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Television and Violence: A Symposium - Introductions

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TELEVISION AND VIOLENCE: A SYMPOSIUM

DEAN'S INTRODUCTORY REMARKS

Dean Stuart Rabinowitz

This Symposium on Television and Violence was developed as the first in a series to be offered under the auspices of the Joseph Kushner Distinguished Professorship in Civil Liberties Law, held by Professor Leon Friedman. We have gathered today to discuss television and violence because it is a topic of current interest, a new concern. Some of us are old enough to remember similar distress expressed in the 1950s, primarily by private persons rather than the government, over violence in comic books. Throughout that decade the debate came to focus on the effect of violence in television. Recently, as you all know, there has been renewed public debate on this kind of issue.

On the legislative front, after a well-publicized debate between our Attorney General and First Amendment scholars, we have seen the introduction of several bills in Congress which attempt to control the amount of the violence in various respects on television. This legislative focus will be the subject of our first panel.

There have also been new sociological studies on the effects of violent television programming on children in particular and on society in general. These studies have attempted to expand and improve upon older ones. The second panel will explore and analyze this aspect of the issue.

As you know, the industry has already reacted to some degree to these concerns. Just recently, it was announced that a “czar of violence” will be appointed to make recommendations to the industry on televised violence. This will be the subject of the third panel.

The fourth and final panel will take a somewhat broader perspective and analyze what role, if any, televised violence plays in the overall problem of violence in America.

All this was brought together by the Hofstra Law Review with the invaluable assistance of the Symposium’s Director, Leon Friedman.

SYMPOSIUM INTRODUCTION

*Leon Friedman**

On October 20, 1993, Attorney General Janet Reno testified at a hearing before the Senate Commerce Committee on the subject of television and violence. She warned the television industry that it had an obligation to reduce the amount of violent programming available to children. "Start doing something about it in ways that can be subject to clear compliance," she testified. "But if further significant, voluntary steps, are not taken soon, I think government action will be imperative," she added, remarks that were quickly interpreted as a threat that the government might step in if the industry did not take steps to reduce the quantity of allegedly violent programming. The then-chairman of the Senate Committee, Senator Ernest Hollings, had already introduced a bill to restrict the hours when "violent video programming" could be shown.¹ In the same period, other members of Congress also introduced other legislation to deal with the issue.² Such liberal Senators as Paul Simon of Illinois endorsed proposals to limit the depiction of violent activity on television.

The premise of this flurry of legislative action was that the increase in violence in the United States was directly related to the increase in television viewing, and in particular, in the viewing of violent programs on television. Senator David Durenberger, the sponsor of one of the new bills commented that:

in 1950, 15 percent of American homes had television sets. In 1990, that number reached 93 percent. Over that same period, the number of U.S. murders per year increased from 7,942 to 21,860 I am not saying that television is the sole cause of this increase in violence. Many other factors have also contributed to the general coarsening of America's moral sense. But these numbers are undeniable—and they are compelling.³

* Joseph Kushner Distinguished Professor of Civil Liberties Law, Hofstra University School of Law. I would like to acknowledge the help of the Hofstra Law Review staff who were instrumental in planning the symposium. In particular I would like to thank Steven Barnett, Jean Kephart Cipriani, Caroline Hall, Donald Lussier and Christine Thornton.

1. See S. 1383, 103d Cong., 1st Sess. (1993).

2. See S. 973, 103d Cong., 1st Sess. (1993); S. 943, 103d Cong., 1st Sess. (1993); H.R. 2888, 103d Cong., 1st Sess. (1993); see also John Windhausen, *Congressional Interest in the Problem of Television and Violence*, 22 HOFSTRA L. REV. 783, 788 n.14 (1994).

3. 139 CONG. REC. S5821 (1993). Other commentators have made the same argument.

Other legislators made the same claims. Senator Dorgan stated that: "Clearly, there must be some kind of relationship between violence on television and violence in our country. There is certainly a relationship between violence on television and some kind of injury to America's children."⁴ Senator Hollings commented along the same lines: "Television violence is not to blame for all of our societal ills, but there is little doubt in my mind that it is a significant negative influence on children."⁵ Representative Edward J. Markey commented when he introduced his bill: "The violence children watch on television is anything but benign. The scientific evidence is in and is indisputable: watching television violence as a child leads to increased aggression and violent behavior, and the effects last over a lifetime."⁶

Claiming that there is a relationship between exposure to expressive material and violence is nothing new. The laws justifying censorship of movies was based upon the notion that films had a greater impact on the audience viewing them than books or reading material and therefore had to be regulated more closely. The Supreme Court noted in *Joseph Burstyn, Inc. v. Wilson*⁷ that it "is urged that motion pictures possess a greater capacity for evil particularly among the youth of a community, than other modes of expression"⁸ and therefore advance screening of movies was necessary before they could be seen by the public. But the Supreme Court refused to defer to the notion that since movies had a more substantial and direct impact on an audience that censors should be permitted to suppress movies that depicted immoral or criminal activity as desirable.⁹

Similarly, in the 1950s, Congress concluded that the reading of

An article in *Harvard Magazine* noted that there has been a 100% increase in the homicide rate in this country over the past forty years, with some large cities showing a five-fold increase with no change in their population. "In looking for a root cause [of this increase]," argues the author, David Barry, "one of the most obvious differences in the social and cultural fabric between post-World War II and pre-World War II America is the massive exposure of American youth to television." He asserts that there is "compelling evidence of a direct, demonstrable link" between television exposure and criminal behavior. David Barry, *Screen Violence: It's Killing Us*, HARVARD MAG., Nov.-Dec. 1993, at 38.

4. 139 CONG. REC. S6022 (1993).

5. 139 CONG. REC. S10581 (1993).

6. 139 CONG. REC. E2011 (1993).

7. 343 U.S. 495 (1952).

8. *Id.* at 502.

9. *See Kingsley Int'l Pictures Corp. v. Regents of the Univ. of N.Y.*, 360 U.S. 684 (1959) (reversing Regents' decision refusing to issue a license for film that depicted adulterous relationship in desirable manner).

comic books, particularly horror comic books was a contributing factor in juvenile delinquency: "The Committee . . . concludes that widespread, regular and habitual reading of objectionable comic books dealing with crime, bloodshed, lust, sex, horror, and violence is a contributing factor leading to juvenile delinquency and crime."¹⁰ As a result of this "finding," the comic book industry entered into certain "voluntary" codes of self-regulation that established guidelines on what should appear in the magazines.¹¹

Two decades later, there were further complaints that expressive material caused or contributed to criminal activity, in particular, that pornographic material caused crime. A Presidential Commission was appointed by President Johnson in 1968 to determine whether exposure to violent pornography contributed to criminal behavior. Again there were extravagant claims that such a relationship existed, extensive hand-wringing about what should be done about it, and little action because of the inconclusiveness of the scientific findings to support the accusations.¹²

10. See Kevin W. Sanders, *Media Violence and the Obscenity Exception to the First Amendment*, 3 WM. & MARY BILL RTS. J. 107, 157 n.378 (1994).

11. The campaign against comic books is described in 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, 787-89 (1992). The article describes that American parents were driven "into a state of frenzy over the effects of comic books on children." *Id.* at 788. After extensive Senate hearings, the industry created a Comics Code Authority which was given authority to inspect story lines, artwork and advertising to insure that graphic images of crime did not appear in the magazines.

12. The campaign is described in William K. Layman, *Violent Pornography and the Obscenity Doctrine: The Road Not Taken*, 75 GEO. L.J. 1475 (1987). The author notes:

The most frequently discussed and studied harm of pornography is its causal link to rape and violence. Feminists claim that pornography perpetuates the myth that women enjoy rape, encourage rape (even when they say "no"), and deserve to be raped. They claim a dramatic increase in the violent content of pornography and conclude that pornography has the effect of eroticizing and romanticizing sexual violence and that it conditions men to find the abuse of women arousing. Although feminists argue abstractly that sexual relations in society are not just distorted by but actually are formed by the ideology of pornography, statistics are the primary weapons in the battle over whether pornography does indeed incite rape.

Id. at 1489-90. The Commission concluded that there was little proof to support that claim:

If a case is to be made against 'pornography' in 1970, it will have to be made on grounds other than demonstrated effects of a damaging personal or social nature. Empirical research designed to clarify the question has found no reliable evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal sexual behavior among youth or adults.

THE REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 139 (1970). The Report further noted:

We would have welcomed evidence relating exposure to erotica to delinquency,

The more recent campaign against the depiction of violence on television resembles the earlier campaigns against movies, comic books or pornographic material. On the one hand there is a correlation between increased violence in society and increased exposure to the medium involved. Crime has increased dramatically over the past decades while television saturation of this society has also increased.¹³

But there are many who attack the conclusions drawn from this analysis. Recent crime statistics issued by the FBI show that the homicide rate in the United States in 1992 was 9.3 per 100,000, down from 9.8 in 1991.¹⁴ But the rate during the 1930s rose to 8.3 in 1935 at a time of great social malaise but when there was no television. The homicide rate declined through the 1940s and 1950s to a low of 4.5 in 1963. It then began a steady rise to 10.2 in 1980. It then decreased through the early 1980s to 7.9 in 1985 (a 24% drop) and then rose again to 9.8 in 1991. Since television exposure increased constantly from the 1960s to the present, the up-and-down movement of the murder rate does not correspond to the continuing expansion in television viewing.¹⁵

But it is argued that children at the bottom end of the income scale in the urban centers watch a disproportionate amount of television, with the tube acting as a baby-sitter. They are the persons more likely to engage in antisocial behavior, and their constant exposure to the violence in the medium must be having an effect.¹⁶

To examine some of these issues, the Hofstra Law School held a

crime and anti-social behavior, for if such evidence existed we might have a simple solution to some of our most urgent problems. However, this is not only to deny the facts, but also to delude the public by offering a spurious and simplistic answer to highly complex problems.

Id. at 380.

13. *See supra* note 3.

14. FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: UNIFORM CRIME REPORTS 13-21 (1992).

15. In addition, the FBI crime reports show that there is an enormous disparity in homicide rates from place to place. The homicide rate was 75.2 per 100,000 in the District of Columbia and 28.3 in New Orleans, but only 0.7 in New London, Connecticut, 0.7 in Green Bay, Wisconsin and 0.8 in the entire state of South Dakota. Since the same television programming reaches all of these locales, it is impossible to blame the medium for this checkerboard pattern in homicide rates. *Id.* at Tables 6, 8.

16. Critics answer this argument by noting that a symptom was being confused with a cause. If parents are absent and cannot supervise their children and must use television as a surrogate, they are less likely to provide the discipline, guidance and control necessary to keep their children from committing crimes.

conference in April, 1994 to examine these issues. Among the questions raised were (1) what do the psychological and sociological studies say about the relationship between television viewing and violence; (2) what other evidence exists to support the claim that there is a connection between television viewing and crime; (3) what is the television industry itself doing to deal with criticism of its programming practices; (4) are there constitutional limitations to any legislative effort to restrict non-obscene television programming; and (5) whether the entire campaign to deal with television programming is a distraction which takes us away from dealing with the more fundamental causes of violent crime.

Twelve leading social scientists, television industry leaders, academic figures and lawyers came to the school to discuss these issues. Among those attending were Marvin Kitman, a leading television critic; Peggy Charren, the founder and director of Action for Children's Television; John Windhausen, Senior Counsel, Senate Subcommittee on Communications; Arthur Eisenberg of the New York Civil Liberties Union; Professors Todd Gitlin (University of California at Berkeley), George Gerbner (University of Pennsylvania), Edward Donnerstein (University of California), Jonathan Freedman (University of Toronto) and John Murray (Kansas State University); Beth Bressan, Vice President and Assistant to the President CBS/Broadcast Group; William Abbott, a partner in Simonds, Winslow, Willis & Abbott and the president and founder of the national Foundation to Improve Television; and Kathleen Peratis, a partner in Frank & Peratis.

The results of the conference are examined in the pages that follow. Hopefully, the discussion can clarify the many claims made on both sides so that this important public policy issue can be advanced through governmental and industry action.

