

2000

# Media Violence Tort Cases: Problems of Causation and the First Amendment

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## Recommended Citation

27 N. Ky. L. Rev. i (2000).

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# **MEDIA VIOLENCE TORT CASES: PROBLEMS OF CAUSATION AND THE FIRST AMENDMENT**

Symposium Introduction by David J. Franklyn<sup>1</sup>

We live in a violent age. The most recent rash of school shootings are but one example of the extent to which our culture has become accustomed to senseless — and to some extent random — violent acts. We find ourselves asking: who beyond the individual perpetrator is responsible for these acts? Victims of violent crimes, and families of victims, increasingly point the finger at members of the media — book publishers, television executives, movie producers and the like — and seek to place legal responsibility and liability squarely on their shoulders.

When this sort of claim is made, our traditional tort system is put under great pressure. On November 20, 1999, the *Northern Kentucky Law Review* held a symposium to address the issue of whether media-producing entities should be subject to tort liability for violent acts committed by media consumers. Several notable experts in the field participated in the symposium, including Rodney A. Smolla,<sup>2</sup> Bruce W. Sanford,<sup>3</sup> Richard M. Goehler,<sup>4</sup> Elizabeth Wilborn Malloy,<sup>5</sup> L. Lin Wood<sup>6</sup> and Jill Meyer-Vollman.<sup>7</sup> This special edition of the *Northern Kentucky Law Review* includes articles by each of these speakers (occasionally co-authored with other writers) and by two student authors, Robin R. McCraw, and J. Robert Linneman.

In their articles and essays, the authors discuss the potential tort liability of media defendants for violent acts committed by media consumers in the context of several litigated cases, including: (1) a Kentucky case in which victims of a

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school killing spree by a teenager allegedly obsessed with a video game sue the manufacturer of the game;<sup>8</sup> (2) a Michigan case in which the family of a gay man murdered by a fellow guest on the “Jenny Jones” television program sue Ms. Jones’ production company for allegedly inciting the violent acts of the guest;<sup>9</sup> (3) a Louisiana case in which the victims of a convenience store shooting sue producers of the film *Natural Born Killers*, alleging the spree occurred in part because the murderer viewed the violent film;<sup>10</sup> (4) an Oregon case wherein abortion protesters were ordered to pay \$109 million in damages to the relatives of murdered doctors for putting the names and addresses of four doctors on two “wanted”-style posters and on a web site;<sup>11</sup> and (5) a suit by murder victims against the publishers of a “hit man” instructional manual for allegedly inciting the murder.<sup>12</sup>

In all of these cases, courts have grappled with the age-old question of cause — legal cause. That is, to what extent can it fairly be said that a particular act of violence was caused by the media defendant on trial? Causation questions are never easy, and they are not easy here. But traditionally we have confined tort liability to actors whose conduct has caused the plaintiff’s harm in some close or especially connected way. This sort of close connection is not always evident in cases alleging media influence. Our symposium writers discuss the causation issue in some detail, including the extent to which foreseeability or some other standard should delineate the scope of a media defendant’s legal duty to protect the public from harm caused by third parties.

The symposium participants also address freedom of speech and freedom of press issues. As several symposium participants point out, even if a particular producer or publisher can be said to have proximately caused a plaintiff’s harm, courts must still grapple with the question of whether the media defendant’s activities were protected speech under the First Amendment. Our symposium writers take us through the relevant analyses, offering different approaches as to how First Amendment issues should be resolved in media violence cases. In this

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8. See *infra*, Rodney A. Smolla, *Should the Brandenburg v. Ohio Incitement Test Apply In Media Violence Tort Cases*, 27 N. KY. L. REV. 1, 2 (2000).

9. See *infra* Richard D. Goehler & Jill Meyer-Vollman, *Expansion of Tort Law at the Expense of the First Amendment: Has the Jones Court Gone Too Far? Stay tuned to Find Out*, 27 N. KY. L. REV. 112 (2000).

10. See *infra*, Rodney A. Smolla, *Should the Brandenburg v. Ohio Incitement Test Apply In Media Violence Tort Cases*, 27 N. KY. L. REV. 1, 4 (2000).

11. *Id.* at 7.

12. See *Id.*; See also Robin R. McCraw, *Rice v. Paladin: Freedom of Speech Takes a Hit With "Deep Pocket" Censorship*, 27 N. KY. L. REV. 128 (2000).

connection, several symposium authors discuss whether the traditional *Brandenburg*<sup>13</sup> test should apply in media violence cases at all, or whether courts should fashion a new test, one which specifically applies for such cases.

We hope you find this special symposium edition informative and stimulating. Thank you for your continued support of the *Northern Kentucky Law Review*.

*David J. Franklyn*

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13. See *Brandenburg v. Ohio*, 395 U.S. 444 (1969).