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September 14, 2004

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Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

Re: Comment on Notice of Inquiry, **MB Docket No. 04-261**; In the Matter of Violent Television Programming And Its Impact on Children

Dear Commissioner:

The ACLU submits these comments in reference to MB Docket No. 04-261, In the Matter of Violent Television Programming And Its Impact on Children. The Notice of Inquiry is long and fairly complex, seeking comment on many issues regarding violence and its effect on children, as well as the constitutionality of regulating depictions of violence. Our comments are limited to two issues: (1) the adequacy of research demonstrating the effects of violent programming; and (2) the constitutional issues in government regulation of violent programming.

The Notice of Inquiry is a response to a letter from thirty-nine members of the House of Representatives, Committee on Energy and Commerce, dated March 5, 2004. Congressional concern over media effects on children is hardly new. Each new medium is greeted with concern and efforts to regulate it on behalf of the children. The Internet is one of the most recent forms of information and entertainment causing Congressional concern, spawning several attempts to regulate the information that can reach children. Thus far, those attempts have failed, because they failed to adequately address constitutional concerns. Attempts to regulate violence in the broadcast medium are likely to meet the same fate.

**Research has not proven that watching violence on television causes watchers to commit violence.**

Congress often calls witnesses in hearings on media violence that opine their certainty that media violence causes violence. A dispassionate review of the data, however, demonstrates something far different.

The causes of violence are many and varied, and watching violence on television is not the sole, or even the most important factor. In September 2000, the Federal Trade Commission issued a report entitled "Marketing Violent Entertainment to Children: A Review of the Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries." In Appendix A of that report, the FTC reviewed the available research on the impact of violence in the entertainment media. Regarding causation, the FTC noted that "[m]ost researchers and investigators agree that exposure to media violence alone does not cause a child to commit a violent act, and that it is not the sole, or even the most important, factor in contributing to youth aggression, anti-social attitudes, and violence."

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The FTC noted that “[b]roader research into the causes of youth violence has identified interacting risk factors, such as genetic, psychological, familial, and socioeconomic characteristics. Severe antisocial aggressive behavior appears to occur most often when more than one of these factors is present. The typical profile of a violent youth is one who comes from a troubled home, has poor cognitive skills, and exhibits psychological disorders such as anxiety, depression and attention deficit hyperactivity.”

Intuitively, the conclusion that media violence causes actual violence is incorrect. While violent media is allegedly on the rise, violence, and in particular youth violence, has declined according to FBI statistics. If media violence is a causative factor, one would expect to see a rise in violent crime, rather than a decrease.

Attachment 1 to these comments is an *amicus* brief filed on behalf of thirty-three media scholars in the case of *Interactive Digital Software Ass’n v. St. Louis County* in 2002, and is submitted with the permission of the authors. The brief analyzes the studies and data in the area. Quoting psychologist Guy Cumberbatch, it notes, “If one conclusion is possible, it is that the jury is not still out. It’s never been in. Media violence has been subjected to lynch mob mentality with almost any evidence used to prove guilt.” The brief additionally discusses the positive benefits of fantasy violence, and concludes that “[c]ensorship laws based on bogus claims that science has proved harm from violent entertainment deflect attention from the real causes of violence and, given the positive uses of violent fantasy, may be counterproductive.”

Courts that have examined the data have likewise not been impressed with the proponents of causation. Most recently, a federal district court in Washington struck down a law dealing with violent video games where the violence was perpetrated against a law enforcement officer. The proponent of the law was confident that it would be upheld because it was allegedly supported by research that showed that watching violence produces violent activities. The court, however, was unimpressed, and held the law unconstitutional. [*Video Software Dealers Ass’n v. Maleng*, No. C03-1245L (D.Wash. July 15, 2004)]

Assumptions about the negative effects of viewing violence ignore the positive societal value of violent programs that teach us important lessons about history or call attention to problems that society must address. “Roots” was a national television event of enormous educational value that necessarily showed the brutality of the institution of slavery. The made-for-television movie “The Burning Bed” was credited with bringing about reform of existing spousal-abuse laws and included what some would call disturbingly violent scenes. “Saving Private Ryan” was a powerful movie about the horrors of war, and included many disturbing scenes to illustrate that point.

While those who wish to censor violence claim “[h]undreds of studies over decades document the harmful impact that exposure to graphic and excessive media violence has on the physical and mental health of our children,” the fact remains that the basis for regulating media violence rests more on wishful thinking than hard data.

### **Regulating television violence is unlikely to survive constitutional scrutiny.**

The Supreme Court has repeatedly stressed that “above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Department v. Mosley*, 408 U.S. 92, 95 (1972). Moral and esthetic judgments are “for the individual to make, not for the Government to decree, **even with the mandate or approval of the majority.**” *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 818 (2000) [Emphasis added.]

The overriding justification for regulation of television violence “is the concern for the effect of the subject matter on young viewers.” *Id.* at 811. Clearly, any such regulation by the government would be content-based. Content-based speech restrictions are subject to strict scrutiny. *Id.* at 813.

Strict scrutiny requires that any content-based speech regulation must be narrowly tailored to promote a compelling government interest. If a less restrictive alternative would serve the Government’s purpose, it must use that alternative. *Id.*

The fact that the studies do not generally support the thesis that media violence causes actual violence has important implications for strict scrutiny analysis. To the extent that these studies provide the “compelling government interest” in regulating television violence, they are woefully inadequate. As the FTC noted, media violence is not the sole, or even the most important factor in youth violence. Thus, there is no compelling government interest in regulating such content.

The fact that a proposed regulation may not impose a complete prohibition on that show does not save the regulation.<sup>1</sup> “The distinction between laws burdening and laws banning speech is but a matter of degree. The Government’s content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.” *Id.* at 812.

It is also unavailing to claim that the speech at issue is of minimal value. “The history of the law of free expression is one of vindication in cases involving speech that many citizens may find shabby, offensive, or even ugly. It follows that all content-based restrictions on speech must give us more than a moment’s pause.” *Id.* at 826.

“Material limited to forms of violence is given the highest degree of First Amendment protection.” *Sovereign News Co. v. Falke*, 448 F.Supp. 306, 394 (N.D. Ohio 1977), *remanded on other grounds*, 610 F.2d 428 (6<sup>th</sup> Cir. 1979), *cert. denied*, 447 U.S. 923 (1980). In *Winters v. New York*, 333 U.S. 507 (1948), the Supreme Court invalidated a law that prohibited the distribution to minors of any publication “principally made up of . . . accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime.” *Id.* at 508. Even though the Court saw “nothing of any possible value to society in these magazines,” the justices held that the material was “as much entitled to the protection of free speech as the best of literature.” *Id.* at 510.

The First Amendment not only protects expression that depicts violence; it also protects speech that advocates the “use of force or violence.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982). In *Brandenburg v. Ohio*, 395 U.S. 444 (1969)(*per curiam*), the Supreme Court held that the government may not “forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Id.* at 447. The Court further stated that “[a] statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from Government control.” *Id.* at 448.

Applying *Brandenburg*, it is clear that television entertainment fails to meet this stringent test. Nothing in the data supports the conclusion that watching media violence will incite imminent violence. In the context of song lyrics thought to advocate minors to commit suicide, courts have found that expression enjoys full First Amendment

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<sup>1</sup> The Notice of Inquiry discussed the possibility of a “safe harbor” in which violent shows would be aired only at certain times at which children were not likely to comprise a significant portion of the viewing audience. Thus, the material would not be absolutely prohibited.

protection. *Walker v. Osbourne*, 763 F.Supp. 1144 (M.D. Ga. 1991), *aff'd*, 958 F.2d 1084 (11<sup>th</sup> Cir. 1992 (*per curiam*), *cert. denied*, 113 S.Ct. 325, 121 L.Ed.2d 245 (1992). See also, *Zamora v. Columbia Broadcasting System*, 480 F.Supp. 199 (S.D. Fla. 1979); *DeFilippo v. National Broadcasting Co.*, 446 A.2d 1036 (R.I. 1982); *Olivia N. v. National Broadcast Co.*, 126 Cal. App. 3d 488, 178 Cal. Rptr. 888 (1981), *cert. denied*, 458 U.S. 1108 (1982). The same result is likely for television violence.

The foregoing discussion makes it clear that (1) violent material is protected under the First Amendment; (2) because regulation of violent content is a content-based regulation, it must endure strict scrutiny; (3) there is no compelling governmental interest in regulating media violence, and therefore, any such regulation will fail under the strict scrutiny standard.

*Defining "violence" presents great constitutional difficulties.*

For the FCC to regulate violence, it must define what constitutes permissible and impermissible depictions of violence. The law favors bright lines when regulating speech, so it is clear what is and is not permissible.

Vague laws and interpretations create traps for broadcasters and speakers because they are unsure, in the absence of a bright line, what conduct constitutes permissible depictions of violence from impermissible depictions of violence. Rather than have broadcasters act at their peril, the law prefers reasonable notice of what conduct will give rise to legal consequences, so that the speaker or broadcaster may act accordingly. Vagueness results in chilling of communications that may well NOT be impermissibly violent, simply because the cost to the speaker or broadcaster of being wrong is too great. Vagueness encourages silence rather than robust debate. "Uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). Thus, any vagueness in the definition of permissible violence serves to chill protected speech.

As noted above, violence can often teach us important historical lessons, and illustrate societal problems existing today. Thus, the FCC would first have to define "violence," then proceed to define what is permissible and impermissible depictions of violence. Just defining violence can be a daunting task. For example, the FTC in its report of September 2000 noted that researchers who study the effects of media violence are not even consistent in their definitions of "violence." If researchers are unable to concur on an objective definition of "violence," it is unlikely the FCC will be able to make such decisions in a way that will withstand constitutional scrutiny.

Assuming the FCC can provide an objective definition of "violence," it must then proceed to the task of defining what is and is not permissible. For example, *The Magnificent Seven* is a movie about seven men who protect a village from violent marauders. Is their defense of the village "good" violence (allowable)? Is the depicting of violence of the marauders therefore not allowed? If so, then how does one place the violence committed by the *Magnificent Seven* in context? Prohibiting showing the violence of the marauders would seem to make the violence committed by the seven valiant warriors unreasonable. Or, is the movie left to only show a debate between the marauders and the seven warriors with no violence whatsoever? (And probably, no audience.)

While proponents of regulating media violence often claim they are only seeking to prohibit "gratuitous" or "excessive" violence, defining that is a lot like "knowing it when you see it," which is insufficiently precise for constitutional purposes.

*Regulating violence under the rubric of “indecent” is likewise constitutionally problematic.*

The Notice of Inquiry suggests that the FCC may consider expanding the definition of “indecent” to include violence. Such a proposal is unwise.

The FCC’s regulation of indecency rests largely on the Supreme Court case of *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). Much has changed in the intervening twenty-six years to undercut the validity of that case. It should be noted that the decision was a fragmented one (5-4) that did not approve a particular standard for indecency, or uphold a substantive penalty against the licensee.<sup>2</sup> Since *Pacifica*, the Court has acknowledged that the FCC’s definition of indecency was not endorsed by a majority of the Justices, and has repeatedly described the decision as an “emphatically narrow holding.”<sup>3</sup>

The ability to regulate indecency in the broadcasting medium is an exception rather than the general rule. In many other contexts, the Supreme Court has invalidated efforts to restrict indecency.<sup>4</sup> In *Pacifica*, the Court applied a slightly different standard for broadcasting, but that decision cannot be read too broadly.

Perhaps the most important reason to question *Pacifica* is that the law itself has evolved since *Pacifica* was decided. In *Pacifica*, three justices who joined the plurality opinion suggested “indecent” speech was subject to diminished scrutiny because it was “low value” or less important speech.<sup>5</sup> As noted above, in the *Playboy* case, the Supreme Court rejected the government’s argument that it could regulate sexually explicit speech because it was “speech that was not very important.”<sup>6</sup> Additionally, the Court since *Pacifica* has invalidated government-imposed indecency restrictions on cable television, despite its “pervasiveness.” While *Pacifica* noted the pervasiveness of broadcast television as part of its rationale, the Court in striking such regulation in the cable television context found specifically that “[c]able television broadcasting, including access channel broadcasting, is as ‘accessible to children’ as over-the-air broadcasting, if not more so.”<sup>7</sup> Thus, the rationale in *Pacifica* is undercut by the Court’s later decision. And, finally, and most importantly, in *Reno v. ACLU*, the Court for the first time subjected the indecency definition (in the Internet context) to rigorous scrutiny, and found it to be seriously deficient.<sup>8</sup> All of these later decisions undercut *Pacifica*’s rationale and raise serious questions about its vitality.

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<sup>2</sup> See *Pacifica*, 438 U.S. at 743 (plurality op.) and at 755-56 (Powell, J., concurring) (“[t]he Court today reviews only the Commission’s holding that Carlin’s monologue was indecent ‘as broadcast’ at two o’clock in the afternoon, and not the broad sweep of the Commission’s opinion”). See also *Carlin Communications, Inc. v. FCC*, 837 F.2d 546, 559 (2d Cir. 1988) (“[t]he *Pacifica* Court declined to endorse the Commission definition of what was indecent”); *ACLU v. Reno*, No. Civ. A. 96-963, 1996 WL 65464 at \*3 (E.D.Pa. Feb. 15, 1996) (Buckwalter, J.) (“it simply is not clear, contrary to what the government suggests, that the word ‘indecent’ has ever been defined by the Supreme Court”).

<sup>3</sup> *Reno*, 521 U.S. at 866-867, 870; *Sable*, 492 U.S. at 127; *Bolger*, 463 U.S. at 74.

<sup>4</sup> Print medium: *Butler v. Michigan*, 352 U.S. 380, 383 (1957); See also *Hamling v. United States*, 418 U.S. 87, 113-114 (1974) (statutory prohibition on “indecent” or “obscene” speech may be constitutionally enforced only against obscenity); Film: *United States v. 12 200-ft. Reels of Film*, 413 U.S. 123, 130 n.7 (1973); In the mails: *Bolger v. Youngs Drug Products Corp.* 463 U.S. 60 (1983); In the public forum: *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975); Cable Television: *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000); the Internet: *Reno v. ACLU*, 521 U.S. 844 (1997).

<sup>5</sup> Only Justices Stevens, Rehnquist, and Chief Justice Burger joined in that part of the opinion asserting that indecent speech lies “at the periphery of First Amendment concern.” *Pacifica*, 438 U.S. at 743.

<sup>6</sup> *Playboy Entertainment Group*, 529 U.S. at 826.

<sup>7</sup> *Denver Area Educ. Telecomms. Consortium v. FCC*, 518 U.S. 717, 744 (1996).

<sup>8</sup> 521 U.S. at 871-881.

Thus, the FCC's ability to regulate indecency itself is now in question. Because the fabric of *Pacifica* has become frayed over the years, stitching on "violence" to "indecency" would be unwise. In *Reno v. ACLU*, the Court found the definition of "indecency" used in the Communications Decency Act (essentially the same definition used by the FCC) to be vague and overbroad. Expanding a vague and overbroad definition to encompass another concept that is already inherently vague is to invite constitutional challenge.

### Conclusion

Regulation of content is generally impermissible unless there is a compelling government interest, and the regulation is narrowly tailored to meet that interest. Here, there is no compelling government interest demonstrated that would even justify such restrictions.

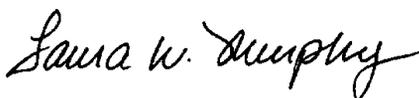
Even assuming there was a compelling government interest, fashioning specific definitions of what is "gratuitous" or "excessive" violence will be constitutionally problematic.

Parents are justifiably concerned that their children learn their values. Parents who are concerned about the effects of media violence (no matter how unproven) want to protect their children from this supposed harm. Parents are, of course, the ones most suitable to make the determination of what is and is not in their children's best interest. When, however, the heavy hand of government steps in to "assist" those parents, constitutional problems abound.

Parents are not helpless in deciding what their children should and should not watch. For example, the Internet contains many reviews and ratings of not just television shows, but movies, music and games. The information is there for those who wish to find it. It is also often more detailed than rating systems currently employed at the government's suggestion. Additionally, education about the media and how to be an informed consumer would be more effective than any censorship scheme, and have more positive benefits.

Whether or not the concern about media violence is justified, a system of government censorship poses insurmountable constitutional policy problems. The Constitution properly prohibits certain decisions from being made by the government, reserving them instead to the judgment and choices of the people. *See, Central Hudson Gas & Electric Corp. v. Public Service Comm'n.*, 447 U.S. 557, 562 (1980). Decisions regarding the expressions to which our children are exposed are among those decisions.

Sincerely,



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Director



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No. 02-3010

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In the  
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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INTERACTIVE DIGITAL SOFTWARE ASS'N, et al.,  
Plaintiffs - Appellants,

v.

ST. LOUIS COUNTY, et al.,  
Defendants - Appellees

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On Appeal From a Judgment of the United States District Court  
for the Eastern District of Missouri, Eastern Division

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**BRIEF *AMICI CURIAE* OF THIRTY-THREE MEDIA SCHOLARS  
IN SUPPORT OF APPELLANTS, AND SUPPORTING REVERSAL\***

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No. 02-3010

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In the  
United States Court of Appeals for the Eighth Circuit

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INTERACTIVE DIGITAL SOFTWARE ASS'N, et al.,  
Plaintiffs - Appellants,

v.

ST. LOUIS COUNTY, et al.,  
Defendants - Appellees

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**BRIEF *AMICI CURIAE* OF THIRTY-THREE MEDIA SCHOLARS  
IN SUPPORT OF APPELLANTS, AND SUPPORTING REVERSAL**

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**INTEREST OF THE *AMICI CURIAE***

*Amici* are scholars in the fields of media, psychology, and culture. They view the relationship between entertainment and human behavior as multi-faceted and complex. They are concerned when, as in this case, a court relies on commonly held but mistaken beliefs about a proven causative link between violent entertainment and violent behavior to uphold a censorship law. They file this brief pursuant to F.R.A.P. 29, in an effort to assist the court in understanding the “media effects” debate.<sup>1</sup>

**SUMMARY OF ARGUMENT**

Both the St. Louis County Council, in passing Ordinance #20.193, and the district court, in upholding it, relied on the assumption that video games containing “graphic violence” cause violent behavior. The Council heard testimony from psychologist Craig Anderson that playing violent video games “for as short as 10 to 15 minutes” causes “aggressive behavior” and, more

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<sup>1</sup> See Appendix for biographies of the *amici*. All parties have consented to the filing of this brief.

broadly, that “there is a causal connection between viewing violent movies and TV programs and violent acts.” J.A. 3, 4. The trial court relied on these statements, adding that according to Anderson, video games are “addictive” and “provide a complete learning environment for aggression.” J.A. 772-73.

Both the County Council and the court were mistaken. Most studies and experiments on video games containing violent content have not found adverse effects. Researchers who do report positive results have generally relied on small statistical differences and used dubious “proxies” for aggression, such as recognizing “aggressive words” on a computer screen. Indeed, research on media violence more generally has also failed to prove that it causes – or is even a “risk factor” for – actual violent behavior. As psychologist Guy Cumberbatch has noted:

The real puzzle is that anyone looking at the research evidence in this field could draw any conclusions about the pattern, let alone argue with such confidence and even passion that it demonstrates the harm of violence on television, in film and in video games. While tests of statistical significance are a vital tool of the social sciences, they seem to have been more often used in this field as instruments of torture on the data until it confesses something which could justify publication in a scientific journal. If one conclusion is possible, it is that the jury is not still out. It's never been in. Media violence has been subjected to lynch mob mentality with almost any evidence used to prove guilt.<sup>2</sup>

This torturing of research data on media effects has been driven by a “causal hypothesis” held by some psychologists, that youngsters will imitate fantasy violence. There is some common-sense appeal to this hypothesis. But seemingly common-sense notions do not always turn out to be correct. And researchers’ attempts to reduce the myriad effects of art and entertainment to numerical measurements and artificial laboratory experiments are not likely to yield useful insights about the way that viewers actually use popular culture. Likewise, in a field as complex

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<sup>2</sup> Guy Cumberbatch, “Video Violence: Villain or Victim?” (Video Standards Council, UK, 2001), [www.videostandards.org.uk/video\\_violence.htm](http://www.videostandards.org.uk/video_violence.htm) (accessed 9/13/02).

as human aggression, it is questionable whether quantitative studies can ever provide an adequately nuanced description of the interacting influences that cause some people to become violent.

Violent crime rates across the United States have fallen significantly in the past decade, even while fantasy violence in entertainment has increased – and while video games, especially violent ones, have become a staggeringly popular form of entertainment. Youth violence in particular has seen dramatic reductions.<sup>3</sup> This does not mean that youth violence is not a serious problem – or for that matter, that media messages do not have powerful effects. But those effects are much more diverse and difficult to quantify than believers in the causal hypothesis generally acknowledge. And efforts to address real-world violence by censoring entertainment are profoundly misguided.

## ARGUMENT

### I. RESEARCH ON VIOLENT VIDEO GAMES HAS NOT DEMONSTRATED REAL-WORLD HARM

Psychologist Kevin Durkin, who reviewed the research on violent video games in 1995, reported that studies had found “either no or minimal effects.” Indeed, he added: “some very tentative evidence indicates that aggressive game play may be cathartic (promote the release of aggressive tensions) for some individuals.” Durkin reported in a 1999 follow-up survey that “early fears of pervasively negative effects” from video games “are not supported”; “several well

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<sup>3</sup> Mike Males, *Framing Youth* (1999), pp. 5-6, 28-70; Jib Fowles, *The Case for Television Violence* (1999), pp. 52-53; Federal Bureau of Investigation, *Uniform Crime Report* (2000) (rates of violent crime for youths aged 10-17 at their lowest level since 1987; between 1990-2000, juvenile violence arrest rates fell 27%, including a record 68% drop in homicides); “Violent Crime Fell 9% in '01, Victim Survey Shows,” *New York Times*, Sept. 9, 2002, p. A18.

designed studies conducted by proponents of the theory that computer games would promote aggression in the young have found no such effects.”<sup>4</sup> His findings were echoed by other scholars.<sup>5</sup>

One proponent of the causal hypothesis, however, continued to search for evidence of harmful effects. In 2000, Craig Anderson and a colleague reported on a lab experiment and a correlational study they had conducted.<sup>6</sup> In the experiment, they had college students play part of either a violent or a nonviolent video game, then tested them for aggression or “aggressive cognition” by asking them to give “noise blasts” to a game opponents or recognize “aggressive words” on a computer screen. A somewhat larger number of the subjects who played the violent game excerpt gave slightly longer noise blasts or recognized the words slightly more quickly. The differences were in fractions of seconds. In addition, it was highly questionable whether word recognition or noise blasts demonstrated anything realistic about actual intent to harm another person.<sup>7</sup> Nevertheless, Anderson concluded that exposure to “a graphically violent video

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<sup>4</sup> Kevin Durkin, *Computer Games - Their Effects on Young People* (Australia Office of Film & Literature Classification, 1995), p. 2; Kevin Durkin, *Computer Games and Australians Today* (Australia Office of Film & Literature Classification, 1999), p. 3.

<sup>5</sup> E.g., Barrie Gunter, *The Effects of Video Games on Children: The Myth Unmasked* (1998), pp. 94-109; Lillian Bensley & Juliet Van Eenwyk, “Video Games and Real-Life Aggression: Review of the Literature,” 29(4) *J. Adolescent Health* 244, 256 (2001) (findings “not supportive of a major public concern that violent video games lead to real-life violence”); Mark Griffiths, “Violent Video Games and Aggression: A Review of the Literature,” 4 *Aggression & Violent Behav.* 203 (1999) (studies’ results are “consistent with the catharsis hypothesis” that fantasy aggression “releases the energy that would otherwise be expressed in aggressive behavior”).

<sup>6</sup> A correlation between two characteristics, such as aggressive behavior and attraction to violent entertainment, gives no clue as to which causes the other, or whether one or more independent factors – such as a violent home, predisposition, or parental neglect – accounts for both the aggression and the preference for violent media.

<sup>7</sup> Cumberbatch, “Video Violence,” *supra*.

game increased aggressive thoughts and behavior.”<sup>8</sup>

In the same article, Anderson reviewed previous video game research. Of four experiments that found “weak” support for the causal hypothesis, he acknowledged that none had ruled out “the possibility that key variables such as excitement, difficulty, or enjoyment created the observed increase in aggression.” Other experiments were negative or yielded “mixed results” and “little evidence” of adverse effect. Yet the following year, Anderson and a colleague reported on a new “meta-analysis” that they conducted, averaging the results of 33 separate studies on violent video games. Now, they concluded that the studies showed violent games “increase aggressive behavior in children and young adults.”<sup>9</sup>

Scholars critiqued Anderson’s new calculations as well as his interpretation of the underlying studies.<sup>10</sup> As they pointed out, if experiments with dubious results are incorrectly interpreted as supportive of the causal hypothesis, the resulting meta-analysis will only magnify the error.

In 2000, Indianapolis passed an ordinance restricting minors’ access to violent video games in arcades. The city relied on Anderson’s “aggressive word”/noise blast experiment to assert that a causal connection had been established between violent games and aggressive behavior. The Court of Appeals stuck down the ordinance, ruling that Anderson did not show that “video games have ever caused anyone to commit a violent act,” or “have caused the average level of violence

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<sup>8</sup> Craig Anderson & Karen Dill, “Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life,” 78(4) *J. of Personality & Social Psych.* 772 (2000).

<sup>9</sup> Craig Anderson & Brad Bushman, “Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature,” 12(5) *Psych. Science* 353 (2001).

<sup>10</sup> Christopher J. Ferguson, “Media Violence, Media Causality,” 57(6-7) *Amer. Psychologist* 446 (2002); see also, e.g., Richard Bloom, “On Media Violence: Whose Facts? Whose Misinformation?” 57(6-7) *Amer. Psychologist* 447 (2002).

to increase anywhere.” The court noted that violent themes have always been part of children’s literature; to shield youngsters from the subject “would not only be quixotic, but deforming.”<sup>11</sup>

## II. MEDIA-EFFECTS RESEARCH OVERALL HAS NOT DEMONSTRATED THAT VIOLENT ENTERTAINMENT CAUSES REAL-WORLD HARM

### A. Most Studies Have Negative Results

Fantasy violence has been a theme in art, literature, and entertainment since the beginning of civilization, but attempts to prove through science that it has adverse effects are less than a century old. In 1928, the Payne Fund commissioned sociologists to gather data on the effects of cinema violence through surveys and interviews. The process took four years, and resulted in multiple published volumes. The conclusions were guarded and equivocal, but caution was forgotten in a one-volume summary, *Our Movie Made Children*, which became a best-seller and claimed the studies had proved harmful effects.<sup>12</sup>

In the 1950s, psychiatrist Fredric Wertham asserted that his informal research with juvenile delinquents proved violent comic books to cause crime. Wertham’s methods were anecdotal; he had no control groups; and he mistakenly relied on correlations as proof of causation. But his assertions resonated with a public eager for answers to concerns about crime.<sup>13</sup>

The next subject of study was television. Soon after TV’s emergence, politicians began to stoke public anxieties about violent content. At the same time, a new field of psychology, social learning theory, posited that children imitate media violence. These psychologists believed,

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<sup>11</sup> *American Amusement Machine Ass’n v. Kendrick*, 244 F.3d 572, 577-79 (7<sup>th</sup> Cir. 2001).

<sup>12</sup> See Gregory Black, *Hollywood Censored* (1994), pp. 151-54.

<sup>13</sup> See Margaret Blanchard, “The American Urge to Censor,” 22 *Wm. & Mary L.Rev.* 741 (1992); John Twomey, “The Citizens’ Committee and Comic Book Control,” 20 *Law & Contemp. Probs.* 621 (1955); Frederic Thrasher, “The Comics and Delinquency: Cause or Scapegoat,” 23 *J. Educ. Sociology* 195 (1949).

moreover, that such effects could be measured through laboratory experiments. Albert Bandura, leader of the social learning school, conducted experiments demonstrating that some children shown films of adults hitting Bobo dolls will imitate the behavior immediately afterward.<sup>14</sup> Even though Bobo dolls are meant to be hit, and aggressive *play* is far different from real-world intent to harm, Bandura announced that he had proved adverse effects from media violence. The announcement resonated politically, and the federal government was soon funding other studies.

The first major result of this funding was a 1972 Surgeon General's report that noted a "preliminary and tentative indication" of a causal link between TV violence and real-world behavior, but cautioned that this possible effect was "small," and only in children already predisposed to aggression.<sup>15</sup> As historian Willard Rowland recounts, however, legislators misrepresented the report's cautious conclusions, claiming that a definitive link had been proven.<sup>16</sup>

Psychologist Jonathan Freedman, who began studying media-effects research in the early 1980s, was astounded at the disparity between the claims being made and the actual results. In a 1984 article, he reported that although there is a small statistical *correlation* between preference for TV violence and aggressive behavior, there is no evidence of a causal link. Likewise, he said, laboratory experiments, which can show a short-term imitation effect, are too artificial to offer

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<sup>14</sup> Albert Bandura *et al.*, "Imitation of Film-Mediated Aggressive Models," 66 *J. Abnormal & Soc. Psych.* 3 (1963). Bandura popularized his claims in *Look* magazine: "What TV Violence Can Do to Your Child," *Look*, Oct. 22, 1963, p. 46.

<sup>15</sup> Surgeon General's Advisory Comm. on Television & Social Behavior, *Television and Growing Up: The Impact of Televised Violence* (1972), pp. 4, 7, 67. Psychologist Stuart Fischhoff notes that it was almost impossible in these years to get government funding for media research unless one was looking for harmful effects. Fischhoff, "Psychology's Quixotic Quest for the Media-Violence Connection," 4(4) *J. Media Psych.* (1999), <http://www.calstatela.edu/faculty/sfisco/violence.html> (accessed 9/20/02).

<sup>16</sup> Willard Rowland, Jr., *The Politics of TV Violence* (1983), pp. 135-96.

much guidance on TV's real-world impact. And field experiments, more realistic attempts to gauge media-violence influence, had wholly inconclusive results.<sup>17</sup>

Freedman found many instances of researchers manipulating results to bolster their theories. A field experiment in 1973, for example, widely cited in support the causal hypothesis, had numerous measures of aggression, all of which failed to produce any finding of adverse effects. Not satisfied, the researchers divided the children into "initially high aggression" and "initially low aggression" categories, and again compared results. Still there were no indications of harm from viewing violent programs ("Batman" and "Superman"). The initially high-aggression group, for example, became somewhat less aggressive after the experiment, no matter which programs they watched. But after more number-crunching, the researchers found that the initially high-aggression children who were shown violent programs "decreased *less* in aggressiveness" than the initially high-aggression children who watched neutral programs. They seized upon this one finding to claim they had found support for the causal hypothesis.<sup>18</sup>

Probably the most widely cited research project in these years was a "longitudinal" study – tracking correlations over time – to determine whether early preferences for violent entertainment correlate with aggressiveness later in life. The researchers found no correlation between violent TV viewing at age 8 and aggressive behavior at age 18 for two out of three measures of aggression. But there was a correlation for boys on a third measure of aggression – peer reports.

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<sup>17</sup> Jonathan Freedman, "Effect of Television Violence on Aggression," 96(2) *Psych. Bull.* 227 (1984).

<sup>18</sup> Jonathan Freedman, "Viewing Television Violence Does Not Make People More Aggressive," 22 *Hofstra L. Rev.* 833, 843-46 (1994). The study was Lynette Friedrich & Aletha Stein, "Aggressive and Prosocial Television Programs and the Natural Behavior of Preschool Children," 38(4) *Monographs of the Society for Research in Child Development* (1973).

They seized upon this finding, and claimed proof of harm from TV violence.<sup>19</sup>

They also later claimed a correlation between violent TV viewing in childhood and violent crime at age 30. Oddly, however, they did not disclose the actual numbers of violent criminals on whom they based their conclusions, and their published report did not mention a link between early violent viewing and adult crime at all. Nevertheless, one of the researchers, Rowell Huesmann, testified in 1986 before the U.S. Senate using a bar graph purportedly showing how violent TV causes violent crime. When, years later, author Richard Rhodes asked for the actual numbers, Huesmann acknowledged that the correlation shown in his dramatic bar graph was based on just three individuals who committed violent crimes.<sup>20</sup>

Huesmann went on to write a pivotal article on media violence in the next major government report, released in 1982.<sup>21</sup> It was an opportunity, as Rowland observes, to “provide a resurgent call to arms” by those “disappointed in the cautious tone” of the 1972 report.<sup>22</sup> But many scholars disputed its claim that harmful effects had been proven.<sup>23</sup> Yale professor William McGuire, for example, wrote that despite the hype, two decades of media-effects research had

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<sup>19</sup> This phase of the study was reported in Leonard Eron *et al.*, “Does Television Violence Cause Aggression?” 27 *Am. Psychologist* 253 (1972).

<sup>20</sup> Richard Rhodes, “The Media-Violence Myth,” *Rolling Stone*, Nov. 23, 2000, p. 55; e-mail from Huesmann to Rhodes, Mar. 13, 2000. The follow-up study was reported in L. Rowell Huesmann *et al.*, “The Stability of Aggression Over Time and Generations,” 20 *Devel. Psych.* 1120 (1984)

<sup>21</sup> National Institute of Mental Health, *Television and Behavior - Ten Years of Scientific Progress and Implications for the Eighties* (1982).

<sup>22</sup> Willard Rowland, Jr., “Television Violence Redux: The Continuing Mythology of Effects,” in *Ill Effects: The Media Violence Debate* (M. Baker & J. Petley, eds.) (1997), p. 113.

<sup>23</sup> *E.g.*, Thomas Cook *et al.*, “The Implicit Assumptions of Television Research: An Analysis of the 1982 NIMH Report on *Television and Behavior*,” 47 *Pub. Opin. Q.* 161, 181-82 (1983) (“the field experiments on television violence produce little consistent evidence of effects, despite claims to the contrary”); see also “Guns, Lies, and Videotape,” 354(9178) *The Lancet* 525 (1999) (“it is inaccurate to imply that the published work strongly indicates a causal link between virtual and actual violence”).

found little or no real-world behavioral impact from violent entertainment.<sup>24</sup>

Other researchers used correlation studies rather than experiments to test the causal hypothesis. One much-publicized study of this type found a correlation between the introduction of television in three countries and subsequent homicide rates. Without considering either the level of violent content in early TV, or other, more likely, explanations for the increased homicides, the researcher announced that “the introduction of television in the 1950s caused a subsequent doubling of the homicide rate.”<sup>25</sup> Many scholars disputed his claims, most notably two criminologists who reported in 1996 that homicide rates in many countries including the U.S. had decreased over the previous two decades despite increases in media violence.<sup>26</sup>

Some correlation research flatly undermined the causal hypothesis. In 1986, for example, Steven Messner reported *negative* correlations between exposure to violent TV and violent crime in 281 metropolitan areas. Messner stated: “The data consistently indicate that high levels of exposure to violent television content are accompanied by relatively low rates of violent crime.”<sup>27</sup>

Similarly, an ambitious cross-national study coordinated by Huesmann and his colleague Leonard Eron found no significant correlations over time between children’s media violence viewing and aggressive behavior in Australia, Finland, the Netherlands, Poland, the U.S., or Kibbutz children in Israel. The only strong correlations were for two groups of Israeli city

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<sup>24</sup> William McGuire, “The Myth of Massive Media Impact: Savagings and Salvagings,” in *Public Communication and Behavior* (G. Comstock, ed.) (1986), p. 174.

<sup>25</sup> Brandon Centerwall, “Television and Violence: The Scale of the Problem and Where to Go From Here,” 267(22) *J.A.M.A.* 3059, 3061 (1992).

<sup>26</sup> Franklin Zimring & Gordon Hawkins, *Crime is Not the Problem - Lethal Violence in America* (1997), pp. 133-34, 239-43.

<sup>27</sup> Steven Messner, “Television Violence and Violent Crime,” 33(3) *Social Problems* 218, 228 (1986).

dwellers. Yet in this case, as Freedman recounts, most of the researchers “tried to put the best face on it that they could” in the book that resulted. “They hedged, did other analyses, and tried to make it sound as if the results supported the initial prediction that television violence would increase aggression.” The Dutch researchers, however, did not hedge. “Their write-up came right out and said that there was no evidence of any effect.” Huesmann and Eron refused to publish their chapter unless they revised their conclusions.<sup>28</sup>

Some experiments, meanwhile, found more aggressive behavior associated with nonviolent shows like “Sesame Street” and “Mr. Rogers’ Neighborhood.” Joyce Sprafkin, who conducted some of these studies, later described her reaction: “I decided to look back carefully at the field and say, well, what have other people really found?” For pre-school children, the field studies simply “did not support a special significance for aggressive television.”<sup>29</sup>

This year, Jonathan Freedman published a thorough review of some 200 experiments or studies – all that he could locate – attempting to test the causal hypothesis. He found that most had negative results, even accepting as positive some experiments that used poor, almost ridiculous, proxies for aggression. Of 87 lab experiments, 37% supported the causal hypothesis; 22% had mixed results, and 41% were nonsupportive. After Freedman factored out experiments using “the most doubtful measures of aggression,” only 28% of the results were supportive, 16%

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<sup>28</sup> Freedman, “Viewing Television Violence,” *supra*, 22 *Hofstra L. Rev.* at 849-51. The Dutch researchers published their report separately; see Oene Wiegman *et al.*, *Television Viewing Related to Aggressive and Prosocial behavior* (1986); Oene Wiegman *et al.*, “A Longitudinal Study of the Effects of Television Viewing on Aggressive and Prosocial Behaviors,” 31 *Brit. J. Social Psych.* 147 (1992).

<sup>29</sup> Sprafkin testimony in *Eclipse Enterprises v. Gulotta* (CV-92-3416) (E.D.N.Y. Mar. 28, 1994), pp. 112-13; see also Joyce Sprafkin *et al.*, “Effects of Viewing Aggressive Cartoons on the Behavior of Learning Disabled Children,” 28 *J. Child Psych. & Psychiatry* 387 (1987); Kenneth Gadow & Joyce Sprafkin, “Field Experiments of Television Violence with Children: Evidence for an Environmental Hazard?” 83 *Pediatrics* 399 (1989).

were mixed, and 55% were non-supportive of the causal hypothesis.<sup>30</sup>

Freedman was hardly alone. A 2000 review of media-violence research by the Federal Trade Commission reported that no firm conclusions about adverse effects can be drawn.<sup>31</sup>

In 1994, a federal court in New York heard expert testimony on media-effects research. The case involved a county ordinance that barred dissemination to minors of any “trading card” that depicts a “heinous crime” or a “heinous criminal,” and is “harmful to minors.” Expert testimony from Jonathan Freedman and Joyce Sprafkin made clear that, contrary to popular belief, research on the effects of media violence has yielded inconclusive results. The court held that the county had not justified the ordinance with any evidence of harm from “heinous crime” trading cards.<sup>32</sup>

#### B. Occasional Positive Results Do Not Establish Real-World Harm

Despite the overall failure of media-effects researchers to prove harmful effects, some studies have reported positive findings. There are a number of reasons why these occasional positive results do not support the hypothesis that fantasy violence has adverse real-world effects.

The first reason relates to a fundamental but often-forgotten fact about social science research. Its results are “probabilistic.” That is, the “identification of a causal relationship” through lab or field experiments “does not entail the conclusion that the identified cause

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<sup>30</sup> Jonathan Freedman, *Media Violence and Its Effect on Aggression* (2002), pp. 56, 62-63. For field experiments, the percent of negative results was higher: “only three of the ten studies obtained even slightly supportive results,” and even this weak showing gave “a more favorable picture than is justified,” for several of the studies with null results “actually consisted of many separate studies.” Counting the results of these separate studies, three field experiments found some support; 20 did not. *Id.*, pp. 106-07.

<sup>31</sup> Federal Trade Comm’n, *Marketing Entertainment Violence to Children*, Appendix A, “A Review of Research on the Impact of Violence in Entertainment Media” (2000).

<sup>32</sup> *Eclipse Enterprises v. Gulotta*, 134 F.3d 63 (2<sup>nd</sup> Cir. 1997).

produces the effect in all, a majority, or even a very large proportion of cases.”<sup>33</sup> Thus, even studies that show a “statistically significant” link between violent entertainment and aggressive behavior do not mean that the link exists for most, or even a substantial minority of, individuals. “Significant” in the statistical sense “does not mean ‘important.’ It means simply ‘not likely to happen just by chance.’”<sup>34</sup>

Another problem with drawing real-world conclusions from quantitative media-effects research is that both “violence” and “aggression” are very broad concepts. Researchers have used vastly different examples of violent content in the cartoons, film clips, or games that they study. Generalizations about all violence (or all “graphic violence”) from these differing examples are not trustworthy, and fail to account for the many different contexts in which works of art or entertainment present violence.

Yet another problem is that experimenters have not always made their nonviolent excerpts equivalent to their violent ones in respect to other variables such as general level of interest or excitement. Freedman gives a striking example – an early, much-cited experiment that compared subjects’ behavior after watching either an exciting film clip of a prizefight or a soporific clip about canal boats. Since the canal boat film was not nearly as exciting as the prizefight film, it was probably the subjects’ general arousal level, not their imitation of violence onscreen, that accounted for a statistical difference in their subsequent lab behavior.<sup>35</sup>

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<sup>33</sup> Frederick Schauer, “Causation Theory and the Causes of Sexual Violence,” 4 *Am. Bar Fdn Rsrch J.* 737, 752-53 (1987).

<sup>34</sup> David Moore, *Statistics - Concepts and Controversies* 486-90 (4<sup>th</sup> ed.) (1997).

<sup>35</sup> Freedman, *Media Violence and Its Effect on Aggression*, *supra*, p. 78. The study was Leonard Berkowitz *et al.*, “Film Violence and Subsequent Aggressive Tendencies,” 27 *Public Opin. Q.* 217 (1973).

Measuring “aggression” is a further problem. For one thing, not all aggression is socially disapproved. For another, aggressive attitudes or “cognition” are not the same as aggressive behavior. Proxies for aggression in lab experiments range from dubious (noise blasts; Bobo dolls; “killing” characters in a video game) to ludicrous (popping balloons; interpreting ambiguous stories in a way that coders consider “more hostile”; recommending a grant termination).<sup>36</sup>

Moreover, aggressive *play*, whether in a lab or in the real world, is far different from real aggression intended to hurt another person.<sup>37</sup> Indeed, aggressive play provides a socially approved outlet for impulses that otherwise might take dangerous forms. Thus, the argument that the statistical link between media violence and aggression is as strong as the link between cigarette smoking and cancer (or other physiological analogues that are often used), even if it were true empirically, would be meaningless, because while scientists can measure the presence or absence of disease, psychologists cannot measure real aggression through the proxies used in lab experiments.

A final problem is the “experimenter demand” factor. Not only are behaviors permitted and encouraged in experiments that would be disapproved outside the lab, but subjects generally

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<sup>36</sup> The grant termination example is from Fischhoff, *supra*; the “more hostile” interpretation example is from Anderson & Dill, *supra*. See also Ellen Wolock, “Is There a Reasonable Approach to Handling Violence in Video Games?” *Children’s Software Revue*, July/Aug. 2002 (occasional findings of short-term effects are questionable, given how “aggressivity” is measured – “increase in heart rate and blood pressure, negative responses on questionnaires, toy choice, etc.”); Craig Emes, “Is Mr. Pac Man Eating Our Children? A Review of the Effect of Video Games on Children,” 42 *Can. J. Psychiatry* 409, 413 (1997) (reliability and validity of procedures used to measure aggression “are questionable”).

<sup>37</sup> Goldstein, “Does Playing Violent Video Games Cause Aggressive Behavior?” Paper presented at U. of Chicago “Playing By the Rules” Conference, Oct. 27, 2001, p. 5. Goldstein notes that “in the rare study that measures both aggressive *play* and aggressive *behavior*, violent video games affect the former and not the latter.” *Id.* See also Griffiths, “Violent Video Games,” *supra* (questioning whether aggressive free play observed in a lab is useful predictor of anti-social aggression).

know what the researcher is looking for. Numerous scholars have noted this problem.<sup>38</sup>

### III. THE FUNCTIONS OF FANTASY VIOLENCE

The causal hypothesis has been popular within one branch of psychology. Other scholars take more nuanced and less simplistic approaches to both media effects and human aggression.<sup>39</sup> They look, as Professor David Buckingham puts it, at “the diverse and active ways in which children and young people use the media for different social and psychological purposes.”<sup>40</sup> MIT’s Henry Jenkins summed up this approach when he wrote that many young people “move nomadically across the media landscape, cobbling together a personal mythology of symbols and stories, and investing those appropriated materials with various personal and subcultural meanings.” Because of this wide variety of responses, “universalizing claims are fundamentally inadequate in accounting for media’s social and cultural impact.”<sup>41</sup> The National Academy of Sciences has likewise pointed out that the causal hypothesis is simplistic because it fails to consider either how different individuals respond to identical stimuli, or how different

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<sup>38</sup> E.g., Freedman, *Media Violence and Its Effect on Aggression*, *supra*, 49-51, 80-83; Cumberbatch, *supra* (quoting “one shrewd four year-old who, on arriving at the laboratory, ... was heard to whisper to her mother, ‘Look mummy! There’s the doll we have to hit!’”); Joanne Savage, “The Criminologist’s Perspective,” in *Violence and the Media* (Freedom Forum, 2001), p. 28 (“it is possible that showing subjects violent material creates an atmosphere of permissiveness and encourages them to be more aggressive”).

<sup>39</sup> Other theories of aggression look to social conditions, family environment, brain chemistry, and variations in human character. E.g., Debra Niehoff, *The Biology of Violence* (1999); Jonathan Kellerman, *Savage Spawn - Reflections on Violent Children* (1999); Rollo May, *Power and Innocence - A Search for the Sources of Violence* (1972); Erich Fromm, *The Anatomy of Human Destructiveness* (1973); Konrad Lorenz, *On Aggression* (1963).

<sup>40</sup> David Buckingham, “Electronic Child Abuse? Rethinking the Media’s Effects on Children,” in *Ill Effects: The Media Violence Debate* (M. Barker & J. Petley, eds.) (1997), p. 34.

<sup>41</sup> Henry Jenkins, “Professor Jenkins Goes to Washington,” *Harper’s*, July 1999, p. 23; Henry Jenkins, “Lessons From Littleton: What Congress Doesn’t Want to Hear About Youth and Media,” *Independent School*, Winter 2000, [http://www.nais.org/pubs/ismag.cfm?file\\_id=537&ismag\\_id=14](http://www.nais.org/pubs/ismag.cfm?file_id=537&ismag_id=14) (accessed 9/19/02).

individuals' psychosocial, neurological, and hormonal characteristics interact to produce behavior.<sup>42</sup>

Art and entertainment influence different individuals in varying ways, depending upon their characters, intelligence, upbringing, and social situation. For a relatively few predisposed youths, the *modus operandi* of a crime depicted in a film might inspire them to incorporate those details into a violent act.<sup>43</sup> For a far greater number, the same violent work will be relaxing, cathartic, or simply entertaining.

Jenkins describes at least four functions of violent entertainment: offering youngsters "fantasies of empowerment," "fantasies of transgression," "intensification of emotional experience," and "an acknowledgment that the world is not all sweetness and light."<sup>44</sup> Similarly, psychologist Jeffrey Arnett, studying a correlation between adolescents' reckless behavior and preference for violent music, found "sensation seeking" to be the independent factor that accounts for both the preference and the behavior. He reported that "adolescents who like heavy metal music listen to it especially when they are angry and that the music has the effect of calming them down and dissipating their anger."<sup>45</sup>

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<sup>42</sup> National Research Council, Nat'l Academy of Sciences, *Understanding and Preventing Violence* (A. Reiss, Jr. & J. Roth, eds.) (1993), pp. 101-02.

<sup>43</sup> See John Douglas & Mark Olshaker, *The Anatomy of Motive* (1999), pp. 82-87 (media can provide "modus operandi and signature elements" to criminals, but do not cause law-abiding people to commit violent acts); Fischhoff, *supra* (same).

<sup>44</sup> Jenkins, "Lessons From Littleton," *supra*; see also Jeffrey Goldstein, "Why We Watch," in *Why We Watch*, *supra*, pp. 216-20 (appeals of violent entertainment include mood management, sensation-seeking and excitement, emotional expression, and the state of "flow" one experiences when immersed in an activity).

<sup>45</sup> Jeffrey Arnett, "The Soundtrack of Restlessness - Musical Preferences and Reckless Behavior Among Adolescents," *7 J. Adol. Rsrch* 313, 328 (1992); Jeffrey Arnett, "Adolescents and Heavy Metal Music: From the Mouths of Metalheads," *23 Youth & Society* 76 (1991); see also Lawrence Kurdek, "Gender Differences in the Psychological Symptomatology and Coping Strategies of Young Adolescents," *7 J.*

Experts on childhood and adolescence have long recognized the importance of violent fantasy play in overcoming anxieties, processing anger, and providing outlets for aggression. Bruno Bettelheim was a pioneer in describing these responses in the context of violent fairy tales.<sup>46</sup> As film historian Jon Lewis explains, Bettelheim understood that children have “terrible struggles, terrible fears”; they are “small, and fully aware that they have no power.” Violent stories “offer a safe opportunity to fantasize about having some power in a world that otherwise seems prepared to crush them.”<sup>47</sup>

Media scholars, eschewing artificial laboratory experiments and using real-world research methods such as interviews and observation, have explored why young enthusiasts are drawn to violent entertainment. Contributors to the anthology *Why We Watch* report that some children “seek out violent programming that features heroes triumphing over villains in an effort to control their anxieties,” and observe that historically, as real-world violence in daily life has decreased, “representations” have “supplanted actual experience” as a way for youngsters to cope with their fears.<sup>48</sup>

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*Early Adol.* 395 (1987) (heavy metal music is useful to adolescents in purging anger).

<sup>46</sup> Bruno Bettelheim, *The Uses of Enchantment* (1975); see also David Blum, “Embracing Fear as Fun To Practice for Reality: Why People Like to Terrify Themselves,” *New York Times*, Oct. 30, 1999, p. B11 (many children and adults enjoy horror movies because they can “experience fear without real danger to themselves” and thereby “tame its effects on the psyche”).

<sup>47</sup> E-mail to Free Expression Policy Project, Sept. 2, 2002.

<sup>48</sup> Joanne Cantor, “Children’s Attraction to Violent Television Programming”; Clark McCauley, “When Screen Violence is Not Attractive”; Vicki Goldberg, “Death Takes a Holiday, Sort Of,” in *Why We Watch*, *supra*, pp. 113, 149, 28. See also Celia Pearce, “Beyond Shoot Your Friends: A Call to Arms in the Battle Against Violence,” in *Digital Illusion: Entertaining the Future With High Technology* (C. Dodsworth, Jr., ed.) (1998), p. 218 (as actual violence in society, especially as a form of public entertainment, has decreased (beheadings, mutilations, etc.), we have, perhaps, “evolved to the point where more of our violence is vicarious than actual”); Norbert Elias & Eric Dunning, *Quest for Excitement: Sport and Leisure in the Civilizing Process* (1986) (seeking pleasurable excitement from violent entertainment is part of the civilizing process).

Author Gerard Jones recently interviewed psychiatrists, pediatricians, therapists, teachers, and parents on the attractions of fantasy violence. “I gathered hundreds of stories of young people who had benefitted from superhero comics, action movies, cartoons, shoot-’em-up video games, and angry rap and rock songs,” he writes. For the most part, he found young people “using fantasies of combat in order to feel stronger, to access their emotions, to take control of their anxieties, [and] to calm themselves down in the face of real danger.” Jones notes that one function of play is to explore, “in a safe and controlled context, what is impossible or too dangerous or forbidden” in reality.

In “focusing so intently on the literal,” Jones says, many media critics “overlook the *emotional* meaning of stories and images.”

The most peaceful, empathetic, conscientious children are often excited by the most aggressive entertainment. Young people who reject violence, guns, and bigotry in every form can sift through the literal contents of a movie, game, or song and still embrace the emotional power at its heart. Children need to feel strong. They need to feel powerful in the face of a scary, uncontrollable world. Superheroes, video-game warriors, rappers, and movie gunmen are symbols of strength.<sup>49</sup>

These attractions of fantasy violence are especially pertinent to video games. In 1995, communications scholar Joel Saxe used in-depth interviews “to assess a full range of player preferences and interpretations related to video games.” He found that gamers express a “deep sense of thrill” in response to the “highly exaggerated, on-screen violent fantasy play.” Transgression, rebellion, and the ability to defy the “formal rules of civility” in a fantasy world all contributed to the appeal. “As players elaborate the meaning of the gaming experience,” Saxe says, they interpret the fantasy play as a “healthy outlet,” providing “a means of releasing feelings

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<sup>49</sup> Gerard Jones, *Killing Monsters* (2002), pp. 6, 11. Jones quotes child development specialist Donna Mitroff (“children have a deep need, an almost physical need, for these archetypes of power and heroism”), and psychiatrist Lenore Terr (like toy guns in the pre-electronic era, fantasy violence is “one of the best tools they have for dealing with their aggressions”). *Id.*, pp. 73, 54.

of aggression.” The play “is also linked to feelings of positive accomplishment,” given the competitive format of the games, and the level of skill required.<sup>50</sup>

Similarly, researchers in Denmark, using “qualitative methods such as in-depth interviews and observations,” found “competition, challenge, and achievement” to be particular attractions of video games. “The violent elements in computer games are attractive as spectacular effects,” and because “they prompt excitement and thrill.” They are “in line with genres known from the film industry,” such as action films and animation, and thus have inherited violence from other media that emphasize spectacular effects. The element of exaggeration “is fully recognized by children.” In fact, children see the violence in video games as less anxiety-provoking than movies and television, because it is more clearly fantastic. The children in the investigation, some as young as five, were fully aware of the difference between reality and the exaggerated fiction of computer games.<sup>51</sup>

Part of video games’ appeal is their communal character. Often they are played in groups, and even when played alone, the iconography of the games forms a bond among many youngsters. A number of authors have described the elaborate communities associated with video games.<sup>52</sup> Saxe notes: “even though the screen fantasy play revolves around brute violence,

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<sup>50</sup> Joel Saxe, “Violence in Videogames: What are the Pleasures?” Paper presented at the Int’l Conference on Violence in the Media, St. John’s University, Oct. 1994, pp. 2, 8, 10 (reprinted in 2(1) *CommOddities - A Journal of Communication and Culture*, July 1995).

<sup>51</sup> Birgitte Holm Sørensen & Carsten Jessen, “It Isn’t Real: Children, Computer Games, Violence and Reality,” in *Children in the New Media Landscape* (C. Von Feilitzen & U. Carlsson, eds.) (2000), pp. 119-21. Similarly, David Buckingham reports that children often describe horror films “as ‘unrealistic’ and even as laughable ... Many [are] keen to draw attention to the liberal use of ‘tomato ketchup’ and ‘make-up.’” Alissa Quart, “Child’s Play,” *Lingua Franca*, Oct. 2001, p. 55.

<sup>52</sup> E.g., J.C. Herz, *Joystick Nation* (1997); John Tierney, “Here Come the Alpha Pups,” *New York Times Magazine*, Aug. 5, 2001, p. 38.

the actual relations among players in the immediate play area are cooperative, if not amiable.”<sup>53</sup>

Researchers who rely on lab experiments or statistical correlations fail to take account of this social context. As psychologist Jeffrey Goldstein explains, young people bring their entertainment choices to bear on “questions of identity, belonging and independence.” Their taste in clothes, music, and video games “has a social purpose.”

Until researchers look, not at isolated individuals forced to play a video game for a few minutes as part of a laboratory experiment, but at game players as members of social groups, we are unlikely to come to terms with violent, or any other, entertainment.<sup>54</sup>

Likewise, the Danish researchers found that “children’s fascination with violent computer games cannot be understood without considering these social aspects. The violent elements fascinate some children, but this fascination should not be mistaken for a fascination with violence in the real world. On the contrary, all children in the investigation repudiated real-life violence.”<sup>55</sup>

It is true, of course, that many aggressive youths are attracted to violent video games. It is also true that many non-aggressive youths are drawn to violent games. For them, the games provide fantasies of empowerment, excitement, feelings of competence, and membership in a community. Jones observes: “heavy gamers as a population are overwhelmingly non-confrontational geeks.”<sup>56</sup>

Games researcher Celia Pearce sums up the humanist understanding of violent fantasy games: “Most of the alarmism about violence,” she writes, “is based on a profound misunderstanding about the social and emotional function of games. Games allow people who are midway between

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<sup>53</sup> Saxe, *supra*, p. 11.

<sup>54</sup> Goldstein, “Does Playing Violent Video Games Cause Aggressive Behavior?” *supra*, p. 7.

<sup>55</sup> Sørensen & Jessen, *supra*, p. 120.

<sup>56</sup> E-mail to Free Expression Policy Project, Sept. 12, 2002.

childhood and adulthood to engage in fantasies of power to compensate for their own feelings of personal powerlessness. This role-playing function is important for children of all ages”<sup>57</sup>

## CONCLUSION

Stephen Jay Gould observed that efforts to invoke science to “validate a social preference” can distort both science and public policy; the risk is greatest when “topics are invested with enormous social importance but blessed with very little reliable information.”<sup>58</sup> Censorship laws based on bogus claims that science has proved harm from violent entertainment deflect attention from the real causes of violence and, given the positive uses of violent fantasy, may be counterproductive. For these reasons, the lower court’s reliance on assumptions about adverse effects from violent video games should be rejected, and the judgment below should be reversed.

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<sup>57</sup> E-mail to Free Expression Policy Project, Aug. 15, 2002.

<sup>58</sup> Stephen Jay Gould, *The Mismeasure of Man* (1981), pp. 22-23.

## APPENDIX

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to F.R.A.P. 32(a)(7) and Eighth Circuit Rule 28A(c), I hereby certify that this brief was prepared in the Corel Word Perfect 8 word processing program, complies with the applicable type-volume limitations, and contains 6,749 words, exclusive of the table of contents, table of authorities, certificates of compliance and of service, list of signers, signature block, and appendix. This certificate was prepared in reliance on the word count of the Corel Word Perfect 8 word processing program.

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Marjorie Heins

## **CERTIFICATE OF SERVICE**

I certify that I served the foregoing Brief *Amici Curiae* of Thirty-Three Media Scholars in Support of Appellants and Supporting Reversal on all parties by mailing two copies via federal express, as well as a virus-free diskette (which has been scanned for viruses) containing the full text of the brief, on September 24, 2002 to:

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