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ESSAY—FIGHTING FOR THEIR LIVES: THE APPLICABILITY OF THE FAIRNESS DOCTRINE TO VIOLENCE IN CHILDREN'S TELEVISION PROGRAMMING

THOMAS BARTON*

—*The grape gains its purple tinge by looking at another grape.*

—*Juvenal, Satires*

The mythologies of men are often dominated by themes of conflict and violence. Though the traditional protagonists are heroes whose stories are worth re-telling, there has been since the days of Aristotle a fear that the portrayal of violent deeds to the young and impressionable will serve only to perpetuate the battles of society. The storyteller may well realize the fantasy of his re-creation, or at least appreciate a perspective: that ordinary people cannot adopt the vehement methods of their folk-heroes. But people learn much through imitation, and to a child these distinctions between fantasy and reality are likely to blur.

The spectre of children learning a code of ethics and behavior based on the violence of American television broadcasting has been vividly resurrected by recent tort litigation alleging that the sexual assault of a nine-year-old girl by minors was incited by the emulation of a scene in "Born Innocent," an NBC entertainment program.¹ The lower court's dismissal of that complaint well illustrates, however, the difficulty with which a private citizen confronts network television. First Amendment guarantees preclude review of the content of entertainment broadcasting unless the program can be said to fall in one of the categories of "unprotected speech" such as "libel, slander, misrepresentation, obscenity, perjury, false advertising, solicitation of crime, complicity by encouragement, conspiracy, and the like."² It is the thesis of this article

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¹ See *Olivia N. v. National Broadcasting Co.*, 74 Cal. App. 3d 383, 141 Cal. Rptr. 511 (1977). In this case, the Court of Appeal reversed, on procedural grounds, the judgment of dismissal entered by the Superior Court of the County of San Francisco against the plaintiff.

² *Konigsberg v. State Bar of California*, 366 U.S. 36, 49 n.10 (1961), *quoted in* 64 Cal. App. 3d at 388, 141 Cal. Rptr. at 514.

that there is much in the content of children's television programming that, although constitutionally protected speech because it is neither likely to incite imminent lawless action nor directed to achieve this result,³ should nonetheless be subject to the regulation known as the "fairness doctrine."⁴

The issue once was argued in a complaint lodged with the Federal Communications Commission.⁵ The importance of this

³ *Brandenburg v. Ohio*, 395 U.S. 444, 447-48 (1969), quoted in 64 Cal. App. 3d at 389, 141 Cal. Rptr. at 514.

⁴ The fairness doctrine can be invoked "in any case in which broadcast facilities are used for the discussion of a controversial issue of public importance." Federal Communications Commission, *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 40 F.C.C. 598 (1964) [hereinafter cited as *Fairness Primer*]. The doctrine is an outgrowth of the early recognition that the electronic media was significantly different from other forms of communication. The limited nature of the broadcast frequency spectrum necessitated governmental allocation and regulation of the airwaves. The F.C.C. was created by Congress to achieve these purposes according to the public interest, convenience, and necessity. 47 U.S.C. § 303 (1976).

The "public interest" standard was eventually translated into specific broadcast requirements in the presentation of public issues. Not only were licensees placed under an obligation to present coverage of such issues, but both sides of any controversial matter were to be aired. Federal Communications Commission, *Editorializing by Broadcast Licensees*, 13 F.C.C. 1246, 1258-59 (1949) [hereinafter cited as *Editorializing Report*]. Congress recognized this administrative policy in a 1959 amendment to § 315 of the Communications Act of 1934 (47 U.S.C. § 315(a) (1976)) which reads:

[n]othing . . . shall be construed as relieving broadcasters . . . from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Such regulation of the content of broadcast media, unprecedented by print media standards, raised cries of censorship from the broadcasters. Echoing the Commission's philosophy in *Editorializing Report*, the Supreme Court in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), went far toward establishing a First Amendment right of the public to be informed:

It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the F.C.C.

Id. at 390.

Hence the fairness doctrine, in seeking greater public information and access to the media, was seen as an *expansion* of First Amendment rights. To insure continued viability to the doctrine, the Court affirmed a previous holding that the legitimate statutory and constitutional domain of the Commission included "general program format and the kinds of programs broadcast by licensees." *Id.* at 395.

⁵ *George D. Corey*, 37 F.C.C.2d 641 (1972).

issue merits a detailed review of that case. Alleging that an inappropriate amount of violence appears in programming specifically directed at children,⁶ the complainant, George Corey, urged the Commission to take one of several alternative courses of action. First, he asked them to review all children's programming to determine the present extent of violence. Once having evaluated the results of such study, the Commission was to eliminate, substantially reduce, or relegate all offending programs to a late-night time slot.⁷ Alternatively, the complainant requested either withholding the licenses of the three Boston stations named as defendants, or the granting of probationary licenses pending further decision of the Commission.⁸ Finally, it was urged that the Commission order the licensees to comply with the fairness doctrine by broadcasting the following public service notice:

"Warning: Viewing of violent television programming by children can be hazardous to their mental health and well being."⁹

Although the first two alternatives suggested by Corey were dismissed summarily by the Commission,¹⁰ the fairness doctrine aspect of the complaint enjoyed detailed consideration. Previous Commission rulings had required that a fairness complaint at least 1) specify the particular broadcasts in which the controversial issue was presented; 2) state the position advocated in such broadcasts; and 3) set forth reasonable grounds for concluding that the licensee in his overall programming has not attempted to present opposing views on the issue.¹¹ The majority found the complaint insufficient upon the first two grounds and did not reach the third. Although complainant listed the names of several offending pro-

⁶ The definition of children's programming varies among researchers. Most commonly it is some combination of age-group audience and hour of the day shown.

⁷ 37 F.C.C.2d at 641.

⁸ *Id.*

⁹ *Id.*

¹⁰ Since the issue of violence in children's programming affected the industry as a whole, the Commission

[did] not believe that it would be appropriate at this time to make an *ad hoc* determination whether the presentation of such programming by one, two or three licensees may have a detrimental effect on children. Instead, we believe that it is more appropriate to consider such industry wide problems through the Commission's rule making forum.

Id. at 642.

¹¹ Federation of Citizens Ass'ns, 21 F.C.C.2d 12 (1969). See also *Fairness Primer*, *supra* note 4, at 598-99.

grams, the majority ruled there was no "specific evidence (e.g., tapes or transcripts) concerning these programs which could lead to a conclusion that one side of a controversial issue has been presented."¹² A detailed showing by the licensee that he had complied with the fairness doctrine was held not to be warranted on the basis of complainant's lack of specificity.¹³

Finally, the Commission rejected the attempt by Corey to further his fairness claim by drawing an analogy to the Commission's previous application of the doctrine to cigarette advertisements.¹⁴ John F. Banzhaf III had alleged in that case that three cigarette advertisements shown on WCBS-TV "[presented] the point of view that smoking is 'socially acceptable and desirable, manly, and a necessary part of a rich full life.'"¹⁵ Banzhaf contended that this viewpoint was made controversial not because of any claim contained directly in the commercial but as a result of extrinsic evidence from the Surgeon General and other sources which showed that cigarette smoking constitutes a significant health hazard. Even in the absence of any specific health claim, *implications* of safety, sufficient to characterize the ads as advocating a distinct point of view, were found from the total context of the commercial, thus raising a fairness controversy.¹⁶ Despite

¹² 37 F.C.C.2d at 642. In this regard the dissenting opinion pointed out that Corey could have remedied this insufficiency by an amendment of his complaint; yet no such opportunity was afforded him. *Id.* at 645.

¹³ *Id.* at 643.

¹⁴ WCBS-TV, 8 F.C.C.2d 381 (1967), *recons. denied*, 9 F.C.C.2d 921, *aff'd sub nom.*, Banzhaf v. FCC, 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969). The extension of the fairness doctrine into product advertising was an early development, though not often invoked until recently. As early as 1946 the Commission declared that under some circumstances, advertising could provoke public controversy. In such a case, "the fact that the occasion for the controversy happens to be the advertising of a product cannot serve to diminish the duty of the broadcaster to treat it as such an issue." *In reference to* Petition of Sam Morris, 3 Radio Regs. 154, 156 (1946).

¹⁵ 8 F.C.C.2d at 381.

¹⁶ The advertisements in question clearly promote the use of the particular cigarette as attractive and enjoyable. Indeed, they understandably have no other purpose. We believe that a station which presents such advertisements has the duty of informing its audience of the other side of this controversial issue of public importance—that, however enjoyable, such smoking may be a hazard to the smoker's health.

8 F.C.C.2d at 382.

In a subsequent denial of reconsideration of the case, the Commission was even more explicit:

this willingness to consider the full ramifications of a cigarette commercial including, as they did, a judgment on the ultimate harmful effects from use of the product, the Commission was unwilling to examine the ultimate effects of violence in children's programming.¹⁷

Further, we are unable to accept the argument that in the absence of any express health claim in the commercial or affirmative discussion of the health issue, there is no viewpoint to oppose The F.T.C. states that desirability [for smoking] is portrayed in terms of the satisfactions engendered by smoking and by associating smoking with attractive people and enjoyable events and experiences, and that by so doing the impression is conveyed that smoking carries relatively little risk . . .

9 F.C.C.2d at 938.

The legitimacy of applying the fairness doctrine to issues implied, rather than explicitly expressed, in a presentation has been confirmed by policy statements of the F.C.C. (see Federal Communications Commission, *Fairness Doctrine and Public Interest Standards, Fairness Report Regarding Handling of Public Issues*, 39 Fed. Reg. 26372, 26376 (1974), where it is stated that licensees should "exercise . . . [their] good faith judgment as to whether . . . [a] statement, in the context of . . . [an] ongoing community debate, is so obviously and substantially related to the . . . issue as to amount to advocacy of a position on that question.") Such implication of issues is possible in the context both of advertising (*Banzhaf v. FCC*, 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969); *Letter to NBC*, 30 F.C.C.2d 643 (1971)) and entertainment programming (*Horace P. Rowley*, 38 F.C.C.2d 49, 53 (1972); *Thomas M. Slaten*, 28 F.C.C.2d 315 (1971); *John Birch Society*, 11 F.C.C.2d 790 (1968)). For an excellent discussion generally on the scope of "issues" for fairness doctrine purposes, see *Simmons, The Problem of Issue in the Administration of the Fairness Doctrine*, 65 CALIF. L. REV. 546 (1977); re implicit issues in entertainment programming, see *Note, The Fairness Doctrine and Entertainment Programming: All in the Family*, 7 GA. L. REV. 554 (1973).

¹⁷ Even by the time of *Corey*, the F.C.C. had begun to question the wisdom of applying the fairness doctrine to media advertising. See Federal Communications Commission, *In re the Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act*, 30 F.C.C.2d 26 (1971). In 1974 the F.C.C. issued its policy statement, Federal Communications Commission, *Fairness Doctrine and the Public Interest Standards, Fairness Report Regarding Handling of Public Issues*, 48 F.C.C.2d 1 (1974) [hereinafter referred to as *Fairness Report*]. A distinction was drawn in the *Fairness Report* between "editorial advertisements" and "advertisements for commercial products or services", editorial advertisements being those commercials which "actually consist of direct and substantial commentary on important issues." *Id.* at 22. The fairness doctrine was to continue to apply to editorial advertisements. *Id.* But as to advertisements for commercial products and services, it was stated: "[W]e do not believe that the usual product commercial can realistically be said to inform the public on any side of a controversial issue of public importance." *Id.* at 26. And hence the fairness doctrine cannot be said to apply to such advertisements. *Id.* About *Banzhaf*, it was stated: "[t]he precedent is not at all in keeping with the

It is simply not an appropriate application of the fairness doctrine to say that an entertainment program—whether it be Shakespeare or an action-adventure show—raises a controversial issue if it contains a violent scene and has a significant audience of children.¹⁸

The Commission discounted proffered substantiation of the harmful effects of television violence, even though the evidence existed in the same form (i.e. a report from the Surgeon General as well as private research)¹⁹ as that accepted by the Commission in *Banzhaf*.²⁰ Corey also cited findings from the academic community,²¹ but this provoked little comment from the Commission. To be sure, the link between violence and mental health was neither so precisely defined nor so conclusively proven as the link between cigarette smoking and cancer; the results could not be said to establish that “normal use . . . can be a hazard to the health of millions of persons,”²² but the evidence deserved more than the cursory treatment afforded it. As stated in the dissenting opinion, “[i]n any event, the existence of this casual link is surely close enough to warrant considerable concern.”²³ Upon rejecting

basic purposes of the fairness doctrine.” *Id.* at 25. See generally Simmons, *Commercial Advertising and the Fairness Doctrine: The New F.C.C. Policy in Perspective*, 75 COLUM. L. REV. 1083 (1975); 25 EMORY L. J. 479 (1976). The *Fairness Report*, while greatly restricting the applicability of the fairness doctrine to commercial advertisements, did not question its continued applicability to entertainment programming nor did it deny that an “issue of controversy can be implied by the context of a message.” See note 16 and accompanying text *supra*.

¹⁸ 37 F.C.C.2d at 643.

¹⁹ SURGEON GENERAL'S SCIENTIFIC ADVISORY COMMITTEE ON TELEVISION AND SOCIAL BEHAVIOR, *TELEVISION AND GROWING UP: THE IMPACT OF TELEVISED VIOLENCE* (1972).

²⁰ Much of the basis for the claim that cigarette smoking constitutes a hazard to health came from the now famous reports from the Surgeon General. See, e.g., SURGEON GENERAL'S SCIENTIFIC ADVISORY COMMITTEE, *REPORT ON CURRENT INFORMATION ON THE HEALTH CONSEQUENCES OF SMOKING*. (1967).

²¹ Corey cited a study conducted by Professor F.E. Barcus, Professor of Communications Research at Boston University, but neither the title nor the nature of the research appeared in the opinion.

²² 9 F.C.C.2d at 943.

²³ 37 F.C.C.2d at 645. While the results of the Surgeon General's study were not conclusive, certain aspects deserve attention. Beginning from a definition of violence as “the overt expression of physical force against others or self, or the compelling of an action against one's will on pain of being hurt or killed,” SURGEON GENERAL'S REPORT, *supra* note 19, at 5, the Committee found, for example, that the general prevalence of violence did not change markedly between 1967 and 1969. For

what must at least be termed significant evidence supporting petitioner's position, the Commission reached a conclusion based upon both shallow and confused thinking. In a misapplication of petitioner's *Banzhaf* analogy, the majority states:

[I]t could not reasonably or logically be concluded that the mere viewing of a person smoking a cigarette during a movie being broadcast on television constitutes a discussion of a controversial issue Similarly, we cannot agree that the broadcast of violent episodes during entertainment programs necessarily constitutes the presentation of one side of a controversial issue of public importance.²⁴

Compounding the mistake, the opinion hypothesizes a scene employing a high-powered car, or a glimpse of a person taking an alcoholic drink or cigarette, or a depiction of a woman in a soft or feminine light, in order to conjure the image of countless hordes of controversial issues, all clamoring for equal time. The Commission's error is mistaking imitation for learning. An incidental smoking of a cigarette during the course of a television program is wholly vacuous; in itself it has no meaning. The significance (and, necessarily, the impact) of smoking changes with the script. And while some contend that the isolated, unrelated viewing of cigarette smoking induces others to smoke, any such stimulation is likely to be exceedingly slight. Contentions of greater effects presume a wholly oversimplified model of human learning, one which stretches the concepts of imitation and identification²⁵ past their

all entertainment programs, the rate of violent episodes remained constant at about eight per hour. *Id.* Cartoons were the most violent type of program, 97% of them containing at least some violence, and on the average, 88% of all leading characters being involved in violence. *Id.* at 73. The conclusion states: "Studies of television program content leave no doubt that among entertainment programs, violence figures prominently." *Id.* at 68.

Although the layman may point to the utter fantasy of these programs, he is viewing through the mind of an adult, not a small child. And to that child, with its undeveloped powers of discrimination, the program may psychologically be quite real. *Id.* at 40. Even though some of the research conducted appeared to support a stronger final conclusion, the Report could only attest to "a modest association between viewing of violence and aggression among at least some children. . . ." *Id.* at 7. For a general critique of the primary focus of this study, see note 26 and accompanying text *infra*.

²⁴ 37 F.C.C.2d at 643.

²⁵ "Imitation" and "identification" are used here as psychological words of art. Although "imitation" is most generally referred to in the context of experimental psychology, and "identification" in personality theory, both terms relate to learning

logical and reasonable limits. Yet it is upon such a model that the Commission bases its decision. Little controversy arises from that which reflects what is real; we know that people sometimes smoke, sometimes drink, and sometimes drive fast cars. This stirs no public issue unless something in the manner in which the events are presented incites us to emotion—be it anger, fear, excitement, disgust, or pity. Unless the values of the viewer somehow interact with the image on the screen, the dots comprise merely the commonplace, rather than the controversial.

Unfortunately, much of the past research attempting to determine the correlation between the viewing of television violence and aggression in children has presupposed the same naive models of learning and human behavior as implicitly adopted by the Commission in *Corey*.²⁶ Such studies suffice to measure only the barest

through observation. As a child matures, it undergoes a social preparation for adult roles. As a part of this process it is recognized, in certain circumstances, that human beings tend to reproduce the actions, attitudes, or emotions they perceive in other persons. The learning process can be triggered both from the interaction with live persons, or from viewing "symbolized models," e.g., a character on television. R. BAKER & S. BALL, *MASS MEDIA AND VIOLENCE* 238 (1969) [This book is the report to the National Commission on the Causes and Prevention of Violence prepared by the Media Task Force and hereinafter will be referred to as MEDIA TASK FORCE.].

²⁶ See, e.g., SURGEON GENERAL'S REPORT, *supra* note 19, summarized at note 23 *supra*. Even though the report approved the distinction between the quantitative aspects (i.e. aggressive behavior as it related to the sheer volume of violent episodes) and the qualitative aspects (i.e. the *context* of the violence, whether it is approved or disapproved, committed by sympathetic or unsympathetic characters, shown to be effective or not in achieving a goal, punished or unpunished, vivid or sterile), the investigation centered only on quantitative aspects. Although the report recognized that "[t]he sheer amount of television violence may be unimportant compared with such subtle matters as what the medium says about it," *Id.* at 8, the research was not conducted in order to uncover the effects of these qualitative aspects. Yet experts are fast coming to the opinion that context is absolutely crucial. As one British researcher pointed out:

[I]n our discussion of the relationship between television and violent behaviour we cannot ignore the way television and the other media deal with the nature and occurrence of violence in real-life situations. What pictures of violence are presented to us? What stereotypes, definitions and classifications of violence are put before us? What forms are approved—what disapproved? . . . These are the vital questions. . . . We do not have to deny the importance of identification, imitation, or other more conventional approaches, as described in the American Commission's Statement [the SURGEON GENERAL'S REPORT] and elsewhere, to hold that answers to the questions just posed are the ones we must try to obtain. Such answers would throw more light on the nature of our social

form of imitative behavior, substantially ignoring the cognitive effects of televised violence.

If one confines the inquiry to the simplistic imitative models, indeed it is difficult to contend that children's television programming presents that distinct point of view sufficiently controversial to invoke the fairness doctrine. For even if a child *does* imitate certain violent behaviors on television, it might be argued that violence is part of life. And in depicting such scenes, the networks play a neutral role, merely photographing and processing without connotation of value. If a child imitates what he or she sees on the screen, this is not the fault of the broadcasters, but of our society. Hence any required shift in program content through the fairness doctrine or otherwise would constitute nothing more than censorship.²⁷ And it could be asked that even if the fairness doctrine *were* to apply, what would be the method of compliance? Suggestions of a peaceful or rustic scene for children to imitate dissolve into the ludicrous. Again, however, the argument is based on a confusion between the quantitative and qualitative aspects of portrayed violence. Certainly the volume of violence is immense, and it reflects irresponsible conduct by the broadcasters. But it is tenuous to assert that volume in itself raises the requisite distinct point of view. The *context* in which the violence is presented, however, does convey several messages, value judgments such as may legitimately be said to require fairness treatment.

The subliminal messages of television violence are twofold:

problem than those based on imitation and other over-simplified models that have so often been used in the past.

J. HALLORAN, R. BROWN & D. CHANEY, TELEVISION AND DELINQUENCY 63-64 (1970).

²⁷ § 326 of the Communications Act of 1934, still in effect today (47 U.S.C. § 326 (1976)), contained the following warning:

Nothing in this chapter shall be construed to give the Commission the power of censorship over the radio communications or signals transmitted by any 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.

Although the fairness doctrine requirements upon broadcasters repeatedly have been held consistent with this provision, it should be noted that the doctrine prohibits nothing from being expressed; it merely requires broadcasters to provide an adequate right of reply to any presentation which sparks public controversy. See note 4 and accompanying text *supra*. For a treatment of the legal implications of direct controls on television violence, see *Violence on Television*, 6 COLUM. J. OF LAW & Soc. PROB. 303 (1970).

first, that violence is an acceptable and most effective means of solving problems; second, that violence results in little overall harm to society.

What sort of world appears on our television screens? Professor George Gerbner, conducting a study for the National Commission on the Causes and Prevention of Violence,²⁸ analyzed this projected world in terms of the extent, nature, and participants of violent acts. Some of his observations included the following:²⁹

1) Some violence occurred in 81% of all programs and 85% of all program hours. Even when cartoons (“which are saturated with violence”) are included, the great bulk of all violence occurs in a serious or sinister context.³⁰

2) In the majority of acts, those who committed violence perceived it as in their own personal self-interest rather than as service to some other cause. Weapons, ranging from handguns to complex devices of torture or mass destruction, were used in at least six out of ten violent episodes. Six out of ten violent acts evoked no response from their victims; they could not or did not resist. Counter-violence occurred 36% of the time, and in only six occasions out of one hundred was there non-violent resistance. Half of all violent episodes took place between strangers.³¹

3) Half of all violent episodes did not show witnesses, who might be considered a device through which societal reaction to the violence could be portrayed. Two out of three times that witnesses *were* shown, they did not or could not object to or prevent the violence. When they did react, it was more often in assisting or encouraging the violence than in attempting to prevent it.³²

4) Even though half of all episodes resulted in physical injury or fatality, in only one-fourth of them was there any permanent physical effect on the victim. Blood and wounds were shown in 14% of all programs.³³

5) In a great majority of acts, Dr. Gerbner was able to label

²⁸ MEDIA TASK FORCE, *supra* note 25, at ch. 15.

²⁹ *Id.* at 313-36.

³⁰ *Id.* at 318, 320.

³¹ *Id.* at 320-21.

³² *Id.* at 322.

³³ *Id.*

the opponents as "good" or "bad." The "good" characters were shown to suffer more violence than the "bad," although good generally triumphed in the end.³⁴

6) At least half of all characters inflicted some violence upon others; one of every ten leading characters was a killer. Five percent of all characters, and 15% of all killers, met with violent death. More than half of those recognizable as "violent," and nearly half of all killers, achieved a "happy ending."³⁵

7) Due process of law (legal apprehension or trial) was indicated as a consequence of major acts of violence in only two of every ten violent plays. "In conclusion, television drama presents a lawless world in which due process plays a small part. It is a wild world of many violent strangers, with a mostly violent past and a totally violent future."³⁶

The first conclusion to be drawn from the above survey of qualitative aspects of violence is that television—and most particularly that directed to children—is not neutral; it carries distinct messages with regard to conflict resolution or problem solving. One study explicitly identified this issue, and articulated the messages portrayed in one week's prime time entertainment for all three networks.³⁷ For the week, 202 separate story problems were analyzed. Of these, 58% were resolved through the use of violence, 33% in a non-violent fashion, and 9% remained unsolved.³⁸ In an even more intensive study,³⁹ researchers concluded that of certain discernible program goals (e.g. self-preservation, affection, property, or power) the major goal of children's programs was property acquisition.⁴⁰ The study also examined what *methods* were used to obtain these goals, suggesting the following possibilities: legal, economic, compromise, negotiation, nonlegal (short of violence), violence, and escape or avoidance. In children's shows, violent means

³⁴ *Id.*

³⁵ *Id.* at 323.

³⁶ *Id.* at 326-27.

³⁷ This unpublished research by Stempel was reported in MEDIA TASK FORCE, *supra* note 25, at 439-40.

³⁸ *Id.* at 439.

³⁹ Larsen, Gray & Fortis, *Achieving Goals through Violence on Television, VIOLENCE AND THE MASS MEDIA* 97-111 (1968) [summarized in MEDIA TASK FORCE, *supra* note 25, at 440-41].

⁴⁰ MEDIA TASK FORCE, *supra* note 25, at 440. See also J. HALBRAN, *TELEVISION AND DELINQUENCY* 21 (1970).

were used 47% of the time, non-legal and avoidance accounting for another 15%; what might be termed "socially acceptable methods" solved only 38% of the problems.⁴¹ Consistent with Gerbner's research and that presented above, the Task Force concludes:

At the very least, it can be said that the messages being sent about violence are inconsistent with a philosophy of social behavior based upon involved cooperation, non-violent resolution of conflict, and non-violent means of attaining personal ends.⁴²

Somewhat related to the first "message" found is the unavoidable impression that violence is socially approved, or at least causes very little actual harm. This message is more attuned to the ethics of violence as a way of life, rather than instruction in problem solving. If one central value pervades all programming, it is Machiavellian: that the end justifies the means.⁴³ In the typical action-adventure serial, an often intricate plot (generally a threat of some sort to life or nation) must be developed, attempted, and thwarted, all in the period (excluding commercials) of twenty-five or fifty minutes. Little wonder that violence, as admittedly the most expedient of remedies, most often resolves the crisis. Certainly the broadcasters do not intend to encourage violence; the danger lies in the incessant cultivation of the assumption that "*that is the way life is.*"⁴⁴ Violence, if not socially approved, is at least the expected response in conflict situations. Much of the violence, to be sure, stems from law enforcement officials acting to uphold what is right. But the "ethical ending" perhaps only partially counterbalances the underlying message that justice is often achieved only through superior fire-power.⁴⁵

⁴¹ MEDIA TASK FORCE, *supra* note 25, at 440.

⁴² *Id.* at 338.

⁴³ *Id.* at 246.

⁴⁴ *Id.*

⁴⁵ One of the clearest content analysis findings is that violent characters in television portrayals are often rewarded for their behavior. Reward comes most directly to 'good guys,' who often achieve success through violence. In addition, the use of violence is not often punished in the television world. Thus, if viewers infer from their exposure that violence not only goes largely unpunished but is rewarded, they may be more likely to transfer this inference into an expectation that they might be rewarded or go unpunished for using violence.

Id. at 337.

The NAB provision reads: "The use of violence for its own sake and the detailed dwelling upon brutality or physical agony by sight or by sound, are not permissible."

Another focus of the typical children's program has a more subtle, yet potentially more dramatic theme: the emphasis upon the aggressor rather than the victim. Acting with the best of intentions, the National Association of Broadcasters has proscribed the vivid portrayal of human suffering or agony, thinking (rightly, no doubt) that such depictions would shock or disgust the audience.⁴⁶ The end result of this policy, however, is frequent violence without suffering, without description of the often brutal consequences of the act. It is ironic that such an "inhuman" orientation to violence may well result in the optimum conditions by which aggression is induced in the audience.⁴⁷

CONCLUSION

It should be evident that, viewed from the proper perspective, much of children's television programming presents one side of a controversial issue of public concern. Far from being neutral or acting as a mere recorder of that violence which exists as one facet of social reality, television depicts aggression as a positive and effective means of solving problems. Moreover, through the sheer volume of its appearance, lack of pathos-creating consequences,

⁴⁶ NATIONAL ASSOCIATION OF BROADCASTERS, *THE TELEVISION CODE*, art. IV, § 1A (20th ed. 1978). See also *Violence on Television*, 6 COLUM. J. OF LAW & SOC. PROB. 303, 308-11 (1970).

⁴⁷ MEDIA TASK FORCE, *supra* note 25, at 244. This possibility was also recognized in the SURGEON GENERAL'S REPORT, *supra* note 19.

Television entertainment may contribute to insensitivity. In such programs the primary victims seldom exhibit the repulsive physical consequences of violence, and the effects of such violence on secondary victims such as bereaved family members are rarely shown. Entertainment program content which creates sympathy for the victim is thus relatively rare, and indeed such content might well be avoided by many people in the audience Victims have usually been portrayed in a manner which does not cause the kind of discomfort which would alienate viewers, and these portrayals may therefore directly or indirectly produce comfort and pleasure for the audience. This situation poses a very difficult set of problems.

SURGEON GENERAL'S REPORT, *supra* note 19, at 207.

Perhaps in recognition of this danger, the NAB in 1974 supplemented its standards respecting portrayal of the consequences of violence by requiring that: "Programs involving violence should present the consequences of it to its victims and perpetrators." NATIONAL ASSOCIATION OF BROADCASTERS, *THE TELEVISION CODE*, art. IV, § 1A (17th ed. 1974). This provision is also found in the current code at art. IV, § 1A (20th ed. 1978).

and insensitivity to the victims of such aggression, violence becomes the unswerving lieutenant of social expedience. The alternative forms of television programming, stressing constructive action, compromise, negotiation, and tolerance are feasible, and have in fact existed in isolated numbers; with a bit of imagination and talent, such programs can be made just as exciting and entertaining to children. Those who desire the cultivation of different social and cultural values than those now portrayed on television should, in all fairness, be given the chance to try.