



### Don't Bring a Video Game to a Gun Fight

By Christopher B. Hopkins

It has been more than a month since the Sandy Hook School shooting and, across the nation, over 900 additional deaths are blamed on guns in America. Renewed calls for gun legislation have arisen and, as in the wake of past shootings, the dialogue begins again about violence, gun ownership, and the Second Amendment. The National Rifle Association boldly decried “violent video games” as the societal ill producing gun violence. Two weeks later, however, the NRA joined what it had labeled the “callous, corrupt, and corrupting shadow industry” of video game developers by publishing its own first person shooter video game “NRA: Practice Range” – rated for children 4 years and older.

Regardless of your position in the gun control debate, there is little reason to distract ourselves from a solution to gun violence by discussing a ban video games. This country has a long (failed) history of a “moral panic” which blames contemporary pastimes for societal problems: dime story novels, radio dramas, Elvis’ dance moves, salacious and indoctrinating books, music lyrics, and motion pictures. One expert testified before Congress that modern entertainment was causing a “preoccupation with violence and horror.” Sounds familiar – except he was talking about comic books.

This particular debate – presumably leading to a restriction on video games – has already been fought and lost. Decisively. In 2011, the U.S. Supreme Court held, in a 7-2 decision, that California’s ban on the sale of violent video games was unconstitutional (*Brown v. Entertainment Merchants Association et al.*). Justice Scalia wrote that video games enjoy bullet-proof First Amendment protection and that “esthetic and moral judgments ... are for the individual to make, not for the Government to decree.” But what about new technologies having a stronger effect? In another 2011 case, the Court separately determined that efforts to create new categories of unprotected speech was “too harmful to be tolerated” – to that end, balancing societal costs (say, an unconfirmed connection to violence) to particular forms of speech (video games) was something the Court “emphatically rejected” as a “startling and dangerous proposition.”

Renewing this legislative fight against video games will only cost critical time and money. To wit, Californian tax payers were stuck with a \$1.8 million dollar legal bill and lost time in their legislature.

But such political attacks have traction in public debate since video games are the *bête noire* of entertainment; many gamers are below the voting age while of-age gamers are shamed to admit their gameplay. Thus, there is no grassroots pushback against the modern-day book burning of violent games. Finding no easy answer, we repeat the historical process blaming “easy” targets like text, images, music, and motion pictures (as one psychiatrist warned a Senate Committee, “as long as the crime comic book exists in its present form, there are no secure homes”).

What about studies connecting video games and real-life violence? The Supreme Court was confronted with a host of party and amicus briefs and the majority found, “Psychological studies purporting to show a connection between exposure to violent video games and harmful effects on children do not prove that such exposure causes minors to act aggressively.” The Supreme Court concluded, “These studies have been rejected by every court to consider them, and with good reason: they do not prove that violent video games cause minors to act aggressively (which would at least be a beginning). Instead, nearly all of the research is based on correlation, not evidence of causation, and most of the studies suffer from significant, admitted flaws in methodology.” Indeed, the champion anti-game researcher, psychologist Dr. Craig Anderson, admitted that the effect of video games on children is “about the same” as television; meanwhile, he acknowledged the same effect is produced when children “view a picture of a gun.” Like when kids play the iPhone game, NRA: Practice Range.

Discovering a shelf of video games in a killer’s home is not an “a-ha” forensic moment to determine the reason for a tragedy. Yes, the initial news from the Sandy Hook story is that the 20-year old killer played Call of Duty. But he is one of several million players. He also had other likely stronger influences, such as a mental health condition and an unfortunate home life. Whatever was on a TV screen (and we still do not know what), there is no evidence that gaming was the tilting influence.

Meanwhile, while the NRA labels video game makers as a “shadow industry,” annual video game sales are \$70 billion and over half American households have a game console. That’s a lot of healthy, non-violent people in the “shadow.” As game sales increases, our national crime average declines (*US Violent Crime Down for 5th Straight Year*, [bit.ly/WzD6w1](http://bit.ly/WzD6w1)).

Video game development is a uniquely American industry – particularly strong in South Florida – which prevails in the global economy (while our video games are enjoyed worldwide, we are one of few countries with such gun violence problems). Since the Centers for Disease Control may be tasked with researching any connection between virtual and real violence, perhaps it will have the final word – but it is unlikely to satisfy either side of the debate or a court (the NRA previously criticized CDC studies on gun violence). As the Supreme Court noted in *Brown*, “California’s effort to regulate violent video games is the latest episode in a long series of failed attempts to censor violent video entertainment for minors.”

*Christopher B. Hopkins is a shareholder at Akerman Senterfitt. Send your missives and missiles (pixelated-kind only) to [Christopher.Hopkins@Akerman.com](mailto:Christopher.Hopkins@Akerman.com).*

**CLE Content Now Available 24/7**

Click on the Bar’s CLE webpage

<http://www.palmbeachbar.org/continuing.php>

to view list of seminars available either on CD’s or for immediate download to your MP3 device.