamir, UNESCO-IHP, *Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation, and Consensus Building*, [http://www.un.org/waterforlifedecade/water\\_cooperation\\_2013/pdf/adr\\_background\\_paper](http://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_background_paper).

<sup>216</sup> See GOLANN & FOLBERG, *supra* note 206, at 99.

<sup>217</sup> See Mieke Brandon, *Reflection and Self Awareness*, Address at 11th National Mediation Conference in Sydney 1 (2012).

<sup>218</sup> See *id.* at 1.

<sup>219</sup> See *id.* at 4.

<sup>220</sup> See *id.* at 1.

<sup>221</sup> See *id.* at 5.



News professionals also need competency on the conflict and cognitive biases that are at play with themselves, pundits, interviewees, and the general consumers of the news.

### C. *Understanding Conflict & Cognitive Biases*

Conflict is an inescapable part of life. It can be defined as “any situation in which people have incompatible interests, goals, principles, or feelings.”<sup>222</sup> A cursory glance at the news will accentuate the landmines of conflict entrenched in our political discourse. Unintentionally, people fall prey to the “drama triangle” of victim, villain, and hero.<sup>223</sup> People in a conflict see the other side as the villain and erect walls of judgment that prevent parties from moving past their “positioning” to consider the possibility of a resolution.<sup>224</sup> This understanding of conflict supports the level of discontent and personalization of politics, including the mutually perceived incompatibility, between the Democrats and the Republicans in America today.<sup>225</sup>

Another way to conceptualize conflict is in three dimensions: behavioral, emotional, and cognitive.<sup>226</sup> The behavioral element refers to the concrete elements surrounding a conflict, such as the Dakota Access Pipeline and Standing Rock Sioux tribe.<sup>227</sup> The emotional element refers to the feelings associated with the incident(s) at any stage of the process, such as a legitimate fear that grows into anger or resentment.<sup>228</sup> And lastly, the cognitive dimension involves how people contemplate, understand, and interpret the issues.<sup>229</sup> Different parties have differing interpretations, and as a reporter it is important to understand and share these varying interpretations and the drivers behind them.<sup>230</sup>

Cognitive biases are “universal human tendencies to process information in ways that often lead to erroneous judgments of others.”<sup>231</sup> These judgments arise from incorrect assumptions concerning motivations when ignorant of a person’s true intentions.<sup>232</sup> Cognitive biases generally serve as instigators of

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<sup>222</sup> RUNDE & FLANAGAN, *supra* note 212, at 4.

<sup>223</sup> GARY HARPER, *THE JOY OF CONFLICT: TRANSFORMING VICTIMS, VILLAINS AND HEROES IN THE WORKPLACE AND AT HOME* 8 (2004).

<sup>224</sup> *See id.* at 8.

<sup>225</sup> *See generally* Pew, *Polarization in America*, *supra* note 1; Pew, *Divide on Political Values Grows Wider*, *supra* note 53; Pew, *On the Eve of Inauguration*, *supra* note 41.

<sup>226</sup> Leonard L. Riskin, *Eleven Big Ideas About Conflict: A Superficial Guide for the Thoughtful Journalist*, *J. DISP. RESOL.* 157, 159 (2007), <http://scholarship.law.ufl.edu/facultypub/456>.

<sup>227</sup> *See id.* at 159.

<sup>228</sup> *See id.* at 159.

<sup>229</sup> *See id.* at 159.

<sup>230</sup> *See id.* at 159.

<sup>231</sup> VICTORIA PYNCHON & JOE KRAYNAK, *SUCCESS AS A MEDIATOR FOR DUMMIES* 151 (2012).

<sup>232</sup> *Id.*

disputes and often cause negotiations to fall apart.<sup>233</sup> Thus, a newsperson should be cognizant of cognitive biases that cause people in the same situation to view the situation vastly differently. Common cognitive biases include: selective perception, confirmation bias, attribution bias, anchoring, and reactive devaluation.<sup>234</sup>

### 1. *Selective Perception*

Selective perception underpins why people view the same event differently.<sup>235</sup> When people process new information, they automatically view it from a particular lens and judge the situation from that frame.<sup>236</sup> Data that is inconsistent with the frame is likely to be disregarded.<sup>237</sup> It is the root of why people in arguments can instinctively tune into concepts that support their viewpoint and point out weakness in the other side, but miss weaknesses in their own argument.<sup>238</sup> Understanding selective perception can prompt a reporter to account for bias by asking probing questions to their interviewees.<sup>239</sup>

### 2. *Confirmation Bias*

Confirmation bias, as discussed earlier, is similar to selective perception.<sup>240</sup> It is the tendency to weigh supporting evidence more heavily and discredit conflicting evidence.<sup>241</sup> Confirmation bias is perpetuated by advocacy or “positioning.”<sup>242</sup> For example, positioning occurs when a political party representative takes a “position” while speaking to a reporter or live audience, and the representative focuses on building her case rather than evaluating it fairly because of her commitment to her argument’s superiority.<sup>243</sup>

### 3. *Anchoring*

Anchoring occurs when people form value estimations or benchmarks based on their individual experiences and understanding.<sup>244</sup> Once the initial

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<sup>233</sup> *Id.*

<sup>234</sup> See GOLANN & FOLBERG, *supra* note 206, at 55–60.

<sup>235</sup> *Id.* at 57.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.* at 57.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> See *id.*

<sup>244</sup> *Id.* at 58.

benchmark is made, it is difficult to readjust; people are “anchored” by the baseline, even if the comparison or starting point was unsubstantiated.<sup>245</sup> In news coverage, anchoring is evident when political parties are “posturing.” For example, Republicans assert that Obamacare was a failure that ruined healthcare and the economy, while Democrats argue it saves lives and helps those who cannot afford insurance.<sup>246</sup> Whether there is a legitimate basis for the numbers or the “positioning,” the parties are stuck or “anchored” in their initial positioning.

#### 4. Attribution Bias

Attribution bias is the tendency to assume the worst about the opposition.<sup>247</sup> Any action or conduct by the other side is judged in the worst possible light—intentional malfeasance—whereas any ambiguous conduct by one’s own side is mere mistake or unintentional conduct.<sup>248</sup> In the political arena, this is apparent. The Democratic Party will scourge the Republican Party for being anti-women’s rights but at the same time not praise strong women leaders who identify as Republicans.<sup>249</sup> Similarly, the Republican Party will condemn the Democratic Party over their government “handouts” or “abortions” but often promote wheat subsidies for many of the same philosophical reasons the Democrats push welfare programs.<sup>250</sup>

#### 5. Reactive Devaluation

Lastly, reactive devaluation is another level of attribution bias.<sup>251</sup> Any offer or suggestion made by the opposing side is viewed automatically as insufficient or ill-intentioned.<sup>252</sup> Even if, from a neutral perspective, a decent compromise or proposal is offered, reactive devaluation is the tendency to assume the other side does not have one’s best interests at heart; therefore, there must be an underlying trap or hidden agenda.<sup>253</sup> News people, like mediators, have a unique role and opportunity to evaluate the merits of

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<sup>245</sup> *Id.*

<sup>246</sup> See e.g., Erika Franklin Fowler et al., *Media Messages and Perceptions of the Affordable Care Act During the Early Phase of Implementation*, J. HEALTH POL. POL’Y L. 167, 170 (2017).

<sup>247</sup> GOLANN & FOLBERG, *supra* note 206, at 60.

<sup>248</sup> *Id.*

<sup>249</sup> See, e.g., S.E. Cupp, *No, Not All Women are Democrats*, N.Y. TIMES (June 16, 2018), <https://www.nytimes.com/2018/06/16/opinion/sunday/no-not-all-women-are-democrats.html>.

<sup>250</sup> See, e.g., Erika Eichelberger, *The Four Most Hypocritical Provisions in the GOP Farm Bill*, MOTHER JONES (Nov. 7, 2013), <https://www.motherjones.com/food/2013/11/republican-farm-bill-food-stamps-subsidy-hypocrisy/>.

<sup>251</sup> See GOLANN & FOLBERG, *supra* note 206, at 60–61.

<sup>252</sup> See *id.*

<sup>253</sup> See *id.*

proposals or ideas in the abstract, and being unattached from party affiliation allows them to critically examine a matter and avoid reactive devaluation.<sup>254</sup>

#### D. *Managing an Impasse*

Awareness of cognitive biases is one aspect, but mediators also have techniques to manage an impasse that arises, which can be useful to the media in news reporting. Key techniques are as follows: emphatic listening, reframing, and reality testing.<sup>255</sup>

##### 1. *Empathetic Listening*

“The most basic of human needs is the need to understand and be understood. The best way to understand people is to listen to them.”<sup>256</sup> Mediators and journalists alike actively seek to learn people’s stories.<sup>257</sup> By creating the space to be fully heard, a mediator and a journalist can redirect confrontational energy to foster collaboration and openness.<sup>258</sup> Empathy is the ability to project oneself into the other person’s shoes to understand their emotions and feelings.<sup>259</sup> Empathetic listening uses verbal and nonverbal cues such as saying, “I see” or nodding to reassure the speaker that the speaker can share without fear of criticism, judgment, or interruption.<sup>260</sup> Active listening requires stopping one’s inner conversation or urgings to prepare a response, and truly listening to the other person.<sup>261</sup>

An extension of the technique would be reflective listening—where the listener summarizes back what he or she heard to demonstrate understanding.<sup>262</sup> It is important to note, empathy does not equal sympathy.<sup>263</sup> Empathy does not mean that one agrees with the speaker; it simply means that the listener indicates that he or she has heard and understood the speaker.<sup>264</sup> Entertainment news today unfortunately uses mostly confrontational conversations playing a “game of ping-pong marked by a series of ‘yes, but’ as the person immediately rebuts the other’s points.”<sup>265</sup> While perhaps

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<sup>254</sup> See *id.* at 160–61.

<sup>255</sup> *Id.* at 123–32.

<sup>256</sup> Dr. Ralph Nichols, INT’L LISTENING ASS’N, <https://www.listen.org> (last visited Feb. 12, 2018).

<sup>257</sup> HARPER, *supra* note 223, at 93.

<sup>258</sup> See *id.*

<sup>259</sup> GOLANN & FOLBERG, *supra* note 206, at 125.

<sup>260</sup> *Id.* at 125–26.

<sup>261</sup> See HARPER, *supra* note 223, at 93.

<sup>262</sup> GOLANN & FOLBERG, *supra* note 206, at 126.

<sup>263</sup> *Id.* at 126.

<sup>264</sup> *Id.* at 126.

<sup>265</sup> See HARPER, *supra* note 223, at 95.

entertaining, this style can be damaging and fails to create an understanding of perspectives.<sup>266</sup>

On the other hand, shows like *Messy Truth* with Van Jones or *On Being* with Krista Tippett demonstrate unique, non-partisan styles of reporting aimed at building understanding through conversations with real citizens.<sup>267</sup> Each reporter has their own style, but their attention to listening goes a long way in building understanding.<sup>268</sup>

## 2. Reframing

Mediators manage conversations by reframing, in other words restating or paraphrasing, disagreement using nonjudgmental language.<sup>269</sup> Reframing can also be defined as using different words, concepts, or emphases to appropriate for the context.<sup>270</sup> Journalists aim to gather information to report to the public, not understate disagreement.<sup>271</sup> However, this does not mean reframing is useless. Especially when parties are in a joint conversation with the journalist, the journalist may find that using the reframing technique to rephrase statements of one side's "position" in terms of "interests" can be powerful:<sup>272</sup> for example, framing "immigrants" as people seeking a better life or escaping poverty, or "gun-lovers" as individuals wanting the right to keep their family safe or continue a hard-earned way of life without interference. Reframing can help the journalist and the participants uncover deeper interests and foster understanding even if they do not agree.<sup>273</sup> It may even create space for a journalist to probe one's side about their understanding of the other side's positions, and even potentially create workable solutions.<sup>274</sup>

## 3. Reality Testing

Reality testing is used by mediators to guide parties to uncover gaps in their understanding of a situation.<sup>275</sup> In serving as an agent of reality, the mediator (and the journalist) can pose critical questions and help parties

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<sup>266</sup> GOLANN & FOLBERG, *supra* note 206, at 126.

<sup>267</sup> See Van Jones, *Beyond the Messy Truth*, [http://www.vanjoness.net/beyond\\_the\\_messy\\_truth](http://www.vanjoness.net/beyond_the_messy_truth) (Jan. 28, 2018); Krista Tippett, *On Being*, *Civil Conversations Project*, <http://www.civilconversationsproject.org> (Feb. 8, 2018).

<sup>268</sup> GOLANN & FOLBERG, *supra* note 206, at 126 (noting that good listening helps bring understanding between parties).

<sup>269</sup> Pauli, *News Media as Mediators*, *supra* note 1, at 725–26.

<sup>270</sup> See BOULLE, *supra* note 206, at 128.

<sup>271</sup> Pauli, *News Media as Mediators*, *supra* note 1, at 725–26.

<sup>272</sup> *Id.* at 725–26.

<sup>273</sup> See GOLANN & FOLBERG, *supra* note 206, at 130–31.

<sup>274</sup> See Pauli, *News Media as Mediators*, *supra* note 1, at 726 (arguing against conflict oriented frames because collaborative spaces foster better understanding and actual resolution of issues).

<sup>275</sup> See BOULLE, *supra* note 206, at 233.

conduct evaluations of the issue.<sup>276</sup> In helping a party see the merits of an issue objectively, the party can move towards a more realistic view of the circumstances as opposed to having a view that is completely distorted by cognitive biases.<sup>277</sup> The newsperson, using reality testing, can ask a party to respond to the opponent's claims, illustrating the strengths and weaknesses in the party's own position.<sup>278</sup> In a broadcast or written piece, this critical engagement would be illuminating to the public consuming the news. However, it is important to note that this technique is more interventionist and commonly conducted in private caucusing in mediation to avoid creating vulnerability and defensiveness in the party who is being challenged.<sup>279</sup> As a reporter, critical evaluation jointly with a party can foster understanding, but there is also risk the silent audience may not also join the ride; but at the very least, the journalist has fulfilled her role in enhancing the public understanding of viewpoints.

## VII. CONCLUSION

The intended role of the media, as the unofficial fourth branch of the government, is to arm the public with the information they need to be free and self-governing.<sup>280</sup> Unfortunately, the rise of technology, confirmation bias, and mistrust of the media has led to an increasingly polarized America. The growing personalization of politics and misunderstandings demands that the media bolster their toolkit with ADR insights and methods in order to promote understanding. This article provides a few techniques that may prove useful. Every news media professional must grasp that "public discourse lies at the heart of and actually predates formal American journalism."<sup>281</sup> We need more understanding across the aisle today and the Media's adoption of ADR techniques may be the best first step towards a better informed, more understanding public.

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<sup>276</sup> *See id.* at 234.

<sup>277</sup> *See id.*

<sup>278</sup> *See id.* at 233.

<sup>279</sup> *Id.* at 235.

<sup>280</sup> *The 4th Estate as the 4th Branch*, TEACHING HISTORY, <https://teachinghistory.org/history-content/ask-a-historian/23821> (last visited Sep. 27, 2018).

<sup>281</sup> KOVACH & ROSENSTIEL, *supra* note 5, 170.