

Television Violence: Is Our Society at Risk?

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LEGISLATIVE UPDATES

Television Violence: Is Our Society at Risk?

I. INTRODUCTION

“Television violence” are the new buzz words in the halls of Congress. Currently, there are eight bills¹ pending before the federal legislature seeking to minimize television violence, its influence, and specifically, its effects on our children. All of these bills fall into one of the following categories: 1) establishing a commission or study; 2) regulating content; 3) limiting the time of day for broadcasts; or 4) notice and publicity requirements.² This legislative update seeks to analyze three of the bills, the Television Violence Report Card Act of 1993, the Children’s Protection From Violent Programming Act of 1993 and the Television Violence Reduction Through Parental Empowerment Act of 1993, as these bills will probably present the most heated debate in this legislative session.

1. In addition to the bills discussed in this article, there are a number of other bills currently pending on television violence, including:

* FCC Report On Television Violence Act — requiring a study into violence on television programs. H.R. 2159, 103rd Cong., 1st Sess. (1993).

* Presidential Commission On TV Violence and Children Act -establishing a 28 member commission to study, evaluate and suggest solutions to TV violence. H.R. 2609, 103rd Cong., 1st Sess. (1993).

* Parents Television Empowerment Act of 1993 — would establish a toll free phone number for the public to report comments or complaints to the FCC on TV programs with violent content. H.R. 2756, 103rd Cong., 1st Sess. (1993).

* Resolutions Concerning Broadcasting of Video Programming Containing Violence — expresses the sense of Congress for the need of TV broadcasters to reduce the level of violent programs. S. Res. 122, 103rd Cong., 1st Sess. (1993) and H.R. Res. 202, 103rd Cong., 1st Sess.(1993).

* Television Violence Report Card Act of 1993 — orders the FCC to promulgate regulations which evaluate and rate the violent content of television programs. After the ratings system is established, the FCC is then given the task of selecting one week every three months in which to evaluate and rate the extent of violence contained in *each* program carried on television or the cable systems. One of the weeks selected each year must be during a sweeps week. After the shows are rated by the amount of violence contained, the FCC will publish the results in the federal register along with a ranking of sponsors and the amount of the television violence they sponsor.

S. 973 and H.R. 2159, 103rd Cong., 1st Sess. (1993).

2. *See, Hearing of the Senate Commerce, Science and Transportation Committee*, Oct. 20, 1993, Federal News Service, available in LEXIS, Nexis Library, Current File (statements by Sen. Gorton).

The first portion of the analysis takes a brief look at the background of legislative action with television violence in America, the incredible statistics, and the recent television violence “summit” in Washington, D.C. The second portion analyzes the three pieces of legislation in detail, explaining the provisions and their impact. The discussion section takes a look at the Federal Communication Commission’s (“FCC”) role in broadcast programming, the First Amendment rights of broadcasters and the ultimate constitutionality of these bills if passed. The final portion seeks to understand the response from the industry, the public and our government.

II. BACKGROUND

The war against television violence has heated up over the past few years. Sponsor boycotts, network boycotts and various other methods have been used by private individuals and special interest groups to pressure broadcasters to comply with requests to reduce violent programming. Congress decided to step into this thicket three years ago when it passed the Television Program Improvement Act of 1990.³ The sponsor, Senator Paul Simon (D-Ill.) has been a noted opponent of television violence. The 1990 Act provided a three year period of exemption of the antitrust laws so that all members of the television industry could act jointly to develop guidelines to reduce and eliminate the “negative impact of violence in telecast material.”⁴ True to his word, Senator Simon returned three years later and requested an accounting from the television industry.

In June 1993, the Senate Judiciary Committee held hearings on television violence. At that time, “members of the broadcasting and movie industries . . . testified . . . [and] reject[ed] calls for limitations of programming, but advocat[ed] community outreach discussion to gauge the feelings of the community to certain programming and striving to eliminate ‘excess’ violence on television.”⁵ After the hearings, for the first time ever, the four major networks, ABC, CBS, NBC and FOX adopted a warning system to advise parents of the violent content of the program that would be broadcast.⁶ Since July, over a dozen cable networks have signed the pact.⁷

The warnings, it was decided by the networks, would be used only on the most violent programs and would be aired during commercial promos, on press releases and advertising, before the program and possibly even during the

3. 47 U.S.C.A. 303c (1991). Note: However, this subject is not unknown in Congress. Sen. Thomas Dodd (D-CT) held Senate Committee hearings on this very subject back in 1964. Arthur Salm, *Television Debate Over Violent Effects On Children Is On The Rerun*, SAN DIEGO UNION-TRIB., Sept. 18, 1993, at E-1.

4. 47 U.S.C.A. 303c(c) (1991).

5. Mark Conrad, *Violence On Television: What Congress Is Doing*, N.Y.L.J., Aug. 27, 1993, at 5.

6. The warning reads: “Due to some violent content, parental discretion advised.” *Id.*

7. Linda Matchan, *TV Violence: Don't Expect a Warning*, BOSTON GLOBE, Sept. 15, 1993, at

commercial breaks.⁸ However, this system is totally voluntary. Each network is allowed to evaluate and determine which programs would carry the warning.⁹ At its inception, the networks were very articulate as to the initial uses of the warning being limited to movies, miniseries and TV specials.¹⁰ CBS, however, has emphatically stated that none of its series will carry the advisories,¹¹ and NBC has yet to identify any programming that would require an advisory.¹² As a result, only one new network television series — ABC's "NYPD Blue" — will carry a warning.¹³ The networks have stated there is a greater sensitivity towards violence, but as one news reporter stated, "[D]on't expect violent movies to vanish."¹⁴

Congressional Action and Some Amazing Statistics

This action on the part of the industry was not enough for Congress. The statistics and reports were too alarming to ignore. Examining the "Findings" portion of each piece of legislation has provided some helpful insight into the Congressional concern. Almost every bill has recited the same findings:

- 1) By 7th grade, the average child has seen 8,000 murders and 100,000 acts of violence on television.¹⁵
- 2) Based on a University of Pennsylvania study, children's programming averages 30 violent acts per hour.¹⁶
- 3) By the end of high school, children watch 22,000 hours of television — more time than spent in school.¹⁷
- 4) Over 25% of prime time programs contain very violent material, according to the National Coalition on Television Violence and prime time violence has tripled during the 1980's, according to an American Academy of Pediatrics study.¹⁸

Other interesting statistics include:

- * By age 18, children have witnessed 200,000 acts of televised violence with 40,000 of those being murders.¹⁹

8. Judith Barra Austin, *TV, Film Industries to Warn Parent of Violent Programs*, Gannett News Service, June 30, 1993, available in LEXIS, Nexis Library, Current File.

9. *Id.*

10. *Id.*

11. Linda Matchan, *TV Violence: Don't Expect a Warning*, BOSTON GLOBE, Sept. 15, 1993, at 31.

12. *Id.*

13. *Id.* Note: The warning used on ABC's "NYPD Blue" isn't even the same one adopted by the networks. It is called a "viewer discretion advisory" that states, "[T]his police drama contains adult language and scenes with partial nudity." *Id.*

14. *Id.*

15. 139 Cong. Rec. E1958-03 (daily ed., Aug. 3, 1993).

16. H.R. 2837, 103rd Cong., 1st Sess., §2(3) (1993).

17. 139 Cong. Rec. E1958-03 (daily ed., Aug. 3, 1993).

18. H.R. 2837, 103rd Cong., 1st Sess., §2(1) and (2) (1993).

19. Daniel Schorr, *TV Violence — What We Know But Ignore*, THE CHRISTIAN SCIENCE MONI-

* In one day of television programming in 1992, the Center for Media and Public Affairs recorded 1,846 acts of violence.²⁰

* Of the 1,846 acts recorded, the Center found that the most violent portions of the day were during time when children comprised a substantial portion of the television audience. Between 2 p.m. and 5 p.m., there were 203 violent acts per hour, between 6 a.m. and 9 a.m. there were 165.7 violent acts per hour and between 8 p.m. and 11 p.m. there were 106.7 violent acts per hour.²¹

* The National Coalition on Television Violence — based out of Champaign, Illinois — defined violence as “any physically hostile acts committed with the intention of hurting another person,” and named some of the most violent shows, including “Looney Tunes” with 80 acts per hour, Fox network’s “Dark Water” with 109 violent acts per hour, and “The Young Indiana Jones Chronicles” with 60 violent acts per.²²

Not only are the statistics persuasive, but the studies over the past 20 years are nearly conclusive: there is a causal relationship between the negative effects of television violence and increasing societal violence especially among children.²³ Although no one factor can be blamed, the American Psychological Association’s Committee on Violence and Youth has stated: “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.”²⁴

Now that Congress has given the television industry time to reduce the problem, they feel the broadcasters’ efforts have not gone far enough and Congress is determined to go forward with their goals to reduce televised violence.

III. ANALYSIS OF THE LEGISLATION

*Television and Radio Program Violence Reduction Act of 1993 (H.R.2837)*²⁵

This first bill orders the FCC to prescribe standards for television and radio in an effort to reduce overall broadcasting of audio and video violence.²⁶ The bill

TOR, Sept. 7, 1993, at 19.

20. Penny Bender, *Local Lawmakers Offer Views on Moves to Curb TV Violence*, Gannett News Service, August 27, 1993, available in LEXIS, Nexis Library, Entertainment News File.

21. Charles Oliver, *INVESTOR’S BUSINESS DAILY*, July 8, 1993, at 1.

22. *Id.*

23. Various studies made by the American Medical Association, American Academy of Pediatrics, American Psychological Association, Centers for Disease Control and the National Institute of Mental Health. 139 Cong. Rec. E1958-03 (daily ed., Aug. 3, 1993).

24. Mary Jo Kochakian, *Children’s Taste for Violence Is Not Instinctive*, HARTFORD COURANT, Oct. 5, 1993, at F1. See also, Daniel Goleman, *Hope Seen for Curbing Youth Violence*, N.Y.TIMES, Aug. 11, 1993, at A10.

25. This bill was introduced on August 3, 1993 by Representative John Bryant (D-TX) and currently has 10 co-sponsors (8 Democrats and 2 Republicans). It is currently assigned to the House Energy and Commerce Committee. H.R. 2837, 103rd Cong., 1st Sess. (1993).

26. *Id.* at §4(a). Note: “Violence” is defined as “any action that has as an element the use or

lays down a three-tiered system of punishment for violations of the FCC prescribed standards after a broadcast has been aired.

The first level of punishment would place a \$5,000 civil fine on the offender.²⁷ In this case, each program would be considered a separate violation.²⁸ The second level would place a civil fine between \$10,000 and \$25,000 on the person for an "intentional" violation of the act.²⁹ The final level of punishment is for repeated violations which would result in the repeal of the person's broadcast license.³⁰

This legislation allows exceptions in the "public interest" for items including: news reports, sports telecasts, documentaries and educational features.³¹ The act seems to draw a distinction between entertainment and non-entertainment broadcasting. Note also, that cartoons are not exempt from the act's definition of programming, and violence contained therein, would be subject to these rules.³² Finally, the FCC will consider compliance with this act when evaluating license renewals.³³

In examining this legislation, numerous questions come to mind. First, how do the three levels of punishment relate to each other in enforcement? The first level is only viewed as a "violation," yet the second level is "intentional violations." If the violation is intentional, would not the person be subject to both the \$5,000 fine and the fines related under "intentional violations?" Secondly, if there are repeated violations, is the repeal of the license in addition to the civil fines imposed by sections (a) and (b)?

Also questionable are the definition standards of the act. What constitutes "intentional" violations? Is each episode of a television or radio show considered a separate violation or is it just each program series? The statute is very vague in these areas and provides no guidance for the FCC in the creation of the standards.

threatened use of physical force against the person of another, or against one's self, with intent to cause bodily harm to such person or one's self. For purposes of this Act, an action may involve violence regardless of whether or not such action or threat of action occurs in a realistic or serious context or in a humorous or cartoon type context." *Id.* at §3(1).

27. *Id.* at §5(a). Note: Any offender is defined as "person" under the act and is defined as "an individual, partnership, association, joint stock company, trust, corporation, or governmental entity." 47 U.S.C.A. §522(14).

28. H.R. 2837, 103rd Cong., 1st Sess., §5(a) (1993).

29. *Id.* at §5(b).

30. *Id.* at §5(c).

31. *Id.* at §6.

32. *Id.* at §3(2).

33. *Id.* at §7.

*TV Violence Reduction Through Parental Empowerment Act (HR 2888)*³⁴

This act would amend Section 303 of the Communications Act of 1934³⁵ requiring some type of apparatus (unspecified) that would block display of channels, programs and time slots or commonly rated programs.³⁶ The legislation mandates that no person could ship or import any 13 inch or larger television set without this apparatus in place.³⁷ The bill would make it possible to block out all programs that receive a rating signal (unspecified) by way of a "line 21 of the vertical blanking interval,"³⁸ and as otherwise specified by the FCC. Unfortunately, the bill is rather vague on any of the fine points of the technology or the rating system.

The technology, nevertheless, is available. Canada has recently announced the discovery by a Vancouver inventor which allows such a blocking control feature.³⁹ Named "YouControl," the mechanism would first require a rating signal to be encoded in TV shows and videos. The numbers ranking one to seven, seven being the most violent or sexually explicit, would then be picked up by a decoder in the television set and blocked out according to the viewer's programming.⁴⁰ Normal blocking devices have been used for years in some of the larger-screened televisions, but they have only allowed blocking of the entire station for the time the device is activated. Youcontrol technology, however, enables the viewer to block out individual shows as they see fit.⁴¹ The biggest obstacle Canada now faces is an acceptable ratings system for all groups involved.⁴²

Although one of the more controversial bills of the group, H.R. 2888 has received wide support by numerous television industry and newspaper leaders, along with public health and civic organizations, including the American Medical Association.⁴³ Dubbed the "V-chip," this technology is based on the fact that it

34. Introduced by Representative Edward J. Markey (D-MA), on August 5, 1993, this bill has also been referred to the House Energy and Commerce Committee. Currently there are 26 co-sponsors on this bill (15 Democrats and 11 Republicans). H.R. 2888, 103rd Cong., 1st Sess. (1993).

35. 47 U.S.C.A. §151 et. seq., (1991).

36. H.R. 2888, 103rd Cong., 1st Sess., §3 (1993). The amendment would state as follows:

(v) Require that (1) apparatus designed to receive television signals be equipped with circuitry designed to enable viewers to block the display of channels, programs, and time slots; and (2) such apparatus enable viewers to block display of all programs with a common rating. The requirements of this subsections shall apply when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size, measured diagonally.

37. *Id.* at §4(a)(2)(C).

38. *Id.* at §4(a)(2)(C).

39. Lynne Ainsworth, *TV zapper blocks sex and violence*, TORONTO STAR, Sept. 20, 1993, at A1.

40. *Id.*

41. *Id.*

42. *Id.*

43. 139 Con. Rec. E2011-01, (daily ed., Aug. 5, 1993) (statement of Rep. Markey) and *This Week's News: Lawmakers Submit Poipourri of Proposals on TV Violence*, VIDEO WEEK, August 9, 1993, at Vol. 14, No. 31.

is impossible to provide parental supervision 24 hours-a-day and this gives parents an opportunity to exercise their acknowledged parental rights to guide what their children watch.⁴⁴ Those who support the idea recognize that this act would probably be the least restrictive avenue in dealing with violent programming, while still protecting First Amendment rights.⁴⁵

*Children's Protection From Violent Programming Act of 1993 (S. 1383)*⁴⁶

The third bill is an amendment to section 601 of the Communications Act of 1934,⁴⁷ making it illegal to distribute "violent video programming during hours when children are reasonably likely to comprise a substantial portion of the audience."⁴⁸ The FCC has prohibited the broadcasting of indecent programming between the hours of 6 a.m. and 10 p.m. on any day for a public television station⁴⁹ and between the hours of 6 a.m. and 12 p.m. for any television broadcasting station.⁵⁰ Since these hours have been established because children comprise a substantial portion of the audience during these times, then it is possible that these guidelines will be the hours used for this legislation. If used, this would, in essence, place violent programming on the same level as obscenity and indecency.

Exempt from the act are news, sports, educational, documentary and cable programming.⁵¹ Obviously, both this act and H.R. 2837 note a distinction between entertainment and non-entertainment broadcasting. Programs such as news, sports and educational items are viewed as being in the "public interest." This policy supports the public's right to know and society's interest in keeping an educated and informed public.

However, conspicuous in this legislation is the exemption for cable broadcasting. The explanation for the differing treatment of cable has been offered by the FCC during comment in a notice of inquiry.⁵² Under the Cable Act,⁵³ cable companies must provide parental lock-out controls upon request, which enables parents to lock out specific programs or channels that they do not wish

44. 139 Cong. Rec. E2011-01, (daily ed., Aug. 5, 1993).

45. *Id.*

46. Introduced by Senator Ernest Hollings (D-SC) on August 5, 1993, this bill is pending before the Senate Commerce, Science and Transportation Committee.

Note: A similar bill was introduced by Senator David Durenberger (R-MN) which would only require warnings placed on violent programming stating that the program may adversely affect the mental or physical health of children and that such acts could carry criminal penalties. S. 943, 103rd Cong., 1st Sess. (1993).

47. 47 U.S.C.A. §151 et. seq.

48. S. 1383, 103rd Cong., 1st Sess., §3(a)(1) (1993).

49. 47 U.S.C. §303 note. *See also*, 8 FCC Rcd. 704 (1993).

50. *Id.*

51. S. 1383, 103rd Cong., 1st Sess., §3(b)(1) (1993).

52. "In The Matter of Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. §1464." 4 FCC Rcd. 8358 (1989).

53. 47 U.S.C. §544(d)(2)(A).

their children to view.⁵⁴ Such devices are not readily available for regular television broadcasts and thus the differing treatment for cable programming.⁵⁵

The act leaves the definitional issues for the FCC to decide.⁵⁶ If a person is found to have repeatedly violated this act, and after notice and hearing, their license can be revoked.⁵⁷ Any other violations will be considered in renewal of licenses.⁵⁸

IV. DISCUSSION

The FCC and Broadcasting Regulation

In order to analyze the three bills thoroughly, a brief history of the FCC's power to regulate broadcasting must be examined. Title 47 of the United States Code §151, et. seq., provides the guidelines for the creation and execution of the Federal Communications Commission's ("FCC") duties. This Code gives the FCC powers and duties to make regulations that "will promote public convenience or interest or will serve public necessity."⁵⁹ The responsibilities given to the FCC and the means to achieve those ends, have been interpreted liberally by the courts over the past 50 years.⁶⁰

However, one significant restriction placed on the FCC since its inception was §326.⁶¹ This section prohibits any regulation that would interfere with free speech rights by broadcasters. The language of this section seems fairly absolute in its terms:

Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by a radio station, and *no* regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.⁶² (emphasis added)

This section has been found to prohibit the FCC from editing broadcasts in advance, however, it is deemed acceptable for the Commission to review a broadcast in performance of its license renewal duties.⁶³

The FCC, nevertheless, has been held to possess the authority to take watch over general program format and content.⁶⁴ This power stems from its statutory

54. 4 FCC Rcd. 8358 (1989).

55. *Id.*

56. S. 1383, 103rd Cong., 1st Sess., §3(b)(3) (1993). Note: However, under §3(e), the term "distribute" is defined as "to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite."

57. *Id.* at §3(c).

58. *Id.* at §3(d).

59. 47 U.S.C.A. Sec. 303(f) (1991).

60. *See*, FCC v. Midwest Video Corp., 440 U.S. 689 (1979).

61. 47 U.S.C.A. §326 (1991).

62. *Id.* Note: The Communications Act is viewed to apply to all forms of broadcasting, not just radio transmissions. *See*, Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 567 (1990).

63. FCC v. Pacifica Foundation, 438 U.S. 726, 735 (1978).

64. Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367, 395 (1964).

duty to serve the “public interest.”⁶⁵ The public is seen as possessing a right of suitable access to issues of social, political, esthetics and moral concern that effectuates this interest;⁶⁶ however, this interest is not to be viewed as censorship.⁶⁷ Therefore, the “public interest” is defined as being “the interest of the listening public in ‘larger and more effective use of radio’ [and television].”⁶⁸

This idea of “public interest,” although broad, is not amorphous. The Supreme Court has made it clear that this “touchstone” of FCC power is “a criterion which ‘is as concrete as the complicated factors for judgment in such a field of delegated authority permit’ [citation omitted].”⁶⁹ and that this criterion is not “so indefinite as to confer an unlimited power.”⁷⁰ This criterion has allowed the FCC to formulate numerous methods of preventing discrimination in broadcasting⁷¹ and to require a certain percentage of programming be devoted to non-entertainment subjects,⁷² all in the public’s interest.

The First Amendment Right of Broadcasters is Not Absolute

FCC regulation of the broadcast industry must, of course, be considerate of First Amendment issues, and the Supreme Court has held that broadcasters are afforded First Amendment protection for their broadcasting.⁷³ However, under later opinions, the Court asserted that the rights of the industry are limited by the “public interest” in certain broadcast programming.⁷⁴ Numerous times over the past few years, the Supreme Court has made it clear that although “the purpose of the First Amendment [is] to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail . . . it is the right of the viewers and listeners, not the right of broadcasters, which is paramount.”⁷⁵

This reasoning stems from the Supreme Court’s recognition that the free speech rights of broadcasters are inherently and uniquely different from other modes of expression and are therefore to be treated separately.⁷⁶

It has held that because radio and other broadcast facilities are not available to all, the government has the right and duty to regulate licensing and broadcasting.⁷⁷

But the area of content-based broadcasting regulations has become a source of constant concern. Numerous cases brought before the Supreme Court by

65. 47 U.S.C. §303(f).

66. *Red Lion Broadcasting*, 395 U.S. at 390.

67. *Carter Mr. Transmission Corp., v. FCC*, 321 F.2d 359, 364 (1963).

68. *National Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1943).

69. *Id.* (citing *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940)).

70. *Id.*

71. *See, Metro Broadcasting*, 497 U.S. at 588 (note 38).

72. *Id.* at note 39.

73. *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948).

74. *See, Red Lion Broadcasting*, 395 U.S. at 367.

75. *Id.*

76. *National Broadcasting Co.*, 319 U.S. at 226.

77. *Id.*

broadcasters have argued that FCC duties are limited to the technical aspects of broadcasting. However, the Supreme Court has consistently taken a broader view of the FCC's responsibilities. Since 1943, in *National Broadcasting Co. v. United States*, the Court has invariably allowed more expansive FCC duties and has not limited the FCC's powers to only the technical and engineering aspects of broadcast communication.⁷⁸ Such powers include the composition and content of the broadcast.⁷⁹

This reasoning was more clearly explained in the later case of *Red Lion Broadcasting Co., Inc. v. FCC*. In *Red Lion*, the Court ruled on an FCC requirement that broadcasters provide free access time for responses to personal attacks on the air. The broadcasters strenuously argued that if free access time for responses was required, they would need to become "self-censors" in their coverage of controversial public issues.⁸⁰

In rejecting this argument as speculative, the Court made clear that the FCC's duties encompass regulations on program format and content:

The Court upheld the regulations, unequivocally recognizing that the Commission was more than a traffic policeman concerned with the technical aspects of broadcasting and that it neither exceeded its powers under the statute nor transgressed the First Amendment in interesting itself in general program format and the kinds of programs broadcast by licensees.⁸¹

The Proposed Legislation and The Freedom of Speech

Although the Supreme Court ruled FCC duties encompass issues of program content and format in *Red Lion*, it simultaneously reserved its opinion on more restrictive content-based legislation and regulation by the FCC:

We need not and do not now ratify every past and future decision by the FCC with regard to programming. There is no question here of the Commission's refusal to permit the broadcaster to carry a particular program or to publish his own views; of a discriminatory refusal to require the licensee to broadcast certain views which have been denied access to the airwaves; of government censorship of a particular program contrary to §326; or of the official government view dominating public broadcasting. Such questions would raise more serious First Amendment issues. But we do hold that the Congress and the Commission do not violate the First Amendment when they require a radio or television station to give reply time to answer personal attacks and political editorials.⁸²

Under the proposed legislation, the issue is whether or not these bills could be considered "government censorship of a particular program contrary to §326 or of the official government view dominating public broadcasting." Technically, under the three bills proposed, the FCC would be compelled to prescribe

78. *Id.* at 215-216.

79. *Id.*

80. *Red Lion Broadcasting*, 395 U.S. at 392-393.

81. *Id.* at 395.

82. *Id.* at 396.

standards limiting excessively violent programming or rating a program based on the violent content.⁸³ This could be considered a specific content-based regulation in advance of broadcasting.⁸⁴

Much of this issue comes down to how the Supreme Court will view television violence. Is it a protected form of expression under the First Amendment, or, will the Court decide to carve out an exception for violent programming as it did with obscenity and indecency?

*Is Violence Patently Offensive?*⁸⁵

In *FCC v. Pacifica Foundation*, the U.S Supreme Court was confronted with the issue of whether or not the FCC content-based time restrictions on indecent and obscene language could be considered censorship under 47 U.S.C. §326. This case dealt with the radio broadcast of George Carlin's infamous 12 minute monologue called "Filthy Words" at approximately 2:00 p.m. on a weekday afternoon. Despite a warning given prior to the broadcast, a man complained to the FCC stating that he had heard the broadcast over the car radio while driving with his young son.⁸⁶

The Court ruled that vulgar and patently offensive language is not afforded absolute constitutional protection under the First Amendment, and as a result, could be regulated to certain broadcast time restrictions.⁸⁷ In confronting this issue and developing its reasoning, the Supreme Court made some very interesting statements. First, it stated that although a warning was placed on the broadcast prior to airing, this form of caution is not totally effective since people tune in and out of programming and it "cannot completely protect the listener or viewer from unexpected program content."⁸⁸ Second, the Court noted that "the broadcast media have established a uniquely pervasive presence in the lives of all Americans."⁸⁹ Material that is patently offensive, indecent or obscene confronts an individual in the sanctuary of their home.⁹⁰ This invasion "plainly outweighs the First Amendment rights of [the] intruder."⁹¹ Third, the Court observed that such programming is "uniquely accessible to children, even those too young to read."⁹² As a result, the government has an interest in the "well-being of its

83. H.R. 2837, 103rd Cong., 1st Sess., §4(a) (1993); S.973/H.R. 2159, 103rd Cong., 1st Sess., §3(a) (1993); S. 1383, 103rd Cong., 1st Sess., §3(a)(1) (1993).

84. See, *FCC v. Pacifica Foundation*, 438 U.S. 726, 735 (1978).

85. A fascinating analysis of state restrictions on violent expression is provided by Jessalyn Hershinger in the *Vanderbilt Law Review*. She provides an analysis of state interests in regulating violent expression including: regulating morality, preventing incitement and protecting children. Jessalyn Hershinger, *State Restrictions on Violent Expression: The Impropriety of Extending An Obscenity Analysis*, 46 VAND. L. REV. 473, 490-498 (March, 1993).

86. *Pacifica Foundation*, 438 U.S. at 729-730.

87. See, *Id.* at 747-748.

88. *Id.* at 748-749.

89. *Id.* at 748.

90. *Id.*

91. *Id.*

92. *Id.* at 749.

youth,” and “supporting ‘parents’ claim to authority in their own household.”⁹³

The same analysis can be applied to violent programming. Although warnings are made on violent programming, such does not protect a viewer, especially a child, that comes in half-way through the programming. It invades the sanctuary of a person’s home repeatedly and often without warning. The violence is often not a single occurrence, rather it is repeated and escalates in its degree throughout the program. As Dr. Deborah Prothrow-Stith, author of “Deadly Consequences” stated: “the problem is that television and the movies and the music, it’s overwhelming. It’s very difficult for parents. You can turn it off, but not always.”⁹⁴ Furthermore, in some of the most violent programming — cartoons — children are the audience that the programming is geared towards. The three pieces of legislation proposed could pass constitutional “muster” if violence is viewed as patently offensive material as in *Pacifica*. The government has a compelling interest in protecting youth from violent programming and parents in their authority to guide their child’s viewing habits. None of the proposed legislation would place an absolute ban on violent programming. Furthermore, the bills provide exceptions for such viewing as is in the public’s interest for news reports, sports, cable and educational features.

The TV Violence Reduction Through Parental Empowerment Act (HR 2888) is probably the least objectionable bill of the three proposals. This bill places the authority in the hands of parents to supervise the information their children receive over the airwaves without any restrictions placed on broadcasters. Although it requires a rating standard, it is more akin to a movie rating used to notify the public, rather than a means of restricting production or distribution.

The Television and Radio Program Violence Reduction Act of 1993 (H.R. 2837) and the Children’s Protection From Violent Programming Act of 1993 (S. 1383) will probably be the most contested bills of the group. It should be noted that Attorney General Janet Reno testified before the Senate Commerce, Science and Transportation Committee on October 20, 1993, and stated clearly that S. 1383 would be constitutional, based on her analysis, as there is a sufficiently compelling interest to restrict violent programming.⁹⁵ Her office is currently analyzing the remaining bills on this issue.⁹⁶

One question must be presented: can these provisions be viewed as restrictions on violent programming in advance of broadcasting? They limit the time of the broadcast and place punishments upon violators. If there is any possibility that these bills would fall under §326 censorship prohibition, the Supreme Court could view violence as an exception to the First Amendment absolute protection and make it clear that the government has a compelling interest in regulating this mode of expression.

93. *Id.* at 749-750 (citing *Ginsberg v. New York*, 390 U.S. 629, 640 (1968)).

94. *This Week With David Brinkley*, (ABC television broadcast, Nov. 7, 1993) (transcript available in LEXIS, Nexis Library, Current File).

95. *See, Hearing of the Senate Commerce, Science and Transportation Committee*, Oct. 20, 1993, Federal News Service, available in LEXIS, Nexis Library, Current File.

96. *Id.*

V. THE RESPONSE

Television violence has stirred up some of the greatest debate between the coasts of this nation. The rage of controversy surrounding the MTV cable show "Beavis and Butt-head" is a prime example of the ripeness regarding this issue. However, many people in the broadcast industry are passing the blame these days, as pointed out by Senator Paul Simon, when he spoke before the National Press Club Luncheon in September.⁹⁷

Jack Valenti, the President of the Motion Picture Association presented his views on this subject in both the Los Angeles Times and most recently on "This Week with David Brinkley." His belief is that Congress needs to deal with the real issues of guns, poverty, family issues, loss of hope and parental responsibility.⁹⁸ For him, any intrusion on this issue by Congress is too much: "[b]ut what frightens the industry and should chill the blood of every citizen is the heavy hand of government slowly, steadily, remorselessly intruding into the outer perimeter of the First Amendment."⁹⁹

In general, most networks oppose any form of ratings, regardless of how they are used. The "V-Chip" Act causes great concern among writers in Hollywood. So much concern, in fact, that they have recently founded a group called Mediascope, a group encouraging the "creative community" to start using less violent scripts.¹⁰⁰ The entire industry, including all the major guilds, is working to eliminate gratuitous violence (those scenes unnecessary to plot development) from their broadcasts over the next few years.¹⁰¹ These are obviously efforts to lessen the impact of the proposed legislation and to show that the industry wants to regulate itself without help from Washington.

However, Washington is not so tolerant these days. The wheels have been set in motion with this legislation, and the support is growing for some sort of regulation on televised violence. U.S. Attorney General Janet Reno, U.S. Surgeon General Jocelyn Elders, Senator Paul Simon and many more are rallying for something to be done. Although they may not agree on the method, they are all in consensus on the issue. Surgeon General Elders made some important points before House Telecom Subcommittee on September 15, 1993, when she recognized that specific groups of people are effected by televised violence: "TV violence is especially harmful to minority children, not because of race, but because of socioeconomic status . . . [m]any children of poor spend more than 13 hours each day watching TV programs."¹⁰²

97. *National Press Club Luncheon on TV Violence with Senator Paul Simon*. Sept. 16, 1993, Federal News Service, available in LEXIS, Nexis Library, Current File.

98. Jack Valenti, *Whose Children Are They Anyway?*, L.A. TIMES, Oct. 4, 1993, at B7.

99. *Id.*

100. *World News Tonight With Peter Jennings: The American Agenda*, (ABC television broadcast, Oct. 6, 1993) (transcript available in LEXIS, Nexis Library, Current File).

101. *This Week With David Brinkley*, (ABC television broadcast, Nov. 7, 1993) (transcript available in LEXIS, Nexis Library, Current File).

102. *This Week's News: Divergent Washington Views on Televised Violence*, TELEVISION DIGEST, Sept. 20, 1993, at Vol. 33, No. 38.

Finally, of course, is the public response. Numerous polls have been taken, but the most recent Gallup Poll showed that 80% of Americans think television is too violent, while 75% think television violence is linked to violent behavior.¹⁰³ This number is up 12% from a 1990 Gallup poll, which showed that 63% agreed TV violence encourages real life violence.¹⁰⁴

VI. CONCLUSION

Only time will tell if the proposed legislation will pass the Congress and constitutional “muster.” Nevertheless, something must be done to stem the rising tide of violence out on the streets, in our society, and specifically among our children. Many people argue television violence is only a “symptom” of a growing problem of lack of parental guidance or easy access to guns, or any number of other issues. Furthermore, they argue, television only shows the reality of everyday life.

Ultimately, our society must take responsibility for what is taking place. Our society includes television broadcasters, parents and the government. If television is only a “symptom,” then possibly one less “symptom” will help save a few lives. Furthermore, more positive portrayals and themes may help produce better responses, as Prof. Charles Ogletree, law professor at Harvard Law School, recently pointed out on “This Week with David Brinkley.”¹⁰⁵

Is broadcaster’s right of free speech enough to justify the 20 years worth of studies that show the systematic desensitization of our youth to crimes and violence? But is more government control the real answer? These are two questions that must be confronted in this issue and it must be done soon, before we lose a whole generation to a misplaced sense of “constitutional rights.”

Valerie C. Perera

103. Joe Urschel, *TV Networks: Violence? What Violence?*, USA TODAY, July 27, 1993, at 8A.

104. Charles S. Clark, *TV Versus Actual Violence: Debate Rises with Crime*, AFA JOURNAL, Aug. 1993, at 6.

105. *This Week With David Brinkley*, (ABC television broadcast, Nov. 7, 1993) (transcript available in LEXIS, Nexis Library, Current File).