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The Effects of Media-Based Campaigns on Candidate and Voter Behavior:
Implications for Judicial Elections

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Abstract

This comment addresses the reasons for the increased prominence of advertising in judicial elections and the likely consequences for candidates and voters. I attribute the importance of advertising to the insufficient “newsworthiness” of judicial races (from the perspective of media sources) and to the desire of campaign consultants to expand their client base.

Social scientific studies of the effects of advertising in non-judicial races suggest that exposure to advertising makes voters more familiar with the sponsoring candidate(s), and directs their attention to specific issues or topics which then become the principal yardsticks for evaluating the candidates. By running ads on crime, voters choose on the basis of the candidates’ credentials as crime fighters. But advertising also affects attitudes toward the political process. In particular, the spectacle of negative campaigns – in which candidates attack and demean their opposition – fosters political cynicism, thus reducing turnout.

In closing, I recommend the use of a modernized version of judicial election guides as a new form of candidate outreach. A multimedia CD, by allowing voters to see and hear the candidates in person, is more likely to engage voters than a bland pamphlet listing the candidates’ educational and professional credentials.

In “Television Ads in Judicial Campaigns,” Professor Anthony Champagne has made an important contribution to political science. His paper comprehensively documents the emergence of television advertising as a key ingredient in judicial elections. While traditionally, candidates for judicial positions largely avoided the glare of media attention, more recently would-be judges have begun to conduct campaigns that are strikingly similar to those of candidates for legislative or executive office. Thus, radio and television ads have become the order of the day. Interested observers may well ask what factors underlie the new reliance on this form of campaigning, and, equally important, what consequences will ensue for voters and for the judiciary?

This comment will address both questions from the perspective of a social scientist who has studied the strategies and effects of political advertising in a variety of electoral contexts. My own research has focused exclusively on elections for legislative and executive office. The thoughts offered here are essentially extrapolations drawn from a series of empirically based studies of these conventional types of advertising campaigns.

Why Advertising Now?

There are several possible explanations for the increasing importance of television advertising in judicial elections. The first and most basic is that, like candidates for any other elective office, judges have to make their case to voters. Thus, a candidate has to acquire both name recognition and political acceptability. “Free” coverage in the form of news reports is generally unavailable to judicial candidates. Although the press occasionally feels obliged to report on civic affairs, the only beneficiaries of news coverage tend to be candidates contesting “high profile” elections. Virtually from necessity, therefore, judicial candidates must gravitate to the forum of paid-for advertising. This situation is particularly unfortunate and problematic

for challengers, since advertising is perhaps their only available strategy for overcoming the huge incumbency advantage in judicial elections, with which many of you may be quite familiar (Hall, 2001).¹

A second factor that may account for increasing advertising efforts by judicial candidates is the expansion of the industry of political consulting. As elections have become increasingly “professionalized” across the board, the focus of campaign managers has been on the adroit use and manipulation of the media -- through free coverage, where possible, and through paid advertising in abundance.² One can reasonably assume that challengers in judicial elections have special reasons to seek out this type of consultation, and incumbents must then respond in kind. We can anticipate that judicial elections are only going to become more “sophisticated” in terms of this spiral of advertising and fund raising.

Voter Behavior in Low Information Elections

How might the use of campaign advertising affect the outcome of judicial elections? Before I address the possible effects of advertising on voter behavior, it is important to acknowledge that these elections are typical of what political scientists call “low-information” elections, meaning elections for offices (or concerning propositions) about which the public is relatively uninformed.

What is especially interesting about these elections is that for the most part voters *do* make choices. (To some degree it is true that voters simply “opt out” by failing to cast a vote on low-information races and propositions; this phenomenon is known in our trade as “ballot roll-

¹ Based on her compilation of all state supreme court elections between 1980 and 1994, Hall reports that the probability of an incumbent judge being challenged is equivalent to a coin flip. That is, incumbents were challenged in only 52 percent of all cases.

² In fact, a common ploy used by consultants is to use their advertisements as the “bait” with which to attract the attention of reporters. A particularly hard-hitting attack on the opponent is generally worth a news report or two, thus gaining the candidate additional “free” exposure.

off.”) Many more, however, “make do” with what little information they have. And so, for persons interested in judicial elections, it should be paramount to try to understand how and why voters choose between candidates when they know very little about the “substantive” credentials that would seem most relevant to the candidates themselves.

The evidence is overwhelming that in the case of partisan elections, the answer for most voters is simple: voters rely on their party affiliations on the assumption that the candidate of their party is more responsive to their preferences. Contrary to the conventional wisdom, party voting is alive and well in the United States (Bartels, 2000).

Nonpartisan elections provide a greater challenge. When voters are denied information about the party affiliation of judicial candidates, one might expect that the information problem would become overwhelming. Not so in practice, however. As social psychologists have clearly demonstrated, human judgment is remarkably resilient and resourceful. One aspect or technique of judgment is the ability to “satisfice” – to reach the best possible outcome *given the available resources*. (“Satisficing” is often contrasted with “optimizing,” which assumes decision-making in a context of complete information.) Thus, when denied partisan cues, as in the case of California referenda elections or non-partisan judicial contests, voters fall back on relevant, low cost substitutes. These might include endorsements by well-known public figures, or voters’ beliefs about the groups supporting and opposing the measure or candidate.

As an example, in California the insurance industry sponsored a series of initiatives to “reform” automobile insurance. While it is doubtful that the voters had examined the texts of the proposed statutory changes, nevertheless, they managed to reject them decisively. Research demonstrated that the car-driving public perceived the industry’s interests as contrary to theirs. All they had to know was who sponsored the proposal (Lupia, 1994).

In the case of non-partisan judicial elections, voters may overcome their lack of information about the candidates' experience or professional/legal credentials by relying on name recognition, -- supporting the candidate whose name is more familiar -- or by taking the word of credible public figures who have endorsed particular candidates. In many cases, name recognition may provide incumbent candidates with an edge; in other cases, a challenger with the same name as a well-known athlete or entertainer may spell defeat for a distinguished incumbent. Alternatively, voters may resort to the logic of "performance-based" voting. Reasoning that judges are supposed to reduce the incidence of crime, voters may tend to hold incumbent judges responsible for the level of crime. In fact, research indicates that the margin of victory for incumbents is significantly eroded during times of rising crime and vice-versa (Hall, 2001).³

I cite the cases of sponsor credibility, party, name recognition and perceived performance as voting cues only to make the point that voters choose on a cost effective basis, making do with information that is easily available. All drivers know that insurance companies prefer higher premiums; one only needs to scan the ballot to identify the candidates' party affiliation, and the mere act of turning on the television or radio is sufficient to provide information about crime.

It is in the context of these voting cues or shortcuts that we must consider the role of judicial campaigns and campaign advertising in particular. As I know of no systematic evidence concerning the effects of television advertising in judicial campaigns per se, for some clues I turn to the evidence from national and statewide campaigns for non-judicial offices.

³ Hall's analysis shows that decreases in the actual crime rate predict support for the incumbent. The fact that crime is a salient issue in judicial elections seems known to those who design the advertisements. In Professor Champagne's data, criminal and civil justice themes appear in 80 percent of the sample of judicial ads.

What Effect Advertising?

There are two broad classes of effects of political advertising on voter attitudes (see Iyengar and Simon, 2000). The first has to do with beliefs about and attitudes toward the candidates. Advertising enables a candidate to convey information, set the political agenda, and ultimately, it is hoped, increase his or her share of the vote. The second class of effects is more systemic and relates to the electorate's general feelings about campaigns and the electoral process. In particular, there is evidence to suggest that negative campaigning increases voter cynicism, thus contributing to lower voter turnout.

Although political advertising is sometimes ridiculed as a serious form of campaign communication, there is evidence that exposure to advertising informs voters and makes them more aware of the candidates (Weaver and Drew, 1993; Brians and Wattenberg, 1996). Even when the message is delivered in the form of a thirty-second commercial, embellished with musical jingles and eye-catching visuals, viewers manage to acquire new and relevant information about the sponsoring candidate. In one well-known example, a candidate for U.S. Senate in California managed to recite his position on six different issues in the span of thirty seconds! One possible explanation for this beneficial effect of ads, it must be acknowledged, is that most viewers have very little prior information. Given this modest baseline, exposure to campaign advertising cannot help but educate voters.

In addition to providing voters with information about the candidates, an important goal of advertisers is to set the campaign agenda. As noted above, most voters are likely to rely on information that is available when it comes time for them to express their preference. It is well known that the issues or themes that are more frequently encountered during a campaign become more available and salient to voters. The reason for repeating the same ad (and Professor

Champagne's paper vividly documents the extent of repetitive advertising in judicial elections) is to make the subject matter of the message more prominent in the public agenda. His evidence shows 80 percent of the ads aired in judicial races in 2000 referred to criminal or civil justice issues. Given this pattern, and the fact that advertising was probably the only source of information about the judicial election for most voters, we can safely assume that crime was a prominent agenda item for judicial elections. When voters thought about their vote, they were quite likely considering the issue of crime.

Like candidates for other offices, it can be expected that judicial candidates will utilize advertising to "set" a political agenda based on issues on which they enjoy a comparative advantage. Thus, by running ads on the subject of crime, candidates accomplish two objectives: first, they make voters think about crime as a relevant issue. Second, they propel voters' beliefs about the two candidates as crime fighters into key determinants of vote choice. Crime becomes the principal yardstick for evaluating the candidates, thus benefiting the candidate who claims to be "tougher" on crime.⁴ Alternatively, the candidate who has greater appeal in the area of "family values" or other personal attributes can be expected to attempt to focus the campaign accordingly.

By setting the agenda and altering the foundations of vote choice, campaign advertising can indirectly bolster a candidate's support at the polls. But what can we say about the more immediate question of advertising's effects on voters' attitudes towards the sponsoring candidate? Does advertising, in and of itself, make a candidate more appealing or his opponent less appealing? The answer depends on the type of election.

⁴ This "priming" phenomenon (weighting issues in accordance with their perceived salience) has been documented in a series of experimental and non-experimental studies (for a recent review of priming research, see Miller and Krosnick, 2000).

In partisan elections, the effects of advertising on candidate preference are contingent on viewers' party affiliation. Ads aired by Democrats are highly persuasive among Democratic voters, less persuasive among non-partisans, and not at all persuasive among Republicans (see Ansolabehere and Iyengar, 1995). In the context of partisan judicial elections, accordingly, we would expect that campaign advertising would polarize the electorate by party. In non-partisan elections, where to be recognized is to be liked, we would expect advertising to produce a bigger swing in electoral fortunes.

In addition to affecting voter choice, campaigns also affect the predispositions underlying the decision to vote. For many years, it was taken for granted that getting out the vote was the *sine qua non* of effective campaigns. But campaign managers are well aware that it is often easier to dissuade people from voting than to convert them from the ranks of the opposition. Hence it has become a standard strategy to use negative advertising with the specific intent of depressing turnout among that segment of the population expected to support the opponent. Of course, it is axiomatic that when attacked, candidates must respond in kind, and the initial attack ad spawns a negative campaign which fosters cynical attitudes about the candidates and the political process, thus lowering turnout. Carefully controlled experimental studies demonstrate that exposure to negative advertising makes voters less likely to believe in the value of elections and more likely to stay home (Ansolabehere and Iyengar, 1995; Houston, Doan, and Roskos-Ewoldsen, 1999).

In summary, advertising enables candidates to become better known, to focus attention on particular issues, and, in many cases, to cast aspersions on the opponent's candidacy. The spiral of negative ads tends to diminish the public's already weak interest in voting.

Policy Implications

I do not have the space in this comment to address the many important implications of the modern trend toward media-based judicial elections. What I can offer is the prediction that the use of negative campaign tactics in judicial races will spread. Tactics that “work” for consultants in non-judicial campaigns will, inevitably, be put to use in judicial races. Professor Champagne’s evidence demonstrates that third party advertisers, a major force in judicial elections, have especially strong incentives to “go negative.” Since these groups are immune to official oversight or sanction, one anticipates that the “attack-rebuttal-counter-attack” syndrome will characterize increasing numbers of judicial races.

The spread of negative campaigning in judicial races is likely to have adverse consequences for the court system. The motives of judicial candidates will be cast into doubt, and public esteem for the judiciary will suffer. Not only will candidates for judicial office be equated with ordinary politicians, but the impartiality, independence and professionalism of the judiciary will also be called into question. Large-scale advertising in state judicial elections will further politicize state courts in the eyes of the public.

Possible Remedies

If past experience is a guide, we may expect no relief from the media. Despite a chorus of calls for “free” airtime for candidates, television and radio stations have been reluctant to oblige. There is simply too much money at stake. Attempts to rely on news organizations as referees or arbitrators of judicial campaigns are, unfortunately, likely to prove counterproductive. In recent years, news organizations have taken to running “adwatch” reports in which particular advertisements are subjected to critical scrutiny. One wonders about their efficacy in judicial campaigns. Available evidence indicates that when the news media gets into the fray, the swirl

of charges and countercharges is only amplified, and voters become still more cynical and withdrawn (see Ansolabehere and Iyengar, 1995 for evidence on this point). Thus, even if the media were to take up specific issues (e.g. “Did Candidate X really rule in favor of “drug pushers,” as alleged by Candidate Y?”), I do not see the news media as part of the solution.

I am also pessimistic about the efficacy of “voluntary restraint” as a method of toning down campaigns. The problem is lack of enforcement. Candidates may claim to abide by the prescribed code of conduct, but their surrogates are free to do as they please. In general candidates are self-interested and rational actors; they pursue winning strategies, not the civic good.

Rather than increased media coverage of judicial elections or promulgation of voluntary canons of campaign conduct, the most promising route to campaign reform may be one which would bypass the media entirely by allowing judicial candidates to communicate directly with the electorate. In a few states including California, the Secretary of State publishes a “judicial guide” which is sent (along with the more comprehensive “voting guide”) to every household with a registered voter. The official guide provides background information on judicial candidates including their educational accomplishments, legal and judicial experience, professional affiliations, etc. Given the relatively low level of interest in civic affairs, it is likely that very few voters use these guides. By enlivening their content and presentation, technology offers the possibility of greater public exposure. A multimedia CD, for example, allows voters the opportunity to hear from the candidates “in person” either individually, in the form of prepared statements, or jointly, in the form of debates. The CD also provides the user with the freedom to select material that is relevant or interesting. It is both simple and inexpensive to produce a CD containing accessible, attention-getting, and relevant information about every

judicial election in the state. By presenting the information in a visually appealing and eye-catching manner, electronic voter guides have the potential to broaden the audience for judicial candidates.⁵ In states lacking official guides, nonpartisan organizations (such as the League of Women Voters or the state bar association) could be asked to sponsor a similar effort, thus lending credibility to the information.

My enthusiasm for a “high tech” approach to voter information is based on more than mere speculation. During the 2000 presidential election, Stanford University, with the full cooperation of the Bush and Gore campaigns, produced a multimedia CD containing the speeches, televised advertisements and debates, and platforms of the two major candidates. The CDs were mailed to a representative sample of adult voters two weeks before the election. Nearly one-half of them actually used the CD! Subsequent research (see Iyengar, Jackman, Hahn and Prior, 2001) indicated that voters who used the CD were significantly more likely to take an interest in the campaign and vote. Bypassing the media is beneficial to voters and candidates alike.

Conclusion

If past experience in non-judicial elections is a guide, the use of advertising in judicial campaigns will only increase. Negative advertising is an important ingredient of advertising strategy. A likely byproduct of the spectacle of judicial candidates and their surrogates hurling charges and countercharges at each other is diminished public esteem for the candidates, the selection process and for the judiciary.

⁵ The CD approach has many advantages over the Internet. Despite their profusion, political websites have attracted relatively small audiences. One of the primary problems has been that political content on the web is far less appealing than non-political content. In addition, the multimedia content offered by candidate websites requires a level of technology (e.g. high speed data transmission capacity) unavailable to most voters.

How should society respond? Regulating political speech is a non-starter. Depending on the news media and campaign consultants to forego their private interests in favor of the public good is unrealistic. The more appropriate remedy is to liberate both candidates and voters from these interests. Modern information technology allows judicial candidates to deliver vast amounts of information to a rapidly growing segment of the electorate, free of economic or strategic constraints. For their part, voters are liberated from editorial and other gatekeepers; rather than waiting passively, and most likely in vain, for news reports or advertisements to provide coverage of relevant issues, voters can initiate the queries themselves to obtain information that is personally meaningful. Thus, voter autonomy, the breadth of available information, and candidate control over their message are all realized. In the long run, direct campaigning may contribute to the collective good: increasing the number of people who feel good about the process by which they select judges augurs well for the health of the judiciary.

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