Stacey Goodman

# Violent Media and the First Amendment

On October 26, 1984, nineteen-year-old John McCollum shot himself in the head while listening to an Ozzy Osbourne album. His parents, blaming the suggestive lyrics of Osbourne's *Suicide Solution* instead of John's emotional problems and alcohol abuse, filed suit against CBS records and Osbourne himself. It was their belief that the record company was negligent in the dissemination of Osbourne's music because the lyrics vividly encouraged suicide, thus aiding and abetting John's tragic end. The defense countered that there was not enough evidence to substantiate claims that the music caused John's suicide, nor was it Osbourne's intent to produce such a result. The Court of Appeals of California sided with the defense, ultimately concluding that the plaintiffs failed to allege solid bases for overcoming Osbourne's first amendment rights (*McCollum v. CBS*). This case illustrates some of the major points of debate amongst scholars surrounding violent media and the First Amendment, including the ever-present question of imminent lawless action.

Historically speaking, imminent lawless action, earlier deemed "clear and present danger," is one of few standards that uniformly limits the First Amendment constitutionally. This clause, along with other classes of limited speech, like obscenity, libel and false advertising, are often applied to media as justification for censorship. Critics of violent media believe there is a clear correlation between violence in the media and violence in society, which suggests the imminent lawless action clause is applicable in certain media situations. In the context of the previously introduced case, imminent lawless action was applied by the McCollum family because they believed lyrics like "get the gun and try it, shoot shoot

shoot" were likely to cause any listener to "get the gun and try it" (*McCollum v. CBS*). However, when making such claims, judges must be sure beyond doubt that the speech was likely and intended to produce lawless action, and in this case, the judge was not convinced. Other factors, like interpretation of the lyrics and intended mood of the music, are too subjective to serve as the basis for such certain claims. Even though there is an assumed correlation between media violence and violence in reality, it is very difficult to assuredly establish the connection, which makes the successful application of the imminent lawless action clause unlikely.

On the other hand, there is warranted stipulation that claims violent media does not denote imminent lawless action because the vast majority of people who participate in this American pastime do not act lawlessly. Justice Louis Brandeis argued, "to justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced" (*Whitney v. California*). In the case of violent media, it is very difficult to prove that serious evil will result with the continued propagation of violence on television or in music. While there are certainly cases where media is blamed for acts of violence, it seems excessive to project these specific outcomes on the general population. More specifically, watching violence on television or hearing it in music could possibly produce violent behavior in some, but certainly does not in most.

Thus, unusual reactions of a few should not limit the freedoms of all. The Federal Communications Commission endorses this claim, stating, "it is unjust to censor entertainment for a huge majority of Americans because a small fraction of the population reacts inappropriately" (Firstamendmencenter.org). To illustrate this point, let's examine the Rhode Island Supreme Court case, *DeFilippo v. NBC,* from 1982. This case arose after thirteen-year- old, Nicky DeFilippo, hung himself while viewing the *Tonight Show*. That night, Jonny Carson interviewed a stuntman who could imitate a realistic hanging suicide and then emerge completely intact and alive. Though the program included a "don't try this at home" warning, the boy attempted the stunt. Hours later his parents found him hanging, lifeless, with the television still tuned to NBC. They then unsuccessfully sued for ten million dollars, claiming that broadcasting the stunt was negligent of NBC because it disregarded Nicky's welfare. Stories like this and the Osborne case are shocking and memorable, but pale in number when com-

pared to the thousands of uninteresting accounts of people viewing similar acts without killing themselves or others. These rare instances of supposed media provoked violence are not only unintentional by the media, but are unpredictable by networks and subsequently should not merit the imminent lawless action bar of First Amendment protection.

The courts clearly agree as monetary compensation has yet to be awarded in any of the similar cases. A provable link does not seem to exist between the acts of violence and the media, though lawyers continue to try and make these connections. For instance, fifteen-year-old Ronny Zamora claimed TV shows like *Kojak* led him to shoot his 83 year old neighbor (Hancock). In the case of *Olivia N. v. NBC*, the prosecution tried to hold the network responsible for broadcasting a movie that allegedly led a group of minors to artificially rape Olivia N. with a bottle. In 1978 little Craig Shannon tried to sue Walt Disney Productions Inc., claiming *The Mickey Mouse Club* caused him to pull a stunt that resulted in blindness. These cases and a slew of other unsuccessful suits illustrate that courts are unwilling to hold media monetarily responsible, and rightly so.

There are other, more likely enablers of violence, and the alleged harm caused by media exposure is most likely felt by a vulnerable population that has already been exposed to other enablers. Alfred Blumstein, a dean at Carnegie-Mellon, bluntly states, "the glorification of violence on television has little effect on most folks, but it has a powerful effect on kids who are poorly socialized" (qtd. in Kopel). To assert that the previously mentioned perpetrators acted solely based on their exposures to media is unreasonable, especially when compared to the vast majority of people exposed to the same television shows and songs that did not have violent reactions. Realistically, the media does not exist in a vacuum, and to hold the media responsible for these violent acts is ignoring the bigger picture. Thus, if lower courts cannot even legitimize suits making such allegations, it would not be just to limit First Amendment freedoms of the media based on these faulty claims.

However, few would deny there is at least a slight correlation between violent television and violent reality. Lyndon B. Johnson said, "It is reasonable to conclude that a constant diet of violent behavior on television has an adverse effect on human character and attitudes" (qtd. in firstamendmentcenter.org). On the other hand, the old high school science

adage applies here: just because ice cream sales are higher when more air conditioners are turned on does not mean turning on air conditioners will increase ice cream sales. In these terms, just because violent acts are sometimes related to the media does not mean the media causes violent acts; or simply, correlation is not the same as causation. Much of the research claiming otherwise is subject to serious criticism because of methodological flaws and inconsistencies. For example, a commonly cited Centerwall Study of 1989 claimed that "long-term childhood exposure to television is a causal factor behind approximately one-half of the homicides committed in the United States" (Centerwall). Another study done by George Comstock of Syracuse University's Center for Research on Aggression surveyed 230 and found a much lower correlation of ten percent (Kopel). Critics of Centerwall argue that his research is skewed because he was searching for a particular outcome. That speculation aside, significant inconsistencies in outcomes testing the same or similar hypotheses suggest innate methodological flaws, and thus courts should not hold these inadequate conclusions as proof that media's First Amendment rights should be limited. Furthermore, countries with more violence on television, like often cited Japan and Canada, have less violence in society than the United States. Instead, the United States has higher levels of poverty, drug abuse, broken homes, deteriorating public schools, excessive gun ownership, etc. It seems more practical to pin these issues as causal factors of violence in society than to try drawing connections with the fake, acted violence on television.

Yet politicians persistently attempt to pass legislation limiting media freedoms to display violence. Karen Sternheimer, a sociology professor at USC, asserts that regulating television is less difficult than eliminating other potentially causational issues, which is why officials continue to try violating the First Amendment with certain regulations. She rightly points out that "violence is not an equal opportunity problem," meaning that other factors, like growing up in a rough neighborhood, are more likely to cause violence. It is naïve to deduce that media can create violence in places where none of the aforementioned causational issues exist. For instance, it is true that Ronny Zamora watched a lot of *Kojak*, but does that explain why a fifteen-year-old boy had such easy access to a loaded gun? The attention that politicians give to the media correlation encourages the public to ignore the other causes, which is obviously detrimental.

Disregarding the more likely origins of violence to focus on media regulation is shunning away from the problem and thus avoiding a solution.

Furthermore, it is not the role of the government to regulate public tastes, though that argument for censorship is becoming more common in First Amendment jurisprudence. Many critics of violent media, and video games specifically, claim that these mediums "lack serious literary, artistic, political, or scientific value" (Free Expression) and banning them loses little. And while Harry Kalven Jr. points out, "the desire to elevate public taste and to eliminate the tawdry, the vulgar, and the worthless . . . [is] indeed a seductive one," the government should be focused on more pressing domestic issues, like the real violence plaguing our streets.

Just as it should not be the government's responsibility to dictate public tastes, the government should not be responsible for discerning between violent media to determine permissibility. The unclear definition of what constitutes as media violence makes its regulation ambiguous, and vague legislations about censorship are dangerous as they threaten all media freedoms. For instance, few would support the suppression of local news media, which frequently contains actual violence, because free access to that genre of information is highly valued in United States culture. Even less would advocate banning Shakespeare's *Hamlet*, though there is little more violent than the tale's graphic descriptions of cold-blooded murder.

But then what is the difference between that violence and the significantly lighter and less brutal violence depicted in the cartoon *South Park*, which is often contested? Some claim the interactive nature of television makes violence seem more real and thus regular exposure makes violence seem ordinary (Kopel). And in terms of *South Park* specifically, the lighthearted nature of the program makes violence and its subsequent consequences seem less serious. Conversely, others claim the fantasy aspect of cartoon clearly separates fiction from reality, so the latter is less likely to provoke a violent reaction. Coming to a consensus or even to a significant majority vote about which violent media deserves censorship is unlikely, so it is preferable for the government to protect freedoms by not implementing subjective regulation.

These abstract, conflicting ideas are managed by courts asserting that subjective judgments based on unclear state laws surrounding the media violence issue are unconstitutional. The first case to make such

claims was *Winters v. New York*, which established that laws prohibiting publications of violent materials were unconstitutional because of ambiguous criteria and thus violated the First Amendment. Justice Reed delivered the opinion of the Court saying the law "violates the right of free speech and press because it is vague and indefinite." Based on this initial case and many others that followed, it is clear that the government recognized the unconstitutional aspect of media regulation of this nature, and though the issue continues to be pressed, the government will rightly stand by these decisions.

There have been laws that successfully bypass the vague criteria claim with unequivocal language. In 1994, Representative Edward Markey successfully passed legislation requiring networks to label violent programs in an obvious and accessible way. This led to the 1995 v-chip law which compelled television manufacturers to implant chips allowing parents to block programs of a certain, explicit rating ("FCC V-Chip"). These television and network features enable parents to do the censoring, taking the responsibility further out of the government's hands in an appropriate manner. These laws are preferable to other potential forms of government regulations. Additionally, producers would rather play along with the v-chip than offend Congress and risk greater controls, so neither of these laws have been hotly disputed.

The fact that the First Amendment keeps the government from demanding the media to limit violence does not preclude the media from self censorship. This idea is discussed ad nauseam that freedom of speech is not the same thing as freedom to speak, and the same concept applies to violent media. However, the goal of the media is not to be a virtuous source of morals and goodness, but rather to make money and broadcast whatever will up ratings. If violence is selling, the media will sell it. At the same time, if one prefers not to experience media violence, there is the option to select media that does not include it. As it stands, government regulation of violence in the media is neither constitutional nor appropriate, and the media itself is unlikely to cut programs when there is an interested audience. The clear solution is not to ask the government to violate the First Amendment, but rather to address the real violence enablers. Violent media should continue to be included under First Amendment

protection until there is a distinct correlation between programming and imminent lawless action.

## Works Cited

Centerwall, B. S. "Young Adult Suicide and Exposure to Television." *Social Psychiatry and Psychiatric Epidemiology* 25.3 (1990): 149–53. Print.

DeFilippo v. NBC. Supreme Court of Rhode Island. 1982. Print.

"FCC V-Chip: Legislation." *Federal Communications Commission (FCC) Home Page*. Web. 15 Oct. 2009. <http://www.fcc.gov/vchip/legislation.html>.

"Firstamendmentcenter.org: Arts & First Amendment in Speech – Topic." Firstamendmentcenter.org: Welcome to the First Amendment Center Online. Web. 5 Oct. 2009. <http://www.firstamendmentcenter.org/speech/arts/topic.aspx?topic=violence_media>.

Hancock, David. "'TV Intoxication' Killer Freed - CBS News." *Breaking News Headlines: Business, Entertainment & World News - CBS News*. Web. 15 Oct. 2009. <http://www.cbsnews.com/stories/2004/06/01/national/main620636.shtml>.

Heins, Marjorie. "Why Nine Court Defeats Haven't Stopped States From Trying to Restrict 'Violent Video Games." *Free Expression Policy Project*. 15 Aug. 1997. Web. 5 Oct. 2009. <http://www.fepproject.org/commentaries/videogamelaws.html>

Kalven, Harry. "The Consensus on Untouchable Content." *A Worthy Tradition: Freedom of Speech in America*.

Kopel, David B. "Massaging the Medium: Analyzing and Responding to Media Violence Without Harming the First Amendment." David Kopel Home Page. Web. 06 Oct. 2009. <http://www.davekopel.com/Media/lrmassag.htm>

McCollum v. CBS. Court of Appeals of California, Second Appellate District, Division Three. 1988.

Olivia N. v. NBC. 74 Cal. App. 3d 383. 1977.

Sternheimer, Karen. "Blaming Television and Movies is Easy and Wrong." *LA Times* 4 Feb. 2001, Opinion sec. Print.

Waller v. Osbourne. 763 F. Supp. 1144 M.D. Ga. 1991.

Whitney v. California. 274 U.S. 357, 375-77. 1927.

Winters v. State of New York. Supreme Court. 1948. Print.

STACEY GOODMAN is part of the class of 2012. She is in COM with a public relations focus. She is from the greater Philadelphia area and her favorite food is vanilla soft serve with rainbow sprinkles. This essay was written for Bradley Queen's course, WR 150: The First Amendment.