

Media Errors in Coverage of Boulder High School:

Falsehoods, Distortions, and Omissions by Bill O'Reilly and "Caplis & Silverman"

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Introduction

By Jon Caldara, President, Independence Institute

This is not an easy report for us to release.

As I have said repeatedly, I agree with Bill O'Reilly that everyone should be outraged by the panel on sex, teens and drugs at Boulder High School. The panel was unbalanced and in direct violation of Boulder Valley School District policy. And parents and all concerned citizens should make their voices heard. But outrage is no excuse for O'Reilly and others broadcasting erroneous information that greatly misrepresents the story.

In some cases, quotes were taken out of context in order to sensationalize the story and some statements were just false including two of the following claims:

O'Reilly stated that all students were required to attend the panel. That is false. A few teachers—not all—brought their students to the panel, which was in direct violation of district policy. Those teachers have been reprimanded.

O'Reilly stated that the "same people" have been invited back next year. This is simply false.

What's more, the district responded. It has now changed the policy so every family has an opportunity—in advance—to opt out from any Conference on World Affairs panel.

The panel itself was in violation of district policy because it did not have a broad variety of views, for which the district has admitted error and apologized.

These are only some of O'Reilly's errors and omissions.

Even more troubling was O'Reilly's use of ambush journalism I would expect from the likes of Michael Moore, including having a reporter follow a school board member into her garage, cameras rolling, even after she requested he leave her private property.

The Caplis & Silverman coverage, while better, has still been far below their normal high standards.

Just as we have taken on the liberal media for their bias and sloppy reporting, we must do so with our friends on the right, or else we will lose credibility.

We have invited Bill O'Reilly and Caplis & Silverman to write a response to our Issue Paper, of whatever length they choose, which we will post on our website. Dan Caplis has already agreed to take advantage of our offer. We hope Bill O'Reilly will do the same. _

Executive Summary

This Issue Paper examines media coverage of a controversy involving a panel which was held at Boulder High on April 10, 2007. In particular, the Paper examines coverage by Bill O'Reilly, a national television and radio host on the Fox Network, and by the Caplis & Silverman Show, a weekday afternoon talk radio program in Denver.

- The presentation of the panel at Boulder High School was wrong for many reasons. A factually accurate approach to the panel could be a good starting point for a more comprehensive look at parental rights in the context of public school health education.
- Unfortunately, sensational media coverage has omitted critical facts, and has substantially misled the public.
- Audio clips or quotations from those clips have been used in a manner which falsifies some speakers' messages.
- O'Reilly employees have violated the criminal laws of the state of Colorado, perpetrating a felony home invasion by illegally entering and remaining in the attached home garage of a woman.
- In all respects, the O'Reilly coverage has been egregiously worse than the Caplis & Silverman coverage.
- O'Reilly's outrage is inconsistent with his own bad advice to middle and high school students: "As for me, I'm not going to tell you to avoid sex, because in the end you're going to do what you want anyway." His book *The O'Reilly Factor for Kids* recommends sex on the basis of "sincere affection."
- Among the falsehoods are:
 - Both shows claiming that a speaker told people not to use condoms when in fact he told them to always use condoms
 - Both shows claiming that a speaker said that 12-year-olds should have sex when in fact he said that there was never any good reason why a 12-year-old might do so.
 - O'Reilly's gross untruth that the speakers have been invited back to Boulder High School next year.
 - Both shows claiming that a speaker promoted teenage homosexual experimentation, when he actually described such experimentation as "a mistake" and "a bad situation."

Media analysis of the Boulder panel could have begun a public discussion of what place, if any, "safe sex" education should play in public schools, or whether public schools should even have panels or curricula on non-academic subjects such as sex, drugs, or alcohol. Unfortunately, much of the media coverage has been so false and so inflammatory (e.g., that 12-year-olds were encouraged to have sex without condoms) that it has impeded a constructive public dialogue.

The coverage appears to have been responsible for violent threats that have been directed at the Boulder High principal, at School Board members, and at school district employees.

It would be wonderful for the media to lead a public inquiry about the management failures in the school district that led to the presentation of a panel which so greatly violated the School Board's own official policies. Such an inquiry is hindered, not helped, by an atmosphere in which irresponsible media coverage leads to students attending school while the principal in the same building must receive police protection from violent criminals.

This Issue Paper does not allege that either Bill O'Reilly or Caplis & Silverman told listeners to perpetrate crimes. (A threat is itself a felony in Colorado.¹) However, the threats were a reasonably foreseeable consequence of O'Reilly's incendiary and recklessly false coverage.

Factual Background

Since 1948, the week-long Conference on World Affairs has been put annually by the University of Colorado at Boulder.² The Conference features dozens of speakers and numerous panels, debates, and speeches. The University of Colorado is a world-class research university in the hard sciences, and also has many excellent scholars in the humanities and social sciences.

The University of Colorado is adjacent to Boulder High School.³ For the last ten years, several Conference on World Affairs panels have been held at Boulder High. The selection of speakers and panels to invite to Boulder High is conducted by students as an extracurricular activity by Boulder High students, under the guidance of a faculty advisor.

¹ Colo. Rev. Stats. 18-3-306: "Any person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4 felony."

The First Amendment prohibits punishment for mere political hyperbole, but offers no protection for "true threats." To be a true threat, it is not necessary that the speaker intended to carry out the threat.

"True threats" encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.... The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats "protect[s] individuals from the fear of violence" and "from the disruption that fear engenders," in addition to protecting people "from the possibility that the threatened violence will occur."

Virginia v. Black, 538 U.S. 343, 359-60 (2003); People v. Stanley, 2007 WL 1017674 (Colo. App., April 5, 2007)(existence of a "true threat" is based on how a reasonable victim of the threat would perceive it).

² For details, see <http://www.colorado.edu/cwa/>

³ Founded in 1875 as a preparatory school for the University of Colorado, BHS is the oldest high school in the state. The building's red flagstone and limestone are the same as those used at CU. Advanced BHS students take classes at CU for courses not available at BHS (such as third-semester calculus).

Panels are held in the Boulder High auditorium, and are open to the public.

On April 10, 2007, one of the panels was “STDs: Sex, Teens and Drugs.” At a School Board meeting of the Boulder Valley School District (BVSD) on May 8, a parent of one of the students who had attended the panel complained. The School Board conducted an investigation, and at the next meeting, announced several actions to address the parent’s concerns.

The story was originally reported by the Boulder *Daily Camera* on the morning after the first School Board meeting. Not long after, the Caplis & Silverman talk radio show, which is broadcast 3-6 P.M. in the Denver area on KHOW-AM radio, announced that it would make the controversy of the panel into a major continuing topic. C&S have hammered the issue almost every day since then.

Dan Caplis and Craig Silverman have appeared many times as guests on Bill O’Reilly’s television show. O’Reilly has covered the Boulder High issue several times, on radio and television, often with Caplis or Silverman as the sole guest.

Background of the Journalists

Bill O’Reilly won an Emmy in 1982 for his reporting for KMGH television in Denver, and another Emmy in 1980 as an anchor for WCBS television in New York City. Later, he became host of national tabloid gossip TV show, “Inside Edition.” Currently he hosts a radio program which is syndicated on 400 stations, and considered by some to be the second most-influential talk radio program. He also hosts a daily television program, “The O’Reilly Factor,” which is broadcast on the Fox News network every evening. The program played an important role in exposing problems with the American Red Cross and United Way disbursement of funds to 9/11 victims.⁴

Formerly a Roman Catholic seminary student, and later, the student body President of the University of Colorado, Dan Caplis is a plaintiff’s trial lawyer. Like Caplis, Craig Silverman is a graduate of the University of Colorado School of Law. Formerly the second-ranking lawyer in the Denver District Attorney’s office, Silverman is now in the private practice of law, handling criminal defense as well as civil cases. Since the 1990s, Silverman has been a frequent guest on national television, especially on cable television stories discussing crimes in Colorado.

For many years Caplis was a Saturday-morning talk radio host on KOA, Colorado’s largest radio station. In 1999-2000, Caplis played by far the leading role in the Colorado media in exposing the ineffective police tactics during the Columbine High School murders; while open phone lines indicated the students were being methodically killed in the school library, the police stood a few yards away, outside the building, under orders

⁴ See [http://en.wikipedia.org/wiki/Bill_O'Reilly_\(commentator\)](http://en.wikipedia.org/wiki/Bill_O'Reilly_(commentator)).

to protect their own safety. Before the killers entered the library, the students easily could have escaped through an outside door, but they obeyed a 911 operator's instructions to stay in the library because the police were coming.

Caplis's work likely played a part in the nationwide change in police tactics after Columbine; now the approach is to confront an "active shooter" immediately. It is not implausible to suggest that Caplis's reporting may have helped to save lives in subsequent school attacks.

In September 2004, "The Caplis and Silverman Show" premiered on weekday afternoons, on KHOW, a Denver sister station of KOA. In the opinions expressed on the show, Silverman could be described as a moderate-liberal Democrat, and Caplis as a religious conservative Republican.

In contrast to many talk radio hosts, Caplis and Silverman are almost always very polite and civil with their guests, even guests with whom they strongly disagree. Their politeness was on display on May 17, when they interviewed BVSD School Board President Helayne Jones and Superintendent George Garcia. Their respectful treatment of guests sets an ethical model which other talk show hosts would do well to emulate.⁵

The Caplis & Silverman Show played a major role in advancing the story on CU Ethnic Studies Professor Ward Churchill's advocacy of terrorism, false claims to be an American Indian, and academic fraud. While Churchill appeared on the show once, and thereafter refused to reappear, Churchill's lawyer David Lane has appeared on the show many times. The hosts' discussion with Lane are unfailingly civil, legally sophisticated, and exemplify the best potential of talk radio as a medium to advance public discussion of a controversial issue.

On the Saturday program and later on Caplis & Silverman, Dan Caplis often provided otherwise absent balance to the rest of the Colorado media regarding the (alleged yet never-proven) rape scandal involving the University of Colorado football team. He often brought forward important facts about the controversy which were ignored or underplayed by other media.⁶ In my *Rocky Mountain News* column on media issues, I wrote that "Caplis is a Colorado treasure."⁷

⁵ I have appeared twice on O'Reilly, including once on the Boulder High issue. I have appeared numerous times on the Caplis & Silverman show, and sometimes have been an in-studio guest for one or more hours on days when Caplis was not able to appear on the show. Our dialogues on the air have always reflected the typical Caplis & Silverman high standards of intellectual rigor, and agreeing to politely disagree when necessary.

⁶ When covering the CU football "scandal," Caplis never denied that his understanding of the issue was informed by his personal knowledge of the CU Athletic Department, including his knowledge of Athletic Director Dick Tharp, who had given Caplis his first job as a lawyer. Associated Press, "CU recruits led to believe purpose of party was sex," October 28, 2003 ("Caplis is a longtime friend of CU Athletic Director Dick Tharp, who gave Caplis his first law job. Even so, he said his opinion is objective and valid.") Based on personal knowledge, Caplis was well aware that the Athletic Department was not the den of iniquity which other media had been portraying. He then proceeded to document errors and omissions in media coverage of CU.

Like anyone who talks for several hours a day in public, with every word recorded, Caplis and Silverman sometimes make factual errors or misstatements. As a close follower and frequent listener of the show, I believe that their error rate is relatively low, and well within reasonable bounds in light of the particular challenges of the talk radio medium.

Unfortunately, the Caplis & Silverman coverage of the Boulder High School controversy has deviated very far from the show's normal standards. There have been numerous errors on important facts. The selective presentation of some material, particularly some of the audio segments, has distorted the panel discussion, and falsely attributed to speakers views which the speakers explicitly rejected.

O'Reilly's handling of the story has been even worse, as will be detailed below.

Boulder High School

Every year, *Newsweek* magazine ranks the top public high schools in the United States, based on criteria such as the number of students taking Advanced Placement college-level courses. (Boulder High is an AP Focus School). In 2007, Boulder High ranked 173 nationally, and was the third-best public high school in the state of Colorado. By the *Newsweek* academic ranking, Boulder High rates above 98.7% of public high schools in the United States.⁸ Boulder High has a very strong record in interscholastic academic competition, including winning the statewide Academic Decathlon for the last six years.

If one examines the Boulder Valley School District website, one will find that the District puts enormous efforts into health education. Starting with the District web page on anti-substance abuse education, you can find a wide panoply of programs, including peer

As I noted in a June 2 *Rocky Mountain News* column, I am a Boulder High parent. Like Caplis regarding the CU Athletic Department, I am concerned about false media portrayals of institution which I know to be good, and which is not at all the awful place falsely portrayed by O'Reilly.

⁷ David Kopel, "KOA's Dan Caplis a radio treasure," *Rocky Mountain News*, Feb. 14, 2004, <http://davekopel.com/Media/RMN/2004/KOAs-Dan-Caplis-a-Radio-Treasure.htm>. The "Colorado treasure" column also noted that Caplis "takes himself very seriously, and has a tendency toward self-righteousness."

⁸ "The Top of the Class: The complete list of the 1,300 top U.S. schools," *Newsweek*, <http://www.msnbc.msn.com/id/18757087/site/newsweek/>. The *Newsweek* ranking system, like the *U.S. News* ranking system for colleges and graduate schools, is imperfect. The metric for the number of students taking AP exams is not as useful an indicator of academic achievement as would be data which accounted for the scores achieved by the students taking those exams. See David Kopel, "Newsweek's bad streak hits home," *Rocky Mountain News*, May 21, 2005, <http://www.davekopel.com/Media/RMN/2005/Newsweek's-bad-streak-hits-home.htm>. However, the general problem with *Newsweek's* use of the AP metric would not appear to artificially raise Boulder High's ranking. Over 80% of Boulder High students who take an AP exam achieve a score of 3 or better on the 1-5 scale. Boulder Valley School District, *Fall 2006 Report on Boulder High School*, <http://www.bvsd.org/OurSchools/Annual%20Reports/HighBoulder.pdf>. Most college require a score of 3 or better on the AP exam in order to receive college credit, although some of the most elite schools require a 5.

education.⁹ The Boulder Valley School District, pursuant to state law, imposes mandatory health education in middle school and high school. The BVSD curriculum requires that students be taught that “abstinence is the only sure method of preventing pregnancy and sexually transmitted infections.”¹⁰

The mandatory health courses, as well as BVSD’s decision to invest additional resources in drug prevention programs, well beyond the mandates of state law, contradicts O’Reilly’s assertions that Boulder Valley School Board is heedless to or tolerant of teenage drug use.

The father of a conservative Christian family at Boulder High, whose children are doing third-world missionary work this summer, wrote:

What’s also of interest, and not covered by any media, is that much change has occurred at Boulder High this past year under Principal Bud Jenkins. Boulder High, once captive of the left, in the form of Student Worker,¹¹ has quietly been transformed into a place for more, if not yet all, kids. Once a mono-culture, ironically, Boulder High is well on its way to becoming “diverse” in the best sense of the term...The change has also, through faculty, manifested itself in the classroom, in the way faculty relate to and support one another, and in student attitudes and feelings about safety.¹²

Family Choice

Regarding education about sex and drugs (as well as alcohol and tobacco), some families believe in “say no to everything.” Of those families, some want to shield young people from any different message, and even to criminalize messages which are contrary to their personal philosophy.

- Some families who also believe in “always no” also believe that it is immoral or counterproductive to censor too much. They agree with the great English Protestant poet and free speech advocate John Milton: “I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees

⁹ <http://www.bvsd.org/SubstanceAbuse/default.aspx>

¹⁰ http://www.bvsd.org/C13/Curriculum/Documents/curric_SecondaryHealth.pdf. See also BVSD Policy IGAG, <http://www.bvsd.org/C4/Policies/PolicyI/IGAG.pdf> (“The Board and professional staff will continue to seek ways to educate students and school personnel of the District as to the dangers from illegal use of drugs and to support the majority of students who are resisting such use or other involvement.”)

This Issue Paper takes no position on the particular contents of the BVSD health curriculum, or, for that matter, on the propriety of such issues being state-mandated or of devoting a semester or more or classroom time to such issues.

¹¹ A far-left student group responsible for, among other things, taking over the school library to protest the results of the 2004 elections. The principal at the time (not Bud Jenkins) imposed no sanctions for the takeover.

¹² Personal communication with author.

her adversary . . .”¹³ Or as Bill O’Reilly put it, “Who do we suppose will be able to deal more constructively with the challenges of your time: people who have only experienced preaching to the converted, or people who have tested their understanding against the countervailing understandings of others?”¹⁴

- Some families agree with the approach espoused by the panelists: that many young people do completely abstain from sex and/or drugs, and the choices of those young people deserve respect and applause. For those young people who do not, however, they should at least engage in those activities in ways least likely to lead to the many harms that can result from teenage sex or drug use. This is quite a different message from the false picture that O’Reilly and C&S painted: of panelists urging twelve-year-olds to have homosexual sex without condoms.
- Some many families might take one approach on one issue, and a different approach on another, or take different approaches for different children, based on the parents’ own knowledge of the particular child.

For nearly a quarter century, the Independence Institute has been the Colorado’s leading voice for family choice. This has been especially true regarding education.¹⁵

We respect the right, and the responsibility, of families to make their own decisions in educational matters. We have opposed government coercion of family educational choices.

Compulsory attendance at the panel

Bill O’Reilly has claimed that every student at the panel was forced to attend. This is false.

At almost any CWA panel held at Boulder High, some students attended on their own, with the parental permission that is required for an excused absence from class.

Several classes were brought to the panel by teachers. This was inappropriate, and the School Board said so. The responsible employees were reprimanded.¹⁶ Superintendent George Garcia apologized, on behalf of the BVSD.¹⁷

¹³ John Milton, “Areopagitica: A speech of Mr John Milton for the liberty of unlicensed printing to the Parliament of England” (1644), http://www.dartmouth.edu/~milton/reading_room/areopagitica/

¹⁴ Bill O’Reilly & Charles Flowers, *The O’Reilly Factor for Kids: A Survival Guide for America’s Families* (Harper, 2005), p. 165 (quoting Yale dean Richard Brodhead).

¹⁵ The Open Enrollment is limited by the common-sense requirements than the other school must have space available, and that the family is responsible for transportation, since it would be inefficient and wasteful to operate school bus routes in an area where only one or a very few student are bound for a remote school.

The Independence Institute provides extensive resources to help families choose schools. See http://www.i2i.org/main/page.php?page_id=69. Soon, the Independence Institute will open a new website provided parents with a great deal of additional information, in both English and Spanish, to select schools.

Appropriately, the School Board announced that for all future Conference on World Affairs panels, parents would be notified in advance, with the opportunity to opt out.¹⁸ This fact has rarely been mentioned by O'Reilly and C&S.

Future Panels

O'Reilly has repeatedly told the world that the same speakers will be appearing at Boulder High next year.¹⁹ The statement is false. The CWA has not even invited speakers for next year, and Boulder High's process of selecting the panels for April 2008 will not begin until the Fall 2007 school year. Boulder High Principal Bud Jenkins has told students that the April 10 panelists will not be invited to return to Boulder High.²⁰

Intellectual Diversity on the CWA Panel

¹⁶ This Issue Paper does not take a position on the very narrow question of whether a verbal reprimand, which is what the BVSD imposed, was appropriate, or whether there should have been something put "on their permanent record" (in the words of many a high school discipline officer). The BVSD's statement noted that all the employees involved had solid prior records, and that the problem was caused primarily for inadequate supervision. *See* George F. García, "BVSD Superintendent's Report Regarding April 10, 2007 Conference on World Affairs Panel Held at Boulder High School," presented at the May 22, 2007 Board of Education meeting, <http://www.bvbsd.org/C2/DistNews/Documents/Superintendent%20Report%20Regarding%20CWA%20at%20Boulder%20High.pdf>.

¹⁷ Statement by Dr. George F. García, Superintendent: "April 10 2007 Colorado World Affairs Conference Panel at Boulder High School," BVSD News Release, May 17, 2007, <http://www.bvsdwatch.org/content/view/90/1/>

¹⁸ García, "Superintendent's Report," *supra*.

¹⁹ The O'Reilly Factor, May 29 ("The people who recommended drugs and unrestrained sex to the kids are being invited back to Boulder High School next year."); May 30 (Guest: "Have they been invited back -- ." O'Reilly: "Yes." Guest: "-- for next year?" O'Reilly: "They've been invi -- but it's gonna be an optional assembly. They're not gonna force the kids to go. But they've been invited back."), May 31 ("Folks have a right to be angry with these cowards, who, unbelievably, have invited the same loons back again to Boulder High next year... Is something going to happen to these three administrators who [are] actually inviting these people back again next year?")

On the June 1 C&S, Caplis defended O'Reilly from a critical caller by incorrectly stating that O'Reilly had only said that the Conference on World Affairs would be returning. Caplis also asserted that the untrue claim about re-invitations for 2008 was a minor part of O'Reilly's coverage. To the contrary, it was repeatedly used a climactic fact, proving not only that BHS was wrong, but that it was planning on repeating its wrong. You need only read the comments on the various Internet sites which have discussing the controversy to find how many people consider the alleged re-invitation to be a central fact in their understanding of the issue.

On June 5, C&S interviewed O'Reilly, and Silverman corrected O'Reilly's assertion that the panelists were returning to Boulder High.

²⁰ Boulder High student Mansur Gidfar, interview on Caplis & Silverman, June 1, 2007.

Perhaps O'Reilly's false statements were based on an incompetent reading of fact that Boulder High would not sever its connection with the Conference on World Affairs.

The April 10 CWA panel was not balanced. While the content of the panel has been grossly distorted by O'Reilly and C&S, the panelists were generally in agreement that—in cases where a student is not abstinent—it is reasonable to offer cautions about relatively safer ways to act. A better and more interesting panel would have included some other speakers who would have presented other views; the ensuing debate might have been intellectually engaging.

Upon investigation, the Boulder Valley School Board determined that the panel was in violation of official BVSD policy that controversial subjects must be taught with a “balanced presentation.”²¹ The Board stated that invitations for future CWA panels to speak at Boulder High would be carefully reviewed for compliance with the intellectual diversity policy.

The stricter enforcement of the intellectual diversity policy will significantly affect the make-up of panels for Boulder High to use. The CWA is part of the University of Colorado, although the vast majority of CWA panelists come from out of state. Even so, the CWA is a good reflection of the CU humanities and social science faculties, in that the spectrum of opinion runs from Left to Far Left. Like CU, the CWA does have a few, very heavily outnumbered, moderates and conservatives. And the CWA has sometimes given prominent speaking slots to moderates/conservatives.²²

The BVSD, including Boulder High, has a long way to go to fully implement the School Board's policy on intellectual diversity. Some teachers are excellent at providing balanced analysis of controversial subjects. But too often the classroom treatment of controversial topics such as global warming or income distribution does not present a broad variety of viewpoints.

The CWA panel may be one of many examples of systemic failure within the BVSD about the communication and enforcement of School Board policies. A good result from the controversy over the CWA panel would be a thorough self-examination by the BVSD about how to fully implement the intellectual diversity policy.

The Content of the Panel

Summary of key errors in coverage of the content:

- Sacre's message to always use condoms was falsely presented as urging students not to use condoms. (O'Reilly and C&S.)
- False claim that sexual intercourse for 12-year-olds was encouraged. (O'Reilly and C&S.)
- Claim that Sanho Tree said that same-sex experimentation is “natural” but omitting that he described such experimentation as “a mistake” and “a bad situation.” (O'Reilly and C&S.)

²¹ BVSD Policy INB, <http://www.bvdsd.org/C4/Policies/PolicyI/INB.pdf>.

²² Independence Institute personnel, including myself, were CWA panelists in some years in the 1990s.

- Omission of Joel Becker's retreat from his anti-abstinence comments. (O'Reilly and C&S.)
- Misleading presentation of Sanho Tree's warnings about drug use to make it seem that he was promoting drug use. (O'Reilly and C&S.)
- Factually incorrect claim that the panel was obviously off-track within five minutes. (C&S).
- Omission of student applause and cheers for pro-abstinence and anti-drug messages. (C&S).²³

A complete transcript of the panel is available on-line, as are complete audio files of the panel.²⁴ To read the transcript, or to listen to the complete audio, is to discover how often the remarks of panelists have been grossly distorted by ripping them out of context.²⁵ Other aspects of the panel have also been described in a misleading fashion.

To point out that the media have misrepresented, or omitted important additional context, about some of what the panel said is *not* to endorse any particular statement of any of the panelists. Sometimes, Caplis & Silverman have raised legitimate points about the panel, and have presented those points in an appropriate context, so that listeners can make an informed decision.²⁶

Panelist Joel Becker's disgraceful performance was replete with malicious denunciations of religious people. It is one thing for a speaker to say something like "I respectfully disagree with the views of some religious people for the following reasons..." Becker, however, went far beyond the polite expression of disagreement; he in effect promoted intolerance and bigotry with his repeated and categorical denunciations of religion. He set

²³ The June 12 broadcast of C&S represented a major change from previous programs. The topics of condoms, Becker's retreat, and the pro-abstinence cheers were all addressed accurately.

²⁴ See www.bvsdwatch.org. In this Issue Paper, I have made minor corrections in spelling and punctuation in the transcript.

²⁵ It is surprising that Mr. O'Reilly would be so aggressive in taking taped comments about sexual matters out of context, since he may have been a victim of similar decontextualization. In May 2005, he settled lawsuits involving Andrea Mackris, a former employee of his. While the terms of the settlement have been kept confidential, the *Washington Post* reported evidence that the settlement involved the payment of at least two million dollars to Ms. Mackris. In the lawsuit "Mackris said that in numerous phone conversations her boss suggested she buy a vibrator, boasted of having taught women to masturbate, discussed what kind of sex they should have together and launched into 'a vile and degrading monologue' after interviewing two porn stars on 'The O'Reilly Factor.'" "Fox believed Mackris had tape recordings of the long, highly detailed conversations alleged in the suit, but Morelli [her lawyer] never confirmed that, saying only that they had concrete evidence. O'Reilly and his attorney, Ronald Green, never denied that the Fox commentator had used such language, but said he never broke the law and questioned whether Mackris was truly offended or was taking words and phrases out of context." Pursuant to the terms of the settlement, Mr. O'Reilly was allowed to state that there was "no wrongdoing in the case whatsoever by anyone." Howard Kurtz, "Bill O'Reilly, Producer Settle Harassment Suit," *Washington Post*, October 29, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A7578-2004Oct28.htm>; Howard Kurtz, "O'Reilly, Accuser Air Their Cases," *Washington Post*, October 15, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A34312-2004Oct15.html>. Mr. O'Reilly's statement was consistent with his position that his recorded conversations about vibrators, masturbation, and other sexual topics were taken out of context.

²⁶ For example, C&S have accurately portrayed Joel Becker's words and tone in encouraging students to masturbate.

an awful example for students who should be learning how good citizens of a democracy can disagree with each other while still recognizing each other as sincere and honorable fellow citizens. Some other panelist remarks made the same error, although generally not with same venom as Becker.²⁷

Don't Use Condoms

Antonio Sacre is story-teller and an award-winning playwright from California. According to C&S, Sacre told the students not to use condoms; in support of this C&S have played an audio clip in which Sacre said that a condom “doesn’t feel as good,” and that condoms make him lose his erection.²⁸ O’Reilly has made similar charges.²⁹ The claims are wrong.

²⁷ In a thoughtful op-ed in the *Daily Camera*, Father Bill Breslin, of Boulder’s Sacred Heart of Jesus Catholic Church, accurately pointed out that the panel was engaged “in proselytism, an attempt to convert the younger generation into a system of values that are inimical to what we consider to be the wisdom of ages.” He asked that Boulder’s spirit of tolerance be broadened to include tolerance for the “minority view” who belong to “a culture that encourages such virtues as self-mastery, discipline, prudence, self-sacrifice, and concern for the common good.” Father Bill Breslin, “Why some of are greatly concerned,” *Daily Camera*, June 2, 2007. Father Breslin was not asking that contrary opinions be silenced in the public schools. But it is surely fair to require, in accordance with BVSD’s existing policy on controversial issues, that proselytizers of any sort not be given a panel in which *only* their views are represented. And besides, even proselytizers ought to be held to a higher standard of civility and tolerance than Becker exhibited.

²⁸ E.g., May 16, 3rd hour (twice); May 17, 1st hour (twice); May 17, 3rd hour; May 23, 2nd hour; May 23, 3rd hours May 24, 1st hour; June 1, 2nd hour.

Some examples of Caplis’s characterization of Sacre’s story:

May 16, 3d hour: “You won’t believe this, but we’re actually gonna’ play tape of one of these panelists telling kids the downsides of using condoms.” “these same panelists, who are pushing these kids to have sex, now talk about the downsides of condoms.” “**listen to what they say about condoms.** Now please don’t understand me I’m, uh, misunderstand me, pardon me, I’m not in any way endorsing what I view as this completely wrong, abusive, irresponsible **instruction that that these experts at Bolder High have given these kids.** I don’t in any way endorse that. I go on to make the follow up point that even after telling ‘em to have sex, they now talk about the downside of condoms. So, listen to what this one expert had to say about the downside of condoms.” “it doesn’t feel as good. Look at what, listen to what they’re doing to your children.” “**the experts go on to say ‘well look at the downsides of a condom’.**”

May 17, 1st hour: “And, uh, brother, interesting again, some research on these panelists turns up some very interesting facts, and we’ll get to that in a bit, uh, particularly about this gentleman, Mr. Antonio Sacre, and here’s what he had to tell the kids. Now keep in mind that, you know, the discussion of should sex ed classes include some instruction on birth control etc. is a separate discussion. What we’re talking about here is panelists the school brought in to tell kids to have sex and do drugs. **So after telling them to have sex and do drugs and, you know, mentioning all this other kind of sex they can have, and then this guy comes on board to tell these kids the downsides of condoms.**”

May 17, 3rd hour: “listen to what he tells kids about condoms after these panelists are telling them ‘do drugs, have sex’.”

May 23, 2nd hour: “Now, listen to what this guy says directly to these high school students. He has to just be a pervert. He has to, this is personal opinion, not a state of fact, my opinion, this guy’s gotta’ be perverted to some significant degree to stand in front of these young people and talk about his erections. And, and, can you imagine an administrator; no administrator stepped in and ended the panel when he said *this* to the kids? Now listen carefully, the sound isn’t real good, but, but, listen **to how he complains about what condoms do to his erection and his enjoyment of sex at the same time this panel’s telling kids to have sex and do drugs.** Cut 17, please.”

May 23, 3rd hour: “He comes in, then, and after they’ve told kids to have sex and, and, to have it in all these different ways, **here’s the advice of this panelist on the downside of condoms,** and imagine a growing

What O'Reilly and C&S have omitted is that the quote comes from Sacre, as an adult, explaining what he wishes he could have told his fifteen-year-old self. It is the fifteen-year-old (not the adult Sacre) who does not want to use condoms. The adult Sacre, speaking to the fifteen-year-old, presciently warns of the negative consequences of not using condoms: the terrifying worry that his girlfriend is pregnant when her period was late; a sexually transmitted disease and its painful treatment; and an abortion he would regret for the rest of his life.³⁰ Further, the adult Sacre tells his fifteen-year-old self that:

man talking to ninth, tenth, eleventh, twelfth graders like this in public, and the administrators just sit back and let it happen. Cut 17 please.” “As an administrator sitting in that auditorium, how could you not get up and walk out with the kids at that point. I mean, you’ve told the kids to have sex, experiment with all these different types of sex and ‘oh, by the way, at the same time do drugs’ **and then this guy gets up there and advises against condoms.** Now, the issue of whether condoms should be taught in schools, that’s a separate issue for a separate day, **but after just telling them to go out and do all these things to then discourage condoms, this is just gross irresponsibility.**”

June 1, 2nd hour: “...but after they have told the kids to do drugs and to have sex and to experiment with same sex and multiple partners then **here’s the instructions they’re given on condoms.**” “Listen to this cut as ok now they’ve told them have sex, do drugs, multiple partners, experiment with same sex, oh, condoms, you know, they can really interfere with your performance in sex.”

²⁹ E.g., “The O’Reilly Factor,” June 1. A compilation of some of the quotes used by O’Reilly, many out of context, is available at <http://www.billoreilly.com/blog?categoryID=2>

³⁰

Well, anyway, I’m the last person to listen to someone like me talk about anything, especially sex. **But there are some things I wish I could say to my teenage self now at my age. I wish I could somehow go back in time and speak to me now at my age back when I was 15,** but if (*singing:*) “I could turn back time, (*laughter from audience*) if I could find a way,” I’d talk to me as a young man and I’d say (*rapid “storytelling” voice:*), “Yo, Antonio, when Carla damn Rosio tells you she wants to kiss you, don’t ask her if you’re going to get stuck to her because you got braces...

And know this, most of your classmates, when they brag about sex, are lying. Those people that brag about having sex, if you need to talk about it with someone, don’t talk to someone who’s bragging, talk with one of your friends in a quiet time.

And I know me when I was 15, and **I know now at 38 deep in my heart that there are some things that me at 15 should have never done.** There should have been a law not allowing me to have the ability to drive until I was at least 23 because I was stupid as hell behind the wheel, risking my life every time I drove and, worse, risking others’ lives. (*reverts to storytelling voice*) Like that time you almost killed little Jane on her tricycle because you were trying to drive like the Dukes of Hazzard (*laughter from audience*)—the TV show, not the movie—when I was a kid. **And you at 15, little Antonio, should have waited to have sex.** Because I know now, and I know you weren’t ready for what you felt. And when you got older and you were ready, it was transcending, and beautiful, and amazing, and like God, but you didn’t wait, and you should have at least known that when Carla, super hot junior, invited you over to her house for the first time for you to have sex, when you were a sophomore, and she tells you, “It’s okay, you’ll like it,” she’s telling you the truth. But when she tells you don’t worry, her mom never comes home this early, she’s lying. (*laughter from audience*) Because by the time she tells you that, when you’re naked on her bed with her, her mom is already in the house, coming up the stairs. And when you hide, don’t hide in her mom’s shower, because for some reason, that’s the first place she looks. (*laughter from audience*) And you’ll be there with your clothes in your hands with the shower dripping on your head, and when she asks you, prepare something better for her question, “Who are you?” “I don’t know.” “What are you doing here?” “I don’t know.” “What’s your name?” “I don’t know.” And you run down the street, buck-naked. (*laughter from audience*) And when you

- Age 15 is too young to have sex. “And you at 15, little Antonio, should have waited to have sex.”
- That he shouldn’t drive a car until he was 23, because he was too irresponsible.
- “And know this, most of your classmates, when they brag about sex, are lying.”
- That he would regret losing his virginity with someone he didn’t even like.
- That even when a person is mature enough for the intimacy of sex, and the woman is taking birth control pills, and is “clean,” the male should *still* use a condom every single time, because the woman might forget to take a pill one day, because everyone forgets things.

finally stop behind a tree and put on your clothes, **you realize you lost your virginity to someone you didn’t even like. And you feel dirty, and bad, and you want it back.** But you can’t think of anything else. And when she invites you back to her house, you say yes. And she says, “Don’t worry, my mom won’t be back,” that’s true. And you say something about a condom and she says, “Don’t worry, I’m clean, and I can’t get pregnant,” and I swear to God she said, “because the moon is full.” (*laughter from audience*) And when she says that, don’t believe her. **Because a few weeks later she says she’s late getting her period, and those four days waiting until she finally gets her period are the longest of your short life.** (*laughter from audience*) **And from that day on, you swear you will always use condoms.**

But, they’re tricky. And even through in your teens, even when you’re 16 and 17, you could have thousands of erections, sometimes 50 in a day, and you know because you counted (*laughter from audience*), [indecipherable phrase] the act of putting on a condom, for me at least, makes me lose my erection almost every time. That’s the thing they don’t tell you about condoms. If you’re lucky enough to get them on, and you still stay hard, it’s hard to stay hard. (*laughter from audience*) And it doesn’t feel as good. And sometimes you hurt the woman because you can’t feel her, because you didn’t know, when you were 16, that lubrication like KY helps you stay hard and makes her feel better. And I know how hard it is to talk like that to a girl. It’s even hard now for me as an adult. So I don’t know how it is for you to be able to say so.

So it’s no surprise that me at 15 stopped using condoms when she said she was going on the pill, and the next thing you know, something is leaking out of your penis, and it hurts when you pee. So then you find yourself in a clinic across town, hands around your ankles. Dr. Walters pulls out a huge q-tip meant for a horse or something, (*laughter from audience*) and sticks it right there and says, “This might hurt for a moment.” (*laughter from audience*) And he puts it in where things should only come out, and you say **“Doc, that kind of hurts,” and he says, “Yeah? Well, you should have thought about that if you weren’t using condoms.”** (*laughter and applause from audience*)

And even that experience won’t teach you about condoms. And when you finally fall in love, when you’re a senior and old enough to know, with that beautiful, amazing, angelic girl that makes you laugh, and you trust her with your heart, with all of these stories, and more, and making love with her is literally that, an act of creation, that creates more love in the world, and fills you full of light and hope and joy, and you hold her and she holds you and it is as close to heaven as you can get. And you would move mountains for her if you could. And she goes on the pill and she is clean, and you believe her. And you should, because she really loves you, little Antonio, 16 years old. And she forgets to take her pill one day because she’s 17, and amazing, but she’s not perfect. I know women in their 30s who forget to take their pill. And a little while later, you both make **a decision that you’ll regret for the rest of your lives**—every year, marking how old it would have been. And how it would have been to have been a 17 year-old father. And you’re glad that you’ve had that choice, and it makes sense, but **why do you have a hole in your heart, all these years later?** And you can’t go back in time and tell myself that.

Sacre's cautionary story warning of the dangers of sex without condoms—and of younger teenagers having sex at all—was very different from how it has been portrayed by C&S and O'Reilly.³¹ Even so, there are many parents who would legitimately consider it inappropriate for their children, especially for ninth graders (the large majority of whom would be 15 years old by April 10 in a given school year). This is one more reason why it was wrong for classes to be taken to hear the panel without advance parental consent.

Twelve-year olds should have sex

This charge has been leveled against Joel Becker, a Beverly Hills psychologist who is also associated with UCLA. Here is what Becker actually said:

BHS Student: ...I just wanted to ask because I've seen a huge increase in, like, people in general having sex earlier, just from, like, my observations of people that I know, and I was wondering if you had any idea why people that are um like, 11 or 12 are having sex?

Becker: That's a really good question. I don't think there is an easy answer. I think it's probably a combination of what you're exposed to in the media, probably it comes also from a lack of good parenting in some situations, absent parents, and probably from a lack of ability to attend educational panels like this.

³¹ Sacre was really following the same strategy as *The O'Reilly Factor for Kids*: "Maybe you'll laugh at my boneheaded behavior, but that's okay, as long as you end up smarter than I was at your age. ...I am as honest in this guide as I am on the air. No sugarcoating. This is straight stuff." *The O'Reilly Factor for Kids*, at xii-xiv.

Caplis's defense is to move the goal posts. On the radio, he repeatedly claimed that Sacre was urging people not to use condoms. Now, when presented with the inaccuracy of his claims, he argues that Sacre's speech was dangerous because it admitted that condoms can interfere with sexual performance; Caplis then infers that all teenage males would then refuse to use condoms. Colorado Inside Out, KBDI Television, June 8, 2007 (taped June 6).

Put aside for the moment the implausibility of Caplis's new theory (that all teenage males are so stupid and naïve that they never before realized that condoms can impede sexual performance; that all teenage males so single-mindedly reckless that they would ignore all of Sacre's warnings about the dangers of not using condoms, including the warning—delivered almost immediately after the language about condoms and sexual performance—that non-use will lead to an extremely painful sexually-transmitted disease).

Caplis's new theory is, at least, consistent with what Sacre actually said. But it has been improper for Caplis to falsely accuse Sacre of having had the intention of convincing people not to use condoms. Sacre's intention was quite plainly the opposite. As discussed below, Sacre may have a strong libel case against Caplis.

Caplis has stated that "One panelist encourages abortion." (May 17, 2d hour) and "One panelist recommends abortion." (May 17, 3d hour). Sacre actually described abortion as the awful consequence of failing to use a condom when having sex with a teenage partner who was taking birth control pills. The abortion was "a decision you'll regret for the rest of your lives," one that leaves "a hole in your heart," even though the decision "makes sense."

Thus, Becker stated that the only reason a 12 year old would have sex is that there must be some dysfunction in the person's life. For O'Reilly and Caplis to claim that Becker promoted 12-year-old sex is untrue.³²

“Drugs feel good”

The quote is used by O'Reilly, but not by Caplis & Silverman. The words are lifted from drug policy expert Sanho Tree, who was explaining why people should not use drugs:

And so, and finally, I think that we need to educate kids about drugs in terms of the relative harms caused by these drugs. And so when adults say “Kids, don't take drugs; drugs make you feel bad.” No they don't. They make you feel good. That's why people take drugs. They have bad consequences, and that's what we have to be honest about.

Objections to the phrase are simply stupid, and not only because the phrase is lifted out of its context in an anti-drug speech. If drugs always made people feel bad, then people would not take drugs. The reason that drugs are used is that they often make people feel good. The problem in many cases is that temporarily feeling good leads to bad consequences in the long run.³³

³² Caplis & Silverman, May 16, 1st hour (paraphrasing Becker: “I'm going to encourage you kids 12-year-olds, 14-year-olds—go have sex and do drugs.”). The claim appears to be based on a prior quote by Becker:

I'm probably speaking to the choir by encouraging you to have healthy sexual behavior because most of your parents probably have given you similar views, but you know, when you are 13, 12, 13, 14, certainly one of the most appropriate sexual behaviors would be masturbation. (*laughter from audience*) Masturbate. Please masturbate.

Becker's phrase that masturbation is “one of the most appropriate sexual behaviors” for 12-14 year-olds left open the possibility that he thought that there might also be other “appropriate sexual behaviors” for such persons. His subsequent Q&A made it unmistakable that he believes that 12-year-olds “having sex” is *never* appropriate.

If O'Reilly and Caplis were not ignoring or ignorant of Becker's warning against 12-year-olds “having sex,” then it is possible that O'Reilly and Caplis define masturbation (which Becker did encourage) as a form of having sex. If so, O'Reilly and Caplis should have complained that Becker was “telling 12-year-olds to masturbate,” rather than complaining that he was telling them to have sex.

Nothing Becker said supports Caplis's claim that he encouraged 12-year-olds to use drugs.

³³ Tree's message about drugs were much tamer than someone else's much more aggressive debunking of anti-drug messages:

Playing the percentages, I don't believe that marijuana is guaranteed to lead to heroin, or worse. That can happen for certain types of personalities, but it's not true for everyone. So the argument that smoking pot can lead to worse addictions is valid only for some people, not for all.

Except in very rare cases, pot is also less likely than alcohol to cause traffic accidents... Many people can play around with marijuana for a few years, then get on with their lives....

...I know that you will not be terrorized or moralized into staying away from drugs...most kids don't become raving maniacs or suicidal depressives because of social uses of marijuana.

Bill O'Reilly & Charles Flowers, *The O'Reilly Factor for Kids: A Survival Guide for America's Families* (Harper, 2005), pp. 67-68.

Indeed, the theme was taken up by Andee Gerhardt, the panelist who followed Tree, and who devoted her presentation to warnings about the long-term dangers that can result from teenage drug use.

Also omitted from the C&S and O'Reilly is even a mention of the lengthy arguments by Becker and Tree against the abuse of prescription drugs, including complaints about the bad examples set by television advertising and by adult use of prescription drugs as a crutch to deal with emotional challenges.

Caplis has also complained that students were allowed to hear Tree's arguments criticizing current drug prohibition laws.³⁴ His complaint strikes at the heart of the First Amendment and democracy. A free society cannot have the checks and balances to know that its current laws are good ones unless it allows people to argue for changes in those laws. Besides, Tree's arguments explicitly and repeatedly stated that drugs were harmful; he simply argued that prohibition laws are currently causing even more harm—as when drug testing of students in extra-curricular activities causes the students who are most at-risk to drop the extra-curricular activity, thereby removing them from the beneficial environment of after-school activities.

“You're going to do what you want anyway”

Consider the following message, aimed at 6th-12th graders:³⁵

As for me, I'm not going to tell you to avoid sex, because in the end you're going to do what you want anyway...Are you surprised by my thoughts on the subject? **Did you think [I] would tell you sex is off-limits?** As you know, things are more complicated than that. But I will repeat my mantra: Sex is best when you combine sensible behavior with sincere affection.

The defeatist message “you will do what you want anyway” undermines young people who are working hard to be abstinent. It is a repugnant message for thirteen year olds. For much older teenagers, some parents would approve, and many would not.

To say “you're going to do what you want anyway” is really to disempower young people who are working hard to *not* do what they might “want” (in some baser sense) to do. The message “you're going to do what you want anyway” ignores the reality of mixed motives in all human behavior, especially sexual behavior. The conscience and the will might “want” one thing; the more animalistic or physical aspects of a person might “want” another. When a trusted adult says “you're going to do what you want anyway,”

³⁴ May 16, 3rd hour.

³⁵ According to the *School Library Journal* review quoted on the Amazon.com website, the book is for “Grade 6 up.” The letters to the author from kids, which figure prominently in the book, and which are presumably reflective of the book's intended audience, include letters from persons identified as fifth graders, or as 12 or 13 years old. If we presume that *School Library Journal* was wrong about the intended audience, the title of the book still affirms the book is “for Kids.”

he is really saying “you cannot control your physical drives, so just give in to them.” It is very inappropriate for adults to promote this message. Taking into account the fact that many teenagers are already sexually active, the “safe sex” message could be conveyed in a less damaging way if phrased something like, “You should not—and you have the power to choose not to. But if you do, then you should reduce the inevitable dangers you will bring on yourself by taking the following steps....”

The inappropriate message that “you’re going to do it anyway” comes from *The O’Reilly Factor for Kids*.³⁶ A similar message was conveyed by a speaker on the BHS panel, and it was inappropriate for the same reasons (although at least it was not aimed at an audience including 6th graders).

As oft-played on O’Reilly and C&S, Prof. Joel Becker began:

I’m going to dovetail off a little bit of what Andee said, but I think I’m going to go in a little bit of a different direction, because I’m going to encourage you to have sex, and I’m going to encourage you to use drugs appropriately. (*applause and cheering from audience*) And why I’m going to take that position is because you’re going to do it anyway. So, my, my approach to this is to be realistic, and I think as a psychologist and a health educator, it’s more important to educate you in a direction that you might actually stick to. So I want to, I’m going to stay mostly today talking about the sex side, because that’s the area I know more about.

Becker’s particular remarks on safe sex consisted of the dangers of having sex under the influence of alcohol or drugs, and a warning against have sex before one is emotionally ready. Yet Caplis & Silverman wrongly claimed “They encourage the kids to drink, do drugs, and have sex all at the same time.”³⁷

He provided some examples about 14-year-olds to illustrate his point about not being emotionally ready. The largest part of his presentation consisted of encouraging masturbation as an alternative to having intercourse or oral sex with someone else. This discussion was offensive, ignorant, and religiously bigoted. It was another example of how the panel was undermined by its lack of balance.³⁸ It was also another example of

³⁶ *The O’Reilly Factor for Kids*, p. 75.

³⁷ May 17, 1st hour. Also, May 23, 3rd hour: “I mean, you’ve told the kids to have sex, experiment with all these different types of sex and ‘oh, by the way, at the same time do drugs’.”

³⁸ Much of the masturbation presentation consisted of a discussion of the story of Onan, an Old Testament character who refused to fertilize his widowed sister-in-law, thereby disobeying a then-applicable religious law. *Genesis* 38:7-10. As Becker explained, the Onan story has been misread by some religious persons as a prohibition on masturbation.

If the panel had been balanced, another speaker could have pointed out that Becker had falsely portrayed religious opposition to masturbation as founded on the Onan story. He is wrong. *See, e.g., Sacred Congregation for the Doctrine of the Faith, “Persona Humana: Declarations on Certain Questions Concerning Sexual Ethics,”* part IX (1975)

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html (“Even if it cannot be proved that Scripture condemns this sin by name, the tradition of the Church has rightly understood it to be condemned in the New Testament when the latter speaks of ‘impurity,’ ‘unchasteness’ and other vices contrary to chastity and continence.”)

the type of material for which parental consent should have been sought in advance, and the many parents who would object should have been given the opportunity to say no.

Becker undercut his own point about “you’re going to do it anyway” by citing a survey showing that a third of Boulder High students had had sex—which of course implies that most do not. But the crucial missing context comes in the final Q&A from a student. Student Daphne White:

...Mr. Becker, you discredited abstinence, and this is something that a lot of people feel very strongly about, and I just want everyone to know that there are two sides to the argument, even though this has been fairly one-sided. And also, I noticed that you were taking some of these serious issues to be humorous, and I think that, if anything, kind of encouraging teens to kind of the opposite of what I thought this panel was supposed to be about, encouraging teens to be abstinent.

Panelist Andee Gerhardt then said, “I personally want to thank you for being brave enough to do that. I don’t know that I would have ever been brave enough to do that, so I think you should give—feel really good about that.”

Becker then answered:

I would second that opinion, and even though I think you may have thought that I was—what did you say, something about abstinence—I actually tried discrediting it? **I wasn’t discrediting it. In fact, I started by saying, I’m not telling you whether you should or you shouldn’t choose abstinence;** I just think if you choose abstinence, it doesn’t obviate your need to still be educated about sex...

Becker gave himself too much credit, because the most reasonable meaning of his opening words *was* to discredit abstinence. But once Becker realized that his ill-chosen opening words had been construed to discredit abstinence, he specifically affirmed the validity of abstinence as a personal choice.

To play Becker’s opening remarks, without also playing (or at least summarizing) his subsequent explanation of what he meant to say is incomplete and misleading.³⁹ Again, I think that White’s interpretation of the meaning conveyed by Becker’s opening words is more persuasive than Becker’s own interpretation. But Becker did specifically repudiate the message he had wrongly conveyed, though poorly-chosen words, about abstinence.⁴⁰

Moreover, many Buddhists are opposed to masturbation, and their views obviously have nothing to do with the Old Testament. The Buddhist issue is not a minor one in Boulder, a city which perhaps has the highest percentage of Buddhists of any American city more than a few miles from the ocean.

³⁹ The first time that Becker’s quote was played on C&S appears to have been June 12 (2d hour), several days after I had raised the issue with Caplis.

⁴⁰ Becker should have stopped then, because the rest of his reply was fatuous and intolerant:

I also think that—I’m so glad to hear the student body clap for this young woman, because I see that you have respect for a person who has views different than you, and you’re saying that this is this girl’s choice to make. One of the things I’m afraid happens in the religious movement is they don’t give the same choice to other people. They try to tell other people that what they’re doing is right, and what these people are doing is wrong. That’s my issue. I think you’re very right for you.

It is strange that O'Reilly waxes so indignant about Becker giving young people the same bad advice about sex that O'Reilly himself did.

“It’s very natural for young people to experiment with same-sex relationships”

C&S⁴¹ and O'Reilly⁴² both complain about the quote from Sanho Tree. Research from the Centers for Disease Control and Prevention indicates that 10.6% of females and 4.5% of males aged 15-19 admit to having had at least one same-sex encounter,⁴³ which for some people would be proof that Tree’s statement was accurate. A balanced panel might also have included a commentator who would argue that same-sex relationships are *per se* unnatural.⁴⁴

Tree’s broader point was regarding abstinence: “If it works for you, well, great, it works for you. But what if it fails?” He used same-sex experimentation as an example of “mistake” from which people can recover, and “go on and lead very productive lives.” His objection to the abstinence-only model was that it may send someone who made the “mistake” into downward spiral, so as to “take a bad situation and make it much worse.”⁴⁵

And I think that all the people who believe like you are right for them. But I don’t want you to tell the other people that what they are doing is wrong.

Contrary to Becker’s wishes, religious people (like anyone else) have the right to tell other people that “what they are doing is wrong.” Whether religious people should have their views enacted into criminal law is an entirely different question. A free society thrives on the right of people like Daphne White and Joel Becker to speak their minds; neither side should attempt to silence the other from sharing their opinions.

There is no requirement that public dialogue on important issues be conducted under Becker’s preferred rules of moral relativism. One of the most serious defects of the panel was that there was no-one on it to challenge Becker’s relativism.

Becker’s claim that the audience agreed with him rather than with White was wishful thinking, a cheap trick for an adult who just lost an argument to a ninth-grader.

⁴¹ May 16, 2nd hour; May 16, 3rd hour (twice); May 23, 2nd hour; May 23, 3rd hour; June 1, 1st hour (twice); June 4, 2nd hour.

⁴² *E.g.*, “The O’Reilly Factor,” June 1.

⁴³ William D. Mosher, Anjani Chandra & Jo Jones, “Sexual Behavior and Selected Health Measures: Men and Women 15–44 Years of Age, United States, 2002,” *Advance Data from Health and Vital Statistics*, CDC Division of Vital Statistics, no. 362, September 15, 2005, p. 4, Table A, www.cdc.gov/nchs/data/ad/ad362.pdf.

⁴⁴ The commentator likewise could have countered Becker’s statement that same-sex relationships were appropriate.

Also, there’s an unintended consequence, again, of abstinence-based models, particularly when they’re combined with religious fundamentalism and indoctrination. If it works for you, well, great, it works for you. But what if it fails? What happens then to a person who perhaps may have made a mistake? We all make mistakes; this is how we learn. This is a very important way of learning, from mistakes. But you know, taking someone who may have made a mistake, and you make them feel much worse about themselves—that they have betrayed their covenant with God, that they’re dirty, they’re impure, something is wrong with them. It’s a mistake. We all make mistakes. We all experiment. It’s very natural for young people to experiment with same-sex

Thus, Tree referred to homosexual experimentation as “a mistake” and “a bad situation.” O’Reilly and C&S have portrayed the out-of-context quote as a libertine incitement to homosexual activity. In truth, it was an example of the kinds of “mistakes” sometimes made by non-homosexual youths.

Other pro-homosexuality comments, such as those from Becker, have been accurately quoted. Many parents strongly believe that homosexuality is immoral; other parents (perhaps a majority in Boulder) believe that it is immoral to portray homosexuality as inferior to heterosexuality. The inevitable conflict is a good example of problems with public schools getting involved in sex issues in the first place. It is also another example of why parental permission should have been sought before some students were brought to the panel.

Students should have sex with someone who doesn’t even like them

One student asked “Would you have sex with someone you liked but he doesn’t love you?” Three panelists simply answered “Yes” or “Yeah” or “Done that.”⁴⁶ Sacre and Gerhardt, answering based on their own experiences, said that sex without love can sometimes be great, and sometimes emotionally devastating. Gerhardt said “it doesn’t always have to be about love.” The message was consistent with O’Reilly’s advice book “for kids” that sex is best when it involves (merely) “sincere affection.”⁴⁷

Although the panel answers were all about the panelists’ own behavior, it was reasonable to draw the inference that the message was that sex without love is acceptable.

A balanced panel should have included the perspective that sex should always be mated with love—and is especially (or exclusively) suited for marital love.

Sometimes C&S play the full Q&A, so that listeners can draw their own conclusions. Several times early in their coverage, Caplis has incorrectly characterized the panel as encouraging sex with a partner who “doesn’t even like us,” but this error was corrected and not repeated later.⁴⁸

Obvious factual errors

relationships. Perhaps you don’t talk about it much. A lot of people experiment and never go on to become homosexual. They go on and lead very productive lives, etcetera, etcetera. Well, if you’ve had that indoctrination, you think, “Well, maybe there’s something wrong with me. Maybe I’ve sinned, I’m dirty,”—all these other things that take a bad situation and make it much worse, in my opinion.

⁴⁶ Tree’s answer of “Done that” is mistranscribed as part of two other panelists answering “yeah” at the same time.

⁴⁷ *The O’Reilly Factor for Kids*, p. 75.

⁴⁸ May 17, 1st hour. See also May 17, 2nd hour (“They say sex without love and even sex without like.” Then, later in the hour, accepting a correction on “not even like”)

Caplis has sometimes gotten himself so worked up over the issue that he loses his normal poise, and says things that he cannot for a second believe to be actually true. For example, he told O'Reilly that the Boulder *Daily Camera* had “completely ignored” the Boulder High controversy. As Caplis well knew, the *Daily Camera* had broken the story, and had written several follow-up articles—which Caplis had previously criticized on his own radio program.⁴⁹

The next day, after another *Daily Camera* article, pointed out Caplis's incorrect statement, he acknowledged that he had been wrong, but accused the *Daily Camera* of blaming the messenger.⁵⁰

It is “normal”—and also a “mistake” and a “bad situation”—for a person to say something that he knows cannot be true in the heat of a television program taping. Everyone, including experienced TV personalities like Caplis, gets carried away once in a while. Abstinence from error is a good ideal, but sometimes unrealistic.

Teachers should have ordered students out of the room five minutes after the panel began

So says Caplis, again and again. He claims that it was obvious “within five minutes” that the panel was promoting sex and drugs. He repeatedly uses this “five minute” fact to prove the blatant dereliction of responsible adults at Boulder High, in not driving the students out of the auditorium.⁵¹

Unlike the lone incorrect statement about the *Daily Camera*, this gross factual error cannot be explained as a semi-accidental slip of the tongue. In the C&S playlist of audio “outrages” from the panel, the first “outrage” occurs fifteen minutes into the panel.

⁴⁹ The criticism was that the *Daily Camera* was not printing the C&S litany of inflammatory quotes. The *Daily Camera* later did publish many of those C&S-selected quotes, but that publication was a mistake, since the some of the printed quotes did not include the appropriate context of the speakers' remarks. If the *Daily Camera* did not have enough space to print enough words so as to convey the speakers' intended meanings, the *Daily Camera* should have stuck with its original policy of simply providing a link to the full transcript, from which readers could see the quotes in context. A *Rocky Mountain News* article on June 12 suffered from similar problems. In contrast, an article published on the *Rocky* website the same evening provided excerpts in context.

⁵⁰ “A man making false news is a cause of trouble, but he who gives news right makes things well.” *Proverbs* 13:17 (Bible in Basic English translation).

It was inaccurate for School Board President Helayne Jones to claim that all the critics of the panel were motivated by a religious or political agenda. First of all, there is nothing wrong with religious or political motives. Second, Craig Silverman is a very prominent critic of the School Board, and it would be difficult to argue that his motives are religious or political.

Similarly, it was wrong for Silverman to claim that all the students who are speaking up on the opposite of the issue from him are merely apple-polishers who are trying to curry favor with teachers (June 12, 1st hour), and for Caplis to claim that every one of the students would one day realize he or she had been “a fool.” (June 12, 2^d hour; *see also* June 11 (“foolish”). This mean-spirited and intolerant statement is a good example of how the BHS issue has disoriented C&S from its normally high standards, such as respectful treatment of people who disagree with them, especially including young people.

⁵¹ *E.g.*, May 17, 1st hour; May 17, 2nd hour (twice); May 17, 3rd hour

The difference between five minutes and fifteen minutes is insignificant in geologic time, but matters a lot in other situations—as is known by anyone whose spouse has angrily complained, “You said you would be back in five minutes, but I’ve been standing here for fifteen!”

Quite obviously the difference is relevant for media accuracy, since Caplis’s theory that about evacuating the room would not seem as persuasive if he were always saying “within fifteen minutes.”

Applause, Cheers, and Laughter

The playing of the C&S audio tapes often includes students applauding or cheering after a particular remark. The obvious purpose of including the student response is to imply that the students are being seduced by the evil ideas being presented. Colorado State Senator Steve Johnson is one of the people who may have been seduced by C&S’s clever audio. According to the *Daily Camera*, “after listening to the audio tape of the discussion and hearing students cheer, Johnson said he’s sure damage was done.”⁵²

What C&S audience almost never hears on the radio are some of the other cheers and applause from the audience. Such as the cheers and applause for the panelists denouncing the use of prescription drugs to deal with emotional problems, or with lesser issues such as “restless leg syndrome.”

Or the applause and laughter for Antonio Sacre’s story, in which a doctor rebuked a teenager for not using condoms; as a result, the teenager had to undergo a very painful examination for disease. And the applause and laughter for Sacre’s story of the teenager who spent the longest four days of his life wondering if his girlfriend is pregnant because he did not use a condom.

And C&S has certainly not put on its high-frequency playlist the reaction to the final question from the audience. As noted above, Daphne White told the panelists that they were wrong, criticized Becker in particular, and defended abstinence and the religious point of view. As another student wrote, “she was thunderously applauded by the students in the audience.”⁵³

C&S, to their credit, took a call from a person who teaches jiu-jitsu after school at Boulder High School. The instructor said that he had talked with students after the panel,

⁵² Vanessa Miller, “CWA debate continues to heat up,” *Daily Camera*, June 3, 2007, <http://dailycamera.com/news/2007/jun/03/cwa-debate-continues-to-heat-up/>.

⁵³ Patrick Garrett letter, printed in “Boulder High School Students Join Forces To Demand An Apology From Bill O’Reilly,” *News Hounds*, May 31, 2007, http://www.newshounds.us/2007/05/31/boulder_high_school_students_join_forces_to_demand_an_apology_from_bill_oreilly.php#more. The complete audio tapes are available at www.bvsdwatch.org. C&S did play the White’s statement, with the applause, on June 12 (2nd hour), with the applause. Caplis states that audio problems are the reason why White’s statement has not been played more often.

and none of them had agreed with it. He argued that the students are not automatons who would blindly follow what the panel said.⁵⁴

Crimes and Tort

Felony Home Invasion

Attempting to perpetrate an ambush interview of School Board President Helayne Jones, an O'Reilly producer illegally entered the garage attached to the rest of Ms. Jones' house.

Under Colorado law, an attached garage is part of one's "dwelling" under the criminal trespass statutes.⁵⁵ The illegal entry into a dwelling constitutes felony First Degree Criminal Trespass under Colorado law.⁵⁶ The presumptive sentencing range for such a felony is one to three years in prison.⁵⁷

"The O'Reilly Factor" was apparently so proud of its crime and so contemptuous of the criminal laws of the state of Colorado that the footage of its own perpetration of a felony was broadcast on the TV program.⁵⁸

In other contexts, C&S and O'Reilly have criticized what they see to be the lassitude of the Boulder District Attorney's office.

Home invasions are a serious matter, and a home invasion in which the perpetrator flaunts his crime on national television is especially serious, in part because the perpetrator's self-aggrandizement may encourage other people to commit similar crimes. Especially if the District Attorney ignores the crime that was televised to an audience of millions.

An effective prosecutor might seek evidence about whether the producer was encouraged to perpetrate the felony by other members of the O'Reilly staff, including Mr. O'Reilly himself. In such a prosecution, it would be relevant to present evidence about whether the Colorado felon or other O'Reilly staffers have perpetrated similar home invasion felonies at other times, and whether they have been rewarded by O'Reilly and other staffers for doing so, and have been urged to commit similar crimes in the future.

⁵⁴ May 16, 2nd hour.

⁵⁵ People v. Hanna, 981 P.2d 627 (Colo. App. 1999).

⁵⁶ Colo. Rev. Stats. § 18-4-502 ("A person commits the crime of first degree criminal trespass if such person knowingly and unlawfully enters or remains in a dwelling of another or if such person enters any motor vehicle with intent to commit a crime therein. First degree criminal trespass is a class 5 felony.")

Based on the camera footage, it is not certain whether the cameraman filming the crime also committed First Degree Criminal Trespass by entering the garage himself, committed a lesser trespass by entering the property around Ms. Jones' home, or remained on public property. In any case, it would seem that the camera operator was an accessory to the producer's felony.

⁵⁷ Colo. Rev. Stats. § 18-1.3-401.

⁵⁸ The program was broadcast May 29, 2007.

It is true that public officials should answer questions from the media about public issues. The O'Reilly team would not have conducted the ambush interviews if a Boulder official had appeared on his program. However, frustration about a subject declining an interview does not legally excuse the perpetration of a felony against that subject. An "ambush interview" could have been attempted on a public sidewalk, or some other place in which the interviewer would not have committed a crime.

Moreover, O'Reilly, in great contrast to Caplis & Silverman, is notorious for rudeness to guests, interrupting, insulting, and attempting to prevent them from telling their side of the story. If O'Reilly would ever discipline himself sufficiently to follow the C&S mode of "tough yet polite," he might not have so much trouble attracting guests.⁵⁹

Caplis and Silverman's Non-Reaction to the Felony

The O'Reilly home invasion is a good illustration of how the Boulder High affair has caused C&S to lose its moral compass. In October 2005, Caplis went into high dudgeon because Denver Broncos quarterback Jake Plummer had telephoned *Rocky Mountain News* columnist Penny Parker to complain about something that Parker had written. Parker received the loutish call on her cell phone at home one evening. Caplis was outraged by the bad example being set for "the children."⁶⁰

Caplis denounced Plummer at length for what Caplis considered to be the threat implied by an angry phone call to a woman in her home in the evening. Yet the O'Reilly team has gone far beyond an implicit threat, and has actually perpetrated a felony in the home of a woman in the evening. And has compounded the bad example by broadcasting its felony nationally during hours when many children are watching television.⁶¹

Caplis has uttered not a word of criticism about O'Reilly's felony home invasion against Ms. Jones.

Silverman knows the Colorado Criminal Code inside and out. As former high-ranking prosecutor, he too should set a better example for "the children"—and for everyone else—by denouncing the home invasion.

Criminal Libel and Civil Libel

Under Supreme Court precedent, a public figure may only win a civil libel lawsuit if the defendant's speech was false, and the falsehood was malicious. Malice may be inferred if

⁵⁹ Given that C&S had been polite to Superintendent George Garcia and School Board President Helayne Jones during a May 17 interview, it would have been appropriate for a BVSD spokesperson to appear on C&S again, after Garcia delivered his report to the School Board.

⁶⁰ David Kopel, "Cheater prospers, after all," *Rocky Mountain News*, Oct. 22, 2005 ("Monday's *Caplis & Silverman* radio show on KHOW-AM (630) spent lots of time slamming Broncos quarterback Jake Plummer for his loutish phone call to *News* columnist Penny Parker. Dan Caplis repeatedly complained, as he often does, about the bad example that was being set for children.")

⁶¹ "The O'Reilly Factor" is broadcast weeknights at 8 P.M Eastern Time, and earlier in some other places.

the defendant knew his statement to be false, or recklessly disregarded the truth or falsity.⁶²

Colorado's criminal libel statute provides:

- (1) A person who shall knowingly publish or disseminate, either by written instrument, sign, pictures, or the like, any statement or object tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation or expose the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule, commits criminal libel.
- (2) It shall be an affirmative defense that the publication was true, except libels tending to blacken the memory of the dead and libels tending to expose the natural defects of the living.
- (3) Criminal libel is a class 6 felony.⁶³

Prosecutions under this statute are currently rare, but there have been a few in recent years. The Supreme Court's precedents on civil libel limit the application of the statute for criminal libels involving public figures⁶⁴; the government would have to prove knowledge of falsity or recklessness by the defendant.⁶⁵

The evidence provided in this Issue Paper tends to suggest that O'Reilly and C&S may have libeled the panelists.⁶⁶

Boulder High School Principal Bud Jenkins has been vilified—quite literally, since O'Reilly called him “the villain” and Caplis agreed. The epithet by itself does not constitute libel. A jury could find that the falsehoods about Boulder High's administration (e.g., that the panelists have already been scheduled to return to Boulder High next year) were believed by some of the public to be about Jenkins.⁶⁷

⁶² *New York Times v. Sullivan*, 376 U.S. 254 (1964).

⁶³ Colorado Revised Statutes, § 18-13-105.

⁶⁴ Unlike, for example, prominent elected officials, the panelists would probably not be considered public figures for all purposes. Insofar as the libels involved the presentations that the panelists gave at program that was advertised and open to the public, they would probably be considered limited purpose public figures. Accordingly, the Supreme Court's strict restrictions on libel cases involving libels of public figure would apply.

⁶⁵ *People v. Ryan*, 806 P.2d 935 (Colo. 1991)(criminal libel statute cannot be applied to constitutionally-protected speech).

⁶⁶ That the perpetrators accurately used a quote which was knowingly or recklessly taken out of context so as to portray a false meaning to the speaker is not a defense to a libel prosecution. As the U.S. Supreme Court noted in a libel case, “an exact quotation out of context can distort meaning, although the speaker did use each reported word.” *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 514 (1991)(Kennedy, J.); *see also* *Quigley v. Rosenthal*, 327 F.3d 1044, 1068 (10th Cir., 2003)(Colorado case upholding punitive damages for defamation by libel in a case where persons “did not accurately report the contents of the recorded telephone conversations. Instead, they took snippets of those conversations out of context in an attempt to support their claims.”).

⁶⁷ As a high school principal who did not seek out the public eye, Jenkins may not be a “public figure” in libel law.

Some libels do not require the plaintiff to prove actual damages. *See, e.g.*, *Gordon v. Boyles*, 99 P.3d 75, 78-79 (Colo. App., 2004) (“Defamation is a communication holding an individual up to contempt or ridicule that causes the individual to incur injury or damage...A radio broadcast of defamatory matter is

Conclusion

Reasonable people can disagree about the policy questions in the Boulder High controversy. People cannot make reasonable decisions when they are misinformed by the media.

It would be good for Colorado to have a debate about “safe sex” education and similar programs, which are present in many public schools throughout Colorado. Such a debate should certainly include discussion of ways to better inform parents about the content of such curricula, and to increase the ability of families to opt out.

It is impossible to have a constructive discussion about schools telling students that they should always use condoms when the media falsely claim that a particular school told students not to use condoms.

Boulder High students finished the school year under an atmosphere of violent threats that resulted from extremely irresponsible media coverage.

There were many aspects of the panel that are subjects of legitimate criticism and debate. Unfortunately, O’Reilly (in much of his coverage) and C&S (sometimes) have gone beyond the bounds of factually-accurate criticism. Derelictions from basic standards of journalism have included selective quotation which has altered the meaning of speakers, a negligent (or worse) approach to accuracy and completeness, and the felony invasion of a woman’s home.

It will be a great day when the Caplis & Silverman Show returns to its normally high standards. We hope that the show in future will more accurately and completely describe what really took place on April 10.

We look forward to publishing the response to this Issue Paper that C&S have already agreed to write, and we hope that Mr. O’Reilly or his staff will also take up the Independence Institute’s invitation to write a response._

defamation by libel...To be defamation per se, that is, to be actionable without proof of special damages, a libelous statement must be (1) on its face and without extrinsic proof, unmistakably recognized as injurious (defamatory meaning) and (2) specifically directed at the plaintiff (identity)... If defamatory meaning is apparent from the face of the publication, or if the subject matter of the publication falls into one of the traditional slander per se categories, then the publication is defamatory per se.)

As a plaintiff, Principal Jenkins might have an easy time proving damages, since the libels directed at him have apparently led to criminal threats against him by people who, a jury might find, were plainly acting on the libelous information.

Additional resources

BVSDwatch. A citizen group which monitors the Boulder Valley School District. The site includes an excellent collection of resources on the Boulder High Issue, including a full transcript of the panel, audio files of the entire presentation, statements by BVSD officials, and more. www.bvsdwatch.org

Boulder Valley School District. <http://www.bvsd.org/default.aspx>

Caplis & Silverman website. Internet audio of their programs. http://www.khow.com/pages/shows-caplis_silverman.html

Bill O'Reilly website. <http://www.billoreilly.com/>

NewsHounds. An anti-Fox website. Includes material from Boulder High students Patrick Garrett and Mansur Gidfar responding to O'Reilly's misrepresentations of the school. <http://www.newshounds.us/>

Boulder *Daily Camera* newspaper. Continuing coverage of the issue, including diverse community comments on the website. www.dailycamera.com.

Independence Institute: iVoices.org podcast of Jon Caldara interview with Kopel, discussing O'Reilly's coverage. <http://www.i2i.org/ivoices/audio/iipodcast122.mp3>

Independence Institute, iVoices replay of Independent Thinking, KBDI-TV, channel 12. Host Jon Caldara interviews Dan Caplis and David Kopel. <http://ivoices.org>

Jon Caldara: Podcasts of June 2 and 4 radio programs discussing the issue. http://www.koaradio.com/cc-common/podcast/single_podcast.html?podcast=Caldera.xml

Accuracy in Media: Cliff Kincaid, "Bill O'Reilly Claims to be Donald Duck," June 5, 2007, http://www.aim.org/aim_column/5510_0_3_0_C/. "Another Black Eye for Fox: O'Reilly Smears Noted Conservative," June 6, 2007, http://www.aim.org/press_release/5514_0_19_0_C/.

Colorado Media Matters: "On Caplis & Silverman, O'Reilly misrepresented Kopel's remarks regarding balance of CWA panel," June 6, 2007, <http://colorado.mediamatters.org/items/200706070001>. "O'Reilly to Kopel: "[I]f you're not a secular progressive, then I'm Donald Duck," June 5, 2007, <http://colorado.mediamatters.org/items/200706060001>. "Caplis falsely defended O'Reilly's statements about controversial CWA panel being invited back to Boulder High," June 4, 2007, <http://colorado.mediamatters.org/items/200706040001>. "On O'Reilly, Caplis lied about Daily Camera covering Boulder High panel; O'Reilly falsely claimed 'no public outcry' locally," June 1, 2007, <http://colorado.mediamatters.org/items/200706010005>.

Longmont *Daily Times-Call*. Victoria A.F. Camron, “Both sides criticize O’Reilly for misrepresenting issue,” June 6, 2007, <http://www.longmontfyi.com/region-story.asp?ID=16759>.

Rocky Mountain News. Vincent Carroll, “Know your opponent,” June 6, 2007, http://blogs.rockymountainnews.com/denver/onpoint/archives/2007/06/carroll_know_your_opponent.html.

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This Issue Paper is another in a continuing series of in-depth studies of media bias and error. Previous studies have included “Unabashed Bias: Denver Dailies campaign rather than report on Referenda C and D,” by Amy Oliver and Jessica Littman, and “Fifty-nine Deceits in *Fahrenheit 9/11*” by David Kopel.

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