

Violence and the Media

An exploration of cause, effect and the First Amendment

by Marjorie Heins with Joanne Cantor • Henry Jenkins • Debra Niehoff • Joanne Savage
Robert Corn-Revere • Rodney A. Smolla • Robert M. O'Neil

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1207 18th Avenue South
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(615) 321-9588
www.freedomforum.org
Project Coordinator: Paul K. McMasters
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Foreword

By Paul K. McMasters



Paul McMasters is First Amendment ombudsman for The Freedom Forum.

A series of horrors in our schools brings the nation's general anxiety about crime and violence into sharp focus. The need for someone or something to blame becomes acute. America points an accusing finger at the entertainment media as the primary reason for mayhem in our midst.

The grisly shootings at Columbine High School in Littleton, Colo., were a galvanizing event in the national quest for an answer to violence, particularly violence that affects our children. In the weeks and months immediately following the tragedy, public-policy makers unleashed a barrage of actions designed to quell public concern.

- President Clinton created the National Campaign Against Youth Violence, targeting 13 cities; he also ordered monthly meetings of the Cabinet-level National Council on Youth Violence Prevention.
- Congress took up dozens of bills designed to curb

the flow of media violence. The Senate proposed a \$900 million appropriation for National Institutes of Health research into youth violence.

- The Federal Trade Commission launched an inquiry culminating in a report charging that Hollywood has been aggressive in marketing violence to young people.
- Surgeon General David Satcher commissioned a report on strategies for treating violence as a disease.
- Gloria Tristani, a member of the Federal Communications Commission, delivered a major speech embracing the theory that violent expression should be treated the same as obscenity under the law.
- At a summit organized by U.S. Sen. Sam Brownback, R-Kan., the American Medical Association, the American Academy of Pediatrics, the American



Psychological Association, and the American Academy of Child & Adolescent Psychiatry issued a statement saying that “viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children.”

- The American Bar Association’s Division for Public Education announced the publication of a new guide to help teachers address violence in television programs, movies, video games and on the Internet.

The rationale for all these actions and activities appeared to lie with academic studies that suggest a link between media and violence. There is serious concern by some, however, that the number and certainty of such studies have been overstated. Others note that even if a causal link were satisfactorily demonstrated, it still would not justify restricting or punishing the First Amendment rights of the entertainment media or their consumers.

The fact that incidents of crime and violence have decreased dramatically in recent years has not diminished the importance or urgency of this public-

policy debate. Nevertheless, it is imperative that as many voices as possible be heard before minds are made up and public policies cemented in place.

The goal of this report is to enhance and enliven the public discourse by offering voices and perspectives that have not been heretofore effectively raised on the issue of media violence and its effects.

Anchoring the publication is the title essay by well-known author, lawyer and scholar Marjorie Heins, who examines the history of violence in the media, the scholarship involving media effects and the freedom-of-speech issues raised by the debate.

The report’s second section consists of edited transcripts of presentations by four scholars from widely divergent areas of expertise: Joanne Cantor is one of the nation’s leading authorities on the effects of television on children; Henry Jenkins is an expert on popular culture; Debra Niehoff is an expert on the biology of expression; and Joanne Savage is an authority in the field of criminology.

The third section features an edited transcript of a debate between two prominent lawyers over one of the more extreme

manifestations of media violence: a handbook for assassins called *Hit Man: A Manual for Independent Contractors*. Rodney Smolla and Robert Corn-Revere, both dedicated advocates for the First Amendment, disagree on whether such speech should be protected.

It is the goal of “Violence and the Media: An exploration of cause, effect and the First Amendment” to inform public debate and sharpen the questions we ask as we seek solutions. The views of these national authorities should help divest the debate of easy assertions and provoke a more considered examination of the impact that proposed remedies would have on actual violence — not to mention on the Constitution itself.



I Violence and the Media

Excerpted from Not in Front of the Children: "Indecency," Censorship and the Innocence of Youth by Marjorie Heins. To be published in May 2001 by Hill and Wang, a division of Farrar, Straus and Giroux, LLC. Copyright © 2000 by Marjorie Heins. All rights reserved.

By Marjorie Heins



Marjorie Heins is a First Amendment lawyer and author.

In early 1999, two students at Colorado's Columbine High School gunned down 13 of their classmates and then killed themselves. Like earlier ghastly and seemingly inexplicable crimes, this one generated a frenzied search for explanations. But instead of talking about the easy availability of firearms, about the mean social pecking order at Columbine High School, or about the personal demons that drove the two young criminals, many political leaders and media pundits focused on violent entertainment.

President Clinton immediately summoned entertainment industry executives to a White House meeting on youth violence. Rep. Henry Hyde proposed a "Children's Defense Act" banning the distribution to minors of "sexually explicit or violent material." Sen. Ernest Hollings introduced a bill

to prohibit the broadcast of "any violent video programming" at times when "children are reasonably likely to comprise a substantial portion of the audience."¹

At Senate hearings a few days after the disaster, MIT professor Henry Jenkins questioned the assumption that TV violence, rock music, video games, or other forms of entertainment were responsible for the teenagers' murderous rampage. Disaffected young people move "nomadically across the media landscape," Jenkins said, "cobbling together a personal mythology of symbols and stories taken from many different places." Thus, different individuals make different uses of the messages and images in popular culture, depending on their upbringing, family environment, inherited

characteristics, and other aspects of background and character. Jenkins told the senators that the “vocabulary of ‘media effects’” in psychology — the idea that violent entertainment has the consistent, predictable effect of desensitizing viewers or making them more aggressive — has recently been “challenged by numerous American and

popular entertainment, and games invented by children at play. From the gory descriptions of wartime atrocities in Homer’s *Iliad* and *Odyssey* to the fantasy action in *Mortal Kombat* and “Teenage Mutant Ninja Turtles,” human culture has displayed, reflected, embroidered, and documented aggression and violence. Debates over the effects of this violent

inspiring pity and fear, they purged the spectators of unruly emotions and made it less likely that they would actually behave violently upon leaving the theater.⁴

Young people have often been at the center of these debates over the effects of artistic expression, but they have not always been viewed as particularly vulnerable, innocent, and impressionable. The historian Philippe Ariès, in his book *Centuries of Childhood*, identified the end of the 16th century as the time when ideas of childhood innocence and vulnerability came into vogue. Before that time, educators gave youngsters the classics to read (including violent and bawdy ones); but now, Ariès wrote, “certain pedagogues refused to allow children to be given indecent books any longer.”⁵

It was not until the 19th century, though, that censorship in the interest of protecting youth really flourished. Although the subject deemed most dangerous tended to be sex rather than violence, Anthony Comstock, director of the New York Society for the Suppression of Vice and a leading arbiter of cultural standards in the U.S. for 40 years, also attacked “penny dreadfuls,” dime novels, and police

Violence is an eternal theme in literature, art, popular entertainment, and games invented by children at play.

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international scholars as an inadequate and simplistic representation of media consumption and popular culture.”²

But Jenkins’s comments were not widely appreciated. He was the only scholar appearing at the hastily convened hearings who questioned the idea that youngsters directly adopt and imitate the attitudes and behavior they see in media entertainment.

A BRIEF HISTORY

Violence is an eternal theme in literature, art,

entertainment also began long ago: the philosopher Plato, writing in the 4th century B.C., took a highly didactic view, insisting that the government should censor unsavory or unpatriotic messages. As one critic has written, “the greatest part of contemporary criticism of television depends on a moral disapproval which is identical to Plato’s attack on epic and tragic poetry in the fourth century B.C.”³ Plato’s pupil Aristotle, by contrast, originated the idea that gruesome deeds portrayed in the theater, instead of inspiring imitation, had cathartic effects — that is, by



magazines as perils for youth. Comstock played on fears, especially among the upper classes, that cheap popular literature, like sex and gambling, would corrupt young people and drag the more privileged ones down from their social positions.⁶

In the 1930s, some thought that the new art of movies would inspire youngsters to fantasies and deeds of violence. The Payne Foundation sponsored a series of studies, the “most conclusive” of which “showed that the movies did not have any significant effect in producing delinquency in the crime breeding area in which the study was made,” although the author also found that some boys and young men, “when suitably predisposed, sometimes have utilized techniques of crime seen in the movies” or “idealized themselves imaginatively as possessing as attractive a personality, or as engaging in as romantic activities as gangster screen heroes.”⁷

In the 1950s, crime and horror comic books were attacked for inspiring similar fantasies. The psychiatrist Fredric Wertham led a crusade to ban them, based on his interviews with troubled youth among whom the adventures comics were popular (as they were among non-delinquent

youth as well). To Wertham, cowboy and jungle stories, science fiction, and superhero adventures were all corrupting – *Batman* especially so because of the “subtle atmosphere of homoeroticism which pervades the adventures of the mature ‘Batman’ and his young friend ‘Robin.’”⁸ In 1954, Wertham testified at Senate hearings on juvenile delinquency; but by this time, the industry had responded to the pressure by adopting a self-censorship code that largely eliminated crime and horror comics.⁹

By the 1960s, TV had largely replaced comic books as a source of anxiety; and some psychologists were conducting studies that, they said, scientifically established a causal relationship between violent television and aggressive behavior. Many of the scholars engaged in this type of research subscribed to the “social learning” school of psychology, which posits that youngsters model their attitudes and behavior on the media’s “symbolic environment” as well as on observation of real life. Albert Bandura, a leading theorist of the social learning school, conducted a famous series of laboratory experiments in which he showed nursery-

school children films of both an adult and a cartoon figure hitting a large bouncy “Bobo doll.” The children were then frustrated, in order to stimulate aggression, and finally given the opportunity to aggress against actual Bobo dolls. Those who had viewed the violent films did so in larger numbers than children in a control group; this short-term imitative effect was larger for boys than girls. Bandura publicized his findings in a 1963 magazine article in which he argued that few parents “would deliberately select Western gunslingers, hopped-up psychopaths, deranged sadists, slapstick buffoons, and the like” as role models for their children.¹⁰

Hitting Bobo dolls, of course, is a socially permissible activity, and as with many laboratory experiments that were to follow, the relevance of Bandura’s research to real-world aggressive behavior over the long term was questionable. Seymour Feshbach, a psychologist who believed that violent entertainment was more likely to defuse than to stimulate aggression, argued that most children do understand the difference between fantasy play and anti-social behavior — that the results of “playing war or punching a Bobo doll”



are quite different from the results of “kicking one’s mother.” Feshbach explained: violence “in the guise of dramatic fantasy is found throughout history

officials continued to sponsor studies, hold hearings, propose legislation, and attack media violence, while the complex psychological

children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.¹⁴

Different schools of psychology hold widely varying views about what causes humans to be violent or aggressive.

and it seems likely that the vicarious participation in these fantasies does satisfy some human needs.”¹¹

Social learning experiments became popular, however, in large part because of their political appeal. The theory gave a scientific shine and a feel of quantitative certainty to the common-sense notion that people — especially young ones — do absorb attitudes and role models from media entertainment. Even though a 1972 government study found little evidence that televised violence has “an adverse effect on the majority of children,”¹² its cautious conclusions were often misrepresented as “media effects” theories gained popularity. Another government report 10 years later claimed a more definitive causal relation between media and real-world violence, but it was criticized for misconstruing the data.¹³ Government

mechanisms by which different human beings actually process the enormous range of images and ideas in popular culture tended to be forgotten.

THE VARIETIES OF MEDIA EFFECTS

By the 1990s, many politicians and psychologists insisted that there was no longer room for debate; hundreds of studies, they said, had proven that media violence caused aggressive attitudes and behavior, especially in adolescents and children. Congress’s “findings” in a 1996 law that mandated v-chips in most new TV sets were typical:

Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that

But Congress did not define what it meant by “violent video programming,” which could include news, documentaries, cartoons, fictional dramas like *The Miracle Worker*, educational films about the Holocaust or the Civil War, and Shakespearean dramas. Nor did it mention that different schools of psychology hold widely varying views about what causes humans to be violent or aggressive.¹⁵

What, then, do the psychological studies to which Congress referred in its v-chip law actually show? It is useful in discussing this literature to understand at the outset some of the basic characteristics of social science research that distinguish it from research in the physical sciences. First, even those psychologists who believe that media violence is a significant influence on youthful attitudes and behavior do not agree about which violent images or ideas are harmful. Most acknowledge that contextual factors such as humor, plot, and theme (for example, whether the



person using violence is punished) influence the ways that movies or TV shows are perceived. Others think that the stimulation created by a “hot” medium like television causes excitement or aggression regardless of the content of the program. The philosopher Sissela Bok, in her book, *Mayhem - Violence as Public Entertainment*, draws a distinction between high art, which she believes may have cathartic and educational functions (for example, Picasso’s *Guernica* or Steven Spielberg’s “Schindler’s List”), and “the pitilessness that accompanies much entertainment violence.” Bok also praises movies in which terror “blends with pity for the victims” or killing is “a dramatic device or a form of closure rather than something savored for its cruelty.”¹⁶ The subjectivity of these distinctions illustrates how difficult it is to generalize about large-scale, long-term psychological or behavioral effects. Research in this area starts with a hypothesis and then tries to prove it. Different researchers, depending on their initial hypotheses, therefore use quite different examples of violent media content when they fashion their experiments.

There is equally little agreement, even among

those who believe in a direct causal connection between the media and behavior, about the precise nature of the effects. Some say the primary effect is imitation — the “modeling” behavior identified by the social learning school. Others think that media violence primarily desensitizes viewers — that is, makes them more callous about real-world violence. Still others subscribe to the “mean world” syndrome: they believe that violent entertainment or news reports cause people to become unduly fearful and to perceive the real world as being more brutal than it actually is.¹⁷ Finally, most studies in this area try to measure aggressive attitudes or behavior, not violence — and there is a big difference

between the two. Aggression is “not a unitary concept,”¹⁸ and not all of it is socially disapproved, particularly if it is merely verbal. Indeed, neither is all violence. (Self-defense and sports are two examples).

Even where psychologists can agree on what media

effects they are trying to measure, research in this area deals with aspects of human character that are inherently difficult to quantify. Researchers not only have different understandings of what is meant by aggressive attitudes or behavior, but they often have to rely on inherently subjective “self reports,” or reports from parents, teachers, and peers, in trying to measure it. Or, if they are conducting laboratory experiments, they use artificial substitutes for aggression such as hitting Bobo dolls or delivering electric shocks in an environment where these acts are permitted and even encouraged. As one child psychologist has written, it is “methodologically almost impossible” to prove a

Not all aggression is socially disapproved, particularly if it is merely verbal.



other social and cultural influences on their developing characters.¹⁹

The measurement techniques of media violence studies also have limitations. To begin with, not all studies in psychology aspire to scientific validity; some are merely reports of clinical cases. Case studies such as Fredric Wertham's interviews with troubled youngsters were unscientific because the "sample" from which the conclusions were drawn was skewed — not representative of the general population —and because Wertham did not use a control group of non-delinquents who may have been exposed to the same violent entertainment without ill effects.

television, for example — simply means that the two are found together too often to occur purely by chance. But the correlation may not be very large; it may not exist in most, or even a substantial number, of cases.²⁰ More important, a correlation tells us nothing about which variable caused the other, or whether in fact some "common third variable" was the causative factor that accounts for the linkage.

One of the more famous examples of the correlational fallacy was a statistical analysis of homicide rates after the introduction of television in Canada, the U.S., and South Africa. Based on correlations, the researcher, Brandon Centerwall,

showed precisely the opposite correlation (increased television viewing and reduced homicide rates in many countries) completely undermined Centerwall's claims.²²

One last fact about social science is that studies yielding results that do not confirm the researchers' hypotheses often do not get published. Thus, when pundits refer to an overwhelming majority of studies in which a causal hypothesis has supposedly been confirmed (even if only at a small level of statistical significance), they are generally not taking account of studies that produced "null" results. Nor, of course, are they considering studies done by psychologists with different working hypotheses about the sources of human aggression, and attempting to measure such factors as family background, drug and alcohol abuse, or availability of firearms. It was on the basis of studies that started from these other perspectives that the 1993 report of the National Research Council, *Understanding and Preventing Violence*, concluded that genetic, social, and family influences — not media violence — were the primary determinants of violent behavior.²³

Even where studies do use scientific methods, such as random samples and control groups, positive results may be quite small. Finding a "statistically significant" correlation between two "variables" — aggressive behavior and preference for violent

concluded that television was responsible for a doubling in the number of killings in these countries.²¹ The flaws in his logic, and his failure to consider other factors that might account for the rise in homicides, led to widespread criticism. Indeed, later data that

Studies yielding results that do not confirm the researchers' hypotheses often do not get published.

The studies that do focus on media violence, and that are the basis for claims of definitively proven adverse effects, are of three main types. First are *laboratory experiments* of the sort conducted by Bandura. It is well-established that experimenters can induce short-term behavioral effects in a statistically significant number of subjects in these laboratory settings, but “the very artificiality of the circumstances,” and “the brevity of both the TV exposure and the effects being measured,” make it questionable whether the experimental results have “ecologic validity” in the real world.²⁴ Aggression in a laboratory, as a bar association committee in New York explained, “is necessarily only an analogue of aggression, such as pushing a ‘shock button’ or hitting a Bobo doll”; it may be perceived as encouraged and approved by the researchers, “with no possibility of retaliation, sanction, or moral condemnation.”²⁵ Lab studies are also artificial because they are so limited in time, and because they often isolate “selected violent programs or scenes,” both from their context in the film and from the larger world in which people are exposed to “a mixture of

programming depicting violent and nonviolent activities.”²⁶

Because it is so difficult to draw conclusions about real-world behavior from the short-term effects produced in lab

experiments, psychologists began to conduct *field studies*, which examine children’s or adolescents’ behavior following exposure to violent entertainment in real-world settings. Field studies have yielded inconclusive and inconsistent results, however. Psychologists Joyce Sprafkin and Jonathan Freedman had believed widely publicized claims about the field studies until they looked at the actual write-ups, or, in Sprafkin’s case, conducted experiments of their own. Sprafkin and her colleagues found that youngsters in some of their experiments actually became more aggressive after watching “pro-social” programs like “Sesame Street” or “Mr. Rogers’ Neighborhood.” They concluded that “commonsense notions about what is harmful or

innocent television fare for children are not always on target”; often, “it is the ‘control’ programs that are the most problematic.” Forcing “a wholesome television diet on children,” they said, “may be counterproductive.”²⁷

Sprafkin found that youngsters actually became more aggressive after watching ‘pro-social’ programs.

Finally, there have been *correlational studies* that often show a link between aggressive behavior and a preference for violent entertainment. But correlations do not demonstrate causation. A well-known example comes from a series of studies that found statistically significant correlations between sales of “men’s magazines,” such as *Playboy* and *Penthouse*, and rape rates in different states. The correlations, as it turned out, were explained by a third variable, which the researchers called the “Violence Approval Index” — a measure of “hypermasculine” attitudes that accounted for the high magazine sales and the high rate of assaults.²⁸ Similarly, a correlation found in one study between reckless behavior by adolescents and their taste

for heavy metal music “did not demonstrate that listening to these types of music causes adolescents to behave recklessly. Rather, both reckless behavior and heavy metal or hard rock music appeal to adolescents who have an especially high propensity for sensation seeking.”²⁹ It is likely that some adolescents find violent lyrics to be cathartic: as one researcher said, “heavy metal music, with its angry and aggressive sound, is especially useful to adolescents in purging anger.”³⁰

To remedy the correlation fallacy, some researchers have conducted “longitudinal” correlation studies — that is, they have observed the relation between two variables over time and then, through sophisticated statistical techniques, tried to see if the results supported their hypothesis that aggressive behavior among the youngsters who were subjects of the study increased as a consequence, at least in part, of earlier television viewing. One of the most famous of these longitudinal experiments was the so-called “Rip Van Winkle” study, which examined TV viewing habits and social conduct among a group of rural New Yorkers at ages 8, 19, and 30. For the males in

the study, there was a correlation between violent TV viewing at age 8, at least one measure of aggression at age 19, and serious crime at age 30. The researchers, L. Rowell Huesmann and Leonard Eron, said the data supported a finding of “bidirectionality,” meaning that aggressive tendencies led to increased viewing of violent television, and increased viewing in turn increased aggression.³¹ But other longitudinal studies failed to replicate these findings, and some scholars criticized Eron and Huesmann’s statistical methods in this and other experiments; their failure to explore other factors associated with violent behavior; their reliance on dubious parental reporting of children’s aggressiveness; and their inability to keep track of many of the subjects over the years of the Rip Van Winkle study.³² Another large-scale longitudinal study, which followed about 3,200 youngsters in Midwestern cities over a period of three years, found no evidence of a delayed behavioral effect from watching TV violence.³³ Most interesting, perhaps, was that when journalist Richard Rhodes questioned Huesmann years later about the crime data for the 30-year-olds in his study, Huesmann admitted that the correlation was “entirely due to three boys

who committed violent crimes and had scored high on age 8 TV violence viewing. ... It is enough to make the results significant according to statistical theory, but if just these three boys had behaved differently, all the significant results could have vanished.”³⁴

Eron and Huesmann later conducted a large-scale longitudinal study involving six different countries, with a total of 14 different groups, but the results were overwhelmingly negative, showing no significant effect for Australia, Finland, the Netherlands, Poland, the U.S., or kibbutz children in Israel. The only strongly significant effects over time were for two groups of Israeli city dwellers – a score of two positive results out of 14. The authors nevertheless interpreted the findings in the most positive light that they could. Dutch researchers who had participated in this study refused to go along with Eron and Huesmann’s conclusions and ultimately published their own report. They said that the hypothesis, “formulated on the basis of social learning theory, that television violence viewing leads to aggressive behavior could not be supported.”³⁵



Those who believe that psychological studies have proved media violence to cause adverse effects generally adopt a “convergence” argument. That is, they accept the deficiencies of the various methods and the ambiguities of the results, but say that cumulatively, the studies sufficiently reinforce each other to demonstrate a causal relationship.³⁶ They sometimes point to the statistical technique of “meta-analysis” — combining the results of many studies to see how strongly they converge. But if the underlying studies are flawed, inconsistent, or ambiguous in their results, it is not clear that blending them strengthens the case for adverse media effects.

None of this means that movies, television, books, music, and the Internet have no influence on the attitudes and behavior of children — or of adults, for that matter. But the effects vary widely, and are difficult to quantify, as many social scientists recognize. Even the 1982 U.S. government report noted “a change in psychology since the 1960s when the stimulus-response models of learning began to give way to a broader-gauged cognitive orientation,” which understands that human

beings respond in varying ways to new information, based on “preestablished schema” that are “built up by many previous interactions with the environment.”³⁷ As the psychologist Kevin Durkin put it, broad generalizations

about simple, direct effects of art or entertainment on human psyches “do not carry us very far”; television “may be implicated” in child development, but “in different ways at different points in the lifespan.” As much depends “upon what the child brings to TV viewing as upon what it extracts.”³⁸

Thus, for some people, in some circumstances, some movies, TV shows, or video games may cause a “copy cat” effect. For others, the same entertainment may produce revulsion, fear, indignation, boredom, curiosity, or some combination of these reactions. For still others, the same works simply provide escapist enjoyment. Many psychologists believe that violent entertainment, like frightening fairy tales, has a cathartic or

therapeutic function, allowing viewers to experience excitement and adventure without running any real risk of harm.³⁹

As an expert witness in A.S. Byatt’s novel *Babel Tower* observes, any mother

Many psychologists believe that violent entertainment has a cathartic or therapeutic function.

“knows that some children can take *anything* and some cry and cry over the death of a seal or Bambi and never quite recover.”⁴⁰ Another author, Judith Rich Harris, recently reframed the point: children *do* learn by imitation, but selectively. Among other things, they learn that for the most part they cannot simply imitate adults.⁴¹

At bottom, public concern about violent entertainment probably has more to do with widely shared feelings about the kinds of messages and ideas children should be receiving than with any direct cause-and-effect relationship that has been, or likely can be, established by social science studies. These concerns about the proper upbringing, or socialization, of young people are important ones.



But it is not clear that censorship laws, or even ratings systems that make violent entertainment forbidden, and, therefore, more attractive, are likely to reduce anti-social behavior. Moreover, the high value that Americans

surely as news reporting and political debate. As the Supreme Court put it more than half a century ago, the First Amendment does not apply “only to the exposition of ideas. The line between the informing and the entertaining is too

“patently offensive” according to local, “contemporary community standards”; (2) must, taken as a whole, predominantly appeal to a “prurient” — that is, a shameful or morbid — interest in sexual or excretory matters; and (3) must, taken as a whole, lack “serious literary, artistic, political, or scientific value.”⁴⁵ There has never been an analogous exception to the First Amendment for speech or entertainment with violent content — unless it rises to the level of threats, “fighting words,” or incitement.⁴⁶

It is not clear that censorship laws or ratings systems are likely to reduce anti-social behavior.

place on free expression creates a serious barrier to censorship as a response to media violence.

elusive for the protection of that basic right.”⁴³

The First Amendment is not an absolute — it no more protects perjury, extortion, or other types of speech that in themselves constitute crimes than it prevents Congress or state legislatures from passing laws against invasion of privacy, threats, or libel.⁴⁴ The Supreme Court has also created an exception to the First Amendment for “obscenity.” This has been defined — after years of judicial struggle and experimentation with different formulas — in terms of a three-part test. To be obscene, and therefore unprotected by the First Amendment, material (1) must depict or describe specific sexual or excretory activities in a manner that is considered

The first Supreme Court case to address the issue of violent entertainment was *Winters v. New York* in 1948. The State of New York had a law banning publications “principally made up of” criminal news or police reports, or “pictures or stories of deeds of bloodshed, lust or crime.” The justices invalidated the law because terms like “bloodshed” and “lust” were too vague to put publishers on notice of what was illegal. Vague laws, they said, were particularly dangerous in the area of free speech and press. And although “we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as

FREEDOM OF EXPRESSION

The First Amendment to the U.S. Constitution protects “the freedom of speech,”⁴² but exactly what this Delphic phrase means has long been a cause for debate. Intellectual freedom and inquiry, personal growth, the right to blow off steam, and the essential role of public discourse in a functioning democracy have all been mentioned as values underlying the constitutional command. The First Amendment protects art, literature, TV sitcoms, action movies, and Internet chat rooms just as

the best of literature.”⁴⁷ This vagueness problem would prove endemic to censorship efforts aimed at violent content; the category is simply too vast and various, and too important a subject of art and literature as well as news, sports, and politics, for legal restrictions to be objectively defined.

The Court reiterated the point 20 years after *Winters* in a case challenging a movie ordinance in the city of Dallas, Texas. This was not a criminal ban like the New York “bloodshed, lust or crime” law, but a licensing scheme requiring exhibitors to submit all films in advance to a municipal board, then abide by the board’s ruling with respect to each film’s “suitability” for minors. Among the factors the board considered were whether the film contained “brutality, criminal violence or depravity” in a manner “likely to incite or encourage crime or delinquency on the part of young persons.” The Supreme Court rejected Dallas’ argument that the “salutary purpose of protecting children” justified the ordinance. Laws “aimed at protecting children from allegedly harmful expression,” it said, “— no less than legislation enacted with respect to adults” — must be “clearly

drawn,” with standards “reasonably precise so that those who are governed by the law and those that administer it will understand its meaning and application.” Following the logic of *Winters*, the Court ruled that Dallas’ standards were too vague: what might encourage delinquency was left totally to “the censor’s discretion.”⁴⁸

More recently, courts faced with laws designed to restrict minors’ access to violent entertainment have followed the Dallas and *Winters* cases. A few have gone beyond the vagueness issue to rule explicitly that art or entertainment with violent content is constitutionally protected. That is, simply plugging the obscenity formula of patent offensiveness, prurience,

and lack of serious value into a censorship law directed at violence does not make the law constitutional, for the obscenity exception to the First Amendment is limited to speech about sex.⁴⁹

For example, in 1992, Nassau County, N.Y., passed an ordinance that banned the distribution to minors of trading cards that depicted “a heinous crime, an element of a heinous crime, or a heinous criminal.” Eclipse Enterprises, a producer of trading-card sets with themes like “Crime and Punishment,” “Drug Wars,” and “Friendly Dictators” (describing U.S. support of authoritarian regimes) brought a First Amendment challenge to the law. The county’s defense relied on the legal test of “strict scrutiny” that the Supreme Court uses to evaluate restrictions on speech that are based on its content. Under the strict scrutiny test, such “content-based” restrictions are presumptively unconstitutional, but can

This vagueness problem would prove endemic to censorship efforts aimed at violent content.

be salvaged if the government proves that they are necessary to serve a “compelling state interest.” Nassau County argued that its ordinance was “narrowly tailored” to serve a “compelling interest in providing for the well-being of minors.”⁵⁰

Courts in the past had often assumed that protecting youth from sexual images or ideas was a compelling state interest, and had not required the government to prove why. In the *Eclipse* case, the county tried to extend this assumption of psychological harm — from sexual images and ideas to violent ones. The trial judge, however, was not about to accept such a claim at face value, and, therefore, ordered both sides to present evidence on the issue of psychological harm. *Eclipse's* lawyers presented the expert testimony of Joyce Sprafkin and Jonathan Freedman, who both testified that, contrary to popular belief, the research on television violence has yielded, at best, inconsistent results, with weak or nonexistent evidence of actual effects on children's behavior. As for violent trading cards, there was not even a body of social science research. The county, in response, presented a child psychiatrist, a priest, a rabbi, a victims' rights advocate, and a social worker, all of whom gave their opinions that some crime trading cards could be harmful. But they acknowledged that they knew of no studies connecting crime trading cards or other reading material to violent behavior

in children, and no "particular incidents of violent behavior in children that could be attributed to crime trading cards."⁵¹ The courts therefore ruled that the government had not made its case. Indeed, it is unlikely that evidence presented in a legal case can ever prove that a broad category of entertainment, whether "violent" or "depicting a heinous crime," has predictable large-scale imitative effects.

This problem of defining a broad category of expression for purposes of censorship does not arise, though, where a *particular* book, movie, song, or TV show is alleged to have caused harm, usually by inspiring an individual reader or viewer to act out its description of a crime. As a result, the aggrieved victims of violent crimes have occasionally sued producers or publishers of specific works that they claim caused an individual criminal to harm them or their families. But holding publishers, authors, producers — or newscasters — liable for the "copycat" crimes of deranged individuals when thousands or millions of others who were exposed to the same work were not moved to violence, has dire consequences for free expression. Some of the goriest crimes are depicted

in classic works of literature — *Hamlet*, *Macbeth*, *Oedipus Rex*, *The Iliad*, *Crime and Punishment*, *War and Peace*, and the Bible. As a judge in one copycat case explained, "if the shield of the First Amendment can be eliminated" by proving that one individual imitated a description of a dangerous activity, then "all free speech becomes threatened."⁵²

Because suppressing or punishing violence in literature or entertainment is prohibited by the First Amendment, those concerned about the issue have implemented regulatory schemes that don't directly ban violent content but that require labels, ratings, filters, or v-chips. These devices are often described simply as helpful information, or forms of "parental empowerment." But filter manufacturers and raters, not parents or teachers, are the ones who decide what material is questionable under these systems. Thus, the 1996 law requiring v-chips in most new television sets preempted the attitudes and judgments of a culturally diverse population of American parents when it listed "sexual, violent, or other indecent material" as the specific categories to be rated and potentially blocked.⁵³ And this diverse



population of parents will not get to decide what programs receive an adverse label. The problem is even more pronounced in the case of Internet filtering software, which operates either by mechanically blocking World Wide Web sites based on “keyword” identification, or by hastily made, subjective judgments about a complex mass of material on thousands of Web sites.

Whether or not courts eventually decide that government-prescribed rating-and-blocking systems restrict expression seriously enough to violate the First Amendment, they do have censorial effects. They pressure producers to steer clear of controversial subjects (particularly in order to avoid the loss of advertisers), and they reduce the audience for the TV shows that receive ratings, or the Web sites that are blocked. The problems of vagueness, moreover, are formidable: there is no coherent or trustworthy way for any group of raters to decide what violent content is harmful or inappropriate; and labeling all violence, from war movies, cowboy sagas, biblical epics, and Shakespearean dramas to space odysseys and cartoon fantasies, would target a vast amount of valuable expression.

Frequently, the argument is made that even if the First Amendment bars censorship of violent content for adults, children are different; they are impressionable and vulnerable, likely to “get lost in the marketplace of ideas.” Young people are not without First Amendment rights, though; and as they mature, those rights become increasingly important to their intellectual development, their critical thinking skills, and their ability to become intelligent participants in the democratic process.⁵⁴ There is serious doubt, moreover, that censoring violent literature or entertainment actually protects youngsters against bad ideas; there are too many other, more potent models for them to imitate, if they are disposed to do so. Measures designed to restrict youthful exposure to disturbing stories or images also inevitably restrict the choices and rights of adults, whether by prohibiting certain communications to minors in a context, like the Internet, where the age of readers cannot be readily determined, or by imposing rating systems that pressure publishers and producers to self-censor.

Beyond the First Amendment concerns and the problems of trying to

identify what, if any, depictions of violence are actually harmful, it is doubtful that even a large-scale program of censorship would go far toward reducing anti-social behavior and crime among youngsters or adults. The tendency of politicians, from the days of Comstock to the trauma of Columbine, to focus on the essentially symbolic issue of media entertainment obscures the root causes of violence, and, in the long run, probably inhibits rather than advances the search for solutions to the problem of violence in society. Among other, more productive approaches would be controlling the availability of firearms, attempting to alleviate poverty and family dysfunction, improving drug and alcohol treatment, and teaching youngsters media literacy, nonviolent dispute resolution, and critical thinking skills.



Marjorie Heins is a First Amendment lawyer and author whose latest book, Not in Front of the Children: “Indecency,” Censorship, and the Innocence of Youth will be published by Hill & Wang in 2001. She currently directs the Free Expression Policy Project at the National



Coalition Against Censorship and, from 1991-98, directed the Arts Censorship Project of the ACLU. While at the ACLU, she participated in *Reno v. ACLU*, the First Amendment challenge to the 1996 "Communications Decency Act," and *NEA v. Finley*, the challenge to Congress' requirement that in awarding federal arts grants,

the National Endowment for the Arts consider "general standards of decency and respect for the diverse beliefs and values of the American public." Her previous books include *Sex, Sin, and Blasphemy: A Guide to America's Censorship Wars* (New Press, 1993, 1998), and *Cutting the Mustard: Affirmative Action and the*

Nature of Excellence (Faber & Faber, 1987). She graduated from Harvard Law School in 1978.

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¹See "Children's Protection From Violent Video Programming Act," S. 876, 106th Cong., 1st Sess. (1999); "Children's Defense Act of 1999," H.R. 2036, 106th Cong., 1st Sess. (1999); Lawrie Mifflin, "A Media-Violence Link?" *Int'l Herald Tribune*, May 10, 1999, p. 2; David Von Drehle, "Soul-Searching in School Tragedy Yields Many Warnings but Few Answers," *Int'l Herald Tribune*, Apr. 26, 1999, p. 3; Kevin Merida & Richard Leiby, "Out of the Dark, Into the Mainstream: America's Cult of Violence," *Washington Post*, Apr. 30, 1999, p. 1; "The Guns of Littleton," *The Nation*, May 17, 1999, p. 4; Michael Janofsky, "The Columbine Killers' Tapes of Rage," *New York Times*, Dec. 14, 1999, p. A22.

²Henry Jenkins, "Professor Jenkins Goes to Washington," *Harper's*, July 1999, p. 19; reworked as "Lessons From Littleton: What Congress Doesn't Want to Hear About Youth and Media," <http://web.mit.edu/cms/news/nais9912/>.

³Alexander Nehamas, "Plato and the Mass Media," 71 *The Monist* 222 (1988); see Plato, *The Republic and Other Works* (Benjamin Jowett, trans.) (New York: Doubleday, 1973), pp. 62-63; *The Laws* (Trevor Saunders, trans.) (London: Penguin, 1970), pp. 282-92, 300-04. On Plato's puritanism and distrust for any art "outside the full control of the rational mind," see Iris Murdoch, *The Fire and the Sun: Why Plato Banished the Artists* (Oxford, UK: Clarendon, 1977), pp. 12-13.

⁴Aristotle, *The Poetics*, and John Gassner, "Introduction," in *Aristotle's Theory of Poetry and Fine Arts* (4th ed.) (New York: Dover, 1951); Stephen Halliwell, *Aristotle's Poetics* (Chapel Hill: U. of N. Carolina Press, 1986).

⁵Philippe Ariès, *Centuries of Childhood* (Robert Baldick, trans.) (New York: Vintage, 1962), pp. 103, 109, 261.

⁶See *Traps for the Young* by Anthony Comstock (John Harvard Library ed.) (Cambridge, Mass.: Belknap Press, 1967); Anthony Comstock, *Frauds Exposed; or, How the people are deceived and robbed, and youth corrupted* (New York: J.H. Brown, 1880); Heywood Broun & Margaret Leech, *Anthony Comstock - Roundsman of the Lord* (London: Wishart & Co., 1928); Nicola Beisel, *Imperiled Innocents - Anthony Comstock and Family Reproduction in Victorian America* (Princeton, NJ: Princeton U. Press, 1997).

Frederic Thrasher, "The Comics and Delinquency: Cause or Scapegoat," 23 *J. Educ. Sociol.* 195, 199 (1949), citing Paul Cressey, *The Role of the Motion Picture in an Interstitial Area* (unpublished manuscript on deposit at N.Y.U. library). See also Paul Cressey, "The Motion Picture Experience as Modified by Social Background and Personality," 3 *Am. Sociol. Rev.* 516 (1938); Herbert Blumer & Philip Hauser, *Movies, Delinquency, and Crime* (New York: Arno Press & The New York Times, 1970 reprint ed.) (original, New York: Macmillan, 1933) (both studies sponsored by the Payne Foundation).

⁸Fredric Wertham, *Seduction of the Innocent* (London: Museum Press, 1955), pp. vi, 189-90. Wertham attacked those who posited multiple causes for criminal behavior – "unconscious factors, infantile experiences," and so forth – as "pseudoeuridite and utterly false." *Id.*, p. 115.

⁹See *Juvenile Delinquency (Comic Books)*, 1954: Hearings on S. 190 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 83d Cong., 2d Sess. (1954), pp. 86, 103; *Comic Books and Juvenile Delinquency*, Interim Report of the Senate Comm. on the Judiciary, 84th Cong., 1st Sess.; Margaret Blanchard, "The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society," 33 *Wm. & Mary L. Rev.* 741, 788-95 (1992); John Twomey, "The Citizens' Committee and Comic Book Control: A Study of Extragovernmental Restraint," 20 *Law & Contemp. Probs.* 621, 622, 624 (1955); Lynn Spigel, "Seducing the Innocent: Childhood and Television in Postwar America," in *The Children's Culture Reader* (Henry Jenkins, ed.) (New York: NYU Press, 1998), p. 117.

¹⁰Albert Bandura, "What TV Violence Can Do to Your Child," *Look*, Oct. 22, 1963, pp. 46-52. For the original experiment, see Albert Bandura, Dorothea Ross, & Sheila Ross, "Imitation of Film-Mediated Aggressive Models," 66 *J. Abnormal & Social Psych.* 3-11 (1963).

¹¹Seymour Feshbach & Robert Singer, *Television and Aggression: An Experimental Study* (San Francisco: Jossey-Bass, 1971), pp. 1-2, xiv.

¹²Surgeon General's Advisory Committee on Television and Social Behavior, *Television and Growing Up: The Impact of Televised Violence* (Washington, DC: Gov't Printing Office, 1972), Vol. 1, pp. 4, 7, 67; see also National Research Council, *Understanding and Preventing Violence* (Albert Reiss, Jr. & Jeffrey Roth, eds.) (Washington, DC: Nat'l Academy Press, 1993), p. xi (noting Surgeon General's "conflicting evidence and findings of small, if any, impact").

¹³*Television and Behavior - Ten Years of Scientific Progress and Implications for the Eighties* (Washington, DC: US. Dep't HHS, 1982); Thomas Cook et al., "The Implicit Assumptions of Television Research: An Analysis of the 1982 NIMH Report on *Television and Behavior*," 47(2) *Pub. Opin. Q.* 161, 179-92 (1983); Jonathan Freedman, "Viewing Television Violence Does Not Make People More Aggressive," 22 *Hofstra L. Rev.* 833, 836 (1994).

Social learning theorists acknowledged that only some violent entertainment teaches bad behavior; and did not argue that the media were the only, or even a primary, cause of social problems. See Albert Bandura, *Aggression: A Social Learning Analysis* (Englewood Cliffs, NJ: Prentice-Hall, 1973); Albert Bandura, "Social Learning Theory of Aggression," *J. Comm'n* (Summer 1978), pp. 12-29; Ted Rosenthal & Barry Zimmerman, *Social Learning and Cognition* (New York: Academic Press, 1978); Richard Evans, *Albert Bandura: The Man and His Ideas - A Dialogue* (New York: Praeger, 1989); Kevin Durkin, *Television, Sex Roles and Children: A developmental social psychological account* (Milton Keynes, UK: Open U. Press, 1985), pp. 42-46; Robert Liebert & Joyce Sprafkin, *The Early Window - Effects of Television on Children and Youth* (New York: Pergamon, 1988), pp. 65-79.

¹⁴Section 551(a), Public Law 104-104 (1996), published in the Historical and Statutory Notes to 47 U.S.C. §303(w). Congressional "findings" are not necessarily based on empirical evidence; and where First Amendment rights are at stake, courts must make their own judgment about the accuracy of the facts on which the government relies. *Sable Communications v. FCC*, 492 U.S. 115, 129 (1989).

¹⁵See, for example, Konrad Lorenz, *On Aggression* (New York: Harcourt Brace & World, 1963) (positing that humans, like animals, have an innate aggressive instinct); Erich Fromm, *The Anatomy of Human Destructiveness* (New York: Henry Holt, 1973), p. 98 (describing destruction and cruelty not as "instinctual drives, but passions rooted in the total existence of man"); Debra Niehoff, *The Biology of Violence* (New York: The Free Press, 1999) (describing sources of aggression in brain chemistry, which in turn is shaped by the environment); Jonathan Kellerman, *Savage Spawn - Reflections on Violent Children* (New York: Ballantine, 1999) (positing that aggression, like other behaviors, results from the interaction of inborn traits with environmental influences, with media having little direct impact); Committee on Communications & Media Law, "Violence in the Media: A Position Paper," 52(3) *Record of The Ass'n of the Bar of the City of New York* 273, 283-86 (1997) (noting that "the subject of violence and aggression in psychology is vast," with little agreement among experts about its causes).

¹⁶Sissela Bok, *Mayhem - Violence as Public Entertainment* (Reading, MA: Addison Wesley, 1998), pp. 28, 43.

¹⁷For descriptions of the various theories, see University of Oxford Programme in Comparative Media Law & Policy, *Final Report: Parental Control of Television Broadcasting* (1999), ch. 3, "Media Theories Background," <http://europa.eu.int/comm/dg10>; Stacy Smith *et al.*, *National Television Violence Study 3* (Thousand Oaks, CA: Sage, 1998), p. 10; see also George Gerbner & Nancy Signorielli, *Violence and Terror in the Mass Media* (Paris: UNESCO, 1988) ("mean world" theory); *Pornography and Sexual Aggression* (Neil Malamuth & Edward Donnerstein, eds.) (New York: Academic Press, 1984)(imitation theory).

¹⁸Kenneth Gadow & Joyce Sprafkin, "Field Experiments of Television Violence with Children: Evidence for an Environmental Hazard?" 83(3) *Pediatrics* 399, 401 (1989) (noting also that in some studies, a distinction is made "between playful and hurtful aggression"; in others, "both peer and adult-directed aggression" is studied).

¹⁹Kellerman, *supra* n. 15, p. 72-73.

²⁰The usual measure of statistical significance is .05, meaning that there is only one chance in 20 that the results of the study would have occurred by chance. With large samples, even a very small linkage will be "statistically significant." See David Moore, *Statistics - Concepts and Controversies* (4th ed.) (New York: W.H. Freeman, 1997), pp. 404, 486-90; Frederic Schauer, "Causation Theory and the Causes of Sexual Violence," 4 *Am. Bar Fdn Rsrch Jnl* 737, 752-53 (1987) (claims about causation in social science are "probabilistic," rather than "determinative"); Eli Rubenstein, "Introductory Comments," in *Television and Behavior*, *supra* n. 13, Vol. 2, p. 2; Jonathan Freedman, "Effect of Television Violence on Aggressiveness," 96 *Psych. Bull.* 227 (1984); Kellerman, *supra* n. 15, pp. 56-57.

²¹See Brandon Centerwall, "Exposure to Television as Risk Factor for Violence," 129(4) *Am. J. Epidemiology* 643-52 (1989); Brandon Centerwall, "Television and Violence: The Scale of the Problem and Where to Go From Here," 267(22) *JAMA* 3059-63 (1992).

²²See "Violence in the Media," *supra* n. 15, at 292-93; Bok, *supra* n. 16, p. 86; Franklin Zimring & Gordon Hawkins, *Crime is Not the Problem - Lethal Violence in America* (New York: Oxford U. Press, 1997), pp. 133-34, 239-43.

²³Nat'l Research Council, *supra* n. 12; see also Bok, *supra* n. 16, pp. 85, 5, 57 (identifying "more direct" causes of violent conduct to include family breakdown, child abuse, firearms availability, and overindulgence in drugs and alcohol); Zimring & Hawkins, *supra* n. 22 (availability of firearms — not crime rate or media imagery — accounts for high rate of lethal violence in America).

²⁴Victor Strasburger, *Adolescents and the Media - Medical and Psychological Impact* (Thousand Oaks, CA: Sage, 1995), p. 166.

²⁵"Violence in the Media," *supra* n. 15, at 287-88.

²⁶*Id.* at 288; see also Strasburger, *supra* n. 24, pp. 161-94; Jonathan Freedman, "Television Violence and Aggression: A Rejoinder," 100(3) *Psych. Bull.* 372-78 (1986); Robert Kaplan, "Television Violence and Viewer Aggression: A Reexamination of the Evidence," 32(4) *J. Soc. Issues* 35-70 (1976); and "TV Violence and Aggression Revisited Again," 37(5) *Am. Psychol.* 589 (1982); Daniel Linz *et al.*, "The Attorney General's Commission on Pornography: The Gaps Between 'Findings' and Facts," 4 *Am. Bar Fdn Rsrch J.* 713, 722 (1987).

²⁷Joyce Sprafkin, Kenneth Gadow & Patricia Grayson, "Effects of Viewing Aggressive Cartoons on the Behavior of Learning Disabled Children," 28(3) *J. Child Psych. & Psychiatry* 387, 394 (1987); see also Gadow & Sprafkin, *supra* n. 18, at 403; Freedman, 22 *Hofstra L.Rev.* at 842; Cook *et al.*, *supra* n. 13, at 181-82.

²⁸Larry Baron & Murray Straus, *Four Theories of Rape in American Society: A State-Level Analysis* (New Haven: Yale U. Press, 1989); Baron & Straus, "Sexual Stratification, Pornography, and Rape in the United States," in *Pornography and Sexual Aggression*, *supra* n. 17, pp. 186-208; Baron & Straus, "Four Theories of Rape: A Macrosociological Analysis," 34(5) *Social Probs.* 467-89 (1987).

²⁹Jeffrey Arnett, "The Soundtrack of Restlessness - Musical Preferences and Reckless Behavior Among Adolescents," 7(3) *J. Adol. Rsrch* 313, 325 (1992); Jeffrey Arnett, "Adolescents and heavy metal music: From the mouths of metalheads," 23 *Youth & Society* 76-98 (1991).

³⁰Lawrence Kurdek, "Gender differences in the psychological symptomatology and coping strategies of young adolescents," 7 *J. Early Adol.* 395-410 (1987).

³¹See L. Rowell Huesmann, *et al.*, "The stability of aggression over time and generations," 20 *Devel. Psych.* 1120-34 (1984); Leonard Eron *et al.*, "Does Television Violence Cause Aggression?" 27(4) *Am. Psychol.* 253-63 (1972); Leonard Eron, "Parent-Child Interaction, Television Violence, and Aggression of Children," 37(2) *Am. Psychol.* 197-211 (1982); discussion in Freedman, 96 *Psych. Bull.* at 239-41; "Violence in the Media," *supra* n. 15, at 293-94. In this and other studies, Huesmann and Eron also found strong correlations between aggressive behavior and non-media-related factors such as low parental education and social status, parents' aggressiveness and non-nurturant child-rearing practices, poor school performance, and unpopularity with peers. See L. Rowell Huesmann *et al.*, "Intervening Variables in the TV Violence-Aggression Relation: Evidence From Two Countries," 20 *Devel. Psych.* 746 (1984); Freedman, "Rejoinder," *supra* n. 26, at 376.

³²See David Sohn, "Television Violence and Aggression Revisited," 36(2) *Am. Psychol.* 229-31 (1981); David Sohn, "On Eron on Television Violence and Aggression," 37(11) *Am. Psychol.* 1292-93 (1982); Herbert Kay, "Weaknesses in the Television-Causes-Aggression Analysis by Eron *et al.*," 27(10) *Am. Psychol.* 970-73 (1972); Gilbert Becker, "Causal Analysis in R-R Studies: Television Violence and Aggression," 27(10) *Am. Psych.* 967-68 (1972); Thomas Krattenmaker & L.A. Powe, Jr., "Televised Violence: First Amendment Principles and Social Science Theory," 64 *Va.L.Rev.* 1123, 1148-49 (1978); Freedman, 96 *Psych. Bull.* at 235-43 (acknowledging that one of the correlations [for boys in grade three and later in grade 13]) was suggestive of causation but noting that the pattern was not found for girls, and, even for boys, was found using only one of three measures of aggression at grade 13: peer reports. Using other measures of aggression chosen by the researchers [self-reports and personality tests], there were no statistically significant correlations).

³³J. Ronald Milavsky *et al.*, *Television and Aggression: A Panel Study* (New York: Academic Press, 1982).

³⁴Richard Rhodes, "The Media-Violence Myth," *Rolling Stone*, Nov. 23, 2000, p. 55; e-mail from L. Rowell Huesmann to Richard Rhodes, March 13, 2000.

³⁵Oene Wiegman *et al.*, "A Longitudinal Study of the Effects of Television Viewing on Aggressive and Prosocial Behaviors," 31 *Brit. J. Social Psych.* 147 (1992); see the description of this incident in Freedman, 22 *Hofstra L. Rev.* at 849-51. The original report is *Television and the Aggressive Child: A Cross-national Comparison* (L. Rowell Huesmann & Leonard Eron, eds.) (Hillsdale, NJ: Lawrence Erlbaum, 1986).

³⁶See *Television and Behavior*, *supra* n. 13, Vol. 1, p. 37.

³⁷*Id.*, pp. 87-91, 20.

³⁸Durkin, *supra* n. 13, p. 3; see also Nat'l Research Council, *supra* n. 12, pp. 101-02 (media effects theories are overly simplistic because they fail to consider either how different individuals respond to identical stimuli, or how various factors — psychosocial, neurological, and hormonal — *interact* to produce particular behavior); Zimring & Hawkins, *supra* n. 22, p. 130 (noting the immense variety of violent media messages, images, and themes, and their widely different effects).

³⁹See Bruno Bettelheim, *The Uses of Enchantment - The Meaning and Importance of Fairy Tales* (New York: Penguin, 1975), p. 7; John Sommerville, *The Rise and Fall of Childhood* (Beverly Hills: Sage, 1982), pp. 136-38 (describing psychological value of romances, fairy tales, and nursery rhymes that 16th- and 17th- century pedagogues tried to suppress); Joan Acocella, "The Big Bad Wolf is Back," *The New Yorker*, Nov. 30, 1998, p. 112; Henry Jenkins, "Lessons From Littleton," *supra* n. 2 ("Bettelheim argues that the violence and darkness of fairy tales is important for children to confront as a means of acknowledging the darker side of their own nature. Without such a depiction, children might take their own transgressive impulses as evidence that they are a 'monster,' rather than learning how to recognize and control those aspects of themselves").

⁴⁰A.S. Byatt, *Babel Tower* (New York: Vintage, 1996), p. 581.

⁴¹Judith Rich Harris, *The Nurture Assumption: Why Children Turn Out the Way They Do* (New York: Free Press, 1998), pp. 10-11, 50-70.

⁴²"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Over time, the Supreme Court has interpreted the First Amendment to apply to all branches of the federal government, not only Congress, and, through incorporation into the "liberty" guaranteed by the Fourteenth Amendment, to apply to the actions of state and local governments as well.

⁴³*Winters v. New York*, 333 U.S. 507, 510 (1948).



⁴⁴In many of these instances, the First Amendment does impose limits on the kind of prohibitions the government can enforce. For example, in *New York Times v. Sullivan*, 376 U.S. 254 (1964), the Supreme Court ruled that public officials must prove either deliberate falsity or reckless disregard of the truth before they can recover damages under state libel laws.

⁴⁵*Miller v. California*, 413 U.S. 15, 24 (1973). The Supreme Court first articulated an “obscenity” exception to the First Amendment in *Roth v. United States*, 354 U.S. 476 (1957), on the theory that obscenity was “no essential part of any exposition of ideas,” and was of such “slight social value as a step to truth that any benefit that may be derived from [it] is clearly outweighed by the social interest in order and morality.” *Id.* at 483-85. Justice William Brennan, the architect of the “obscenity” exception, later changed his mind: no definition supplied by judges, he said, could cure the vagueness and subjectivity of such concepts as prurient interest, patent offensiveness, and serious value, which necessarily vary “with the experience, outlook, and even idiosyncrasies of the person defining them.” These concepts are “so elusive,” he said, “that they fail to distinguish clearly between protected and unprotected speech.” *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 79-80, 84 (1973).

⁴⁶*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), created the exception to the First Amendment for “fighting words,” which are limited to comments likely to provoke violence in a face-to-face confrontation. *Brandenburg v. Ohio*, 395 U.S. 444 (1969), likewise limited “incitement” to speech directed to, and likely to have the effect of, provoking immediate violent behavior; mere advocacy of violence is constitutionally protected.

⁴⁷*Winters v. New York*, 333 U.S. at 510.

⁴⁸*Interstate Circuit v. Dallas*, 390 U.S. 676, 688-89 (1968). The case arose from the city’s classification of Louis Malle’s “Viva Maria” (starring Brigitte Bardot and Jeanne Moreau) as “not suitable for young persons.”

⁴⁹See *Video Software Dealers Ass’n v. Webster*, 968 F.2d 684 (8th Cir. 1992) (law borrowing the *Miller* obscenity formula and ostensibly aimed at “slasher” videos was both overbroad and vague); *Sovereign News Co. v. Falke*, 448 F.Supp. 306, 399-400 (N.D. Ohio 1977) (law restricting display of “extreme or bizarre violence, cruelty or brutality” was overbroad because it went beyond *Miller*), vacated on other grounds, 674 F.2d 484 (6th Cir. 1982); *Davis-Kidd Booksellers v. McWherter*, 886 S.W.2d 250 (Tenn. 1993) (law banning display of materials containing “excess violence” was unconstitutionally vague); *Allied Artists v. Alford*, 410 F.Supp. 1348 (W.D. Tenn. 1976) (same); *State v. Johnson*, 343 So.2d 705 (La. 1977) (obscenity definition that included “actual or simulated patently offensive acts of violence” went beyond *Miller* and was therefore unconstitutional).

⁵⁰*Eclipse Enterprise v. Gulotta*, 134 F.3d 63, 65 (2d Cir. 1997). The ordinance, tracking the *Miller v. California* formula, banned cards that were “patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors,” that lacked serious value for minors, and that appealed to the “depraved interest of minors in crime.”

⁵¹*Id.* at 65-66.

⁵²*Herceg v. Hustler*, 814 F.2d 1017, 1024 (5th Cir. 1987) (article on “autoerotic asphyxiation”); see also *Olivia N. v. NBC*, 126 Cal.App.3d 488 (1981) (TV show about a rape); *Zamora v. CBS*, 480 F.Supp. 199 (S.D.Fla. 1979) (steady diet of violent television); *Waller v. Osbourne*, 763 F.Supp. 1144 (M.D. Ga. 1991) (rock music about suicide); *Watters v. TSR, Inc.*, 715 F.Supp. 819 (W.D.Ky. 1989) (fantasy game “Dungeons & Dragons”); *Bill v. Superior Court*, 137 Cal.App.3d 1002 (1982) (film about gang violence); *DeFilippo v. NBC*, 446 A.2d 1036 (R.I. 1982) (dangerous stunt on TV program); *Yakubowicz v. Paramount Pictures*, 404 Mass. 624 (1989) (gang violence film). In 1997, however, a federal court of appeals did refuse to dismiss claims against the publishers of the book *Hit Man* for allegedly aiding a hired murderer by describing various methods of killing and avoiding detection. *Rice v. Paladin Enterprises*, 128 F.3d 233 (4th Cir. 1997). The following year, the Louisiana Court of Appeals reinstated a suit that had been dismissed against the director Oliver Stone and Time Warner Entertainment for crimes said to have been inspired by the film “Natural Born Killers.” *Byers v. Edmondson*, 712 So.2d 681 (La.App. 1998).

⁵³Telecommunications Act of 1996, §551, PL 104-104, 110 Stat. 56, codified in part at 47 U.S.C. §303(w), (x). The law provided that if the TV industry did not, within a year, “voluntarily” develop an “acceptable” ratings system to go along with the chip, the Federal Communications Commission was to “prescribe” one. The industry responded with an age- and content-based rating system designating violence, sex, “coarse language,” and “suggestive dialogue” as the categories to be rated; it did not attempt to distinguish presumably harmful violence on TV from productions with educational value, such as *Hamlet* or *Oedipus Rex*.

⁵⁴The Supreme Court recognized the First Amendment rights of minors in *Tinker v. Des Moines Ind. School Dist.*, 393 U.S. 503 (1969); *Board of Ed., Island Trees School Dist. v. Pico*, 457 U.S. 853 (1982); and *Erznoznik v. Jacksonville*, 422 U.S. 205 (1975).



II

Four Views

The following essays are adapted from the transcription of a panel discussion held during the First Amendment Center's Dec. 9, 1999, program on "The Media and Violence" at The Freedom Forum World Center in Arlington, Va.



Joanne Cantor is an internationally recognized expert on children and the mass media.

ANOTHER FORM OF MEDIA CENSORSHIP: KEEPING PARENTS IN THE DARK

By Joanne Cantor

Research on media violence often is misunderstood.

This is because we can't randomly assign children at the beginning of their lives to watch varying amounts of violence on television and then, 20 years later, see which children committed violent crimes.

We also can't randomly assign groups of people to smoke cigarettes for 20 or 25 years and tell other people not to smoke, and then count the number of people who developed cancer later in life.

With tobacco research we conduct correlational studies, where we look at how much people smoked during their lives and then see the rate at which they have succumbed to cancer. We control statistically for

other factors — other healthy and unhealthy behaviors. Then we can find out if smoking contributed to cancer, over and above all these other influences.

And since we can't do experiments on people, we use animal studies. These are artificial, but they tell us something about short-term effects of tobacco that we can't find out from correlational studies. Putting the two kinds of research together, we get powerful data about effects of smoking on cancer rates.

Similarly, we can do longitudinal studies of children's television watching and look at the types of behaviors the children engage in later. We also control for other factors, such as previous aggressiveness, family problems and the like.



We don't look at media violence in a vacuum; we examine whether there is a correlation between television viewing and violent behavior, even controlling for other influences.

We also do experiments. Like the animal experiments for cancer, these are not natural situations, but such experiments fill the gaps we cannot fill otherwise. They are meant to show short-term effects, such as increases in hostility or more accepting attitudes toward violence — changes that we know increase the likelihood of violent actions.

As with tobacco, the two types of media research form a powerful picture. Even though there are many studies that can be criticized, there are many others that are valid. A recent analysis that put all the studies together makes a compelling case that media violence does contribute to antisocial behaviors, including violence.

It's misguided to say the effects of media violence on violent behavior are trivial. To give an example, when World Wrestling Federation shows were introduced to Israeli TV in 1994, widespread imitation produced an epidemic of playground injuries. The

mayhem continued until educators offered extensive counseling to counteract the media's impact.

Of course the effects of media violence vary. The way violence is depicted and the characteristics of the viewer influence whether media violence will promote violent behavior, intense fears and nightmares or will have some other effect or no discernible effect at all. The question should not be: Is TV violence the most important contributor to violence? Instead we should ask: Does the addition of gratuitous violence to children's media diet make a difficult situation worse? The answer clearly is yes.

We have identified something that is potentially unhealthy. It poses risks to many children. And what do we do? We pipe it into our homes automatically and market it to kids. Not only that: We make it hard for parents to screen and control children's access to it. Then we criticize parents for not doing their job.

What solutions do we have? First of all, we need to promote media literacy. Children need to know what the effects of watching media violence might be. We need to help them be critical of the messages they

see — that violence is easy, that it typically has few negative consequences, that it's a good way to get what you want.

Parents also need help in limiting their children's exposure to media violence. Clearly, parents should have information about what's in a program, movie or video game before they allow their children to see it or before they buy it.

Blocking technologies like the v-chip are a good way to help. This is not censorship. It's telling parents: If you already have decided you don't want "Jerry Springer" in your home, you can automate that decision — you can push a button, and it will be done.

Parents especially need to be able to shield young children from harmful content. This is far from censorship. Parents have a duty to make the home environment healthy.

But censorship is going on in another form. I participated in the taping of a "Leeza" show in 1997 after the new TV ratings system came out. Many parents on the show criticized the new system. And NBC refused to let the program air. Why? NBC was opposed to adding content information to the ratings, a change parents wanted and



ultimately received (except for shows on NBC).

This failure to inform parents is happening with the v-chip, too. For the first time ever, parents have control over their TVs, with the ability to let some shows in while keeping others out. Most parents don't even know the v-chip is now standard equipment in all new TV sets 13 inches and larger.

The media mostly refuse to cover this story. And when they do, they usually suggest that the v-chip is only for lazy parents or that it will never work. The media have offered few stories about the changes in the rating system that parents demanded. Practically no one knows what the content letters in the amended rating system mean.

Unfortunately, the media are making too much money to let parents know about these developments. We now know tobacco executives had information that smoking was dangerous, but didn't release it. The media aren't doing most of the research on TV violence, but they do control the airwaves. So they have greater control over whether this message is disseminated than the tobacco industry ever did.

We can't force the networks to report anything they don't want to. But networks get the airwaves free; they use this advantage to protect their profits and remain silent about information that could help parents and children.

I know most of this group is very much against censorship, and so am I. But I think we really ought to press the users of public airwaves to give more coverage to stories that might affect their bottom line in a negative way. I believe the networks do not adequately cover stories about themselves, especially stories that may be harmful to their public images. I think this is particularly true with regard to coverage of the harmful effects of media violence.

I agree that media violence is not the predominant cause of actual violence. But we have enough information to say that for already troubled kids, it can make a bad situation much worse. And we know that even for healthy kids, a high level of violence in their media diet is psychologically harmful.

The solution is less, not more censorship. Let's make available both to parents and children all the known information about the risks

of media violence. We need to make sure the consumers of media know what the consequences might be and the best ways to prevent and reduce the harmful effects.



Joanne Cantor, professor emerita at the University of Wisconsin-Madison, is an internationally recognized expert on children and the mass media. From 1974 to 2000 at Wisconsin, she taught courses in mass media effects and research methods. Her research has focused primarily on the effects of television on children, with emphasis on children's emotional reactions to scenes involving violence and other disturbing images. Her book, "Mommy, I'm Scared": How TV and Movies Frighten Children and What We Can Do To Protect Them (Harcourt, 1998), summarizes this research for a general audience. Since retiring from classroom teaching, she devotes her time to research, writing, and making public presentations to groups of parents, teachers, mental health professionals, and policy groups. She maintains a website to help disseminate her message (www.joannecantor.com).



Henry Jenkins is director of the Comparative Media Studies Program at the Massachusetts Institute of Technology.

NEEDED: A MEANINGFUL CONVERSATION ABOUT MEDIA VIOLENCE

By Henry Jenkins

Anthropologist Mary Douglas talks about how moral panics originate in traditional societies. First, an unspeakable tragedy occurs — something that shakes society to its roots. Then people begin to ascribe blame, focusing primarily on groups or individuals who already are held suspect within the culture. The charges that stick are those that reaffirm preexisting biases.

If you want to understand why a moral panic occurs, you have to look at the anxieties a society is going through at a particular time.

Moral panics are an extraordinarily bad basis on which to make social policy. We should not be making social policy in the midst of an emotional crisis in which all views can't be heard.

In the wake of the school shootings in Littleton, Colo., we have lived through a period of moral panic. In Washington (in U.S. Senate hearings on media violence), we saw an attack on the “culture

industries” — especially the entertainment industries. But the real victims of the new culture wars were not Hollywood studios but American teens.

In schools, we have seen an enormous breakdown of the protections students enjoy in the classroom. Students have been suspended for expressing controversial views in their papers and in class discussions. Whole schools have been disconnected from the Internet. Kids have been profiled as psychologically unbalanced on the basis of the form of popular culture they consume and have been put into therapy or isolated in the classroom.

One teacher suspended a kid for wearing a Star of David to school, because she thought it was a gang insignia. Another student who wore his ROTC uniform was sent home for wearing a black trench coat, which was a mandatory part of that uniform.

We've got to calm this panic and begin a national conversation about media and media change.

The very nature of our relationship to media is undergoing one of its most radical shifts in the history of civilization. It's comparable to the Gutenberg revolution or to the rise of modern mass media in the late 19th century.

Young people are on the cutting edge of these changes, because they are the ones who have adopted the new technologies first. They relate to this technology more intensely. These are young people whose sense of the world has been shaped by new media.

We trivialize the conversations we should be having as a culture when we boil them down to just one question: Do media images produce real-world violence? We need to be having a much larger conversation.

What typically happens is that media activists latch on to research about media's effects on behavior and then they strip away all the qualifications, all the reservations that careful scholars put on the research findings. What remains is a



cartoon version of media effects that is paraded before the hearings in Washington or elsewhere.

Joanne Cantor suggested that we can't ascribe harm to a particular film, television program or video game. Well, that was a reservation we certainly didn't see coming out of Washington when the film "Basketball Diaries" was singled out as a particularly dangerous work, based on 30 seconds taken out of context.

Kids at different ages respond to media at different levels. But the debate in Washington defined anyone under age 18 as a child who needs to be protected from the media. I heard no distinctions between a 4-year-old and an 18-year-old.

Whatever influence media violence has on young people is a gradual or residual influence. It's not an immediate catalyst. Kids don't get pumped up by playing video games and then grab guns and shoot each other. But these distinctions often are lost in congressional hearings or in other shorthand analyses.

We need a conversation that includes cultural scholars who look at the context in which violent media images appear. Let's hear from anthropologists

who look at the place of those activities in people's lives. Let's talk with people who are concerned with what these images mean. Let's ask cultural and social historians to help us put these issues into the context of play throughout history.

Such a broad-based conversation hasn't ever taken place in a policy setting in North America. In December 1999, the Australian national government released one of the largest studies yet done on video games and violence. It was a study that followed the pattern I am describing and included both quantitative and qualitative methodologies. It included analyses by people who asked about the meaning as well as the effects of video game violence.

The study found minimal concrete evidence of material effects of playing video games on actual violent behavior.

Kids in their teens were the study's primary focus. The

findings show that kids made basic distinctions between fantasy and reality, between game play and real-world behavior. In fact, this study shows that interactive technology gave young people a clearer sense of fantasy's constructed nature than did television, because the kids were consciously and actively controlling what happened.

The Australian study didn't go as far as I would have liked toward understanding what all this means, but researchers were asking questions we need to ask before we set policy.

Before we can change behaviors and attitudes, we have to understand the pleasures and meanings attached to violent entertainment. For teenagers, violent entertainment often means

Films and video games represent a world where teens have control of their own lives.

empowerment. Films and video games represent a world where teens have control of their own lives. The appeal is not the brutality; it's not the blood. It is the sense of power.

Second, violent media may bring a sense of transgression. The youth culture often frames itself in opposition to parental values. Kids' preferred entertainment is intentionally shocking. It's "in your face." Is it any wonder that after decades of attacks on political correctness, teenagers now define their culture in terms of political incorrectness?

Third, violent entertainment acknowledges a reality for young people that is darker than "Barney" or "Teletubbies." Psychologist Bruno Bettelheim said an important function of violence in fairy tales is to acknowledge that dark feelings are not unusual and to offer an opportunity to work through them.

Fourth, violent video games and other violent media offer a kind of emotional intensification. To be an adolescent in our culture is to be on a roller-coaster ride of enormous emotional turmoil. Media that are fast, intense, with loud music give a way of escaping other feelings.

I think all those factors are important.

Now, to solutions. I advocate education and parental control, not "one-size-fits-all" governmental solutions. My biggest reservation about filters and v-chips is whether they really empower parents to determine the standards being employed to block content.

As a parent, I don't want to turn control over my family's cultural choices to an outside agency. I want the information I need to make rational choices for myself. (Internet filters, especially, don't give me information about the criteria they are employing.) I should have the right to decide what my child is exposed to, because I can monitor his or her responses better than across-the-board solutions can.

What is needed is education, education, education. Most important, we need to listen to what teens say about their culture. We need forums where adults and teens talk to one another about the

culture they consume, what role it plays in their lives, what values surround it and what it means to them. We've got to reinsert meaning into the conversation about media violence.



Henry Jenkins, director of the Comparative Media Studies Program at the Massachusetts Institute of Technology, has spent his career studying media and the way people incorporate it into their lives. He has published articles on a diverse range of topics relating to popular culture, including work on "Star Trek," WWF Wrestling, Nintendo Games and Dr. Seuss. He testified before the U.S. Senate during the hearings on media violence that followed the Littleton shootings and served as co-chair of Pop!Tech, the 1999 Camden Technology Conference. His books include From Barbie to Mortal Kombat: Gender and Computer Games (1999), The Children's Culture Reader (1998) and the forthcoming The Politics and Pleasures of Popular Culture.



Debra Niehoff is a research scientist, science writer and consultant specializing in the neurosciences.

THE BIOLOGY OF VIOLENCE: WHAT BRAIN RESEARCH TELLS US

By Debra Niehoff

Many of you probably are less familiar with the biological perspective on violence than you are with the social perspective. And that's really a shame, because in the last 25 years we have learned a tremendous amount about the neurobiology of emotional behavior. What we now know about the relationship between the brain and behavior has the potential to transform not just how we think about violence, but also what we do about it.

For those of you who aren't neuroscientists, here are a few high points from the brain's side of the story — a quick overview of some of the more important things brain research tells us about violence.

First and foremost, violent behavior, like all complex behavior, is the result of a developmental process. It is not programmed into us by genes before we are born; biology is not a synonym for genetics. But neither is it programmed into us entirely by culture after we are born. Instead, violent behavior grows out of a

series of interactions between the physical human being and his or her environments, interactions that trigger an emotional response that is recorded by our nervous system.

Brain cells, of course, don't talk to each other in words. They use chemical messengers and biochemical reactions to trade and retain information. As a result, interactions between the person and the environment are recorded in the brain as changes in the chemistry and physiology of the circuitry that governs not just emotion, but also motivation, cognition (which is thinking and planning) and our reactions to stress.

If the dialogue between brain and environment has been largely positive, then we see a human being developing a nervous system capable of supporting socially acceptable behavior. On the other hand, if the dialogue has been predominantly negative, we see changes in the nervous system that

impair the ability to cope effectively with the challenges of life — and a gradual deterioration in behavior. The person either overreacts to threats that aren't really there or underreacts to threats that really are, like the threat of punishment or the threat of getting hurt. Or we see a person's judgment becoming clouded by drugs, alcohol, or collapsing entirely under the burden of severe mental illness.

Regardless of the details, violence is a process. And because it is a process, it doesn't have one cause, it has many causes.

Second, interactions between the brain and the environment and the brain and behavior are two-way streets. Your brain colors how you see your world, and the environment continually updates that worldview. Similarly, your brain controls your behavior, but the act of behaving also can change the brain.

For example, animal studies of the minute-by-minute changes in brain chemistry before, during and after a conflict show that some of the most profound changes occur after the fight, not

before it. The brain controls behavior; behavior changes the brain. (New imaging techniques may eventually allow us to do studies in human beings similar to the ones we have done with animals.)

Three, violence is a plural noun. It is not one behavior; it is a family of behaviors. Each of these types of violence has its own unique behavioral profile, its own natural history and, surprisingly, its own physiology. For example, people who overreact, who are "hotheads," tend to overreact physiologically as well — they show signs of increased emotional arousal and produce higher levels of stress hormones.

Multiple violences aren't likely to have a single cause. And if there are many kinds of violence, we are going to need more than one kind of solution. "One-size-fits-all" solutions to the problem of violence are not really solutions at all.

Finally, the brain is flexible. Our brains are vulnerable. What we do to people matters, not just because it affects their thoughts or their morals, but because it affects them physically.

Science demonstrates, however, that the brain remains adaptable throughout our lives and that people can learn to compensate for the damage done by toxic experiences. Although a person's past informs his or her present, biology is not destiny, and the past doesn't have to control the future.



*Debra Niehoff has studied the biology of aggression for more than 20 years. After receiving her doctoral degree in 1983 from the Johns Hopkins University Medical School, she worked as a research scientist in both academic and industrial settings and as a science writer and consultant specializing in the neurosciences. Her book *The Biology of Violence: How Understanding the Brain, Behavior and the Environment Can Break the Vicious Cycle of Aggression* offers a unique perspective on the problem of violence, arguing that violent behavior is the result of a developmental process that integrates brain function and personal experience.*



Joanne Savage is an assistant professor in the Department of Justice, Law and Society in the School of Public Affairs at American University.

A CRIMINOLOGIST'S PERSPECTIVE ON THE EFFECTS OF MEDIA VIOLENCE

By Joanne Savage

I'm going to touch on three major issues: First, I'll describe academic criminologists' view of current research, so I can provide a sense of where media research fits in. Second, I will discuss methodological issues related to the research on the effects on behavior of violent media portrayals. And finally, I will talk about policy implications, incorporating some of the things we know about the nature and distribution of crime.

Among academic criminologists, the major theorists do not distinguish between violent crime and other types of crime. Instead, they focus on a unidimensional criminality.

In addition, although many criminologists pay lip service to the effects of media violence on criminal behavior, they do not really integrate those effects into their theories of criminality. This suggests that they do not believe the effect is large enough to make a major contribution to our crime problems.

Generally speaking, when talking about the roots of crime, criminologists propose such factors as the lack of social bonds, lack of self-control due to poor socialization, having criminal opportunities, stress or "strain" (when economically disadvantaged people see affluence everywhere except in their own experience) and associating with deviant peers. If you ask criminologists what are the best predictors of delinquency, they are likely to say prior delinquency and the deviance of ones' friends are the two strongest predictors of present criminality. Empirical evidence supports this.

The biological processes Debra Niehoff described are not well integrated into current thinking in criminology. I would say that biological research of that sort represents a kind of specialty field. Media violence research is another such specialty field. Criminologists respect this research, although most of it has

been conducted by persons other than those with expertise in criminology.

If asked to describe the consensus among criminologists regarding the effects of media violence on violent

criminal violence.

Typically, the research produces some measure of aggression — say a paper-and-pencil measure of attitudes about violence or a physiological measure of arousal. In the more

atmosphere of permissiveness and encourages them to be more aggressive in subsequent activities.

The vast majority of those experiments could never have been done without the experimenters convincing the human-subjects committee at their universities that nobody was going to get hurt. There could be no chance of violence, because ethically we can't conduct a study if there is even a slight chance our subjects will be harmed. This calls into question the general conclusion we often hear that this line of research applies to the popular culture, or that TV violence causes violence. These experiments have never established that.

Second, while the measurable effects of media violence on criminal behavior may be statistically significant (something that is important to academics), they are extremely small.

For example, in a study that measures aggressiveness against a toy after exposure to media violence, one study found something like 28% of the variance in aggressiveness can be explained by whether or not subjects watched violent (versus

While the measurable effects of media violence on criminal behavior may be statistically significant, they are extremely small.

behavior, I would say most think the effects are true, but very small.

Typical criticisms of the experimental research say that because so much of the research is conducted in laboratories — not in real-world settings — the findings aren't generalizable. And, since much of the research uses college males as participants, this further limits our ability to generalize the findings to the population as a whole.

With respect to methodological issues in research that seeks to establish a media-violence connection, I'd like to raise a few concerns. The first is that stimuli in laboratory experiments do not cause

convincing studies, experimenters show subjects violent films. Later, the subjects are given to think they are administering electric shocks to others. The level of shock they are willing (or choose) to give is the measure of aggression.

Subjects who have seen violent material tend to be more willing to shock another person at higher levels than those who have seen neutral material. It is unclear, though, if willingness to shock someone in a lab after being invited to do so is closely connected to real-world willingness to shoot at, beat up or threaten the life of another. It is possible that showing subjects violent material creates an



neutral) material. To academics, this is absolutely huge. But the variance goes down dramatically — to about 1% — when the outcome measure is actual criminal violence. This may be statistically significant, but a 1% increase in the accuracy of predictions is not very impressive to most people; it leaves 99% of the variance to be explained by other factors.

Another methodological issue that concerns me relates to what we call control factors. We might, for example, find a correlation between viewing TV violence and some measure of aggression, and we might get effect sizes of 16% or 10%, or something approaching those percentages.

But often these findings do not control for other factors that might affect both things. We have empirical evidence suggesting that aggressive children like to watch “aggressive” TV. We could further hypothesize that children who are neglected might watch more violent TV and also might be more aggressive. If we don’t control for such other factors as neglect or poverty, we won’t know if the results we find really are due to the variable (the

“causal” factor) we are measuring. I believe the size of the effects in correlational studies are inflated and are even smaller than the 1% to 4% we have seen. If we controlled for all the alternative factors, perhaps we wouldn’t find any effects at all.

Setting aside all the critiques and taking the findings at face value, I’d like to look at the policy implications of these findings. For example, suppose we uncover some evidence that more serious violence, more realistically portrayed violence, has a bigger effect on actual criminal behavior.

In fact, some of the literature refutes this. But for the moment, let’s

of an impact on violent crime rates in the United States. Remember, serious, realistic violent material only accounts for a small percentage of the violent material offered in the media and probably would only be a small piece of that 1% of explained variance described earlier.

A second finding in some studies suggests that TV violence has more of an impact on already aggressive people. So what could we do, from a policy standpoint? Make a list of aggressive people and not let them watch any violent TV or movies? You can imagine that this might be difficult to accomplish.

Third, evidence suggests that the effect occurs when the audience identifies with

I believe the size of the effects in correlational studies are inflated and are even smaller than the 1% to 4% we have seen.

hypothesize that we have found statistically sound evidence. We could push for a policy that says you have to eliminate serious, realistically portrayed violence. But it is unlikely that this would have much

the perpetrator. So, for media portrayals of crime, we could insist that people who are going to do something violent should only be those with whom the audience will not identify. In other words,



viewers should not see the person as a good guy. Put the black hat back on the bad guy and make it clear that this is not a person to admire. Do not allow good guys to fight back or retaliate. This also would be kind of tricky to do and is surely likely to meet with resistance by film directors and television producers.

There's more: Evidence suggests that the media violence effect occurs if the perpetrator is not punished for committing a violent act. But if the perpetrator is punished or if there is some depiction of suffering or guilt, the effect doesn't seem to occur. So we could try to influence filmmakers, encouraging them to restrict violent portrayals to those where the perpetrator

television and movies. This would put a huge dent in our violent crime rate.

There is some evidence that not just violent TV but any TV produces aggressive and criminal after-effects. Part of the effect may come from watching nonviolent scenes that glorify guns or violence, from becoming desensitized to violence just by watching the news or from the strain effect, described earlier, in which people who are in poverty have affluence waved in their faces on TV. If we could get rid of all TV and movies, we'd add to the overall drop in violent behavior, because our culture would be less accepting of violent crime.

But before we create new policies, we should think

who, if they didn't have TV as an outlet, might be busy thinking about the many problems in their lives and then acting out accordingly.

In other words, applying findings from media research to a censorship-based policy to prevent crime would be a complicated enterprise. Most of the policy recommendations would not result in any meaningful reductions in crime rates. We'd need incredible amounts of censorship to apply that research and make any kind of change in the crime rate. Clearly, that amount of censorship is not likely to be acceptable in a modern democracy.

What we know about the nature and distribution of crime is that there are dramatic year-to-year and five-year changes in crime rates. There are dramatic jurisdiction-to-jurisdiction variations in crime rate. Violent crime concentrates in urban centers with high rates of poverty, inequality, single-parent homes and distressed schools and neighborhoods. And violent crimes involve guns, to a large degree.

These factors minimize the credibility of any proposal that uses research on media violence to try to reduce

There is some evidence that not just violent TV but any TV produces aggressive and criminal after-effects.

is punished or suffers for his or her actions. Again, such a policy is unlikely to put a big dent in our violent crime rates, and we would pay dearly for any tiny effects with losses in our storytelling freedom.

A final thought: We could simply eliminate all

about potential benefits of watching TV, other than the obvious one of its being an important way to disseminate information. For example, watching TV occupies the time of people who might otherwise get into mischief. Violent television shows also might be entertaining for people



violent crime rates. Instead, they suggest that media violence probably plays a minor role in U.S. crime rates or in urban crime rates. If we lived in a utopia, we might see a closer relationship between media portrayals of crime and actual criminal behavior. But we don't live in utopia — we live in a situation where there are many more proximate and evident causes of crime that can and should be addressed.

I think I speak for most criminologists when I

recommend that we address the more proximate causes of crime instead of giving so much attention to what is probably a peripheral cause of criminality and violence.



Joanne Savage is an assistant professor in the Department of Justice, Law and Society in the School of Public Affairs at American University. Her research themes and interests include causes of violence and the distinction between violence

and other forms of crime, violence prevention and integrative and interdisciplinary theory and methodology. She co-authored with Bryan Vila The Evolutionary Ecology of Crime and Crime Control. Her current research activities include "Trends in Crime and Justice in Washington, D.C., 1960-2000," a large-scale research project; "Understanding Homicide: An Integrative Approach" and "Theoretical Criminology and the Differential Etiology of Violence and Stealing: The Prediction of Violence Versus Theft."

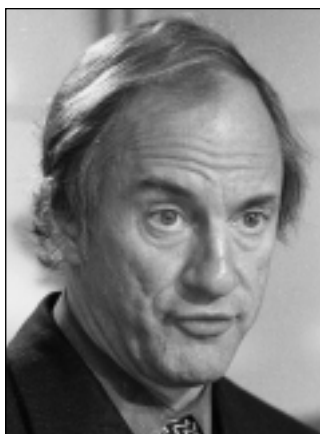




III

The Paladin Case and the Limits of Protection for Violent Speech

The following is adapted from the transcription of a discussion held during the First Amendment Center's Dec. 9, 1999, program on "The Media and Violence" at The Freedom Forum World Center in Arlington, Va.



Rodney A. Smolla is an attorney and professor who writes and speaks extensively on constitutional law issues.

PRESENTATION RODNEY A. SMOLLA

Let me tell you the facts of the murder that gave rise to this dispute. It involves a successful producer for Motown Records, someone who helped produce the Motown sound. His name: Lawrence Horn. He produced Smokey Robinson, Stevie Wonder and others.

Motown moved from Detroit to Los Angeles, and Horn hit on hard times. He needed money and came up with a diabolical scheme for getting it. Back here in the suburbs of Washington, he had an estranged family. He was divorced. He had some kids.

One of his children had been rendered paraplegic through alleged medical malpractice. There was a big pot of money set aside to take care of the child,

named Trevor. Lawrence Horn hit upon the idea that if he could murder his own son and his ex-wife, under Maryland law he would inherit this pot of money.

To carry out that scheme, he hooked up with a thug named James Perry. Perry murdered Horn's son, Trevor; the mother, Mildred; and the nurse, Janice Saunders, who happened to be there that night taking care of the little boy.

The police were able to connect the murders to Horn and Perry. When they searched Perry's apartment, they found he had purchased a book called *Hit Man: A Technical Manual for Independent Contractors*, produced by Paladin Press in Colorado. It appeared as if Perry had followed the

book's detailed instructions to carry out the hits.

I was hired by the victims' families to file a lawsuit against Paladin Press on the theory that the publisher was to some degree liable for civil damages for these murders.

The case looked like a loser for three reasons. First of all, Perry clearly was the person who caused the murder. The book *Hit Man* did not cause the murder, not in the way we normally think of causation. A lawyer is trained to think in what we call "but-for" causation — but for what the bad guy did, would the harm have taken place?

You certainly can't say, but for the publication of the book, the murders would not have taken place. The odds are that Horn would have had his kid killed anyway. Perry would have figured out some other way to commit the murders. So that's one reason our suit looked like a loser.

Second, the most significant Supreme Court case ever decided on the issue of violence, *Brandenburg v. Ohio*, made our suit look like a loser. *Brandenburg* involved a Ku Klux Klan rally outside Cincinnati in which the Klan engaged in cross-burning, racist speech, anti-Semitic speech and so on.

Ohio successfully prosecuted the Klan leader for that rally.

But the Supreme Court ruled that the Klan could not be prosecuted in these circumstances, because there wasn't a sufficiently close nexus between the Klan's violent rhetoric and any actual violence. The Supreme Court said there could be no liability unless the speech was directed to the incitement of imminent lawless action and likely to produce such action.

Brandenburg seemed to require three things: that you intend to have violence, that there is immediacy or imminence to it and that it is likely. Paladin Press's murder manual didn't seem to fall within that paradigm. The book didn't say: "Go out and murder somebody right now."

Third, there was the gigantic problem of what kind of culpability we would be talking about.

Here's the problem: If you impose liability on this kind of violent speech, aren't you inevitably forced to impose liability on things like the movie "Natural Born Killers," on violent video games and so on? There was arguably no principled way to distinguish our case from those kinds of cases.

Because of the force of those arguments, we lost in the District Court. The District Court judge said, in essence: You don't have causation. There is no tort here. You don't satisfy the *Brandenburg* standard.

We then took the case to the U.S. Court of Appeals. The federal appeals court reversed the ruling, sending the case back to a jury.

We prepared for a jury trial. On the day before the jury was to try the case, Paladin Press settled for \$5 million and agreed to take *Hit Man* off the shelves. That is the story of the case, in a nutshell.

Now, what about some of the issues I have raised?

First of all, causation. There's an ancient concept in criminal law that sometimes has been used in civil tort law, called "aiding and abetting."

In aiding-and-abetting cases we don't require causation in the normal sense, because there almost never is causation. The aider-and-abettor always will be able to say, "Somebody else would have driven the getaway car, had I not done so. Somebody else would have furnished the gun or given the plans to break into the bank, had I not done so." And of course, that's true.

But for moral and social-policy reasons, the historic criminal doctrine has been that if you intentionally assist someone in a crime, we won't let you weasel out on the theory that there is no causation. It may literally be true that the crime would have happened in any event, but you are morally culpable for having substantially assisted and can be held responsible. We argued that the aiding-and-abetting theory solved our causation problem.

Now, what about *Brandenburg*? We had three arguments: One was that perhaps there was imminence. Paladin Press admitted for the purposes of this case that it had published the book with the intent that criminals could use it to plan and execute murder for hire.

We argued that imminence was not the victims' death, but rather imminence to lawless action. The lawless action included the planning process. Indeed, the whole idea of a murder manual is this: You do not simply buy it and then go out and blow somebody away. You go through all the complicated things the book tells you to do to carefully plan the hit. If those things themselves are lawless actions, then there is an element of imminence.

Our second argument was that maybe *Brandenburg* was not the right case to apply at all. *Brandenburg* is an enormously important case that arises from a line of cases applying the concept of "clear and present danger." All the cases in that line have involved social protest or political dissent — speeches of the NAACP, the Klan, abortion protesters or anti-war protesters, for example.

We argued that the Paladin Press case doesn't fit that pattern at all. This was not somebody trying to incite someone to engage in violence. This was an assistant case. This was about providing training. Aiding-and-abetting concepts presuppose you are probably going to commit the crime. It's a different intellectual problem, a different social problem; it requires a different test.

Our last point was philosophical. We said the function of *Brandenburg* in a free society is to allow even the most aggressive, offensive and violent discourse to be uncensored. But none of that comes into play with a training manual that gives technical and psychological instruction as to how to commit crimes.

Which goes to the very final issues: the intent and

spillover questions. We argued that the book *Hit Man* included two things: one, technical instruction — engineering formulas, chemical formulas, photographs, diagrams, checklists and detailed instruction on techniques of killing — and two, psychological training.

If you want to produce assassins, only half your job is technical know-how. Just as important is putting the assassin in the correct psychological disposition to commit the crime in a cold-blooded and efficient manner. That has been a problem assassin trainers have understood for thousands of years.

It's the lethal combination of detail and psychological steeling, we argued, that renders this book unlike a movie, novel, real-crime reporting or other legitimate forms of public discourse. These don't have the intent to train and rarely include the kind of detail we are talking about.

The combination of all those things, we argued, merited — in this rare case — imposing liability for what truly was a murder manual.

No jury ever determined whether we were right or wrong, because the case was settled. But keep in mind two distinct lines of questioning.

First, do I have my facts right? Did the publisher really intend all of this? Did this book really assist the murderer? That's a question on which you may agree or disagree with me.

Second, if I have the facts right, what should the social policy be? What should First Amendment policy be? If a person intends to train another in a violent crime and if we

can prove that he or she in fact provided substantial assistance, in that unusual circumstance, should or should not the First Amendment permit liability?

CROSS-EXAMINATION

ROBERT CORN-REVERE

Is it your contention that certain well-defined categories of speech are not subject to First Amendment protection and that this case — the kind of speech contained in *Hit Man* — falls into one of those forbidden categories? For all intents and purposes, does this case fall off the edge of the First Amendment earth?

SMOLLA: No, we didn't argue it in those terms. In contrast, we argued that this approach to thinking about free-speech problems is obsolete. It no longer is the method the Supreme Court uses. What you must do instead is look to broad First Amendment principles and, as needed, apply those principles to new contexts as they arise.

If you look at a free-speech casebook used to teach students, you won't find five chapters suggesting five categories. You will find 25 chapters and an enormous level of complexity.

CORN-REVERE: So rather than saying this is just incitement to crime, and therefore unprotected, it's a less well-defined notion that is very fact-based?

SMOLLA: We offered two alternative arguments. One was that, within the familiar groove of *Brandenburg*, we had a right to go to a jury.

Then we made a creative argument. The new argument focused on aiding-and-abetting concepts, which are traditional, well-known concepts in criminal law. We said, "If you satisfy all the elements of aiding and abetting, the fact that the aider and abettor uses language doesn't immunize that person under the First Amendment." In my view, the Supreme Court has never passed on that question. This was the experimental aspect of our case.

CORN-REVERE: But the bottom line is that the speech embodied in *Hit*

Man is not protected by the First Amendment?

SMOLLA: Because of its content and the intent with which it was published, it is not protected.

CORN-REVERE: So you could not only win a civil suit against it, but you could make it illegal to publish *Hit Man* again, is that correct?

SMOLLA: Subject to whatever requirements that are unique to criminal law, the answer is yes. If a person intentionally assists another to commit a crime through the publication of a book, and all other criminal law requirements are satisfied, I see no First Amendment reason why there could not be liability.

In the same way, under *Brandenburg v. Ohio*, if the Klan leaders had distributed maps to an African American church and diagrams on how to make a pipe bomb, in my view that would have rendered them potentially criminally liable

for solicitation of murder or incitement to murder, had someone in the Klan taken the pipe-bomb instructions, built the bomb, gone out and bombed the church.

I believe the U.S. Supreme Court, in that fact pattern, would say you could have criminal liability.

CORN-REVERE: Let's take a different hypothetical. Suppose I own a copy of *Hit Man*, and I lend it to a friend who I know is disturbed. Could I be criminally liable? Or let's say *Hit Man* was written as a novel. Say it's *The Turner Diaries*, and I think it should be required reading

for all my seriously disturbed friends. Could I be criminally liable for that?

SMOLLA: I think if you own a copy of *Hit Man* and you give it to someone who you know is disturbed, you cannot be held criminally liable. If you own a copy of *Hit Man* and you give it to someone knowing and intending that he or she will follow the instructions to commit a crime, you may be criminally liable. That nuance would be something the prosecutor would have to prove.

I don't believe it is possible to prosecute a novelist who

uses explicit detail, because I don't believe it would be possible to demonstrate the intent behind the novel. But what if the novelist wants to put out a murder manual and is simply thinly disguising it as a novel?

That would be a loophole we as a society probably would not be able to plug, and that's not uncommon. You often can get away with things through disguise. The difficulty of proving intent might make it impossible. But to me this doesn't undercut the validity of the principle when it's not a novel, but a manual.

PRESENTATION ROBERT CORN-REVERE

Before discussing the Paladin Press case, I want to talk a little bit about the way *Hit Man* relates to the earlier panel discussion on media violence, the overall effect of policy in the law and its relationship to the debate over media violence.

Henry Jenkins provided wonderful perspective on this issue when he talked about how media-effects research is taken up by media-effects advocates, and how the reservations stated in the research are stripped away in the policy debates and never discussed.

He said we live in a time of moral panic. I agree, but I would describe it more as an era of cultural McCarthyism. We are treating aspects of the culture and violent speech much as our government treated discussions of communism in the 1950s.

This past summer [1999], the Senate Judiciary Committee issued a report on media violence. It said there have been numerous studies conducted over the past 40 years and they all find an adverse effect from media violence on violent behavior. The report even

quoted one "expert" who said, "It's like arguing against gravity to suggest there is any other answer."

Despite such a statement, I think there are some other answers.

As a matter of fact, in testimony at one Senate hearing on a TV violence bill, I referred to a wonderful article by Chief Judge Harry Edwards of the U.S. Court of Appeals for the District of Columbia. In this article, Judge Edwards analyzed all the major research on television violence and tried to



Robert Corn-Revere is an attorney who specializes in First Amendment Internet and communications law.

explain both its context — how the research was done, what it meant, how it related to the law — and why it provided a good perspective for analyzing legislative proposals.

One of the other panelists, a social scientist, said, “Well, that’s just a judge assessing social science. He’s simply not qualified to talk about these issues.” Incredible.

As a result of such attitudes, you see irresponsible claims by social scientists being accepted uncritically in the policy debates. One researcher has made the unbelievable claim that 10% of youth violence is the direct result of television viewing. Or another, again quoted in the Senate Judiciary Committee report, says if television hadn’t been invented, there would be 10,000 fewer homicides a year and our violent crime rate would be cut in half. Such irresponsible statements find their way into congressional hearings. They drive legislation. When you add this phenomenon to cases like *Hit Man*, it can lead to seriously adverse effects in the law.

For example, Pat Schroeder mentioned the Hyde legislation that was introduced last summer. Fortunately, it was not

adopted, although I doubt we have seen the last of this kind of proposal. It would have created criminal penalties for distributing sexual or violent material to minors.

The legislation, if adopted, would have applied to any picture, photograph, drawing, sculpture, video game, motion picture, book, pamphlet, magazine, printed matter or sound recording containing sexual or violent material or detailed verbal descriptions or narrative accounts of explicit sexual or violent material. Violent *sculpture*? Where are we? Go to Washington. Try to find a statue that isn’t portraying a hero on a horse riding into war. What is violent sculpture? I don’t know, but that’s the kind of proposal we are seeing in Congress now.

In light of these developments, the question presented by the *Hit Man* case is, where do you draw the line? What kind of speech is permissible under the First Amendment, what kind of speech can be restricted and still be consistent with the principles of free society? My opinion is that the *Hit Man* case went too far and opened a dangerous door.

Any time you get into a discussion about First Amendment issues, the first

thing you hear is that free speech is not absolute. It’s a true statement, but fairly meaningless. In a free society, the more relevant question is, when can you turn people into criminals because of their speech? The first time the Supreme Court addressed this question had to do with the Espionage Act passed during World War I. Basically, the act was intended to prevent speech that might obstruct the Selective Service System.

The first Supreme Court cases interpreting the Espionage Act provide the most well-known language from court opinions, at least among the general public, about the First Amendment. Justice Oliver Wendell Holmes wrote that the “most stringent protection of free speech does not protect a man in falsely shouting ‘Fire!’ in a theater and causing a panic.” Now, every time I get into a family discussion about anything involving the First Amendment, the conversation stopper — the final argument I hear from my relatives — is, “Hey, you can’t yell ‘Fire!’ in a crowded theater.”

It doesn’t matter what the argument is about. It could be about anti-abortion demonstrators or pornography on TV. It could be anything. The bottom-line argument is:

“You can’t yell ‘Fire!’ in a crowded theater.” Thank you very much. Thanks for clearing that up.

A moment ago, I read Justice Holmes’ exact quote to you. It’s different from the folk-wisdom, “fire-in-a-crowded-theater” argument. It says the most stringent protections would not protect a man *falsely* shouting “Fire!” in a crowded theater and *causing a panic*. This statement led to the doctrine of “clear and present danger,” which is an antecedent to the standard of the *Brandenburg* case that Rod Smolla was talking about.

Justice Holmes wrote that the question in every case is whether the words are used in such circumstances or are of such a nature as to create a clear and present danger. Will the words bring about the substantive evils that Congress has a right to prevent? It is a question of proximity and degree.

In the case I am describing, *Schenck v. United States*, the Socialist Party distributed about 15,000 anti-draft pamphlets. They contained a quote from the Thirteenth Amendment prohibiting slavery and had this inflammatory rhetoric: “Do not submit to intimidation, assert your rights.” The pamphlets contained no call to violence.

The question was whether or not there was a likelihood this publication would lead to violence. The court said that, of course, the document would not have been sent unless it had been intended to have some effect. It could not see what effect the pamphlets could be expected to have on persons subject to the draft except to influence them to obstruct it.

This question highlights the distinction Rod was trying to make with the *Hit Man* case and why that book alone should be penalized, as opposed to all that other advocacy out there. The analysis focuses on the question of intent. The question is, what does it take to cross that line before you can criminalize speech?

We have had, in the Constitution and the law, the designation of certain categories of unprotected speech. However, when you expand those categories, whether you make them less well-defined or very fact-specific, you open the door for censorship of all kinds of materials that simply weren’t at risk before. In other words, if you don’t rely on a firm test or category and you rely instead on case-by-case analysis, there is a greater risk of widespread censorship.

As our experiences during the McCarthy era demonstrated, you can’t rely on such an approach to protect free speech. At that time, the Supreme Court upheld the convictions of members of the Communist party for distributing books and advocating the violent overthrow of the United States as soon as possible. It wasn’t a direct call to immediate action, yet in 1951 the Supreme Court said it was. Cases like that continued until the 1960s. Finally, at the end of the ‘60s, the *Brandenburg* case was decided. It created the test for incitement you heard about during Rod’s presentation.

Given our experience during the McCarthy era, it is not hard to imagine where expanding categories of unprotected speech in the wake of *Hit Man* is going to lead. The 4th Circuit Court of Appeals decision in *Hit Man* devotes two and a half pages to a discussion about how this case isn’t going to lead to its application in other cases. The court said it couldn’t imagine how the precedent can be applied to movies or other works.

Yet in the brief time since the *Hit Man* case (*Rice v. Paladin Publishing*) was handed down, we have seen a spate of cases alleging that the producers of movies and video games

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knew or intended that their products would cause crimes. People are indeed being forced to go to trial over these issues. For example, Rod mentioned Oliver Stone's "Natural Born Killers." *Byers v. Edmundson* is a Louisiana case where a surviving family alleged that the makers of the movie intended it to incite people to go out and commit crimes. This is one of those cases the 4th Circuit told us would never happen.

Similarly, after the school shooting in Paducah, Ky., two families sued a whole range of defendants, including Time Warner for making "The Basketball Diaries," the Persian Kitty Web site, video game makers and a number of other defendants, saying they had defective products and knew they were inciting people to commit crimes.

By the way, there is a precedent for such allegations. There were some 2,000 prosecutions under the Espionage Act during World War I. One involved a motion picture called "The Spirit of '76." This was a patriotic movie about the Revolutionary

War. But it showed atrocities being committed by British soldiers at a time when England was our ally. As a result, the filmmaker was convicted for distributing the movie. Both the District Court and the appeals court said, maybe it's a good movie about historic events and maybe it's accurate, but during this time and with the possible intent that it could obstruct our Selective Service System, we have to find it a violation of the Espionage Act. I think great damage has been done when you add the precedent from *Hit Man* to this history of the First Amendment. It opens the door for more cases like "The Spirit of '76."

More important, no positive good really comes out of cases like *Hit Man*. Certainly, good was done for the surviving family members, who collected millions of dollars as a result of the settlement. But as Rod acknowledged, this wasn't a cause-and-effect case, a "but-for" case. Lawrence Horn, who perpetrated this crime, still had a motive to kill his son and still would have found a way to do it. *Hit Man* presumably could be

repackaged, or even in this case, the contract killer might have turned to a number of excellent U.S. government publications if he wanted instruction on how to commit a crime.

Significantly, the settlement in *Rice v. Paladin Publishing* has increased the book's visibility. *Hit Man* is available online, and it is more popular now than ever. In the 16 years since it was published (between 1983 and 1999), 13,000 copies were in print. There were about 700 copies still available at the time of the settlement on May 21, 1999. However, in the five months between May 22 and mid-October, 6,800 copies of *Hit Man* have been downloaded from the Internet.

So even though the intentions of those who argued the *Hit Man* case may have been good, I have real questions about whether the precedent it created is helpful either to the victims of crimes or to anybody else. And I am absolutely convinced it has been harmful to the spirit and future of the First Amendment.

SMOLLA: Bob, I have two questions. Here is what I will call Hypothetical No. 1. Imagine we had the following conversation on tape pursuant to a wiretap:

A caller calls a publisher and says, "I want to bomb a federal building and kill the people inside. I need technical instruction on how to manufacture a bomb to accomplish this purpose. Do you have such instruction available?"

The operator says, "Yes, we do. We have a variety of titles" and reads them off.

The caller says, "I'll take *How to Manufacture an Incendiary Bomb Useful for Terrorist Purposes, Vol. III.*"

The publisher says, "Do you have a Visa card?"

"Yes."

The transaction has taken place. The caller goes for the Federal Express option. Using that material, the building is bombed.

In your view, did the First Amendment protect the publisher in that transaction?

CORN-REVERE: The difference between that transaction and the situation of simply publishing a book that is sent out into the stream of

commerce is that you have a specific contact between individuals. This is a discussion about what a person who is going to commit a crime plans to do; that person gets specific advice about how to do it.

This is not that much of a stretch in the law. We have conspiracy cases in which people provide directions to a person's house, as Lawrence Horn did for the hit on his family. Or you have a situation where someone gets together in a cell, as part of a movement, and makes plans for building a bomb.

There is a federal statute that specifically addresses that. Teaching someone to make explosive devices for the purposes of causing a civil disturbance is against the law. I don't think that creates a First Amendment problem.

SMOLLA: The answer to the first hypothetical is "No, the First Amendment would not protect the publisher in that transaction"?

CORN-REVERE: With a fairly big caveat.

SMOLLA: Here's Hypothetical No. 2.

The publisher is not caught in that conversation, but instead the following is

proven: The publisher publishes bomb-making material so that novelists can write thrillers about bomb incidents with more verisimilitude; so that law-enforcement officials can learn about bomb-making techniques for the purposes of investigating explosions; so that people can fantasize about being bombers, although they have no intention of ever engaging in that kind of violent fantasy; so that people who are simply interested in real crime and in the techniques of violence can gather information about it; so that people who wish to perpetrate crimes and need expertise can obtain it. These are five purposes the publisher is proven to have.

The publisher never knows which customer is calling for which purpose, but suspects that one out of 15,000 is actually purchasing the book to bomb somebody. If we were to catch a publisher in that situation, having sold to a real bomber, your answer — is it not? — is that the First Amendment would protect the publisher, that the First Amendment in this situation *must* protect the publisher because of the difference between the first hypothetical and the second hypothetical.

CORN-REVERE: In fact, that is the scenario presented in the stipulation of the defense counsel in *Hit Man*. They essentially admitted they were aware that among these categories of people who might be interested in the book, there might be contract killers out there who use it

as an instructional manual. Their stipulation was, they intended that the book be used by contract killers for instruction to go out and commit murders. There is a vast difference between being aware of the possibility that what you publish may be used by

people for bad ends, as opposed to someone who actually writes a book and intends something to be done. But even that is distinct from the situation in which you supply information to a specific person to commit a specific crime. That is conspiracy, and that's illegal.



Robert M. O'Neil is founding director of the Thomas Jefferson Center for the Protection of Free Expression and former president of the University of Virginia.

DISCUSSION ROBERT M. O'NEIL, moderator

O'NEIL: The subtitle to the book actually says, "How to Carry Out the Perfect Assassination Without Getting Caught." Unfortunately, Mr. Perry — the assassin — didn't read that part of the book, or something went wrong. So my favorite hypothetical has always been this: Mr. Perry gets out of jail and decides he is going to bring suit against Paladin Press for issuing a defective product.

And the question is whether Professor Smolla would then be willing to represent Mr. Perry and whether Mr. Corn-Revere would be willing to represent Paladin Press on First Amendment grounds. But that would be unfair, so I will forgo that opportunity and turn instead to your questions.

MIKE GODWIN (Electronic Frontier Foundation): I agree that if you have all the elements of aiding and abetting, including intentionality after the specific elements of the specific crime, there ought to be tort liability, even if all you did was provide how-to information.

But what you don't have in either the facts of this case as we understand it or even in the stipulated version of the facts, is that kind of intentionality — specific intent with regard to aiding and abetting. I think what you have done is actually to merge incitement and aiding and abetting in that discussion.

With regard to imminence of the lawless action, typically we understand imminence as having no opportunity to reflect.

It seems hard to conceive of anyone reading a book and not reflecting before acting.

SMOLLA: You are absolutely right. I don't believe the decision we got followed automatically from existing legal principles.

Invoking the values that underlie aiding-and-abetting law and applying them to this situation was the breakthrough aspect of our case. Remember my Hypothetical No. 2 — the one in which the publisher offers the book for a variety of purposes, but understands that somewhere a customer may use its information to commit a crime?

I suggest that it's first a moral question; and then a question of how one is going to construct state criminal law and tort law; federal criminal law; and

then a First Amendment question.

In my view, the Court of Appeals thought the moral answer was: “You are morally culpable. You should, in this very free society, nevertheless be responsible.”

If you are not merely aware that some people will take what you offer and commit violent acts, but you intend to assist them ... if you could prove that one of the purposes in putting out a training manual is to train real killers, the fact that there isn't the specificity you require shouldn't matter.

Bob Corn-Revere is bothered by the necessity for case-specificity weighing, because that often is seen as a threat to First Amendment values. But I would say there isn't a single area of modern First Amendment law in which we do not impose case-specific weighing.

Day in and day out, it's what we do in libel cases, in commercial-speech cases, in obscenity cases. It always has been thought permissible to inquire into things like intent and the causal nexus to determine if there is liability.

CORN-REVERE: The discussion of how the law has changed as a result of

Hit Man really encapsulates the danger I've tried to describe. It's certainly true that in First Amendment cases, just as in any other case, facts are important. But this is an area of law where the Supreme Court and lower courts all have held that strong tests are necessary, and that the government must overcome high hurdles to give the First Amendment breathing room before you begin censoring speech wholesale.

To say we can simply decide certain speech is going to be considered on the specific facts of a case gives too little breathing room for the First Amendment. This is what happened in the 1950s in *Dennis v. United States*, when the Supreme Court ruled that merely joining the Communist party, believing we should overthrow the government and having books about Communist doctrine was enough to put a person in jail.

O'NEIL: There is one other element we ought to remember: You have to be in a jurisdiction where something like aiding and abetting is recognized.

KAY MILLER (Longfellow Middle School): What exactly was the precedent created by *Hit Man* if, in fact, the case was settled and did not come to a conclusion?

CORN-REVERE: The precedent is the extensive legal discussion by the U.S. Court of Appeals in the 4th Circuit that stands as binding precedent in this circuit and as persuasive authority elsewhere. It says you can be subject to civil liability simply by publishing a book that can lead someone you don't know — whom you have never met and about whose circumstances you are unfamiliar — to commit a crime.

Based on the discussion by that court and on Rod's answers today, you also could be subject to criminal penalties if the legislature criminalizes that kind of behavior. As a result, that legal analysis is being used in courtrooms across the country to go after films where victims of tragedies want to get some kind of retribution.

The argument is being made that even if the filmmakers didn't intend to cause tragedies, they should have known the films would cause them. The same argument is being used in cases about Web pages protesting abortion and naming doctors and so on. It cuts across a wide spectrum of different cases and different applications. It's a dangerous development in the law.

O'NEIL: The Court of Appeals never said the plaintiffs prevail on the merits, only that they have a right to go to trial. In a case of this sort, you can imagine how sympathetic jurors would likely be once you got to trial and they heard all the things Rod was describing. But it's important to understand they are not home free. It's just the first stage in what would have been a long process if they had gone trial.

RON COLLINS (Center for Science in the Public Interest): One book that comes to mind when we talk about the *Hit Man* case is *The Anarchist Cookbook*.

You said the *Hit Man* manual didn't really fall into the *Brandenburg* scenario for a variety of reasons, one of which was that it wasn't political. If *The Anarchist Cookbook* falls on the political side of the spectrum and there was a similar stipulation as to intent, would it be governed by the *Brandenburg* political speech test, or would it be governed by the law of aiding and abetting?

SMOLLA: I think the *Brandenburg* test ought to apply to *The Anarchist Cookbook*. I didn't come up with this on my own. It is actually well discussed by

Anthony Kennedy when he was a judge on the 9th Circuit before he joined the Supreme Court.

An intriguing thing happened when we researched our case and looked at lower court opinions. We found that the "mother lode" of lower court opinions was — of all places — in tax cases. For ideological reasons, tax protesters often produce material — books, pamphlets and speeches — on how to defraud the IRS.

There have been quite a few federal court cases dealing with whether or not there is a First Amendment *Brandenburg* defense available in that situation. Judge Kennedy said if you have, in effect, a tax-evasion training manual, you are not entitled to a *Brandenburg* instruction. That's aiding and abetting tax evasion. When you are providing this kind of detailed information with no ideological patina, aiding-and-abetting law is all you get.

But, he said, if there is a mixture of ideological diatribe and detail, you are entitled to the *Brandenburg* instruction. We want to be careful that we are not coming after you merely because you are a tax crazy and we find your ideas reprehensible. We want to

be careful that we're getting you because of some of kind of immediate nexus to criminal behavior.

Now this is not entirely satisfying because there are going to be close cases, but it's a sensible judgment. In your hypothetical, then, I would give the publisher the benefit of *Brandenburg*.

CORN-REVERE: It's important to note that in most of the tax instruction-manual cases that arise, you are dealing with a situation where people get together at seminars. There are published materials, but there also are people who will counsel others as to how to get around the tax laws and will help them fill out their tax forms so as to defraud the government.

So in most cases, the added dimension you are talking about is criminal conduct that is accompanied by publication.

COLLINS: So, if you have an ideologically motivated act to kill somebody in a federal government building, *Brandenburg*; if you have the same act but not ideologically motivated to kill somebody in a federal building, no *Brandenburg*. Is that correct?

SMOLLA: I think the answer is yes. This was exactly the colloquy we had in the oral argument. It seems to me

that if you look at the philosophy underlying free speech, of course it ought to be harder to prosecute people who are engaged in what we claim is violent speech for ideological purposes — which is part of public discourse — as opposed to people who, in a very cold-blooded way, simply are willing to sell you details on how to kill people or blow up buildings or whatever, for whom there is not even a pretense of contributing to the marketplace of ideas, it's purely to assist in hurting others.

DAVID SKOVER (Seattle University School of Law): Unless you espouse a virtually absolutist position on the First Amendment — and I don't understand you to be doing that, Mr. Corn-Revere — it seems to me you're in a hard place to be critiquing the use of intent as a First Amendment criterion in the kinds of cases raised by Rodney Smolla.

Are these not time-honored criteria for determining between lesser- and more-protected forms of speech? How could we distinguish, for example, between political speech and commercial speech, except by the speaker's identity and the commercial intent or purpose of the speech?

Aren't we really dealing with a common criterion for distinguishing between lesser- and more-protected speech that the court has used all the time?

CORN-REVERE Obviously, the First Amendment isn't an absolute. You can't pass someone a note that says, "Give me all your money" at the teller's window at the bank and think because you used words to commit the crime, that the First Amendment protects you. You can't say you're a reporter for a major metropolitan daily, and break into a warehouse for a big story, and assume you are immune from the normal laws against breaking and entering.

First Amendment absolutism is a meaningless concept, and I don't know anybody who actually would fall into the category of absolutist.

To answer your more specific question about the use of intent, it's true that intent may figure in as an element of crimes — and often does in crimes that involve communicative behavior or speech. The difficulty here is that intent was used to overcome the obligation to prove immediacy in the *Brandenburg* sense.

Because the defendants in this case stipulated they

had intended bad things, there was absolutely no obligation to demonstrate any kind of causal relationship between the crime that occurred — immediate or not — and the publication.

SKOVER: Isn't intent being used to take the case out of the *Brandenburg* category and into the aiding-and-abetting category? Thus, immediacy becomes irrelevant.

CORN-REVERE: That's the problem — creating the aiding-and-abetting category for a publication. While it might be argued, as the 4th Circuit tried to do, that this case is unique — that it's not going to be applied to people who write novels or make films — in fact, that is the development in the law we are seeing.

It is essentially because we have this new development that makes this case dangerous. This is not the commonplace application of aiding-and-abetting principles used every day in the law. Criminals talk to each other, and that is sometimes part of the crime. But here we are talking about a distinctly different thing. We are talking about applying the law to a publisher who had no idea who might be reading the book.

O'NEIL: The Court of Appeals understandably and properly was not entirely comfortable in shifting everything onto aiding and abetting. There is a lot of ambivalence in the opinion on that issue, on the significance of the stipulations. At one point they say, "Well, the stipulations don't really matter." And then a few pages later they come back and talk about the stipulations again.

CORN-REVERE: This opinion has freed up other courts, like the one in Louisiana in *Byers v. Edmundson* examining whether the makers of "Natural Born Killers" intended the film to incite people to rob and kill.

I expect we are going to have a number of cases go through these kinds of factual analyses to determine whether or not the publisher knew or should have known or intended such results.

At least since 1964 and *New York Times v. Sullivan*, in developing First Amendment law, we've created high hurdles to settle these kinds of questions. You don't want to drag people through years of litigation and encourage them not to publish things they otherwise would have published.

O'NEIL: It may not be entirely clear how "Natural Born Killers" reached the same stage. There weren't any stipulations there, but the plaintiffs alleged the same kind of intent. The defendants, eager to have the case dismissed before it went to trial, essentially had to concede for purpose of argument that those allegations about intent could have been proved. So it ends up in a very similar posture, even though by a different route. I think that distinction may be helpful.

SMOLLA: *New York Times v. Sullivan* did not end libel litigation; some argue it encouraged protracted litigation. Whatever the result, it still requires you to negate the allegations.

CORN-REVERE: The difference between *New York Times v. Sullivan* — which involved publishing an advertisement that was later argued to be defamatory — and the *Hit Man* case is that in the former you have a specific transaction between specific individuals where someone alleged he was wronged by the publication, whereas here, in *Hit Man*, the factual allegation goes to more amorphous, more intangible issues as to how someone you don't know may use your publication once it goes out into the stream of commerce. It raises a fundamentally

different and more troublesome kind of question to be decided in litigation, and I think is much more chilling for that reason.

I think we will see people stretching the boundaries. Not just people who think they may score big on a civil case, but I suspect we'll see national policies and laws being adopted that seek to stretch the boundaries that *Paladin Press* opened.

SAM DINGMAN (T.C. Williams High School senior): In our government class at school, we have been doing a mock Supreme Court trial using *NEA v. Finley*, the case about controversial art forms and the validity of the decency clause.

One of the arguments made by the student lawyers was that Ms. Finley didn't have the right to be funded by the NEA for her controversial art, but she did have the right to produce it.

My question deals with the boundaries of the *Hit Man* case. It seems like the publisher who published the work was liable, but I'm curious as to where the people who wrote *Hit Man* — the people who actually created the words — where do they fit in? Was there any suit brought against them? Are they protected

under the First Amendment? It seems to me they are almost more liable than the publishers are, because they are the ones who created the ideas.

SMOLLA: On the cover of the book *Hit Man*, the author is listed as Rex Feral. “Rex” is a pseudonym. A woman wrote the book. She submitted the book as a novel, as fiction. The publisher said, “We are not interested in publishing fiction. But if you will rewrite this as a murder manual, a how-to instruction manual, we will publish it.”

The publisher engaged in a contractual negotiation with the author in which the publisher agreed to hold the author harmless, to pay for the author’s defense and damages in the event that any liability suits ever arose out of the publication of the book.

For that quirky reason, she became a kind of behind-the-scenes player, because both sides realized the publisher was the prime mover behind the events. But in a different fact pattern involving a different author/publisher relationship, it might have turned out differently.

It is magnificent that in your high school you have mock Supreme Court arguments. It’s a great way to learn. You have taken on one of the hardest First

Amendment questions that exist — funding of the arts and offensive speech. So when you have that one figured out, come help the two of us.

CORN-REVERE: Actually, I wanted to add a simple answer to your question: The publisher got sued because the publisher had the money.

O’NEIL: Should you ever have the misfortune of coming home and finding your family wiped out by somebody who did it by the book, or should you discover that a close relative had published that book, you will now know where to turn for the best possible legal representation.



Rodney A. Smolla joined the law faculty of the University of Richmond, T.C. Williams School of Law, in 1998 as the new George E. Allen Professor of Law. He was previously the Arthur B. Hanson Professor of Law in the Marshall-Wythe School of Law, College of William and Mary. From 1988 to 1996, he was director of the Institute of Bill of Rights Law at William and Mary. He writes and speaks extensively on constitutional law issues and is also active in litigation matters involving constitutional law. His book *Free Speech in an Open Society* (Alfred A. Knopf,

1992) won the William O. Douglas Award as the year’s best monograph on freedom of expression. His latest book, *Deliberate Intent* (Crown Publishers), was published in July 1999; it describes the successful representation of three murder victims in a suit against the publisher of the murder instruction manual *Hit Man*.

Robert Corn-Revere is a partner in the Washington, D.C., office of Hogan & Hartson L.L.P., specializing in First Amendment, Internet and communications law. Before joining Hogan & Hartson in 1994, he served as chief counsel to Interim Chairman James H. Quello of the Federal Communications Commission. From 1990 until 1993, he was Commissioner Quello’s legal adviser. He regularly advises clients on Internet-related issues and has served as counsel in First Amendment litigation involving the Communications Decency Act, the Child Online Protection Act, Internet content filtering in public libraries and export controls on encryption software. In 1999, he was listed on a 30th Anniversary Roll of Honor by the American Library Association’s Office of Intellectual Freedom and Freedom to Read Foundation for his role as lead counsel in *Mainstream Loudoun v. Board of Trustees of the Loudoun County Library*.

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Robert M. O'Neil is founding director of the Thomas Jefferson Center for the Protection of Free Expression and the former president of the University of Virginia. He is a member of the university's law faculty and teaches courses in constitutional and copyright law. For the past three decades, he has taught about

free speech and press at the universities of California (Berkeley), Cincinnati, Indiana, Wisconsin and Virginia. In addition to teaching, he has had a distinguished career in higher education administration, serving prior to his move to Virginia as provost of the University of Cincinnati, vice president of Indiana University

for the Bloomington campus and president of the University of Wisconsin. He is the author of several books, including *Free Speech in the College Community*, *Free Speech: Responsible Communication Under Law*, *The Rights of Public Employees (second ed., 1993)* and *Classrooms in the Crossfire*.



Bibliography

Bok, Sissela. *Mayhem: Violence as Public Entertainment*. Reading, Mass.: Addison Wesley, 1998.

Brooks, Kim, Vincent Schiraldi and Jason Ziedenberg. "School House Hype: Two Years Later." Washington, D.C.: Justice Policy Institute/Children's Law Center, 2000.

Cantor, Joanne. *"Mommy, I'm Scared:" How TV and Movies Frighten Children and What We Can Do To Protect Them*. New York: Harcourt Brace, 1998.

Committee on Communications and Media Law, The Association of the Bar of the City of New York. "Violence in the Media: A Position Paper," *The Record*. New York: The Association, April 1997.

Elliott, Delbert S., et al., eds. *Violence in American Schools: A New Perspective*. New York: Cambridge University Press, 1998.

Freedman, Jonathan. "Effect of Television Violence on Aggressiveness," *Psychological Bulletin*. Washington, D.C.: American Psychological Association, 1984.

Freedman, Jonathan, "Television Violence and Aggression: What Psychologists Should Tell the Public," Suedfeld, Peter and Philip Tetlock, ed., *Psychology and Social Policy*. New York; Hemisphere Publishing Corp., 1992.

Freedman, Jonathan. Testimony. Washington, D.C.: House Bipartisan Task Force on Youth Violence, Oct. 13, 1999.

Freedman, Jonathan. "Viewing Television Violence Does Not Make People More Aggressive," *Hofstra Law Review*. Hempstead, N.Y.: Hofstra Law Review Association, 1994.

Gadow, Kenneth and Joyce Sprafkin. "Field Experiments of Television Violence with Children: Evidence for an Environmental Hazard?" *Pediatrics*. Elk Grove Village, Ill.: The American Academy of Pediatrics, 1989.

Goldstein, Jeffrey. "Video and Computer Games: A Summary of Research on the Attractions, Effects, and Applications of Video and Computer Games." Washington, D.C.: Interactive Digital Software Assn., 1997.

.....

Horn, David M. "Bruised Inside: What Our Children Say About Youth Violence, What Causes It, and What We Need to Do About It." Washington, D.C.: National Association of Attorneys General, 2000.

Jenkins, Henry and Justine Cassell, eds. *From Barbie to Mortal Kombat: Gender and Computer Games*. Cambridge, Mass.: MIT Press, 1999.

Jenkins, Henry. Testimony. Washington, D.C.: U.S. Senate Commerce Committee, May 4, 1999.

Kellerman, Jonathan. *Savage Spawn: Reflections on Violent Children*. New York: Ballantine, 1999.

Kunkel, Dale, et al. "Measuring Television Violence: The Importance of Context," *Journal of Broadcasting & Electronic Media*. Washington, D.C.: Broadcast Education Association, 1995.

Levine, Judith. "Shooting the Messenger: Why Censorship Won't Stop Violence." New York: The Media Coalition, 2000.

National Research Council. *Understanding and Preventing Violence*. Washington, D.C.: National Academy Press, 1993.

Niehoff, Debra. *The Biology of Violence: How Understanding the Brain, Behavior and the Environment Can Break the Vicious Cycle of Aggression*. New York: Free Press, 1998.

Rhodes, Richard. *Why They Kill: The Discoveries of a Maverick Criminologist*. New York: Alfred A. Knopf, 1999.

Surgeon General's Advisory Committee on Television and Social Behavior. *Television and Growing Up: The Impact of Televised Violence*, Vol. 1. Washington, D.C.: Government Printing Office, 1972.

Witcomb, Julie. "Causes of Violence in Children," *Journal of Mental Health*. Abingdon, England: Carfax Pub. Co., 1997.

INTERNET RESOURCES

Federal Trade Commission. "Marketing Violent Entertainment to Children." <http://www.ftc.gov/opa/2000/09/youthviol.htm>. September 2000.

Free Expression Network. "An Appeal to Reason." <http://www.freexpression.org/reason.htm>. 2000.

Hatch, Orrin and Senate Judiciary Committee. "Children, Violence, and the Media: A Report for Parents and Policy Makers." <http://www.senate.gov/~judiciary/mediavio.htm>. 1999.

Jenkins, Henry. "Lessons from Littleton: What Congress Doesn't Want to Hear About Youth and Media." <http://web.mit.edu/cms/news/nais9912/>. 1999

The First Amendment Center works to preserve and protect First Amendment freedoms through information and education. The center serves as a forum for the study and exploration of free-expression issues, including freedom of speech, of the press and of religion, the right to assemble and to petition the government.

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First Amendment Center

Kenneth A. Paulson
EXECUTIVE DIRECTOR

John Seigenthaler
FOUNDER

1207 18th Avenue South
Nashville, TN 37212
(615) 321-9588
www.freedomforum.org

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