

Supreme Court Coverage: Using *Kelo* and *Citizens United* to Measure Media Bias

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I. INTRODUCTION

Much research has been conducted to quantify the overall level of biased coverage by media outlets. However, little has been done to specifically investigate how biases may affect coverage of Supreme Court decisions. Salience studies have shown that media outlets give different amounts of coverage to Supreme Court decisions based on whether the decisions are favored by liberals or conservatives. For example, the front page of the *New York Times* covers 28% of Supreme Court decisions decided by the liberal Justices, but only 19% of decisions decided by the conservative Justices.³ However, these Supreme Court salience studies reveal only the *frequency* of coverage. Coverage frequency does not necessarily correspond to bias. There could be a number of benign explanations for the 28% versus 19% disparity. Perhaps the issues in the liberal decisions were more newsworthy. Perhaps the liberal decisions were covered more critically than the conservative cases. While case salience studies provide valuable information, without accounting for these variables they do little to address bias. It is possible that these *New York Times* front page findings are consistent with neutral Supreme Court coverage or even with coverage biased in favor of a conservative ideology. Salience studies simply do not provide enough evidence to say either way.

In our research we examined the *New York Times*' coverage of two unpopular twenty-first century Supreme Court decisions (one issued by conservative Justices, the other by liberal Justices) to determine if there are indicators of bias in reporting about Supreme Court decisions. For each case, we calculated the percentage of articles discussing the case that contain explicit mentions of the ideological split, thereby creating an objective standard to expose potential latent biases in reporting about the Supreme Court. To confirm the results, we applied the standard to reporting

³ Isaac Unah & Ange-Marie Hancock, *U.S. Supreme Court Decision Making, Case Salience, and the Attitudinal Model*, 28 L. POL'Y 295, 304 (2006).

from other media outlets. While the separate topics of media bias and Supreme Court case salience have been extensively covered elsewhere, our analysis will greatly benefit those interested specifically in reportage of Supreme Court decisions. We conclude our report with a discussion of how biased reporting on the judiciary can be more detrimental to society than biased reporting on the executive and legislative branches.

II. BACKGROUND

Two of the most widely unpopular Supreme Court decisions this century are *Kelo v. City of New London*⁴ in 2005, and *Citizens United v. Federal Election Commission*⁵ in 2010. In *Kelo*, the Court held that eminent domain could be used to force the transfer of land from one private owner to another as part of an economic redevelopment plan. The “public use” requirement of the Fifth Amendment’s takings clause would be satisfied, according to the Court, by the general benefits that accrue to the public from economic growth.

The *Citizens United* decision held that, under the First Amendment, restrictions on independent electioneering expenditures⁶ by corporations and labor unions are unconstitutional.

Both of these decisions were the result of five-to-four splits along ideological lines. Liberal Justices Stevens, Souter, Ginsburg, and Breyer were in the majority in deciding *Kelo*.⁷ The opposite is true of *Citizens United*: conservative Justices Roberts, Scalia, Alito, and Thomas were

⁴ 545 U.S. 469 (2005).

⁵ 558 U.S. 310 (2010).

⁶ An independent expenditure is an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party or its agents.

¹¹ CFR 100.16(a).

⁷ Although there exist complex nuances in categorizing Supreme Court Justices by political ideology, this is the standard grouping.

in the majority. In both cases, Justice Kennedy, commonly referred to as the “swing Justice”, sided with the majority.

Both decisions are widely unpopular. It was reported in the *New York Times* that “[f]ew recent Supreme Court opinions have aroused as much public outrage as *Kelo v. City of New London*.”⁸ Forty-four states responded to widespread bipartisan disagreement with *Kelo* by enacting some form of eminent domain reform.⁹ Gallup polls taken before and after *Kelo* showed a precipitous drop in the Supreme Court’s approval rating.¹⁰ The *Citizens United* decision is also unpopular with both Republicans and Democrats.¹¹ In a *Time* magazine Supreme Court special edition, legal experts were asked to name the worst Supreme Court decision since 1960. The second most common answer was *Citizens United*.¹² As with *Kelo*, Gallup polls taken before and after *Citizens United* showed a substantial drop in the Supreme Court’s approval rating.¹³

An additional Gallup poll further exposes the bipartisan nature of public disapproval of these two cases. The Gallup poll asked individuals, “In general, do you think the current Supreme Court is too liberal, too conservative or just about right?” It would be expected that after issuance of a liberal-leaning decision unpopular with only conservatives, the number of “too liberal”

⁸ Terry Pristin, *Eminent Domain Revisited: A Minnesota Case*, N.Y. TIMES, Oct. 5, 2005, at C9 (italics added).

⁹ Collin Levy, The Weekend Interview, *Litigating for Liberty*, WALL ST. J., Jan. 7, 2012, at A13 (“Since *Kelo*, 44 states have strengthened their laws protecting property rights from eminent domain and *Kelo* has become shorthand for insensitive, overreaching government not respecting the rights of ordinary people.”).

¹⁰ The most recent Supreme Court Gallup poll before *Kelo* was conducted September 13–15, 2004. After the June 23, 2005 decision, another Gallup poll was taken June 24–26, 2005. The Supreme Court approval rating went from 51% to 42% (42% is tied for the lowest approval rating since the modern question began in 2000). The disapproval rating before and after *Kelo* went from 39% to 48%. Gallup News, *Supreme Court*, GALLUP, <http://news.gallup.com/poll/4732/supreme-court.aspx>.

¹¹ Dan Eggen, *Poll: Large Majority Opposes Supreme Court’s Decision on Campaign Financing*, WASHINGTON POST (Feb. 17, 2010, 4:38 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/17/AR2010021701151.html?sid=ST2010021702073> (Washington Post–ABC News poll shows 85% of Democrats and 76% of Republicans disagree with the decision).

¹² Andrea Sachs, *The Worst Supreme Court Decisions Since 1960*, TIME (Oct. 6, 2015), <http://time.com/4056051/worst-supreme-court-decisions/>. The most common answer was *Bush v. Gore*. *Id.*

¹³ The most recent Gallup Supreme Court polls before and after *Citizens United* were August 31–September 2, 2009 and September 13–15, 2010. From the former to the latter, the Supreme Court approval rating went from 61% to 51%, and the disapproval rating went from 28% to 39%. Gallup News, *supra* note 10.

responses would increase, and—conversely—after issuance of a conservative-leaning decision unpopular with only liberals, the number of “too conservative” responses would increase. However, after *Kelo* (liberal Justices in the majority), the number of “too liberal” responses did *not* increase (in fact, it decreased from 28% to 25%), and after *Citizens United* (conservative justices in the majority), the number of “too conservative” responses also did *not* increase (it stayed constant at 19%).

The lack of shift in perceptions after the decisions may be reflective of a populace that have limited understanding of the cases and the associated ramifications. Regardless, given the expectation for unbiased reporting of the judiciary there is merit for continuing to explore reports of Supreme Court decisions with respect to case decisions and news source. The potential for news outlets to influence public perceptions of the judiciary is substantial; thus, there is an ongoing need for documenting biased Supreme Court reporting.

III. METHODOLOGY

A unique opportunity to explore potential media bias in reporting about the Supreme Court is presented by the parallelism of *Kelo* and *Citizens United*—both decided by a five-to-four vote along ideological lines and both unpopular with both the left and the right, although the former was the decision of liberal Justices, and the latter of conservative justices.

The *New York Times* was selected as the primary media outlet to be tested for several reasons. In studies that aim to measure Supreme Court case salience, the *New York Times* has been touted as “the preeminent indicator . . . as well as perhaps the most decorated and influential paper in the country.”¹⁴ Also, the *New York Times* has more Supreme Court coverage than other

¹⁴ Todd A. Collins & Christopher A. Cooper, *Case Salience and Media Coverage of Supreme Court Decisions: Toward a New Measure*, 65 POL. RES. Q. 201, 399 (2012).

comparable newspapers, thus providing a larger sample size.¹⁵ Finally, evidence shows that the *New York Times* leans significantly further left than conservative outlets lean right;¹⁶ therefore, the *New York Times* may be more likely to reveal bias than its conservative counterparts.

The ProQuest newspapers database was searched for every mention of “Kelo” and “Citizens United” in the *New York Times* within the “news” category from the date of the respective Supreme Court opinion (June 23, 2005 for *Kelo* and January 21, 2010 for *Citizens United*) through November 1, 2017. We eliminated articles that mentioned the search words only in relation to something other than the Supreme Court case. We analyzed the remaining articles to determine if they explicitly mentioned the ideological split. We further eliminated articles that simply referred to how the Supreme Court’s decision might be more advantageous for one political party or the other. We developed our methodology based on our desire to maximize sample size, minimize bias, and maintain objectivity.¹⁷

An example of our process can be understood based on our decision to not include the article that included the following passage: “Justice Stevens . . . arguably the most liberal [J]ustice . . . wrote for the majority in the eminent domain case, *Kelo v. City of New London*”¹⁸ This statement does not make an ideological split clear and therefore did not meet our inclusion criteria.

¹⁵ From 1986 to 2004, the *New York Times* covered a higher percentage of Supreme Court decisions every year than the *Chicago Tribune* and the *Los Angeles Times*. For only one year in that eighteen year time period did the *Washington Post* cover more Supreme Court cases. Collins & Cooper, *supra* note 14, at 401.

¹⁶ Tim Groseclose & Jeffrey Milyo, *A Measure of Media Bias*, 120 Q.J. ECON., 1191, 1222 (2005) (“The *New York Times* is slightly more than twice as far from the center as [Fox News’] Special Report.”). The right-of-center *Washington Times* is also considerably closer to the center than the *New York Times*. *Id.*

¹⁷ Potential examples of bias from the *New York Times*’ coverage of *Kelo* and *Citizens United* include referring to *Citizens United* as removing independent campaign contribution limits for corporations (likely disproportionately benefiting Republican candidates) while neglecting to mention that the case extends the same benefits to labor unions (likely disproportionately benefiting Democratic candidates). While an analysis of this aspect of the *Citizens United* coverage would be objective, there would be legitimate alternative explanations for a discrepancy, such as corporations spending more than labor unions on influencing elections and therefore being more relevant to the discussion. As previously stated, and as is demonstrated by looking at alternatives to measuring media bias in Supreme Court coverage, the primary methodology implemented in this article effectively develops a good proxy for bias while maintaining objectivity.

¹⁸ Linda Greenhouse, *Court’s Term a Turn Back to the Center*, N.Y. TIMES, July 4, 2005, at A1 (italics added).

Another example of our process is our exclusion of the article that include the statement, “The landmark Supreme Court ruling in the Citizens United case this year that eased restrictions on corporate political spending has certainly benefited Republicans”¹⁹ Again, the passage does not explicitly state that there was an ideological split among the Justices.

Our presumption was that the *New York Times* would be more likely to mention who was in the majority of an unpopular Supreme Court decision when the conservative Justices were in the majority (*Citizens United*) rather than the liberal Justices (*Kelo*).

IV. RESULTS

The results of our analysis support our hypothesis. The *New York Times* mentioned the ideological split in the unpopular, liberal *Kelo* case 2.3% of the time and in the unpopular, conservative *Citizens United* case 5.5% of the time.²⁰ (Again, all articles that we analyzed were printed in the “news” sections of the newspaper, and did not include opinion or editorial columns.)

V. FURTHER RESEARCH

Next, we analyzed the conservative media outlet Fox News via foxnews.com, again using the *Kelo* and *Citizens United* decisions. Unsurprisingly, the analysis yielded results opposite to those we found in the *New York Times* analysis.²¹ Fox News mentioned the ideological split in the

¹⁹ Michael Luo & Jeff Zeleny, *Democrats Find Many Big Donors Cutting Support*, N.Y. TIMES, Sept. 29, 2010, at A1.

²⁰ We found a total of forty-three news articles in the *New York Times* about the *Kelo* case. Of those, one explicitly referred to the ideological split. We found a total of 330 articles about the *Citizens United* case. Of those, 18 explicitly referred to the ideological split.

²¹ The search term “Kelo” was entered into the “search” box at foxnews.com and every result was analyzed for references to the liberal justices being in the majority. Then, the search term “Citizens United” was entered and results analyzed. With *Citizens United*, because of the large number of results, the search was limited to the first year after the decision (January 21, 2010 through January 20, 2011). This still yielded almost twice as many *Citizens United* references to analyze as *Kelo* references.

unpopular, liberal *Kelo* decision 13.6% of the time while mentioning the ideological split in the unpopular, conservative *Citizens United* decision only 2.4% of the time.²²

To further strengthen our findings, we analyzed two additional cases, *District of Columbia v. Heller*²³ and *Kennedy v. Louisiana*,²⁴ which—like *Kelo* and *Citizens United*—are twenty-first century Supreme Court cases decided five-to-four along ideological lines. In *Heller*, the conservative majority held that the Second Amendment protects an individual’s right to bear arms for self-defense. The viewpoint was unpopular among the four liberal Justices and the readers of the *New York Times*.²⁵ In *Kennedy*, the liberal majority held that a state cannot execute someone convicted of child rape, regardless of the level of brutality. Barack Obama explicitly spoke out against the *Kennedy* decision in 2008.²⁶

²² We found a total of twenty-two articles at foxnews.com about the *Kelo* case. Of those, three explicitly referred to the ideological split. We found a total of forty-two articles about the *Citizens United* case. Of those, one explicitly referred to the ideological split.

²³ 554 U.S. 570 (2008).

²⁴ 554 U.S. 407 (2008).

²⁵ In December 2017, Quinnipiac University Poll found that 85% of registered Democrats support stricter gun laws in the United States. Press Release, Quinnipiac Poll, Americans Have Little Hope For World Peace in 2018, Quinnipiac University National Poll Finds; ‘Merry Christmas’ is Bogus Issue, Voters Say 4-1 (Dec. 20, 2017), <https://poll.qu.edu/national/release-detail?ReleaseID=2510> (data in question 44). A 2014 Pew Research survey found that, consistent with its coverage, the *New York Times*’ readers are more liberal than the general population. AMY MITCHELL, ET AL., PEW RES. CTR., POLITICAL POLARIZATION AND MEDIA HABITS: FROM FOX NEWS TO FACEBOOK, HOW LIBERALS AND CONSERVATIVES KEEP UP WITH POLITICS 9 (Oct. 21, 2014), <http://assets.pewresearch.org/wp-content/uploads/sites/13/2014/10/Political-Polarization-and-Media-Habits-FINAL-REPORT-7-27-15.pdf>. While only 38% of the respondents identified themselves as “left of center,” 65% of the *New York Times*’ readers did. *Id.* at 23. This placed its readers further to the left than consumers of the *Washington Post* and significantly further to the left than consumers of MSNBC, CNN, NBC, CBS, ABC, and *USA Today*.

In 2016, the *New York Times*’ public editor Liz Spayd wrote about her investigation into why the *Times* receives a “stream [of emails] into this office every day” from liberals who are troubled by what they perceive as coverage biased against the conservative point of view. Liz Spayd, *Why Readers See the Times as Liberal*, N.Y. TIMES, July 24, 2016, at SR9. Perhaps answering her own question without realizing it, Spayd went on to admit that the writers at the *Times* are “mostly liberal” and that the reader comment sections are a “giant liberal echo chamber.” *Id.* Given the demographics of *New York Times* writers and readers and the corresponding views of liberals about gun control, *Heller*—a case that expanded gun rights—while not necessarily a universally unpopular decision nationwide can be fairly identified as an unpopular decision for the *New York Times* and its readers, especially when considering that the *New York Times* published an op-ed explicitly advocating for a complete repeal of the Second Amendment. Bret Stephens, *Repeal the Second Amendment*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/opinion/guns-second-amendment-nra.html>.

²⁶ Senator Barack Obama, the presumptive Democratic nominee, said, “I think that the rape of a small child, 6 or 8 years old, is a heinous crime, and if a state makes a decision under narrow, limited, well-defined circumstances, that the death penalty is at least potentially applicable, that does not violate our Constitution.” He added that the Supreme Court should have set conditions for imposing the death penalty for the crime, “[b]ut it basically had a blanket

An analysis of every *New York Times*' mention of these two cases found the same disparity as with *Kelo* and *Citizens United*. The *New York Times* was more likely to mention the ideological divide when the conservatives were in the majority (*District of Columbia v. Heller*) than when the liberals were in the majority (*Kennedy v. Louisiana*).²⁷

VI. POTENTIAL CRITICISM

Some people may view biased coverage of the Supreme Court as being of little importance because the justices are appointed rather than elected and therefore not beholden to the public in any significant way. However, public opinion about a Supreme Court decision—well-informed or not—can cause backlash resulting in legislation to counteract the impact of the decision. Additionally, opinions about the Court and its decisions can play a role in the appointment process. One need only watch the Senate hearings on Supreme Court appointments to see that there is public opinion gamesmanship involved.

Public opinion can also affect the Supreme Court's decision-making. While the judicial branch is more insulated from public opinion than the executive and legislative branches—as the judicial branch was designed to be—the branch is not immune to the effects of public opinion. Former Justice Benjamin Cardozo explained, “[T]he great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by.”²⁸

prohibition, and I disagree with the decision.” Linda Greenhouse, *Justices Bar Death Penalty for the Rape of a Child*, N.Y. TIMES, June 26, 2008, at A1.

²⁷ We found a total of forty news articles in the *New York Times* about the *Heller* case. Of those, five explicitly referred to the ideological split. We found a total of sixteen articles about the *Kennedy* case. Of those, zero explicitly referred to the ideological split.

²⁸ BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 168 (1921).

Legal activists know that public opinion can affect Justices' decisions. For example, the legal team arguing for same-sex marriage in 2013 actively pursued a national public relations campaign to influence the Court's decision-making.²⁹

Much research has been conducted regarding how media coverage and public opinion influence Supreme Court Justices. As Casillas and colleagues argue, “[E]ven for *nonsalient* cases, repeatedly issuing judgments that deviate from the public's preferences risks attracting negative attention from the news media, the public, and other branches of government.”³⁰ Furthermore, Supreme Court Justices must sometimes consider the political pragmatism of their decisions. “With little formal institutional capability to enforce the Court's decisions and to compel the elected branches or the public to respect its judgments, [J]ustices must often act strategically in their opinion writing, adjusting to shifts in the public mood in order to ensure the efficacy of their decisions.”³¹

Simply put, ascension to the Supreme Court does not supernaturally bestow upon an individual the capacity to ignore political considerations, media coverage, and public opinion. Therefore, unbiased media coverage of the Supreme Court, which helps shape public opinion of the Court and its decisions, is of high importance.

Some people may be tempted to critique our research by suggesting a benign explanation for the discrepancy: Perhaps there is something inherent to the *Citizens United* case (and absent in the *Kelo* case) that naturally tends to make writers more likely to point out the ideological divide.

²⁹ See generally JO BECKER, FORCING THE SPRING: INSIDE THE FIGHT FOR MARRIAGE EQUALITY (2014).

³⁰ Christopher J. Casillas, Peter K. Enns & Patrick C. Wohlfarth, *How Public Opinion Constrains the U.S. Supreme Court*, 55 AM. J. POL. SCI. 74, 75 (2011) (emphasis in original).

³¹ *Id.* (citation omitted).

The critique is certainly true in the most controversial five-to-four Supreme Court decision of the twenty-first century, *Bush v. Gore*.³²

However, further investigation shows that such an assertion is likely to be inaccurate. A separate analysis of references to the five-to-four splits in *Kelo* and *Citizens United* (regardless of any references to the ideological divide) reveals that the *New York Times* mentioned that the *Kelo* case was a five-to-four decision 41% of the time, but did so regarding *Citizens United* only 13% of the time. It is highly suspect for a news outlet to find it necessary to point out the five-to-four split in *Kelo* (while disproportionately not mentioning the ideological divide), and, conversely, point out the ideological divide in *Citizens United* (while disproportionately not mentioning that it was 5–4).

With no neutral explanation for the discrepancy, our initial hypothesis of the disproportionate reporting appears to be justified. Supreme Court coverage in the *New York Times*, whether intentional or subconscious, is more likely to mention when an unpopular opinion was issued by a conservative majority and less likely to mention when an unpopular opinion was issued by the liberal majority.

Another possible criticism is that *Citizens United* and *Kelo* are not comparable because *Citizens United* is a worse decision than *Kelo*. However, which case is “worse” is highly subjective and, more importantly, irrelevant to our findings. Even if the “worse case” premise is granted, it does not diminish the bias that we have illuminated. Regardless of the relative severity of the two cases, the fact remains that both were unpopular decisions, and the *New York Times* pointed out when the conservative Justices were to blame for an unpopular decision more than when the liberal Justices were.

³² 531 U.S. 98 (2000). This is, in part, why we chose not to use *Bush v. Gore*. Furthermore, while controversial, *Bush v. Gore* is not unpopular with both conservatives and liberals, for obvious reasons.

Others may claim that even if the *New York Times*' Supreme Court coverage is biased to the left, the bias is not that problematic because there are other media outlets that provide coverage that is biased to the right. Therefore, the public's exposure to information about Supreme Court opinions is balanced if citizens consider reports from a diversity of news outlets. However, we contend that the judiciary coverage by news outlets is substantially less than the other two branches of the federal government, which suggests that people are not likely to be routinely confronted with opposing views on Supreme Court issues. So, although conservative-leaning reportage is available, readers of the *New York Times* will not often be exposed to it because it is unlikely they will actively seek out opposing views.³³ Furthermore, with the subtlety of the bias that is demonstrated in this article, it is unlikely that consumers of the *New York Times* would even be aware of the bias. Finally, it is difficult to claim that the *New York Times*' biased coverage is balanced out by that of conservative news outlets because the *New York Times* has been found to be more left-of-center than the *Washington Times*.³⁴ Therefore, the chances of balanced exposure to opposing bias is unlikely.

VII. CONCLUSION

Unbiased reporting on the Supreme Court is of high importance because the judiciary is the least understood branch of the United States government.³⁵ Fewer than half of Americans can

³³ See generally Barry A. Hollander, *Tuning Out or Tuning Elsewhere? Partisanship, Polarization, and Media Migration from 1998 to 2006*, 85 JOURNALISM & MASS COMM. Q. 23 (2008).

³⁴ Groseclose & Milyo, *supra* note 16.

³⁵ This is likely due, at least in part, to Supreme Court Justices' lifetime appointments, eliminating the need for interviews, debates, advertising campaigns, and other outreach that those in the executive and legislative branches have. This also coincides with far less media coverage of the judiciary. To illustrate, we performed searches for "Obama" and "John Roberts" (OR "Chief Justice") for 2015 in the *New York Times*. The "Obama" search yielded over seven times more results.

accurately name even one Supreme Court Justice.³⁶ Since the Justices rarely write op-ed pieces or engage in nationally televised interviews, it could be argued that it is even more important for media reports on the Court's opinions to be more unbiased than their coverage of the President or Congress. If prominent media outlets continue the process of presenting biased coverage of the Court, the public—which holds extremely limited knowledge of judiciary considerations—will develop similarly aligned biases. Since public opinion about Supreme Court decisions has the potential to affect both statutory enactments and common law developments, it would be preferable for citizens' opinions on the matter to be formed by accurate, objective reportage.

An in-depth analysis of potential solutions is beyond the scope of our report. However, we wonder about the professional development and other guidance that journalists receive with respect to avoiding the biased coverage we exposed in our research. It is of interest to note that the Society of Professional Journalists' Code of Ethics contains over 750 words,³⁷ but only a few of the passages could be interpreted as being applicable to unbiased reporting: "Recognize a special obligation to serve as watchdogs Avoid stereotyping. . . . Never deliberately distort facts or context Abide by the same high standards they expect of others."³⁸ These statements appear to be aimed at the media's responsibility to police the government (i.e., to be "watchdogs") and refrain from factual errors; they provide little direction for correcting, or even becoming aware of, the biases we found in our analysis. There is a need for ongoing research to determine the best practices news outlets should take to assure a balanced perspective when reporting on judiciary decisions.

³⁶ Joe Concha, *Survey: Only 43 Percent Can Name a Supreme Court Justice*, THE HILL (Mar. 20, 2017, 3:15 PM), <http://thehill.com/homenews/media/324834-survey-only-43-percent-can-name-a-supreme-court-justice>.

³⁷ *SPJ Code of Ethics*, SOCIETY OF PROFESSIONAL JOURNALISTS, <https://www.spj.org/ethicscode.asp> (last revised Sept. 6, 2014).

³⁸ *Id.*