

COMMUNICATIONS AND POLITICS: THE MEDIA AND THE MESSAGE

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Lincoln, at Gettysburg, characterized the American democracy in part as "government . . . for the people." More than one skeptic has amended Lincoln's statement to read: government for those who make themselves heard. The formulation can be taken still a step further: American democracy can be defined as government for the people most effectively heard.

Effective communication is important in two respects to those who would wield political power: it is effective communication which elects men to the nation's offices, and it is effective communication which enables men to exercise control over the direction and activity of the government and to incorporate certain opinions and preferences in the policies and laws of the land.

Those who win elections in the United States are successful, for the most part, because they effectively communicate—even if all they do is instill in the electorate an awareness of their name, their party, or their personality. Effective organization and congenial ideology are important, but these alone are not enough. The candidate seeking election has to gain visibility in a competitive world. He competes for the attention of the voter not only against his opponents for the same office but also against others on the same ticket who likewise wish to be visible and popular. He has to compete against nonpolitical communicators who, like him, want to attract the attention of an audience—the candidate on television has to lure the viewer away from other advertisers as well as from entertainment programs. The candidate furthermore has to compete against the everyday forces of work, play, and leisure which divert the voter from instruments of political communication.

The American system of elections, then, creates a highly competitive political arena within a universe full of nonpolitical sights and sounds. In American society, where men are busy and issues complex and politics musters relatively low interest, what interest there is tends to be diffused among many levels of candidacy and contention. During the relatively short campaign season, the candidate must somehow get through to the voter, get him to the polls, and impress himself enough upon him to capture his vote. Because of the intense competition and the sophisticated technology which is needed to effectively reach the contemporary voter, the cost of modern communication is high—high enough to drive many out of the political marketplace and, occasionally, drive some into rebellion.

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In addition to pervading the electoral process, effective communication is a vital element in the political process. The policies and rules which governments adopt are partly a response to the effective articulation of demands upon government by individuals and groups. Men engage in politics to get something done or to prevent something from being done; to have a say in determining the distribution of scarce resources; or to commit a constituency or the country to some kind of goal. They are successful to the extent that they can communicate their demands either to those directly in power or to the voters who, in sufficient number, have power over their governors.

Voice alone is not enough for effective communication. Muscle as well as voice is needed. But an individual or a group lacking some of the traditional political resources can go a long way toward achieving its aims with effective use of the techniques of communication. Through drama and showmanship—often evident in demonstrations, disruptions, even violence—some of the most politically destitute of the country—the poor, the black, the students—can attract attention to their claims and mobilize support from more powerful segments of the society.

In the struggle for governmental influence, many political communications are not presented directly by public officials, candidates, or their supporters, but are filtered to the public by the communications media—newspapers, magazines, broadcasters—in the form of news and analysis that may reflect the biases of the media. Journalism by newsprint or by air selects, magnifies, deemphasizes, or dramatizes a host of random acts and places them in particular relationship and perspective, with intended and unintended political effects. Some of these acts are consciously initiated by political actors for their own benefit, and are transmitted to the unsuspecting public as objective news or analysis. For example, film clips are prepared and provided to stations by campaigners and then used as hard news; government press offices are used to put the officeholder in the best possible light.

All the mass media are important as channels of communication in politics. We have come a long way from the days when campaigns were national social galas and communication was carried out only by handbill, newspaper, or oratory from the stump (and, of course, the irrepressible buttons, banners, and bangles of infinite design and uncertain impact). These techniques still serve the purpose of identification and spur a psychology of support, and some have even adopted modern guise: newspaper advertising is written by the same copywriters who provide slogans for America's corporate giants; orators are hustled from stump to stump by jets; and the campaign paraphernalia reflects the most popular contemporary designs.

But great emphasis today is on electronic media and the supportive techniques developed by modern technology for pervasive and persuasive communication. Many of the newspaper ads simply announce the broadcasting of a political special, and

most of the orations are arranged so highlights will appear on the evening news. Through radio and television, candidates can capture voters at unguarded moments and in unlikely places. They can take advantage of the viewing habits which television watchers develop; a spot announcement is over before the dial can be flicked. Commercial advertising has prepared a market which reaches into ninety-five per cent of the nation's households (with each household reputedly averaging forty-six hours and thirty-six minutes of viewing a week) and politicians eagerly utilize it.¹ Effective utilization requires the advice of professional persuaders and the allied experts on whom persuaders are dependent. Candidates hire public relations firms, advertising agencies, campaign consultants, pollsters, media buyers, copywriters, computer analysts, and producers of television commercials.

I

THE MEDIA: HOW TO USE IT

A candidate running for office has to decide what portion of his resources to devote to the various media and what techniques he will use during his campaign. More and more candidates each year, especially those running for high-level offices, are turning to professional campaign management firms for advice on these decisions. Professional public relations and advertising agencies have been involved in politics since the early 1930s when California's haphazard political structure gave birth to the professional union of Clem Whitaker and Leone Baxter.² These experts may supplant, complement, or supplement the candidate's political advisers. Much political public relations today takes one of two forms: substantial management of the campaign by the professional who demands a free hand and complete authority; or consulting either in terms of over-all strategy (where the professional advises the candidate's campaign team and then leaves the scene) or specific needs (where the professional is hired for a specific purpose, such as to take polls, organize a registration or telephone campaign, produce literature, develop broadcast commercials, or help to raise funds).

James M. Perry, in writing about modern campaign technology,³ has emphasized two essential ingredients: appeals are made directly to the public through the mass media by experts in electronic communication; and sophisticated and scientific methods such as polls, computers, direct mail, and television are used to make these appeals. Candidates use extensive polling, partly to learn how to better reach voters by radio or television, or newspapers. Computers store data, write personalized letters, and test campaign strategy.

¹ Statistics are from MEDIA RESEARCH DIVISION, A. C. NIELSEN Co., TELEVISION 1968.

² The story of Whitaker and Baxter's Campaigns, Inc., and of early political management in general is told in S. KELLEY, JR., PROFESSIONAL PUBLIC RELATIONS AND POLITICAL POWER (1956).

³ J. PERRY, THE NEW POLITICS: THE EXPANDING TECHNOLOGY OF POLITICAL MANIPULATION (1968).

In-depth attitude polling based on market research techniques and the use of computers are the two most popular recent innovations of political professionals. Both are important tools in deciding what and how to communicate. Issue polling can be useful early in the campaign for deciding which issues the candidate should stress. Issue polling over time can gauge the impact of the candidate's message in its different forms. Polling can also determine where the candidate is weakest and which issue areas and geographical areas most demand his attention. Polls, private or public, can also be used for psychological impact; their results can be used effectively to communicate a sense of winning to potential voters, campaign workers, and contributors.

Polls are also used by campaign strategists to measure relative usage and credibility of the mass media. Findings by Roper Research Associates in 1968,⁴ revealed that television, the nation's primary source of news since 1963, is considered the source of most news by fifty-nine per cent of the population, compared with forty-nine per cent for newspapers, twenty-five per cent for radio, and seven per cent for magazines. Television is also the nation's most believable news medium. A total of forty-four per cent of the Roper sample ranked TV most believable; twenty-one per cent named newspapers, eleven per cent magazines, and eight per cent radio. In the same Roper survey, the public indicated that it gained its clearest understanding of national candidates and issues from television by more than two-to-one over newspapers (65 per cent TV, 24 per cent newspapers, 4 per cent radio, and 5 per cent magazines). The margin was narrower for statewide political contests (42 per cent TV, 37 per cent newspapers, 6 per cent radio, 1 per cent magazines, and 9 per cent "other people"), and newspapers were predominant for local elections (26 per cent TV, 40 per cent newspapers, 6 per cent radio, 1 per cent magazines, and 23 per cent "other people").

Computers enable candidates to put their polling data to rational use. They perform clerical functions much faster, more cheaply, and more efficiently than humans. And they permit sophisticated analyses of the campaign and the electorate by skilled programmers.⁵

Computers can be used to tell a candidate whether he has a chance to win an election and what he has to do to be successful. Computers can pinpoint swing areas and swing voters and in fact program an entire campaign, including where a candidate should go, how long he should stay, and what he should do. Computers can be stocked with data and then programmed for simulation. In this role, the computer, containing millions of bits of data accumulated from polls and censuses, responds to hypothetical situations in ways suggestive of how the populace would respond. Using the simulator, the candidate can test various strategies and the

⁴These findings are reported in B. ROPER, *A TEN-YEAR VIEW OF PUBLIC ATTITUDES TOWARD TELEVISION AND OTHER MASS MEDIA, 1959-1968* (1969).

⁵See PERRY, *supra* note 3, at 71.

impact of various issues on the electorate and then go back before the people with an idea of how they will respond. Simulation on an elementary scale was experimented with in the 1960 Kennedy campaign.⁶ In the aftermath of the 1968 presidential campaign, leaders in both major parties recommended and predicted that their parties would make extensive use of simulation in 1972.

When perfected, the computer simulator could give politicians up-to-date answers about what specific groups of people think and how influential their opinions will be. The candidate could determine long-range strategy as well as hour-by-hour tactical decisions without relying on intuition. The distribution of scarce resources such as materials, money, TV spots, or the candidate's time could be scientifically determined, and media dollars could be more effectively allocated. For example, an area with high-rise apartments might be served more cheaply by direct mailing or telephone than by television which covers too large an area. Rules of thumb might not catch this; the machine would.

In addition to programming the campaign, the computer could place advertising—for example, deciding exactly which commercial to broadcast for the audience likely to be watching television at any particular minute. The computer can help in the solicitation of funds. And the computer can bring efficiency to mass mailings and permit easy mailing to specialized groups. With special information on magnetic tape, computers can personalize a mass mailing by inserting personal data or a personal paragraph in a standard letter. The computer can identify those to whom specific letters should be sent and prepare the letters at fantastic speed: the IBM 360 computer types 11000 lines a minute, the equivalent of 636 typists.⁷ Needless to say, the replaced typists are freed for other functions, such as door-to-door campaigning, which the computer cannot yet manage. And while the computers are typing and the typists ringing doorbells, other electronic equipment can be utilized for a far reaching telephone campaign where those who answer the phone are treated to taped messages from the candidate.

The wide-spread, split-second communications network available to American political office-seekers has contributed to a renovation of the American political system. The American tradition of party politics has been challenged by modern communications techniques as well as by other forces in the contemporary environment. Manipulation of the media has become as important, and sometimes more important, than control of a party organization, especially for those seeking statewide or national offices, and campaign technicians and professional persuaders have replaced the organization men of former days in the campaign hierarchy. An organization can be purchased or men can be employed who can decrease the need for foot soldiers in the battle for ballots. Contemporary politics is focused on the

⁶ See I. DE SOLA POOL, R. ABELSON & S. POPKIN, *CANDIDATES, ISSUES AND STRATEGIES* (1964).

⁷ PERRY, *supra* note 3, at 145.

candidate, not the party, and if suggestions such as the national primary are adopted, the trend toward candidate-centered rather than party-centered organizations should accelerate.

It can surely be said that modern communications techniques permit the building of an image and a personal organization in ways not possible a few years ago. But it must also be said that these techniques at the same time seem to demand a certain type of candidate and a certain style of organization not demanded in years past.

II

TELEVISION

Though it is easily overrated, the most influential tool of the new communications has been television.⁸ Television has changed the political campaign, changed the political candidate, and, in fact, changed the entire nature of the political discourse. Television has reordered the political campaign. Itineraries, speeches, and the nominating conventions are planned according to the dictates of prime time. Campaigners design methods for getting exposure on newscasts: some of the best practitioners of the political art claim that a few minutes on the evening news are worth all the rest of the publicity they can get—or can buy.

Just a few years ago, it was reasonable to write that, at the presidential level at least, the air-conditioned studio had seemingly replaced the "smoke-filled room." It was the studio in which Richard M. Nixon saved his career in 1952 in the famous "Checkers speech" and then jeopardized it in 1960 by debating Senator John F. Kennedy.⁹ In 1968, television was widely used even though neither of the major party presidential nominees projected good TV images. Nixon's carefully programmed campaign called for noncontroversial television spots and live regional broadcasts which featured the candidate answering questions from a panel of citizens. Humphrey's media campaign, under the guidance of master consultant Joseph Napolitan, stressed imaginative commercials once sufficient money was raised to purchase TV time. Nixon's television presence was an improvement over 1960, but he was hardly a TV idol. Humphrey, who otherwise talked too much and in a gravelly voice, appeared at his best in filmed documentaries which were carefully photographed and edited; he did not appear in his commercials. Both Nixon and Humphrey—as Johnson and Goldwater before them—were products of party, not of television. Nor were vice presidential candidates chosen on the basis of television

⁸ An analysis of television's impact on politics which incorporates much of the recent literature in the field can be found in R. MacNEIL, *THE PEOPLE MACHINE: THE INFLUENCE OF TELEVISION ON AMERICAN POLITICS* (1968). MacNeil's title refers to the simulator used in 1960, which was nicknamed "The People Machine."

⁹ Alexander, *Broadcasting and Politics*, in *THE ELECTORAL PROCESS 81* (M. Jennings & L. Zeigler ed. 1966).

appeal; younger, more physically appealing politicians were available. These facts stand as evidence both that party politics still produces nonstars, and that the power of party can still be decisive. Glamorous candidates, say a Lindsay, under some circumstances, still may lose out to less stylistic types, say a Marchi, who do not even use television.

But if the candidates are not necessarily children of the television age, many of the voters are. And more and more voters will be each year from now on. The candidates too, even if they are not the offspring of television (as Estes Kefauver almost was in 1952), must campaign in a world dominated by the electronic screen. Humphrey never recovered from the television reports from Chicago, home battleground for the Democratic National Convention. Perceptions of reality affect in some measure attitudes and behavior, and television conveys a special reality to the viewer. The voter may be familiar with the candidate only through broadcasting, or his primary image of the candidate may be a result of electronic exposure. Television does not work only to transmit an image for the election season; rather, a man may develop a television image over time, or a man's television personality in one election may win a nomination, or at least some amount of support, in a future election. By the same token, overexposure on unpopular issues can surely hurt—again, Lindsay is an example.

The news media seek out the dramatic—the dramatic events and the dramatic men. Television newsmen encapsulate the day's news in half-hour broadcasts (at the longest) which can spare only several minutes for the particular event—be it campaigning, demonstrating, or anything else. Occasionally, snap news judgments will not stand the light of review—hopefully less because of deliberate bias than because they are made on the spur of the moment in developing news situations, as in Chicago. Candidates deliberately utilize television's penchant for the visual by gearing their daily events toward newsreels that will be full of action.

The point is not that television seeks out and broadcasts dramatic events, but rather that such events, when broadcast, affect so many viewers so quickly. Democracy's theoretical foundation may be rational choice, but emotional appeal has always been a prime ingredient of politics. Only the ability to convey emotion instantly to such large audiences is new. Television permits a quick penetration of the public mind by images that may tell only part of a story or may incorrectly tell a story but which are very hard—and very expensive—to erase.

This power of television has healthy and unhealthy aspects. It permits a relatively unknown Eugene McCarthy to escalate a seething issue into a national political movement, and it permits an isolated individual such as Milton Shapp—albeit with plenty of money available—to wrest a gubernatorial nomination from such an entrenched organization as the Pennsylvania Democratic Party. In this sense, television enlarges political options and helps keep the political system open and

flexible—something liberal critics sometimes overlook. Television also provides a limited soapbox for minority views and in so doing provides alternatives to party control; even if offering a forum for demagogic appeals, at least it facilitates variegated political discourse.

Campaign strategy and campaign activity have adapted to the promises and demands of the age of television. The criteria for candidates have also been modified. The candidate needs sufficient money, sufficient looks, and sufficient style to communicate via television. The potential candidate may, as happened in New York to eventual gubernatorial candidate Robert Morgenthau in 1962, have to pass a screen test before getting the party nod. The candidate in a television campaign, if he is anything of an actor, can pretty much choose his personality and then project it over the air with the aid of whatever skills in lighting, makeup, or script writing he can afford.

Open nomination politics and long ballots give the American political system a strong candidate orientation. Television campaigning puts further emphasis on the candidate, and emphasis on the candidate enhances party factionalization. In building his own organization, a candidate may well build a party faction, as the Kennedys did, or assume factional leadership, as Rockefeller did. Television campaigning also means emphasis on spot announcements, and emphasis on spot announcements can quickly degenerate into a battle of slogans. Television has made image visible and made it a prime requirement for electoral success. It has supplemented the lawyers and journalists with advertisers and professional consultants. It has enabled candidates to reach uninformed and disinterested citizens who otherwise are not exposed to the campaign and who may comprise the crucial swing vote in an election. Television has bred a feeling of intimacy between voter and public official, an intimacy which has led voters to trust their own impressions about candidates rather than rely on the impressions of outside commentators and which has erased some of the awe and respect which distance once fostered. One might call television campaigning a culmination of a process toward "the intensification of feeling and a degradation of significance."¹⁰ Finally, television may also influence the citizen's opinion of the electoral process itself, and may serve to either strengthen or undermine the nation's confidence in its institutions and its democracy.

Yet social scientists using modern techniques have not yet really told us what we want to know about the impact of television in politics.¹¹ The impact is hard to

¹⁰ W. LIPPMANN, *THE PHANTOM PUBLIC* 48 (1925).

¹¹ Some of the best work yet done on impact of television on politics can be found in MacNEIL, *supra* note 8. The following is a sample of useful works: K. & G. LANG, *POLITICS AND TELEVISION* (1948); Campbell, *Has Television Reshaped Politics?*, 1 COLUM. JOURNALISM REV. 10 (1962); Glaser, *Television and Voting Turnout*, PUB. OPINION Q., Spring 1965, at 71; and P. LAZARSFELD, B. BERELSON, & H. GAUDET, *THE PEOPLE'S CHOICE* (1968). Also useful for a survey of media in general is J. KLAPPER, *THE EFFECTS OF MASS COMMUNICATION* (1960); for a collection of articles about broadcasting in general and politics, see *AMERICAN VOTING BEHAVIOR* (E. Burdick & A. Brodbeck ed. 1959); for a study of the

measure because a television audience is composed of a great variety of individuals with a wide range of responses to different stimuli. The Langs, among others, have shown that it is possible to describe what respondents say their reactions were—for this can be quantified—but this is not the same as describing the impact of events or of presentations on the political process. Several studies, by Campbell, Glaser, and the Langs, have found voter turnout minimally affected by TV, even when early returns have been telecast. Too little is known of the differential effectiveness of campaign techniques, whether considered as a problem of seeking ways to campaign cheaply and effectively, or of learning the effects of saturation as opposed to normal modes of campaigning. Much more is known about the effects of advertising on consumer behavior than about the impact of political communication—whether presented in news or as direct advertising—on voter behavior.

III

EQUAL TIME, OR EQUAL OPPORTUNITIES

A peculiar relationship exists between those whose business is communicating and those whose business is communications. The broadcaster holds a government license, and he may be reluctant to antagonize the politician. The politician needs exposure, and he may not want to antagonize the broadcaster. A sizable collection of reforms dealing with political broadcasting and the enveloping problem of campaign finance awaits resolution of the impasse between candidates and the communications industry. Costs and problems mount while reform rests suspended in a legislative environment ripe with suggestions for modification.

A. Section 315 in Practice

The broadcasting industry's suggestion for reform features repeal of Section 315 of the Communications Act of 1934,¹² which requires that any television or radio station giving free time or selling commercial time to one candidate must provide access to similar time for any other candidate seeking the same office or nomination. Popularly called the "equal time" law, this section is more accurately termed an "equal opportunities" provision. Broadcasters argue that repeal of section 315—which requires that they treat all minor party candidates just as they treat major party candidates—would result in more free time for major candidates. Even if this is true—and there is some evidence to the contrary—the question is whether candidates would take the time unless it were to their liking.

impact of election returns broadcast before certain polls have closed, *see* K. & G. LANG, *VOTING AND NON-VOTING* (1968); for analysis of impact of the 1960 televised debates, *see* *THE GREAT DEBATES: BACKGROUND, PERSPECTIVE, EFFECTS* (S. Krans ed. 1962); and two books dealing with English elections: J. TRENAMEN & D. McQUAIL, *TELEVISION AND THE POLITICAL IMAGE* (1961), and J. BLUMLER & D. McQUAIL, *TELEVISION IN POLITICS* (1968).

¹² Communications Act of 1934 § 315, 47 U.S.C. § 315 (1964).

An example of a candidate's reluctance to accept free time with stipulations attached can be found in Richard Nixon's behavior in 1968. Despite the high cost of television, Nixon used paid time that he could control in preference to free time that he could not control. He refused invitations to interview-type programs like "Meet the Press" from early 1967 until the last Sunday before the November 1968 election. Broadcasters too have certain preferences about how campaign time should be used. They do not like to give candidates time without structure. They very much like drama and confrontation, such as is found in debate. But some candidates, especially incumbents, make avoiding debates a prime element of their campaign strategy—they simply will not agree to giving their opponent equal exposure. To attract an audience, the broadcaster might want to attach conditions to the free time which are unpalatable to one candidate. By setting the ground rules on a "take it or leave it" basis, the broadcaster may leave little room for candidate influence over format. Some candidates need time to develop ideas without interruption. If one candidate refused free time, the main effect of the repeal of section 315 could be that broadcasters would offer free time to the remaining major candidates, a possibility subject to abuse, and still keep the minor candidates off the television screens entirely—something which cost alone almost accomplishes now. The obstacles to many kinds of coverage by networks and stations appear to be as much the refusal of one or more candidates to participate, and the program judgments of broadcasters, as section 315 itself.

In the present legal climate, little free time is offered. Candidates ostensibly decide for themselves what their television effort shall be. Some candidates like spots; Joe Napolitan uses spots but stresses half-hour programs. But even that kind of decision is not out of the realm of the broadcaster's influence. In 1968, for example, there was one especially interesting illustration of how broadcasters can shape politics rather than conform to political needs. On television, NBC stressed the sale of one-minute network participations, while CBS stressed the sale of five-minute slots at the end of an abbreviated regular program. NBC gave fifty per cent discounts for the participations, and CBS charged at a reduced rate for the trailers—one-twelfth of an hour rather than the more expensive five minutes. NBC received favorable publicity for giving the discount, but rates on programs and on spots of other lengths—perhaps more to a particular candidate's liking—were not discounted. The politicians were grateful for any discount. The networks weren't suffering because they were just cutting back on entertainment fare—NBC did not curtail commercials to accommodate the political spots; it chopped minutes off its shows. Thus these essentially public decisions, decisions to encourage certain kinds of campaigning, decisions which most properly belong in the political realm, were being made by private corporations.

B. The Costs of the Present System

Problems relating to political broadcasting do not directly affect all, or even most, of the candidates who seek public office in the United States. In small constituencies, or even in larger areas where a constituency covers only a small part of a broadcast station's listening range, many candidates never buy time, nor are they given any. Some actually manage to campaign much as was done generations ago—and at small cost. There are more than 500,000 public offices filled in elections in the U.S. over a four-year cycle and, within this range of elective offices from the courthouse to the White House, there are thousands of variations of broadcasting need and usage.

Candidates who do need and who do use broadcasting facilities pay plenty for the opportunity. Talk on radio and television is not cheap. The only available systematic nationwide information on a single campaign cost covers broadcasting, and these figures, compiled by the Federal Communications Commission (FCC),¹³ show combined television and radio spending in 1968 to be \$58.9 million. This is seventy per cent higher than the \$34.6 million spent in 1964. The 1968 figure represents almost twenty per cent of the \$300 million total for 1968 political spending at all levels, an increase over 1964 when only eighteen per cent of all political spending went for broadcasting. \$38.0 million, or 64.5 per cent, of the money spent on broadcasting in 1968 went to television, with about one-third of that (\$10.9 million) being spent in the primaries. On the Presidential level, about \$12.6 million was spent on broadcasting for the Richard Nixon campaign, and about \$6.1 million worth of broadcasting was devoted to Hubert Humphrey's campaign. George Wallace spent about \$0.69 million on network broadcasting, and the bulk of the \$0.95 million spent on non-network broadcasting by minor party candidates must also be attributed to his campaign. The broadcast expenditures for the Presidential and Vice Presidential contests during primaries and the general election period accounted for 48.3 per cent of total political broadcast expenditures in 1968 and amounted to \$28.5 million—2.2 times the comparable expenditures in 1964.

The broadcast figures represent only network and station charges and do not include production or promotion costs related to broadcasting. Experience indicates that from twenty to fifty per cent more must be added to the FCC figures for production charges, and certainly several million dollars more must be included for promotion, including "tune-in" advertising. A comprehensive cost analysis of broadcasting for 1968, if production costs were at the fifty per cent figure, could reach as high as \$90 million. The Humphrey media campaign, which Napolitan reported to cost \$4.4 million in time and space charges, spent \$1.1 million—or twenty-five per cent—on production for these purchases. A similar breakdown for the 1968 Nixon

¹³FEDERAL COMMUNICATIONS COMMISSION, A SURVEY OF POLITICAL BROADCASTING, PRIMARY AND GENERAL ELECTION CAMPAIGNS (1969).

campaign is not available, but 1964 Republican figures show TV and radio production costs to have been \$1.1 million compared with a TV and radio time expenditure of \$4.5 million.¹⁴ With production costs this high, the investment for a single spot is so great that it must be repeatedly aired to average down the initial investment.

While much is said about the high cost of television in politics, little mention is usually made about the cost of radio. Actually, there has been a more rapid rise in the use of radio for political broadcasting in recent years than in television.¹⁵ In 1968, costs of radio increased almost 100 per cent over 1964, while costs of television increased roughly sixty per cent. Of course, more is spent in aggregate dollars on television, but radio is rapidly becoming more popular. In 1964, the ratio of television to radio costs was \$23.8 million to \$10.8 million. In 1968, the ratio was \$38.3 million to \$20.2 million. Candidates like radio because it is much cheaper for an equivalent amount of time and for production; therefore it is much cheaper per message. They also like radio because of its potential for reaching trapped audiences such as commuters traveling the freeways. In 1968, Richard Nixon used network radio to deliver a series of speeches on the issues, finding that such speeches attracted more attention from the press than the traditional position papers issued by candidates, and besides there was some radio audience which was purchased at very reasonable price—less than \$10,000 for twenty-five minutes.

Newspaper advertising, especially at the local level, has not disappeared from American politics. In 1968, a special analysis of newspaper advertising was done for the Citizens' Research Foundation by Media Records, Inc., a firm that specializes in counting newspaper advertising lineage. From rate charts, Media Records then determines the cost of the advertising. From July 1 through November 5, the analysis of daily newspapers in 139 cities, covering about sixty-four per cent of daily and seventy-two per cent of Sunday circulation in the United States, indicated at least \$11.6 million in political advertising by candidates and committees at various levels.

Advances in technology augur increases in campaign costs in the future. Color television has already brought higher time and production costs. Community antenna or cable television (CATV) facilities promise more broadcasting opportunities once the cities are wired and particular districts can be reached exclusively. Cable television permits the candidate to broadcast very specific appeals to a limited number of carefully selected households. The National Cable Television Association reported after the 1968 presidential election that 415 CATV systems in forty-five states, representing 4.5 million viewers, had carried campaign material for Richard Nixon, and 350 systems in forty-four states representing 3.5 million viewers had

¹⁴ Republican figures for 1964 can be found in H. ALEXANDER, *FINANCING THE 1964 ELECTION* 48 (1966).

¹⁵ FCC SURVEY, *supra* note 13.

carried Hubert Humphrey tapes or films.¹⁶ The use of computers to advise on media buying hikes costs still further.

What, if anything, may be done to control campaign costs and make like facilities available to like candidates without implicitly demanding a massive campaign cost?

C. Reform Proposals

One elementary reform often advanced would involve equalizing costs for incumbents and challengers. But incumbents have considerable advantage just because they can more easily manufacture news and capture the limelight than out-party candidates. Their names tend to be better known and challengers may need more exposure simply to become as well known. That is one reason why candidates often prefer spot announcements which are essentially electronic billboards flashing name and identification repetitively. Incumbents in Washington have financial advantages too; broadcasting facilities are available to occupants of the White House and members of Congress at minimal cost. Facilities like these should also be available to challengers, and to all candidates at several lower levels as well. If necessary, these facilities could be provided by government subsidy and could be available at state-houses, city halls, or at some state facility such as ETV stations, for use at cost.

Because of spiraling campaign costs and occasional inequity in political broadcasting, there have been periodic recommendations recently for Congressional reform in this area. Proponents of reform have suggested remedies ranging from simple elimination of section 315 to intricate formulas for assuring equal access to the media at reasonable cost. Reformers have suggested greater government activity in the form of more stringent regulation or subsidies. Reform of political broadcasting has been quite properly tied to general financial reform in politics, where suggestions such as tax credits and dollar vouchers have been advanced.

Political broadcasting presents perhaps a classic case of conflict between the democratic theory of public dialogue in free elections and the economic freedom of the market place. The campaign interests of candidates do not always coincide with the presumed interests of the electorate in full and open discussion; nor do they always, or even often, square with the interests of the broadcaster. To bring about some balance of interests, section 315—with its 1959 amendments exempting regularly scheduled newscasts, interview programs, documentaries, and on-the-spot coverage of developing news—was designed to explicitly protect candidates against discrimination or unfairness.¹⁷ FCC policy, known as the Fairness Doctrine, further protects candidates from improper treatment; but whereas section 315 is a statute that compels compliance, fairness is an imperfectly defined concept and a debatable standard which admits only of after-the-fact administrative procedures. There is no equity for a candidate after an election is lost.

¹⁶ BROADCASTING, Nov. 11, 1968, at 34.

¹⁷ Act of Sept. 14, 1959, 73 Stat. 557, amending 47 U.S.C. § 315 (1964).

The FCC is required by law to grant broadcasting licenses with a view to the "public interest, convenience and necessity,"¹⁸ but the precise meaning of these terms has never been defined. Broadcasters often argue that without section 315, the FCC could still protect candidates and the public interest by either imposing the fairness doctrine or revoking (or failing to renew) a station's license if it acted in a biased manner. We have mentioned that the doctrine is cumbersome to utilize; furthermore, it is extremely unreliable for the FCC to have to employ such a drastic step as revocation of license for disciplinary action. Since the broadcast spectrum limits the number of broadcasters, licenses must be issued under specific conditions which assure specifically defined levels of fairness at the very least.

Broadcasters generally have insisted that section 315 prohibits them from giving free time to candidates because of all the minor candidates who would as a result have claims for free time for themselves. The record does not show that broadcasters offer any more free time in statewide contests involving just two men—where section 315 is no inhibition—than they do in contests involving a greater number of aspirants.¹⁹ Even if broadcasters did increase the amount of free time available, the question arises of who would decide which candidates at which levels would receive it. Most of the time offered would probably be program time, but candidates would still want to buy spots. And candidates would have money freed to buy more of them. Could Congress prohibit spots? Surely questions of constitutionality would be raised: if this were not an infringement on freedom of speech, what would be? Could there be justification of free spots, which are hardly likely to be edifying or to contribute to the public dialogue? There are further problems. Would not stations emphasize the most exciting contests, contests with candidates who by virtue of the excitement probably attract or control ample funds? How would a station respond to the fact that some viewing areas may include hundreds of candidates; New York stations broadcast to New Jersey and Connecticut as well as to the city, Long Island, and Westchester County.

Some observers have suggested that free time to candidates should be a condition for holding a broadcasting license. Others have suggested that the government supply funds to candidates to purchase time—thereby assuring each candidate a certain minimum. But these suggestions do not surmount all drawbacks to repeal—especially the nature of the time to be given—without active government involvement in broadcast programming. The giving of funds would have to be accompanied by retention of section 315 or something like it for the sake of equity. For this reason, most reform suggestions have concentrated on remodeling section 315. One suggestion would be to devise a formula by which broadcasters could distinguish between major and minor candidates. Section 315 presently offers fairly good pro-

¹⁸ 47 U.S.C. § 303 (1964).

¹⁹ Alexander, *Broadcasting and Politics*, *supra* note 9, at 96.

tection to major candidates in terms of paid time because stations can offer this without having to make similar time available to minor candidates who cannot afford it. Under a policy of "differential equality of access"²⁰—a doctrine that would recognize our predominant two-party system while giving all contenders a chance to be heard—stations offering free time to major candidates would be obligated to make time available to minor candidates, but in smaller quantities.

Some reform proposals have been around for a while. Some have been made quite recently by widely divergent groups. Most of the recent proposals have, like those before them, been directed either generally at the problem of political costs (through subsidies or tax incentives for political contributions or the earmarking of designated tax dollars) or specifically at political broadcasting. Only a few have been directed at other aspects of communications—such as proposed free mailings, as done in England, or voter information pamphlets, containing a page ad for each candidate, which are sent free to every registered voter in Oregon and Washington. Most of the recent proposals have been prompted by concern over the presumed impact and the increased usage of television.

The Committee for Economic Development, in a comprehensive and commendable report,²¹ performs valuable service by pointing out the role public television could play in experimentation. This should not, however, be considered a substitute for the role that commercial broadcasters with larger audiences should play. As to section 315, the Committee generally adheres to the remedy favored by the broadcasting industry—repeal.

The National Citizens Committee for Broadcasting recommended during the 1968 campaign²² that broadcasters circumvent section 315 by arranging for two candidates to appear simultaneously on a news interview program (as was actually done by ABC for the McCarthy-Kennedy debate during the California primary) or in some other fashion which could be classified under one of the exceptions to section 315. The legality of such a move under the present law is unclear, which is why I shall suggest redefining exempt news programs to include joint or simultaneous appearances, on the basis of their newsworthiness.

1. NCEC Proposal for Guaranteed Political Time

The National Committee for an Effective Congress has proposed²³ that candidates for the Senate and the House be guaranteed a certain amount of time at a stated discount by television stations which are located in their districts or transmit to a significant portion of them. Candidates for the Senate would be eligible to buy, during

²⁰ Alexander, *The High Costs of TV Campaigns*, 5 TELEVISION Q. 55 (1966).

²¹ RESEARCH AND POLICY COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT, FINANCING A BETTER ELECTION SYSTEM: A STATEMENT ON NATIONAL POLICY (1968).

²² Statement by National Citizens Committee for Broadcasting Concerning Commercial Network Presidential Election Year Coverage, Oct. 22, 1968.

²³ National Committee for an Effective Congress (tentative draft, June 3, 1969).

the general election period, 120 one-minute segments of prime time—or its monetary equivalent in spot segments—at a seventy per cent discount from the standard rate. Candidates for the House could purchase sixty one-minute segments or their spot equivalents under the same conditions. All Congressional candidates could buy at eighty per cent discount thirty minutes of program time from each applicable television station, to be used in segments of five minutes or more. All time provided under this arrangement would be in prime viewing hours. Time to which a candidate is entitled would be equally divided among the stations located within the geographic boundaries of the district and such stations outside the district whose broadcast area population (*i.e.*, the population residing within the radius of the station's "A contour" broadcast area) includes at least one-third of the population of the given district; in the case of a Senatorial campaign, time entitlement would be divided equally among instate stations and such broadcasters outside the state if one-fifth of the broadcast area population (or "A contour" population) reside within the state. Time beyond the guarantees could be purchased by any candidate, but not necessarily at reduced rates.

Critics of this proposal note that the main impact of reduced rates could be an increase in the amount of time bought. Moreover, there is the problem that the minimum guarantees might be adopted by broadcasters as the maximum amount of time they would sell. On the positive side, the proposal would impose a minimum on stations and would assist candidates with little money by giving them the potential of at least limited exposure. The plan marks a forward advance in attempting to cope with the cases of out-of-state broadcast purchases. The plan is realistic in that it recognizes that even spots merit a discount if they are what a candidate wants to use. Observers are prone to criticize spots unduly, without recognizing that half-hour programs can also contain partisan exaggeration and distortion. Politically, the proposal is designed to help those called upon to enact it by cutting their media costs.

2. *The Ashmore Proposals*

Another reform proposal comes from Harry S. Ashmore, executive vice-president of the Center for the Study of Democratic Institutions. In an article²⁴ overflowing with faith in the American citizenry and idealization of the American system, Ashmore has suggested that public financing replace private money in campaigning, that paid political advertising be prohibited and free time be guaranteed, and that the electoral system be standardized and federalized, under a "responsible public authority." The purpose of the proposals is to make American elections truly rational and prohibit television from distorting the electoral process by shaping it according to television's merchandising techniques and "theatrical demands." The problem with Ashmore's proposals is not only that they would be impractical, probably uncon-

²⁴ *Electoral Reform*, THE CENTER MAGAZINE, JAN. 1969, at 2. Additional remarks by Ashmore, replying to criticisms of his proposal, can be found in the March 1969 issue.

stitutional, and certainly undesirable in their consequences; they also seem to overlook the nature of political America and seem to resort to means which would only by coincidence produce the ends intended. Ashmore would establish a great bureaucratic superstructure over the electoral process, to ensure equal access, which, as I have suggested, is in any case unfair to challengers not widely known. To prohibit private financing is impractical, given so many candidates at so many levels, and is probably unconstitutional (on the theory that an expenditure for speech is substantially the same thing as speech itself, because necessary to reach large audiences, and is therefore protected by the first amendment). Ashmore professes great faith in the American people but lacks faith in their ability to conduct an election without comprehensive federal regulation and their ability to determine the preferred candidate through unrestricted competition.

3. *Commission on Campaign Costs in the Electronic Era*

The most recent reform proposals come from the Commission on Campaign Costs in the Electronic Era. The Commission proposals²⁵ are divided into two parts—one set dealing with broadcast time, the second dealing with finance generally as it relates to the political broadcast problem. Under the first, the Commission recommends that presidential and vice-presidential candidates of parties that qualify in three-fourths of the states be given limited broadcast time which would be paid for by the federal government at a fifty per cent rate. This time would be devoted to programs that “substantially involve the live appearance of the candidates,” that “are designed to promote rational political discussion,” and that would be “presented in prime evening hours simultaneously by time zone over every broadcast and community antenna facility in the United States.” The amount of time offered would depend on the vote received by the parties in previous presidential elections. Parties which ranked first or second in two of the three previous elections would receive six prime time thirty-minute programs within the thirty-five days preceding the day before Election Day with the provision that there be at least one broadcast in each seven-day period. Candidates of parties that receive at least one-eighth of the popular vote in the preceding election would get two thirty-minute programs within this time period with the provision that no more than one be broadcast in any seven-day period. Parties which meet the state-ballot criterion but not the previous-vote criteria would receive one thirty-minute program within the thirty-five day period. Administration of the program would be the responsibility of the Comptroller General of the United States.

The Commission's second recommendation is that individual taxpayers receive federal income tax credit equal to one half the dollar amount of their annual con-

²⁵ Commission on Campaign Costs in the Electronic Era (preliminary draft, undated) (1969).

tributions to political campaigns for federal office up to \$25 (\$50 on a joint return) or to deduct their contributions up to \$100 from their total taxable incomes.

Extending the proposals beyond presidential general elections for one proposal only, the Commission also recommends that all commercial broadcasters be required to charge legally qualified candidates for federal office no more than fifty per cent of the lowest charge made to any commercial advertiser and that broadcasters may then, for federal income tax purposes, deduct as a business expense amounts equal to the dollar value of such discounts to candidates from total taxable income.

The Commission's proposals raise several minor questions of definition and practicality and several minor questions of impact and consequence. While seeking to avoid unnecessary detail, the Commission has unfortunately left too much unexplained. The Commission does not define such terms as "rational political discussion," "substantially live appearances," or "prime time." The Commission does not suggest a format for handling negotiations among the candidates for specific program time nor does it advance a formula for determining which candidates get which minutes. It does not consider the practicality or the constitutionality of the requirement that political programs be presented simultaneously over every broadcast facility in the United States; there may be some advantage to having some stations present the programs later in the evening for those who missed the original presentation. The Commission, furthermore, does not explain why the Comptroller General has been chosen to administer this program or what initiatives he could take. We might ask why the FCC is not the administering agency.

Beyond such questions of definition and structure, the Commission has left unanswered several fundamental questions about the impact and consequences of this proposal if adopted. The most important question is that of whether a party should have to meet such extensive qualifications for subsidized exposure. The Commission's proposals may bolster the two-party system, but diversity is sacrificed. Access to the political system would be restricted, with poor and splinter groups still not qualifying for free time. New voices could be stifled even while the well established voices might be amplified. The ability of George Wallace to get on the ballot in fifty states in 1968 may serve as a helpful precedent and ease somewhat the problem hereafter, but getting on the ballot in even three-fourths of the states is undoubtedly going to remain a difficult and expensive undertaking. For candidates, other than the major party designates, who do rate time under the Commission's proposal, there is no provision to assure them a balanced schedule for their presentations. One candidate might receive the one or two half hour programs to which he is entitled weeks before the election with no exposure near election day, while his opponent might get his time just before. There is no assurance of equity built into the proposals.

A refinement of the free time proposal to make it workable could provide more candidates for president with some subsidized time granted under less stringent conditions. Within the limitations set, however, even a refined system would not assist minor parties that lack ballot status but have ideas, nor would it assure participation by the candidates on these format-controlled shows.

The tax credit/deduction scheme should provide more financial support for the parties from small contributors. The question must be asked whether this added money would be sufficient to obviate the need for the first proposal, which focuses on granting free broadcast time to parties. Also to be asked is whether giving subsidies directly to parties or candidates, rather than to broadcasters, as in these proposals, would not be more desirable if it extended options and flexibility, going beyond broadcasting by coping with over-all campaign finance problems.

The second part of this second proposal, requiring discounts and offering tax deductions to broadcasters, helps spread the cost of political advertising among the government, the public, the candidates, and the broadcasters. In part, this section seems aimed at Congressmen. Since the rest of the proposal is designed for presidential general elections, Congress has little incentive to enact it. But the discount provision would also cut their expenditures for television in half—or enable them to purchase twice as much time at the amount they are spending now, and the tax incentives are designed to serve as an incentive to broadcasters to give more time.

The Commission report needs some reformulation and refinement. It does, however, make a major contribution by documenting and showing graphically the increases in costs in recent years. It also adds valuable fuel to the growing debate in and out of Congress on political costs and particularly on political broadcasting.

Of all the proposals, none suggests a practical step to broaden the definition of news programs rather than to tamper with the time-honored “equal time” provision. The definition of a news program could be extended to include any joint or simultaneous appearances of major candidates. This recognition of the special news quality of such appearances would give broadcasters greater flexibility in providing campaign dialogue. Minor candidates would not have to get equal treatment unless broadcasters decided their appearance was equally newsworthy.

But if the “equal time” provision needs to be tampered with, probably some variation of differential equality of access offers the most equitable solution. Differential equality need not entail a complex system for rating parties or candidates according to the size of the vote, membership, or petition. It could simply state that major candidates are equal to major candidates, that minor candidates are equal to minor candidates, and that the two are not equal to each other. If a group grows or at the outset looks significant, it can jump to major status. Of course, definitions of categories of candidacy would have to be tight, and in the prenomination period, “leading candidates” would have to be defined.

4. *A Differential Equality of Access Proposal*

A comprehensive proposal applying differential equality of access to presidential nomination and general election campaigns has been formulated by Professor Roscoe L. Barrow.²⁶ His proposal classifies candidates for president and vice president as major, minor, and evolving political candidates. Major candidates are those who seek the nomination or are the nominees of parties which polled at least three per cent of the popular vote in the last presidential election or who are supported by petitions signed by qualified electors numbering at least one and a half per cent of that popular vote. Minor candidates must be either qualified candidates for nomination or, as nominees, qualified in at least three states. They must either be associated with a party which received one per cent of the popular vote in the past presidential election or be supported by petitions signed by qualified electors numbering at least one half of one per cent of that popular vote. Candidates who do not qualify as major or minor are called evolving candidates.

Under this proposal, in each of the eight weeks preceding election day, free prime time would be granted by every network and station to presidential candidates. Each major candidate would get one hour; each minor candidate would get one half hour; and each evolving candidate would get none. The presidential candidate, not the party, would receive the time and he would be able to share the time with his vice presidential candidate as he wished. The networks and stations would be able to deduct from their taxable income one half of the revenue lost as a result of granting the free time.

Beyond the minimum free time, networks or licensees would be encouraged to grant additional free and/or commercial time to candidates for nomination or election to the offices of president and vice president. The broadcasters would be permitted to vary the amount of time granted to opposing candidates for the same office according to this formula: if time is granted to a major candidate, the station or network granting the time would have to grant equal time to all other major candidates and one-half time to all minor candidates, but the broadcaster would not be required to grant any time to evolving candidates; if time is granted to a minor candidate, the station or network would have to grant equal time to other minor candidates and half time to major candidates, but would not be required to provide time for evolving candidates; if the time is granted to evolving candidates, the station or network would not be required to grant any time to minor or major candidates.

Under the Barrow proposal, any candidate denied equal opportunities within the time variables would be granted a cause of action in federal district court. The

²⁶ Barrow, *The Equal Opportunities and Fairness Doctrines in Broadcasting: Pillars in the Forum of Democracy*, 37 U. CIN. L. REV. 447 (1968). See also SPECIAL HOUSE SUBCOMM. ON INVESTIGATIONS, HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, CONCLUSIONS AND RECOMMENDATIONS ON THE FAIRNESS DOCTRINE AND RELATED ISSUES, H.R. REP. No. 91-257, 91st Cong., 1st Sess. 44-49 (1969).

proposal would be administered by the FCC. In addition to court actions, enforcement would be possible through the licensing process. Barrow suggests that networks could be controlled by withholding licenses from stations associated with networks which do not comply with the regulations. The proposal could be extended to state and even local contests by suitably redefining major and minor candidates and appropriately altering the program requirements.

Barrow's proposals attack a variety of shortcomings in a reasonable manner. The formula for classifying candidates is simple and well thought out. Free time would be scheduled to spread over the entire election period, and all major and minor candidates would appear on television during each of the eight weeks preceding election. Incentives encourage stations to grant (or at least sell) time in addition to that required. Although awards in cases where discrimination is charged and proved would be small, it is important to provide that such cases at least be actionable.

One flaw in the Barrow proposal might be his treatment of evolving candidates. They could conceivably get no time during the campaign. But at the same time, Barrow does provide that stations can give these candidates time without incurring any obligations to any other candidates. A station could broadcast Eldridge Cleaver without having to offer time to everyone else, and that is a positive advance that even the Commission proposals do not make.

IV

THE FAIRNESS DOCTRINE

The issue of "equal time" has recently shared attention with the fairness doctrine, a doctrine which would have to fill many of the gaps in the existing proposals. The Supreme Court, in a decision in two cases announced on June 9, 1969,²⁷ upheld FCC regulations requiring stations to take the initiative in giving free time to any individual or group whose honesty, character, or integrity had been attacked. The Court declared that the free speech right of viewers and listeners, not the rights of the broadcasters, is paramount and reiterated the argument that scarcity of broadcast frequencies places broadcasters under different obligations than publishers of printed communications.

The rules at issue in these cases were regulations adopted in 1967 by the FCC to specify broadcasting obligations under the nebulous "fairness doctrine."²⁸ The rules require stations carrying personal attacks to send the person or groups attacked a script or tape or an accurate summary of the attack, notification of the time of the broadcast, and an offer of free time to reply. The same requirements apply in connection with the broadcasting of editorials. The rules do not apply to regularly scheduled news programs or commentaries contained within such programs, on-the-spot news cover-

²⁷ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

²⁸ 47 C.F.R. §§ 73.123, 73.300, 73.598, 73.679 (1969) (all identical).

age, or personal attacks made by political candidates during a campaign. Situations exempt from the specific rules are not exempt from general application of the fairness doctrine. The Court, in upholding the concept of fairness and the specific rules, noted that the first amendment permits the FCC to go still further. The opinion by Justice White said the amendment does not prohibit the government "from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which would otherwise, by necessity, be barred from the airwaves."²⁹

Directly applicable to political broadcasting are the Court's findings that it is the rights of viewers and listeners, not of broadcasters, that are paramount and the finding that since there are not enough airwaves for everyone, "it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish."³⁰ These statements would seem to permit some differential in time made available to various candidates while at the same time requiring some standard of equal opportunity.

V

THE MEDIA AND THE POLITICS OF CONFRONTATION

Broadcasters like covering confrontations—they like action and drama. Broadcasters earn prestige and good will by covering the news with vivid film clips. Broadcasters like covering demonstrators protesting authority. All these factors affect not only the electoral half of American political communication; they also affect the political action half.

Consciously or not, the disadvantaged and the young seem to have perceived the power of the media and devised strategies to exploit that power.³¹ Through protests, demonstrations, and violence, these groups have gained the attention—without payment—that dollars buy for politicians. Our democratic system guarantees free speech, but effective speech, speech which makes those in power listen and act, can be expensive. The wealthy or the powerful have access to the media through payment or through press agency; the alienated, with lively imaginations, find they too can have access by taking to the streets. When the activities of dissent are reported by the news media, the content and the context of the protest are transmitted economically. The payoff may well be much greater if one gathers twenty-five people on a street corner to protest than if one works through established institutions and gets twenty-five signatures on a petition that receives little public or official attention. The exposure afforded to relatively inexpensive demonstrations

²⁹ 395 U.S. at 389.

³⁰ 395 U.S. at 388.

³¹ For an interesting treatment of this topic, see Lipsky, *Protest as a Political Resource*, 62 AM. POL. SCI. REV. 1144 (1968). Also suggestive is Horowitz, *The Struggle is the Message*, THE CENTER MAGAZINE, May 1969, at 37.

would be priced far outside the resources of the demonstrators were it paid for in the conventional way.

The ability of radio and television to bring the protest directly and intimately to the viewer has increased the opportunity for protestors to use media to mobilize sympathetic groups or the general public. The communications media, however, may filter the message—sometimes distorting or exaggerating, sometimes producing undesired backlash effects. The demonstrators have come to recognize broadcasters as potential allies *or* opponents in their function of common carrier. The broadcasters, as tools of the Establishment, are, of course, in another context, natural enemies of the protesters. Occasionally the protesters, as at SDS conventions, attack media representatives. The protestors want to be recorded only on their own terms; they, like politicians, may want to control the format. Even refusing access to media carries with it a mystique and drama that captures attention.

The easy rise to prominence of an Eldridge Cleaver or a George Wallace, or indeed a Eugene McCarthy, also has important implications in terms of treatment of minor parties or dissenting candidates over broadcast facilities. Apart from occasional discussion panel shows or open mike shows, there are no continuing electronic “soap boxes” or the equivalent of an underground press, either to let people let off steam or to give audience to potentially important ideas or emotions. Educational television has so far not met the need, and, in fact, some educational stations are prohibited from engaging in political broadcasting or even from airing controversial subjects. So positive therapeutic usages of broadcast facilities are very limited. This is why in political campaign season some minimal time for more ideas, especially ideas of dissent and protest, would seem imperative. A responsive democracy can hardly demand less.

Clem Whitaker, the first great modern political manager, used to advise his clients to “put on a fight, and, if you can’t do that, put on a show.”³² Campaigning and protesting are linked to entertainment: the candidates and the dissenters have to keep themselves before the public using whatever means they can if they are to exert influence and power. The politician, the protester, and the star all have to treat popularity as depreciable assets requiring exposure for growth, maintenance, and renewal. In a way, it used to be more difficult: television and radio are more effective as soap boxes for those who can capture them than newspapers and magazines. But in another way, it used to be easier: politics or protest at one time added excitement to otherwise dull and routine lives. But now with sports and entertainment and wars and international showdowns constantly on the screens in the living rooms of the public, the fight—or the show—has to be awfully good to even attract interest, much less to attract enthusiasm or political support.

³² PERRY, *supra* note 3, at 209.