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## **Is Litigation the "Suicide Solution"? Performers, Producers and Distributors' Liability for the Violent Acts of Music Listeners**

Maureen Mahoney

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**IS LITIGATION THE "SUICIDE SOLUTION"?  
PERFORMERS, PRODUCERS AND DISTRIBUTORS'  
LIABILITY FOR VIOLENT ACTS OF MUSIC LISTENERS.**

**I. INTRODUCTION**

The United States has rapidly become a nation of "finger-pointers." It seems as though every time a tragedy occurs, the injured parties, and/or their family members, feel the need to hold someone else responsible for what has happened. Nowadays, injured parties will stop at nothing to make sure that someone pays for what has happened to them or to their loved ones as the case may be. That is not to say that there are not victims that truly deserve to be compensated for the injuries caused by the wrongful acts of others. However, a line has to be drawn somewhere.

In the past decade or so, there has been an upspring of litigation where claimants allege that certain musical lyrics have led listeners to perform certain acts of violence that culminated in death or serious injury.<sup>1</sup> Is it possible to hold the performers, producers and distributors of music responsible for the actions of their listeners? Does the freedom of speech extended by the freedom of speech clause of the First Amendment<sup>2</sup> protect lyrics in musical works? What will happen to our society if we consistently hold third

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<sup>1</sup> See, e.g., *McCollum v. CBS, Inc.*, 202 Cal. App. 3d 989, 249 Cal. Rptr. 187 (1988) (alleging the music and lyrics on Ozzy Osbourne's album *SPEAK TO THE DEVIL* encouraged the plaintiffs' son to commit suicide by shooting himself in his head); see also *Davidson v. Time Warner, Inc.*, 1997 U.S. Dist. LEXIS 21559 (S.D. Tex., March 31, 1997) (blaming the lyrics on Tupac Shakur's album *2PACALYPSE NOW* for the shooting murder of Police Officer Bill Davidson); see also *Vance v. Judas Priest*, 1990 WL 130920 (Nev. Dist. Ct. 1990) (alleging that two boys shot themselves, one fatally, as a result of listening to alleged subliminal messages on the Judas Priest album *STAINED GLASS*); see also *Waller v. Osbourne*, 763 F. Supp. 1144 (M.D. Ga. 1991) (involving a wrongful death action brought on behalf of teenage boy who was allegedly incited to shoot himself in his head by subliminal messages on the Ozzy Osbourne album *SUICIDE SOLUTION*).

<sup>2</sup> U.S. CONST. amend. I. The First Amendment provides in pertinent part: "Congress shall make no law . . . abridging the freedom of speech." *Id.*

parties liable for the actions of others? The answers to all of these questions will be explored below by looking at the relevant case law, as well as scholarly articles that have been written on the subject.

## II. THE *BRANDENBURG* STANDARD FOR VIOLENT SPEECH

In the wake of the shootings at Columbine High School in Littleton, Colorado, there has been much discussion about how music may have influenced the shooters' decisions to go on a rampage.<sup>3</sup> Specifically, Marilyn Manson's work entitled *Irresponsible Hate Anthem*,<sup>4</sup> with the line "I am so all American, I'd sell you suicide,"<sup>5</sup> was claimed to be a prime example of "the

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<sup>3</sup> D.A. Dave Thomas on the Littleton Tragedy, PROSECUTOR, July-Aug. 1999, at 25.

<sup>4</sup> MARILYN MANSON, *Irresponsible Hate Anthem*, on ANTICHRIST SUPERSTAR (UNI/Interscope, 1996)

<sup>5</sup> *Id.* The full lyrics to *Irresponsible Hate Anthem* are as follows:

I am so all-american[sic], I'll sell you suicide  
 I am totalitarian, I've got abortions in my eyes  
 I hate the hater, I'd rape the raper  
 I am not the animal who will not be himself  
 f\*ck it  
 Hey victim, should I black your eyes again?  
 Hey victim,  
 you were the one who put the stick in my hand  
 I am the ism, my hate's a prism  
 let's jut kill everyone and let your god sort them out  
 f\*ck it  
 Everybody's someone else's ni\*\*er, I know you are so am I  
 I wasn't born with enough middle fingers  
 I don't need to choose a side  
 I better, better, better, better not say this  
 better, better, better, better not tell  
 I hate the hater, I'd rape the raper  
 I am the idiot who will not be himself  
 f\*ck it.

*Id.*

[dangerous] messages being sent to teenagers."<sup>6</sup> Indeed, many news sources cited this song as a message that influenced the two teenaged gunmen. However, just two days after the tragedy, Manson had some harsh words to say in his defense: The media has unfairly scapegoated the music industry and so-called Goth kids and has speculated -- with no basis in truth -- that artists like myself are in some way to blame. This tragedy was a product of ignorance, hatred and access to guns.<sup>7</sup> It should be noted that even Charles Manson claimed that The Beatles' song entitled *Helter Skelter*<sup>8</sup> inspired the Tate-LaBianca murders of 1969.<sup>9</sup> The public may remember that plea by Charles Manson and think that it is possible for music to inspire violent crimes.<sup>10</sup> On the other hand, nobody accepted Charles Manson's argument then, so why should we believe it now?

Reacting to the purported connection between music and the shootings in Colorado, Senator Gary Drzewiecki of Wisconsin is promoting legislation that will make it a crime in Wisconsin to sell music with explicit lyrics that may promote violence.<sup>11</sup> Senator Drzewiecki proposes to make it a crime for minors to even attend concerts where violent lyrics will be heard.<sup>12</sup> Despite these criticisms and attacks, legal actions have not yet been commenced against Marilyn Manson in connection with the Columbine tragedy.<sup>13</sup> In the past, lawsuits initiated against musicians in an attempt to hold them liable for the actions of third parties have not been successful.<sup>14</sup> To better understand how the courts in those

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<sup>6</sup> Chris Riemenschneider, *Is it Only Rock n' Roll? Debate Continues Over Role of Music in Columbine Shootings*, TULSA WORLD, June 4, 1999, at 3.

<sup>7</sup> *Id.*

<sup>8</sup> BEATLES, *Helter Skelter*, on BEATLES (WHITE ALBUM) (EMD/Capitol, 1968).

<sup>9</sup> See, e.g., VINCENT BUGLIOSI, *HELTER SKELTER: THE TRUE STORY OF THE MANSON MURDERS* (1994).

<sup>10</sup> See generally, CHARLES MANSON, *MANSON IN HIS OWN WORDS* (1998).

<sup>11</sup> Natasha Kassulke, *Manson Fans Say Music Didn't Cause Massacre: They Blame the Shootings on Parents, Other Factors*, WISCONSIN STATE JOURNAL, April 26, 1999 at 1.

<sup>12</sup> *Id.*

<sup>13</sup> Riemenschneider, *supra* note 6.

<sup>14</sup> See *Waller v. Osbourne*, 763 F. Supp. 1144, 1152 (M.D. Ga. 1991) (holding Ozzy Osbourne's "First Amendment right protects him from being held liable

cases came to their decisions, it is necessary to first look at the law underlying the courts' decisions.

In *Brandenburg v. Ohio*,<sup>15</sup> the issue was whether a state statute violated the freedom of speech clause of the First Amendment.<sup>16</sup> In that case, Mr. Brandenburg, a Ku Klux Klan member, gave a speech at a Klan rally calling for the elimination of blacks and Jews, by sending them back to their home countries.<sup>17</sup> Mr. Brandenburg was arrested and convicted under the Ohio Criminal Syndicalism statute.<sup>18</sup> The conviction was based on the idea that Brandenburg's words were not protected speech under the First Amendment of the United States Constitution because the speech incited lawless acts. Mr. Brandenburg appealed to the United States Supreme Court on the grounds that the statute violated his First Amendment right of freedom of speech.<sup>19</sup> The Court overruled previous case law and held that Brandenburg's words were protected by the First Amendment.<sup>20</sup> The Court found that Brandenburg's words neither incited a group to participate in the acts described in any of his statements, nor did it help them in doing so.<sup>21</sup> Therefore, the Court overturned Brandenburg's conviction and held the Ohio statute to be unconstitutional, as

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under plaintiff's claims of negligence, nuisance, fraud, and invasion of privacy"); *see also Davidson*, 1997 U.S. Dist. LEXIS 21559 at \*30 (holding that the musician Tupac Shakur was not liable on a negligence theory or products liability theory, in addition to finding First Amendment protection); *see also McCollum v. CBS, Inc.*, 202 Cal. App. 3d 989, 249 Cal. Rptr. 187 (1988) (holding lyrics on Ozzy Osbourne's album SUICIDE SOLUTION were protected speech under the First Amendment).

<sup>15</sup> 395 U.S. 444 (1969).

<sup>16</sup> *Brandenburg*, 395 U.S. at 446.

<sup>17</sup> *Id.* at 447.

<sup>18</sup> *Id.* at 444 (quoting the Ohio Syndicalism statute that made it a crime to "advocate . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform," and to "voluntarily assemble with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism").

<sup>19</sup> *Id.* at 445.

<sup>20</sup> *Id.* at 447. *See also Dennis v. United States*, 341 U.S. 494, 507 (1951) (overruling *Whitney v. California*, 274 U.S. 357 (1927), which upheld California's similar syndicalism statute).

<sup>21</sup> *Id.* at 448.

violative of the First Amendment.<sup>22</sup> The *Brandenburg* holding has become the underlying law for freedom of speech cases, forcing courts to determine whether the speech in question should fall under the protection of the First Amendment. Several freedom of speech cases involving music lyrics have relied on the underlying law set forth by the *Brandenburg* court.<sup>23</sup>

### III. THE *BRANDENBERG* STANDARD AS APPLIED TO THE LYRICAL CONTENT OF "POPULAR MUSIC"

In *McCollum v. CBS, Inc.*,<sup>24</sup> the plaintiffs sued recording artist Ozzy Osbourne as well as the producers and distributors of his album, after their son, John McCollum, committed suicide.<sup>25</sup> The plaintiffs alleged that John McCollum had been listening to Ozzy Osbourne's music all evening on the day of his death, and subsequently took his own life.<sup>26</sup> The plaintiffs contended that one of Osbourne's songs, entitled *SUICIDE SOLUTION*,<sup>27</sup> portrayed

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<sup>22</sup> *Id.* at 449.

<sup>23</sup> See *supra* note 1 and accompanying text.

<sup>24</sup> 202 Cal. App. 3d 989 (Cal. Ct. App. 1988).

<sup>25</sup> *Id.* at 993-94.

<sup>26</sup> *Id.* at 995.

<sup>27</sup> OZZY OSBOURNE, *Suicide Solution*, on BLIZZARD OF OZZ (Sony Music, 1981). The lyrics to *Suicide Solution* are as follows:

Wine is fine  
But whiskey's quicker  
suicide is slow with liquor.  
Take a bottle drain your sorrows,  
Candied thoughts await tomorrows,  
Await tomorrows!!

Evil thoughts and evil doings  
Cold, alone you hang in ruins  
Thought you'd escape the reaper  
You can't escape the master keeper

'Cause you feel life's unreal and you're living a lie  
Such a shame who's to blame and you're wondering why  
Then you ask from your cask is there life after birth  
What you saw can mean hell on this earth

suicide as the only way to solve life's problems.<sup>28</sup> The plaintiffs argued that the song urged listeners to acquire a handgun and to shoot themselves.<sup>29</sup> The defendants stated that the words contained in their songs were protected speech under the First Amendment.<sup>30</sup> However, the plaintiffs contended that speech, which encourages violent acts, such as suicide, is not protected speech under the First Amendment.<sup>31</sup> The trial court in the *McCollum* case agreed with the defendants, holding that the lyrics in Osbourne's music were protected speech under the First Amendment.<sup>32</sup> The plaintiffs appealed to the California Court of Appeals.<sup>33</sup>

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Hell on this earth!!

Now you live inside a bottle  
 The reaper's travelling at full throttle  
 It's catching you but you don't see  
 The reaper is you and the reaper is me

Breaking laws, knocking doors  
 But there's no one at home  
 Made your bed, rest your head  
 But you lie there and moan  
 Where to hide, suicide is the only way out  
 Don't you know what it's really about

Wine is fine  
 But whiskey's quicker  
 Suicide is slow with liquor  
 Take a bottle down your sorrows  
 Candied thoughts await tomorrow.

*Id.*

<sup>28</sup> *McCollum*, 202 Cal. App. at 996.

<sup>29</sup> *Id.* at 997.

<sup>30</sup> *Id.* at 998 (responding that "plaintiff's entire action, irrespective of the theory of recovery, is barred by the First Amendment's guarantee of free speech").

<sup>31</sup> *Id.* at 1000 (arguing that language which incited suicide is equivalent to inciting imminent lawless action, and therefore does not get the protection of the First Amendment).

<sup>32</sup> *Id.* at 994.

<sup>33</sup> *Id.*

In *McCullum*, the plaintiffs sought recovery based on three different theories.<sup>34</sup> The first theory was that "Osbourne and CBS were negligent in the dissemination of Osbourne's recorded music."<sup>35</sup> Second, the defendants intentionally produced and distributed Osbourne's music knowing that people like John McCollum would not be able to control their self-destructive impulses.<sup>36</sup> Third, the defendants "intentionally aided, advised or encouraged John's suicide in violation of [California] Penal Code section 401."<sup>37</sup> The defendants contended that the whole action brought by the plaintiffs was barred by the First Amendment.<sup>38</sup> The defendants argued "that the public dissemination of Osbourne's recorded music did not . . . negligently or intentionally invade any right of plaintiffs or constitute a violation of [California] Penal Code section 401."<sup>39</sup>

On appeal, the California Appellate Court explored a number of cases including *Brandenburg v. Ohio*.<sup>40</sup> The court held that Osbourne's music was protected speech and, therefore, the First Amendment precluded the plaintiffs from recovering.<sup>41</sup> The court reasoned that since the lyrics did not specifically tell the listener to perform any act at that moment, the lyrics deserved First Amendment protection.<sup>42</sup> The court held that the plaintiffs could not recover based on a theory of negligence because the defendants owed no duty to the plaintiffs.<sup>43</sup> The court further held that it was not foreseeable that McCollum would take his own life after

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<sup>34</sup> *Id.* at 998.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* See also CAL. PENAL CODE § 401 (Deering 1999), which states in pertinent part: "Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony." *Id.*

<sup>38</sup> *McCullum*, 202 Cal. App. 3d at 998, 249 Cal. Rptr. at 191.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 1000 (citing *Brandenburg v. Ohio*, 395 U.S. 444 (1969)).

<sup>41</sup> *Id.* at 1003.

<sup>42</sup> *Id.* at 1001.

<sup>43</sup> *Id.* at 1005-06 (holding that it would be unwise in a free society to impose duty upon artists which would limit their creativity).



listening to Osbourne's music.<sup>44</sup> Finally, the court found that the elements of section 401 of the Penal Code were not satisfied because the defendants did not specifically intend for John to commit suicide; and the defendants did not directly participate in John's suicide.<sup>45</sup> The court went on to say that:

[r]easonable persons understand musical lyrics and poetic conventions as the figurative expressions, which they are. No rational person would or could believe otherwise, nor would they mistake musical lyrics and poetry for literal commands or directives to immediate action. To do so would indulge a fiction which neither common sense nor the First Amendment will permit.<sup>46</sup>

The trial court's decision was affirmed and the case was dismissed.<sup>47</sup>

Similarly, in *Davidson v. Time Warner, Inc.*,<sup>48</sup> the plaintiffs were the family members of Police Officer Bill Davidson, who was shot to death by Ronald Howard during a routine traffic stop.<sup>49</sup> Defendant Howard was driving a stolen car when Officer Davidson stopped him for an unrelated traffic infraction.<sup>50</sup> When Davidson confronted the defendant, he pulled out a nine millimeter Glock handgun, shot and killed the officer.<sup>51</sup> Defendant was listening to Tupac Shakur's recording, entitled *2Pacalypse Now*,<sup>52</sup> and claimed that the music made him shoot Officer Davidson.<sup>53</sup> Although it was not clear what song the defendant was listening to at the specific time of the murder, the court noted that at least one

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<sup>44</sup> *Id.* at 1005 (stating that the recording of Osbourne's music was not in fact contemporaneous with John's suicide, and thus suicide could not be a foreseeable outcome).

<sup>45</sup> *Id.* at 1007.

<sup>46</sup> *Id.* at 1002.

<sup>47</sup> *Id.* at 1008.

<sup>48</sup> 1997 U.S. Dist. WL 405907 (S.D. Tex. March 31, 1997).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> TUPAC, *2PACALYPSE NOW* (Priority, 1996).

<sup>53</sup> *Davidson v. Time Warner, Inc.*, 1997 U.S. Dist. WL 405907 (S.D. Tex. March 31, 1997).

song on Shakur's audiocassette speaks very explicitly about violence against police officers.<sup>54</sup> The jury in the criminal trial did not believe that Tupac Shakur's music drove the defendant to commit the crime, and as such he was convicted and sentenced to death.<sup>55</sup>

In the civil trial, the Davidsons attempted to use Howard's arguments that the music caused him to kill the officer against him.<sup>56</sup> The plaintiffs contended that Shakur's music incited Howard to commit violence against Officer Davidson.<sup>57</sup> Defendants claimed that the lyrics of *2Pacalypse Now* were protected speech under the First Amendment.<sup>58</sup> The plaintiffs argued that Shakur's album did not deserve "First Amendment protection because it: (1) was obscene, (2) contains 'fighting words,' (3) defames peace officers like Officer Davidson, and (4) tended to incite imminent illegal conduct on the part of individuals like Howard."<sup>59</sup> Furthermore, the plaintiffs' contended that since the recording did not have constitutional protection, they could seek liability in tort for making music that proximately caused Officer Davidson's death.<sup>60</sup>

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<sup>54</sup> *Id.* (citing the lyrics of Tupac Shakur's song *Crooked Ass Nigga*); See also TUPAC, *Crooked Ass Nigga*, on *2PACALYSE NOW* (Priority, 1996). The lyrics to "Crooked Ass Nigga" in part state:

Coming quickly up the street, is the punk ass police  
The first one jumped out and said freeze  
I popped him in his knees and shot him punk please  
These cops are reminded, and get us as when we rush . . .

Two very bloody bodies on the streets  
A noisey[sic] ass cop and a ni\*\*a that robbed from me  
Well from me, back up punk, how you figure  
My fingers on the trigga for you.

*Id.*

<sup>55</sup> *Davidson*, 1997 U.S. Dist. WL 405907.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Davidson v. Time Warner, Inc.*, 1997 U.S. Dist. WL 405907 (S.D. Tex. March 31, 1997).

<sup>60</sup> *Id.*

The court found that the defendants could not have foreseen that *2Pacalypse Now* would lead to violence.<sup>61</sup> Therefore, the defendants could not be held liable under a negligence theory.<sup>62</sup> The court specifically said that the “murder of Officer Davidson was an irrational and illegal act” and therefore, “defendants are not bound to foresee and plan against such conduct.”<sup>63</sup>

The court went on to address the First Amendment issues raised by the plaintiff.<sup>64</sup> First, the court found that the plaintiffs’ obscenity argument did not apply to this case.<sup>65</sup> In order to determine whether the recording was obscene, the court applied the test set forth by the United States Supreme Court in *Miller v. California*.<sup>66</sup> The factors in making that determination are whether:

- (1) the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (2) measured by contemporary community standards, the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law and (3) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>67</sup>

The court held that *2Pacalypse Now* did not satisfy the *Miller* test.<sup>68</sup> Accordingly, the court declined to find the recording obscene.<sup>69</sup>

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<sup>61</sup> *Id.* at \*13.

<sup>62</sup> *Id.* at \*9.

<sup>63</sup> *Id.* at \*13.

<sup>64</sup> *Id.* at \*15.

<sup>65</sup> *Id.* at \*16.

<sup>66</sup> *Davidson v. Time Warner, Inc.*, 1997 U.S. Dist. WL 405907 (S.D. Tex. March 31, 1997) (citing *Miller v. California*, 413 U.S. 15 (1973), which held that obscenity is not protected speech under the First Amendment and enunciated a three part test to determine whether speech can be classified as obscene) (5-4 decision) (Douglas, J., dissenting)).

<sup>67</sup> *Id.* See also *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 498 (1985) (describing as prurient material whose predominate appeal is to a “shameful or morbid interest in nudity, sex or excretion”).

<sup>68</sup> *Davidson* at \*17.

Next, the court held that the Davidsons' allegations of defamation did not apply to this case.<sup>70</sup> The court found that the plaintiffs had no standing, as they must have been the ones to be defamed in order to recover on that theory.<sup>71</sup> Obviously, any statements made in Shakur's music were not directed in any way toward the plaintiffs, so the court ruled that this theory was not cognizable.<sup>72</sup>

Third, the court said that the lyrics on the album were not "fighting words."<sup>73</sup> The court stated that although Shakur's words may have been offensive, it was not likely that violence would occur as a result of listening to the music.<sup>74</sup> The court further stated that the "fighting words" doctrine "applies when an individual hurls epithets at another, causing the latter to retaliate against the speaker."<sup>75</sup> Accordingly, the Texas court found that the "fighting words" doctrine did not apply.<sup>76</sup>

Lastly, the *Davidson* court had to determine whether *2Pacalypse Now* imminently incited violence under the *Brandenburg* test.<sup>77</sup> To find that the recording did not deserve First Amendment protection, the court must have determined that it "(1) was directed or intended toward the goal of producing imminent lawless conduct and (2) was likely to produce such imminent illegal conduct."<sup>78</sup> As to the first prong, the court found that Shakur might have intended for violence to occur at a later time, but not immediately upon listening to the music.<sup>79</sup> Therefore, the first prong of the test was not satisfied. The court also found that

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at \*18.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*; See also *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (upholding a conviction of a person who called the marshal arresting him a "damned racketeer" and a "damned fascist").

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at \*19 (citing *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969), which held that in order for speech not to be protected, it must be likely to incite or produce lawless action, not merely advocate it.).

<sup>78</sup> *Id.* at \*20 (citing *Hess v. Indiana*, 414 U.S. 105, 108 (1973)).

<sup>79</sup> *Id.*

Shakur's music was not likely to incite imminent violence.<sup>80</sup> As such, the plaintiff also failed to satisfy the second prong. The court reasoned that Howard continually listened to Shakur's music for about forty-five minutes prior to the killing and thus, there was no imminence attached to the statements in the music.<sup>81</sup> Finally, the court held that neither Tupac Shakur nor the producers and distributors of his music were liable for the death of Officer Davidson.<sup>82</sup>

#### IV. LIABILITY BEYOND THE LYRICAL CONTENT: ALLEGED SUBLIMINAL MESSAGES

The plaintiffs in the preceding two cases<sup>83</sup> alleged that the actual words in music encouraged certain violent acts. However, there have also been cases where plaintiffs alleged that there were subliminal messages in music that encouraged violent acts.<sup>84</sup> Subliminal messages can be defined as "the process whereby individuals and groups can be presented with visual and auditory information without their being consciously aware of exposure to this information but to which they make a selective response."<sup>85</sup> In *Vance v. Judas Priest*,<sup>86</sup> a Nevada court had to decide if there were

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at \*21.

<sup>82</sup> *Id.* at \*22.

<sup>83</sup> See notes 39 and 47, *supra*, and accompanying text.

<sup>84</sup> See *Waller*, 763 F. Supp. at 1145. Plaintiffs allege the subliminal message "Shoot, shoot, shoot" on the Ozzy Osbourne, *BLIZZARD OF OZ* album, directed their son to kill himself. *Id.* See also *Vance*, 1990 WL 130920 at \*1. Two boys allegedly shot themselves as a result of subliminal messages contained on the Judas Priest album *STAINED GLASS*. *Id.*

<sup>85</sup> Olivia Goodkin & Maureen Ann Phillips, Note, *The Subconscious Taken Captive: A Social, Ethical and Legal Analysis of Subliminal Communication Technology*, 54 S. CAL. L. REV. 1077, 1080 (1981) (citing Katz, Goldstein & Dershowitz, *PSYCHOANALYSIS PSYCHIATRY AND LAW* 274 (1967)).

<sup>86</sup> 1990 WL 130920 at \*1 (Nev. Dist. Ct. Aug. 24, 1990).

subliminal messages on the Judas Priest album *Stained Glass*,<sup>87</sup> and if so, whether subliminal messages were protected speech.<sup>88</sup>

In *Vance*, the plaintiffs claimed that the subliminal messages in certain Judas Priest songs led to the deaths of James Vance and Raymond Belknap.<sup>89</sup> The two teenaged boys were allegedly listening to *Stained Glass* when they decided to take shotguns, go out into the woods, and to kill themselves.<sup>90</sup> The plaintiffs claimed that the words "Do It" were repeated subliminally throughout the song *Better By You, Better Than Me*.<sup>91</sup> The plaintiffs contended that the implication of those words was to encourage the listener to commit suicide.<sup>92</sup>

The court reached three conclusions concerning plaintiff's allegation that the words "Do It" were intentionally inserted as subliminal messages on the recording.<sup>93</sup> First, the court found that the words "Do It" are indeed present several times in the song *Better By You, Better Than Me*.<sup>94</sup> Second, the court found that the words "Do It" on the record are subliminal, meaning that the words

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<sup>87</sup> JUDAS PRIEST, *STAINED GLASS* (Sony Music, 1978)

<sup>88</sup> *Id.* at \*4.

<sup>89</sup> *Id.* at \*12 Plaintiff's expert testified that "the subliminal command 'Do It' created a compulsion towards doing that which James and Raymond were already predisposed to do, commit suicide." *Id.*

<sup>90</sup> *Id.* at \*16, 17 (noting that James Vance died instantly as a result of a self-inflicted gun shot wound, and Raymond Belknap was severely injured ultimately resulting in his death).

<sup>91</sup> See JUDAS PRIEST, *Better By You Better Than Me*, on *STAINED GLASS* (Sony Music, 1978). In *Vance*, the court made a finding of fact that the words "Do It" were present several times on the song. The court noted that during demonstrations the sound was "identified, isolated and amplified as well as that the court's attention was brought to hearing the words "Do It." *Vance*, 1990 WL 130920 at \*8.

<sup>92</sup> *Id.* at \*11. The court held plaintiffs only had to prove the subliminal messages caused the shootings by a preponderance of the evidence. Plaintiffs' expert, Dr. Howard Sherrin, testified "that the subliminal command . . . created a compulsion towards doing that which James and Raymond were already predisposed to do . . ." *Id.* at \*12.

<sup>93</sup> *Id.* at \*8-9 (finding that although the words "Do It" were present several times on the recording and they were subliminal, they were not inserted intentionally).

<sup>94</sup> *Id.* at \*8. Finding of Fact Number 2, the court listened to various demonstrations on special audio equipment and could hear the words "Do It." *Id.*

were faintly audible and not part of the regular lyrics.<sup>95</sup> Third, the court found that the words "Do It" were not intentionally formed.<sup>96</sup> The court examined the tracks of tape and decided that the words were inadvertently formed by a combination of the singer's exhalation and a guitar sound.<sup>97</sup> Having decided that the sounds were not intentional, the court further rejected the assertion that defendants should be liable for the unintentional subliminal messages.<sup>98</sup> The court held that in order to be liable for a subliminal message, there had to be an intention to put the message in the recording.<sup>99</sup> The court found that since Judas Priest did not intentionally insert subliminal messages into the music, they could not be held liable for those "words."<sup>100</sup>

The court went on to evaluate whether subliminal messages that are intentionally inserted into music can be protected speech under the First Amendment.<sup>101</sup> The court found that intentional

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<sup>95</sup> *Id.* at \*9. The court explained that subliminal messages are so faint that they are below the level of conscious awareness, and the words "Do It" would not be consciously discernable to the ordinary listener under normal listening conditions. *Id.*

<sup>96</sup> *Id.* The court based its finding on four factors:

1) the words were not present on any individual track of the 24 track tape; 2) it became apparent the words were a result of the singer's exhalation and the guitar; 3) all band members were deposed or appeared at trial and denied any intention to insert such messages; and 4) the court's rejection of plaintiff's theory that the defendants spread sounds over several tracks so they could only be heard when played together.

*Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at \*10. The defendants are not liable in this action for subliminal commands, which were inadvertently formed. For liability to exist for this type of activity "there must be a showing of a clear, conscious and intentional act on the part of the defendants." *Id.*

<sup>99</sup> *Id.* (holding the action is founded upon an invasion of privacy claim, the essence of which is the intentional interference with another's interest in solitude or seclusion).

<sup>100</sup> *Id.* (finding that the requisite intent had not been shown).

<sup>101</sup> *Id.* at \*22. (discussing the First Amendment protection and subliminal messages, the court noted that the traditional *Brandenburg* standard could not be applied). The court further noted this would be treated as a case of "first impression, with no precedents to construe." *Id.*

subliminal messages are not protected speech.<sup>102</sup> One justification is that subliminal messages are not "wanted" speech and therefore, the listener has no choice but to hear them.<sup>103</sup> In other words, a person listening to a particular piece of music is freely accepting whatever words he may hear in the music.<sup>104</sup> However, if there are subliminal messages of which the listener is not aware, the listener is not choosing to listen to those words or to be influenced by them.<sup>105</sup> Therefore, the Nevada court found that intentional subliminal messages cannot be protected under the First Amendment.<sup>106</sup>

Similarly, in *Waller v. Ozzy Osbourne*,<sup>107</sup> the Georgia court considered whether subliminal messages were used in Ozzy Osbourne's song *Suicide Solution*,<sup>108</sup> and if so, whether Osbourne could be held liable for the death of Michael Waller.<sup>109</sup> The plaintiffs contended that their son Michael committed suicide as a result of the influence of *Suicide Solution*.<sup>110</sup> Originally, the Wallers' complaint alleged that the words of the song encouraged the suicide of their son.<sup>111</sup> In light of previously decided cases, the lower court dismissed the complaint for failure to state a cause of action<sup>112</sup> but the Wallers were granted leave to amend their

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<sup>102</sup> *Id.* at \*23 (reasoning that subliminal messages "do not advance any of the purposes of free speech;" that every individual has a right to "be free from unwanted speech" and "that a listener's right to privacy outweighs the speaker's right of free speech when subliminal messages are used").

<sup>103</sup> *Id.* at \*26 (noting that the Supreme Court has held an individual has a First Amendment right to receive information and further has a right to be free from unwanted speech). The court held that "when an individual is exposed to subliminal messages, without his knowledge and consent, he is deprived of his constitutional right to choose . . . ." *Id.* at \*28.

<sup>104</sup> *See id.* at \*26.

<sup>105</sup> *Id.* at \*28. When an individual has no knowledge of subliminal messages he has no means of making a conscious decision to hear them. *Id.*

<sup>106</sup> *Id.* at \*32.

<sup>107</sup> 763 F. Supp. 1114 (M.D. Ga. 1991).

<sup>108</sup> *See* note 24, *supra*, and accompanying text.

<sup>109</sup> *Waller*, 763 F. Supp. at 1145-46. Plaintiffs allege their son shot himself as a result of messages contained on the recording. *Id.*

<sup>110</sup> *Id.* at 1146. Plaintiffs' complaint alleged defendants were liable for causing the pain and suffering of Michael Waller and inciting his wrongful death. *Id.*

<sup>111</sup> *Id.* at 1145.

<sup>112</sup> *Id.*



complaint.<sup>113</sup> The amended complaint alleged that subliminal messages within *Suicide Solution* incited their son to commit suicide.<sup>114</sup> The court made a distinction between the music portraying a necessity to resort to suicide, and actually demanding a listener to act immediately.<sup>115</sup> The court further stated that there was no evidence that subliminal messages were in fact present in *Suicide Solution*.<sup>116</sup> The recording was deemed protected speech and, therefore, the plaintiffs had no basis for recovery.<sup>117</sup> Summary judgment was granted in favor of the defendants.<sup>118</sup>

## V. THE IMPACT OF PERFORMERS, PRODUCERS AND DISTRIBUTORS' ON THE FREEDOM OF SPEECH

In light of the aforementioned cases, it is readily apparent that courts in the United States are not allowing people to blame musicians and their lyrics for the intentional acts of others. However, there have been many differing opinions on the subject. Indeed, Professor David Dow of the University of Houston Law Center has suggested his own test to determine if speech is entitled to First Amendment protection.<sup>119</sup> Dow postulates that speech should be protected unless three conditions are met.<sup>120</sup> First, "the

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<sup>113</sup> *Id.* at 1146.

<sup>114</sup> *Id.* at 1152. "Plaintiffs' case is predicated almost entirely upon the allegation that defendants incited their son to commit suicide by the use of subliminal messages . . ." *Id.*

<sup>115</sup> *Id.* at 1151 (reviewing the Brandenburg analysis, the court held that the defendants may have suggested that suicide was a viable option to be considered but this was not inciting someone to actually commit suicide).

<sup>116</sup> *Id.* at 1152 (noting "[p]laintiffs failed to present any evidence from which a reasonable fact finder could even infer that a subliminal message even existed . . .").

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 1152-53 (holding that "[p]laintiffs failed to demonstrate the existence of subliminal message or that the defendant's music incited imminent lawless activity . . .").

<sup>119</sup> David R. Dow, *The Moral Failure of the Clear and Present Danger Test*, WILLIAM AND MARY BILL OF RIGHTS JOURNAL, Summer 1998, at 733.

<sup>120</sup> *Id.*

speaker's specific intent in uttering the words was to cause an unlawful injury."<sup>121</sup> Secondly, "the injury in fact occurred as a proximate result of the speech."<sup>122</sup> Lastly, "the speaker, through his or her speech, overwhelmed the will of the listener."<sup>123</sup> The theory behind Dow's test is that people have wills of their own and, therefore, choose whether or not to act.<sup>124</sup> This test would only allow for the punishment "of the most culpable speakers, those who overwhelm the will of the listener and in essence, force the listener to act as the speaker desires."<sup>125</sup> To agree with Professor Dow's views on this subject would be to agree that every individual should be held responsible for his or her own actions.

To hold third parties liable for the actions of others could open the floodgates of litigation with no limitations. In the case of musical lyrics, the creativity of artists would be severely inhibited if the artists were to be held liable for the actions of their fans. As cited above, courts have made it very clear that they will not impose liability on musicians for the actions of their listeners.

The courts appear unwilling to allow people in our nation to shun responsibility for their actions. That responsibility includes getting the appropriate help for any problems one may have, such as alcohol dependence, drug addiction, depression, etc. In the *McCollum* case, the court emphasized John McCollum's personal problems.<sup>126</sup> There was evidence that John was a troubled teen who had alcohol addictions.<sup>127</sup> The court reasoned that the defendants should incur no moral culpability for John's suicide.<sup>128</sup> Perhaps the court has a point.

Imagine the chaos that would ensue if murder went unpunished because the killers claimed that they were influenced by music or movies. There would be no accountability for taking the life of another. If all troubled people who commit suicide were said to have been encouraged to do so by a song, what is left of the

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See *McCollum*, 202 Cal. App. 3d at 994.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 1005.

accountability of the deceased? These issues are reflected in the views of the courts that have decided the cases discussed above.

In *Waller*, for example, the plaintiffs claimed that lyrics in Ozzy Osbourne's music encouraged their son to take his own life.<sup>129</sup> However, when the court dismissed the complaint for failure to state a claim, the plaintiffs had to find some other way to hold a third party accountable for the suicide of their son.<sup>130</sup> Then, the plaintiffs added the claim that there were subliminal messages in the songs which led their son to commit suicide.<sup>131</sup> Of course, the death of the plaintiff's son must have been traumatic, but the court rightly examined which factors may have actually led the plaintiffs' son to take his own life. There cannot always be a third party to blame.

Similarly, in *Davidson*,<sup>132</sup> the court concluded that due to the music's First Amendment protection, it would be unreasonable to hold Tupac Shakur responsible for the actions of a known criminal.<sup>133</sup> Thus, the court dismissed the plaintiffs' contention that the shooter had been influenced by the artist's (Tupac Shakur) music at the time of the murder.<sup>134</sup> Furthermore, the court opined

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<sup>129</sup> *Waller v. Osbourne*, 763 F. Supp. 1114, 1145 (M.D. Ga. 1991). The Ozzy Osbourne song was *Suicide Solution* on the album BLIZZARD OF OZ. *Id.* at 1148.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* The court was "[c]onvinced that the presence of a subliminal message, whose surreptitious nature makes it more akin to false and misleading commercial speech and other forms of speech extremely limited in their social value, would relegate the music containing such to a class worthy of little, if any, first amendment constitutional protection." *Id.*

<sup>132</sup> *Davidson v. Time Warner, Inc.*, 1997 U.S. Dist. LEXIS 21559 (S.D. Tex., March 31, 1997).

<sup>133</sup> *Id.* at \*21. The court specifically stated:

*2Pacalypse Now* is both disgusting and offensive. [The fact that] the album has sold hundreds of thousands of copies is an indication of society's aesthetic and moral decay. However, the First Amendment became part of the Constitution...Thus, although the Court cannot recommend *2Pacalypse Now* to anyone, it will not strip Shakur's free speech rights based on the evidence presented by the plaintiffs.

*Id.*

<sup>134</sup> *Id.* at \*22 (citing *Hill v. Herald-Post Pub. Co. Inc.*, 877 S.W.2d 774, 779 (Tex. App. 1994) that Shakur's lyrics should be construed "as a whole in light of surrounding circumstances judged upon how a person of ordinary intelligence would perceive the entire statement").

that Shakur's lyrics, although offensive, did not defame Davidson in particular,<sup>135</sup> and it also dismissed the Davidsons' claim of injury by defamation.<sup>136</sup>

The First Amendment guarantees citizens of the United States the right to freedom of speech.<sup>137</sup> While there are no limitations written into the Constitution, courts have applied limitations in granting protection to certain speech.<sup>138</sup> Certainly, each person should be entitled to his or her own opinions on any subject. But where is the line drawn? When should courts step in and deem a particular speech, song, or movie unworthy of First Amendment protection? The cases discussed above have largely answered these questions.

The courts are reluctant to deem lyrics unprotected speech.<sup>139</sup> The main reason cited is to avoid inhibiting the creativity of the artists, which has been said to be an underlying factor in the granting of the freedom of speech in the first place.<sup>140</sup> However, some courts have also made it clear that if subliminal messages are

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<sup>135</sup> *Id.* at \*22 (citing *Hardwick v. Houston Lighting & Power Co.*, 881 S.W.2d 195, 197 (Tex. App. 1994)).

<sup>136</sup> *Davidson*, 1997 U.S. Dist. LEXIS 21559 at \*17. The Supreme Court has recognized there exists, "[c]ertain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional. *Id.* These include fighting words--those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Id.* See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-2 (1942).

<sup>137</sup> U.S. CONST. amend. 1, § 1. This section provides in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." *Id.*

<sup>138</sup> See, e.g., *Bose Corp. v. Consumers Union of U.S. Inc.*, 466 U.S. 485. The Supreme Court ruled that libelous speech, fighting words, incitement to riot, obscenity and child pornography should not be protected. *Id.* However, the court has confined the perimeters of these unprotected categories to ensure that protected speech is not inhibited. *Id.* at 503-5.

<sup>139</sup> *Chaplinsky*, 315 U.S. at 572.

<sup>140</sup> *Davidson*, 1997 U.S. Dist. LEXIS 21559 at \*12 (quoting *McCollum v. CBS, Inc.*, 202 Cal. App. 3d 989, 993 (1998)). The Court stated: "It is simply not acceptable to a free and democratic society to impose a duty on performing artists to limit and restrict their creativity in order to avoid dissemination of ideas in artistic speech which may adversely affect emotionally troubled individuals." *Id.* at 37-8.

intentionally inserted into music, the artists may find themselves being held liable for actions taken by a listener.<sup>141</sup>

As with most subject areas, there are opposing views on these First Amendment issues. There are those who believe that music can corrupt the senses of vulnerable people, thereby leading them to do things they would not have done had it not been for the suggestive lyrics.<sup>142</sup> This train of thought leads to allegations that television shows and movies are to blame for the violence among children.<sup>143</sup> It is very easy to follow that reasoning given the abundance of violence depicted in movies, on television, and in music. American children growing up in this era are far more exposed to those violent depictions than earlier generations.<sup>144</sup> Additionally, there is also a rise in the overall violent crime rate among teenagers.<sup>145</sup> Is it fair to say that there is a correlation between the two? On the surface it seems that there may be an extremely strong relation between the two variables. Alternatively, when there is a close examination of the lives of many teenage criminals, there are other factors that may help to explain their behavior. Some of those factors should be taken into account in

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<sup>141</sup> *Vance v. Judas Priest*, 1990 WL 130920 at \*32 (Nev. Dist. Ct. 1990). The *Vance* court held that "when an individual is subjected to subliminal messages without his knowledge and consent, his privacy rights outweigh any free speech rights of the person or entity publishing the subliminal message." *Id.*

<sup>142</sup> Cecelie Beery & David Wolin, *REGULATING ROCK LYRICS: A NEW WAVE OF CENSORSHIP?* 23 HARVARD J. ON LEGIS. 585 (1986).

<sup>143</sup> *See* *Action for Children's Television v. Federal Comm'n*, 58 F.3d 654, 682. The court suggested that there is a "wealth of research conducted on the harmful effects of televised violence." *Id.* Well-known studies include the *Surgeon General's Scientific Advisory Committee on Television and Growing Up: The Impact of Televised Violence* (U.S. Pub. Health Serv., 1972); *See also* Laura Schneider, *Warning: Television Violence May Be Harmful to Children; But First Amendment May Foil Congressional Attempts to Legislate Against It*, U. MIAMI L. REV. 477 (Winter 1994). The author cites four main effects that television violence can have on children: "the aggressor effect, the bystander effect, and the self socialization effect including imitation." *Id.* at 482.

<sup>144</sup> *Hamilton v. ACCU-TEK et al.*, 935 F. Supp 1307 (1996). The court referred to Justice Department reports showing that "weapons offenses arrest rate for teenage males have increased dramatically in comparison with the population at large, and that 23% of those arrested for weapons offenses in 1993 were under the age of 18." *Id.* at 1330.

<sup>145</sup> *Id.* The court further stated that, "[j]uvenile arrests for weapons offenses increased 100% between 1985-1993." *Id.*

determining who should take responsibility for the actions of these troubled teens.

Furthermore, it is true that some of the music of the late 1980's and the 1990's have violent connotations. While, it seems unfair to declare that parents should know all the music their children have access to, parents should be aware of what their children are listening to.<sup>146</sup> If parents try to keep a more attentive eye on what is going on in their children's lives, perhaps some of the problems could be stopped before things got out of control. This is yet another view taken on the subject of where responsibility lies when a music fan performs some act that is harmful himself or a third party. It may seem as if this view blames parents for the actions of their children, but that is not the case. Parents are not being blamed for what their children do. Parents are being asked to be in touch with their children and be aware of any problems their children might be having.<sup>147</sup> That is not to say that parents can always change what a child might do, but perhaps if parents were more in tune with their children's problems, they could work together to try to avoid any further tragedies.

In examining *Vance*,<sup>148</sup> the court addressed the responsibility the boys' parents had to recognize the various emotional problems their sons had during their lives.<sup>149</sup> The court never blamed the parents for the suicides, but cautioned the parents not to blame the music of Judas Priest.<sup>150</sup>

There is also the question of the creativity of artists who write, perform and produce the music in question. Would the creativity

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<sup>146</sup> See Nancy Churnin, *Who's Responsible*, THE DALLAS MORNING NEWS, May 4, 1999, at 1C (noting the parental responsibility to raise children of high moral values).

<sup>147</sup> *Id.*

<sup>148</sup> *Vance v. Judas Priest*, 1990 WL 130920 (Nev. Dist. Ct. 1990).

<sup>149</sup> *Id.* at \*14-5.

<sup>150</sup> *Id.* at \*10-12. The court stated that

subliminal communication techniques are more common than one would expect. However, the full extent to which subliminal communication is being used today in television, music, movies, videos and other mediums is not known. This is partly due to the fact that such messages are not intended to be consciously perceived and partly due to the fact that no governmental agency is monitoring their use.

*Id.* at \*8.

of these artists be daunted by the lack of First Amendment protection? The answer to that is almost surely, yes. If an artist, such as Billy Joel, were not confident that his music was protected speech, would he have written *Only the Good Die Young*?<sup>151</sup> That particular song depicts traditional Catholic girls as prudes who will have no fun and as a result, die young.<sup>152</sup> The song actually encourages these girls to break out of their shells and go against their Catholic upbringing.<sup>153</sup> If Billy Joel believed that he could be sued if a traditional Catholic girl went out and had sexual relations after hearing the song, would he have recorded and sold the song? Without actually asking him, there is no way to determine what the unequivocal answer would be. However, there is a good chance that Billy Joel himself would not be able to give an absolute answer, because when he wrote the song he knew that the First Amendment guaranteed him the right to express himself in that manner. It is likely that the artists involved in the above-analyzed cases wrote or performed the songs in question under the same assumption illustrated herein.

Yet another view in favor of the artists is that holding artists responsible for the actions of their listeners would delve into the area of censorship.<sup>154</sup> Artists who cannot freely express themselves without the threat of being sued, are, in effect, being censored. Artists fearing that they will be held liable for the actions of their fans may not be as creative. By facing the possibility of being sued by a third party, artists face a self-censorship issue. The musicians would basically be forced to censor their own music just to avoid any possibility of being sued. The idea of prior censorship is archaic and has not openly been used in this country for years. So why should recording artists now be forced to censor themselves? The courts have overwhelmingly said that they should not.<sup>155</sup> The courts may not

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<sup>151</sup> BILLY JOEL, *Only the Good Die Young*, on STRANGER (Sony Music, 1977);

<sup>152</sup> See Sam Eccleston, *U. Chicago: CD REVIEW: Various Artists' 'SNL 25'*, U-WIRE, October 12, 1999. "His *Only The Good Die Young* is a throaty, randy jolt. An openhearted, tender plea by some ruffian for his Catholic girlfriend to sleep with him." *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Davidson*, 1997 U.S. Dist. Lexis 21559, \*70-1.

<sup>155</sup> *Id.* (citing *Bill v. Superior Court*, 137 Cal. App.3d 1002, 1006 (1983)).

agree with the language or implications in a particular song,<sup>156</sup> but have not seen fit to enforce censoring the song's content.<sup>157</sup>

Ultimately, the question still remains whether society is ready, willing, and able to take responsibility for its own actions, and to stop blaming others for adverse occurrences. As the cited cases have shown, when a loved one is killed or kills, the grieving family seeks to hold third parties responsible for the death.<sup>158</sup> In cases involving drunk-driving accidents, for example, the victims of the negligence have a claim against the drunk driver. But should the alcohol manufacturer or distributor also be held responsible? That is where the distinction should be drawn. The only people who should be held accountable are those directly involved in the death.

In *Davidson*, the only person who should be, and was, held liable for the tragic murder of Officer Davidson is Ronald Howard. In *Davidson*, the plaintiffs could not show that those responsible for producing the album knew or should have known that Ronald Howard would murder Officer Davidson.<sup>159</sup> Therefore, liability of the producers for the tragedy was not established.<sup>160</sup>

*Zamora v. ABC, CBS and NBC*<sup>161</sup> shows how unwilling the citizens of our nation are to take responsibility for themselves. In *Zamora*, fifteen year old Ronny Zamora and his parents sued ABC, CBS and NBC, alleging that violent network programming led Ronny to kill his eighty-three year old neighbor.<sup>162</sup> The claim alleged that Ronny became a dangerous sociopath who was "involuntarily addicted to and completely subliminally intoxicated

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<sup>156</sup> *Davidson*, 1997 U.S. Dist. Lexis 21559 at \*21. The Davidson court found the content of the album *2Pacalypse Now* to be both "disgusting and offensive." *Id.*

<sup>157</sup> See, e.g., *Columbia Broad Sys. v. Democratic Nat'l. Comm.*, 412 U.S. 94, 102 (1973).

<sup>158</sup> *Davidson*, 1997 U.S. Dist. Lexis 21559; *Waller v. Osbourne*, 763 F. Supp. 1114, 1145 (M.D. Ga. 1991); *Zamora v. ABC, CBS and NBC*, 480 F. Supp. 199 (S.D. Fla. 1979).

<sup>159</sup> *Davidson*, 1997 U.S. Dist. Lexis 21559 at \*21. The court stated that "foreseeability should be measured in light of common or ordinary experience." *Id.*

<sup>160</sup> *Id.* at \*31-32.

<sup>161</sup> 480 F. Supp. 199 (S.D. Fla. 1979).

<sup>162</sup> *Id.* at 200. Zamora fatally shot his victim. *Id.*



by” the violence depicted in network shows.<sup>163</sup> The court dismissed the complaint for failure to state a cause of action.<sup>164</sup> In essence, the networks were not responsible for the actions of the plaintiff.<sup>165</sup> The court further stated that the First Amendment allowed the networks to air whatever they wanted within the guidelines set forth by the Federal Communications Commission.<sup>166</sup>

The lesson of *Zamora* is very valuable. Perhaps it is up to parents to decide what their children watch on television. While parents cannot be held responsible for all the actions of their children, it can be argued that it is the job of a parent to keep a close eye on the influences surrounding their children. It is hard to believe that Ronny Zamora’s parents did not realize that something was happening to their son, until he committed murder. If Ronny had become so dangerous, his parents should have noticed his condition prior to the murder. Also, if Mr. and Mrs. Zamora believed that the television programs their son was watching were violent, and having an overwhelming influence on their son, they could have taken steps to curtail the programs he watched or the time he watched them.<sup>167</sup> It is not illogical to expect parents to be

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<sup>163</sup> *Id.* The complaint did not allege that Zamora was incited to action as a result of watching a particular program. *Id.*

<sup>164</sup> *Id.* at 203. The court stated that the complaint must be dismissed because “[s]tripped of conclusory language, the standard demanded is so devoid of guidance and so lacking in a showing of legal cause . . .” *Id.*

<sup>165</sup> *Id.* at 202 (citing *Yuhas v. Mudge*, 129 N.J.Super. 207 (1974)). In this case, a product advertised in defendant’s magazine injured the plaintiff. *Id.* The court reasoned:

To impose the suggested broad legal duty upon publishers of nationally circulated magazines, newspapers and other publications, would not only be impractical and unrealistic, but would have a staggering adverse effect on the commercial world and our economic system. For the law to permit such exposure to those in the publishing business who in good faith accept paid advertisements for a myriad of products would open the doors ‘to a liability in an indeterminate amount for an indeterminate time to an indeterminate class.’

*Id.*

<sup>166</sup> *Zamora*, 480 F. Supp at 205.

<sup>167</sup> *Id.* at 202. The court observed that the plaintiffs charged the defendants with the plaintiffs’ own acquiescence with regard to the programs their sons watched. *Id.*

the voice of reason when it comes to the morals and values their children are learning.

## VI. CONCLUSION

So why are parents so quick to blame others for the problems their children have? The reason is fairly simple. The United States has become a nation of people who feel the need to blame others when there is an adverse occurrence. It all boils down to responsibility. If you listen to a majority of young children, you will be astounded to hear how they always blame someone else for something they have done themselves. Where do children learn this type of behavior?

Some would like to blame media sources. It is true that the media may have some type of influence on how we think and act, but to what extent? Logic tells us to look to the home. Children hear far more at home than most parents realize. There are times when a child may repeat an inappropriate line from a movie, but it is up to the parents to relay to the child that it is not acceptable to repeat that line again. That is a very simplistic example, but a very clear picture of how children can be taught right from wrong.

The notions of right and wrong seem like clear, straightforward concepts, but people give different meaning to the concepts. Certainly, some acts are surely wrong, no matter who you are or where you come from. Murder is one example. One would be hard pressed to find any rational citizen of this country who would think that Ronald Howard was justified in killing Officer Davidson.<sup>168</sup> Likewise, there are not many citizens who would agree that suicide is the right answer to ones' problems. Therefore, there is no way to justify blaming anyone for those tragedies, except the people immediately involved.

In conclusion, the First Amendment guarantees citizens of the United States the right to freedom of speech. All citizens are

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<sup>168</sup> See *Davidson v. Time Warner, Inc.*, 1997 U.S. Dist. Lexis 21559 (S.D. Tex., March 31, 1997).

guaranteed this right, including musicians. Although some lyrics may be offensive, crude, or even violent in nature, they are still creative works to be protected by the First Amendment. There is no justification for holding musicians liable for the actions of their fans merely based on the words in their music. It is time that people start taking responsibility for their own actions, and begin to realize that there will not always be someone else to blame. If individuals are not held accountable for their own actions, there would be utter chaos in this country. Those who commit horrible acts could always point to the media as a scapegoat. More importantly, children would learn that their conduct could be excused by pointing the finger at a song or television program as the cause of their behavior. The courts in the preceding cases had the right idea by refusing to hold the musicians liable. In effect, the courts are forcing individuals to take responsibility for their actions. Hence, accountability is being charged to the citizens of the United States.

*Maureen Mahoney*<sup>169</sup>

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