

**APPENDIX C:  
MEDIA ASSOCIATION VIOLENT PROGRAMMING COMMENTS**



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## **EXECUTIVE SUMMARY**

In response to a congressional request, the Commission launched this *Notice of Inquiry* to explore policy issues arising from depictions of violence on television. Among other things, the *Notice* seeks comment on such issues as the amount of violent programming, the effects of viewing such shows, the role of parental guidelines and the V-chip, and possible new regulatory solutions in this arena. It also asks whether potential regulations are authorized by the Communications Act or if they would be barred by the First Amendment. These comments, submitted on behalf of the Media Associations, including the American Advertising Federation, the American Association of Advertising Agencies, the Association of National Advertisers, Inc., the Motion Picture Association of America, the National Association of Broadcasters, and the Satellite Broadcasting and Communications Association, explain that the justifications for regulation are greatly exaggerated, and that the First Amendment and statutory barriers to new content regulations are insurmountable.

### **The Definition is the Key**

The Commission acknowledges in its Notice of Inquiry that “it is not necessarily the case” that there is a well-established definition of “violent programming.” Social science researchers, policymakers, and members of the public all profess to have a unique understanding of what ought to be regulated as “violent programming,” but every definition is different. What exactly is meant by the term “violent programming” bears on every aspect of the present inquiry, from the amount of such programming that exists to questions of its purported impact, as well as whether the Commission can adopt any regulations that are consistent with the law and the First Amendment.

## **Reports of Media Effects Are Greatly Exaggerated**

The Commission's review of the literature is badly needed, for there is no shortage of extravagant and wildly inaccurate claims about the overall effect on children of viewing violent television shows. Advocacy groups have claimed that there are 3,500 studies that demonstrate adverse effects of media violence, and it is commonplace for organizations and policymakers to casually (and falsely) assert that there are thousands of such studies that point to a "causal connection." In reality, however, fewer than 250 studies have been done, and the vast majority of those fail to support the hypothesis that there is a connection between violent programming and violent actions.

Professor Jonathan Freedman of the University of Toronto published an exhaustive review of all of the research on this topic available in 2002, and concluded that "evidence does not support the hypothesis that exposure to film or television violence causes children or adults to be aggressive." For purposes of these comments, Professor Freedman analyzed the available research (and summaries of research) published more recently and found nothing to alter his earlier conclusions. His report is appended to these comments. Nor is there evidence that exposure to violent imagery leads to "desensitization." Although the evidence in support of a link is often described as "overwhelming," the evidence is, in fact, weak and inconsistent. Research findings often are mischaracterized, and in some cases reach conclusions that are the opposite of what has been reported.

Actual experience with real-world aggression and violent crime provides an important reality check against claims that pictures of violence produce aggressive acts. If the causal hypothesis is correct, then increasing levels of violence in the media must result in higher levels of violence in society. Some media critics claim that depictions of violence in prime time have increased dramatically in recent years, and they assert that this violent programming causes

violent behavior. But actual experience shows just the opposite. By almost any measure, we are living in a less violent society. Violent crime rates declined about 55 percent between 1994 and 2003, and a September 2004 Justice Department report found that the crime rate is at its lowest level since it began conducting the survey in 1973.

### **The Importance of Viewer Control**

The current state of technology provides individuals with the capacity to select which programs they wish to receive or exclude. Where the audience is a willing one, governmental regulation is inappropriate, as the First Amendment does not permit the government to prohibit speech as intrusive unless the audience is “captive” and cannot avoid the objectionable speech. In 1978, the Supreme Court upheld a narrow exception to this rule in the area of broadcast indecency, because it concluded the radio audience was powerless to exclude unwanted communications. *FCC v. Pacifica Found.*, 438 U.S. 726, 748 (1978). That finding, however, has never been applied to depictions of violence, and there is no justification for expanding its scope to entirely different subject matter. As the Commission itself recently concluded, the modern media marketplace has greatly evolved, and “new modes of media have transformed the landscape, providing more choice, greater flexibility, and more control than at any other time in history.” *2002 Biennial Regulatory Review*, 18 FCC Rcd. 13620, ¶¶ 86-87 (2003). Such changes in the technology undermine any argument for expanding government control over content.

In addition to solutions that evolved on their own, such as parental control devices and digital video recorders, other self-regulatory options were stimulated by the Telecommunications Act of 1996. The Act requires that all televisions with a screen size of 13 inches or greater be equipped with V-chip technology. To implement the system, the industry in 1997 devised TV Parental Guidelines to rate programs both on the basis of age and on the basis of content. This combination of marketplace developments, self-regulatory efforts, and minimal

regulations suggests that the Commission must thoroughly evaluate the technological landscape before proposing any new content regulations.

### **First Amendment Problems Are Insurmountable**

Quite apart from whether there is a need for regulation of violent programming, any attempt by the Commission to regulate such programming would face high First Amendment hurdles. Every court that has addressed the degree to which “violent” expression is constitutionally protected has concluded that such material receives the utmost protection. The United States Court of Appeals for the Seventh Circuit has observed that “violence on television ... is protected speech” and that “[a]ny other answer leaves the government in control of all the institutions of culture, the great censor and director of which thoughts are good for us.” *American Booksellers Ass’n, Inc. v. Hudnut*, 771 F.2d 323, 330 (7th Cir. 1985), *aff’d mem.*, 475 U.S. 1001 (1986). In striking down restrictions on renting to minors videotapes that depict violence, the Eighth Circuit confirmed that violent video programming is entitled to “the highest degree of First Amendment protection.” *Video Software Dealer’s Ass’n v. Webster*, 968 F.2d 684, 689 (1992).

Any regulation of violent television programming obviously would be content-based and presumptively unconstitutional. Such strict scrutiny cannot be diluted by attempting to classify violent material as “obscene” or “indecent.” In any event, a change in classification would not affect the level of scrutiny. Under well-established law, the government must prove that regulation of violent programming is necessary to serve a compelling interest and that the resulting rules are the least restrictive means of control. *ISDA v. St. Louis*, 329 F.3d 954, 958 (8th Cir. 2003); *Webster*, 968 F.2d at 689. Regulation of violent programming cannot survive this test.

Regulation of televised violence would impose either wholesale censorship or an incomprehensible standard. As one study reported, if all violence were eliminated, viewers

would be unable to watch historical dramas like *Roots*, theatrical films like *Schindler's List*, or a documentary on World War II. If, on the other hand, the Commission attempted to distinguish “good” depictions of violence from “bad” depictions, the resulting vague standard would impermissibly chill speech and would give the Commission too much discretion to curb disfavored expression. Any such regulation would necessarily discriminate based on viewpoint, thus exacerbating its constitutional infirmities. Finally, regulation of violent programming would violate the First Amendment because less restrictive means exist to empower individual choice, including parental controls and the V-chip.

### **FCC Lacks Statutory Authority**

In addition to First Amendment problems, the Commission lacks statutory authority to regulate violent programming. The Communications Act specifically precludes censorship or interference with free speech in radio communication as well as the imposition of content regulations on cable service. No specific provisions of the Act authorize the Commission to adopt rules regulating violent television programming, and the general grant of power to “regulate the broadcast medium as the public interest requires” does not fill the void. *Motion Picture Ass’n of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

The adoption of V-chip mandates in the Telecommunications Act of 1996 clearly undermines any claim that the Commission can promulgate direct content regulations. Congress specifically considered – and rejected – FCC rulemaking authority for violent programming in its deliberations prior to the passage of the 1996 Act. Because Congress adopted the provisions regarding the V-chip instead, the Commission cannot now claim authority to do that which Congress withheld. Accordingly, the Commission must decline to take any action to regulate violent programming on television.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Violent Television Programming ) MB Docket No. 04-261  
And Its Impact on Children )  
 )

**COMMENTS OF THE MEDIA ASSOCIATIONS**

The Media Associations, comprised of the American Advertising Federation (“AAF”), the American Association of Advertising Agencies (“AAAA”), the Association of National Advertisers, Inc. (“ANA”), the Motion Picture Association of America (“MPAA”), the National Association of Broadcasters (“NAB”), and the Satellite Broadcasting and Communications Association (“SBCA”) (together, the “Media Associations”), hereby submit comments on the *Notice* of Inquiry in the captioned proceeding.<sup>1</sup> The *Notice* seeks comment on such issues as the “incidence of violent programming,” *Notice* ¶¶ 3-4, the “effects of viewing violent programming,” *id.* ¶¶ 5-7, the role of “parental guidelines and [the] V-chip,” *id.* ¶¶ 16-19, and “possible new regulatory solution[s]” for violent programming, *id.* ¶¶ 20-22. It also asks whether potential regulations are authorized by the Communications Act or would be consistent with the First Amendment. *Id.* ¶¶ 23-28.

**I. INTRODUCTION**

This inquiry is as much a national Rorschach Test as it is a public policy proceeding. Revealing a gift for understatement, the Commission acknowledges it “is not necessarily the case” that there is “a well established definition of violence” or “violent programming.” *Id.* ¶ 8.

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<sup>1</sup> *Violent Television Programming and Its Impact on Children*, 19 FCC Rcd. 14394 (2004) (“*Notice*”). Descriptions of the Media Associations reflecting their interests in this proceeding are provided in the Attachment to these Comments.

As it turns out, “[a]lmost everyone has his or her own definition of violence,”<sup>2</sup> a fact that applies equally to social science researchers, policymakers, and – last but not least – members of the public, each professing his or her unique understanding of what ought be regulated under the “violence” rubric.<sup>3</sup> What is meant by the term “violent programming” bears on every aspect of the present inquiry, from the amount of such programming that exists to questions of its purported impact, as well as whether the Commission can adopt any regulations that are consistent with the law and the First Amendment.

While much of the public policy debate on the subject of televised violence is animated by social science research on the subject, those conducting the studies have used a “wide variety of definitions and measures” such that “the definition of violence or aggression becomes extremely murky.”<sup>4</sup> This includes great diversity in what is classified as the violent stimulus as well as a wide array of responses that the researchers consider aggressive. Among the examples of programs put forth as violent include sports films (including presentations of

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<sup>2</sup> UCLA Center for Communication Policy, *THE UCLA TELEVISION VIOLENCE REPORT 1997* (rel. January 1998) (“UCLA TELEVISION VIOLENCE REPORT”), at 26.

<sup>3</sup> *See, e.g.*, Comment of Michael Skora (“You can’t watch nightly news hyping all the world violence every night and feel balanced and safe.”); Comment of Judy Jenvold (“horrific and violent images” include “network program [that] showed the Zapruder film of the moment JFK was hit in the head and an autopsy photo”); Comment of K Mitchell (“Violence [includes] actual killing to the depiction of dead bodies in their homicidal positions on shows like CSI, NCIS, etc.”); Comment of Gaylynn Griffin (“Cartoons and Disney movies are full of adult innuendos.”); Comment of Peter Rauschenbach (“Only PaxTV is offering family friendly TV.”); Comment of Douglas K. Ulrey (violence on TV includes fictionalized WWE program of “man being assaulted by a sledge hammer” and “sadistic melodrama[s] during prime time”); Comment of John McElwain (“soft core pornography [and] programming that continually allows more and more sensuality ... is directly related to the breeding [*sic*] of violent criminals”). *Cf.* Comment of Noelle Stout (“I don’t think there’s too much violence on tv ... I did however watch Kill Bill recently and the violence ... made me physically ill” but “[w]here to draw the line in-between Kill Bill and Seventh Heaven is hard to say” and “each individual [should] make choices based on their sensitivity”).

<sup>4</sup> Professor Jonathan L. Freedman, *FCC Inquiry on the Effects of Televised Violence: What does the Scientific Research Show?*, attached as Appendix hereto (“Freedman Report”).

boxing and hockey), Batman and Superman cartoons, and *The Untouchables* television show. Measures of aggressiveness included punching Bobo dolls, showing a willingness to administer loud noises, and thinking of aggressive words in free association, among other things. In many cases it is “especially difficult to relate real aggression to the research, since so often the research has involved at best metaphors for aggression rather than the real thing and at worst, measures that have little relationship to real aggression or violence.”<sup>5</sup>

Policymakers similarly have used a wide range of definitions in this area, suggesting that some depictions of violence are “good” while others are “bad.” Former Surgeon General Jocelyn Elders testified that presentations of violence should not be sanitized and should realistically portray the consequences – “that you really do bleed.”<sup>6</sup> Congressman Carlos Moorhead, on the other hand, objected to programs in which “people are shot and get hurt and are writhing in pain,” and concluded, “cowboy movies were better.” Senator John Kerry has objected to reality-based shows like *Cops*, while other lawmakers have declined to differentiate between the various types of programs. Former Senator John Danforth reportedly said, “Shakespeare, *Beavis and Butthead*, Schwarzenegger, its all the same.”<sup>7</sup> Former Senator Paul Simon explained to a group of broadcasters that cartoons such as *Tom and Jerry* are too violent, but that a film such as *Schindler’s List* would be permissible so long as it is not aired “at eight o’clock when a lot of kids are watching.”<sup>8</sup> Senator Ernest Hollings once complained about the violence

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<sup>5</sup> *Id.* at 40.

<sup>6</sup> Hanna Rosin, *The Producers: Congress Fights TV Violence*, THE NEW REPUBLIC, December 13, 1993, at 12.

<sup>7</sup> *Id.*

<sup>8</sup> Kim McAvoy, *Washington Watch*, BROADCASTING & CABLE, March 7, 1994, at 58.

level in the network sitcom *Love and War*, and showed a clip at one hearing in which the characters threw popcorn at each other as part of a spoof on televised violence.<sup>9</sup>

As the Commission acknowledged in the *Notice*, quoting the UCLA TELEVISION VIOLENCE REPORT, “not all violence is created equal,” and some uses may be deemed acceptable while others may express “inappropriate or improper uses of violence.” *Notice* ¶¶ 8, 12. Raising this question shows the Commission’s appreciation of context but also highlights the inherent complexity of this inquiry. From a public policy perspective, it is *not* sufficient for the Commission to define only “gratuitous or excessive violence,” *id.* ¶ 8, when it starts from a position of uncertainty regarding what is even meant by “violence” and which depictions of violence are “bad.” These are only the threshold questions that define what the FCC purports to measure. It must also determine whether its measurement tools, largely in the form of social science studies, are adequate to the task, what the studies purport to find, and whether the results are relevant to the legal standards that will be used to scrutinize any resulting regulation.

Answering these questions presents a host of practical and legal problems if the Commission seeks to fashion regulations based on its understanding of social science theories. Will any rules be confined to televised images of fictional violence or will they also include real-life violence shown on the news and ritual violence in full-contact sports programs? Similarly, will the regulations address “food chain” violence in nature programs or “autopsy violence” in medical programs? Each of the policy alternatives begins with the Commission’s definition of violence, and the choices made will have significant ramifications, not only on the scope of the regulation, but also any resulting legal analysis, which cabins the Commission’s power to effectuate public policy initiatives.

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<sup>9</sup> Robert Corn-Revere, *Television Violence and the Limits of Voluntarism*, 12 YALE J. ON REG. 187, 193 (1995).

## II. REPORTS OF THE EFFECT OF VIEWING VIOLENT PROGRAMMING ARE GROSSLY OVERSTATED

The *Notice* seeks comment on the impact of violent programming, focusing primarily on the social science studies that have been at the heart of the debate over media effects. *Notice* ¶¶ 5-7. The Commission’s review of the literature in this area is most needed, for there is no shortage of extravagant claims about the overall effect on children of viewing television shows with depictions of violence. Groups such as the American Academy of Pediatrics claim that there are 3,500 studies that demonstrate adverse effects of media violence,<sup>10</sup> and it has become commonplace for such organizations and policymakers to casually (and falsely) assert that there are thousands of such studies that point to a “causal connection.”<sup>11</sup> Certain proponents of the causal hypothesis have even made the astonishing statements that television shows are behind half the homicides in the United States,<sup>12</sup> and the cause of 10 percent of violent crimes.<sup>13</sup> Many of these advocates state boldly that “the debate is over”<sup>14</sup> and that to dispute a causal link between TV and aggression is to “argue against gravity.”<sup>15</sup>

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<sup>10</sup> See *id.* ¶ 7 n.18 (citing American Academy of Pediatrics, *Media Violence*, 108 Pediatrics 1222, 1223 (Nov. 2001)).

<sup>11</sup> A June 2000 joint public statement of the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association, among others, stated that “[w]ell over 1,000 studies ... point overwhelmingly to a causal connection between media violence and aggressive behavior in some children.” *Id.* ¶ 6 n.17.

<sup>12</sup> See Brandon S. Centerwall, *Television and Violence: the Scale of the Problem and Where to Go From Here*, 267 JAMA 3059 (1992).

<sup>13</sup> See L. Rowell Huesmann *et al.*, *The stability of aggression over time and generations*, 20 Developmental Psychology 1120 (1984).

<sup>14</sup> American Psychiatric Ass’n, *Psychiatric Effects of Media Violence*, available at [http://www.psych.org/public\\_info/media\\_violence.cfm](http://www.psych.org/public_info/media_violence.cfm).

<sup>15</sup> See Lawrie Mifflin, *Many Researchers Say Link is Already Clear on Media and Youth Violence*, NEW YORK TIMES, May 9, 1999 (quoting Jeffrey McIntyre of the American Psychological Association).

Such statements are wildly inaccurate, and the *Notice* prudently seeks additional information on these issues, citing more balanced reviews of the research. It notes, for example, that the FTC found “[m]ost researchers and investigators agree that exposure to media violence alone does not cause a child to commit a violent act, and it is not the sole, or even necessarily the most important, factor contributing to youth aggression, anti-social attitudes, and violence.”<sup>16</sup> It also quotes a 2001 Surgeon General’s report stating that “many questions remain regarding the short- and long-term effects of media violence, especially on violent behavior.”<sup>17</sup> Additionally, it asks commenters to address the discrepancy in claims about the number of studies, noting the gulf between the “thousands” trumpeted by some advocates versus the couple of hundred described by researchers in the field.<sup>18</sup>

It therefore is appropriate in this proceeding to explore the chasm between the “debate-is-over/more-certain-than-gravity” line of argument, and the conclusions of the FTC and Surgeon General. The question here is not how many studies exist; it is why the number is so grossly overstated by some. Answering that question also provides a valuable touchstone for evaluating what the studies really mean, and whether they provide an adequate basis for policymaking.

#### **A. Social Science Research and Public Policy in Perspective**

One factor making it difficult to dispassionately interpret research findings in the area of televised violence is the extent to which the issue has been politicized. In the policy arena, research often is used less as a path to understanding the issue and more as currency to be

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<sup>16</sup> *Notice* ¶ 6 (quoting *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (September 2000) at Appendix A: A Review of Research on the Impact of Violence in Entertainment Media at 8).

<sup>17</sup> *Id.* ¶ 6 (quoting *Youth Violence: Report of the Surgeon General* (2001), App. 4-B).

<sup>18</sup> *Id.* ¶ 7 n. 18 (noting some 200 to 250 studies on televised violence).

exchanged for political leverage. As a result, studies of televised violence rarely are reported or discussed in terms of what actually was found (or not) by the researchers, and this creates a tendency to misstate or exaggerate their impact. The policy debate is a *mélange* of social science mixed with politics and advocacy, and there is not always a clear dividing line between the researchers and the advocates.<sup>19</sup>

One indication of this is the extent to which prominent organizations have weighed in on the issue by “endorsing” research findings in the aggregate rather than by reviewing the research and reporting on particular studies. The June 2000 announcement by a number of noted public health organizations provides a good case in point.<sup>20</sup> That well-publicized announcement was characterized by its misstatement of the actual extent of the research (“well over 1,000 studies”) and its careless use of the concept “causality.” Professor Freedman observes that such errors “are always in the direction that would tend to make the statements of harm more impressive.” In all instances “the errors have been to overstate the total number of studies and to understate or not to mention the failures.” The important point is not that there are fewer studies on televised violence than advertised, but that such statements “indicate that the organization involved does not know the status of the research and is not taking a position based on a rigorous examination of the scientific research.”<sup>21</sup>

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<sup>19</sup> Professor Freedman provides details on researchers in the field who have moved beyond studying the phenomenon of televised violence and have become policy advocates. Freedman Report at 27, 41.

<sup>20</sup> *See Notice* ¶ 6 n.17.

<sup>21</sup> Freedman Report at 5-6 (“it is obvious that these organizations have issued their potentially very important statements without knowing the scientific literature”). *See also* Jonathan Freedman, *MEDIA VIOLENCE AND ITS EFFECT ON AGGRESSION* 9 (Univ. of Toronto Press 2002) (“*MEDIA VIOLENCE AND ITS EFFECT ON AGGRESSION*”) (“That the [American Academy of Pediatrics] gave such an inflated figure [for the number of studies] is only one indication that they do not know the research. Imagine the response if an organization of economists asserted that there were serious economic problems in over 150 American states. No one would bother

Why would such well-respected professional organizations take a position in the TV violence debate if not based on sound research findings? Perhaps the answer is that in the world of public policy, it is not all about the facts. Dr. Edward Hill, a member of the Board of Trustees of the American Medical Association (“AMA”), provided some insight into this issue at a May 2001 panel discussion hosted by the Freedom Forum. In describing the AMA’s motivations for signing the June 2000 joint statement on televised violence, he said:

[T]here were political reasons for signing on. We’re looking for a champion in Congress that will be willing in the long run to back our desire for funding of comprehensive school health in this country. And we haven’t found that champion yet but we are looking for him. There are five federal agencies who have large health education budgets. Some of them don’t use it for much health education: the Department of Defense, Agriculture, Education and one other have large budgets for health education. What our dream of seven years ago was to have those funds put into a single pot and have them utilized by states and school districts who are willing to follow a certain criteria for developing or using curriculum for school health. Much as we have done with highway funds in this country and successfully build highways. We haven’t found that champion yet, so some of our reason was political and some of it was true belief that our science department signed off on what was good science. I question that, of course, and I have. But I still believe that all the science is not in.<sup>22</sup>

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asking for their statistics, since if they were so sloppy as to think that there were that many states, who could possibly trust the rest of their statement?”).

<sup>22</sup> *Violence in the Media – Connection or Cause*, Freedom Forum First Amendment Center, May 1, 2001 (Transcription from webcast) (“Freedom Forum Panel”), attached as Exhibit 1 at 14-15. Dr. Hill added:

Up until the time I read [Marjorie Heins’] paper, I was fairly comfortable with the research that we were presented with at the American Medical Association. I have become less comfortable. I still don’t believe that I am necessarily wrong. I just believe none of the research has been done yet or the right kind of research and maybe we cannot do the right kind of research in the right context. I suspect that’s true because of social issues. But we are still very concerned about – not causality as much as we are concerned about context and volume of violence and sexuality in the entertainment industry and the media. But the solution is – you would have to be a simpleton not to know what the solution to the problem is. It’s what I call prenatal through 12 comprehensive health education in this country – funding it and financing it.

*Id.* at 8-9.

Such statements are far removed from the rhetoric that “the debate is over” that so often dominates policy discussion on this issue. At the same Freedom Forum event, Jeff McIntyre of the American Psychological Association was asked directly if he is “convinced there is a causal link between media violence and actual violence.” His answer is revealing:

Not to sound too Clintonesque, but how do you define causal? [laughter] I think one of the difficult things in this debate has been a problem in just that term – causal – unfortunately, that when we use the term causal, a lot of folks think that that is something that can be used in a predictive sort of way. When we use it in social science context, generally what we see is that in the roots of violence, and we have to kind of get away from your traditional cause-and-effect model when we talk about violence, because there is nothing in the roots of violence prevention that aims at one thing.<sup>23</sup>

Those more moderate descriptions of the research findings cannot be reconciled with the claims made in the policy arena that “the evidence is overwhelming” and that “[t]o argue against it is like arguing against gravity.”<sup>24</sup> Such statements make wonderful sound bites, but they should not be confused with science.

Quasi-scientific pronouncements have a long history in the world of public policy, most especially in matters related to the protection of children. In 1954, psychiatrist Dr. Fredric Wertham published the book *SEDUCTION OF THE INNOCENT*, which claimed that reading comic books caused juvenile delinquency. It described instances of violence, sex, drug use, and other adult behavior in comic books and concluded, largely based on undocumented anecdotes, that

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<sup>23</sup> *Id.* at 9.

<sup>24</sup> Mifflin, *supra* note 15 (quoting Jeffrey McIntyre of the American Psychological Association). Jeffrey McIntyre also stated in a recent congressional hearing that the joint consensus statement issued in 2000 was “what we absolutely know to be true in the public health community regarding children’s exposure to violence in the media.” *The Effect of Television Violence on Children: What Policymakers Need to Know*, Subcom. on Telecomms. and the Internet, Sept. 13, 2004 (statement of J. McIntyre), available at <http://energycommerce.house.gov/108/Hearings/09132004hearing1355/McIntyre2197.htm>.

reading this material caused similar behavior in children. Wertham warned parents of a “blond, curlyheaded boy of six” who had “started his career as a burglar” after reading comic books.<sup>25</sup>

The example is relevant because comic books were as pervasive in 1954 as television is in 2004, reaching over 90 percent of children aged 6 to 11 and over 80 percent of children aged 12 to 17.<sup>26</sup> The Senate reported that juvenile delinquency rose more than forty percent between 1948 and 1953.<sup>27</sup> Citing this rise in juvenile crime, Dr. Wertham reasoned that the comic books must have caused children to become delinquents. The Senate Judiciary Committee convened a special Subcommittee to Investigate Juvenile Delinquency in the United States and held hearings on the topic of Comic Books and Juvenile Delinquency in 1954. Dr. Wertham testified extensively before the Subcommittee, restating arguments from his book and pointing to comic books as the major cause of juvenile crime. As support for his cause, Dr. Wertham testified that “A boy of 6 wrapped himself in an old sheet and jumped from a rafter. He said he saw that in a comic book.”<sup>28</sup> However, twenty years after his sensational testimony, and outside the glare of the media spotlight, Dr. Wertham later backed off his assertions and became “a comic book fan,”<sup>29</sup> corresponded with other fans<sup>30</sup> and even published a book about fanzines, which are self-published books by comics fans.<sup>31</sup>

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<sup>25</sup> See Frederic Wertham, *What Parents Don't Know About Comic Books*, LADIES HOME JOURNAL, November 1953 (excerpting SEDUCTION OF THE INNOCENT). The anecdotes also described a teenager found driving a stolen car and twelve-year-old boys caught stealing, both of whom supposedly “learned” their behavior from comic books – although no evidence suggested that the boys in question actually had seen the comics Wertham concluded had “obviously inspired” them. *Id.*

<sup>26</sup> See Note, *Regulation of Comic Books*, 68 HARV. L. REV. 489, 489 n.3 (January 1955).

<sup>27</sup> *Id.* at n.9 (citing Sen. Rep. No. 1064, 83<sup>rd</sup> Cong., 2d Sess. 7 (1954)).

<sup>28</sup> See *Are Comics Horrible?*, NEWSWEEK, May 4, 1954, at 60.

<sup>29</sup> *Id.*

It is not at all unusual for anecdotes to masquerade as fact in the debate over televised violence, particularly when bolstered by the patina of credibility provided by scientific references. In one widely-reported incident in 2000, an activist group claimed that children were committing violent acts after watching the wrestling program “WWF Smackdown!” on television. On the basis of this assertion, the group orchestrated a campaign to persuade advertisers not to sponsor World Wrestling Entertainment (“WWE”) (formerly the WWF), blaming the deaths of four children on the “Smackdown!” show.<sup>32</sup> WWE sued the group for libel in November 2000, and ultimately agreed to settle the case for \$3.5 million.<sup>33</sup> The activist group acknowledged that it had made false statements about the deaths and stated in a public apology: “Please disregard what others and we have said in the past about the Florida ‘wrestling’ death. Neither ‘wrestling’ in general, nor WWE specifically, had anything to do with it. Of that I am certain.”<sup>34</sup> Other high-profile examples that claim adverse effects of television viewing similarly turned out to be false upon closer inspection.<sup>35</sup> Retractions, however, are not usually

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<sup>30</sup> Dwight Decker describes his correspondence with Dr. Wertham in “Fredric Wertham - Anti-Comics Crusader Who Turned Advocate,” *Amazing Heroes* (1987). A version of article is available at <http://art-bin.com/art/awertham.html> (visited October 6, 2004).

<sup>31</sup> Frederic Wertham, *The World of Fanzines: A Special Form of Communication*, Southern Illinois University Press (1973).

<sup>32</sup> See Paul Farhi, *TV Watchdog Apologizes for False Claims on Wrestling*, WASH. POST, July 9, 2002, at C1.

<sup>33</sup> See John M. Higgins, *Bozell’s \$3.5M apology*; BROADCASTING & CABLE, July 15, 2002, at 36; *Flash: Wrestling 1, Parent Group, 0*, NEWSDAY, July 9, 2002, at A12.

<sup>34</sup> L. Brent Bozell, *Parents Television Council Retraction to WWE and to the Public*, issued July 9, 2002, attached as Exhibit 2.

<sup>35</sup> In another case that received extensive media coverage, a five-year-old boy set fire to his family’s trailer home in Ohio in 1993, killing his two-year-old sister. Joe Chidley, *Toxic TV: Is TV Violence Contributing to Aggression in Kids?*, MACLEAN’S, June 17, 1996 (available at [www.mediaawareness.ca/english/resources/articles/violence/toxic\\_tv.cfm](http://www.mediaawareness.ca/english/resources/articles/violence/toxic_tv.cfm)). The mother said the boy set the fire after watching the show “Beavis and Butthead,” but subsequent investigation

as highly publicized as the sensational accusations, and they combine with inflated descriptions of social science research to color the policy debate.

**B. Research Findings Are Exaggerated and Do Not Provide a Sound Basis for Making Policy**

The *Notice* quite properly asks what the policy implications should be, if any, arising from findings in the social science literature regarding the effects of television violence. *Notice* ¶¶ 5-7. As an initial matter, however, it identifies the significant differences in the way the results have been characterized and seeks comment on the overall nature of the research findings, as well as an update on more recent research efforts. It describes the various types of studies that have been conducted and cites the literature reviews of the FTC in 2000 and the Surgeon General in 2001. *Id.* ¶¶ 5-6. In response, we set forth an analysis below of the research findings.

As a threshold matter, it is important to explain the importance of the public policy context in which this analysis occurs. First, as a matter of scientific method, there is an obligation on the part of the researcher to show that results provide strong support for the proposed effect (if, in fact, that is what the study concludes). Second, by moving into the regulatory realm, there is an obligation on the part of policymakers to demonstrate that any research findings they cite are relevant to, and support, some supposed regulation. This second burden of proof is far more complex, for a couple of reasons. As an initial matter, it is generally not sufficient to create a regulation in response to a particular study's findings. Just as it is possible to criticize any study, it would be foolhardy to base national policy on a particular result. Moreover, the First

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(which was far less widely reported) revealed “the mobile home in which Jessica Matthews died did not even have cable.” *Id.* See also MEDIA VIOLENCE AND ITS EFFECT ON AGGRESSION at 6 (“*Tommy’s family did not have cable television. In fact, no one at the trailer park had it, and no one he knew had it. So there was no way he could have seen the show. The tragic incident had nothing whatsoever to do with the television program that had been shown the day before. Rather than being a case of television causing the tragedy, it was simply one more instance of children playing with fire and someone getting hurt.*”) (emphasis in original).

Amendment places a substantial burden of proof on the government to support any content-based regulations, so that policymakers must identify a substantial body of findings that would specifically support the proposed regulations.

A detailed examination of the 200 to 250 existing studies shows that the literature does not support the claim of a causal relationship between depictions of violence in the media and aggression. Nor is there evidence that exposure to violent imagery leads to desensitization. Although the evidence in support of a link is often described as “overwhelming” in the policy debates, in fact the evidence is weak and inconsistent. Unfortunately, research findings often are mischaracterized, and in some cases reach conclusions that are the opposite of what has been reported.<sup>36</sup> In 2002, Professor Jonathan Freedman of the University of Toronto conducted an exhaustive review of all of the research on this topic available, and concluded that “evidence does not support the hypothesis that exposure to film or television violence causes children or adults to be aggressive,” a finding that “has never been seriously challenged.”<sup>37</sup> In particular, he reviewed each study and classified it as (1) supporting the causal hypothesis, (2) failing to support the causal hypothesis, or (3) yielding mixed results. His results are summarized for each type of study:

Laboratory Experiments. Freedman reviewed eighty-seven laboratory experiments and found that 37 percent of the studies supported the causal hypothesis, 22 percent gave mixed results, and 41 percent did not support the hypothesis.<sup>38</sup> He noted that laboratory experiments have serious limitations. The experiments are short-term, involve only brief exposures to pro-

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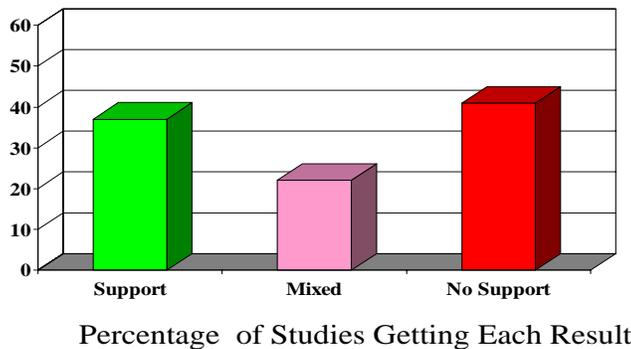
<sup>36</sup> See generally Freedman Report; MEDIA VIOLENCE AND ITS EFFECT ON AGGRESSION.

<sup>37</sup> Freedman Report at 6.

<sup>38</sup> The typical laboratory experiment brings subjects into the laboratory, shows them violent or nonviolent films, and then measures aggression levels, also in the laboratory setting. See MEDIA VIOLENCE AND ITS EFFECT ON AGGRESSION at 46-84.

grams, use measures of aggression that are often questionable, and are conducted in an artificial environment, therefore increasing the effect of experimenter demand. Freedman concluded that the laboratory experiments do not provide much support for the causal hypothesis, both because of their inherent limitations and, more importantly, because of the weakness of the results.

### Results of Laboratory Experiments

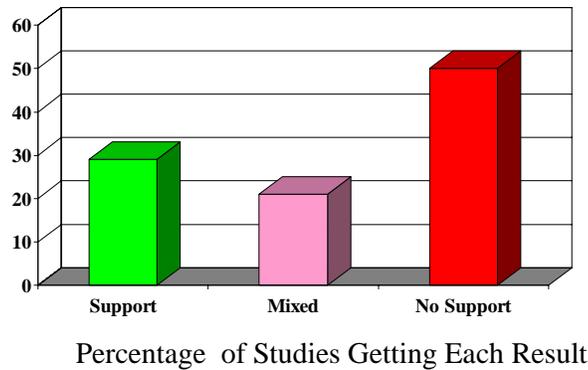


The above chart simply reports the findings of laboratory studies based on the researchers' conclusions as to whether the results supported or failed to support the causal hypothesis. Even by this measure, most studies are not supportive. But Professor Freedman observed further that when unrealistic measures of aggression are removed from the analysis (e.g., thinking "aggressive thoughts," hitting a Bobo doll, or administering a loud noise), the percentage of supporting studies drops even further, to 28 percent, while 55 percent of the studies show no support for the causal hypothesis.<sup>39</sup>

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<sup>39</sup> *Id.* at 62-63. Freedman has noted that "many of the experiments with children defined aggression in terms of behaviours that are so remote from actual aggression that they are highly questionable or even laughable as measures of aggression" (e.g., asking the subject if he would pop a balloon if he had one). Since Bobo dolls are made for the purpose of being hit, Freedman has pointed out that "[c]alling punching a Bobo doll aggressive is like calling kicking a football aggressive .... No harm is intended and none is done." *Id.* at 61. *See id.* at 39.

### Results of Laboratory Experiments no Bobo dolls, no thoughts

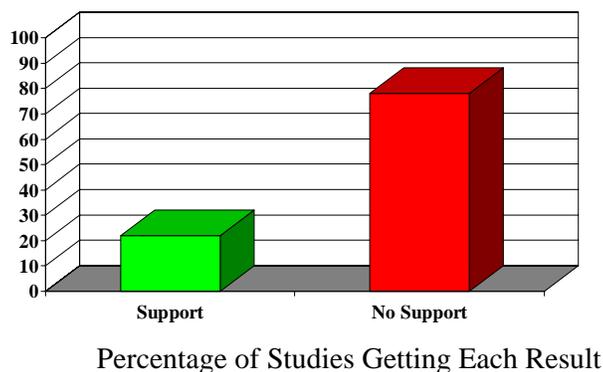


Field Experiments. Freedman reviewed a total of 23 field experiments,<sup>40</sup> and concluded that three experiments found some support for the causal hypothesis, while twenty did not. Further, the three experiments that obtained supportive results all had small samples. Freedman concluded that the field experiments provided little or no support for the causal hypothesis, and therefore constitute evidence *against* the causal hypothesis. The field experiments should be the best test of the hypothesis, since they are done in natural settings and therefore avoid many of the problems of the laboratory research. That the field experiments produced such negative results for the causal hypothesis is a strong indication that the laboratory results, described above, were not due to the direct effect of the violent media.

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<sup>40</sup> *Id.* at 85-107. Field experiments are experiments done in natural settings, as opposed to a laboratory. These experiments show the subjects programs in the subjects' homes or classrooms, and observe behavior in the school playground or equivalent setting.

## Results of Field Experiments

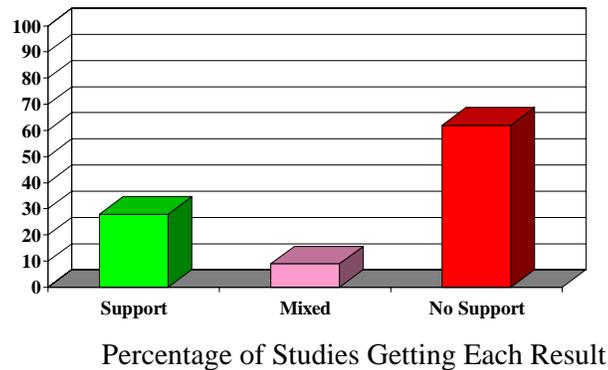


Longitudinal Studies. Freedman reviewed the eight longitudinal studies that have been conducted on the issue of media violence and aggression.<sup>41</sup> He found that only three studies provided any results that were clear support for the causal hypothesis. However, even in those three studies, the results were neither strong nor consistent (and the other five provide no support whatsoever). The same three studies that found the only supportive results also produced many more non-supportive results. Freedman concluded that the evidence from longitudinal studies provides little support for the causal hypothesis, and could be interpreted as evidence against that hypothesis.

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<sup>41</sup> Id. at 108-134. Longitudinal research on media violence starts with the results of surveys on the correlation between viewing violent programming and aggressive behavior. However, since correlation alone does not provide information about a causal link between media violence and aggression, longitudinal studies gather data on viewing habits and aggressiveness in an attempt to provide evidence that will establish whether there is a causal effect.

## Results of Longitudinal Studies



These findings are entirely consistent with the work of other scholars. Thirty-three scholars in the fields of media, psychology, and culture concluded in 2002 that the research on media violence has not demonstrated that violent entertainment causes real-world harm. *See* Brief of Amici Curiae Thirty-Three Media Scholars at 6-12, *Interactive Digital Software Ass’n v. St. Louis Cty.*, 329 F.3d 954 (8th Cir. 2003) (No. 02-310), attached to ACLU Comments, MB Docket No. 04-261, filed September 15, 2004. In addition, various researchers have debunked a widely-quoted study by Brandon Centerwall which claimed that television influences the homicide rate. Centerwall studied the homicide rates in South Africa, Canada, and the United States in relation to the introduction of television in those countries (while Canada and the United States began receiving television broadcasts in 1945, television was banned in South Africa until 1975). In all three countries, Centerwall found that the homicide rate doubled ten to fifteen years after the introduction of television. Centerwall therefore concluded that watching television as a child is a causal factor behind approximately one-half of the homicides committed in the United States.<sup>42</sup> These sensational claims were reported uncritically in a 1999 Senate

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<sup>42</sup> *See* Brandon S. Centerwall, *Television and Violence: the Scale of the Problem and Where to Go From Here*, 267 JAMA 3059 (1992). He concluded that “[i]f, hypothetically, television technology had never been developed, there would be 10,000 fewer homicides each year in the

Judiciary Committee Report,<sup>43</sup> and have been described as “a mainstay of the American Medical Association and Congressional claims that television violence is destroying American youth.”<sup>44</sup>

Such superficial analysis has been widely criticized, as the Federal Trade Commission noted in its September 2000 report.<sup>45</sup> For example, Franklin Zimring and Gordon Hawkins of the Earl Warren Legal Institute at the University of California at Berkeley refuted Centerwall’s findings in 1997. Zimring and Hawkins tested Centerwall’s theory by studying homicide rates in the three countries Centerwall studied, as well as four other countries: France, Germany, Italy, and Japan. They found the homicide rates in those countries either remained the same or declined with increased television exposure, “*disconfirm[ing]* the causal linkage between television set ownership and lethal violence for the period 1945-1975.”<sup>46</sup>

Professor Freedman likewise describes Centerwall’s conclusions as “nonsense,” and notes that “careful analysis of the crime statistics indicates that the pattern of increases in crime rates is inconsistent with the suggestion that the increases were caused by exposure to television.” Moreover, other changes in the US and Canada that occurred during the period Center-

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United States, 70,000 fewer rapes and 700,000 fewer injurious assaults. Violent crime would be half what it is.”

<sup>43</sup> *Children, Violence and the Media: A Report for Parents and Policy Makers*, Sen. Jud. Committee, September 14, 1999.

<sup>44</sup> Richard Rhodes, *The Media Violence Myth*, attached as Exhibit 3 (“*Media Violence Myth*”).

<sup>45</sup> The FTC Report cited critics who noted that Centerwall did not take into account the social changes taking place in South Africa during the time period of the study, and that Centerwall’s focus on television in general makes it difficult to isolate the impact of violence in entertainment media versus violence in television news. *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (September 2000) at Appendix A: A Review of Research on the Impact of Violence in Entertainment Media at 8.

<sup>46</sup> *Media Violence Myth* at 3 (citing Franklin Zimring & Gordon Hawkins, *Crime Is Not the Problem: Lethal Violence in America* (1997), at 243) (emphasis in original).

wall studied (*e.g.*, massive social change – the sexual revolution, more unwanted children to young mothers, more broken homes, etc.) could well explain increases in violent crime. In any event, the cultural difference between the U.S. and Canada as compared to South Africa during the period in question (*e.g.*, “the former were democratic, had free press, allowed public dissent, were not police states, and were not apartheid”) make Centerwall’s extrapolation fanciful.<sup>47</sup>

Another study that is widely quoted by policymakers is a longitudinal study conducted by Leonard D. Eron and L. Rowell Huesmann that purported to find that viewing television had a long-term effect on aggression.<sup>48</sup> It is on the basis of this data that the researchers have asserted televised violence is responsible for 10 percent of violent crime.<sup>49</sup> However, closer examination of this data reveals one extraordinary fact: as Huesmann has admitted, the correlation between televised violence and arrests for violent crime in their study was based on the activities of only three boys.<sup>50</sup> For the other 142 boys in the study, there was no relationship between viewing televised violence and later arrests for violent crime.<sup>51</sup>

Finally, in response to the request in the *Notice* that commenters address more recent research, *Notice* ¶ 6, the Media Associations engaged Professor Freedman to review the newer studies of media violence. He examined recent studies by Huesmann and Johnson, as well as recent research on brain activity. The resulting report, attached in an Appendix to these Com-

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<sup>47</sup> Freedman Report at 30-31; MEDIA VIOLENCE AND ITS EFFECT ON AGGRESSION at 140.

<sup>48</sup> See L. Rowell Huesmann *et al.*, *The Stability of Aggression Over Time and Generations*, 20 *Developmental Psychology* 1120 (1984). The study has been described as a “key study leading to the Surgeon General’s committee conclusions,” and was influential in the legislative debates that led to adoption of the V-chip provisions of the 1996 Telecommunications Act. *Media Violence Myth* at 5.

<sup>49</sup> *Media Violence Myth* at 6.

<sup>50</sup> *Id.* at 7.

<sup>51</sup> *Id.*

ments, describes the nature of recent research and concludes that “the few studies done since” 2002 do not change his conclusion that “scientific evidence does not support the hypothesis that exposure to media violence causes people to be aggressive.”<sup>52</sup> In addition, Professor Freedman specifically addresses the review that was published by a group of psychologists who are advocates for the causal hypothesis.<sup>53</sup> A version of this review was submitted to the Surgeon General (who largely rejected it) and has been submitted to the Commission. Although the review was supposed to be definitive, Freedman concludes that the review “presents a highly selective and one-sided description” of media violence studies.<sup>54</sup> “It is not the state-of-the-art review it is meant to be nor a balanced presentation of the scientific literature.”<sup>55</sup>

In sum, studies that claim to have found “causality” between media violence and effects are grossly overstated. In fact, the causes of violent behavior are far more complex, and the experimental studies of reactions to violent programs are too simplistic. As Professor Freedman notes, “[t]he simplest explanation, the one that must be disproved, is that some children have more aggressive personalities or dispositions than others and that these children like more violent media, play more violent sports, and engage in more aggressive behavior. To demonstrate that violent media *cause* aggressiveness, it is necessary to rule out this simple, intuitive explanation ....”<sup>56</sup>

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<sup>52</sup> Freedman Report at 2.

<sup>53</sup> *Id.* at 21-37.

<sup>54</sup> *Id.* at 27.

<sup>55</sup> *Id.* at 37.

<sup>56</sup> *Id.* at 8 (emphasis in original).

### **C. Reality Check for Research Findings**

Actual experience with real-world aggression and violent crime provides an important reality check against claims that pictures of violence produce aggressive acts. If the theories are correct, then increasing levels of violence in the media *must* result in higher levels of violence in society. Some commenters in this proceeding undoubtedly will submit evidence purporting to show that the number and intensity of violent images in the media is continuing to rise. For example, some media critics have claimed that between 1998 and 2002, depictions of violence in prime time increased by 41 percent during the “family hour” and 134.4 percent during the hour beginning at 9 p.m.,<sup>57</sup> and they argue that this violent programming causes violent behavior. But the actual statistics show just the opposite effect. By virtually any measure, we are living in a less violent society.

#### **1. Violent Crime Rates Have Plummeted**

The rate of violent crime in the United States began to drop in 1994, and the reduction has continued through 2003 to the lowest level ever recorded. Between 1994 and 2003, violent crime rates declined about 55 percent.<sup>58</sup> A September 2004 Justice Department report found the crime rate is at its lowest level since it began conducting the survey in 1973.<sup>59</sup> The following Justice Department chart illustrates the fall in the rate of violent crime<sup>60</sup> since 1973:

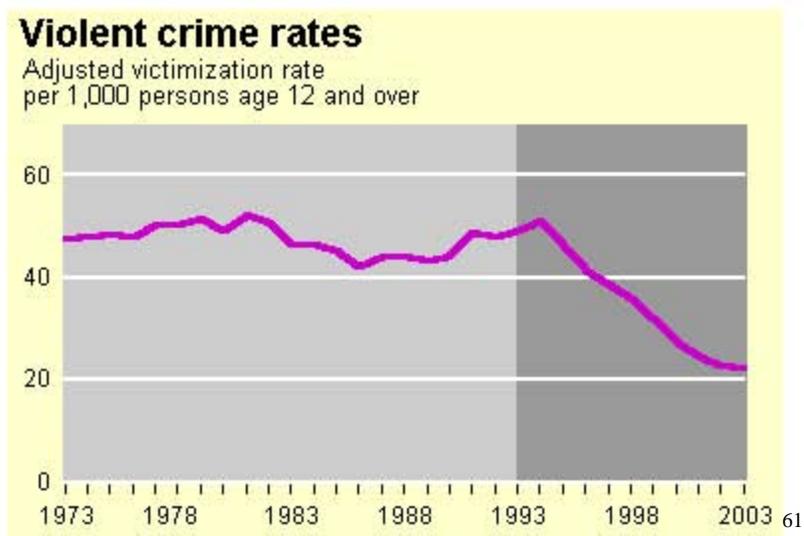
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<sup>57</sup> Parents Television Council, *TV Bloodbath: Violence on Prime Time Broadcast TV: A PTC State of the Television Industry Report* (2003), available at <http://www.parentstv.org/ptc/publications/reports/stateindustryviolence/main.asp>.

<sup>58</sup> See U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics at <http://www.ojp.usdoj.gov/bjs/glance/viort.htm>.

<sup>59</sup> *Id.*

<sup>60</sup> In this study, violent crime encompasses rape, sexual assault, robbery, aggravated assault, and simple assault. *Id.*



Another study showed that in major metropolitan areas where violent television programs have the largest audiences, the rate of violent crime (including homicide, rape, robbery, and aggravated assault) is low. Steven Messner studied statistics to determine whether “population aggregates with high levels of exposure to violent television content also exhibit high rates of criminal violence.”<sup>62</sup> Messner compared FBI violent crime rates in metropolitan areas to the popularity of “violent” programs in those areas.<sup>63</sup> He found that the “data consistently indicate that high levels of exposure to violent television content are accompanied by relatively low rates of violent crime.”<sup>64</sup> In fact, Messner found that areas “in which large audiences are attracted to

<sup>61</sup> Rape (excluding sexual assault), robbery, and assault data are from the National Crime Victimization Survey. Ongoing since 1972, this survey of households interviews about 75,000 persons age 12 and older in 42,000 households twice each year about their victimizations from crime. The homicide data are collected by the FBI's Uniform Crime Reports from reports from law enforcement agencies. See <http://www.ojp.usdoj.gov/bjs/glance/viort.htm>.

<sup>62</sup> Steven Messner, “Television Violence and Violent Crime: An Aggregate Analysis,” 33(3) *Social Problems* 218 (1986).

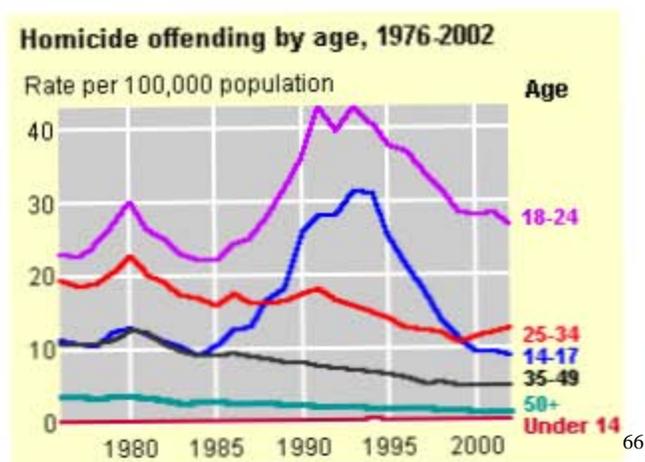
<sup>63</sup> Messner used a list of “violent” TV shows as identified by an antiviolence advocacy group.

<sup>64</sup> *Id.* at 228.

violent television programming tend to exhibit *low* rates of violent crime.”<sup>65</sup> As illustrated by these studies, the claim that violent crime is increasing due to increased television viewing is incorrect.

## 2. Youth Violence Also Declined

Not only have overall violent crimes rates decreased, but youth violence in general, and school violence in particular, has declined markedly since the early 1990s. The juvenile crime rate has been falling since 1994, as illustrated by this Department of Justice chart:



Further, Bureau of Justice statistics show the rate of violent crime in schools declined by more than 50 percent between 1994 and 2001.<sup>67</sup> Between 1995 and 2001, the percentage of students who reported being victims of crime at school decreased from ten percent to six percent.<sup>68</sup> Other studies also report that violence among youth is decreasing. National Center for Education Statistics show the number of homicides in U.S. schools in 2001-02 was only half

<sup>65</sup> *Id.* at 223-24.

<sup>66</sup> The source of the statistics for this chart is the FBI's Supplementary Homicide Reports, 1976-2002. See <http://www.ojp.usdoj.gov/bjs/homicide/teens.htm#oage>.

<sup>67</sup> See <http://www.ojp.usdoj.gov/bjs/abstract/iscs03.htm>.

<sup>68</sup> *Id.*

the number it was five years earlier.<sup>69</sup> From 1993 to 2001, the percentage of students who reported having been in a physical fight decreased, as did the percentage of students who reported carrying a weapon to school at least one day.<sup>70</sup> The Centers for Disease Control and Prevention reported that the percentage of high school students who had been in a physical fight dropped to 33 percent in 2003 from 43 percent in 1991.<sup>71</sup> Also, the percentage of students who carried a weapon to school decreased from 26.1 percent in 1991 to 17.1 percent in 2003.<sup>72</sup>

Despite the continuing efforts of media critics to link television programming to increased violent behavior, the facts do not support this assertion. If violent programming is responsible for crime, then violent crime rates should have increased in recent years. The fact that it has not, and in fact has moved in the opposite direction, should lead proponents of the causal hypothesis to check their premises.

### **III. CONSUMERS HAVE AMPLE MEANS TO CONTROL PROGRAMMING IN THEIR HOMES**

No review of the issue of televised violence would be complete without a thorough analysis of the current state of technology. As a general proposition, content restrictions have been permitted in the United States only when individuals lack the capacity to select which programs they wish to receive (or exclude). While policymakers may debate the relative merits of certain types of programs, the law requires the government to remain neutral when people have a choice. As Justice Kennedy explained:

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<sup>69</sup> There were 28 homicides in schools in 1996-97, and fourteen homicides in 2001-02. See National Center for Education Statistics, *Indicators of School Crime and Safety, 2003*, Fig. 1.2, available at <http://nces.ed.gov/pubs2004/crime03/1.asp>.

<sup>70</sup> *Id.* at Fig. 5.2 and 11.2.

<sup>71</sup> 2003 Youth Risk Behavior Surveillance System, available at [www.cdc.gov/yrbss](http://www.cdc.gov/yrbss).

<sup>72</sup> *Id.*

The Constitution exists precisely so that opinions and judgments, including esthetic and moral judgments about art and literature, can be formed, tested, and expressed. What the Constitution says is that these judgments are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority. Technology expands the capacity to choose; and it denies the potential of this revolution if we assume the Government is best positioned to make these choices for us.

*United States v. Playboy Entmt. Group, Inc.*, 529 U.S. 803, 818 (2000). See *Ashcroft v. ACLU*, 124 S.Ct. 2783, 2794-95 (2004) (evaluating constitutionality of speech restrictions requires court to update record to assess changes in technology). With a willing audience, government regulation is inappropriate, as the First Amendment “does not permit the government to prohibit speech as intrusive unless the “captive” audience cannot avoid objectionable speech.”<sup>73</sup>

In 1978, the Supreme Court upheld a narrow exception to this rule in the area of broadcast indecency because it concluded the radio audience largely was powerless to exclude unwanted communications.<sup>74</sup> That finding, however, must be updated even with respect to the subject of indecency (and it never applied to other subjects like violence). As the Commission recently concluded, “the modern media marketplace is far different than just a decade ago.” It found that traditional media “have greatly evolved,” and “new modes of media have transformed the landscape, providing more choice, greater flexibility, and more control than at any other time in history.” *2002 Biennial Regulatory Review*, 18 FCC Rcd. 13620, ¶¶ 86-87 (2003).

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<sup>73</sup> *Bolger v. Youngs Drug Prods Corp.*, 463 U.S. 60, 72 (1983) (quoting *Consolidated Edison Co. v. Public Serv. Comm’n of New York*, 447 U.S. 530, 542 (1980)). See also *Lehman v. City of Shaker Heights*, 418 U.S. 298, 303 (1974) (“Once a public forum for communication has been established, both free speech and equal protection principles prohibit discrimination based solely upon subject matter or content.”).

<sup>74</sup> *FCC v. Pacifica Found.*, 438 U.S. 726, 748 (1978). In dissent, however, Justice Brennan pointed out that individuals voluntarily open their homes to broadcast signals, and are not required to listen or watch anything they find offensive. He argued that “an individual’s actions in switching on and listening to communications transmitted over the public airways ... are more properly viewed as a decision to take part, if only as a listener, in an ongoing public discourse.” *Id.* at 765 (Brennan, J., dissenting).

Consumers today are not limited to the media that existed in the past. Rather, they make conscious choices to participate in broadcast media or to select other services that bring media into their homes. In 2004, consumers not only have more programming options, but the available alternatives permit a far greater degree of control over programming than ever before. In addition to delivered video media (including broadcasting, cable and satellite), consumers may watch videotapes or DVDs of movies, technology that was only in its infancy two decades ago. Today, the vast majority of households have VCRs, and over half of American households have DVD players to view the more than 300,000 titles available on DVD.<sup>75</sup> Further, with the advent of digital video recorders, or DVRs, viewers have an increased ability to “time-shift,” or watch programming at a later time than it is broadcast. Consumers can purchase a stand-alone DVR or rent one through their cable or satellite provider.<sup>76</sup> DVR penetration is projected to reach 24.7 million homes by 2007.<sup>77</sup> With a DVR, viewers can pause, rewind, or fast-forward programs as they are being transmitted, changing the definition of “live TV.”

These marketplace developments empower individuals and parents to accept or reject programming of their choice.<sup>78</sup> In fact, some children’s media advocates see the devices as an

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<sup>75</sup> *DVD Disc Purchases in 2003 Exceeded \$12 Billion*, January 26, 2004, MEDIA LINE NEWS, available at [http://www.medialinenews.com/articles/publish/article\\_455.shtml](http://www.medialinenews.com/articles/publish/article_455.shtml).

<sup>76</sup> See Ken Belson, *TiVo, Cable or Satellite? Choose That Smart TV Wisely*, N.Y. TIMES, September 4, 2004.

<sup>77</sup> Tenth Annual Report at 44. A Kagan Research study found that DVRs were in 2.9 million households at the end of 2003, and expected to be in 6.6 million households by the end of 2004. Kagan predicts that by 2014, DVR penetration will close in on cable’s reach, at 62 million homes. Ann M. Mack, *Untitled*, ADWEEK, September 20, 2004.

<sup>78</sup> See, e.g., <http://customersupport.tivo.com/knowbase/root/public/tv1529.htm> (guide to TiVo parental controls); <http://www.timewarnercable.com/corporate/products/digitalcable/dvr.html> (guide to cable box DVR parental controls).

improvement over existing parental-control technology.<sup>79</sup> Some types of parental controls are provided along with video service. For example, satellite customers have access to parental control technology,<sup>80</sup> and analog cable subscribers can use their set-top boxes, or can lease or purchase a “lockbox” to lock specific channels so that the programming cannot be viewed.<sup>81</sup> Digital cable subscribers can use their digital cable box to restrict viewing by rating, by program title, by time or date, or completely lock out certain channels or programs.<sup>82</sup> Such blocking options allow parents to control programming in their homes without infringing others’ rights.<sup>83</sup>

In addition to solutions that evolved on their own, other self-regulatory options were stimulated by the Telecommunications Act of 1996. The Act requires that all televisions with a

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<sup>79</sup> Daniel McGinn, *Tending Tots with TiVo*, NEWSWEEK, December 16, 2002, at 9. “All the V-chip does is block what you don’t want,” says David Kleeman of the American Center for Children and the Media. “With [a DVR], you can pick the best programs for your children’s age group from all the different channels.” *Id.* One parent praised DVRs because “[y]ou’re making a conscious choice on what to watch, and when you’re done with what you’ve chosen, the default is not to sit there and watch what comes on next.” *Id.*

<sup>80</sup> For example, the Locks & Limits feature on DIRECTV service allows customers to restrict access to movies based on the rating system, pay-per-view spending limits, and block viewing of entire channels. See [http://www.directv.com/DTVAPP/learn/FAQ\\_DTVBasics\\_System.dsp#4](http://www.directv.com/DTVAPP/learn/FAQ_DTVBasics_System.dsp#4). Similarly, Dish Network has an Adult Guard security feature for all models of its receivers that offers subscribers the ability to remove or restrict access on a per-channel basis. The VOOOM set-top box supports personal identification number or “PIN” based parental controls that allow subscribers to block the video and audio of entire channels and/or individual programs based on both MPAA or TV Parental Guidelines ratings.

<sup>81</sup> CGB, *How to Prevent Viewing Objectionable Television Programs*, available at <http://www.fcc.gov/cgb/consumerfacts/objectionabletv.html>.

<sup>82</sup> *TV Channel Blocking: V-Chip, the Cable “Lockbox,” and Set-top boxes*, available at <http://www.fcc.gov/parents/channelblocking.html> (last reviewed/updated on 2/11/04).

<sup>83</sup> Though parents should have options to control their children’s viewing, it is important to ensure filtering technology does not violate the rights of others, including intellectual property rights. While most parental-control technology simply blocks children from watching content their parents do not want them to see, some companies have created products that “edit” content without authorization from copyright holders. *E.g.*, Mike Snyder, *Hollywood Riled up over ClearPlay*, USA TODAY, May 5, 2004.

screen size of 13-inches or greater be equipped with V-chip technology, a device which allows parents to block “sexual, violent, and other indecent material about which parents should be informed before it is displayed to children.”<sup>84</sup> To enable the system to work, MPAA, NAB and NCTA devised TV Parental Guidelines to rate programs both on the basis of age and on the basis of content.<sup>85</sup> Almost all broadcast and cable networks were utilizing the Parental Guidelines by October 1, 1997, thus giving parents an additional tool to help them decide which programming they wish their children to view.<sup>86</sup> This combination of marketplace developments, self-regulatory efforts, and minimal regulations suggests the Commission must thoroughly evaluate the technological landscape before proposing any new content regulations.

#### **IV. REGULATION OF VIOLENT PROGRAMMING IS BARRED BY THE FIRST AMENDMENT**

Any attempt to regulate televised violence would face insurmountable First Amendment barriers.<sup>87</sup> As the Tennessee Supreme Court has noted, “*every court* that has considered the issue has invalidated attempts to regulate materials solely based on violent content, regardless

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<sup>84</sup> 47 U.S.C. § 303(w)(1). The V-Chip reads information encoded in television programs and blocks the program based on (1) the overall age category; (2) the content rating assigned to the program; or (3) by a combination of the two. Parents also can use the V-Chip to block shows based on the MPAA rating system. The Parental Guidelines were devised by the industry and do not constitute a government-mandated classification system. *See Implementation of Section 551 of the Telecommunication Act of 1996, Video Program Ratings*, 13 FCC Rcd. 8232, 8241 (1998).

<sup>85</sup> *See* <http://www.tvguidelines.org/ratings.asp>. In addition, some networks also air their own, separate advisories as to program content to the extent appropriate when the programming airs.

<sup>86</sup> *See* Joel Federman, *Rating Sex and Violence in the Media: Media Ratings and Proposals for Reform*, A Kaiser Family Foundation Report (November 2002) at 8.

<sup>87</sup> The *Notice* indicated that members of the House Commerce Committee asked the Commission to evaluate whether constitutional considerations would limit the government’s ability to define the phrase “excessively violent programming that is harmful to children” or its ability to create a “safe harbor” for violent programming. The *Notice* also solicited comment on whether the answer to these questions would be affected by exceptions for certain types of programs, such as news or other “unrated” programs, or whether any rules should exempt programs with “cultural, historical, or artistic merit.” *Notice* ¶ 23.

of whether that material is called violence, excess violence, or included within the definition of obscenity.” *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 531 (Tenn. 1993) (emphasis added). See also *Video Software Dealers Ass’n v. Maleng*, 325 F.Supp.2d 1180, 1182 (W.D. Wa. 2004) (“*VSDA v. Maleng*”) (“no such regulation has passed constitutional muster”).

**A. Regulation of “Violent” Television Programming Would Be Subject to the Most Exacting First Amendment Scrutiny**

A growing number of courts have addressed the degree to which “violent” expression is constitutionally protected in a variety of contexts, and every one has decided that such material receives full First Amendment protection. The Supreme Court initially set a high hurdle for regulation in this area, invalidating a state law that curbed the publication of magazines “devoted principally to criminal news and stories of bloodshed, lust or crime.” *Winters v. New York*, 333 U.S. 507, 510-11 (1948). In doing so, the Court observed that “[w]hat is one man’s amusement, teaches another’s doctrine. Though 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 the best of literature.” *Id.* at 501. Since then, a growing number of courts have struck down laws that attempted to restrict the rental to minors of videotapes depicting violence,<sup>88</sup> that regulated the sale of “violent” trading cards,<sup>89</sup> that sought to restrict pornography because of an alleged connection

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<sup>88</sup> *Video Software Dealer's Ass’n v. Webster*, 968 F.2d 684 (8th Cir. 1992).

<sup>89</sup> *Eclipse Enters. v. Gulotta*, 134 F.3d 63 (2d Cir. 1997).

with violence,<sup>90</sup> that sought to regulate access by minors to “violent” video games,<sup>91</sup> and that sought to impose various forms of tort liability for media that allegedly incited violent acts.<sup>92</sup>

The United States Court of Appeals for the Seventh Circuit has observed that “violence on television ... is protected speech, however insidious. Any other answer leaves the government in control of all the institutions of culture, the great censor and director of which thoughts are good for us.” *American Booksellers Ass'n, Inc. v. Hudnut*, 771 F.2d 323, 330 (7th Cir. 1985), *aff'd mem.*, 475 U.S. 1001 (1986). Similarly, in striking down restrictions on renting to minors videotapes that depict violence, the Eighth Circuit confirmed that violent video programming is entitled to “the highest degree of First Amendment protection.” *Webster*, 968 F.2d at 689. Any regulation of violent television programming obviously would be content-based and

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<sup>90</sup> *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188 (9th Cir. 1989).

<sup>91</sup> *Interactive Digital Software Assn. v. St. Louis County*, 329 F.3d 954 (8th Cir. 2003) (“*ISDA v. St. Louis*”); *American Amusement Machine Ass’n. v. Kendrick*, 244 F.3d 572 (7th Cir. 2001); *VSDA v. Maleng*, 325 F.Supp.2d 1180.

<sup>92</sup> *See James v. Meow Media, Inc.*, 300 F.3d 683 (6th Cir. 2002) (First Amendment precludes private tort action based on distribution of violent media products); *Sanders v. Acclaim Entmt., Inc.*, 188 F.Supp.2d 1264 (D. Colo. 2002) (same); *Wilson v. Midway Games, Inc.*, 198 F.Supp.2d 167 (D. Conn. 2002) (First Amendment bars tort claim based on alleged wrongful death caused by video game); *Watters v. TSR*, 904 F.2d 378 (6th Cir. 1990) (First Amendment precludes wrongful death claim against “Dungeons and Dragons” game); *Herceg v. Hustler*, 814 F.2d 1017 (5th Cir. 1987) (First Amendment precludes tort action over article plaintiff alleged advocated practice of autoerotic asphyxia); *Federation of Turkish-American Societies v. ABC*, 620 F.Supp. 56 (S.D.N.Y. 1985) (First Amendment protects telecast of film “Midnight Express” despite allegation it incited violence against Turkish-Americans); *Waller v. Osbourne*, 763 F.Supp. 1144 (M.D. Ga. 1991), *aff'd*, 958 F.2d 1084, *cert. denied*, 113 S. Ct. 325 (1992) (First Amendment precludes tort action alleging Ozzy Osbourne album incited teen suicide); *McCullum v. CBS*, 202 Cal.App.3d 989 (1988) (same); *Vance v. Judas Priest*, 1990 WL 130920 (Nev. Dist. Ct. 1990)) (First Amendment precludes tort action alleging Judas Priest album incited teen suicide); *Olivia N. v. NBC*, 126 Cal. App. 3d 488 (1981), *cert. denied*, 458 U.S. 1108 (1982) (First Amendment precludes tort action alleging television program incited copycat rape).

subject to First Amendment strict scrutiny.<sup>93</sup> Under the applicable standard, the government must demonstrate that any regulation of violent programming is necessary to serve a compelling interest and that it has adopted the least restrictive means of achieving its purpose. *ISDA v. St. Louis*, 329 F.3d at 958; *Webster*, 968 F.2d at 689.

### **B. There is No Justification for Reducing the Level of Scrutiny**

The *Notice* asks whether violent programming may be classified as expression that qualifies for a lesser degree of constitutional protection, such as “obscene” or “indecent” speech.<sup>94</sup> Although it acknowledges that “an interpretation of indecency or obscenity as encompassing violence would be novel,” *id.*, the Commission nevertheless asks commenters to address whether violent speech could be relegated to a category of speech that it presumably could regulate more easily. Not only does this inquiry beg the question of whether such a classification would affect the level of scrutiny – which it would not – it also ignores the growing number of cases that already answer the question. As explained in more detail below, depictions of violence cannot constitutionally be lumped in with either obscene or indecent speech.

First, however, it is important for the Commission to understand the constitutional trend is away from recognizing categories of speech that receive less First Amendment protection. Early First Amendment cases described certain “well-defined and narrowly limited classes of speech” that were long considered to be outside the First Amendment’s protection. These categories included “the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting words,’” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942), and commercial speech, *Valentine v. Chrestensen*, 316 U.S. 52 (1942). Since those early pronouncements,

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<sup>93</sup> Various courts have held that strict scrutiny is the applicable standard for regulation of violent media and that such regulations are “presumptively invalid.” *E.g.*, *ISDA v. St. Louis*, 329 F.3d at 958. *See also Eclipse Enters.*, 134 F.3d at 67; *Webster*, 968 F.2d at 689.

<sup>94</sup> *Notice* ¶ 25.

however, the clear trend has been toward greater constitutional protection of speech to such an extent that some scholars suggest this categorical approach has “largely been discredited and abandoned.” Rodney A. Smolla, 1 *Smolla & Nimmer on Freedom of Speech* 2-70 (1997).

Commercial speech now receives First Amendment protection, *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), and the same is true of “lewd” speech, *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115 (1989), “insult[s],” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), and even “fighting words.” *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). Substantial constitutional protections buttress the freedom of speech alleged to be obscene, *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 65 (1963), or defamatory, because freedom of expression must have substantial “breathing space” in order to survive. *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-272 (1964) (citation omitted). This trend has narrowed the “variable obscenity” or “harm-to-minors” category of speech as well. Since the Supreme Court first articulated this standard in *Ginsberg v. New York* in 1968, it has limited regulation in this area to “borderline obscenity” or to material considered to be “virtually obscene.” *Virginia v. American Booksellers Ass’n*, 484 U.S. 383, 390 (1988). Similarly, in *Playboy*, 529 U.S. at 829, the Court stressed that “indecent” speech is fully protected by the First Amendment and is not subject to diminished scrutiny as supposedly “low value” speech.<sup>95</sup> Consistent with this movement toward greater protection, the United States Court of Appeals for the Second Circuit expressly “decline[d] any invitation to expand these narrow categories of speech to include depictions of violence.” *Eclipse Enters.*, 134 F.3d at 66.

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<sup>95</sup> See *Playboy*, 529 U.S. at 826 (the government cannot assume that it has greater latitude to regulate because of its belief that “the speech is not very important”). Thus, even if violent speech legitimately could be classified as “indecent,” the First Amendment nevertheless requires the government to use the “least restrictive means” of regulation. *Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd. 7999, 8000-01 (2001). See *Action for Children’s Television v. FCC*, 59 F.3d 1249, 1253 (D.C. Cir. 1995) (“ACT IV”).

## 1. “Violent” Programming Cannot be Analogized to Broadcast Indecency

The First Amendment generally prohibits the government from regulating speech “by wrapping itself in the cloak of parental authority.” *ISDA v. St. Louis*, 329 F.3d at 960. The Supreme Court has made clear that “[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them. In most circumstances, the values protected by the First Amendment are no less applicable when the government seeks to control the flow of information to minors.” *Erznoznik v. Jacksonville*, 422 U.S. 205, 213-214 (1975). Here, there is no justification for imposing special limits on violent programming.

The suggestion that the Commission “could expand its definition of indecency to include violent programming” is based on a misunderstanding of the government’s authority to regulate indecency. *Notice* ¶ 25. The Commission’s observation that “the Supreme Court has concluded that the term indecent ‘merely refers to nonconformance with accepted standards of morality’ and that ‘neither our prior decisions nor the language or history of § 1464 supports the conclusion that prurient appeal is an essential component of indecent language,’” *Id.* (quoting *Pacifica*, 438 U.S. at 740-41), is inapplicable to this inquiry on televised violence. The cited passage in *Pacifica* stands only for the proposition that indecency need not be limited to material that is “obscene.”<sup>96</sup>

Review of the Commission’s indecency policy makes clear that the First Amendment precludes extending it to include violence. Although restrictions against “indecency” and

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<sup>96</sup> *Pacifica*, 438 U.S. at 739-740. The cited passage comes from the *Pacifica* Court’s discussion as to why the FCC may be able to enforce its indecency rules (separately from the prohibition on obscenity) despite the fact that a similar provision applicable to printed matter could be applied constitutionally only to obscene communications. *Compare Hamling v. United States*, 418 U.S. 87, 113-114 (1974) (statutory prohibition on “indecent” or “obscene” mailings may be constitutionally enforced only against obscenity).

“profanity” have existed in some form since the Radio Act of 1927, the Commission officially defined the term “indecent” for the first time in 1975 to clarify the concept in light of the Supreme Court’s then-recent constitutional ruling regarding the obscenity standard in *Miller v. California*, 413 U.S. 15 (1973). *Citizen’s Complaint Against Pacifica Foundation Station WBAI (FM), New York, N.Y.*, 56 F.C.C.2d 94 (1975). Noting that “the term ‘indecent’ has never been authoritatively construed by the Courts in connection with Section 1464,” it “reformulate[ed] the concept” of indecency as “language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of day when there is a reasonable risk that children may be in the audience.” *Id.* at 97-98. At that time, the Commission also made clear its understanding that statutory restrictions on indecency did not include violence, and that any attempt to expand the definition would raise “sensitive First Amendment problems.”<sup>97</sup>

The scope of the “indecency” definition is constitutionally limited. As former Commissioner Glen O. Robinson explained, “[d]espite the fact that the statute (18 U.S.C. § 1464) on its face expresses no limit on our power to forbid ‘indecent’ language over the air, the First Amendment does not permit us to read the statute broadly.” *Citizen’s Complaint Against Pacifica.*, 56 F.C.C.2d at 103-104 (Concurring statement of Comm’rs Robinson and Hooks). The Commission stated that in order to “avoid the error of overbreadth” it was necessary “to make explicit whom we are protecting and from what.” *Id.* at 98. It reasoned that the indecency standard it articulated would not “force upon the general listening public debates and ideas which are ‘only fit for children’” because “the number of words which fall within the definition of

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<sup>97</sup> *Report on the Broadcast of Violent, Indecent, and Obscene Material*, 51 F.C.C.2d 418, 420 (1975). This report, issued at the same time the FCC developed its definition of indecency, concluded that regulating televised violence could result in “improper governmental interference in sensitive, subjective decisions about programming, could tend to freeze present standards and could also discourage creative developments in the medium.” *Id.*

indecent is clearly limited.” *Id.* at 99-100. The FCC also stressed that its definition of indecency was formulated “in a specific factual context” and emphasized that the government “must take no action which would inhibit broadcast journalism.” “*Petition for Reconsideration*” of a Citizen’s Complaint Against Pacifica Foundation Station WBAI (FM), New York, N.Y., 59 F.C.C.2d 892, 893 (1976). The Supreme Court has reinforced this fact, and in numerous cases emphasized the narrowness of the *Pacifica* holding.<sup>98</sup> To add violence to the types of content that could be more intensively regulated would be a significant – and unconstitutional – expansion of the government’s ability to control speech.<sup>99</sup>

## 2. “Violent” Programming Cannot be Analogized to Obscenity

The same conclusion follows from any attempt to treat violence as if it were obscene. The *Notice* asks whether violence may be subject to regulation under an obscenity approach, and refers to a Seventh Circuit opinion that it acknowledges declined “to conflate obscenity and violence in the context of a particular ordinance regulating violent video games.” *Notice* ¶ 25. At the same time, the *Notice* asserts – quite misleadingly – that the court suggested “a demonstrated link to such games and deleterious effects could possibly provide a basis for regulation of violent ‘pictures.’” *Id.* This point in the *Notice* raises two separate points, which are addressed in turn: (1) there is no basis for analogizing violent programs to obscenity, and (2) courts have

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<sup>98</sup> *Pacifica*, 438 U.S. at 742 (“our review is limited to the question whether the Commission has the authority to proscribe this particular broadcast” in a “specific factual context”); *id.* at 750 (“[i]t is appropriate ... to emphasize the narrowness of our holding”). See also *Sable Communications*, 492 U.S. at 127 (*Pacifica* was “an emphatically narrow holding”); *Bolger*, 463 U.S. at 74 (emphasizing narrowness of *Pacifica*).

<sup>99</sup> See, e.g., *Winters*, 333 U.S. at 510, 519 (prohibiting stories of bloodshed and lust does not relate to “indecent or obscenity in any sense heretofore known to the law”); *Olivia N. v. NBC*, 178 Cal. Rptr. 888, 894 (Cal. App. 1st Dist. 1981) (rejecting relevance of *Pacifica* outside the context of “indecent” programming).

refused to approve regulation of violent imagery given the grave First Amendment problems that would result.

First, there is no judicial support whatsoever for the notion that violent speech could legitimately be regulated as if it were obscene. Suggestions to the contrary are the stuff of idle bureaucratic speculation and fringe academic musings, not serious legal analysis. For example, then-FCC Commissioner Gloria Tristani once called upon Congress and state governments to treat violent programs as obscene, and dismissed First Amendment concerns as nothing more than the “most popular sham objection to protecting children from harmful media influences.”<sup>100</sup> The *Notice* cites one academic writer – and it would be difficult to find more than one – who has suggested that violence should be equated with obscenity because the ancient origins of the word “obscene” may include violence as well as sex.<sup>101</sup> Such arguments are entirely out of touch with the state of the law as it has been analyzed and applied in a growing number of cases.

Chief among the leading authorities is Judge Richard Posner’s opinion in *American Amusement Machine Ass’n v. Kendrick*, 244 F.3d 572 (2001), the Seventh Circuit opinion cited in the *Notice*. That opinion did far more than “decline to conflate obscenity and violence” as the

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<sup>100</sup> Commissioner Gloria Tristani, *On Children and Television*, Keynote Address, Annenberg Public Policy Center Conference on Children and Media, June 26, 2000.

<sup>101</sup> *Notice* ¶ 25 (citing Kevin W. Saunders, *Regulating Youth Access to Violent Video Games: Three Responses to First Amendment Concerns*, 2003 L. Rev. M.S.U.-D.C.L. 51 (2003)) (“*Regulating Youth Access to Violent Video Games*”). Professor Saunders draws on ancient history to bolster his argument that courts must include violent content, not just sexual content, in the definition of obscenity. He relies on the etymological derivation of the word “obscene” as well as common practices in ancient Greek and Roman theatrical productions to argue that the definition of “obscenity” includes violence as well as sex. *Id.* at 80-83. Professor Saunders notes with alarm that, in his view, the *Roth* Court mistakenly relied on an 1896 definition of obscenity instead of one from over a century earlier. *Id.* at 84. *See also* Kevin W. Saunders, *VIOLENCE AS OBSCENITY: LIMITING THE MEDIA’S FIRST AMENDMENT PROTECTION* 113-118 (1996) (“*VIOLENCE AS OBSCENITY*”) (suggesting that historical antecedents to modern obscenity law included very broad restrictions on profanity, blasphemy and depictions of violence, so that the concept of what can be obscene may be too limited by contemporary understandings).

Commission delicately characterized it. It unanimously reversed a lower court opinion and explained in detail why violent expression presents “a different concern from that which animates the obscenity laws.” *Id.* at 575. A principal difference, according to the court, is that obscenity is regulated not because it is harmful, but because it is “to many people disgusting, embarrassing, degrading, disturbing, outrageous, and insulting.” *Id.* (“Offensiveness is the offense.”). Violent speech, on the other hand, may only be regulated if it can be *proven* to be harmful – just like any other protected speech that may be subjected to regulation.<sup>102</sup>

The Commission’s characterization of the holding, however, that violent speech may be regulated if there is “a demonstrated link to ... deleterious effects” misses the point of Judge Posner’s opinion. While the court noted that proof of “harmful effects” historically has not been required in the case of obscenity,<sup>103</sup> it observed that the government faces a significant burden of proof when it seeks to regulate depictions of violence. The Commission’s reference to the case entirely overlooks Judge Posner’s skepticism about the government’s ability to meet this standard of proof (as will be explained below).

All existing judicial authority on this subject confirms that violent speech cannot be equated with obscenity. “Simply put, depictions of violence cannot fall within the legal definition of obscenity for either minors or adults.” *ISDA v. St. Louis*, 329 F.3d at 958. As numerous courts have explained, obscenity “encompasses only expression that ‘depict[s] or describe[s]

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<sup>102</sup> Among other things, regulations are subject to the basic rule that the “government may not [restrict] speech because it increases the chance an unlawful act will be committed at some indefinite future time.” *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002) (citation and internal quotation omitted).

<sup>103</sup> After *Kendrick* was decided, the Supreme Court raised the bar on the government’s burden of proof, even in cases involving sexually-oriented speech. *See Free Speech Coalition*, 535 U.S. 234. The Court invalidated a federal law on First Amendment grounds where the “causal link [to the asserted harm was] contingent and indirect.” The Court observed that “[t]he harm does not necessarily follow from the speech, but depends upon some unquantified potential for subsequent criminal acts.” *Id.* at 250.

sexual conduct.” *Webster*, 968 F.2d at 688 (quoting *Miller v. California*, 413 U.S. at 24). As a consequence, “[m]aterial that contains violence but not depictions or descriptions of sexual conduct cannot be obscene.” *Id.* See *Eclipse Enters.*, 134 F.3d at 67 (“standards that apply to obscenity are different from those that apply to violence”). As one court explained recently, “historical justifications for the obscenity exception simply do not apply to depictions of violence.” *VSDA v. Maleng*, 325 F.Supp.2d at 1185. Images of violence “have been used in literature, art, and the media to convey important messages throughout our history, and there is no indication that such expressions have ever been excluded from the protections of the First Amendment or subject to government regulation.” *Id.* See *Kendrick*, 244 F.3d at 577 (“Violence has always been and remains a central interest of humankind and a recurrent, even obsessive theme of culture both high and low. It engages the interest of children from an early age, as anyone familiar with the classic fairy tales collected by Grimm, Andersen, and Perrault is aware.”).<sup>104</sup> Consequently, the Seventh Circuit in another case observed that empowering the government to delete “violence” from constitutional protection would give it “control of all the institutions of culture, [and make it] the great censor and director of which thoughts are good for us.” *Hudnut*, 771 F.2d at 330.

The suggestion by some theorists that the judicially-accepted definition of obscenity is too limited, because historical antecedents to modern obscenity law included very broad restrictions on profanity, blasphemy and depictions of violence, ignores more than a century of

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<sup>104</sup> The purposes and motivations underlying the regulation of sexual materials in the United States has far more to do with the “complex tapestry” of American history and culture than it does the presence (or absence) of social science research. See generally Richard A. Posner, *Sex and Reason* 60-66, 218-219 (1992). The regulation of “girlie magazines” upheld in *Ginsberg* was grounded in notions of morality and values, not actual harm. By comparison, violence is far more endemic to contemporary American culture, with elements woven into the fabric of literature, film, philosophy, religion, fairy tales, video games, children’s toys, photojournalism, and sports. See generally *Why We Watch: The Attractions of Violent Entertainment* (Jeffrey H. Goldstein, ed., 1998).

constitutional jurisprudence. *E.g.*, Saunders, VIOLENCE AS OBSCENITY at 113-118. The fact that ancient understandings of the term obscenity, or even that some antiquated obscenity laws in the U.S., contained expansive restrictions on blasphemy or violence is hardly a persuasive rationale for expanding the concept of obscenity in the 21st century. Just because our history includes the unfortunate episode of Comstockery,<sup>105</sup> is not a reason to repeat the mistake, any more than it would support reinstating the death penalty for sodomy, as it existed in Colonial America.<sup>106</sup> With respect to restrictions on speech, it should be kept in mind that a principal purpose of the 1873 Comstock Act was to prohibit the dissemination of information about contraceptives. Posner, *Sex and Reason*, *supra*, at 78-79. Yet it scarcely could be argued that adding birth control information to a definition of obscenity would survive today.<sup>107</sup> Indeed, when an updated Comstock restriction on the dissemination of abortion-related information was included in the Communications Decency Act in 1996, the provision was so obviously unconstitutional that the U.S. Justice Department refused to even defend the provision in court. *Sanger v. Reno*, 966 F.Supp. 151 (E.D.N.Y. 1997). For the same reasons, any attempt to expand the concept of obscenity to include violence would violate the First Amendment.

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<sup>105</sup> The first federal obscenity statutes were passed following a lobbying onslaught by Anthony Comstock, who founded the New York Society for the Suppression of Vice. In addition to all things sexual, Comstock crusaded against “dime novels” which he described as “devil traps for the young.” He claimed that the books’ descriptions of crime and violence were “the inspiration for all of the antisocial behavior exhibited by the youth of the day.” See Margaret A. Blanchard, *The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society – From Anthony Comstock to 2 Live Crew*, 33 Wm. & Mary L. Rev. 741, 757 (1992).

<sup>106</sup> Posner, *Sex and Reason*, *supra*, at 61-62. As the Supreme Court made clear in *Lawrence v. Texas*, 539 U.S. 558 (2003), prohibitions on consensual sodomy between adults are unconstitutional despite history of laws prohibiting sodomy dating back to 1533.

<sup>107</sup> *Carey v. Population Servs. Int’l*, 431 U.S. 678, 697 n.22 (1977) (plurality op.) (rejecting argument that exposure to contraceptive information is “harmful to minors” under *Ginsberg*); *Bolger*, 463 U.S. at 72-73.

Notwithstanding this conclusion, the Commission’s suggestion that at least one court might approve government regulation of “violent pictures” if there was a “demonstrated link [between violent images] and deleterious effects,” *Notice* ¶ 25, badly misstates the relevant holding. In *Kendrick*, 244 F.3d at 575-576, the Seventh Circuit held that the concept of obscenity could not be expanded to include violence, and that any regulation of violent speech would require the government to prove the necessary harm, just as in any First Amendment case. This does not mean that the court would accept the proffer of social science research as sufficient evidence to satisfy First Amendment strict scrutiny, as more credulous observers are eager to do.<sup>108</sup> Rather, Judge Posner stressed that any grounds for regulating violent expression “must be compelling and not merely plausible.” *Id.* at 576. In addition, he was deeply skeptical of the claim that exposing children to violent imagery is necessarily harmful:

This is not merely a matter of pressing the First Amendment to a dryly logical extreme. The murderous fanaticism displayed by young German soldiers in World War II, alumni of the Hitler Jugend, illustrates the danger of allowing the government to control the access of children to information and opinion. Now that eighteen-year-olds have the right to vote, it is obvious that they must be allowed the freedom to form their political views on the basis of uncensored speech *before* they turn eighteen, so that their minds are not a blank when they first exercise the franchise. And since an eighteen-year-old’s right to vote is a right personal to him rather than a right exercised on his behalf by his parents, the right of parents to enlist the aid of the state to shield their children from ideas of which the parents disapprove cannot be plenary either. People are unlikely to become well-functioning, indepen-

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<sup>108</sup> For example, Professor Saunders discounts the numerous court rulings which have held that violent speech cannot be constitutionally regulated by citing some of the available research. To support his thesis, Professor Saunders relies on studies linking television to violence that have been thoroughly discredited, such as Centerwall’s 1992 claim that television is responsible for a doubling of the homicide rate. While Saunders admits that the studies upon which he relies have “weaknesses,” he nonetheless blithely insists that “[t]he view of the scientific community seems to be that the debate is over and that it is clear that there is a connection between media violence and aggression in the real world.” *Regulating Youth Access to Violent Video Games*, *supra* note 10, at 67, 69. Those who have reviewed the studies more carefully, however, such as the FTC and the Surgeon General, have concluded that there is no such consensus. *See supra* at 6.

dent-minded adults and responsible citizens if they are raised in an intellectual bubble.

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To shield children right up to the age of eighteen from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it.

*Id.* at 577 (emphasis in original). Although Judge Posner acknowledged the violent imagery of video games at issue in that case was limited to “the world of kid’s popular culture,” he wrote “it is not lightly to be suppressed” and rejected the social science studies in the record as insufficient to support the law, *id.* at 578-579, just as other courts have done.<sup>109</sup> This is hardly the opinion of a court that is likely to uphold regulation of violent programming.

**C. Regulation of “Violent” Programming Cannot Be Reconciled With Basic First Amendment Principles**

The constitutional problems arising from this inquiry are perhaps the most problematic of any potential content regulations the FCC might consider. Judge Harry Edwards of the United States Court of Appeals for the D.C. Circuit, in an influential law review article, identified many of the serious First Amendment questions that would have to be addressed with respect to any regulation of televised violence.<sup>110</sup> Writing with Professor Mitchell Berman, he concluded that there must be full First Amendment protection for violent speech, and he noted that the constitutional weakness of any scheme to regulate violence turns on the definition that the law uses.<sup>111</sup> They wrote that “[w]hen it comes to televised violence, we cannot imagine how

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<sup>109</sup> *ISDA v. St. Louis*, 329 F.3d at 958-959; *Eclipse Enters.*, 134 F.3d at 67; *VSDA v. Maleng*, 325 F.Supp.2d at 1188-89.

<sup>110</sup> See Harry T. Edwards and Mitchell N. Berman, *Regulating Violence on Television*, 89 NORTHWESTERN U. L. REV. 1487 (1995) (“*Regulating Violence on Television*”). See also Patricia M. Wald, *Doing Right by Our Kids: A Case Study in the Perils of Making Policy on Television Violence*, 23 U. BALT. L. REV. 397 (Spring 1994).

<sup>111</sup> *Regulating Violence on Television* at 1524.

regulators can distinguish between harmless and harmful violent speech, and we can find no proposal that overcomes the lack of supporting data.”<sup>112</sup> As explained below, there is no satisfactory answer to Judge Edwards’ concerns.

**1. Regulation of Televised Violence Will Impose Either Wholesale Censorship or an Incomprehensible Standard**

Virtually all observers agree that any attempt to regulate all televised violence would impose an unprecedented degree of censorship. As the Commission concluded in 1975 when it declined to equate “indecent” and “violent” programming, “no reform short of wholesale proscription” of all violent material would “provide absolute assurance that children or particularly sensitive adults will be insulated from objectionable material.” *Report on the Broadcast of Violent, Indecent, and Obscene Material*, 51 F.C.C.2d at 423. The Commission quoted then-Chairman Richard E. Wiley for the proposition that, under such an absolute approach, “many traditional children’s films should be banned because they include some element of violence – for example, episodes in *Peter Pan* when Captain Hook is eaten by an crocodile or in *Snow White* where the young heroine is poisoned by the witch.” Chairman Wiley concluded that “[s]uch an extreme result simply does not make sense and would not be acceptable to the American people.” *Id.* at 419 n.5.

This point has been acknowledged by those who have studied closely the phenomenon of television violence. For example, the 1997 UCLA TELEVISION VIOLENCE REPORT noted that if all violence were eliminated, “viewers might never see a historical drama like *Roots*, or such outstanding theatrical films as *Beauty and the Beast*, *The Lion King*, *Forrest Gump* and *Schindler’s List*.”<sup>113</sup> Violence is an important element in storytelling, and “violent

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<sup>112</sup> *Id.* at 1565.

<sup>113</sup> UCLA TELEVISION VIOLENCE REPORT at 25.

themes have been found in the Bible, *The Iliad* and *The Odyssey*, fairy tales, theater, literature, film, and ... television.” The report added that in many instances, “the use of violence may be critical to a story that sends an anti-violence message” and it would be impossible to tell some stories without depictions of violence, including Shakespeare’s *Hamlet*, the history of World War II (or, for that matter, any war), or the life of Abraham Lincoln. UCLA TELEVISION VIOLENCE REPORT at 25. The study pointed out that parents know “that violence can be instructive in teaching their children important lessons about life” and it sought to conduct a contextual analysis to determine when programs presented “inappropriate or improper uses of violence.” *Id.* Similarly, the National Television Violence Study is premised on the understanding that “all acts of violence are not equivalent in their impact on the audience” and that “the larger meaning or message that is conveyed” must be examined program-by-program.<sup>114</sup>

The problem, then, is far more complex than determining whether televised violence may have some effect on the viewer that is measurable by social scientists. Even if such evidence could be characterized as sufficient to support content-based regulation – a highly dubious proposition – it would be necessary for the government to adopt regulations that precisely define which violent programs will be regulated (based on specific supporting evidence), and to articulate a rationale for doing so that survives strict scrutiny. But as Judge Edwards concluded, this task presents the government with insurmountable constitutional problems.

## **2. Regulation of “Violent” Programming is Unconstitutionally Vague**

It is basic First Amendment doctrine that the government cannot use a vague standard for the sensitive task of regulating constitutionally-protected speech. *Reno v. ACLU*, 521 U.S. 844, 874 (1997). Imprecise speech restrictions are invalid for a number of reasons. First,

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<sup>114</sup> Mediascope, Inc., THE NATIONAL TELEVISION VIOLENCE STUDY (1994-1995) at 8-9.

without clear guidelines, those subject to a restriction cannot understand what is forbidden and what is not.<sup>115</sup> Second, a vague standard impermissibly chills speech, causing speakers to “steer far wider of the unlawful zone”<sup>116</sup> and to restrict their expression “to that which is unquestionably safe.”<sup>117</sup> Third, restrictions on speech that lack clear limits give government officials far too much discretion to curb disfavored expression.<sup>118</sup> These concerns are not lessened by the fact that the government may seek to regulate in the interest of protecting children. As the Supreme Court made clear in *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 689 (1968), “the permissible extent of vagueness is not directly proportional to, or a function of, the extent of the power to regulate or control expression with respect to children.” *Id.* at 689. *See also Bantam Books*, 372 U.S. at 59 (condemning a commission that was charged with reviewing material “manifestly tending to the corruption of the youth”).

For purposes of this inquiry, there is no precise way to define “gratuitous” or “harmful” violence that could withstand constitutional scrutiny.<sup>119</sup> This is another factor that distinguishes proposed regulation in this area from the law of obscenity, which requires a specific definition of “sexual conduct” in the statute or through authoritative construction.

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<sup>115</sup> *See, e.g., Reno v. ACLU*, 521 U.S. at 871; *Kolender v. Lawson*, 461 U.S. 352, 357-358 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972); *Gentile v. State Bar*, 501 U.S. 1030, 1048 (1991) (regulation of speech is unconstitutional when those subject to it can do no more than “guess at its contours”).

<sup>116</sup> *Speiser v. Randall*, 357 U.S. 513, 526 (1958).

<sup>117</sup> *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964).

<sup>118</sup> *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992); *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 770 (1988); *City of Houston v. Hill*, 482 U.S. 451, 468-469 n.18 (1987); *Kolender*, 461 U.S. at 358, 360; *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940).

<sup>119</sup> By way of example, the Children’s Protection from Violent Programming Act, S. 161, introduced by Senator Hollings, provided that the definition of “violent video programming” may include “matter that is excessive or gratuitous violence within the meaning of the 1992 Broadcast Standards for the Depiction of Violence in Television Programs, December 1992.”

*Miller*, 413 U.S. at 24. No such specific definition is possible in the context of violence.<sup>120</sup> Former Chairman Wiley confirmed that “[s]hort of an absolute ban on all forms of ‘violence’ – including even slapstick comedy – the question of what is appropriate for family viewing is entirely subjective.” *Broadcast of Violent, Indecent, and Obscene Material*, 51 F.C.C.2d at 419 n.5. Reviewing courts that have invalidated local regulations for vagueness have reached the same conclusion. *Davis-Kidd Booksellers, Inc.*, 866 S.W.2d at 532 (describing statutory restrictions as “entirely subjective”). *See Webster*, 968 F.2d at 689 (“every application of the statute create[s] an impermissible risk of suppression of ideas”) (citation omitted); *VSDA v. Maleng*, 325 F.Supp.2d at 1190-91.

This problem is exacerbated by the many types of programs that can be characterized as “violent” in some way. In any proposed regulation, the government would be required to decide whether the definition of “violence” includes only fictional depictions of violence, or if it also would include reality-based violence. If both, would the rules cover news, sports and nature programs that include violent scenes, or would there be exceptions? Questions arise even within the various subcategories. For example, would it be acceptable for children to see professional football but not professional wrestling? Additionally, if some types of programs are not covered by the rules, how are the exemptions justified? Are they supported by the social science studies that policymakers have cited to justify the regulation of violent programming?

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<sup>120</sup> Any effort to distinguish only “harmful” or “gratuitous” violence by analogy to the “concepts of ‘prurient interest,’ ‘patently offensive,’ and ‘serious value’ used to define obscenity,” would fail. *Regulating Violence on Television* at 1523. It is clear that to the extent “these concepts have proven difficult to apply in obscenity cases, ... they would pose even more problems in cases seeking to distinguish between” regulable and non-regulable violence, particularly in that “violent material would have to be at least as graphic and beyond the mainstream as sexually explicit material is to be obscene,” so programming falling within whatever regulation evolved likely would comprise an empty set. *Id.* at 1523-24. *See, e.g.*, NATIONAL TELEVISION VIOLENCE STUDY at 14 (“In general, very little of the violence on television is graphic or explicit.”).

The subjectivity of such choices, along with a lack of any supporting science to support distinctions between “harmful” or “gratuitous” violence compared to other televised violence, led Judge Edwards and Professor Berman to posit that, because “existing social science data do not supply a basis upon which one may determine with adequate certainty which violent programs cause harmful behavior, ... legislators face an insurmountable problem in finding a generic definition of violence that is coherent and not overbroad.”<sup>121</sup> They concluded that “[w]hen it comes to televised violence, we cannot imagine how regulators can distinguish between harmless and harmful violent speech, and we can find no proposal that overcomes the lack of supporting data.” The inability to do so is constitutionally fatal since the appropriate level of First Amendment “scrutiny requires that any [such] regulation be precisely drawn to restrict only that programming that will likely induce antisocial aggression.” *Id.*

As Judge Edwards and Professor Berman explained, “the many studies employ widely disparate definitions of ‘violence,’” and this alone results in impermissible vagueness:

While the diversity of operational definitions might be unfortunate, the task is not simply to agree upon any single one so long as it is not unconstitutionally vague. The heart of the problem is that available research does not supply a basis upon which one could determine with adequate certainty whether a particular “violent” program will cause harmful behavior.

In fact, researchers have identified a large and varied assortment of aspects of the relationship between program and viewer that influence whether and to what extent the program might contribute to aggressive behavior. These include the extents to which the violence is presented as justified, effective, unpunished, socially acceptable, gratuitous, realistic (yet fictional), humorous, and

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<sup>121</sup> *Regulating Violence on Television* at 1492. As Professor Freedman concludes, “if one is going to relate any conclusions to the research, the definition of violence or aggression becomes extremely murky.” Freedman Report at 38. Because “aggression” also has been defined in many different ways in the different studies, it is virtually impossible to define what causes that aggression. “[I]t is especially difficult to relate real aggression to the research, since so often the research has involved at best metaphors for aggression rather than the real thing and at worst, measures that have little relationship to real aggression or violence.” *Id.* at 40.

motivated by a specific intent to harm. The effects of a particular presentation will also depend upon the extent to which actual viewers like and associate with the aggressor or the victims. Significantly, it is not the case that all violent programming is harmful, with the above factors relevant only for distinguishing the more harmful from the less. Some genres of violent programming might not, as a general matter, be harmful. More fundamentally, a program characteristic harmful in the abstract might be neutralized when combined with other features into a single whole.

*Id.* at 1553-54 (footnotes omitted). Recent decisions applied these precepts to invalidate violence regulations.<sup>122</sup>

Any effort to reconcile these competing definitions to arrive at a divining line for regulable “harmful” or “gratuitous” violence in television programming leaves the government with an impossible task from a First Amendment perspective. In view of the many variables that may factor into whether violence in programming is “harmful,” the “government lacks the ability to actualize the requisite subtlety into legislation” because “[b]road and indiscriminate application of the operational characteristics already mentioned will sweep too broadly in practice.” Even partial reliance upon “such qualitative and ... fuzzy terms as ‘gratuitous,’ ‘socially acceptable,’ and ‘effective’ will almost surely prove unconstitutionally vague.” *Id.* at 1554. Ultimately, “any regulation of television violence confronts an inherent tradeoff between precision and effectiveness” with the “risk ... that any restriction in this area that is neither overbroad nor vague will leave unregulated so much violent programming that it will no longer accomplish a compelling interest.” *Id.* at 1555. Not surprisingly, Judge Edwards described this exercise as “a jurisprudential quagmire.” *Id.* at 1502-03.

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<sup>122</sup> *Kendrick*, 244 F.3d at 578 (“There is no indication that the games used in the studies are similar to those in the record of this case or to other games likely to be marketed in game arcades in Indianapolis.”); *VSDA v. Maleng*, 325 F.Supp.2d at 1188 (“Most of the studies on which defendants rely have nothing to do with video games, and none of them is designed to test the effects of such games on the player’s attitudes or behavior toward law enforcement officers.”).

### 3. Regulation of “Violent” Programming Discriminates Based on Viewpoint

Researchers in this field have attempted to overcome the definitional problems by proposing what they describe as a “contextual” approach to determining what type of programs present the greatest risk and should be regulated. The UCLA TELEVISION VIOLENCE REPORT asserts, for example, that “all violence, in our view, is not created equal,” and it employed a “contextual analysis” in order “to distinguish between uses of violence which raise concern and those acts which, because of their nature and the context in which they occur, do not raise such concerns.” Report at 27. Similarly, the NATIONAL TELEVISION VIOLENCE STUDY stresses that “[i]t is important to consider the larger meaning or message that is conveyed by a program,” including its “overall narrative purpose” in order to determine whether the “overall message ... is an anti-violence one.” Study at 9.

Not surprisingly, policymakers seeking to implement such findings as law also suggest certain exceptions for programming they consider to be meritorious. For example, S.161 would have empowered the FCC to exempt from its violence definition shows that it determines do “not conflict with the objective of protecting children from the negative influences of violent video programming,” including “news programs and sporting events.” *Children’s Protection from Violent Programming Act*, S. 161, 108<sup>th</sup> Cong. § 4 (2003). Consistent with this view, the *Notice* asks whether there should be an exception for news or other types of unrated programs” including programs with “cultural, historical, or artistic merit.” *Notice* ¶ 23. This approach has at least two major constitutional problems: (1) it fails to solve the vagueness problem and, in fact, exacerbates it; and (2) it seeks to define the scope of regulation in terms a program’s message, which is even more troubling from a First Amendment perspective.

First, the attempt to examine programming contextually and based on presumed merit makes the definitional problem far more difficult. As the NATIONAL TELEVISION VIOLENCE

STUDY observed, “[a]t the base of any policy proposal in this realm is the need to define violence and, assuming that not all violence is to be treated equally, to differentiate types of violent depictions that pose the greatest cause for concern.” Study at 28. This requires a “careful consideration of the contextual elements” of every program. *Id.* Consistent with this approach, the UCLA TELEVISION VIOLENCE REPORT observed that “[t]he scientific evidence, although valuable, gives the public little guidance in regard to specific television programs” and it attempted to “fill the void” by “using a detailed contextual analysis of every scene of violence in a program” and subjecting each one to “a whole panoply of contextual criteria.” Report at 15. The result was a detailed examination of particular programs in selected television seasons, scene by scene, in an effort to define “inappropriate or improper uses of violence.” *Id.* at 25. As should be obvious, any regulation that does more than simply define “violent” acts, but instead tries to base regulation on the purpose and meaning of the violence, would be staggeringly complex.

Second, the contextual factors used to determine whether violence is acceptable or inappropriate are the essence of viewpoint discrimination. As the NATIONAL TELEVISION VIOLENCE STUDY put it:

When considering a particular program, think about whether violence is rewarded or punished, whether heroes or good characters engage in violence, whether violence appears to be justified or morally sanctioned, whether the serious negative consequences of violence are portrayed, and whether humor is used. All of these elements enhance the risks associated with children’s exposure to violent depictions.<sup>123</sup>

The study notes that “the overall narrative purpose of an historical or educational program may be to condemn the evilness of violence, whereas an action-adventure show may seem to glorify violence.” It cites as an example of “good” violence the theatrical film *Boyz ‘n the Hood*

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<sup>123</sup> Study at 29. Professor Freedman points out that there is no scientific evidence to support the suggestion that different types of portrayals of violence may or may not affect the audience. Freedman Report at 49-51.

because of its overall anti-violence message, despite the fact that the movie “ranks high in terms of frequency of violent interactions and scenes.” *Id.* For the same reasons, the UCLA TELEVISION VIOLENCE REPORT indicated that “*Schindler’s List* contains graphic violence but because of its historical importance and necessity to the plot, the violence does not raise concerns.” Report at 33. In short, violence is deemed to be acceptable if it teaches the “correct” moral or historical lesson.

But the government cannot constitutionally regulate speech based on content or the message it conveys. *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Government regulation may not favor one speaker over another, *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984), and discriminating against speech based on its message is presumed unconstitutional. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641-643 (1994) (“*Turner I*”). However, when the government targets not the subject matter of speech, but particular views taken by speakers on a subject, the First Amendment violation is all the more blatant. *R.A.V.*, 505 U.S. at 391. Indeed, “[v]iewpoint discrimination is ... an egregious form of content discrimination,” *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 828-29 (1995), and the government is barred from regulating speech when the specific motivating ideology, opinion, or perspective of the speaker is the rationale for the restriction. *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 46 (1983).

The “contextual” approach to defining violence harkens back to a First Amendment theory that permitted local governments to operate film censorship boards in the decades before the Supreme Court finally put an end to the practice. *See Freedman v. Maryland*, 380 U.S. 51 (1965); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952). Former Chief Justice Earl Warren described the “astonishing” extent “to which censorship has recently been used in this country” during the period the film review boards were in operation. *Times Film Corp. v. City of*

*Chicago*, 365 U.S. 43, 69-78 (1961) (Warren, C.J., dissenting). He noted, for example, Atlanta banned *Lost Boundaries*, a film about a black physician and his family who “passed” for white, on grounds that exhibition of the film would “adversely affect the peace, morals and good order” of the community; Ohio’s censors deleted scenes of orphans resorting to violence in the film *It Happened in Europe*; the Chicago licensing board banned newsreel films of Chicago policemen shooting at labor pickets and refused a license to exhibit the film *Anatomy of a Murder*; and the New York film licensing board censored over five percent of the movies it reviewed. *See, e.g., id.* at 69-72 (Warren, C.J., dissenting). Such examples are just the tip of the iceberg. *See generally* Edward DeGrazia & Roger Newman, *BANNED FILMS*, at xviii, 177-381 (1982) (describing 122 representative examples of film censorship between 1908 and 1981).

Ultimately, however, First Amendment doctrine evolved and the Supreme Court ended the reign of the film review boards. *Freedman v Maryland*, 380 U.S. at 58-61; *id.* at 62 n.1 (Douglas, J. concurring) (“the Chicago censorship system, upheld by the narrowest of margins in *Times Film Corp.* ... could not survive under today’s standards”). As a consequence, contemporary understandings of the First Amendment preclude the FCC from declaring itself a national review board for televised violence. *Hudnut*, 771 F.2d at 330 (“Any other answer leaves the government in control of all the institutions of culture, the great censor and director of which thoughts are good for us.”).

#### **4. Such Viewpoint-Based Regulation Cannot Directly and Materially Further the Government’s Interest**

The “contextual” analysis described above also makes clear the government cannot demonstrate that its regulations will serve an important interest in a “direct and material way.” *Turner I*, 512 U.S. at 644. Regulations that are predicated on “appropriate” messages and social values, and not to the demonstrable effects of programming on viewers, could not possibly

achieve the government's stated purpose. In this respect, the Commission faces a dilemma: By proposing to exempt programming categories with presumed "merit," it may well be permitting those very programs that have the most significant adverse effects on aggression. But if it proposes a blanket ban on violence regardless of a program's social value, its rules would be unconstitutional even if it could treat such programs as obscene. *See Miller*, 413 U.S. at 44-45.

A central problem with proposals to regulate televised violence is the inability to predict which programs will have the adverse effect the government is trying to prevent.<sup>124</sup> One reason for this was described by Professor Henry Jenkins, the Director of the Comparative Media Studies Program at MIT, in his testimony to the Commission in 2000. He observed that it is necessary not only to evaluate the program at issue, but also the viewers, since the effect of a given program will be determined ultimately by the attitudes and experiences of each audience member. He advocated treating violent programs as "one cultural influence among many," and acknowledged that "different consumers react to the same media content in fundamentally different ways."<sup>125</sup> This more nuanced approach suggests it would be impossible for the Commission to come up with lists of "suspect" programming or to predict what the effect would be of restricting them.

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<sup>124</sup> *See Regulating Violence on Television* at 1492 ("existing social science data do not supply a basis on which one may determine with adequate certainty which violent programs cause harmful behavior"). Professor Freedman concludes that the existing studies have provided no data about the effects of different types of portrayals of violence. *See Freedman Report* at 40. For example, there is no evidence that answers the question of whether violence which has consequences has less effect than violence with no consequences, or whether there is a different reaction to violence that is justified as opposed to unjustified violence. *Id.* at 41.

<sup>125</sup> *See Transcript, In the Matter of En Banc Hearing on the Public Interest Obligations of TV Broadcast Licenses, Testimony of Henry Jenkins* (October 16, 2000), available at <http://ftp.fcc.gov/realaudio/tr101600.pdf>. This point also has been made by the National Academy of Sciences. *See National Research Council, Nat'l Academy of Sciences, Understanding and Preventing Violence* (A. Reiss & J. Roth, eds.) (1993) at 101-102.

A good example to illustrate this point is the film *The Passion of the Christ*, reportedly one of the most violent films ever made. The *New York Times* described the film as “harrowingly violent; the final hour ... consists of a man being beaten, tortured and killed in graphic and lingering detail” until he is “a mass of flayed and bloody flesh, barely able to stand, moaning and howling in pain.”<sup>126</sup> Another reviewer, on the other hand, wrote that the film’s director used “the extremely naturalistic depiction of violence” to “drive home the idea that Jesus ... lived.”<sup>127</sup> Given the film’s theme, it may serve as a paradigmatic example of how the “merits” of a program may outweigh the impact of the depicted violence, yet its intensity may also cause some to question this premise.<sup>128</sup> In any event, since viewers bring their own experiences to the subject, it is not possible to predict what effect – if any – the film may have on them.<sup>129</sup>

The same is true of the other types of programs that policymakers suggest should be exempt from regulations of violent programming. Many observers have suggested, for example, that telecasts of sporting events may cause as much violent behavior by its viewers as does any other type of television programming.<sup>130</sup> The UCLA TELEVISION VIOLENCE REPORT, for

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<sup>126</sup> A.O. Scott, *Good and Evil Locked in a Violent Showdown*, NEW YORK TIMES, February 25, 2004. The level of violence led one reviewer to describe the film as a “two-hour-and-six-minute snuff movie” and to dub it “The Jesus Chainsaw Massacre.” David Edelstein, *Jesus H. Christ*, Slate.com, February, 24, 2004 (<http://slate.msn.com/id/2096025/>).

<sup>127</sup> E.g., Gary Thompson, *Using Gore With a “Passion,”* PHILADELPHIA DAILY NEWS, February 25, 2004.

<sup>128</sup> *Id.* (“Adults who want to see ‘The Passion’ should view it themselves before judging whether it’s suitable for younger teens and older children.”).

<sup>129</sup> *Georgia Couple Arrested After Debate Over “Passion of the Christ” Turns Violent*, USA Today.com, March 18, 2004 ([http://www.usatoday.com/life/people/2004-03-18-couple-fight-passion\\_x.htm](http://www.usatoday.com/life/people/2004-03-18-couple-fight-passion_x.htm)).

<sup>130</sup> See *Regulating Violence on Television* at 1546 n.264; John J. O’Connor, *Labeling Prime-Time Violence is Still a Band-Aid Solution*, N.Y. TIMES, July 11, 1993 at II.1.

example, observed that “[m]any feel that violent spectator sports such as football or hockey make violence an acceptable or even desirable part of American life.” As a consequence, it included “sports violence” in its definition of televised violence. One difference with this category is that it does not depend on laboratory experiments to show tangible effects. The socially-sanctioned violence of televised sports could be a source of the most widespread social effects of all.<sup>131</sup>

Similarly, there is the question whether violent programming in the news should be exempt from regulations. Some researchers suggest that news programs can cause “elevated fears among children” and have advocated extending V-chip requirements to cover news broadcasts.<sup>132</sup> It is noteworthy in this regard that prominent social science researchers who assert a link between violent media and behavior do not necessarily differentiate between a work’s merit and its alleged adverse effects on children.<sup>133</sup>

In at least one case, a reviewing court held that the merit or importance of political programming outweighed the potential adverse impact on children. In *Becker v. FCC*, 95 F.3d

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<sup>131</sup> More than 775,000 children and adolescents ages 14 and under are treated in hospital emergency rooms for sports-related injuries each year. In 2002, for example, more than 207,400 children aged 5-14 were treated in emergency rooms for basketball-related injuries and nearly 187,800 for football-related injuries. See National SAFE KIDS Campaign, Sports Injury Fact Sheet. In comparison, according to the National Center for Injury Prevention and Control, 268,004 children aged 5 to 14 were victims of violence-related nonfatal injuries in 2002 – about a third of the number of children injured playing sports. See the Center for Disease Prevention and Control’s online database, available at <http://www.cdc.gov/ncipc/wisqars/> (visited October 10, 2004). Cf. Dianna K. Fiore, *Parental Rage and Violence in Youth Sports: How Can We Prevent “Soccer Moms” and “Hockey Dads” From Interfering in Youth Sports and Causing Games to End in Fistfights Rather Than Handshakes?* 10 VILL. SPORTS & ENT. L.J. 103 (2003).

<sup>132</sup> E.g., Nathanson, Ami I. and Joanne Cantor, *Children's Fright Reactions to Television News*, JOURNAL OF COMMUNICATION, Vol. 46 No. 4, (Fall 1996); James T. Hamilton, CHANNELING VIOLENCE 239-284 (1998).

<sup>133</sup> See, e.g., *FCC En Banc Hearing* at 107 (Statement of Dr. Joanne Cantor) (discussing potential psychological impact of “Schindler’s List” and “Saving Private Ryan”); *id.* at 136-137 (“even great programming can be harmful psychologically to kids who are too young to see it”).

75 (D.C. Cir. 1996), the D.C. Circuit reversed an FCC ruling that had permitted broadcasters to channel political advertisements to late night that contained graphic anti-abortion imagery that, in the good faith judgment of the licensees, posed a risk to children. The Commission had found that the presentation of graphic abortion imagery in political advertisements could be psychologically damaging to children and ruled that broadcasters had discretion to transmit such materials at times when children were less likely to be in the audience.<sup>134</sup> Notwithstanding these findings, the Court of Appeals held that the imperative needs of the young did not outweigh the rights of political candidates. The court concluded that channeling political advertisements violated the “no censorship” provision of Section 315 of the Communications Act.

Such cases illustrate the problem of any regulation that is predicated on social science findings. If the government tries to emulate research results and restrict speech whenever it believes that programming may have adverse psychological effects or lead to heightened aggressiveness, then a great deal of constitutionally-protected speech will be suppressed. Moreover, where the social science findings are the touchstone for regulation, how should the government react to studies purporting to show that non-violent programming intended for children may lead to higher levels of aggression?<sup>135</sup> Faced with these conflicting values, regulations would either fail to achieve their stated purpose, or would lead to widespread restrictions on protected speech.

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<sup>134</sup> One United States District Court similarly had found that graphic anti-abortion images posed the risk of a negative psychological impact on children, and held that such political advertisements were indecent. *Gillett Communications of Atlanta, Inc. v. Becker*, 807 F.Supp. 757, 763 (N.D. Ga. 1992), *appeal dismissed*, 5 F.3d 1500 (11th Cir. 1995).

<sup>135</sup> *E.g.*, Testimony of Professor Joyce Sprafkin in *Eclipse Enterprises v. Gulotta*, No. CV-92-3416 (E.D.N.Y. Mar. 28, 1994), at 112-113 (describing research findings that viewing *Mister Rogers* and *Sesame Street* leads to more aggressive behavior in children).

## **D. Regulation of “Violent” Programming Cannot Survive Strict Scrutiny**

### **1. The Asserted Interest is Too Abstract**

To survive First Amendment scrutiny the government must demonstrate that the harms it seeks to address are “real, not merely conjectural.” *Turner I*, 512 U.S. at 664. In doing so, it must “show a record that validates *the regulations*, not just the abstract ... authority” to regulate. *Time Warner Entmt. Co. v. FCC*, 240 F.3d 1126, 1130 (D.C. Cir. 2001) (emphasis in original). In this regard, simply naming the interest, without quantitatively and/or qualitatively describing its dimensions and showing how the regulation affects the stated interest, is insufficient. *See Playboy*, 529 U.S. at 819 (“First Amendment requires a more careful assessment and characterization of an evil in order to justify a regulation as sweeping as” either an outright ban or time-channeling that renders specific content unavailable most of the day). Here, it is not sufficient for the government to simply claim there are “deleterious effects ... that may result from exposure” to violent programming, or suggest that “exposure to media violence can be associated with certain negative effects,” or to claim that it is “protecting children from ... violent programming.” *Notice* ¶¶ 6, 28. Merely reciting an interest in protecting children is not enough. As Judge Edwards explained:

To determine whether the interest the legislation accomplishes is compelling, we need to know how much societal violence the regulation would curb. Thus, for purposes of the compelling interest prong of exacting scrutiny, the issue most likely will not be whether television violence causes societal violence, but how much. Unfortunately, despite the vast number of studies investigating the violence hypothesis, there is scant data on the magnitude of the effect of television violence.<sup>136</sup>

The Supreme Court addressed a similar issue in *Playboy*, and it held that the government had failed in its burden of proof. The Court did not dispute that protecting the

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<sup>136</sup> *Regulating Violence on Television* at 1549.

physical and psychological well-being of children is a compelling interest or that it is important to reduce children's exposure to indecent "signal bleed" (*i.e.*, imperfectly scrambled sexually-oriented networks that could be seen in the homes of non-subscribers). Rather, the Court explained that "[t]o say that millions of children are subject to a risk of viewing signal bleed is one thing; to avoid articulating the true nature and extent of the risk is quite another." *Id.* The Court refused to accept generalized "concern for the effect of the subject matter on young viewers" as the government's "overriding justification for the regulation." *Id.* at 811. Rather, it faulted the government for producing "little hard evidence of how widespread or how serious the problem of signal bleed is," and "no proof as to how likely any child is to view a discernible explicit image" or as to "duration of the bleed or the quality of the pictures or sound." *Id.* at 819.

Here, the asserted interest is even more amorphous than in *Playboy*, and the government's evidence is even less susceptible of validation, particularly where some violent depictions are characterized by the proponents of regulation as "good" and others as "bad." *E.g.*, UCLA TELEVISION VIOLENCE REPORT at 25. Additionally, there is no universal agreement that exposing children to "bad" depictions of violence is necessarily harmful. *See e.g., Kendrick*, 244 F.3d at 577 ("To shield children right up to the age of eighteen from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it."). Moreover, in *Playboy* all the parties at least could identify what "signal bleed" was even if the government failed to adequately demonstrate (and the parties disagreed about) its impact. Here, the definitional issues about what qualifies as "violent" programming, even apart from the inability to gauge its impact, renders even more diffuse whatever state interest the government might claim it seeks to advance. In such circumstances, it is not enough simply to say "TV violence is bad for children." *See VSDA v. Maleng*, 325

F.Supp.2d at 1187-88 (simply identifying a compelling state interest in reducing aggressive feelings or behavior is insufficient).

## 2. Regulation Would Restrict Vast Amounts of Constitutionally-Protected Speech

The *Notice* describes “safe harbor” rules as a “possible new regulatory solution” and asks whether violent programming could be restricted during times when children are likely to be in the audience. *Notice* ¶¶ 20-22. Noting that such “time channeling” or “safe harbor” rules currently preclude the broadcast of indecent programs between the hours of 6 a.m. and 10 p.m., the *Notice* asks whether such rules might be extended to include violent programming on both broadcast and nonbroadcast media. Alternatively, the *Notice* asks whether a “safe harbor” approach could be combined with V-chip ratings in order to restrict programming that is “not blockable by electronic means specifically on the basis of its violent content.” *Id.* at ¶ 22. However, all of these “possible new regulatory solutions” violate the First Amendment.

For reasons already described, any regulation of violent programming would pose insurmountable constitutional problems. A so-called “safe harbor” solution does not diminish the constitutional difficulties where, as here, the government lacks an appropriate justification for restricting programming content in the first place. *See, e.g., Erznoznik*, 422 U.S. at 213-214 (“[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them”). Nor does a “safe harbor” diminish the First Amendment problems of the regulation just because it does not impose a total ban. As the Supreme Court explained in *Playboy*, “it is of no moment that the statute does not impose a complete prohibition. The distinction between laws burdening and laws banning speech is but a matter of degree.”<sup>137</sup> In

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<sup>137</sup> 529 U.S. at 812. Such “safe harbor” rules have been upheld only in the limited area of broadcast indecency rules. The Court in *Playboy* expressly rejected extending the regime to

the case of time channeling, such a rule “silences the protected speech for two-thirds of the day in every home ... regardless of the presence or likely presence of children or the wishes of the viewers.” 529 U.S. at 812. Such a restriction is grossly overbroad in light of the fact that nearly two-thirds of U.S. households have no children under 18.<sup>138</sup>

The fact that a “safe harbor” regime has been upheld (at least for the present) in the limited context of broadcast indecency rules does not affect this analysis, and not just because violent programming cannot be treated as if it were indecent. *See supra* at 33-35. Rather, the effect of regulating “violent” programming, especially as it is broadly defined by some critics, would be far more widespread than with indecency, as it would impose a wholesale reordering of programming available on television. The Supreme Court has noted that it upheld the indecency rules with respect to “a specific broadcast that represented a rather dramatic departure from traditional program content.” *Reno*, 521 U.S. at 867. This finding was recently borne out in comments filed with the Commission in a recent rulemaking proceeding, demonstrating that only a minute fraction of programs ever receive an indecency complaint, and only a tiny fraction of the complaints are considered actionable.<sup>139</sup> In sharp contrast, the National Television Violence Study suggested that “[v]iolence predominates on television.” Study at 9. As a result, a “safe harbor” requirement for violence could mean that much television programming would be relegated to what the D.C. Circuit has described as “broadcasting Siberia.” *Becker v. FCC*, 95 F.3d at 84. And safe harbor rules would have an even greater impact for DBS due to the effect

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cable, and no court has ever suggested they could be applied to DBS transmissions. Indeed, such a regulatory approach is inapplicable to a medium that has a nationwide footprint. *See Carlin Communications, Inc. v. FCC*, 749 F.2d 113 (2d Cir. 1984) (setting aside time-channeling regulation of phone services as violative of First Amendment).

<sup>138</sup> U.S. Census Bureau, *Profiles of General Demographic Characteristics, 2000 Census of Population and Housing* (May 2001) (36.0% of U.S. households have children under age 18).

<sup>139</sup> Comments of the Broadcasters’ Coalition, MB Docket No. 04-232, Aug. 27, 2004, at 5-9.

of time-zone differences on a national feed, which shrinks the permissible window for time-channelled content even further. *See also supra* note 137. Such widespread suppressions of constitutionally-protected speech is unprecedented.

Of course, the extent of the restriction would depend on the Commission's definition of "violent programming." It would be possible for the government to reduce somewhat the constitutional burden if it were to use a very narrow definition of the programming to be affected. Indeed, if the Commission attempted to use some definitional equivalent of obscenity it might avoid the most obvious First Amendment problems. But as Judge Edwards observed, such a narrow definition is likely to be an "empty set." *Regulating Violence on Television* at 1523-24 ("violent material would have to be at least as graphic and beyond the mainstream as sexually explicit material is to be obscene").

Regulations that tie a "safe harbor" requirement to V-chip ratings would not save the Commission's rules. Congress adopted the ratings as an expressly voluntary system, and mandating their use would change the constitutional dynamic of the rule. The V-chip ratings were created by industry agreement and were adopted voluntarily on the understanding that they were not to be considered regulatory categories.<sup>140</sup> To penalize programmers that fail to use the system would violate well-established constitutional principles. For example, various courts have held that the government may not use privately-developed ratings as means to restrict marketing of entertainment products.<sup>141</sup>

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<sup>140</sup> *See* Conf. Rpt. 104-458, 104th Cong., 2d Sess. 195 (Jan. 31, 1996) (V-chip ratings provisions are expressly voluntary).

<sup>141</sup> *E.g.*, *Neiderhiser v. Borough of Berwick*, 840 F.2d 213, 218 (3d Cir. 1988) (zoning exemption based on film ratings invalidated); *Drive In Theatres, Inc. v. Huskey*, 435 F.2d 228, 230 (4th Cir. 1970) (film censorship cannot be based upon "ratings of the motion picture industry"); *Gascoe, Ltd. v. Newtown Township*, 699 F.Supp. 1092, 1096 (E.D. Pa. 1988) (zoning exemption based on film ratings invalidated); *Swope v. Lubbers*, 560 F.Supp. 1328, 1334 (W.D. Mich. 1983) ("standards by which the movie industry rates its films do not correspond to the ... criteria

Such regulations would be unconstitutional regardless of the medium the government seeks to regulate. *See Notice* ¶ 21. While the discussion above primarily focuses on reasons proposed rules targeting broadcast channels would be unconstitutional, it is clear such regulations also are unconstitutional with respect to cable and similar subscription services like DBS and other satellite platforms.<sup>142</sup> The conclusion that regulation of violent programming is unconstitutional without respect to the medium regulated is consistent with courts' treatment of other media in striking down regulations against violent content. *See, e.g., Winters*, 333 U.S. 507 (magazines); *Webster*, 968 F.2d 684 (videotapes); *Eclipse Enters.*, 134 F.3d 63 (trading cards); *ISDA v. St. Louis*, 329 F.3d 954 (video games).

Finally, the solution of “time channeling” ignores the inexorable trend of technology that renders regulatory solutions based on time of day pointless. As noted *supra*, a growing number of households have DVRs that allow residents to watch programming whenever they want. Such technology makes regulatory solutions such as the safe harbor unnecessary by giving individuals greater selection over their programming options. At the same time, a rule that alters

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for determining whether an item merits constitutional protection or not”); *Engdahl v. City of Kenosha*, 317 F.Supp. 1133, 1136 (E.D. Wis. 1970) (ordinance to prevent persons under 18 from viewing films rated for adults enjoined where the “determination as to what is proper for minors in Kenosha is made by a private agency, the Motion Picture Association of America”).

<sup>142</sup> *See Turner I*, 512 U.S. at 637 (rejecting government contention in favor of must-carry rules that cable regulation should be analyzed under the same First Amendment standard as broadcast, on grounds that “rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation ... does not apply in the context of cable regulation”); *SBCA v. FCC*, 275 F.3d 337, 353-55 (4th Cir. 2001) (applying same level of constitutional scrutiny to satellite carry-one, carry-all rules as to cable must-carry in *Turner*). Notably, though *Turner* and *SCBA* applied intermediate scrutiny to the carriage regulations at issue, both held that strict scrutiny applies where the government seeks to regulate based on content, as would be the case here with “violent” programming. *See Turner I*, 512 U.S. at 642 (“Our precedents ... apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content”); *SBCA*, 275 F.3d at 353-54.

the scheduling of programs is superfluous when people can watch shows at any time, not just when they are aired. Quite simply, “safe harbor” is a regulatory solution whose time has passed.

**3. Regulation of Programming Content is Not the Least Restrictive Means of Achieving the Government’s Objective**

Any regulation that bans, restricts, time-channels, or otherwise limits viewer control over the receipt of purportedly “violent” program content flunks constitutional scrutiny for the additional reason that it would not be the least restrictive means of advancing the government’s interest (however defined) with respect to such programming. *E.g., Playboy Entmt.*, 529 U.S. at 813. Unlike at earlier stages in broadcast history, where TV options were limited to over-the-air signals that purportedly entered viewers’ homes “unbidden,” *see, e.g., Reno v. ACLU*, 521 U.S. at 844, those seeking televised entertainment have a broad range of options, over which they have total control. These include subscription service, videotape, DVD, video-on-demand, DVR, and similar options, not to mention many more broadcast channels than previously existed, and other non-TV platforms for audio-visual entertainment. *See supra* at 26-28. In addition, blocking technologies, program filters, programmable navigation devices, and other technical options have evolved to give viewers complete control over the TV programming that enters their homes, regardless whether it does so via broadcast, cable or satellite. *Id.*

It is obvious that these options are less restrictive than regulatory mandates. Determining what programming to watch, and when, is decided entirely by viewers and not the government. Indeed, as described in more detail below, it is clear that technological options are less restrictive alternatives, because *the government itself already has declared them as such.* *See infra* at 69-70. Congress specifically rejected bills that would have mandated audio warnings for programs that contain violence, required FCC publication of program violence ratings, and/or used FCC definitions for “violent video programming” and content-based

exemptions therefrom, in restricting children's access to such programs.<sup>143</sup> In rejecting these options and instead adopting what became Sections 303(w) and (x) of the Act, proponents advocated the V-chip approach as a "constructive solution that would avoid" the more restrictive alternative of "Government intervention" via direct content regulation. 141 Cong. Rec. S8225, S8232 (June 13, 1995) (statement of Sen. Lieberman). *Cf. Ashcroft v. ACLU*, 124 S.Ct. at 2793 ("not only has the Government failed to carry its burden of showing ... that the proposed alternative is less effective, but also a Government Commission appointed to consider the question has concluded just the opposite").

In view of these "plausible, less restrictive alternative[s]," the government would not be able to demonstrate that these options "will be ineffective to achieve its goals." *Playboy Entmt.*, 529 U.S. at 816. *See Ashcroft v. ACLU*, 124 S.Ct. at 2791. Because the government must give less intrusive alternatives a chance to work, and explain why less burdensome alternatives would fail, content-based government restrictions on violent programming would be overly restrictive. *See Denver Area Educ. Telecomms. Consortium v. FCC*, 518 U.S. 727, 758-759 (1996).

Critics may assert that the V-chip is not an adequate alternative because most parents do not yet use it. A recent survey by the Kaiser Family Foundation indicated that 15 percent of parents use the V-chip.<sup>144</sup> However, this finding, by itself, does not show that the V-chip has failed. Quite to the contrary, the survey found that most who use it agree that it helps control

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<sup>143</sup> *See infra* at 69-70 (citing *Children's Television Violence Protection Act of 1993*, S. 943, 103rd Cong., 1st Sess. (1993); *Television Violence Report Card Act of 1993*, S.973, 103rd Cong., 1st Sess. (1993); *Children's Protection from Violent Programming Act of 1993*, S.1383, 103rd Cong., 1st Sess. (1993); *Parents Television Empowerment Act of 1993*, H.R.2756, 103rd Cong., 1st Sess. (1993); *Television and Radio Program Violence Reduction Act of 1993*, H.R.2837, 103rd Cong. 1st Sess. 1993).

<sup>144</sup> *Parents, Media and Public Policy: A Kaiser Family Foundation Survey* (Fall 2004) at 7.

programming in their homes.<sup>145</sup> Moreover, parents also use the Parental Guidelines to help choose appropriate programming. The Kaiser survey found that half of all parents have used the Parental Guidelines to guide their families' viewing choices, and the vast majority of parents who have used the Parental Guidelines find them either "very" or "somewhat" useful.<sup>146</sup>

The fact that not all parents actually use the V-chip does not diminish its importance as an alternative to regulation. All parents have the option to use it, and those who do so report that it works. Others rely on the ratings to choose what programs are suitable for their households. As the Supreme Court very recently held in *Ashcroft v. ACLU*, the government is barred from "presum[ing] that parents lack the ability, not the will, to monitor what their children see," but rather must "enact[ ] programs to promote use of filtering" or similar options "to give parents the ability [to control what their children see] without subjecting protected speech to severe" restrictions. 124 S.Ct. at 2793.

The Supreme Court confirmed in this regard that the government must satisfy a substantial burden of proof in order to demonstrate that less restrictive measures are ineffective. It held that the government cannot discharge its constitutional obligation by showing that a proposed alternative "has some flaws." Rather, the government must demonstrate the alternative measures are "less effective" than the law or regulation in question. *Id.* at 2793. The Court specifically rejected the government's complaint that a certain percentage of parents might not use a voluntary blocking solution, pointing out that "[t]he need for parental cooperation does not automatically disqualify a proposed less restrictive alternative." *Id.*

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<sup>145</sup> Of those parents who have used the V-Chip, 61% find it "very useful," while 28% find it "somewhat useful." *Id.* at 7.

<sup>146</sup> Fifty percent of parents say they have used the television ratings. Of the parents who have used the guidelines, 38 percent found them "very useful" and 50 percent found them "somewhat useful." *Id.* at 4-5.

In *Playboy*, 529 U.S. at 816, the Supreme Court similarly invalidated a regulation intended to shield children from unsolicited sexually-oriented sounds and images from signal bleed. The Court held that the government had failed to meet its obligation to show that content regulation was the least restrictive means of addressing the problem, because the law in question provided a voluntary (*i.e.*, “opt-in”) blocking option that parents could use in addition to the mandatory restrictions. *Id.* at 826. It reached this conclusion despite the fact that “fewer than 0.5 percent of cable subscribers requested full blocking” during the time the more restrictive prohibition was enjoined and only the voluntary option was available. *Id.* at 816. In doing so, the *Playboy* Court noted the “uncomfortable fact” that “the public greeted [voluntary blocking] with a collective yawn” during the time it was the sole blocking alternative, but reasoned the less than enthusiastic reaction could be explained by the possibility that the problem it sought to address was less of a concern to parents than the government supposed, or that the voluntary option was insufficiently publicized. The same considerations apply here.

## **V. THE FCC LACKS STATUTORY AUTHORITY TO REGULATE TELEVISED VIOLENCE**

Another “legal constraint on ... the Commission” that does not allow it to regulate violent programming is a lack of statutory authority for such rules. *Notice* ¶ 2. As shown above, any regulation of violent programming necessarily involves program content, *see supra* Section IV, and the *Notice* effectively concedes as much in its discussion of studies that require “content analyses” to offer any conclusions. *Notice* ¶ 9. The Act specifically precludes censorship or interference with free speech rights with respect to radio communication and the imposition of content regulations on cable service. 47 U.S.C. §§ 326, 544(f)(1). These prohibitions, and the absence of authority delegated to the FCC in the Act for anything other than technical rules (together with First Amendment limits discussed above), provide a resounding “no” in answer to

the question of “whether the Commission currently has the authority to adopt” rules regulating violent television programming. *Notice* ¶ 23.

Sections 326 and 544(f)(1) preclude the Commission from imposing direct content regulations such as restrictions on violent television programming. Section 326 prohibits censorship and expressly withholds from government the power to “interfere with the right of free speech by means of radio communication.” 47 U.S.C. § 326. This denies to the FCC “the power of censorship” as well as the ability to promulgate any “regulation or condition” that interferes with speech. *Id.* Similarly, Section 544(f)(1) states that no “Federal agency,” defined to include the Commission, *id.* § 522(8), “may ... impose requirements regarding the ... content of cable services, except as expressly provided” in the Act. *Id.* § 544(f)(1). Accordingly, the FCC may not regulate televised violence unless it can cite provisions in the Act expressly authorizing such action, and it may take action only as far as permitted by the provisions on which it relies.

It is clear, however, that no provision in the Act grants the Commission *any* authority to address violent programming beyond the technological rules that already exist. *See* 47 C.F.R. § 15.120(b) (effectuating V-chip provisions in §§ 303(w)-(x) of Act). *See also id.* §§ 544(d)(2); 560 (imposing cable operator blocking and scrambling obligations upon subscriber request). As a threshold matter, the D.C. Circuit recently confirmed that, “[t]o regulate in the area of programming, the FCC must find its authority in provisions other than” general grants of power. *Motion Picture Ass’n of America v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (“*MPAA*”). Consequently, it is not as simple as asking whether *MPAA* “suggests that the Commission’s public interest authority does not extend to regulation of violent program content.” *Notice* ¶ 24. The decision in *MPAA* stands for the broader proposition that, without an affirmative grant of statutory authority, the FCC may not rely on its public interest authority, *or any other general grant of authority*, to regulate content. In addition, though the court analyzed only whether there

was statutory authority for the video description rules at issue, it described the need to interpret the Commission’s powers narrowly because any regulation of program content “invariably raise[s] First Amendment issues.” *MPAA*, 309 F.3d. at 805. While the court expressed no opinion on the constitutional issues, the thrust of its holding was that the Commission’s general public interest authority over programming is far less expansive than previously assumed.<sup>147</sup>

The D.C. Circuit held in *MPAA* that regardless of the asserted “salutary” nature of any rules or objectives the FCC might seek to pursue, “47 U.S.C. § 151, does not give the FCC unlimited authority to act as it sees fit with respect to all aspects of television transmission.” *MPAA*, 309 F.3d at 798, 807. Rather, “where [as here] the FCC promulgates regulations that significantly implicate program content, § 1 is not a source of authority.” *Id.* at 799. The court noted that the fact that Section 151 authorizes the Commission “‘to make such regulations ... that are consistent with the public interest’ ... is a very frail argument” with respect to “regulations [that] significantly implicate program content” as would rules regulating violent programming. *Id.* at 803 (quoting 47 U.S.C. § 151). The court thus required that the Commission look elsewhere when it seeks to regulate program content.<sup>148</sup>

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<sup>147</sup> The same conclusion follows from the D.C. Circuit’s decision in *Radio-Television News Directors Assn. v. FCC*, 229 F.3d 269, 270 (D.C. Cir. 2000) (per curiam), where the court ordered the Commission to repeal the personal attack and political editorial rules, holding that the FCC had the burden – and had failed – to justify rules that “interfere with editorial judgment of professional journalists and entangle the government in day-to-day operations of the media.”

<sup>148</sup> While there is no doubt violent programming regulations are content-based, *see supra* at 48-51, even if the Commission adopted rules it claimed were content-neutral, it could not avoid reversal on statutory authority grounds. *See MPAA*, 309 F.3d at 804 (whether “regulations are ‘content-neutral’ ... is irrelevant” where “[t]he question is whether § 1 provides ... authority to promulgate regulations that significantly regulate program content,” because “content-neutrality is irrelevant to the inquiry of ... delegated authority”). Indeed, “[o]ne of the reasons why § 1 has not been construed to allow the FCC to regulate programming content is because such regulations invariably raise First Amendment issues” such as those described in Section IV. *Id.* at 805 (citing *Turner I*, 512 U.S. at 651; *CBS v. Democratic Nat’l Comm.*, 412 U.S. 94, 126 (1973)).

The general grants of power cited in the *Notice* to “regulate the broadcast medium as the public interest requires” and to grant licenses in the public interest, *Notice* ¶ 24 (citing 47 U.S.C. §§ 303(r); 309(a)), do not provide such authority. As the D.C. Circuit held, such “necessary and proper” public interest provisions, including that found in Section 303(r), “simply cannot carry the weight” of authorizing regulations of program content “if the agency does not otherwise have the authority to promulgate the regulations in issue.” *MPAA*, 309 F.3d at 806. “The FCC must act pursuant to *delegated authority* before any ‘public interest’ inquiry is made,” *id.* (emphasis original), such that where there is no provision in the Act authorizing rules, as is the case with violent television programming, the Commission cannot cite provisions like Section 303(r) and 309(a) as bases for its regulation.<sup>149</sup>

The Commission’s limited authority in this area is confirmed by Sections 303(w)-(x), which set forth the FCC’s authority to adopt V-chip rules. The fact that these provisions require technical standards but otherwise do not authorize the FCC to regulate violent programming, “when coupled with the lack of authority under § 1 ... clearly supports the conclusion that the FCC is barred” from regulating violent programming. *MPAA*, 309 F.3d at 802. Just as with Section 713, which authorized the Commission to study closed captioning and video description, and to adopt closed captioning rules while remaining silent on video description rules, the adoption of V-chip mandates in the 1996 Telecommunications Act, without authorizing more,

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<sup>149</sup> Similarly, though the *Notice* does not cite it, there is no authority to act with respect to violent programming under Section 4(i) of the Act, which allows the FCC to adopt regulations “reasonably ancillary” to exercise the powers the Act does grant. *See MPAA*, 309 F.3d at 806 (discussing 47 U.S.C. § 154(i)). Given the absence of any statutory authority to regulate violent programming, the extent to which the Commission believes the “statutory prohibition against ‘obscene, indecent, or profane language’ ... does not implicate Section 326” is beside the point, *Notice* ¶ 25, since regulation in that area is authorized (to whatever extent it can be consistent with the First Amendment) by 14 U.S.C. § 1464. There is no similar statutory authority as to televised violence, and there is no constitutional or logically principled way for the Commission to “expand its definition of indecency to include violent programming.” *Id.*

undermines any claim that the Commission can adopt direct regulations to restrict violent programming. *See id.* at 801-02. Consequently, the answer to the question “[h]ow does Title V of the 1996 Act ... affect the Commission’s general authority in this area,” *Notice* ¶ 26, can only be that it fatally undermines any claim of authority to adopt regulations beyond technical V-chip requirements.<sup>150</sup>

It is a “cardinal canon” of statutory construction “that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-254 (1992). Here, Congress specifically considered – and rejected – FCC rulemaking authority for violent programming. Before congressional efforts ripened into the legislation that would form the Telecommunications Act’s V-chip provisions, Congress had before it several bills that would have conferred a variety of powers on the Commission other than simply establishing technical regulations to enable V-chip use. One such bill would have required the Commission to mandate that television broadcast licensees and cable operators air video and audio warnings before any program that may contain violence, to the effect that the programming could adversely affect children’s mental or physical health. *Children’s Television Violence Protection Act of 1993*, S. 943, 103rd Cong., 1st Sess. (1993). Another, the *Television Violence Report Card Act of 1993*, S. 973, 103rd Cong., 1st Sess. (1993), would have required FCC to evaluate and rate television programs with respect to the extent of violence they contain and to publish the ratings for public consumption. Yet another bill proposed to make it unlawful to distribute any violent video programming during hours when children are reasonably likely to comprise a substantial portion of the audience, and to have the FCC define “violent video

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<sup>150</sup> The “extent of the Commission’s current authority over cable television in this area” is similarly limited in view of the technical provisions in Sections 544(d)(2) and 560 of the Act.

programming” and the hours when children likely are watching, and to consider a number of specified content-based exemptions from the prohibition.<sup>151</sup> None of these bills were enacted.

Congress instead adopted what would become Sections 303(w) and (x) of the Act, and otherwise was silent on the role the FCC should play with respect to violent programming. Accordingly, there can be no claim of statutory authorization now given that “[f]ew principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987). See also *Railway Labor Executives’ Ass’n.*, 29 F.3d 655, 670 (D.C. Cir. 1994) (categorically rejecting argument that an agency “possesses *plenary* authority to act within a given area simply because Congress has endowed it with *some* authority to act in that area”) (emphases in original). As the D.C. Circuit held, “[t]he ... position ... that the adoption of rules is permissible because Congress did not expressly foreclose the possibility” is “entirely untenable.” *MPAA*, 309 F.3d at 805-06.

In this regard, it is notable that even if reference to legislative history were necessary, it confirms that direct FCC regulation of violent television programming never was intended. When the bill that would become Sections 303(w) and (x) was introduced, it was held out as a “constructive solution that would avoid ... Government intervention” such as direct content regulation. 141 Cong. Rec. S8225, S8232 (June 13, 1995) (statement of Sen. Lieberman). Congress made clear that it sought to “empower parents to exclude programming that comes into their homes, programming they find objectionable – not a Member of Congress, *not the FCC*, not anybody else, but what parents find objectionable[.]” *Id.* at S8227 (statement of Sen. Conrad)

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<sup>151</sup> *Children’s Protection from Violent Programming Act of 1993*, S.1383, 103rd Cong., 1st Sess. (1993). See also *Parents Television Empowerment Act of 1993*, H.R.2756, 103rd Cong., 1st Sess. (1993); *Television and Radio Program Violence Reduction Act of 1993*, H.R.2837, 103rd Cong. 1st Sess. 1993).

(emphasis added). *See also id.* at S9228 (“we have gone to great lengths to make sure what we are offering ... is a voluntary system”). Similarly, debate before the House stressed that: “There is no mandate. There is no enforcement mechanism. There is absolutely no connective tissue between this bill and any first amendment violation. The only objective we have is to give power to parents in their own living rooms.” 141 Cong. Rec. H8481, 8486 (Aug. 4, 1995). Such clear statements of intent to limit any government authority to directly regulate program content, even to address violence issues, preclude a Commission claim of authority to do so here.

## **VI. CONCLUSION**

The Media Associations caution the Commission that any attempt to regulate televised violence will run afoul of the Constitution and the Commission’s own statutory authority. The lack of an intelligible definition of “violence,” among other things, makes it impossible for the FCC to craft a standard that would satisfy strict constitutional scrutiny. Even if no legal barriers existed, however, content regulation should be the last resort – not the first – since individuals can use available technology to select or reject television programming tailored to their own needs and preferences. In any event, the Commission should take a hard look at the evidence typically put forward in support of such rules. The degree to which the available research has been hyped, distorted, and used to make extravagant claims should raise warning flags for an agency that must “walk a ‘tightrope’” to preserve the First Amendment values written into the Radio Act and its successor, the Communications Act.” *CBS v. Democratic Nat’l Comm.*, 412 U.S. at 117. While there may be “a correlation in Germany between the decline of the stork population and the falling human birth rate, ... [t]his does not prove that storks bring babies.” *Videodrome*, *THE ECONOMIST*, August 13, 1994 at 73. And so it is with the many claims about televised violence. There is no basis for the Commission to consider adopting rules in this area.

Respectfully submitted,

**American Advertising Federation  
American Association of Advertising Agencies  
Association of National Advertisers, Inc.  
Motion Picture Association of America  
National Association of Broadcasters  
Satellite Broadcasting and Communications  
Association**

By /s/ Robert Corn-Revere

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October 15, 2004

**ATTACHMENT**

**The American Advertising Federation**, headquartered in Washington, D.C., is the trade association that represents 50,000 professionals in the advertising industry. AAF's 130 corporate members are advertisers, agencies and media companies that comprise the nation's leading brands and corporations. AAF has a national network of 200 ad clubs and connects the industry with an academic base through its 215 college chapters.

**The American Association of Advertising Agencies**, founded in 1917, is the national trade association representing the advertising business in the United States. Its nearly 450 members represent virtually all the large, multi-national advertising agencies, as well as hundreds of small and mid-sized agencies, which together maintain 13,000 offices throughout the country. Its membership produces approximately 75 percent of the total advertising volume placed by agencies nationwide.

**The Association of National Advertisers, Inc.** is the advertising industry's oldest trade association, representing companies offering more than 8,000 brands of goods and services, and is the only organization dedicated to companies that advertise on a national and regional basis. Its membership is a cross-section of American industry, consisting of manufacturers, retailers and service providers across the country. ANA serves the needs of its members by providing marketing and advertising industry leadership, serving as an information resource, and facilitating industry-wide networking.

**The Motion Picture Association of America** is a trade association representing major producers and distributors of theatrical motion pictures, television programs, and home video material.

**The National Association of Broadcasters** is the full-service trade association representing the interests of free, over-the-air radio and television broadcasters, serving as the industry's voice before the Federal Communications Commission other federal agencies,

Congress, and the courts. Organized in 1923, NAB currently represents approximately 6800 radio stations and over 1100 television stations. NAB seeks to preserve and enhance its members' ability to freely disseminate programming and information of all types.

**The Satellite Broadcasting and Communications Association** is the national trade organization representing all segments of the satellite industry. It is committed to expanding the utilization of satellite technology for the broadcast delivery of video, audio, data, music, voice, interactive and broadband services. SBCA is composed of the DBS, C-band, broadband, satellite radio, and other satellite service providers, content providers, equipment manufacturers, distributors, retailers, encryption vendors, and national and regional distribution companies that make up the satellite services industry.

## **APPENDIX**

*Inquiry on the Effects of Televised Violence:  
What Does the Scientific Research Show?*

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University of Toronto

**SUMMARY**

The Federal Communications Commission (“FCC”) initiated an inquiry and sought public comment on “issues relating to the presentation of violent programming and its impact on children.” *Violent Television Programming and its Impact on Children*, FCC 04-175 (released July 28, 2004) (“*Notice*”). In particular, the FCC seeks updated information on research conducted on this issue since the Surgeon General’s 2001 report on youth violence and the Federal Trade Commission’s 2000 report on marketing violent entertainment to children. The *Notice* asks for informed commentary on more recent studies, and notes that “numerous studies have demonstrated the harmful effects of media violence on children.” *Notice* ¶ 7. The *Notice* also says that research has continued “[b]uttressing the conclusion that childhood exposure to media violence lasts into adulthood and increases aggressive behavior.” *Notice* ¶ 6.

For reasons set forth in this report, I disagree with the Commission’s characterization of the research in this area. I am a professor of psychology at the University of Toronto. I grew up in New York City, did my undergraduate work at Harvard and my graduate work at Yale. I taught at Stanford and then Columbia and moved to the University of Toronto as chair of the department. My degree is in Social Psychology and most of my work has involved social influence – how people affect each other and are affected by social situations. (My *curriculum vitae* is attached)

In 1981 I taught a seminar on the effect of television violence on aggression. I had read for years that the research demonstrated beyond question that exposure to media violence made

children more aggressive, and I thought it would be interesting to read the research with a group of faculty and students. The class was attended by five graduate students and three or four faculty besides me. We were all amazed to discover that the research did not show what it was usually described as showing. Rather than indicating that exposure to television violence caused aggression, almost all of the studies indicated that there was no effect of exposure on aggression. Some of the studies that were most often cited as showing an effect, actually showed nothing of the kind. I was upset that many psychologists were giving the wrong impression of the research findings. So I spent a year or so reviewing the research, and in 1984 published a paper (“Freedman, 1984”), in the *Psychological Bulletin*, a prestigious journal of the American Psychological Association. In this paper I tried to set the record straight – to show that the research has been cited incorrectly and that, in fact, the scientific research did not support the notion that exposure to media violence caused aggression (what I called the “causal hypothesis”). Since then I have written several papers and given quite a few talks on this subject, always with the same conclusion.

Starting in 1999 I conducted an exhaustive review of all of the available research, and in 2002 I published a book that reviewed all of the evidence (MEDIA VIOLENCE AND ITS EFFECT ON AGGRESSION). On the basis of this comprehensive examination of the evidence, I concluded once again that the scientific research does not support the causal hypothesis.

In response to the Notice, I have been asked to review newer studies of televised violence since 2000, to analyze their findings and to answer some specific questions asked in the Notice. My analysis is set forth in greater detail below. Generally, however, my review led to the following conclusions:

1. The scientific evidence does not support the hypothesis that exposure to media violence causes people to be aggressive. This was true in 2002 when I

published my comprehensive review of the research. The few studies done since then do not add appreciably to the evidence and provide no reason to change that conclusion.

2. Those who argue in favor of the causal hypothesis wrote a review for the Surgeon General in which they presumably presented as strong a case as they could for their position. They have submitted this paper to the FCC as well. The Surgeon General did not accept their review as it stood – and the FCC should not, either. It is a highly selective, inaccurate and biased presentation of the evidence. Indeed, that the review is so flawed is an indication of its weakness.
3. There is no convincing evidence that exposure to media violence causes desensitization to real violence. However, there is too little research to draw any firm conclusions.
4. Defining violence is relatively simple in principle as long as one distinguishes between real aggression and play aggression. However, identifying aggression or violence is often quite difficult because it is very much dependent on the intentions of the actor and the context in which the actions take place. This is especially true in the research, which has used a wide variety of definitions and measures, some of which have little or no relation to real aggression. Thus, relating any policy or actions to the research is highly problematic even if one thought that media violence is harmful (which, to repeat, I do not.).
5. There is no evidence that one kind of portrayal of violence is more or less harmful than another. Any assertions about this are not based on scientific research.
6. By and large, young children can tell the difference between reality and fiction.
7. All of these statements refer to fictional or fictionalized depictions of violence, not to images of real violence in the news or in sports. There is too little evidence to know anything about the effect of media coverage of real violence. However, I would argue that anyone who believes that exposure to fictional violence has harmful effects must surely accept that exposure to real violence must have at least the same kind of effects and probably stronger ones.

## THE FCC'S TASK

The FCC is undertaking a review of the scientific research on the important topic of the effect of media violence. This is a difficult undertaking, because it is probably not possible for those at the FCC to read all of the original research themselves. Rather, they must depend on the submissions they receive. Unfortunately, they will no doubt get conflicting descriptions of the state of knowledge. Some argue that the evidence overwhelmingly demonstrates that exposure to media violence causes children and perhaps adults to become more aggressive and to commit violent crimes. Others, including me, disagree with that assessment and believe the scientific evidence does not support the idea that exposure to violent media causes aggression or violent crime.

Thus, the FCC presumably will be faced with submissions that directly contradict each other, and the FCC is not in a position to evaluate all of the evidence itself. Under these circumstances, when there are conflicting stories, those who make judgments must depend on the consistency in the statements they receive and on other cues to decide which side to believe. Therefore, in this submission, in addition to making an argument for the position that media violence does not cause aggression, I shall try to point out some obvious flaws and mistakes in statements made by those who take the opposite position. I hope that those who read the various submissions will notice the errors of omission and commission, and will accordingly be less likely to trust the statements by those who make these errors.

### **Errors in describing the number of research studies**

Let me start by echoing the FCC's apparent concern about the enormous discrepancy in the number of research studies cited in various statements on this issue. As the *Notice* points out, there has been great variation in the number of studies cited by those who argue that exposure to

television violence is a cause of aggression. Although some would excuse these errors by saying they were due merely to confusion about what to count, I believe the discrepancy is not a matter of confusion but almost certainly due to lack of knowledge. Consider the statement by the American Academy of Pediatrics (“AAP”). The AAP represents physicians who have the grave responsibilities of caring for our children and advising parents on the medical needs of their children. Surely, this group would never advise parents to give children vaccinations that were not safe or were ineffective or to avoid medicines or foods that had not been shown conclusively to be harmful. Yet the AAP issued a statement (in 2001) stating that exposure to television violence was harmful, and urging parents to restrict children’s access to television violence and, indeed, to avoid any television exposure for children under 2 years of age. In making the statement that television violence was harmful, the AAP referred to over 3500 research studies with all but 18 showing a positive relationship (between exposure to violence and aggression). As anyone who is familiar with the research knows, this statement is wildly inaccurate. There are between 200 and 250 separate research studies on this topic (not over 3500), and it is entirely false that only 18 have failed to show a relationship. Moreover, this is not simply a matter of counting all papers rather than just independent research studies. That would be a careless, but perhaps forgivable, excuse. But that is not the reason for the error. In the first place, the statement clearly refers to “research studies.” And the reference to the failed studies is not a round number. It does not say about 20 or about 30 – it says 18, which is a precise number. One would assume the AAP has the list of those 18 and could readily produce it. But they do not have such a list, because there is no such list. Their statement is obviously made without any detailed knowledge of the research. Other organizations, including the American Psychological Association, which surely should know better, have made similar though not quite as spectacular

errors when referring to the number of studies. Therefore, I would argue that it is obvious that these organizations have issued their potentially very important statements without knowing the scientific literature. One can only wonder what they based them on, but it certainly was not scientific expertise.

In this context it is worth noting that the errors are always in the direction that would tend to make the statements of harm more impressive. That is, none of these organizations has understated the number of studies that supposedly supported the notion that media violence was harmful, nor overstated the number of studies that failed to support this effect. In all instances of which I am aware, the errors have been to overstate the total number of studies and to understate or even not mention the failures.

The reason for detailing this is that it is only one example, albeit the most extreme, of inaccurate statements about this topic being made by prestigious and presumably careful organizations. It is important for the FCC to note that many such statements have been made that, when considered carefully, indicate that the organization involved does not know the status of the research and is not taking a position based on a rigorous examination of the scientific research. Rather, all too often, important organizations on which people rely, have made statements based on either their intuition or on what others have said.

Although some have stated that the evidence for a causal effect of exposure to media violence on aggression is overwhelming, that is not correct. Indeed, the evidence is weak and inconsistent. This is not the place for reviewing this research again. I reviewed much of it 1984 and did an exhaustive review in 2002 (Freedman, 1984, 2002). After reading all the published research carefully, I concluded that the evidence does not support the hypothesis that exposure

to film or television violence causes children or adults to be aggressive. That review has never been seriously challenged, and I stand by it.

I support my position in several ways. First, I point out that it is inconsistent with what has occurred in society; second, I show that the most recent research does not add much if anything to where things stood a few years ago; and third, I demonstrate the weaknesses, inaccuracies, and outright deceptions in the strongest, most up-to-date review done by those who favor the hypothesis that media violence is harmful.

### **Decline in rate of violent crime since 1992**

Let me put this into the context of what has actually happened in our society regarding crime rates. A decade or so after television became generally available in the United States, the rate of violent crime began to rise and increased sharply until about 1980. (The same happened in Canada). This made many people see a connection between television and violent crime. They argued that violence on television caused children to become more aggressive and desensitized to real violence, and these effects in turn were a major cause of the increase in violent crime. This was a plausible idea, although it should be noted that no similar increase in violent crime occurred after the introduction of television into Europe or Japan, where the programming was just as violent or more so. Nevertheless, those who believed in the effect made vehement arguments about the harmful effects of media violence.

However, one must look at these kinds of major social phenomena over a long period. If television violence caused the increase in violent crime, one should expect the effect to continue. That is, if exposure to media violence in 1965 caused children then to become more aggressive, it should have the same effect whatever the time period. Therefore, we must consider the situation today. Starting about 1990, video games with a lot of violent content became extremely

popular, so that many if not most young males played such games and were not only exposed to violent images but took part in the violence that occurred in the games. In addition, rap music, with its violent content, became very popular about the same time. Thus, since 1990 children in our society have been exposed to violent images in television and film, as well as to violent video games and rap music. If exposure to media violence caused children to become aggressive, it seems reasonable to have expected an increase in violent crime and in violent incidents in schools, and this increase should have occurred especially among younger people.

Yet the opposite has occurred. Not only has there not been an increase in violent crime, but there has been perhaps the most dramatic decrease in our nation's history. This is based on both crimes reported to and by police, and on the victimization surveys which pick up about twice as many crimes. Regardless of which method is used, the rate of violent crime has dropped to the point that by almost any measure it is now below the rate before television was introduced. I have heard people say "yes, but the rate of violent crimes by young people is actually increasing." That is not true. This decrease in violent crime has occurred for all age groups and is, in fact, especially pronounced among teenagers. Moreover, despite a few terrible and highly publicized incidents, the number of homicides in our schools has decreased sharply and is at the lowest level in decades. If media violence causes aggression, there should have been an increase in violent crime in the 90's: that there was a decrease surely is inconsistent with the causal effect of media violence and might be considered an argument against it.

I readily acknowledge that this is not a rigorous, scientific argument. The actual reasons for the decrease could be so powerful that they overwhelmed the effect of media violence. Perhaps if it were not for media violence, the decrease in violent crime would have been ever greater. It is conceivable that the sharpest, most sustained drop in violent crime ever seen would

have been even sharper if only there were no violence in the media. This is theoretically possible, but it certainly requires a stretch of the imagination to believe. Let me put it this way: if violent crime had continued to rise after 1980, there is little doubt that it would have been blamed in part on media violence; that it did not rise but rather sank surely should be considered an argument against the harmful effect of media violence.

### **Status of the Research**

Having put this in the context of what is actually happening to the rate of violence in our society, let me turn to the research. From the research there is one clear finding on which everyone agrees – more aggressive children watch more violent television and films than less aggressive children. The relationship is not strong – somewhere between one and ten percent of the variation in aggression is related to exposure to media violence. So at the most, media violence is not a major factor. But it is very important to remember that this relationship between aggressiveness and preference for violent media provides no evidence of causality. The simplest explanation, the one that must be disproved, is that some children have more aggressive personalities or dispositions than others and that these children like more violent media, play more violent sports, and engage in more aggressive behavior. To demonstrate that violent media *cause* aggressiveness, it is necessary to rule out this simple, intuitive explanation that is almost certainly at least partially true.

Consider that boys and girls differ greatly in both aggressiveness and exposure to media violence. As anyone knows who has ever watched boys and girls in a schoolyard, or had boys and girls in their home, or has read any of the hundreds of scientific papers on the subject, boys are more physically aggressive than girls. It is a fact of life. We know also that boys are much more likely than girls to prefer violent programs and films. There is ample evidence for this if

anyone doubts it. So boys are more aggressive and like more aggressive media. Surely no one would seriously suggest that the reason boys are more aggressive than girls is that boys watch more violent programs. This would be ridiculous and would go against the most basic knowledge of boys and girls. It is not the exposure to media violence that makes boys more aggressive – it is that boys are generally more aggressive in many ways, and that includes liking violent media and acting aggressively themselves.

In the same way, we cannot assume there is any causal relationship between exposure to violent media and aggressiveness. Just as boys are more aggressive and are exposed to more violent media than girls, within both sexes some individuals are more aggressive and are exposed to more violent media than others. That's the kind of people they are. It is logically possible that there is more to it than that. Perhaps exposure to violent media plays some role in making them more aggressive.. But the mere fact that more aggressive children watch more violent media provides not the slightest evidence that exposure to the violent media causes them to be aggressive. That remains to be proven by the scientific research, and it has not been.

Until 2002, there was quite a lot of research (between 200 and 250 separate studies) and little evidence to support the notion that exposure to media violence causes aggression. Some studies provided some evidence consistent with that view, but more did not. Overall, the results were inconsistent, weak, and not at the level one would ordinarily accept as demonstrating a causal effect. There is no need to repeat the review or the detailed analysis, except to make a few general points.

(1)While laboratory experiments provided the best evidence in favor of a causal relationship, this kind of research is deeply flawed due to problems inherent in the artificial nature of the situation. You cannot compare watching a program that someone else chooses for

you and seeing it for a few minutes, with a diet of viewing television programs that the people have chosen themselves.

Another serious problem in all of this work has been the lack of comparability of the “violent” and “non-violent” materials. To show that a violent program has a different effect than a non-violent program, one must make the programs as similar as possible in everything except the presence of violence. If they are not similar, any effects could be due to other differences, such as the fact that violent programs tend to be more exciting and interesting to young boys than non-violent ones. An extreme example of this lack of comparability is a study that compared an exciting, violent prize fight with a travelogue about canal boating. Obviously, the prize fight was more exciting and interesting to these viewers than was canal boating.

Yet another problem that I will discuss more later has been the mostly poor measures of aggression used in this work. It is not easy to measure real aggression, because clearly one cannot allow participants in research to get into fights, and certainly not to hurt each other. Therefore, most of the studies have used what charitably might be called “analogues” for aggression. Since no real aggression is measured, it is difficult and very risky to generalize from the results to the effects on real aggression in the real world.

Finally, the laboratory research involved the almost unavoidable problem of what we call “demand effects.” Participants in research always wonder what the experimenter is looking for or expects. When young children (or even college students) are brought into the laboratory, shown a violent film, and then given a chance to act aggressively, they must ask themselves what is going on. Why were they shown that film? Very few studies even attempt to provide a sensible answer. In the absence of an explanation, it is reasonable for the participants to conclude that the experimenter is interested in aggression and wants or expects them to act

aggressively. That is, they feel pressure or “demand” to do what the experimenter wants. Thus, any effects of the violent film could be due to this demand pressure. Surprisingly, very few of the studies even attempted to minimize this problem.

All told, from a purely methodological point of view, the laboratory research has many problems. Because of this, the results of laboratory experiments should be given little weight. In any case, the results of the laboratory experiments were far from impressive in terms of the causal hypothesis. Fewer than half produced supportive results. More to the point, when those that used measures of aggression that had no relationship to real aggression (punching a Bobo doll, thinking of aggressive words, etc.), fewer than 30% found significant effects consistent with the causal hypothesis while over 50% failed to support it. So even if one were to accept the laboratory research as entirely valid, it provides at best weak and inconsistent support for the notion that exposure to violent media cause aggression.

(2) All of methods other than the laboratory experiments produced even weaker results. A large majority of the studies failed to find evidence supporting the causal hypothesis and many produced results clearly inconsistent with the idea that exposure to media violence causes aggression.

(3) Some studies that used innovative methods and considered large-scale effects all found that actual exposure to actual violent television did not increase violent crime.

(4) With the exception of a few small-scale laboratory experiments, there was no evidence that exposure to violent media desensitizes people to actual violence (although it should be said that there is so little research on this topic that no strong statements should be made on either side of the issue.)

## ANALYSIS OF RECENT STUDIES

Since 2002 there has been little research on whether exposure to media violence causes aggression. The *Notice* states that research done since then “buttresses the conclusion that childhood exposure to media violence lasts into adulthood and increases aggressive behavior.” I disagree with this statement. As far as I know there have been only a few relevant studies published in the last few years, and none of them adds materially to the status of the scientific evidence. I address each of the new studies below.

### **Huesmann *et al.*, 2003**

This paper reports the third phase of a study in which data were collected on children in 1977 and again two years later and then in 1995 when the children were adults. The method is similar to that of other longitudinal studies on this topic. At the first wave of the study, the researchers collected measures of aggressiveness and exposure to media violence, as well as (not typical of all of this research) of identification with aggressive characters in the media and how realistic the children rated the violence in the media. During the last phase, measures were obtained of the adult’s exposure to violent media and their aggression. Let me say, as I have always said about this work, that it is very nicely done and one must be impressed by the amount of effort expended to follow people for such a long period. Although one can quibble about some aspects of the method, it is very difficult research to do, and this study does it very well.

Before discussing the results of this study, let me be as clear as I can that they relate to two quite different questions. The first is whether children who watch a lot of violent media are more aggressive than those who watch less. The answer, found in many previous studies as well as in this one, is very simply yes. Children who watch more violent media are more aggressive when they are young, and continue to be more aggressive throughout their lives. I agree with the

description of the results given in the paper's abstract. Childhood exposure to media violence predicts young adult aggressive behavior, as do childhood identification with violent characters in the media and the perception that media violence is realistic. And, although not mentioned in the abstract, childhood aggression also predicts young adult aggressive behavior.

In other words, a constellation of childhood behaviors, preferences and attitudes is related to aggression in childhood and continues to be related to aggression as the children become adults. Although children change a great deal as they get older, aggressiveness seems to be quite consistent. Let me be clear that this does not mean that an aggressive child necessarily becomes an aggressive adult. The consistency is far from perfect, so that many aggressive children become non-aggressive adults, and many non-aggressive children become aggressive adults. What the research shows is that overall aggressiveness appears to be more consistent than almost any other trait that has been studied.

For the purposes of the FCC's inquiry, the most important point is that prediction is by no means the same as causation. Without further data and analysis, there is nothing to indicate that any of these childhood factors *cause* young adult aggression. Rather, it is a fact of life that, just as boys are more aggressive than girls, some boys and some girls are more aggressive than others. And these more aggressive children watch more violent media, engage in more aggressive sports, are more aggressive themselves, and continue to be this way years later.

This leads to the second question, which is whether exposure to violent media has a *causal* effect on aggression. This is, of course, the key question, and it is much more difficult to answer than the first question. As noted above, people who are aggressive when they are young children tend to be aggressive as adults. And aggressive children also tend to watch a lot of violent media. Therefore, if one wants to show that exposure to violent media affects later

aggression, one must take into account that some people are by nature, disposition or early training, more aggressive than others. To demonstrate a causal effect of exposure to media violence, it is necessary to show that among children who are equally aggressive when young, those who watch a lot of violent television become more aggressive than those who watch little violent television. This is difficult to demonstrate. Careful, accurate and complete statistical analyses of the right kind could possibly provide results that are consistent with the causal explanation, though even the best result cannot provide conclusive evidence of causality.

It is important to make this as clear as possible. To provide evidence for causality, it is necessary to rule out what has to be the default explanation, namely that some people are more aggressive than others when they are children and continue to be when they are adults. These people on average have a greater preference for aggressive things than do less aggressive people. So, aggressive children like violent TV and films, play more violent video games, identify with the aggressive characters in the media, and may be more likely to believe that media violence is realistic. It is likely (though I know of little or no evidence for this) that these aggressive people also have more aggressive friends, identify with real-life aggressive people, prefer aggressive sports, and in general whatever the activity or behavior, make more aggressive choices than do less aggressive people. And for our purposes, the key point is that these aggressive people engage in more aggressive behavior of all kinds when they are children and do this throughout life.

Given this, almost any measure that involves aggression or violence in childhood will predict to aggressiveness in adulthood. These predictions do not rely on any causal effects – they are due simply to the stability of the aggressive personality or disposition. Therefore, the only way to make an argument for a causal effect of anything that occurs in childhood on aggressive behavior in adulthood, is necessarily to hold constant the aggressiveness of the

children. This is not easy to do entirely, because even the best measures of childhood aggression are far from perfect. But at the very least, all statistical analyses purporting to show a causal effect must eliminate the effect of early aggressiveness.

Unfortunately, the Huesmann paper does not consistently distinguish between the simple relationship between early exposure (or early aggression) and later aggression on the one hand, and the evidence for a causal effect on the other. The most striking instance of this blurring of the lines is Table 5. This table compared adults who as children watched a lot of violent programs with those who watched less. It shows that those who watched the most violent media as children were more likely to engage in various aggressive behaviors as adults. The table and the text suggest that this indicates an effect of exposure, but that is not correct. We know that the most aggressive children also watch the most violent media, so all this table shows is that aggressiveness persists from childhood to young adulthood, which we already know. The same is true for Figure 2, which displays data that are not corrected for childhood aggressiveness. The authors know very well that the table and figure have no relevance to the question of causation, because there is no control for early aggressiveness. The only interesting aspect of both the table and the figure is that, apparently, differences occur only for the very highest viewers of media violence. That is, those who watch the least (the bottom 20%) are no different in terms of young adult aggression than those who watch a moderate amount (the middle 60%). I'll return later to that anomaly and what it might mean.

Most of the analyses are totally or largely irrelevant to the question of causality. We should therefore focus on the only analyses that matter, namely, the multiple regressions shown in Table 6 – 8. Multiple regressions are complex statistical methods of trying to show, in this case, that early exposure to violence is related to later aggression over and above the relationship

of early aggression to later aggression. To repeat, we know that aggression is very stable so those who are aggressive when young are likely to be more aggressive when older. We also know that those who are aggressive when young watch more violent programs than those who are less aggressive. So any relationship between early exposure and later aggression could be due entirely to the relationship between early aggression and early exposure. The multiple regression tries to separate the relationship of early and later aggression from the relationship between early exposure and later aggression.

The second regressions in Table 6 and 7 are the only evidence in favor of a causal effect the authors present. For both males and females, adding childhood exposure to violent media adds a small amount above just childhood aggression to the relationship with young adult aggression. This is the traditional method of trying to show a causal effect, and although the addition is very small, it is significant. Some previous studies have found the same effects and some have failed to find them, so this paper adds nothing striking to the body of research.

I should note, for those interested in statistical details, that the authors have done their analyses somewhat differently from the way they are usually done. The typical method is to enter childhood aggression first and then, making sure that it continues to be entered first, add the exposure measure. That procedure really holds constant childhood aggression and assesses whether adding exposure increases the relationship. For some reason, the authors chose to enter both factors freely in the second analysis. This does not hold childhood aggression constant and, in this case, obviously makes the apparent contribution of exposure greater. It is possible that if the analysis were done the usual way, the increase would not be significant. I think it is an indication of an attempt by the authors to make the results appear as strong as possible.

A more important point is that two other factors also contribute to the relationship – identification with aggressive characters, and the belief that media violence is realistic. And, of greatest importance, all three together (exposure, identification and belief in the reality measure) add no more than any one of them alone. Another analysis, shown in Table 8, indicates an interaction between exposure and each of the other variables, although for some reason, it does not show what happens when one enters all of the interactive terms as would be expected. These interactive effects appear only for males, not for females (that analysis is not shown).

What are we to make of this pattern of results? The authors claim that the results indicate that exposure to violent media makes children more aggressive and that for males, identification with aggressive characters and the perception that the violence is realistic “exacerbate” the effect. (Just why this does not occur for females is not discussed.) However, the fact that these other factors make about the same (or slightly larger) contribution as exposure and that adding all three does not substantially increase the contribution, suggests that these three are highly interrelated. That is, those who are high in exposure are also high in the other factors. Moreover, that the factors contribute in roughly equal proportion suggests they may well measure essentially the same thing, and the most obvious thing they are measuring is disposition to be aggressive. As previously noted, aggressive children watch more violent television and also probably believe it is more realistic and identify more with the aggressive characters. Since no measure of aggression is perfect, it is quite likely that measuring each of these factors separately provides a somewhat better measure of aggressiveness than any one of them alone. That would explain why each of these factors adds a little something to the relationship between early aggression and later aggression – improving the measurement of early aggressiveness would increase the relationship.

Let me put this slightly differently. Whenever you look at the relationship between two measures, its strength depends in part on the real, underlying relationship and in part on how good your measures are. Even if there is a strong relationship, it may appear weak because your measures are less than perfect. If you improve your measures, the statistical relationship should also improve. In reference to this study, I would argue that the measure of early aggression, the measure of early exposure to media violence, the measure of identification with the aggressive characters, and the measure of the reality of the violence, all are related to aggressive personality. Each one measures it to some extent. One might think that the measure by peers of how aggressive the children are would be the best measure, and it may well be. But it captures only what other children observe, is probably affected to some extent by the children's popularity or lack of it, and is obviously not perfect. The children's direct report of exposure to violent media is probably more accurate, since they know exactly what they watch, and their other self-reports may also be less affected by extraneous factors. Assuming they are all slightly different but strongly related indications of the extent to which the children have aggressive personalities, they should each be related to later aggression.

However, because they are strongly interrelated, once you use two of them, adding a third might not make much difference. That is precisely the pattern that was found, and it is entirely consistent with the explanation that the multiple regression is showing merely the relationship between early aggressive personality and later aggression. The fact that the interactive terms also add something is consistent with this explanation, since it is likely that a child who is at the top end on several of these measures is more aggressive than one who is at the top on only one. Indeed, this is supported by the pattern that I described above in which only the top 20% in terms of exposure differ from the others in the likelihood of specific aggressive acts. If exposure had a

causal effect on aggression, one would expect it to be continuous so that the top 20% would be higher than the middle 60%, who would be higher than the bottom 20%. That this does not occur suggests that the measure is meaningful for only the top group (at least in this study – it works differently in other studies). That also may be true of the other measures. If so, combining the measures interactively would take advantage of this rather odd pattern, and would provide a stronger relationship of the early measures with later aggression.

Let me summarize my response to this study. It is very nicely designed and conducted. The results for the simple relationship are straightforward – early exposure to violent media is related to later aggression, as are presumably early aggressiveness, early identification with violent characters, and early belief in the realism of media violence. The results are much less clear and straightforward with regards to the argument for a causal effect. At most, accepting the analyses uncritically as they are presented, the study provides some slight indication of a causal effect that is consistent with that found in other studies but that has often not been found in similar studies. This finding does not change the status of the scientific research.

However, I am doubtful of that result and of that explanation. I believe that a better and more consistent explanation is that the finding shows merely that early aggressiveness is related to later aggression, and that the better your measure of the former, the stronger this relationship will appear statistically. If this interpretation is accepted, the study provides no evidence for a causal effect.

**Johnson, *et al.*, 2002**

Although this study received a lot of press when it was published, it is quite a step below most of the relevant work. Whereas other studies, including the Huesmann study just discussed, include careful measures of early aggressiveness and of various other factors, this study has no

meaningful measure of childhood aggressiveness, and whereas almost all of the better research included a complex and sophisticated measure of exposure to media violence, this study does not even attempt to measure it, but rather relies on a measure of total television viewing. It is also worth noting that the study focuses on the supposed effect of television viewing during adolescence, whereas virtually all the previous work found little or no relationship between any measure of media exposure during adolescence and aggression. Unfortunately, the results were hyped in a press release by the journal *Science* and then were picked up by and incorrectly described by much of the popular press. The fact is, this study is largely irrelevant to our concerns, since it was not designed to reveal anything about a causal effect of exposure to media violence and therefore does not – and could not – reveal anything about such an effect.

I will not bother reviewing the methodology of this study, since most of it is not relevant. The main finding is that there is a strong relationship between amount of TV viewing at age 14 and aggressive acts several years later; and between TV viewing at age 22 and aggressive acts at age 30. Although this is largely irrelevant to our concerns, it is interesting to note that almost all the other research has reported very low or no correlation between exposure to media violence and aggression during the teenage years, and no study has found any relation between TV viewing in adulthood and aggression. In fact, most of those who write about this assume that whatever effects occur, they happen in the early years. Thus, if anything, the Johnson study's finding confuses even what most of us thought we knew about the relationship between viewing and aggression. On the other hand, since it is total TV viewing and not exposure to violence, perhaps it involves entirely different processes.

The only result of real interest is in Figure 3, which indicates that among those who watch very little TV, there is no difference between those with a prior history of aggression and

those without one in terms of subsequent aggressive acts, whereas there is a large difference among those who watch 1-3 or more than 3 hours a day. However, this is made less impressive and harder to understand by the fact that the difference is greater among those who watch 1-3 hours than among those who watch more than 3 hours. Almost any model of the relationship between viewing and aggression, especially one that involved a causal effect, would assume a greater effect with more exposure. That those who are exposed most show a smaller difference than those who are exposed an intermediate amount, makes it highly unlikely the results are due to a causal effect of exposure. Finally, it must be emphasized that the study measured only total exposure to television, not exposure to violent media, so it is not really dealing with the same issues as the other research. Therefore, rather than providing any clarity or new results to support a causal effect (as was reported in the press), the results of this study are both confusing and irrelevant.

### **Research on brain activity**

There are also some studies using brain imaging techniques and other methods to assess activity in the brain. The use of fMRI and other methods that allow us to observe and especially to localize activity in the brain has been an important part of recent research in many fields. This research is quite interesting, but for the moment, provides no additional information on whether exposure to media violence causes aggression. Several studies have suggested that exposure to media violence, especially to violent video games, is related to frontal lobe activity (Kronenberger *et al.*, in press; Murray, 2002; Wang *et al.*, 2002). I have not managed to get hold of the actual article dealing with MRI, but the press release from the Indiana University School of Medicine describes it in some detail. Assuming the release is accurate, the Wang study involved MRI scans of a small number of teenage boys, some of whom had behavioral disorders,

and some who had no such history. During the scans the boys watched either an exciting but non-violent car racing video game, or a James Bond video game containing violent action. The boys did not play the games, but participated to the extent of pushing a button whenever they thought the main character in the game should take action. There was apparently no measure of how often or appropriately they pushed the buttons, or whether there was any difference in this respect between the groups of boys – the button pushing was included to get the boys involved in the games.

The results were that when watching the violent video game, the boys with the behavioral disorder had less activity in the frontal lobes than those without the disorder. It is not clear exactly what this means, but the frontal lobes are involved in decision-making and behavior control, as well as attention and what is sometimes called executive function. What is perhaps relevant to our concerns is that among the boys without the disorder, those who had been exposed to a lot of violent media also showed different brain reactions to the violent video game from those who had been exposed to less violent media in the past. This is an interesting finding that, as Kronenberger says, indicated that more studies are needed.

There is certainly no indication from this study that playing violent video games *caused* the differences, nor what those differences imply about future behavior. It is very likely the boys who were exposed to a lot of violent media were different from those who were exposed to less, and that it was this difference, not the exposure, that is reflected in the fMRI differences.

I suppose some would like to say that this research suggests that exposure to violent video games causes children to be less affected by violence or perhaps even more inclined to be violent themselves. But it should be clear this research provides no evidence for a causal effect of any kind. That kids who like media violence differ from those who do not is well established.

That they differ in aggressiveness is well established. It should come as no surprise that their brain activity also differs.

However, let us assume simply for the sake of argument that there is a causal effect – that exposure to violent media does affect the brain’s reaction to a violent video game. If that were true, it still provides no evidence that the exposure causes these children to be more aggressive. A much simpler explanation is that the James Bond video game was more familiar to them than it was to the others. The frontal lobes are involved in attention. We know that something unfamiliar causes more activation and activity than something that is not familiar. To the extent that these boys were familiar with James Bond and with the James Bond video game, or even similar videogames, the James Bond video game would be expected to cause less activation. Thus, even if one were to be convinced that it was prior exposure that caused the differences in brain function (which frankly seems highly unlikely), there is no reason to believe that the difference had anything to do with aggression. The same effect would be expected for any stimulus or game or film, whether or not it contained violence. That is, the effect could be due entirely to familiarity. While that result would confirm our expectations, it has no implications for anything about aggression or violent behavior.

I did get a pre-publication copy of the study by Kronenberger *et al.* (my thanks to Professor Kronenberger for sending it). This paper reports on what seems to be the first phase of the study that later collected MRIs on the boys, and also is probably the study presented by Mathews (a co-author on the paper that is about to be published) that is cited by the FCC. In this study, boys with or without a behavior problem were given a series of tests that were designed to test executive function. The results were that boys with more exposure to media violence had

weaker scores on executive function, and that this effect was greater for the boys with the behavior disorder. This and the other finding are interesting and certainly should be pursued.

However, as the authors of the paper say, “causal conclusions cannot be drawn from study results.” They go on to explain that the relationship could be due to boys with weaker executive function being drawn to media violence, or that the media violence reduces executive function, or that some third factor is the cause. In other words, these results provide no new evidence that exposure to violent television or film affects brain function and therefore they should not be considered as buttressing the case for the causal hypothesis.

### **SUMMARY OF RECENT RESEARCH**

These recent studies do not provide any substantial new evidence regarding whether exposure to media violence causes aggression or violence. Accordingly, they do not affect my view of where the scientific research stood a few years ago. At that time, I was convinced the research did not support the idea of a causal effect and as noted earlier, that assessment is consistent with the lack of increase in the crime rates since the early 1990s. I realize that some of my colleagues take quite a different view of the research, and that some of them have stated the research is so strongly in favor of the causal hypothesis that the argument is over. Some of the strongest adherents to that view have published a long article outlining the evidence. They were asked by the Surgeon General to review the scientific research and this article is what they came up with. In other words, as far as they are concerned, this is the latest word and presumably their strongest argument for the belief that exposure to violent television and film causes aggression. Indeed, one of the authors, who is also one of the most outspoken adherents of the view that media violence causes aggression, submitted this article to the FCC as his position statement. Since the group who wrote this article includes many of those who claim to

know the scientific evidence and think that it shows a causal effect, and since this article is the result of consultations among them and is presumably the strongest case they can make for their position, it seems appropriate to examine the article in detail.

### **Examining the case for the causal hypothesis – the Anderson *et al.* review**

In court, when two witnesses give contradictory evidence, jurors use various cues to decide which to trust. They look for inconsistencies in their statements, for evidence that one of them is concealing information that might weaken his position, for an indication that one of them is distorting the information to make the case stronger, and for outright errors. All of these are indications the person's evidence is not entirely objective and thus not entirely trustworthy. The same is true in a disagreement out of court. Therefore, I would like to demonstrate that this state-of-the-art review of the scientific research by those who believe that exposure to media violence causes aggressiveness has many of the characteristics that ordinarily suggest a lack of objectivity and that the evidence does not deserve to be trusted as stated.

Before dealing with the substance of the article, let me put it into context by considering the authors' note to the article. They write that "in the summer of 2000 the Surgeon General asked the National Institute of Mental Health (NIMH) to establish an expert panel of media-violence researchers charged with the task of reporting on the effects of media violence." Rowell Huesmann organized the panel and served as its chair. The panel met in August 2000, "communicated extensively," and submitted their report in September 2000. The authors note their report was not accepted as written and eventually was not incorporated into the Surgeon General's report the way they desired. They were obviously disappointed, perhaps even upset at this, and they managed to get a version of their report published as this article.

I believe this brief history is an indication of how these experts deal with the complex and important issue of media violence. In the first place, when asked to put together a panel, Huesmann did not include anyone who was on record as being skeptical of the causal effects of media violence or who was critical of the research. Instead, the panel includes many of the most outspoken adherents of the causal hypothesis. Thus, just from knowing the panel members, one would know that there was no effort to produce a balanced review of the research.

Second, consider how carefully they reviewed the research. Having read all of the published research, I know that it is a big job. It took me over a year and I read quickly. Thus, it seems unlikely that all members of the panel had read all 200 plus studies, certainly not with the care necessary to assess them. And if any of them had read them all, it is unlikely that they had done so recently. Nevertheless, in a month after what sounds like one face-to-face meeting, the whole panel was prepared to submit a review of this research that was, they hoped, going to inform and influence the vitally important report by the Surgeon General.

This lack of concern and of careful review is, I believe, typical of the group of experts who make public statements about this issue. They are so convinced media violence is harmful, and so certain they are right, that they do not take any criticisms seriously, nor consider any comments that disagree with them. Moreover, they do not even bother to review the evidence on which they are presumably basing their opinions. Is it any wonder that the Surgeon General did not simply accept their report?

One of the most startling aspects of this article occurs right at the beginning. Although this report was supposed to be an assessment of the research, a statement of the scientific status of the findings, the authors chose not to deal with any of the criticisms or critiques of their position. They note that these already have been answered, so there is no reason to bother with

them. This simply is not true, and even if it were, surely a comprehensive report of this kind should outline the critiques and show how they were flawed. If the criticisms are so weak and flawed, it should have taken little effort to review them. In fact, most of the criticisms have never been adequately answered. I note that my book reviewing all the research was published in 2002. The only cited references that could possibly have responded to it is a non-refereed chapter by Huesmann and Taylor published in 2003. I would have welcomed a serious, point-by-point discussion of my review, but this chapter does not provide one. Instead, it offers a general attack on the objectivity of those who do not support the causal hypothesis and a more specific attack on me. It does not deal in detail with any of my criticisms, but says merely that I have been more critical of studies that support the hypothesis than of those that do not. And my most serious error, according to this chapter, is that I am atheoretical. I am, because the issue is not whether the theories make sense but whether the results support them. Thus, this chapter is by no means a thorough response to the criticisms that I – and others – have made.

Given there has never been a careful response to those who disagree with the causal hypothesis, it is surprising the authors of the Anderson article do not take the opportunity to provide one. But they do not. Instead, they merely state that they have been dealt with. If they had approached this issue with even partially open minds or, for that matter, with a view to presenting a convincing argument for their views, one would have expected them to consider opposing views. That they do not is a great weakness of the report. Seeing this, again is it any wonder that the Surgeon General did not merely accept it as written?

Of course, that they are not careful or rigorous does not mean that they are wrong. It is possible the research is so consistent and so strong it is foolish to question it, and unnecessary to continue to review it. That is surely true of many important questions for which scientific

research has provided definitive answers. Therefore, despite their unwillingness or inability to deal with any criticisms, their review should be evaluated mainly by how it deals with the actual research.

### **Experimental studies**

The report deals first with experiments. In this research, people are exposed to either violent or non-violent programs, and then given the opportunity to act aggressively. The authors summarize this research by saying the studies have consistently shown that youths exposed to violent scenes display more aggressive behaviors (or other effects which are of less interest to this discussion). I disagree. The results have been far from consistent. In fact, more than half the studies have failed to get effects of the kind they describe; and if one takes only those experiments that look at reasonable measures of aggression, the results are even weaker.

The report does not, of course, list all of the experiments and describe their results. It does mention a few as examples which, presumably, the authors of the report considered representative. In considering a disagreement about whether these experiments are or are not consistent, it may be helpful to look at the experiments the authors chose as their examples. The first one is an experiment by Bjorkqvist, with a reference to 1985. This study first came out in print almost 20 years ago, and has never been published in a refereed journal. I have not been able to get hold of it, and I would guess the same is true of most, if not all, the members of the panel. Yet this is the first study they cite. Why not cite a published study that it easy to obtain? There are almost a hundred of them.

The next study they cite is Josephson (1987). This is a good choice in one respect, because the measure is actual aggression in a hockey game. Although hockey lovers and other sports fans might argue this is not real aggression but simply playing hard, I agree with the

authors it is a reasonable measure of aggression. However, their description of the results is neither accurate nor complete. The results are very complicated and overall show no effect of exposure to violence on aggression. In describing the results, the authors of the report ignored the fact that the boys in the study were frustrated either before or after seeing the program (violent or non-violent). For no apparent reason, the pattern of results is quite different for these two conditions. When frustrated before the film, the violence plus cue group was indeed the highest; but when frustrated after the film, this group was the lowest. Since the reason for this is obscure, the fairest description of the results is there was no overall effect of type of film and no effect of cue, whether by itself or paired with a film. A complicating factor, not mentioned in the report, is that by chance the boys in the various groups differed considerably in their initial levels of aggressiveness. When their characteristic aggressiveness is statistically controlled for, the amount of aggression after the violent and non-violent film is the same.

My reading of this study is that it is hard to interpret the results due to their inconsistency and the differences in initial aggressiveness, but taken at face value they do not provide any support for the causal hypothesis, and perhaps directly contradict it. The analysis is available in my book, and a full presentation of the results can be seen in the original article. Suffice it so say, this was an odd choice to make a case for the causal hypothesis. The description of the results is clearly biased, because it overstates the one result that supports their view and ignores all of the results that contradicts their view.

The next two examples were conducted in a natural setting – residential schools for boys. It is surprising these studies were chosen for this report, since they have all sorts of methodological problems that make them highly doubtful from a scientific point of view. Moreover, the results are, at best, inconsistent. The first study (Leyens, *et al.*, 1975) did find that

soon after boys were shown the violent movies, they engaged in more aggressive acts. But the results are deeply flawed because the statistics were improper (as acknowledged by Leyens in the original article but not mentioned by the authors of the review). In addition, those who observed the boys did not distinguish between real aggression and play aggression, a long-standing distinction among developmental psychologists. After watching a violent movie, it would not be surprising if the boys engaged in playful imitation of it. The question was whether they engaged in real aggression, and the study cannot answer that. Finally, the effect on aggression, even if it was real aggression, did not carry over even to the next day, and it was not cumulative.

There were actually two other studies (Parke *et al.*, 1977) done by the same group in much the same way. These studies had problems similar to those in Leyens so that any results they found would be hard to interpret. However, I disagree with the authors' description of the actual results. It is not true that these studies "found similar effects of exposure to violent films on overall interpersonal attacks." In fact, the first study found a slight effect that did not last, and the second found no evidence of a causal effect. Since neither these two studies, nor the first one, distinguished between play aggression and real fighting, the authors of the report have no justification for saying these experiments "demonstrate that violent movies can generate serious physical aggression." All these studies were well-intentioned attempts to answer an important question in a real-world setting. Unfortunately, they were not well designed, had far too few cottages to observe, used inadequate measures, and ultimately obtained equivocal results. That the authors of the report have to rely on these studies is an indication of just how weak the research base is for their position.

There have not been many field experiments on this topic, which is too bad, because they could provide the clearest evidence on the question. The authors chose to mention a few from

this limited set of studies. They chose those that, despite their weaknesses, produced the best evidence for a causal effect (which, let me repeat, is not saying much). The authors of this report do not mention any of the other field studies, most of which found no such evidence.

In sum, the authors were very selective in the studies they mention, choosing only those that produced results that at least marginally supported their position and not choosing any that produced negative results. They do not even acknowledge that some studies found non-supportive results. Anyone reading this section of the review would get the impression that every study of this kind, or virtually every study, had found results that support a causal effect of exposure to media violence. This is simply not true, and is highly misleading.

### **Longitudinal studies**

There are a small number of studies that use a method similar to those of the Huesmann study described earlier. These studies observe children at one age, then again when they are older. The idea is to see if the amount of exposure to violent media when the children are young is related to the aggression shown by the children when they are older. In doing this, as noted before, it is necessary to hold constant the children's aggressiveness at the early age, because that tends to be rather stable. So various statistical techniques are used that, in essence, take into account the stability of aggression and then get some indication whether exposure is a factor in later aggression. To repeat, if exposure causes aggression, children who are equally aggressive at one age and watch differing amounts of media violence should differ in aggression years later, with those who watch a lot of violence becoming more aggressive than those who watch less violence.

The review, as usual, presents a highly selective and one-sided description of these studies. It is true the first study they mention (Eron *et al.*, 1972) found some evidence that early

exposure was related to aggressiveness ten years later. In my opinion, this one result is the single, best piece of evidence in favor of a causal effect of media violence, and I have said this before. However, the results of this study are far less impressive than the review makes them sound. In the first place, it is not true that "aggressive behavior was measured primarily by peer nominations." That was one method, perhaps the best method, but there were two other reasonable measurements, and neither of them showed an effect. Also, as the review does say, for girls there was no effect of exposure to media violence. One way of looking at this pattern is that there were six possible tests of the causal hypothesis – boys and girls and three measure of aggression for each – and one of them came out (one measure for boys only). One out of six is better than nothing, but it hardly is overwhelming evidence.

The review mentions the study by Milavsky *et al.* (1982), and puts its own spin on it. This is by far the largest study of its kind and one of the most impressive. The authors of the Milavsky study conclude that the results do not support the causal hypothesis, and I think most readers agree with that assessment. True, there are some hints of a relationship between exposure and aggression, but there are almost no significant effects after controlling for early aggression, and most of these disappear after other factors are controlled. Honest scientists can disagree about the implications of this study, but at the very least, it would seem fair to say the results are usually seen as non-supportive. And even those who interpret them as consistent with the causal hypothesis agree the results are very weak. It is remarkable the review's description of this study can leave the reader thinking the study generally provided evidence in favor of the causal hypothesis, when this study is almost always described the opposite way.

The next study the review describes is a very ambitious project carried out in a number of countries (Huesmann & Eron, 1986). The authors of the review say that the results varied

“substantially” between genders and among the countries. That is an understatement. Having said that, they then describe only the results in the United States, and acknowledge that this time (as opposed to the earlier study), the effect was significant for girls and not for boys (a reversal that has never been explained). What the review does not address is just how “bad” the results from the other countries were for the causal hypothesis. Rather than gloss over the results, let us put them on the table. The key question is whether the multiple regression shows a significant effect of early exposure to violence on later aggression after early aggression is held constant.

There was a small significant relationship for girls in the United States and for boys in Poland, a marginally significant relationship for girls in Poland, and a strong relationship for both boys and girls who lived in cities in Israel. There was no significant relationship for boys in the United States, boys or girls in Finland, boys or girls in Australia, boys or girls in the Netherlands, or boys and girls who lived on a kibbutz in Israel. In other words, taking everything at face value and not bothering with the many possible criticisms of the study, there were fourteen tests of the causal hypothesis, and of these five were significant, one marginally significant, and eight were inconsistent with the hypothesis. Moreover, with the exception of the Israeli result, all of the significant relationships were very small. This is hardly the kind of result most people would consider supportive of a hypothesis. I have pointed out serious problems with some of the significant results, especially the one in Israel, and there is no reason to repeat them here. The main point is that rather than providing support for the hypothesis, the results of this study were generally non-supportive.

However, by far the most remarkable feature of the description in the review is that it says there were five countries. This is simply not correct and, I think, displays an obvious bias in reporting. In fact, the study began with six countries. In each of them, the researchers used

much the same method and the plan was for each group to write independent reports of their results. These reports were to be published in a book edited by Eron and Huesmann. Although the results were quite disappointing in most of the countries, the researchers wrote chapters that minimized the negative results and emphasized whatever they could that was more favorable to their position. The one exception was the Netherlands group who wrote a report that in no uncertain terms acknowledged their results did not support the causal hypothesis. Eron and Huesmann asked them to rewrite the report, they said they would not, and so Eron and Huesmann refused to include the chapter in the book. Thus, the study that began with six countries ended up publishing results from only five of them, and the Netherlands group had to publish their chapter on their own. This was clearly a straightforward act of suppressing a result that the editors did not like. But it is perhaps even more amazing that now, years later, the authors of this review have rewritten history. This supposedly objective scientific review has expunged the Netherlands from the study (shades of Orwell's 1984) and now seem to “remember” there were only five countries involved. The results directly contradicted the causal hypothesis; the authors were honest about that – so they no longer exist. I consider this a shocking act by a scientific group, and it is strong evidence of their lack of objectivity.

The review also mentioned the recent Huesmann study that I discussed in detail earlier. One again, it fails to distinguish between those results that control for early aggression and those that do not, thus giving the impression of much stronger results. And the review of the Johnson *et al.* study is totally uncritical. As noted earlier, this study really provides no useful data relevant to the causal hypothesis, because it did not measure exposure to violent media and did not have an adequate measure of early aggressiveness.

There are other longitudinal studies, some of which provide some slight support for the causal hypothesis, and others that do not. The review mentions only those the authors think provide support, and they present the results uncritically. These other studies are, in any case, less good overall than the ones just discussed, so they do not add much to the literature.

In summary, the review's handling of the very important longitudinal research is biased, misleading and in some respects outright incorrect. The results of this line of research have been inconsistent and more non-supportive than supportive of the causal hypothesis. It is perhaps most telling that the major cross-national study conducted by Eron and Huesmann produced results that most people would consider very disappointing for those who believe in the causal effect. And it is most telling of all that the cross-national study included not five countries, but six – the reviewers have conveniently forgotten the Netherlands – an act of omission I consider shameful.

### **The introduction of television**

The selectivity is perhaps even more striking in the section discussing the impact of the introduction of television. It is really unfortunate the review cites the studies by Centerwall and by Williams in this context. Centerwall (*e.g.*, 1989) argued that patterns of violent crime in the United States, Canada and South Africa after the introduction of television provided evidence that television caused violent crime. He pointed out that about ten years after television was widespread in the United States and Canada, the rate of homicide began to increase and more than doubled by 1980. In contrast, no such increase occurred in South Africa where television was not widely available during this period. Therefore, according to Centerwall, television caused violent crime. He went so far as to say that if television had never been introduced into the United States, there would have been 50,000 fewer deaths by homicide. This is nonsense.

Indeed, the authors must realize this, because they make a passing reference to the weaknesses in the Centerwall analysis. Apparently they feel that there are problems with Centerwall's papers. So why do they mention them?

I spent a considerable amount of time in my book showing all of the problems with the Centerwall argument, so presumably the authors of the review are aware of them. Yet they do not refer to any of them. There are many, but let me focus on just a few. First, one cannot compare the United States and Canada, especially as they were during the period 1950-1980, to South Africa during that period. Among other differences, the former were democratic, had free press, allowed public dissent, were not police states, and were not apartheid. The social structures were different and went through great change in the US and Canada, but not in South Africa. Moreover, if one is going to compare countries, it is important to choose more than one as a contrast. As Franklin Zimring and Gordon Hawkins have forcefully pointed out (Zimring & Hawkins, 1997), during this same period, television was also introduced into western Europe and into Japan, and there was no consistent increase in the rate of violent crime in those countries. If anything, this is an argument against the notion that television causes aggression or violent crime.

Second, as the authors of the review allude to, other changes in the United States and Canada could well explain the increase in violent crime. This was a period of massive social change – the sexual revolution, more unwanted children to young mothers, more broken homes, and so on. Any of these factors would be expected to lead to more children who were neglected and deprived, and were thus at risk of getting involved in crime.

Third, careful analysis of the crime statistics indicates that the pattern of increases in crime rates is inconsistent with the suggestion that the increases were caused by exposure to

television. If there were such an effect, one would expect it to appear first among the juveniles who were exposed to television and later among the younger cohorts, all in line with the supposed time-lag between exposure and the effects. None of this occurred as it should have, so the argument does not hold up.

All of these weaknesses and others should be well known to the authors of the article. That they cite Centerwall nonetheless indicates they include it because it “sounds good” even though they know it does not stand up to serious analysis.

Williams (1986) looked at three communities at two different times. At the first time, one community had many television stations, one had only one station, and one had none. A small group of children in each of the three communities were observed at play at the first time and then later, after the third community got one television station. In addition, teachers were asked to rate the amount of aggression shown by the children in their schools. Using the measure of the small groups, the study reported an increase in aggression in the community that had just gotten television and none in the other communities. Using the teachers’ ratings, there was no such difference. The observers did not distinguish between real and play aggression – it is uncertain whether the teachers did. Thus, at the superficial level, one measure indicated that aggression increased after the introduction of television while the other measure did not, and we cannot tell if the increase was due to real aggression or just aggressive play.

It probably is not worth getting into all of the details of this study. I mention only two. First, the television station that the community got was the Canadian Broadcasting Company station. At the time CBC carried no cartoons except the World of Disney, no programs early on weekend mornings, and only two police/detective shows a week. As Williams acknowledged, it is likely that CBC programs contained less (I would say far less) violence than those on other

channels. I would think that even for those who believe in the harmful effects of media violence, it requires a stretch of the imagination to think that this level of violent programming could cause a doubling in the amount of aggression, which is what the authors reported.

Second, there was no control and no careful description of other changes in the three communities. These were very small communities in Canada. Even a minor change in the social or economic situation, or even a few aggressive children moving into town, could have had a major effect on the children who were there. For example, at time one, the level of unemployment in the town without television was half that of the other communities. We do not know what it was at time two, but if it increased to become more equal to the other communities, this alone might have increased the level of stress and caused an increase in aggressiveness. This is entirely speculative. I offer it as one example of how changes that are completely irrelevant to the introduction of television might be the cause of an increase in aggression, if indeed one occurred. In sum, this is an interesting case study of communities in transition, but it offers only the weakest evidence in favor of the causal hypothesis.

In contrast, the study by Hennigan *et al.* (1982) that is mentioned in the report looked at almost a hundred cities in the United States. Some of these communities had television at time one, some did not. Several years later, they all had television. The study looked at any changes in the rates of crime during this period. I was surprised to see this study mentioned in the review, because the review seems to mention only research supporting their view and I have always thought that the Hennigan study provided some of the strongest evidence *against* the causal hypothesis. However, the authors of the report characteristically cite only the one result that is at least marginally consistent with their view, namely that the rate of larceny went up in the cities with television compared to the others. What the authors fail to say is that there was no

effect on violent crime and more serious property crimes. That is, in contrast to Williams, who looked at three cities and found a marginal effect, this study which looked at many more cities, found not the slightest evidence of an effect of television on aggression. Indeed, Hennigan *et al.*, argue that the interesting effect on larceny was due to relative deprivation caused by people watching mostly rich or middle class people on television and feeling deprived themselves. This is speculative and one could offer other possibilities. The important point for present purposes is that the authors of the report mention this study (they could hardly leave it out since it is so well known) but fail to acknowledge it provides evidence against the causal hypothesis, not in favor of it.

The report also does not mention the very large study by Himmelweit *et al.* (1965), which interviewed thousands of English children soon after television was introduced. Some of the children had television in their homes, while others did not. Although the measures were largely qualitative, it is worth noting the study found no difference in aggression or delinquent behavior between those who watched television and those who did not. An even larger series of studies by Schramm *et al.* (1961) involved almost 6000 children in the United States and Canada between 1958 and 1960. Most of the results are not relevant to our present concerns, and those that are relevant are somewhat inconsistent. The clearest result is comparable directly to the Williams study in that it compared two communities, one with television and one without. Those in the town without television scored somewhat higher on measures of antisocial aggression. The authors commented this was a slight indication television might serve to reduce antisocial aggression and, in any case, the results provides no support for the idea that television increases aggression. I do not put much faith in these results, because they are not based on very

good measures. Nevertheless, this and Himmelweit are two more studies that found no support for the causal hypothesis.

Finally, an unpublished study by de Konig *et al.* (1980) is, I think, worth mentioning, because it seems to be a very good test of the causal hypothesis. I have not seen this study, but it is mentioned in Liebert *et al.* (1982), a book written by one of the strongest advocates of the causal hypothesis. I included the study in my book because it seemed so compelling, so the authors of the review must be aware of it. This study was conducted in South Africa just as television was being introduced. Children were assigned to watch aggressive programs, prosocial programs, or neutral programs. They watched an hour a day for four weeks. Their aggressive and prosocial behavior was rated before and after this period. In other words, it is an actual experiment in the real world and, as such, is quite impressive.

The results offer no support at all for the causal hypothesis. There were few changes in behavior and few differences among the groups that watched aggressive programs compared to those who did not. There was some tendency for those in the neutral group to decrease in aggression toward peers and those in the prosocial group to increase in aggression toward authority. The aggressive programs produced no changes. None of the programs affected prosocial behavior.

As Liebert *et al.* point out, there are all sorts of explanations for these results. One should not put much emphasis on them. Nevertheless, this is a study in which a large number of children were exposed to aggressive or non-aggressive television for four weeks and there was no indication that exposure to aggressive programs increased aggression.

I mention these studies not because they are so important or because their results are definitive, but only to demonstrate how selective the article is both in which studies it cites and

in how it describes them. If one read only this section of their report and thought it a measured, careful assessment of the research, one would be sorely misled. It is not measured or careful or accurate. Rather it is a highly selective summary that presents a biased and misleading view of the research in this area.

### **Innovative methods**

The paper also leaves out a number of studies that employed innovative methods. These studies have generally not found evidence to support the causal hypothesis. Let me mention just one that I think is quite interesting. Messner (1986) started with the idea that if exposure to violent television causes aggression, greater exposure should be associated with more violent crime. He then argued that areas in which there was greater exposure to violent programs should have higher crime rates. The study used Nielsen data to assess the number of people who were watching the most violent programs at the time in each of 281 metropolitan areas. A score for exposure to violent programs was computed for each area and related to the rates of violent crime and property crime for those areas.

The result was unexpected and quite striking. There was a negative relationship between exposure and each of the four main types of violent crime and for all types of non-violent crime. That is, the *higher* the score for exposure to violent television, the *lower* the rates of all of the crimes. The more people who watched the most violent television programs, the less crime there was in the neighborhood. It is worth noting that other measures were associated with higher crime rates. In particular, the Gini coefficient, which measures the economic disparity in the area, was strongly correlated with rates of homicide, rape, robbery and assault. In other words, the data were reliable enough to show strong relationships that made sense, and the data failed to show any indication that exposure to violent programs increased crime rates.

One can, of course, critique this study on various grounds. It is clever but far from perfect. But as with many of the studies I mention and the review paper does not, this study provides evidence against the causal hypothesis. As I have pointed out many times, if the study had shown that exposure was related to crime rates, one can be certain the result would have been embraced by the authors of the review and used to buttress their position.

### **Television news**

The Anderson review says there is some anecdotal evidence and some research evidence suggesting a contagion effect. However, it concludes there is not much research on this issue, and that some of what has been done has methodological problems. For once I agree with the review and would go even further. Everything in this response deals exclusively with fictional or fictionalized violence. We know virtually nothing about whether real violence as described on television or in film affects aggression. There is almost no research on this and it is exceedingly difficult to study. Suffice it to say, however, that anyone who believes that fictional violence has an effect surely must believe the real thing will have an even stronger effect. The same is true of real violence in sports as shown on television. We do not know what effect it has, but if watching a fictional boxing match increases aggression, surely watching a real boxing match or football game should have a similar – and probably stronger – effect. My intuition about this is that exposure to violence in sports affects how the viewers play those sports (kids who watch their favorite players be extremely rough will probably be rough themselves when they play), but does not carry over to other activities. Exposure to real violence in the news probably has complex effects that conceivably could make some people less aggressive and others more aggressive. In any case, it should be clear these are just personal speculations. Neither my

response nor the Anderson review can say much about these issues, because there is far too little research to draw even tentative conclusions.

### **Meta-analyses**

The review presents an impressive-looking meta-analysis on page 93. A meta-analysis is a statistical method for combining the results of many studies to assess the overall impact of the evidence. It can be a very useful method. However, there are several key issues in using it. First, great care must be taken in how the various studies are categorized when they are entered into the analysis. If a study that found no effect is categorized as showing an effect, obviously the analysis will be distorted. Similarly, it is essential to count all chances to show an effect. If a study includes three measures of aggression and gets an effect on only one of them, the meta-analysis must include all three tries – not just the one that got the effect.

Having carefully analyzed a previous meta-analysis by Anderson and Bushman (2001), I can say I disagreed with many of their decisions, and all of the disagreements would have weakened the effects. So in deciding how much weight to give to a meta-analysis, it is necessary to have the information that went into it. This brings me to the second point, which is that there is no information on this analysis so I cannot possibly respond to it. Third, the meta-analysis is presented as if it already appeared in a journal article. In fact, it was not published in a peer-reviewed article, nor even an article at all. As far as I can tell, it appeared for the first time in a letter to a journal. I have nothing against letters, but their contents usually do not have any scientific status, and should not be cited in a review that is supposed to review the research on an important issue. Finally, the meta-analysis includes research on types of media violence not under consideration by the FCC. Since it includes studies on video games, comic books, and

music, it is not possible to extract information on the effect of televised violence from any effects of the other media. Accordingly, it is largely irrelevant even if one were to accept it.

### **Summary of Anderson *et al.* review**

This review of the research on the effect of exposure to media violence on aggression was meant to be the latest word on this research. The authors presented it to the Surgeon General and to the FCC as their summary statement of the status of the research. *See* Comments of Dr. Craig A. Anderson, MB Docket No. 04-261, filed Sept. 14, 2004. Thus, it seems fair to consider it the best argument they can make.

Yet, it is deeply flawed. It is not the state-of-the-art review it is meant to be, nor a balanced presentation of the scientific literature. Instead, it is an extremely biased, selective and often inaccurate argument for a position that presumably the authors believe in so strongly they did not bother to do an adequate review of the research, or perhaps were afraid to present such a review. I think that it is telling that this is the best this group of experts can do to make a case for the causal hypothesis. Their review, with its selective citations, inaccurate and partial descriptions of the research, and reliance on studies that they acknowledge have problems, is a clear indication of the weakness of their position.

### **SPECIFIC QUESTIONS ASKED BY THE FCC**

The *Notice* posed a number of specific questions, which are addressed below:

#### **Does exposure to media violence cause desensitization?**

It has sometimes been suggested that even if exposure to media violence does not make people aggressive, it may make them insensitive to real violence. This would obviously be a very serious matter. The authors of the review agree that exposure causes desensitization, but they take a moderate stance on whether this has been fully proven, and on whether it leads to

aggressive behavior. I agree with them there has been far too little research on this issue to draw any firm conclusions. However, my tentative conclusion is different from theirs.

First, it seems likely that exposure to violent images in the media makes people less sensitive to subsequent violent images in the media. What was startling or shocking the first time, becomes less so the second or tenth time. We get used to types of images and our reactions become less extreme. This is true of almost all images and it seems reasonable to assume that it happens with violent images also.

Second, I do not believe that exposure to media violence desensitizes people to real world violence. There are a few, small-scale studies that provide some evidence that this occurs, but other similar studies did not get this effect. Of greater importance, several large-scale studies found no indication of desensitization. Perhaps the most convincing result was that by Belson (1978). Belson strongly believed that exposure to media violence caused aggression. However, with a large sample of boys he found no relationship between exposure to violent media of any kind and what he called callousness toward violence. Thus, the results of this study provide evidence that contradicts the notion that exposure caused desensitization to violence. Overall, the limited amount of evidence suggests to me that exposure to media violence does not cause desensitization to real world violence. However, let me repeat this is a tentative conclusion based on relatively little scientific research.

### **How should we define violence?**

In principle, violence (or aggression) can be defined as any act that is meant to cause physical harm (I am leaving out other kinds of aggression, although they may also be of concern). The target of the act is usually a person, but I suppose it could be any animal; and if the story involves only animals, obviously they have to be the targets. Hitting a chair is not

aggression or violence, because no living entity is harmed or is meant to be harmed. In my definition, I say “in principle” because it is not always easy to decide whether an act is meant to cause harm. As noted earlier, child psychologists have long distinguished between real and play aggression. Boys often engage in what is called “rough and tumble play” which involves wrestling, falling to the ground, clinging to each other and so on. Sometimes one of the boys gets hurt, but as long as that was not the intention, it is not aggression in the usual sense of the term. Football players hit each other, sometimes very hard. But they are playing a game, albeit a rough one. I do not believe that in general they intend to cause harm to the other person – to break a rib or a leg. They are simply doing what is required in the game and that involves physical contact. Although some would disagree, I would not consider these actions in contact sports to be aggression. Dentists sometime hurt us, but they do not mean to harm us so their actions are not aggressive. If someone violently pushes someone else out of the way of a speeding car, the act may hurt or even harm the person who was pushed, but it is not aggressive because the intention was to help, not harm. Thus, in one sense, as long as one can distinguish between acts that are intended to cause harm (real aggression or violence) and those that are not (play aggression), defining violence should not be difficult.

However, if one is going to relate any conclusions to the research, the definition of violence or aggression becomes extremely murky. This is because aggression has been defined in so many different ways and because many of them do not fit the definition I gave above. The best studies have measured aggression by observing children’s interactions and rating whether their acts are aggressive. Unfortunately, most of these studies have not distinguished between real and playful aggression, so we do not know if the boys (they are mostly boys) meant to hurt each other when they wrestled or were merely having fun. Despite this, direct observation of

actual behavior is clearly the best measure of aggression, because it at least involves real behavior toward other real people. Other measures of violence that are less good but have at least some relationship to real violence are those that have people acting as teachers and when “learners” make mistakes, the teacher pushes a button that supposedly delivers electric shock or loud noise. Although the teachers do not mean to harm the other person, if they really believe they are giving shocks or noises, at least it is unpleasant.

On the other hand, some measures have little or nothing to do with real violence. A series of studies (*e.g.*, Bandura, Ross, & Ross, 1961). defined aggression as punching a Bobo doll. These are inflated plastic dolls with big noses. If they are punched, the doll goes over and then bounces back up. The dolls are meant to be punched. Certainly no harm is intended, and none could possibly be done. It is as if one were to define aggression as kicking a football. That would be silly. Footballs are meant to be kicked; the kicker is not trying to hurt the football; it is obviously not aggression. In the same way, Bobo dolls are meant to be punched. Punching them meets none of the criteria of real aggression.

One of the silliest measures of aggression comes from an early study on this issue (Mussen & Rutherford, 1961). Young children were asked: “If I had a balloon, would you pop it?” The answer to this double hypothetical question was scored as aggressive if the children said that they would pop it.

Other measures though less silly have even less to do with actual aggression. An example is based on how many words with aggressive content people give. Some studies (*e.g.*, Bushman, 1998) found that after seeing a violent program, people were more likely to have aggressive thoughts, and he presented these results as if they meant that violent programs caused aggression. I would have thought that everyone could agree that thinking about aggression or

violence is not the same as behaving aggressively. Presumably we always think about what we have just seen, so that whatever the content of a program, it will be more salient just after exposure. But that does not mean there is any relationship with actual aggression. I am thinking about violence and aggression as I write this, but I don't feel the slightest inclination to act violently. The members of the FCC who are involved in this investigation are probably also spending lots of time thinking about violence, but that surely does not mean that they are more violent than they were before the investigation began.

In summary, it is not difficult to define aggression and violence but from a practical point of view, it can be very difficult to identify it. And it is especially difficult to relate real aggression to the research, since so often the research has involved at best metaphors for aggression rather than the real thing and at worst, measures that have little relationship to real aggression or violence. Those who argue for an effect of exposure on aggression have been quite uncritical of the measures used in the research. They have cited any study that they think supports their position, regardless of the measures used. Yet many of the measures have so little to do with aggression or violence that they should not even be included in the review of the literature.

### **Do different types of portrayals of violence have different effects?**

I do not believe that any type of portrayal causes people to become aggressive, so in one sense, this is a moot point. But it is worth discussing, because it shows once more how little emphasis there has been on the actual research findings. The National TV Violence Study is a very valuable survey of the amount and kinds of violence depicted on television. However, it collected no data of any kind on the behavior of those who view television, and no data about the effects of types of portrayals. Thus, the study provides no evidence of how violent television

affects viewers or whether different types of violence have difference effects. Despite having absolutely no scientific data on which to base claims, the authors of the study have made pronouncements about what kinds of portrayals are the most harmful. These pronouncements have no scientific basis and should be ignored.

Nevertheless, since they have made these pronouncements, let me deal with them. There is no evidence that media violence that shows consequences is any different in its effect on the viewer from media violence that does not show consequences. Moreover, from a theoretical or intuitive point of view, one could make an argument either way. If there are no consequences, perhaps the viewer will not realize how serious violent acts can be and will therefore be more likely to engage in them. Alternatively, if there are consequences, perhaps the viewer will see that violence can be effective and in the appropriate situation will act violently to achieve a desired effect. You may prefer one notion to the other, and there are probably other possible lines of thought. The fact is we have no idea about the effects and no strong theoretical or logical reason to expect one effect or the other.

There is no evidence that violence that is regretted by the actor has less effect than violence not regretted, nor any evidence that violence which is justified differs in its effect from violence that is not justified. Again, one could argue either way on these issues. In a typical television program or film, the good guys (the police, FBI, Spiderman) are using violence to fight evil and the good guys eventually win. These heroes (good guys) usually do not regret using the violence, because they feel it is justified. So from the point of view of the authors of the TV violence survey, these programs should be the most harmful. Yet an obvious reaction by the viewer could be that the bad guys started the violence and only these defenders of justice used violence in response, so the lesson is that you should never start violence because you will

get punished and only those who are appointed to defend us should use violence themselves. Thus, it seems reasonable to think these programs will be the least harmful since they teach a good lesson. Or maybe the violence study people are right, and this kind of violence has a worse effect than when a civilian gets so frustrated by his family situation that he gets into a fight with his neighbor, who has done nothing wrong, and then regrets the fight. This latter case involves unjustified violence that is regretted, but if there were any bad effect of exposure to violence, I would have thought the latter instance would be worse. Since there is no evidence one way or the other, we cannot tell.

What about violence committed by attractive characters with good qualities that might make them role models for children? One might think these portrayals of violence committed by attractive people would lead to more imitation and therefore more aggression by children. But life is not that simple. As noted above, the real question is what message the children take from the program, if any. One possibility is that the children say “If Spiderman can be violent, so can I.” This would be bad. Another possibility is that the children say: “The bad guys started the violence and Spiderman beat them. I sure wouldn’t want to start violence.” That might be good. Another possibility is that the children say: “When bad guys are violent, the good guys in society who are supposed to deal with it, may use violence also. Since the good guys win, I sure won’t start anything and since I’m not one of those special kind of good guys, I won’t get involved either.” That would be even better. Perhaps different children take different messages so the net result is no effect on aggression. Or perhaps almost all children know that this is fiction, not life, and they do not take any message from it. They do, of course, tend to imitate the moves – karate, martial arts, and so on – but that is just play.

### **Can children under eight years of age distinguish between fiction and reality?**

It is conceivable there are some children under eight who have some difficulty with some material in deciding whether it is real or fictional. A six-year-old walking into the room and seeing scenes from a real war may have trouble distinguishing it from seeing similar scenes from a realistic movie. Adults might have the same problem, although they would quickly be able to tell the difference. But by and large, children much younger than eight have surprisingly sophisticated knowledge of the world. The notion that a normal eight-year-old cannot tell that the Roadrunner and Coyote is fiction is ridiculous.

More generally, let me repeat that we do not know much about what kinds of portrayals of violence have what effects. Anyone is free to speculate, but it would be a mistake to believe any statements about this have any substantial scientific support.

### **CONCLUSIONS**

1. The scientific evidence does not support the hypothesis that exposure to media violence causes people to be aggressive. Those who argue otherwise present a highly selective and biased review of the research.
2. There is no convincing evidence that exposure to media violence causes desensitization to real violence. However, there is too little research to draw any firm conclusions.
3. Defining violence is not an especially difficult problem as long as one distinguishes between real aggression and play aggression.
4. There is no evidence that one kind of portrayal of violence is more or less harmful than another. Any assertions about this are not based on scientific research.
5. By and large, young children can tell the difference between reality and fiction.
6. All of these statements refer to fictional or fictionalized depictions of violence, not to images of real violence in the news or in sports. There is too little evidence to know anything about the effect of media coverage of real violence. However, I would argue that anyone who believes that exposure to fictional

violence has harmful effects must surely accept that exposure to real violence must have at least the same kind of effects and probably stronger ones.

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# CURRICULUM VITAE

**Jonathan L. Freedman**

2004

## Education

A.B.	1958	Harvard
Ph.D.	1961	Yale

## Professional Career

Assistant Professor, Department of Psychology, Stanford University, 1961-65

Associate Professor, Department of Psychology, Stanford University, 1966-68

Professor, Department of Psychology, Columbia University, 1969-79

Professor, Department of Psychology, University of Toronto,  
1980 - present; Chair 1980-1985; Interim Chair 2001-2002; Director of Graduate Studies  
- 1994-2004 (except for year as Interim Chair); Currently acting Vice-Dean of Arts and  
Science

## Honors and Awards

American Psychological Association Media Award, grand prize, 1975 for Crowding and Behavior

## Scholarly and Professional Work

### Books

Freedman, J.L., & Doob, A.N. (1968). Deviancy: The Psychology of Being Different. New York: Academic Press.

Freedman, J.L., Sears, D.O., & Carlsmith, J.M. (1970). Social Psychology. Englewood Cliffs, NJ: Prentice Hall. (2nd ed. 1974, 3rd ed. 1978, 4th ed. 1981, 5th ed. 1985).

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### **Recent Conference Presentations**

Freedman, J. L. (1997) Juror's understanding of judicial instructions: comparison of three countries. Delivered at Jury Instruction Symposium, Toronto, March 5-7.

Freedman, J. L. (1998) The jury doesn't get it. American Psychology Law Society Biennial Conference, March, Redondo Beach, California.

Burke, T. & Freedman, J. L. (1998) The biasing effects of pretrial publicity: fact or fiction. American Psychology Law Society Biennial Conference, March, Redondo Beach, California.

Harms, P. & Freedman, J. L. (1998) Jurors' perceptions of child witnesses. American Psychology Law Society Biennial Conference, March, Redondo Beach, California.

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Burke, T.M. & Freedman, J.L. (April, 2000). Process issues in juror and jury decision-making: Does a Need for Cognition make a difference? Paper presented as part of the "Psychology and Law in a Canadian Context" symposium (T. Burke, Chair) at the 10th European Conference of Psychology and Law, Limassol, Cyprus.

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Kahan, D. & Freedman, J. L. (June 2001) The influence of expert testimony on juror reasoning about confession evidence. American Psychological Society meeting, Toronto, June 15.

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### **Invited Lectures (recent)**

Freedman, J. L. Unequal justice in the justice system. Invited symposium Society for the Psychological Study of Social Issues, June, 28, 2002

Freedman, J. L. Media violence and aggression. Cambridge lectures. Cambridge University, July 2001

Freedman, J. L. Invited participant and speaker in conference on video games held at the University of Chicago, October 26 -28, 2001.

Invited participant and speaker in conference on Entertainment Law, held at Loyola Law School, Los Angeles - February 21-23, 2002.

Invited participant and discussant New Developments in Communications Law and Policy. Sponsored by the Law Society of Upper Canada, April 26-27, 2002.

Freedman, J.L. (June 2004). Does media violence really cause aggression? International Perspectives on Crime, Justice and Public Order, Bucharest, Romania.

**EXHIBIT 1**

**VIOLENCE IN THE MEDIA – CONNECTION OR CAUSE?**  
**First Amendment Center, 580 Madison Avenue, New York, NY**  
**May 1, 2001\***

**Ken Paulson:** Good evening. While we are waiting for our panel to assemble - we're just short one, he's right around the corner, I understand, there we go. Some people insist on dramatic entrances. [laughter] Some people are more candid than others. [laughter]

My name is Ken Paulson. I am the executive director of the First Amendment Center and I am delighted to welcome you here. I would appreciate it, while we have the lights up, if you could raise your hand if you have not been here to the First Amendment Center since January 1. If you would just raise your hand, we would appreciate it. Wonderful, that's wonderful news.

We have only been here since January 1, but we were here in a previous incarnation as Newseum New York and the Media Study Center. Since January 1, we have dedicated all our resources to promoting discussion about free speech, freedom of press, freedom of religion, the right to petition and the right to assemble, and we hope you all had a chance to look at the exhibit outside tracing the history of the First Amendment right of assembly, petition, and protest in this country.

The First Amendment Center is funded by the Freedom Forum, a non-profit, non-partisan organization. Our whole mission is a-political, all we're here to say is that James Madison had an awfully good idea more than 200 years ago and society's the better for it if we honor the ideas that the founding fathers put into place at that time. And there is always the temptation to retreat from those freedoms because there is always somebody somewhere offending us, and it's important to retain our passion for free speech in this country and that's why we're here.

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\* As webcast on [freedomforum.org](http://freedomforum.org) May 1, 2001. Because this transcript is based on webcast, some spellings of proper names are phonetic.

We do programs here several nights a week, often, and I wanted to mention to all of you there are brochures outside. There's also a mailing list, and if any of you have an interest in signing up for future events. I know a good number of you came out tonight because you had gotten our mailing. Please sign up. We are growing. We have a full slate of events and we'd love to have you join us on a regular basis.

I would like to mention some upcoming events tomorrow night at 6:30 p.m., same location, a gentleman named Eric Nuzum will present an audio video show on his new book, "Parental Advisory Music Censorship in America." And we were privileged to act as research and resources for him on that book, so I think that will be a lot of fun.

Next week we have two special programs. We have an ongoing partnership with the Whitney Museum here and when we do those partnerships it's called "The Whitney Dialogues First Amendment Center." This is a live television taping and we'll feature legendary choreographer Bill T. Jones in discussion of free speech and dance.

On Thursday, May 10, we have First Amendment scholar Charles Hains, who will moderate a discussion of the impact of President Bush's faith-based initiative. And we have a tremendous panel for that week and invite you all to join us for that.

Some of you may have seen the television show we do. It's called "Speaking Freely." It's on MetroArc's 13. It's in 2 million homes in New York, Connecticut, New Jersey - virtually everywhere but like a 2 square mile area in Manhattan. So those of you who live in that area actually need to come and see the show live. The best way for you to see it - on May 18 we have two shows - one is playwright Edward Albee will be here at 11:00 a.m. and those of you who are fans of Rap know "Public Enemy" - we are privileged to have Chuck D here at 3:30

p.m. on May 18. So if you stay all day you will have the full cultural experience – from Edward Albee to Chuck D. So we invite you to join us on a regular basis.

That concludes my public service announcement. We are delighted you are here. I now would like to introduce a colleague who has made a great difference in the field of the First Amendment. He, like us, shares the viewpoint that people of good faith can differ on important issues involving free speech, but the most important thing is that everybody has the right to speak out on those issues and that's what you will hear tonight. Our moderator today is a man who spent 31 years as a professional journalist including being the former associate editorial director of *USA Today* and to me, the single most important job is that he helped found the First Amendment Center. He was the first executive director of the First Amendment Center and set the tone for all that was to follow. He also writes a terrific weekly column full of passion, anger, and outrage – not necessarily in that order. [laughter] Which you will find at our website [www.freedomforum.org](http://www.freedomforum.org). Please welcome our moderator tonight – Mr. Paul McMasters.

[applause]

**Paul McMasters:** Thanks, Ken and let me add my welcome to Ken's. A great group here tonight and we're so pleased to have you. We're in the presence of – I probably shouldn't say a miracle – but it sure looks like one because on March the 6th when we were originally scheduled to have this program, we had the “unblizzard,” the blizzard that never did materialize. But we cancelled it before it arrived or didn't arrive, anyway, and it's something of a miracle that we had gotten this particular group together. If you look at their schedules and the kinds of things they are involved in, you can imagine what a task Ann Young, our program director, had in getting them together on one day, but to cancel and then get them together on a subsequent

date is beyond miracle as far as I am concerned. So we're very pleased that they could join us for this important program tonight.

I don't think it's a surprise or news to anyone in this audience that Americans are transfixed with the idea of violence today. It is a very worrisome issue in our midst with the school shootings, with a sort of generalized anxiety about crime and violence that has been with us for quite some time which seems to keep bubbling more and more often. We seem to have a media saturated with scenes of violence whether it is TV movies, music video, games and those old standbys, books and comic books. This phenomenon has obviously caught the attention of a lot of people – important people in our society – researchers, policymakers, medical and psychological groups, activist groups and most importantly, ordinary mothers and fathers out there who worry about what their children are being subjected to and what the impact of that might be on them.

Two significant questions have come out of this sort of discourse and are the ones that we are going to focus on in our discussion this evening. The first is: Is there a causal or some other sort of link between violence in the media and violence on the street or actual violence; and the second: If so, what can or should we be doing about it? We are fortunate, as I say, to have assembled truly thoughtful voices on this issue from a variety of perspectives. We are not doing any prepared presentations tonight. We are going to ask a couple of questions up here, have some conversation to get the ball rolling, but we want to include you as part of this conversation also. And I daresay that we have a host of experts in the audience as well as up front. I notice that my good friend, Bob Corn-Revere, a Washington, DC attorney and expert on the First Amendment, won a case before the Supreme Court not long ago having great First Amendment ramifications. Bob along with Gail Markels of the – I'll never get it right Gail – but it's the

Interactive Digital Software Association that these are the folks who work on video games rating and trying to give information to parents about video games. Also, Joan Burton, the executive director of the National Coalition Against Censorship. Chris Finan, American Booksellers Association's Foundation. David Horowitz of the Media Coalition. And many, many more out there who really care about this issue and are knowledgeable about it, and I think we will have a great conversation with those folks involved.

I would like to introduce the panelists and then we'll get right to it. On my far left and your right is Jeff McIntyre. Jeff is a Senior Legislative and Federal Affairs Officer for the American Psychological Association and a real veteran of this particular issue and the more general issue of the impact of media on children. He testifies before Congress, he has been a member of a government taskforce working on various issues and was very much a part of the FCC's work on getting the V-chip installed in television. Jeff testified most recently on this subject before the Senate, and we are most anxious to hear his perspectives on this because his organization is one of those that signed on to a statement saying that there is a link between media violence and violence, and there is a need for action and a cause for concern.

Next to Jeff is a wonderful author and historian, Richard Rhodes, who has written more books than I can read, I think, but a Pulitzer Prize finalist in history with "Dark Sun" and then he won the Pulitzer Prize for general non-fiction with "The Making of the Atomic Bomb." Richard is with us tonight because of his article not long ago, "The Media Violence Myth," which confronted some of these issues rather directly in ways that hadn't been talked about that much in the media lately, and has a fascinating perspective to share with us this evening.

Then, next to Richard is Marjorie Heins. And Marjorie is, if she'll forgive me, the real reason that we are here tonight because Marjorie has just completed two major works. One is a

white paper on media violence which I hope that you picked up. It's the feature of a report that the First Amendment Center has done on this whole issue of media violence and it works as white paper for people who are doing research, journalism and that sort of thing. You may have also noticed that Marjorie has got a new book out – it just came out this month – with a wonderful title of *Not In Front of the Children*, which is all about a larger topic of harmful to minors doctrine and the law as well as violence. So we are most pleased to have Marjorie here to give us the sort of an overview of what this whole topic is about.

Dr. Edward Hill, on my immediate left, is a family physician from Tupelo, Mississippi, and so much more than that, although I think that's probably your most acclaimed title. He is a member of the Board of Trustees for the American Medical Association, which like the American Psychological Association, is one of those groups that have endorsed the idea that media violence does have a link to real violence, and that physicians especially have a public trust in trying to do something about that. Dr. Hill has been on the Board of Trustees of AMA's Council on Legislation and served as its Vice Chair from 1995 – 1996. and in addition to caring very deeply about this topic, has got a lot of expertise in it as a member of the Board of Trustees and in his role at the AMA.

So without further ado, let's get right to some questions of the panelists that will get the ball rolling, and please feel free to take issue with one another and not wait for my questions if feel constrained to say something right away. I'd like to start with Marjorie, though if I could, to just sort of give us some sense of why you got into this topic and why you think it's an important for us to be addressing, Marjorie.

**Marjorie Heins:** Thanks, Paul. It all started when I was working for the American Civil Liberties Union as a First Amendment lawyer and we would – this was in the 1990's – and there

was a pretty steady stream of censorship legislation that was coming out of Congress culminating in the Communications Decency Act of 1996, which essentially banned indecent communications on the Internet, a rather broad concept. We also were constantly confronting school censorship, library censorship, in local communities and the justification was very frequently “we’ve got to protect kids from bad stuff,” and it was very hard to get behind that to get courts or the general public for that matter to think about “what is this concept of harmful to minors” really about. Is it about ideas and morality and proper moral development of youth, or is there really any scientific or medical basis to think that we can pinpoint whether its sexual content, violent content, antireligious content, or anything else in the world of modern ideas that actually could be shown to have psychologically harmful effects? And so I started getting interested in the whole subject, and to make a long story short, eventually left the ACLU and began work on *Not In Front of the Children*. And of course, an important element that I had to confront was the social science literature on media violence and there’s a chapter in the book *Media Effects* from which I excerpted and revised and condensed and added to produce the white paper.

**Paul McMasters:** Dr. Hill, I’d like to hear from you next because I believe you had a family practice for 27 years, so the issue of violence and children is not just an abstract thing to you that you have not just studied the social science, but you have seen some of the effects of it in your own profession. Could you give us some sense of how you view this issue and what you think needs to be done about it?

**Dr. Hill:** First, my background is a rural family practice in a very poverty-stricken part of the deep South. My introduction to the whole issue had to do with delivering 12- and 13-year-old children and wondering what could be done about it. Some might consider that a form of

violence. I certainly did. I became very involved in what I thought was very logical and very prudent. And why would anybody not want to fund it and do it which is comprehensive pre-school through 12 health education, which would deal with the issues not only of violence but all the other social issues that drive probably 70 percent of our healthcare costs in this country – teenage pregnancy, drug and alcohol abuse, sex and suicide, and so forth. So that’s how my interest was – probably why I became so interested in it.

I still believe to this day, 40 years later, that what we have not done in the solution is absolutely education, education, education. It’s got to be the solution. We have as a society and as a country – it appears to me we have not been committed to that at all as it relates to the social issues that drive healthcare costs where as we have been fairly well committed to English, social studies, history and math and science. And so I think that’s been a shortcoming in the entire issue of violence and we’re not going to wipe out violence.

And another thing I want to make very clear is that the American Medical Association has no policy that could be construed as promoting or recommending censorship of any kind. We did sign onto a statement with the Senate hearing that – and said that we felt like the volume of violence that is portrayed in the entertainment industry has a direct relationship to behavioral problems with violence. You must remember how our policy is developed. Our policy is developed by 500 physicians throughout the country who meet and debate and argue this as much as our Congress argues and sets policy that we, of course, follow.

Up to until the time I read Marjorie’s paper, I was fairly comfortable with the research that we were presented with at the American Medical Association. I have become less comfortable. I still don’t believe that I am necessarily wrong. I just believe none of the research has been done yet or the right kind of research and maybe we cannot do the right kind of

research in the right context. I suspect that's true because of social issues. But we are still very concerned about – not causality as much as we are concerned about context and volume of violence and sexuality in the entertainment industry and the media. But the solution is – you would have to be a simpleton not to know what the solution to the problem is. It's what I call prenatal through 12 comprehensive health education in this country – funding it and financing it. We have not gotten a commitment from the Congress or from society to do that and we have to build a consensus and build a critical mass in the public to make Congress do anything sensibly as you all are very well aware.

**Paul McMasters:** Jeff, it makes sense to go right to you from what Dr. Hill has said. Are you convinced there is a causal link between media violence and actual violence?

**Jeff McIntyre:** Not to sound too Clintonesque, but how do you define causal? [laughter] I think one of the difficult things in this debate has been a problem in just that term – causal – unfortunately, that when we use the term causal, a lot of folks think that that is something that can be used in a predictive sort of way. When we use it in social science context, generally what we see is that in the roots of violence, and we have to kind of get away from your traditional cause-and-effect model when we talk about violence, because there is nothing in the roots of violence prevention that aims at one thing. Even Dr. Hill's talking about comprehensive health education as we approach the issue of violence prevention in the U.S. and world-wide. I think – there are instances where media can be the mitigating factor in an act of violence. We live in an age where the culture of violence is so rife in young people's lives and so target-marketed towards them in their everyday lives that we have to take a step back. We see based on the research from Don Roberts at Stanford University last year that kids soak up non-academic media anywhere from about 2-1/2 to as much 10-1/2 hours a day. About 16 to 17 percent or so

rated it the highest category of 10-1/2 hours a day. Messages are learned that way. Jack O'Laney is very renowned for coming out and saying this isn't rocket science. One thing does not cause the other. If you watch television, it does not make you go out and commit heinous crimes. On the other hand, what we are seeing is very simple as well is that the more you are exposed to something, the more likely you are to pick it up. We are concerned about children's exposure to violence in whatever context and we know that there are certainly degrees of that. But we don't want to see it overlaid in any way in any one given area. We know there are problems with context and the volume of violence that's out there. We know that there are problems with gun violence, access to handguns. We know that exposure to violence in a domestic situation – if the child witnesses domestic violence situations occurring in their house – that that is as much of a problem. What we are talking about is the picking up of prevailing norms for a child and we think that the current media culture certainly does contribute to that.

**Paul McMasters:** Richard, that sounds awfully sensible to me, especially when you get causal redefined a bit, how do you react Richard and Jeff?

**Richard Rhodes:** Define causal to include correlation which it doesn't, then you can say almost anything about causal. It's hard to know where to begin with this gray statement. Let me begin in a very simple place. The homicide rate in medieval days was 10 times as high as it is in modern America. It didn't have any media, surprisingly enough. What did they have? They didn't have police, which means they had to decide their disputes themselves. Common people didn't have access to courts of law. They did have extraordinarily brutal child rearing practices, much more brutal than is common in America today, although there are pockets of truly medieval brutality within families. The idea that we today are then transfixed with violence is very interesting. We live in the most peaceful time in the history of the species, evidentially,

based on those numbers, and yet we find ourselves most concerned about violence. I am not sure why that is but I think it is clear to me that we are concerned about media violence because when people act violently, having no other explanation for it, one explanation that seems logical is that they saw it on television. This explanation has been used down through the centuries for whatever media is the popular media as opposed to the sophisticated media.

It was argued against Penny Dreadfuls in England in the 19th century and Punch and Judy shows. It was argued against the novel in the 18th century, which was supposed to corrupt young women. It was argued vehemently in the mid-20th century against comic books, which many of you here will remember which just fell off the map the day the debate was finished in Congress, because they all went G-rated and we all stopped reading them. And by the way, we didn't most of us grow up to be violent despite that. Television is the latest bugbear, and more recently than that, the Internet and video games.

Finally, I think you have to go back and look at the science that has been done or what passes for the name of science in this field. I did this at great length. It is most of the most boring bodies of literature I have ever explored. I looked at what was there. It talked to experts. I challenged the people who made media violence claims in the scientific literature. Others have done this as well. Jonathan Freedman, a professor at the University of Toronto, a psychologist previously at the Columbia University, did a thorough investigation of every study published in English in this field of media study and concluded essentially that there was nothing there.

Well, maybe more research would find it, but this research has been going on now for 40 years. It's been a very extensive investigation and the numbers that have turned up have been correlations at best. Some of them as I discovered in investigating them have been essentially fraudulent, and I can support that statement and would be glad to. I think finally this turns out to

be a great diversion for politicians who are able to stand up and make claims and statements and then go home quite secure that any action is protected by the First Amendment, so they don't have to do anything about it. I think it's easy to blame the media for the claims of unusual violence that we've been seeing lately in public schools, but it's very clear to me looking into the literature and criminology, truly causal studies, not simply correlational, that the cause of violence is indeed single and clear. It is the brutalization of children, some of whom – not all of whom, some of whom – decide as a result of those personal experiences with violence, that violence is the way to defend themselves, and having done that and having heard from others that they are afraid of them now, they decide that violence is the way to achieve whatever end they chose to achieve. That's the evidence from criminology and I think it simply blows out of the water the whole media violence debate.

**Paul McMasters:** Let's say Richard is right, Marjorie, how come that message not only doesn't get picked up by folks like ourselves but august organizations like the AMA and the American Psychological Association that have spent a lot of time looking at this social science and looking .....

**Marjorie Heins:** I wish I knew. I think you have to understand the politics of TV violence. There's actually an interesting book I came across while I was research *Not In Front of the Children* called *The Politics of TV Violence*, and it really started at the very beginning of TV, and as Richard mentioned before that, it was other media and it is evidentially very politically attractive for politicians to seize upon this issue. It's what one of my intellectual heroes, Henry Jenkins, who's an expert in the media and communications, and has a more nuanced approach to the effects of the culture in media on our minds than the school of psychology that looks at it narrowly, the narrow kind of cause-and-effect, and tries to test it in a laboratory. It's what Henry

calls “shifting from real solutions to social problems,” like education, to the “symbolic terrain,” where you can grab headlines by attacking the media, and you never even really define what you mean by violence, which is a vast subject, and then you set up commissions and you fund. You fund studies and psychologists who are trained in a social science experimental tradition that looks to numbers and equations, which in some areas is very useful for establishing realities about sociology and psychology, but I believe in the area of development of human personality and something that is as complex as aggression, these quantitative studies are not as Dr. Hill said “ever going to give us the answers.” But the politics of it draws the funding, and the funding draws the research, and so the research has been overwhelming geared toward a hypothesis that there is this direct cause-and-effect relationship, and even with that disproportionate funding going to this particular school of psychology that Jonathan Freedman has exhaustively shown in a forthcoming book which Richard mentioned – but the results are very poor.

Neither the laboratory studies, nor the correlational studies, nor the attempt at what’s called longitudinal studies correlations, over time have demonstrated anything close to scientific certainty, which doesn’t mean that all kinds of media don’t have real effects on us. They do. But they are just different effects depending on what the individual person, child or adult, brings to the TV show, the cartoon, the comic book, the video game, what experiences that person, that child has had, genetic makeup, community, a whole host of factors that go into how that particular individual is going to process a particular piece of art or literature or entertainment that has violent content and, of course, what the message is, what the context is – is it Shakespeare, is it Schindler’s List, is it a comic book, is it a war movie, is it an adventure movie, what is the message and what is the context?

**Paul McMasters:** I think that is an excellent explanation of why policymakers or politicians, as you put it, arrive at where they are on this issue. But I happen to be tapped into the First Amendment community pretty well who worry about the causal effect between this debate and regulation of the media, and I have to tell you that there was a great sucking sound, if you will, when the American Psychological Association and the American Medical Association said: “Hey, we’re signing on to this science” because they are not the politicians. They are not the headline grabbers. These are people who are sober and sophisticated and supposedly know how to read the science. So, Dr. Hill, would you tell us why the AMA chose to make this – choose sides in this

**Dr. Hill:** And sometimes used by the politicians.

**Paul McMasters:** Right, right.

**Dr. Hill:** And quite often.

**Paul McMasters:** That will happen when you have a press conference with Senator Brownback. [laughter]

**Dr. Hill:** We try to balance that, because we try to use them also. So it’s a contest so the conclusion, of course, is that the politicians are the problem again. [laughter] I don’t doubt that or dispute that, or I don’t think anyone would argue that it is part of the problem. I think we felt very comfortable with the research that we were aware of. That’s why we signed on. But there were political reasons for signing on. We’re looking for a champion in Congress that will be willing in the long run to back our desire for funding of comprehensive school health in this country. And we haven’t found that champion yet but we are looking for him. There are five federal agencies who have large health education budgets. Some of them don’t use it for much health education: the Department of Defense, Agriculture, Education and one other have large

budgets for health education. What our dream of seven years ago was to have those funds put into a single pot and have them utilized by states and school districts who are willing to follow a certain criteria for developing or using curriculum for school health. Much as we have done with highway funds in this country and successfully build highways. We haven't found that champion yet, so some of our reason was political and some of it was true belief that our science department signed off on what was good science. I question that, of course, and I have. But I still believe that all the science is not in.

We are in the infancy of early brain development research and very much in the infancy. And we are not funding that very well either. We are in the infancy of what the human genome project will really do. We are in the infancy of what will come after PET Scans are going to do when we look at childhood development from birth through the teenage years. So I think the research, again, is in its infancy on early brain development, I think we may find that we weren't so far off but we have not found that yet because we haven't been able to do the research. So that's the political reason and the practical reason. Very interesting about early brain development research – it's a little bit more practical.

Some of the social sciences now are doing research, of course, with pilots and various industrial people to see why they make decisions the way they are made when they are fed certain information. Why I am doing that in a training program with doctors, right now, where we have anthropologists and psychologists and psychiatrists and social scientists make rounds with us as we take care of patients on wards in the morning and watching the learning process to see if we can improve the way that residents make decisions about caring for people and we are getting a lot into some of these issues of development.

**Richard Rhodes:** Decision-making is at the center of people learning to be violent.

**Dr. Hill:** Exactly.

**Richard Rhodes:** They are coached. They are told repeatedly by people who they recognize as violent authority figures that they have a personal responsibility to use violence to settle disputes. Violence is a decision. Violence is a choice. It results from perhaps these adverse childhood experiences. I think without question, it does. But ultimately it's something people decide. This is so different from the prevailing medical and psychological model of violence which I think again has to have been arrived at because we live in a society where so very few people are violent. That people don't know why those particular people end up being violent. It's easier to think that they are pathological, rather than to think they have learned from their social experiences a way to behave that's successful for them, however unsuccessful it looks from the rest of us.

**Paul McMasters:** Jeff, in reading your testimony before the Senate, I don't want to put words in your mouth, but it sounded as if you would favor some regulation of the media in order to curb what you consider a very, very real source of harm to our children.

**Jeff McIntyre:** Not to put intent into your question, but one of the leading qualifications of the social sciences and psychologist's qualifiers which I am having to give a few examples of this evening, we do not wish from an organizational standpoint to curb the amount of violence that is available in the media right now. What we wish to do is to give parents more information so they can make the decision on their own about what their kids should see.

When I originally encountered this debate, stemming from the Telecommunications Act of 1996, when the V-chip was first introduced, we were told to get together with the industry and hammer out a ratings plan that would be agreeable both to the industry and then to the participating groups that were called on by the members of Congress to go on and negotiate with

this. Ourselves, the AMA, the Children's Defense Fund, the National PTA, those sorts of groups went together for this.

We got a huge backlash from the religious right on this. They were really concerned – this was the time in history where Ellen DeGeneres' show was doing really well in the ratings at this time, and it was all the fervor of the religious right to get this thing knocked off the air and in fact, the episode of Ellen where she actually came out of the closet. They raised such a stink about this and major advertisers pulled their money from this. Now I have sent some real radicals to the negotiations that we were involved with at the time because they thought “Well, you mean if we label a show this way, advertisers are going to pull their dollars because people don't like what's on there?” And suddenly, the tone of the negotiation changed quite a bit for us.

We consider ourselves in the public health community very much the middle ground on this. We do not want to ban, we do not want to censor, any of this content. We would actually like the industry to stop their – what we feel – is a form of censorship to parents in the material that is out there. We think we need a better movie rating system. We think that the movie rating system done by CARA and by MPAA right now is mostly a marketing tool, and that we can certainly use more information geared towards parents to be able help them make healthier decisions for their own individual kids.

This is really what it boils down to, and I don't know if I am quite ready to go to a Mr. Rhodes violence-is-rational argument that he is making, but it really is – I'll say this as well, in reading Marjorie's piece for this and also some pieces from her other book, *Sex, Sins and Blasphemy*” you can pay me for the plug later, [laughter] I find myself agreeing with everything that everybody is saying, but just coming to a different conclusion on this sort of stuff. What we have found is that the industry does target young kids. That is a marketing tool and I don't think

anybody for certain products questions that, and that was the result of the most recent Federal Trade Commission hearing. We feel like they can do a better job and find labeling in giving information. We think that is an agreeable middle ground to disbanding our censoring.

**Marjorie Heins:** I don't think the American Psychological Association can get off the hook quite that easily. And I appreciate the very nuanced and reasonable things you have said, and appreciate that you don't believe that the V-chip law amounts to censorship. We can debate that but it's a little off the point. But the point is that this professional organization has through the years made much less nuanced statements than you have about the issue of causation, and it has said and encouraged the kind of political grandstanding that we see all the time from the Senator Liebermans of the world, and that prevents us from getting to real educational solutions.

And just let me read a couple things. Testimony of Jeff McIntyre of the Senate hearings last year. Regarding the joint consensus statement of the 4 or 5 professional organizations. "What we absolutely know to be true in the public health community regarding children's exposure to violence in the media." Terms like "absolutely" to claim that based on research there is a proven causal relationship. Nothing equivocating, nothing explaining that probabilistic causation, social science, is not what we think of as scientific causation.

And let me go back to the APA's 1993 Violence and Youth Psychology's Response. "There is absolutely no doubt that higher levels of viewing violence on television are correlated with increased acceptance of aggressive attitudes and increased aggressive behavior." Well, there are some correlations, but that says nothing about what causes what, whether people who for a variety of reasons are inclined toward violence or attracted to violent entertainment maybe because it may have a cathartic effect or whether there is some third variables as for example, infant studies that have been done of heavy metal music by a psychologist named Jeff Arnett

who says “Yes, there is a correlation between kids who are aggressive or acting out and that preference to heavy metal music,” but the cause of this factor is the third variable. It’s the penchant for sensation seeking metasomething and the predisposition of these kids.

Ok, so there’s a correlation, says the APA. Fine so far. Talks about some major national studies and then a sentence later, “Hundreds of studies we arrive at the irrefutable conclusion that viewing violence increases violence.” So they jump from correlations to a statement about causation in absolute terms that is simply not justified and that kind of – just the third example – the joint statement last year “Many thousands of studies have proved the causal relation between media violence and real world violence or aggression.” Well, there aren’t many thousands of studies. There are a couple of hundred studies. You can say “What does it matter, a couple hundred studies is a lot.” Well, putting aside the fact that the couple of hundred studies don’t show very much, just the fact that these professional associations would be careless enough with their numbers to confuse what are a couple of thousand articles and chapters and summaries and reports based on a couple of hundred studies, that they would make that kind of confusing inaccurate statement is an illustration, I think, of a kind of sloppiness - that we should want our professional associations to do better and be more accurate and I think if they were, that would really help us move past this kind of symbolic terrain to something that would really help kids.

**Paul McMasters:** I invite your questions, just hold up your hand and I will pull you into the conversation. It’s just getting good up here and we would like .... [laughter]

**Richard Rhodes:** ....the debate is going on at the time when the violence rates in America are declining radically from a high of 10.4 homicides per hundred thousand in 1981. We are now down to, I think it is, 5.... under 6 percent. So if there’s a correlation, if we’re playing correlation here, it’s the other way.

**Jeff McIntyre:** I'd like to speak to that briefly that Mr. Rhodes' statements of how we live and the most peaceful society of history may certainly be true but violence is still certainly a problem in many areas of society right now. Homicide is the leading cause of death for young African American males. It is also the leading cause of death for young African American females. If you are under the age of 18, regardless of what race you are, it's in the top 3 causes of death for you.

**Richard Rhodes:** Do we think they watch more television than white young people?

**Jeff McIntyre:** Probably not. Actually the studies show the opposite of that based on income level.

**Paul McMasters:** I went to the trouble of naming some of you people in the audience at the beginning. I know who you are, I know where you live. I'll ask you questions if you don't ask questions. [laughter] So please join in if you wish. I'm intrigued by a sort of a dance there, Jeff, about the regulation of the media. Would you include the things that you think need to be done as far as the media is concerned. Would you include in that sports programming, news programming, non-violent programming?

**Richard Rhodes:** Sports programming is never included in these studies. [unintelligible] we consider violent. [laughter]

**Paul McMasters:** But in the regulation such as you wanting more elaboration of the movie rating code and the television rating, to what does it extend and to what effect do you think it would have?

**Jeff McIntyre:** Pure and simple, we just like to get more information out there about the programming. It doesn't matter what the programming is. We'd just like to see more

information given with enough notice that parents can be able to make up their own minds without being told by the industry whether their child should watch it or not.

**Paul McMasters:** Marjorie?

**Marjorie Heins:** Well that's not entirely correct because the V-chip law specifies what Congress has disapproved of – what kind of content has to be rated – and it's violence, sex and other indecent content which the Motion Picture Association responded with its supposedly voluntary rating system interpreted to mean vulgar language. Now there could be a lot of disagreement among parents as to what might harm young viewers' psychological development. I don't think there's any consensus that vulgar language is particularly harmful provided that there's a family context for it.

**Jeff McIntyre:** Forgive me for interrupting. That's not quite as I understood it as it happened at the time – that the V-chip was actually put into effect – the V-chip itself was a violence chip which was what the "V" stood for.

**Marjorie Heins:** But the statute identifies more than violence.

**Jeff McIntyre:** When we went into the ratings negotiation with the industry for the television ratings, since we are talking about the V-chip, we specifically went in and said "We've got to label violence. That's all we care about. We've got to label violence." The industry – when I say the industry here, I mean to infer the Motion Picture Association of America, the National Cable Television Association, and the National Association of Broadcasters – when we were negotiating with those three groups, they were very interested to start including other aspects in this as well, and we feel like they actually included a larger segment. They included sex, or sexuality, I think as it's defined as . . .

**Marjorie Heins:** The Congress required them to do that.

**Jeff McIntyre:** . . . language and then another category, which we really struggled with called “dialogue.” And “dialogue” comes off most exclusively from trying to get a grasp, and frankly this was a bone thrown to NBC to try to get them as part of the agreement, that we had a hard time coming up with adult material as such. The industry was saying that you really needed to rate certain things, that they got a lot of pressure about that didn’t involve violence or sex or language necessarily. And the example that was used for that most infamously is the Seinfeld masturbation episode. What they never actually say anything, but it’s still obviously a pretty adult content.

**Marjorie Heins:** What is masturbation is subject only for adults.

**Jeff McIntyre:** It’s not 6 year olds.

**[unknown]:** My name is [unintelligible] and I am a playwright. You say that violence has gone down. I’d like to know what you are comparing it with. And I’d like a comparison between today and 1940.

**Jeff McIntyre:** [Laughter] I wasn’t born . . . [laughter]

**Richard Rhodes:** Actually there were two peaks of homicides per hundred thousand in the United States in the 20th century. At the beginning of the 20th century, all of western Europe and the United States had reached a level of only 1 per hundred thousand, the lowest being recorded since records were kept or construed. Then violence – homicide – the only number that I think is really solid because you know when someone’s dead – but what rape constitutes, what robbery constitutes, these tend to have different definitions at different times – homicides started to go up in the United States, not surprisingly, after the First World War and reached a peak, I think it was around 9 or 10 per hundred thousand in the 1930s. So probably in 1940 it was still fairly high. Higher certainly than it is today. It declined during the Second World War radically

for the simple reason that these young men were off fighting the war. Young men are the most violent group in our society. It started to go up again after the Second World War. Went up and down a little bit during the 50's. Went up radically for reasons no one's quite sure of, but it may be related to the introduction of drugs and drug dealing into our society. Reached a peak in 1981, as I said, and has been declining sharply ever since. So there's no correlation between the real acts of violence in this society and exposure to any particular media which I think is a very important point.

**Paul McMasters:** Got a question here. Wait for the microphone and please give your name, if you don't mind, because we are web casting it.

**Charlie Spencer:** My name's Charlie Spencer. I am here as an individual. With all due respect to the honorable members of the panel, I have a feeling that they and I are living on different planets. When did we hear about "road rage" as much as we do now? When did – the most feared call that any police officer in the United States has is a domestic violence call. People beating each other up in the same family and so forth and so on, etc. School shootings. When did you hear about that? In New York City now, police officers and police cars are parked outside the schools in the morning and in the afternoon and there are police officers inside. Now, I am not suggesting that 50 percent of the population is behaving violently. Of course not. But more than a few are and we know it. And with all due respect to any surveys that are taken, and I don't want to seem like one of those people who says "don't confuse me with the facts." [laughter] I do want the facts. But in spite of the research we have and so forth and so on, there's a disconnect somehow here. There is plenty of violence. We all know we have to be careful when we are in a crowd or when we go out and this and that and so forth and so on.

And as far as the media are concerned, I spent time in the media, been involved in it. It's a double edge sword. Media can be wonderful, and it is wonderful. But at the same time we are being supersaturated with violent presentations in entertainment and so forth and so on. On top of all of which the news programs we know are not a slice of life. An old saying in the newsrooms now is that "if it bleeds, it leads." The news is skewed toward violence. Everything is skewed toward violence.

Ok, we don't want censorship but I do want is what has been suggested here and Dr. Hill suggested it, too. Let's have some education in various forms so that the public can be aware of what they are seeing, and sense it, and be able to resist and not be overwhelmed and swayed by it. I mean what contributes? We all know that what influences behavior is people's values and their standards. Parents, no matter how loving and caring they are now – and every child is not fortunate enough to have loving, caring parents – but even the loving, caring parents have a reduced and diluted impact upon their own children because of outside forces, largely the media which are influencing their children. And I have said enough. Thank you.

**Paul McMasters:** Dr. Hill, as somebody who spends a lot of time with parents and children, we haven't talked a lot about the parental role and you have spoken eloquently about the role of education. But what about parental responsibility and the parent's role in this whole issue.

**Dr. Hill:** We have to define what the traditional family and parental role is now compared to 1940. It was quite, quite different. And I don't remember the figures, but the single parent with children who works now is the common denominator and not the exception, so consequently, our whole concept of parenting, unfortunately, has not changed with the culture, with the parental culture. That's why I am so interested in the schools and I certainly don't want

to dump social problems on the schools. I'm not one of those people, but I feel very confident that we've got to have outlets somewhere besides parents to address these problems with children.

You all know, you have grandchildren, probably some of you, and children and both parents, if there are two, work. If there's one, one works. If the children are not parented the same way, I'm not saying any worse or any better than they were in the past. And we haven't addressed that very well. Sure, parents have enormous responsibilities. I believe that the modern-day parent, even a single parent, has a greater sense of and greater desire to be a better parent than my parents were and my grandparents were. That goes against traditional thinking, I know. But I think that's quite true. I think our parents today, middle-age and young parents, are actually better parents. But they are under an enormous amount of stress that they never experienced 20 or 30 years ago. So that's why the solution has got to be a more of a societal solution than - the public schools happen to be an arena that we can accomplish some of that.

**Paul McMasters:** Marjorie, we haven't really addressed it in concrete or specific terms and we've got one more question over here, but while we're getting a microphone to this lady here, could you tell us what the First Amendment's imperative is here? We are talking about the media having a role here in the public mind, whether the social science says it or not. Certainly, I think public opinion is very soundly in that corner. What does that say for political figures like Senator Lieberman, Senator Brownback, Senator McCain, and others who are very eager to pass laws to push along that self regulation of the media that seems to be implicit in the FTC reports. What is the First Amendment problem?

**Marjorie Heins:** I'll only answer that if you'll also let me take a minute to respond to the gentleman. Well, the First Amendment protects freedom of expression, obviously, and but

the Supreme Court has said repeatedly “that’s not an absolute” and has caused that exceptions. For the most part the exceptions are identifiable harm to an identifiable category of individual, usual a single individual as in the cases of defamation or a libel suit, can be shown. The one big exception to that is the kind of censorship that has been most pervasive in this country and in England from where we get a lot of our tradition. Obscenity law. And there the justification for the exception to the First Amendment is basically morality. And their perception of societal harm to the tenor of society and attitudes about sexuality.

Arguments to extend that obscenity exception to violence have been made and in a couple of cases, municipalities have passed ordinances explicitly tacking violence, content of one kind or another, onto the obscenity law which has a sort of three part test of the material to be unprotected by the First Amendment as the last series. Value and appeal to prurient interest and so forth. So it is a very broad and vague test even for sexual content and when you stretch it to violent content, it’s even broader and vaguer. Those attempts by municipalities have not been successful. The courts have said that violent content, unless it rises to the level of incitement, to an eminent act of lawlessness, is protected by the First Amendment.

But to get back to the social issues for just a minute. I think there is certainly good reason to be concerned about youth violence. And I think the primary reason that youth violence in this country is so often fatal is the lack of gun control. I think there is also reason to be concerned about the culture. But I think we ought to be clear that we’re not talking about scientific proof – that’s either established or ever likely to be established – that any particular category of entertainment or even any particular single show can have a proven causative effect on what is obviously a very complicated phenomenon. And we ought to be clear. We’re not talking about science and causation, we’re talking about attitudes and intuition and to some

extent common sense and parental experience and physician experience. So how do we address concerns about the culture. I mean, I frankly think that it is of more concern that kids are sitting as couch potatoes in front of a TV set or computer screen which is likely to lead to obesity and lack of social skills, than I am concerned about the particular message in the show that they are watching. But yes, there's reason for concern about the culture and it would be great if we could have media literacy training funded in our public schools to help kids negotiate the culture and think critically about the messages they are getting, not only from TV shows but from advertising and it would be great to have better funding of public broadcasting.

**Dr. Hill:** Let me just get to the question of the numbers. These aren't survey numbers. These are FBI reports collected from police departments of actual crime. So when I say homicide is declining, I'm not saying we took a poll, it is declining in the United States. The question really is why there's such a disjunct between our personal perceptions of violence and the actual violence in our society and I don't know the answer to that question. It's probably the media.

**Richard Rhodes:** Dr. Hill, I can't resist this. Back in November of 2000, there was a commission report released called the Commission for the Prevention of Youth Violence and it was a Robert Johnson funded report that took 18 months of investigation by a nursing public health and 9 medical organizations. They happened to be one of those and we received the grant. That's why I was involved in it. This piece takes every aspect of youth violence and every segment of society and makes recommendations and makes specific recommendations about what each part of society can do from parents to courts to schools to media, gun violence issues in this report. I'm hawking the report – it's free if you'll give me your card, I'll send it to you.

But I think it offers a balance of what we can do as a society and as a culture to continue to address the violence.

I personally think violence – there are fewer guns in school, fewer knives in school, fewer fights after school in the last three to four years – because of all of these things that are going on in communities across this country. We had open hearings in several cities across the country. We invited in victims of violence and perpetrators of violence and listened to them and parents and kids, mostly kids. We had focus groups with children all over the country and then invited the “experts” and the public health violence people in and did this report. What we found is a common denominator in every program that could demonstrate reduction in violence was a single individual or a small group of individuals in a community – and by a community I may mean two blocks or I may mean six counties – that were committed over a long period of time to having a one-on-one relationship with “at risk children.” Every single time it worked. Every single time it worked. And there’s where the shortcoming is with physicians and with nursing and the public health and with society. And that’s what we’ve got to solve. I’d love for you to read that report, though.

**Paul McMasters:** Final question here, real quickly, comment or question?

**Mary Giordin:** I’m Mary Giordin. I’m on the faculty of New York University in the Department of Culture and Communication and Media Ecology. And I’m a big proponent of media literacy. Just a brief overview – media literacy for the people that are not familiar with it. It was a movement that started in the 1930’s in England to educate children from pre-school through high school in the importance of looking at all forms of media and understanding the subliminal messages so they are not manipulated. I do not believe in censorship. The minute

you prohibit somebody from seeing – you know, you prohibit a child from seeing something – he’s going to want to see it even more. We all know that, psychologically.

So what I am saying is the education, you know, I support very much what Dr. Hill is saying, but the media literacy movement, and I am sure that now they seem to be fighting among themselves, which I think is so tragic because I have been trying to bring communication skills into high schools for many, many years. I have done a tremendous amount of volunteer work on this with, Dr. Hill said this, ability of children and especially teenagers to be able to talk to people, to build their communication skills and have someone listen. If they’re not a really strong family. If the parents aren’t there but the community, which you are saying, this ability to build into the community structure, because I find what I’ve done with at-risk high schools, with at-risk teenagers over the country, is this ability for them to talk about how they feel about things and have somebody listen to them and this is what diffuses the bomb and keeps the kids from getting into, so they’re not acting out whatever violence they may feel.

If you want to go back to emotional maturity or go back to emotional intelligence which again, is a wonderful thing. But it’s the education. But it needs to be at every level. Because if they are not coming out of a solid family where they have that ability to discuss things with their family, as we say the social skills, I see it with my students at NYU, they have no ability to communicate. They don’t even know what the word conceptualized means. I don’t know how they got out of high school. This ability to watch television, apart from the violence, is this ability that people sit around watching the boob tube and they don’t talk to each other. They don’t converse and they don’t communicate. So all of these things need to be addressed, but I think the media literacy and health education, all of these things, comprehensive programs within the educational system at the earliest age. And, of course, I’m not going to get into all the

studies that you are familiar with, but I'd like to address the issue of the media literacy which you did talk about. Thank you very much.

**Paul McMasters:** Thank you. Anybody have a quick response there? I've overruled myself with some advice from the audience here to take one more question. So if you have a comment?

**Richard Rhodes:** If we prevent the brutalization of children there would be no violence in this country. Period.

**Jeff McIntyre:** I don't disagree that the absence of brutalization of children – to come out against that statement is to come out for brutalization. [laughter] I'm really not prepared for it tonight. [laughter] But the common theme here, one of the things I would really like to emphasize here, is that while we all in this sort of presentation elaborate on a lot of the differences that we have. One of the things that's common here is that we all think youth violence and violence in society is a problem and needs to be addressed. What we have said in various ways that among the roots of violence, especially youth violence, are complex. And that's the thing that I really want to emphasize in this as well and so to say that if we got rid completely of the brutalization of children that we would have no violence, I think there'd be a little shortcoming in that. I think if we get rid of access to handguns, we'd get rid of violence completely, well not quickly, not quite, and the same goes for substance abuse and domestic violence and all that sort of stuff. But all of these are certainly contributing aspects.

**Paul McMasters:** Yes sir.

**Bob Carpenter:** Just one very quick question.

**Paul McMasters:** Would you give us your name.

**Bob Carpenter:** Bob Carpenter, activist, retired, 38 years. Just one real fast question. Nobody has used the word “institutional violence.” I mean institutional violence seems to be ok. It’s accepted on the evening news. So I think there is a correlation from of when, for example, the Gulf War, when that was on the television, on a constant basis, and it was not put down, to say the least. It was accepted. So what is your opinion on this. What is the correlation between it’s ok to have war and to kill vis-à-vis what the children play with the video games and so forth. I think there is a correlation. I think young people, they want young people to accept what they’ve done militarily in the past and possibly in the future and there is a subliminal thing here, in my opinion, and I just wanted your comments, is possible.

**Paul McMasters:** Who wants to tackle that, or perhaps one of the issues that is of interest or related institutional ed to that is the debate over televising the execution of Timothy McVeigh. What about this, we’ve been focusing on the media being to blame for violence in our society. Is there an institutional – how does it rank with other institutions in our society – as seeming to sanction violence, or is that too big a jump.

**Marjorie Heins:** It reminds me of the debate over Bob Kerry that we’ve been reading about this week. There was this squad who murdered a dozen or so . . .

**Unknown:** alleged

**Marjorie Heins:** . . . children and they talk about women and children, women can be soldiers, but in this case it appeared they weren’t. But what about all tons of napalm that were dropped. Somehow the pilots of that plane are not complicit because it’s, whether it’s institutionalized violence or more sanitized. Yeah, I agree with you and but, I don’t think the answer to – it would be nice to have news that wasn’t always as it bleeds, but I don’t think shutting down what’s on the news is going to help [unintelligible] political problems, and the

more news and information we get, and the more ability we get to talk about it – institutionalized violence – the more sensitized hopefully the population will be.

**Paul McMasters:** Richard?

**Richard Rhodes:** Institutional violence is, of course, a problem. But the scientific evidence that I have seen and credit about how individuals become violent is that they must have personal violence experience, and you don't get that from reading about it or hearing about the Gulf War. However much that has other value issues, I would just add in general that I think this discussion gets disconnect from, for example, your response and others in the audience, because what we're really taking about are cultural issues, value issues, as opposed to talking about violence, which may well be something else, I think it is. It is understandable that you might not agree with what you see of media influence on children. The world has changed enormously and it is changing. I know one media expert who suggests that the media in the 20th century has slowly begun to replace religion in the sense that it's the place where people go now for common values and to feel connected with each other. Young people, especially. That's a very threatening thought when you think about it and I'm not surprised that there are cultural issues, but I wish we could be clear that there is no scientific evidence, at least I find credible, and others who are experts, also don't find it credible, that the media as such violence makes you violent. You have to have experience to become violent.

**Paul McMasters:** It's my sad duty to have to call this to an end. Any final quick words from any of the panelists that is something you are burdened with and didn't get a chance to say. Dr. Hill?

**Dr. Hill:** No, I'm not burdened with anything. [laughter] The discussion could go on about the responsibility or irresponsibility of the institutional violence that is reported and he

didn't get into that and I don't want to. [laughter] Also, we didn't talk about post-traumatic stress syndrome which is intimately related and that's another enormous issue, enormous issue that we don't even recognize very well. It's so pervasive. We don't even recognize it. We won't get into that, it's a whole other . . .

**Paul McMasters:** Jeff, anything?

**Jeff McIntyre:** Very quick, I mentioned to Richard at the start of this, that I really was looking forward to this symposium tonight because we had found in political discussions and in discussions with industry that there had been a real lack of substantive conversation about both the nature of the research and about the true First Amendment concerns inherent in this debate about media violence, about V-chip TV ratings and whatnot. So it is very heartening to be able to have this Socratic dialogue tonight and to see as many people that have come out to show support and show interest in this. We do, from APA's standpoint, we do so much great work for the First Amendment community with the ACLU and other groups around civil rights, around prejudice, around so many issues that are close to both of our community's hearts that it's nice to be able to reach and to be able to talk to each other about this sort of stuff. So mostly just thank you for having us.

**Paul McMasters:** Richard?

**Richard Rhodes:** I think they already did.

**Paul McMasters:** Marjorie, would you like to round it up.

**Marjorie Heins:** Sure, I think this has been a very productive conversation. I would urge the professional associations to be much more scrupulous when they talk about media violence and so-called scientific proof and perhaps we can all get together and unite behind a common agenda of media literacy and sexuality education.

**Paul McMasters:** We attempted to start the conversation on a little different plane with this program this evening and I hope that starts a little different way of thinking about this whole issue on your part. I can't tell you how much we appreciate your coming out tonight and participating in this conversation and let's give a big hand to these experts.

**EXHIBIT 2**



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## PTC RETRACTION TO WWE AND TO THE PUBLIC

Media Research Center (MRC), Parents Television Council (PTC), Dr. Delores Tucker, Mark Honig and I have in the past made statements regarding so-called wrestling deaths—children killed by other children alleged to be mimicking “professional wrestling” moves they saw on television. We made such statements to members of MRC and PTC, the media, advertisers on World Wrestling Entertainment (WWE) *Smackdown!* program, retailers that sell WWE-related toys and merchandise, public officials and the public. MRC and PTC also produced a videotape as part of a fundraising campaign in connection with its “National Campaign to Clean Up TV Now!”, which advanced the notion that the murder of Tiffany Eunick was caused by the influence of professional wrestling on Lionel Tate. The videotape included interviews with Lionel Tate’s lawyer advancing the notion that the murder of Tiffany Eunick, the victim, was directly caused by the impact that professional wrestling had on Lionel Tate.

We based our statements on media reports and source information. We now believe, based on extensive investigation and facts which have come to light since making those statements, that it was wrong for MRC, PTC, their spokespersons and myself to have said anything that could be construed as blaming WWE or any of its programs for the deaths of the children. Simply put, it was premature to reach that conclusion when we did, and there is now ample evidence to show that conclusion was incorrect. I now believe that professional wrestling played no role in the murder of Tiffany Eunick, which was a part of our “Clean Up TV Now!” campaign, and am equally convinced that it was incorrect and wrong to have blamed WWE or any of its programs for the deaths of the other children.

Because of our statements, PTC, MRC and the WWE have been in litigation since November 2000. WWE vigorously advanced its position that neither it, nor “professional wrestling” lead to these deaths. WWE also contended that MRC, PTC, their spokespersons and I had misrepresented the number of advertisers who withdrew support from WWE’s *Smackdown!* television program after receiving communications from the PTC, some of which regrettably connected the WWE and *Smackdown!* to the deaths of children. As such, WWE exercised its right to initiate this litigation, during which facts came to light that prompted me to make this statement.

By this retraction, I want to be clear that WWE was correct in pointing out that various statements made by MRC, PTC and me were inaccurate concerning the identity and number of WWE *Smackdown!* advertisers who withdrew support from the program. Many of the companies we stated had "withdrawn" or pulled their support had never, in fact, advertised on *Smackdown!* nor had any plan to advertise on *Smackdown!* Again, we regret this error and retract any such misleading statements.

Finally, concerning the statements about child wrestling deaths, it was wrong to have stated or implied that WWE or any of its programs caused these tragic deaths. Specifically concerning the Lionel Tate case, recent developments lead us to believe that others and we were given, and relied upon, false information provided by parties close to the case. The information that we were given and relied upon may have been designed to make a national example of the Florida murder trial, pinning the blame on WWE. For example, we were told by a source that Lionel Tate was watching a WWE program when he assaulted Tiffany Eunick. In fact, Lionel Tate was watching the "Flintstones" and a cartoon entitled "Cow and Chicken." We were also told, by a source, that Lionel Tate killed Tiffany Eunick while executing a wrestling move unique to a WWE character called the "Stone Cold Stunner." We have since learned that this was not true, nor was there any evidence that it was true.

It is now well documented that after the Tate trial concluded, the presiding Judge said that it was "inconceivable" that Tiffany Eunick's injuries were caused by Lionel Tate mimicking wrestling moves. Indeed, since the trial ended, Lionel Tate's new lawyers have filed court papers in which they admit that the "wrestling defense" was, in their words, "bogus." Given these facts, WWE was within its rights to be angry at the MRC, PTC, their spokespersons and I for contacting WWE's advertisers to go beyond complaining about WWE content but passing along accusations which we now know were false. Because I feel a simple retraction is not sufficient, I have personally extended my apology to Vince McMahon and the WWE on behalf of MRC, PTC, Dr. Tucker, Mr. Honig and me. Through this letter, I now make this apology public and specifically directed to the advertising community that has in the past, is currently or may in the future consider advertising or sponsoring WWE programming.

The PTC can have its concern with the content of WWE's television programming – though these concerns have been reduced significantly over the past years as a reflection of WWE's changed standards. But nowhere in that debate, including in the correspondence and statements to the advertising community, should there have been any discussion of "wrestling" deaths. I regret this happening, it

wasn't fair to WWE. And I say this emphatically: Please disregard what others and we have said in the past about the Florida "wrestling" death. Neither "wrestling" in general, nor WWE specifically, had anything to do with it. Of that I am certain.

Sincerely,

L. Brent Bozell, III

cc: Vince and Linda McMahon



**EXHIBIT 3**

# The Media Violence Myth

By Richard Rhodes

## I

Lt. Col. Dave Grossman, pale, lean and a little goofy in a bad suit, struts the stage of a high school auditorium somewhere in Arkansas, his home state. He's a man on a mission, a smalltown Jimmy Swaggart, swooping and pausing and chopping the air. He's already scared the fresh-faced kids in the audience half to death, and the more scared they look, the wider he grins. "Before children learn to read," he lobs in one of his rhetorical flash grenades, "they can't tell the difference between fantasy and reality. That means everything they see is real for them. When a three year old, a four year old, a five year old sees someone on TV being shot, raped, stabbed, murdered, for them it's real. *It's real!* You might just as well have your little three year old bring a friend into the house, befriend that friend, and then *gut 'em and murder 'em right before their eyes*" — some of the kids in the audience wince — "as have them watch the same thing on TV, watch someone being brutally murdered on television. For them it's all real. Television is traumatizing and brutalizing our children at this horrendously young age."<sup>1</sup>

A retired U.S. Army lieutenant colonel with an M.Ed. in counseling, formerly an ROTC professor at the University of Arkansas, Grossman left the Army to dedicate himself to saving America from what he calls the "toxic waste" of "media violence" that is "being pumped into our nation and our children," the "electronic crack cocaine" of television and video games that he claims are "truly addictive." He's riding a bandwagon. Columbine turned it into a victory parade. Three days after Eric Harris and Dylan Klebold murdered thirteen of their schoolmates and then killed themselves, President Bill Clinton cited Grossman by name and endorsed Grossman's video-games-teach-kids-to-kill thesis in his weekly radio address. The Republicans have known since their log cabin days that the media are evil, but after Columbine, even Democrats like Connecticut's Joe Lieberman signed on. The American Medical Association, the American Psychological Association, the American Academy of Pediatrics, the Surgeon General and other prestigious institutions have all endorsed the theory that violent media make kids violent. It's a solid cultural consensus.

Grossman speaks to hundreds of organizations every year, from schools and colleges to Rotary Clubs, police departments and veterans' groups. He's an effective speaker and polemicist. "We live in the most violent era in peacetime human history," he sets up his audiences. If someone reminds him that the murder rate was eight times as high in medieval Europe as it is in modern America, that murder rates have been declining steadily in the Western world for the past five hundred years,<sup>2</sup> he claims it's an illusion. "Medical technology saves ever more lives every year," he says. "If we had 1930s medical technology today, the murder rate would be ten times what it is." He claims that people are trying to kill people ten times as often as they used to do back when there were no police and no common access to courts of law, but that modern emergency medicine is masking the increase.

Now and again, as Grossman recites his litany, his narcissism breaks through. He's from Jonesboro, the Arkansas town where eleven-year-old Andrew Golden and thirteen-year-old Mitchell Johnson pulled their school fire alarm on March 24, 1998, and shot down fifteen schoolmates and a teacher as the victims exited the building into the schoolyard, killing five and wounding eleven. After the shootings, Grossman says, "the media were out interviewing everybody and his dog." Unable to resist a superlative, he adds: "We had the highest concentration of media per capita at any point in American history up to that time." He's already briefed his high-school audience about a study which he claims proves that when nations get television broadcasting, their murder rate doubles after a fifteen-year time lag (time for the little television-traumatized killers-in-training to reach adolescence). *Why don't you know that?* he challenges the kids. Because it isn't on television, he says: "If you ask the television industry about the link between violence on television and real-world violence, they'll lie."

With the media packed shoulder-to-shoulder in Jonesboro, Grossman thought that the mountain had finally come to Mohammed. But it wasn't to be. "They were interviewing everybody," he complains, "and here they've got this guy, this Grossman guy, who's this *expert* on violence, he wrote the book, he travels around the world training people. That would be a great interview, right? And I was on Canadian national TV, Australian national TV, I was on the BBC, newspapers and magazines around America were interviewing me." But not on U.S. national television. One of the major network news shows did seek him out, Grossman goes on. "Wow," he claims they told him, "here's a story we gotta get. We want to interview you." I said, "Great! I wanna be interviewed! But here's what it's all about: You've got to realize that every major medical and scientific body in the world has identified the fact that at least *50 percent* of the responsibility for violent crime lies on *your* shoulders." Long pause. The kids are with him. They already know the punch line. "They said, 'Well, thank you very much. If it's okay with you, we'd really rather not.'"

It's easy to believe that violence is getting worse: We hear about it all the time. It's easy to believe that mock violence in media is influencing behavior: What other violence do suburban kids see? Without question, popular culture is a lot more raucous than it used to be. It's a wild pageant, and it scares the culture police. But however many national leaders and prestigious institutions endorse the theory, it's a fraud. There's no evidence that mock violence in media makes people violent, and there's some evidence that it makes people more peaceful.

To start with, take a look at Col. Dave's claim about improved medical technology saving potential homicides. Of 1.5 million violent crimes in the U.S. in 1998, 17,000 were murders. Of the remaining number, according to the FBI, only 20,331 resulted in major injuries (the rest produced minor physical injuries or none at all). So if all the assault victims with major injuries had also died — improbable even with 1930's medicine — the 1998 U.S. murder rate would only have been double what it was — that is, would have been about 13 per 100,000 population rather than 6.3. But even 13 is well below the 23 per 100,000 murder rate of 13th-century England, the 45 per 100,000 of 15th-century Sweden, the 47 per 100,000 of 15th-century Amsterdam. We don't live in "the most violent era in peacetime human history"; we live in one of the least violent eras in peacetime human history.

Jib Fowles, a slight, handsome media scholar at the University of Houston at Clear Lake, worked his way through the media effects literature carefully and thoroughly when he was researching a book on the subject, mischievously titled *The Case for Television Violence*, which was published last year. Although Grossman and others are fond of claiming that there have been more than 2,500 studies showing a connection between violent media and aggressive behavior (the number actually refers to the entire bibliography of a major government report on the subject), the independent literature reviews Fowles consulted identified only between one and two hundred studies, the majority of them laboratory studies. Very few studies have looked at media effects in the real world, and even fewer have followed the development of children exposed to violent media over a period of years.

In typical laboratory studies, researchers require a control group of children to watch a "neutral" segment of a television show while a test group watches a segment which includes what the researchers believe to be violent content — an actor or a cartoon character pretending to assault other actors or cartoon characters. Both segments are taken out of context, although sometimes the children watch entire shows. After this exposure, the researchers observe the children at play together or interacting with toys to see if they behave in ways the researchers consider aggressive. Aggression may mean merely verbal aggression, or rough play such as pushing and shoving, or hitting. Hitting is a rare outcome in these experiments; the usual outcome is verbal banter or rough play. Since the researchers, by the very act of showing the tapes, have implicitly endorsed the behavior they require the kids to watch, and further endorse the kids' response by standing around counting aggressive acts rather than expressing disapproval or intervening as a teacher or parent might do, the experimental arrangement is not exactly neutral.

Even so, the results of their laboratory experiments have been inconclusive. In some studies "aggression" increased following the "violent" television viewing; but in other studies the control kids who watched a neutral segment were more aggressive afterward. Sometimes kids acted up more after watching comedy. Boys usually acted up more than girls, but sometimes it was the other way around. "In the majority of cases," two investigators who reviewed a large number of laboratory studies found, "there was an increase in negative behaviors in the postviewing interval for both aggressive and non-aggressive television material."<sup>3</sup> Contradictory results such as these prove, at best, no more than what everyone already knows:

that watching movies or television can stir kids up. They certainly don't prove that watching television makes children violent. They don't prove anything about the real world, Fowles argues, because they're nothing like the real world.

The best-known real-world study of the effect of television viewing on violent behavior is probably the one a Seattle psychiatrist named Brandon Centerwall reported in 1989. It's the basis for Grossman's claim in his standard stump speech that "with very few exceptions, anywhere in the world that television appears, within fifteen years the murder rate doubles." As usual, Grossman exaggerates; Centerwall's study limited its findings to three countries. To see if television influences the murder rate, the psychiatrist took advantage of a natural experiment: the fact that television broadcasting began in the U.S. and Canada after 1945 but not in South Africa, where the Afrikaans majority government banned it until 1975.

Centerwall graphed the murder rates for whites in Canada and the U.S. from 1945 to 1974 against television-set ownership and compared them to the white murder rate in South Africa during the same period. "White homicide rates remained stable [in South Africa]," he reports, but "in two control populations, Canadian and U.S. white homicide rates doubled following the introduction of television."<sup>4</sup> On the basis of this seemingly spectacular finding, Centerwall issued a call to arms in the prestigious *Journal of the American Medical Association* in 1992, spinning out his doubled murder rates into even more spectacular claims: "If, hypothetically, television technology had never been developed, there would today be 10,000 fewer homicides each year in the United States, 70,000 fewer rapes, and 700,000 fewer injurious assaults."<sup>5</sup>

Two legal scholars at the University of California at Berkeley, Franklin E. Zimring and Gordon Hawkins, refuted Centerwall's findings in a 1997 book, *Crime Is Not the Problem: Lethal Violence in America*. Zimring and Hawkins point out first that there are awkward problems with Centerwall's basic assumptions. How can television set ownership tell you anything about murder rates? Isn't television program *content* supposed to be the issue? And comparing white murder rates in the U.S. and Canada with white murder rates in South Africa, where whites represent fewer than five percent of the murder victims, is probably comparing apples and oranges.

Zimring and Hawkins tested Centerwall's theory more fundamentally by looking at homicide rates in four other industrial democracies — France, Germany, Italy and Japan. They found that the incidence of murder in those countries either remained more or less level (Italy) or actually declined (France, Germany and Japan) with increased television exposure. These counterexamples, they write, "*disconfirm* the causal linkage between television set ownership and lethal violence for the period 1945-1975."<sup>6</sup>

I sent Zimring and Hawkins' analysis to Centerwall for comment. He hadn't seen it before, but he told me he'd heard similar arguments. He was quick to offer reasons why he was right and the legal scholars were wrong. He said he interpreted the French and Italian graphs as confirming his theory — he thought they showed a longterm upward trend. Germany he acknowledged was different, "but since many other European countries that I didn't include in my paper had increased homicide rates, it doesn't bother me all that much." Japan isn't a Western country, Centerwall reminded me, arguing that "culture overrides television if it has a mechanism for dealing with physical aggression."

To explain the recent declines in homicide in the U.S. and England despite continuing and even increasing exposure to media, Centerwall redrew the theory of his study, claiming that it really should have been a two-factor model, factoring in not only television exposure but also economic conditions. Economic conditions affect the murder rate, he said: It goes up in bad times and when times are good it goes down. He said the television effect eventually saturates, after which its influence on the murder rate is steady-state. Thus, he claimed, rising postwar prosperity probably retarded somewhat the influence of television on the murder rate. Then, when that influence saturated, further prosperity kicked in to bring the rate down. He pointed to a particularly dramatic drop in English homicide rates between 1978 and 1981 as evidence of the success of Margaret Thatcher's economic policies, which he said had increased per capita income in England by 80 percent.

I passed along Centerwall's explanations to Franklin Zimring at Berkeley. In an emailed response Zimring barely restrained his scorn. Since Centerwall's theory is generated by U.S. and Canadian data patterns, he wrote, "it should be tested elsewhere." One way to do that is to look at U.S. and Canadian data after 1975. After 1975, it turns out, despite the continuing and increasing exposure to television, the homi-

cide rates leveled off and declines. Centerwall claims the television effect saturates. “Why and how this might be,” Zimring responds, “is anybody’s guess” — that is, Centerwall offers no evidence for his saturation theory; it looks like something he made up to explain why the data don’t fit his model. Zimring added that he’d never seen any evidence that economic conditions immediately impact homicide rates, but in any case, “the big drop in English homicide rates was between 1978’s high and 1981’s low. Mrs. Thatcher took office in 1979.” Causes are supposed to precede effects, but homicides were already declining before the British economy improved.

As for culture overriding television in Japan, Zimring wrote, “says who, and when?” The French murder rate trends upward between 1980 and 1985 and then trends downward, “but all of this leaves French homicide in 1990 at 35 percent lower than it was in 1960” when Centerwall’s theory would predict it to double. Italy, similarly, “goes up in the 1970s, drops back from 1981-1986, and then goes up again. How this pattern fits the Centerwall thesis is his secret.” Centerwall told me he based his claim that other European countries also experienced doubled murder rates (a claim Grossman also makes) on Interpol data. Wrong data, Zimring advised: “Most Continental countries report homicide and attempted murder together, which led our current drug czar to assert recently that Holland had a higher homicide rate than the United States. But even General McCafferty would not use Interpol data, which is unaudited and notorious.” In conclusion, Zimring wrote, “the off-hand and ad hoc quality of the responses that you report reinforce my disinclination to buy a used car from Dr. Centerwall.” Yet Centerwall’s theory has been a mainstay of American Medical Association and Congressional claims that television violence is destroying American youth.

Psychiatrists have been prominent players in the media violence controversy; though they have no special training in assessing broad social trends, people take them seriously because they’re medical doctors. An illustrious predecessor of Brandon Centerwall’s, the psychiatrist Frederic Wertham, indicted comic books in the 1940’s and 1950s as fervently as Centerwall has condemned electronic media. (Every popular art form — the novel, the circus, Punch ‘n Judy shows, comic strips, movies, rock ‘n roll, video games, now the Internet — starts out condemned as trash. One generation’s trash is the next generation’s art form.) Wertham had worked with juvenile delinquents in New York City in the immediate post-World War II years when juvenile delinquency was on the rise and Congress was looking for answers much as it looked for answers in the 1970s and 1980s when the homicide rate was going up. “If it were my task, Mr. Chairman, to teach children delinquency,” he testified before a Congressional committee in 1954, “to tell them how to rape and seduce girls, how to hurt people, how to break into stores, how to cheat, how to forge, how to do any known crime, if it were my task to teach that, I would have to enlist the crime comic book industry. Formerly to impair the morals of a minor was a punishable offense. It has now become a mass industry. I will say that every crime of delinquency is described in detail and that if you teach somebody the technique of something you, of course, seduce him into it. Nobody would believe that you teach a boy homosexuality without introducing him to it. The same thing with crime.”<sup>7</sup>

In those days being gay was believed to be a serious mental illness, and Wertham was convinced that Batman and Robin were a blatantly homosexual couple created to entice new recruits. (Robin, he wrote, “is buoyant with energy and devoted to nothing on earth or in interplanetary space as much as to Bruce Wayne. He often stands with his legs spread, the genital region discreetly evident.”)<sup>8</sup> The psychiatrist thought Superman was a fascist and worried that the muscular Krypton native gave children “a completely wrong idea of basic physical laws” by leaping tall buildings at a single bound.<sup>9</sup> He called comic books “the marijuana of the nursery.” Like Grossman and Centerwall, Wertham demonstrated that literal-minded humorlessness is a requirement for media bashing, but Congress and the public took all this unsupported slander seriously. The comic book industry, which published 130 million copies a month, including at least 30 million devoted to crime and horror, capitulated after the 1954 Congressional hearings and thereafter published only G-rated stories. Fortunately for popular culture, the writers and artists laid off at EC Comics, the hardest hit when the industry crashed, went on to found *Mad* magazine.

Medical authorities, medical organizations and state and federal legislators have awarded statistical studies of media violence broader endorsement than Dave Grossman’s exaggerations or Brandon Centerwall’s purblind graphs. Statistics are said to correlate when they change together. When Centerwall showed the U.S.

murder rate and U.S. television-set ownership increasing during the same period of years, he was graphing a positive correlation between those two variables. If one variable had gone down when the other went up (as Centerwall claims murder rates and income do), that would be a negative correlation. That two variables correlate doesn't necessarily mean they're influencing each other; they may both be changing because of some third factor, or the change may be simply coincidental. Raincoats and umbrellas appear on the streets in increasing numbers on certain days of the year (a positive correlation), but raincoats aren't influencing umbrellas: Both appear because their owners believe it might rain. Correlations by definition can't reveal the cause of anything. They're simply interesting information which can sometimes offer clues about where to look for a cause.

The most celebrated correlations in the annals of media violence studies emerged from longterm investigations of aggression in school children conducted across twenty-two years (from 1960 to 1982) by psychologists Leonard D. Eron and L. Rowell Huesmann, both now professors at the University of Michigan (Huesmann joined the investigations in 1970). According to David Pearl, who administered media research at the National Institute of Mental Health (NIMH), when the U.S. Surgeon General appointed a committee to review research on television violence at the beginning of the 1970s, Eron and Huesmann's investigation "was a key study leading to the Surgeon General's Committee conclusions."<sup>10</sup> Two decades later, when Congress passed the Telecommunications Act of 1996 which requires all new television sets to be equipped with a V-chip enabling parents to block out programs they don't want their children to see, the text of the Act implicitly invoked Eron and Huesmann's findings to justify its intrusion: "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."<sup>11</sup>

Eron himself has candidly called the television violence component of his longterm aggression studies "the tail that wags the dog." He said he and his colleagues "got a lot of financial support through [investigating television violence]" — hundreds of thousands of taxpayer dollars, in fact — but that doing so had not been part of his original research agenda, because he didn't think it was important.<sup>12</sup> "More than 35 years ago," he reminisced in 1995, "when I started to do research on how children learn to be aggressive, I was skeptical about the effects of television violence."<sup>13</sup> In 1960, Eron and his colleagues began studying 875 third graders — boys and girls eight or nine years old — in rural Columbia County in upstate New York. They wanted to identify what childhood experiences correlated with mental health problems later in life, and they decided to use aggression as a marker, since it was something they believed could be measured objectively. They asked the children who started fights, who got into trouble, who said mean things. They questioned parents and teachers. They measured popularity, anxiety, IQ and family values. One measure they recorded almost as an afterthought was how much violent television each third grader watched.

In 1963 Eron reported finding a correlation between aggressive behavior at school (as estimated by classmate peers) and violent television watching at home. A correlation only emerged for boys; there was no such connection for girls. To further confuse the issue, kids who watched the most television overall turned out to be the least aggressive.<sup>14</sup> Eron calls the finding for boys "unsuspected." He adds: "We didn't have too much confidence in the finding by itself" — nor should they have, given the zero finding for girls and the negative correlation overall. "You couldn't tell by these data alone," Eron explains, "whether aggressive boys liked violent television programs or whether the violent programs made boys aggressive — or whether aggression and watching violent television were both due to some other third factor."<sup>15</sup> Nor had the federal government yet become interested in the problem. Eron's requests for grant support were turned down twice in the 1960s by the NIMH and once more by another government agency.<sup>16</sup> But in 1970, when the Surgeon General's committee noticed the 1963 positive correlation for boys, it realized that the Columbia County third graders would now be graduating from high school, raising the possibility that a correlation between childhood exposure to violent television and adult aggression could now be measured. So the NIMH awarded Eron's team, now including Rowell Huesmann, a grant of \$42,000, the first of several lucrative grants, and the psychologists were able to locate and reinterview 436 of the original 875 subjects. (The money the Surgeon General granted for such speculative media studies — \$1.5 million in all — was gouged from the NIMH budget by eliminating or postponing the construction of community mental health centers, at a time when mental institutions were being closed all across America and tens of thousands mental patients were being turned out onto the streets.<sup>17</sup>)

In their followup, Eron and Huesmann found a correlation of .31 between boys' preference for violent television at age 8 (based on their mothers' estimates) and their peer-rated aggressiveness at age 18. In other words, the psychologists found that a preference for viewing mock violence on television in the third grade might account for 10 percent (the square of the correlation) of the childhood influences that led the boys to become aggressive adults.

Assessing this famous correlation, Jib Fowles points out that Eron and Huesmann had looked at two other measures of adult aggression besides peer reports: self-reports and the results of psychological tests which they administered. These two other measures *did not* correlate significantly with age 8 television preference. Nor did any of the three measures correlate for girls. Another research team, Fowles says, might conclude from such a poor showing — only one of six possible correlations turning out to be significant, and that one only weakly — that their data failed to support their theory. Eron and Huesmann chose instead to highlight the one correlation that might. "It is difficult to believe," Fowles concludes, "that a study with such a weak single finding has been taken so seriously by so many thoughtful people."<sup>18</sup>

A bold, savvy psychologist at the University of North Carolina at Charlotte, David Sohn, points to even more damning problems with Eron and Huesmann's famous correlation. If watching television is influencing an eight-year-old boy to be aggressive, Sohn argues, you would expect such influence to be more intense at the time than ten years later. But the correlation Eron and Huesmann found between age 8 TV exposure and aggressive behavior at the same age was only .21 — 4 percent. Ten years later, despite years of intervening experiences, the correlation of *age 8* exposure with age 18 aggression had grown to .31. How could that be? Influences weaken as time passes and other experiences intervene — they don't strengthen. Even more weirdly, Sohn points out, the correlation *disappears* in between: a partial sample of 64 boys in the study, reinterviewed in the mid-1960s, revealed *no* correlation between age 8 exposure and aggressiveness at age 13.<sup>19</sup> Which would mean that an eight-year-old's TV exposure influences his aggressiveness immediately, has no measurable influence five years later, then mysteriously reemerges five years after that to influence an 18-year-old's behavior even more than it did when he was eight — an obvious absurdity.

So I looked up Rowell Huesmann at the University of Michigan and asked him about the mysterious loss of correlation at age 13. Rather than defend the failure of the study to find a measurable correlation, the professor of psychology blamed the anomaly on mistakes by his colleagues. "The little 8th-grade data they had collected was incomplete and clearly biased," Huesmann asserted in his response. "Once I joined the project in 1970 as Analysis Director, I argued successfully against analyzing or reporting at all on the 8th grade data."<sup>20</sup> With a larger, "unbiased" sample, he added, the .31 correlation that turned up at age 18 might also have shown up in thirteen-year-olds. It's equally possible, of course, that it might not. The fact remains that the partial sample correlation at age 13 — published in 1972, *with Huesmann's name on the paper* — was effectively zero.

Despite these serious problems, Eron and Huesmann's investigation had hatched a result the NIMH could use to get media-muzzling Senators off its back, and the psychologists were encouraged to continue their followup studies with taxpayer support. "In 1980-82," Huesmann emailed me, "we tracked down and reinterviewed as many of [the] boys [in the Columbia County study] as we could. We interviewed 198 males from the original 1960 sample of 436." By then the boys were 30 years old. A few of them had been convicted of violent crimes. Huesmann worked his statistical magic and came up with some impressive correlations.

In 1986, officially representing the American Psychological Association, he reported his team's new findings proudly to the Senate Judiciary Committee. "Because the National Institute of Mental Health was generous enough to give us funding," Huesmann told the senators, "we were able to go back 10 years later and 22 years later and track down these subjects, most recently in 1982 when these subjects were now 30 years old. We were able to look at the extent to which their early television viewing behavior related to their adult aggression and criminality. What we found was a strong relation between early television violence viewing and adult criminality. Television viewing in and of itself related to adult criminality, regardless of what the children were watching. But more specifically for boys, *there was a strong relation between early violence viewing and later adult criminality.*"<sup>21</sup> To make that twice-mentioned "strong relation" vivid, Huesmann presented the senators with a bar graph — "simply intended to be," he explained to me in his email, "a visual illustration of the correlation between age 8 TV violence viewing and adult criminality." The bar graph measured "Seriousness of Criminal Convictions by Age 30" on a scale of 1-10

against “Boys’ Preference for Violent Television at Age 8.” It showed three stark black bars stepping up from low preference (4.23 on the seriousness scale ) to medium preference (4.71 on the seriousness scale). The high preference group at 9.71 almost doubled in seriousness of criminal convictions, bumping the 10 limit.<sup>22</sup> The clear implication was that an eight-year-old who watches mock violence on television is likely to grow up to be a rapist or a murderer.

Needless to say, Huesmann’s bar graph was high drama and a call to arms. To the senators and the assembled press, it looked like clear evidence that how much violent television a boy watches in childhood will correspond closely to how heinous a violent criminal he will turn out to be two decades later. Since 1986, Huesmann has made that claim repeatedly. In 1996, defending his work in the *Harvard Mental Health Letter* under a headline calling media violence “a demonstrated public health threat to children,” he claimed that his 1982 study found that “boys who spent the most time viewing violent television shows at age eight were most likely to have criminal convictions at age 30.”<sup>23</sup>

But Huesmann has been curiously selective about where he reports his TV violence/criminal conviction finding. It went unmentioned in the final report on the 22-year aggression study that he and Eron published in the prestigious journal *Developmental Psychology* in 1984. Not one of the team’s media violence findings appears there, not even the celebrated .31 correlation. Instead, the report affirms what psychologists have long known about aggressive behavior: that early aggressiveness predicts later violence and that violence runs in families. (Which doesn’t make it hereditary. There’s strong evidence that violence is learned behavior, and violence begets violence.) All the final report says about television, lamely, is that “examples of aggressive behavior are abundantly available in the media as well as at home, at school, and in the neighborhood.”<sup>24</sup> Watching violent television goes unmentioned. Evidently Eron’s initial skepticism about the effects of television violence was justified.

Why should Huesmann’s “strong relation” between violent television viewing and adult criminality have dropped out of his and Eron’s final summary of twenty-two years of scientific investigation? The likeliest reason is that the independent scientists who reviewed the report when it was submitted to *Developmental Psychology* (in the evaluation process known as peer review) did not think the data justified the two psychologists’s conclusions.

And what was that data? Huesmann has never published the crucial numbers that would make it possible to judge the significance of his age 8 violent television/age 30 violent criminal convictions correlation. The dramatic bar graph he showed to the Senate Judiciary Committee, with its low, medium and high TV violence bars plotted against seriousness of criminal convictions, doesn’t give the number of boys for whom the two measures correlate. I found a clue to this puzzling omission in a paper Huesmann and a colleague published in a book Huesmann edited in 1994. The paper, portentously titled “Long-Term Effects of Repeated Exposure to Media Violence in Childhood,” works all sorts of statistical sleight-of-hand to try to prove that watching TV turns boys into violent criminals. But buried in the text is a remarkable admission: “Unfortunately, the sample on which this conclusion was based was very small because of technical difficulties..While the results are significant, they mostly reflect the behavior of a few high violence viewers and must be treated very cautiously.”<sup>25</sup> Scientists are supposed to publish their data so that their claims to discovery can be checked, but even while grudgingly admitting that his data had problems, Huesmann chose in this 1994 book not to reveal the numbers.

I wondered what he was hiding. When I emailed him I bluntly asked him for the numbers. The answer was incredible. “The correlation between [age 8 TV violence viewing and adult violent crime],” Huesmann wrote me, “was entirely due to 3 boys who committed violent crimes and had scored high on age 8 TV violence viewing.” Three boys! Huesmann’s team had identified New York State records for 145 boys from the original age 8 study. Of these, 66 had committed crimes, but only 24 had committed violent crimes. The “technical difficulties” which Huesmann mentioned in his 1994 book, he now explained, were that “just 3 of the 24 boys arrested for violent crimes had contributed TV violence data [at age 8].” It happened that “all three had scored high on age 8 TV violence viewing.” With serious violent crimes in adulthood and high TV violence scores in the third grade, the numbers on these three boys — *the only boys with criminal convictions for whom age 8 TV data existed* — poison the entire 145-boy sample. As Huesmann himself acknowledged, “if just these three boys had behaved differently, all the significant results could have vanished.” David Sohn puts it differently. “For 142 of the individuals,” he wrote me after reviewing my correspondence with Huesmann, “there is no relationship between TV violence at age 8 and arrests for violent

crime. Huesmann knew from the very beginning that he did not have enough cases with data for the two key variables to permit a meaningful analysis. He does the analysis anyway and conceals the crucial facts about having only three cases. Of course, what he should have done is not to use such inadequate data.”

But Huesmann went even farther. He made up a bogus bar graph that deliberately misrepresented his findings and used it to influence the Senate Judiciary Committee to pass a law intended to limit creative expression on television. With age 8 violent TV viewing data on only three boys with criminal convictions, he had no factual basis for presenting “Low” and “Medium” bars. All three boys scored “High” on TV violence viewing. The graph is a fraud.

## II

The sociologist Howard Becker categorizes media violence zealots like Dave Grossman, Brandon Centerwall, former Vice President Dan Quayle and former U.S. Secretary of Education William Bennett as “moral entrepreneurs.”<sup>26</sup> Part of their hostility, Jib Fowles argues, is simple snobbery, although surveys reveal that the affluent and the highly-educated watch about as many hours of television every week as everybody else. A deeper reason for their hostility is fear of losing social control. Thinking about the role of modern mass communications in social control, Fowles realized that entertainment media have come to satisfy many of the needs that religion used to fulfill: giving people a common frame of reference, a common community with which to identify and a safe place within which to experience emotional release. “The mass media comprise a new social institution,” he told me. “And not only is it new, but it seems to be eating into the traditional social institutions of religion, community, family and so on. All these institutions are shrinking with the exception of education and mass media. We’re choosing to integrate ourselves in very different ways and largely through the mass media.” It shouldn’t be surprising, then, that the moral entrepreneurs — the guardians of the traditional institutions — have led the attack. Blaming the media for criminal violence is one campaign in an ongoing turf war.

Fowles was stuck by the contrast between the negativity of the moral entrepreneurs and the immense popularity of entertainment media. That popularity in itself argued against negative effects and in favor of positive effects. The media scholar wondered if any social science studies had turned up positive responses to watching television, including violent television. After a thorough search of the literature he found several which did. They were hard to find; though they were first-rate studies, they were seldom referenced because they disputed the reigning paradigm that television is bad for you.

In one thorough and careful field study, a highly respected psychologist named Seymour Feshbach had controlled the television viewing of some 400 boys in three private boarding schools and four boys’ homes for six weeks, limiting half the boys to programs high in violent content and the other half to nonaggressive programs. Trained observers judged aggression levels in the boys before and after the controlled viewing period. “No behavioral differences were reported for the adolescents in the private schools,” Fowles summarizes Feshbach’s findings, “but among the poorer, semidelinquent youths, those who had been watching the more violent shows were calmer than their peers on the blander viewing diet.” Feshbach concluded that “exposure to aggressive content on television seems to reduce or control the expression of aggression in aggressive boys from relatively low socioeconomic backgrounds.”<sup>27</sup> When Fowles interviewed Feshbach about this impressive finding, Feshbach interpreted it to mean that fantasy served the cause of self-control. “Television fantasies,” he told Fowles, “supplement a person’s own imagination, and help him discharge pent-up aggression in the same way that dreams and other products of the imagination can do.”<sup>28</sup>

Fowles also located a definitive refutation of Eron and Huesmann’s supposed “criminal violence” finding. He calls the little-noticed study by sociologist Steven F. Messner of the State University of New York at Albany “broad-based and most remarkable.”<sup>29</sup> Messner set out to determine if “population aggregates with high levels of exposure to violent television content also exhibit high rates of criminal violence.”<sup>30</sup> He took his list of “violent” television shows from content analyses developed by the National Coalition on Television Violence (NCTV), an antiviolence advocacy group which counts “violent acts per hour.”

Messner next collected Nielsen ratings for the shows on the NCTV list, which estimated their audience size — their popularity — in a number of U.S. metropolitan areas. He then looked up F.B. I. crime rates for those areas for criminal homicide, forcible rape, robbery and aggravated assault. His final step was to match up crime rates in the metropolitan areas against the popularity of “violent” television shows in the same areas.

“The results are quite surprising,” Messner wrote in his understated conclusion. “For each measure of violent crime, the estimate for the level of exposure to television violence is negative.. In other words, [metropolitan areas] in which large audiences are attracted to violent television programming tend to exhibit *low* rates of violent crime.”<sup>31</sup>

Messner offered a simple explanation for his finding: When people are home watching television, they’re not out committing violent crimes. And since they’re home watching television, burglars can’t rob their houses. He even checked his burglary prevention theory. Rates in areas where violent television was popular turned out to be lower not only for burglary but also for auto theft and larceny (simple theft) as well.

I contacted Messner to ask him how his study had been received by the media effects community. He described submitting it to a major sociology journal, where it collected mixed peer reviews and was ultimately rejected. One hostile reviewer criticized it as “a mechanical exercise in which the author routinely applies a packaged program to a set of data,” adding scornfully, “After all, the ultimate goal is not to generate a pretty story and an apparently significant set of findings, but actually to find out something real about society.”<sup>32</sup> Do I hear Rowell Huesmann’s sarcasm in this slashing anonymous assault? The study was ultimately published in the journal *Social Problems*. “As near as I can tell,” Messner emailed me, “it never did generate much reaction, either positive or negative.”<sup>33</sup> He was happy to hear that Jib Fowles had singled it out for praise.

“This whole episode of studying television violence,” Fowles concluded when we talked, “is going to be seen by history as a travesty. It’s going to be used in classes as an example of how social science can just go totally awry.”

Fowles found support for the idea that entertainment media serves for emotional release in the work of a predecessor media scholar, Gerhardt Wiebe, who was dean of Boston University’s School of Public Communication.<sup>34</sup> Wiebe proposed that the function of the entertainment media is to ease the stresses of socialization, defined as “the process by which an individual becomes a member of a given social group.” Being socialized means being molded and changed — from a rebellious adolescent to a productive, conforming adult, from a self-directed private individual before and after work to a group-directed employee during working hours — and such transformation is stressful. Television and other entertainment media work to relieve that stress. “All kinds of Americans,” Fowles writes in his 1992 book *Why Viewers Watch*, “in all states of mind, turn to the medium for the balm it provides. The most troubled are perhaps the most aided. For the segment of the population that has been crushed by the real world, and has had to be removed from it, television is clearly a boon. Anyone who has visited an institution where humans are confined knows that television exerts a calming, beneficent influence..The administrators of hospitals, prisons and asylums realize that their charges can be highly volatile or depressed, and that television is an efficient, nonchemical means for easing their torments.”<sup>35</sup>

Wiebe defined three kinds of messages that media send. *Directive* messages come from authority figures and “command, exhort, instruct, persuade.” Directive messages seldom get through, Wiebe observes; since the people at home control the remote, they tend to switch channels or downgrade directives into *maintenance* messages — the routine communications which support the knowledge and beliefs people already have. Thus programs on specialized subjects — Greece, say, or transvestite culture, or World War II — tend to draw audiences who already know about those subjects rather than the uninformed.

The primary function of the entertainment media, Wiebe proposes, is to supply *restorative* messages, which allow people to restore themselves “from the strain of adapting, the weariness of conforming.” Restorative messages are “the adult counterpart of youthful protest and retaliation against authority figures” which appear “spontaneously, and apparently inevitably, as an antidote for the strictures of organized living.” Restorative messages feature “crime, violence, disrespect for authority, sudden and unearned wealth, sexual indiscretion, freedom from social restraints.” Their themes, Wiebe observes brilliantly, “seem to

make up a composite reciprocal [that is, a negative counterset, an antidote] of the values stressed in adult socialization.” Rock music, rap, movies like *Natural Born Killers* or *Pulp Fiction*, lurid music videos, video games and any number of “violent” television programs are evidence in support of Wiebe’s insight.

Because the essence of restorative messages, as Wiebe argues, is “token retaliation against the establishment,” censoring the protest and the violence and substituting what social scientists call “prosocial” programming will simply cause viewers to turn elsewhere for the restorative messages they crave. Wiebe’s characterization of restorative programming as “token retaliation” makes it clear why establishment institutions and the moral entrepreneurs who speak for them are so quick to condemn entertainment media, particularly when rising juvenile delinquency rates, school shootings, teenage pregnancies and other problems panic them with fears that socialization might be breaking down: Uncomfortable already with the feeling that new social institutions are emerging to replace them, they’re seized with the fear that the peasants might actually take the programs seriously and storm the barricades of their authority and privilege. One of their defensive maneuvers has been to employ social scientists to “prove” that entertainment media are dangerous. Sadly, to the perversion of their science, the social scientists have complied, although the First Amendment has limited the effectiveness of their assaults.

Media performances serve vicariously to intensify and then resolve tension, carrying away in the process all sorts of psychic detritus. They make it possible to put on a hero’s armor, slay dragons and then hang up your armor and be yourself. Fowles calls the procedure “mental cleansing and redemption.”<sup>36</sup> At their most basic, entertainment media take the psychic garbage out.

The whole thrust of socialization across the past thousand years in Western culture has been toward reducing private violence in order to foster more effective social interaction in an increasingly complex and interdependent society. This movement, which historian Norbert Elias calls “the civilizing process,” has advanced by internalizing the social prohibition against violence, and with that prohibition has come an advancing threshold of revulsion against violence. People who are seriously violent take pleasure in their violence. As people moved away from malevolence toward civility, the pleasure of doing violence was gradually displaced by the pleasure of seeing violence done — such as watching public executions and attending cockfights, bullfights and bare-knuckle boxing matches.

The pleasure of seeing violence done has in turn gradually been displaced by today’s pleasure in seeing *mock* violence done in sports and in entertainment. Thus the increasing revulsion against bullfighting, hunting and boxing and the interdiction of public executions. More recently even mock violence has come under suspicion, especially as fare for children (who used to be taken to see public executions to show them why they shouldn’t misbehave). So media violence has come to be tolerated more than endorsed. When real violence breaks out — the rise of juvenile delinquency in the 1950s, the riots and assassinations of the 1960s, the rash of white-on-white school shootings in the later 1990s — revulsion at media violence intensifies, and the mandarins of psychology and sociology trot out their statistical charts.

But there is no good evidence that taking pleasure from seeing mock violence leads to violent behavior, and there is some evidence, as Jib Fowles found, that it leads away. Bottom line: To become violent, people have to have experience with real violence. Period. No amount of imitation violence can provide that experience. Period. At the same time, mock violence can and does satisfy the considerable need to experience strong emotion that people, including children, build up from hour to hour and day to day while functioning in the complex and frustrating interdependencies of modern civilization. So can comedy; so can serious drama; but young males especially (and even not-so-young males) evidently take special satisfaction in watching mock violence, whether dramatic or athletic. “Whatever the relation of this need may be to other, more elementary needs such as hunger, thirst, and sex,” concludes Norbert Elias, “.one may well find that the neglect of paying attention to this need is one of the main gaps in present approaches to problems of mental health.”<sup>37</sup>

A New Jersey teenager, Joe Stavitsky, responded to an attack on video games in *Harper’s* magazine after Columbine with an eloquent letter in their defense. “As a ‘geek,’” Stavitsky wrote, “I can tell you that none of us play video games to learn how (or why) to shoot people. For us, video games do not cause violence; they prevent it. We see games as a perfectly safe release from a physically violent reaction to the daily abuse leveled at us.” Stavitsky, whose family emigrated from Leningrad when he was four to escape a communist dictatorship, concluded his letter with some pointed advice to the moral entrepreneurs. “The so-

called experts should put away their pens,” he advised, “and spend more time with their children or grandchildren, or better yet, adopt a child who has no home or family. Because there’s only one sure way to prevent youth violence, and that is by taking care of youth.” We do not take care of youth when we deny them entertainment which allows them to safely challenge the powerlessness they feel at not yet controlling their own lives and then to find symbolic resolution. Entertainment media are therapeutic, not toxic. That’s what the evidence shows. Cyber bullets don’t kill.

## Notes

- 1.. All quotes from Dave Grossman’s speech are transcriptions from his videotape “Teaching Kids To Kill.”
- 2.. Rhodes (1999), p. 216.
- 3.. Gadow and Sprafkin (1989), p. 401, p. 402.
- 4.. Centerwall (1989), p. 15.
- 5.. Centerwall (1992), p. 3061.
- 6.. Zimring and Hawkins (1997), p. 243.
- 7.. Twitchell (1989), p. 143.
- 8.. Twitchell (1989), p. 152.
- 9.. Twitchell (1989), p. 153, p. 154.
- 10.. HR 83, p. 46.
- 11.. Quoted in Fowles (1999), p. 126.
- 12.. Quoted in Fowles (1999), p. 35.
- 13.. Eron (1995), p. 84.
- 14.. Fowles (1999), p. 35.
- 15.. Eron (1995), p. 85.
- 16.. Cater and Strickland (1975), p. 47.
- 17.. Cater and Strickland (1975), p. 21.
- 18.. Fowles (1999), pp. 36-37.
- 19.. Cf. Lefkowitz et al. (1972), p. 55, Table 8, item 11.
- 20.. Huesmann 13 March 2000 email, p. 11.
- 21 My emphasis
- 22.. Cf. S. 2323, p. 95.
- 23.. Huesmann and Moise (1996), p. 2.
- 24.. Huesmann et al. (1984), p. 1133.
- 25.. Huesmann and Miller (1994), p. 169.
- 26.. Gauntlett (1995), p. 107, citing Howard Becker, *Outsiders: Studies in the Sociology of Deviance*, New York: The Free Press, 1963.
- 27.. Fowles (1997), p. 30. (Feshbach quoted in Fowles, op. cit.)
- 28.. Quoted in Fowles (1992), p. 142.
- 29.. Fowles (1997), p. 48.
- 30.. Messner (1986), p. 218.
- 31.. Messner (1986), pp. 223-224.
- 32.. Steve Messner 2/24/00 email, pp. 2-3.
- 33.. Messner, op. cit., p. 3.
- 34.. Wiebe (1969).
- 35.. Fowles (1992), p. 54.
- 36.. Fowles (1992), p. 87.
- 37.. Elias (1986), p. 89