
DEAD PRECEDENT? THE SHORTCOMINGS OF
DELGADO V. AMERICAN MULTI-CINEMA, INC. AND
ITS LONG TERM IMPACT

[*DELGADO V. AMERICAN MULTI-CINEMA, INC.*, 85
CAL. RPTR. 2D 838 (CT. APP. 1999)]

I. INTRODUCTION

In the wake of the recent school shootings, America was inundated with images of terror, grief and fury. Indeed, even as the Court of Appeal of California convened in *Delgado v. American Multi-Cinema, Inc.*,¹ President William Clinton mirrored the nation's sentiment by condemning the "excesses" of the film industry.² A heavyhearted America was eager for bold judicial intervention to curb the enduring peril of movie violence.³

In addition to the nation's growing concern over movie violence, the *Delgado* court had numerous studies to draw upon linking movie violence to real-life savagery by minors.⁴ Among these studies is a 1992 report by the American Psychological Association which concluded that there is a connection between media violence and violence in real life.⁵

Moreover, the facts of *Delgado* were tailor-made for judicial intervention. Any dispute as to what provoked the thirteen-year old to murder is resolved by the boy's very words during a violently-charged scene in the movie: "I'm going to have to go and shoot somebody."⁶

Similar to the 1950's, where the pragmatic courts took the initiative in the absence of legislative guidance to thwart the epidemic of drunk

1. 85 Cal. Rptr. 2d 838 (Ct. App. 1999).

2. Michael Massing, *Don't let Hollywood off the Hook on Violence*, MINNEAPOLIS STAR TRIB., July 15, 1999, at 23A.

3. See *Poll Readings*, NAT'L J., July 3, 1999, at 1972. A poll was conducted by Gallup Organization, Inc. for *CNN-USA Today*, which asked those polled: "How serious a problem is the amount of violence that children are exposed to in movies?" *Id.* Thirty percent answered "Extremely serious," thirty-two percent said "Very serious," and twenty-four percent answered "Moderately serious." *Id.* Only four percent answered "Not at all serious." *Id.*

4. See David Grossman, *Trained to Kill; Children who Kill*, CHRISTIANITY TODAY, Aug. 10, 1998, at 31 ("The *Journal of the American Medical Association* concluded that 'the introduction of television in the 1950's caused a subsequent doubling of the homicide rate, i.e., long-term childhood exposure to television is a causal factor behind approximately one half of the homicides committed in the United States, or approximately 10,000 homicides annually.'").

5. See David Grossman, *It's Time to Target Purveyors of Media Violence*, THE RECORD (Bergen County, N.J.) Nov. 2, 1999, at L15.

6. *Delgado*, 85 Cal. Rptr. 2d at 839.

driving,⁷ America was primed for courageous judicial intervention to curb movie violence. However, the *Delgado* court bypassed the opportunity to intervene in the arena of media violence.

This comment explores the unique factual pattern presented in *Delgado*, along with several catalysts surrounding the ruling—each of which may have produced a contrary outcome.

II. CASE DESCRIPTION

On October 7, 1995, American Multi-Cinema's (AMC) branch theater in Long Beach, California, aired the R-rated movie *Dead Presidents*.⁸ This gunfire-laden film was described by the film-rating body, the Motion Picture Association of America (MPAA), as portraying "extremely graphic depictions of violence and bodily injuries which were likely . . . [to] cause . . . minors to become emotionally disturbed."⁹ The movie itself tracks the life of a young African-American male from his youth in Bronx, New York, through Vietnam and full-circle back to America.¹⁰ In blood-spattering fashion, this film depicts such issues as the atrocities witnessed by the young protagonist in Vietnam, and the continual crumbling of his home.¹¹ In one bullet-charged sequence, the central character opens fire on a slew of white security police and an African-American officer in order to perpetrate a bank robbery.¹²

Pursuant to being tagged as an R-rated film, it is the custom of AMC to refuse admission to those under the age of seventeen, who are not accompanied by an adult.¹³ Nonetheless, the respondent admitted thirteen-year-old Raymond Aiolentuna and two of his similarly under-aged friends into the screening of *Dead Presidents* without requesting proof of age or mandating an adult accompany the youths.¹⁴ While the film was playing, Aiolentuna "became agitated and violent."¹⁵ During a particularly graphically-charged scene, Aiolentuna declared to his companions that he was going to have to "go and shoot somebody."¹⁶ Aiolentuna's threat provided a chilling precursor, as he shot and killed Marcos Delgado, Jr. one-and-a-half blocks from the theater immediately following the movie.¹⁷

Based on the above sequence, Delgado's family filed suit claiming

7. See generally *Rappaport v. Nichols*, 156 A.2d 1 (N.J. 1959).

8. See *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838, 839 (Ct. App. 1999).

9. *Id.*

10. *DEAD PRESIDENTS* (Caravan Pictures 1995).

11. See *id.*

12. See *id.*

13. See *Delgado*, 85 Cal. Rptr. 2d at 839.

14. See *id.*

15. *Id.*

16. Appellant's Opening Brief at 4, *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838 (Ct. App. 1999) (No. B-117790).

17. See *Delgado*, 85 Cal. Rptr. 2d at 839.

AMC was negligent in admitting the thirteen-year-old Aiolentuna into an R-rated film without the accompaniment of an adult.¹⁸

III. BACKGROUND

The focus of the *Delgado* court's discussion was aimed principally at the movie rating system and negligence.¹⁹ The tribunal also included a discussion regarding premises liability; however, its analysis was brief, presumably because the plaintiffs' complaint did "not allege premises liability."²⁰ Since the focal point of *Delgado* was to determine whether a duty was owed to the plaintiffs, the court first sought to resolve whom the movie rating system is intended to protect.²¹

Deciding the suitability of movies for minors is conducted by a group called the Classification and Ratings Administration, which is composed of an array of parents living in Los Angeles.²² The Classification and Ratings Administration is a division of the MPAA.²³ To preserve the sanctity of the rating system, the names of those on the rating board are not revealed.²⁴ All members of the board are parents, which is the only requirement for participation, and they are paid an undisclosed amount for their services.²⁵

The board screens the movies pursuant to the creed: "what most parents would consider to be that film's appropriate rating."²⁶ However, there are a few concrete rules the board customarily implements.²⁷ Illegal drug use and even a single "sexually-derived obscenity" will render an automatic PG-13 rating.²⁸ Whenever a sexually derived expletive is used in a sexual context, this generally mandates an R-rating.²⁹

The rating system in the United States has developed five classifications:³⁰

- "G" for "General audiences – all ages admitted."
- "PG" for "Parental guidance suggested; some material may not be

18. *See id.* at 839-40. AMC demurred to the complaint, stating that the Delgados failed to state a cause of action. *See id.* The court below sustained this demurrer, yet gave leave to amend. *See id.* Armed with a litany of allegations, the plaintiffs filed an amended complaint, to which the theater again demurred. *See id.* The court upheld the second demurrer and did not permit the plaintiffs to revise the complaint. *See id.*

19. *See generally id.*

20. *Id.* at 841.

21. *See id.* at 840-41.

22. *See* Holly J. Morris & Marc Silver, *G, Why R Ratings so Confusing?*, U.S. NEWS & WORLD REP., Sept. 20, 1999, at 68.

23. *See id.*

24. *See id.*

25. *See id.*

26. *Id.*

27. *See id.*

28. *Id.*

29. *See id.*

30. *See* Diane Roberts, *The Jurisprudence of Ratings Symposium Part I: On the Plurality of Ratings*, 15 CARDOZO ARTS & ENT. L.J. 105, 131-32 (1997) (citing JACK VALENTI, THE VOLUNTARY MOVIE RATING SYSTEM: HOW IT BEGAN, ITS PURPOSE, THE PUBLIC REACTION (1991)).

suitable for children.”

- “PG-13” for “Parents strongly cautioned. Some material may be inappropriate for children under 13.”
- “R” for “Restricted, under 17 requires accompanying parent or adult guardian.”
- “NC-17” for “No children under 17 admitted.”³¹

The voluntary movie rating system was first instituted in 1968.³² In its thirty-second year, the rating system has recently been graded with resounding approval.³³ While the movie rating system helps parents curb their children’s viewing of offensive films, minors are still viewing scenes of violence at an alarming rate.³⁴ Every four minutes, television and movie audiences witness “an act of serious violence as defined by the FBI’s violent crime index – murder, rape, kidnapping, and assault with a deadly weapon.”³⁵

With the history and purpose of the movie rating system acting as a meaningful backdrop under the element of duty, resolving the Delgados’ claim necessitated a close examination of negligence.³⁶

To establish a claim for negligence four components must be shown: (1) there existed a duty which mandated the defendant comply with certain standards of conduct; (2) the defendant in fact breached said duty; (3) there existed a causal relationship between the defendant’s conduct and the plaintiff’s injury—both actual and proximate; and (4) there were actual damages as a result of the plaintiff’s injury.³⁷

The primary purpose behind the law of negligence is to ensure that “[w]hoever by his own fault causes damage to another shall be bound to compensate the same.”³⁸ Thus, negligence is principally comprised of duty, breach, causation and injury.³⁹ In the absence of any of these components a claim of negligence cannot stand.⁴⁰

31. *Id.*

32. *See* Morris & Silver, *supra* note 22, at 68.

33. *See id.* (Seventy-six percent of parents with children under the age of thirteen find the system “very useful” to “fairly useful,” according to Jack Valenti, president of the MPAA).

34. *See* Alexandra Marks, *Few Signs that Media Violence is Abating*, CHRISTIAN SCI. MONITOR, Sept. 23, 1999, at 2.

35. *Id.*

36. The historical origins of negligence can be traced to the industrial revolution of the nineteenth century. 57A AM. JUR. 2D *Negligence* § 2 (1989). “The law of negligence was created by common law judges,” which has given modern courts extensive autonomy in developing the concept. *Id.* § 3. Despite the seemingly inexhaustible scope of negligence, “the boundaries of negligence should not be pushed too far. Some of the decisions have erected boundaries. There must be a legal obligation. There must be a duty.” *Id.*

37. *See* RESTATEMENT (SECOND) OF TORTS § 281 (1965); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 30, at 164-65 (5th student ed. 1984); *see also* E. Barrett Pretymann, Jr. & Lisa A. Hook, *The Control of Media-Related Imitative Violence*, 38 FED. COM. L.J. 317, 347 (1987).

38. FRANCESCO PARISI, LIABILITY FOR NEGLIGENCE & JUDICIAL DISCRETION 1 (2d ed. 1992).

39. *See* sources cited *supra* note 37.

40. *See* T. SHERMAN & A. REDFIELD, LAW OF NEGLIGENCE § 6, at 11 (6th ed. 1913).

The instant case turned on the element of duty.⁴¹ In a negligence case, the element of duty is characterized as a burden to conform one's behavior to a "particular standard of conduct toward another."⁴² Imposing this duty on a party is fundamentally a question of policy.⁴³ Duty mandates an "obligation to limit freedom of action and to conform to a prescribed course of conduct."⁴⁴ In sum, "there can be no negligence where there is no breach of duty."⁴⁵

IV. ANALYSIS

The *Delgado* court's analysis was limited to an examination of negligence and premises liability.⁴⁶ On both claims, the primary dispute was whether the theater owner owed a duty of care to the parents of the deceased, Marcos Delgado, Jr.⁴⁷

First, under their negligence claim, the plaintiffs alleged that because AMC had adopted the MPAA rating system, AMC's failure to confirm the age of Aiolentuna was a breach of a self-imposed duty, with the foreseeable result of violence against Delgado.⁴⁸ In support of this assertion, the plaintiffs relied on *Weirum v. RKO General, Inc.*⁴⁹ In *Weirum*, a radio station conducted a contest where listeners were rewarded for arriving first at a specified location.⁵⁰ As a result, two listeners driving separate vehicles sped toward a specific location and caused an unsuspecting third party to veer off the roadway.⁵¹ The *Weirum* court found that the risk of an auto accident was foreseeable because the contest encouraged speeding on crowded streets.⁵² In accordance with *Weirum*, the plaintiffs contended "that if a theater fails to ensure that a minor is accompanied by an adult when viewing a violent and graphic R-rated movie, there is a possibility that the minor will become violent and commit acts of violence upon other persons, whether on the premises of the movie theater or not."⁵³ The court in *Delgado* found this argument unconvincing, however, since the plaintiffs did "not allege

41. See *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838, 840 (Ct. App. 1999).

42. *Prettyman & Hook*, *supra* note 37, at 347 (citing W. PROSSER, LAW OF TORTS § 53, at 324 (4th ed. 1971)).

43. See *id.*

44. SHERMAN & REDFIELD, *supra* note 40, § 9a, at 14 (quoting BEVEN ON NEGLIGENCE 10 (3d ed.)).

45. *Id.* § 15, at 30.

46. See generally *Delgado*, 85 Cal. Rptr. 2d at 838.

47. See *id.* Even though the plaintiffs did not assert a premises liability claim, the court found that their complaint sought to support this cause of action, and thus it merited analysis. See *id.*

48. Appellant's Opening Brief at 7, *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838 (1999) (No. B-117790).

49. See *id.* at 8 (citing *Weirum v. RKO General, Inc.*, 539 P.2d 36 (1975)).

50. See *Weirum*, 539 P.2d at 37.

51. See *id.* at 38-39.

52. See *id.* at 40.

53. Appellant's Opening Brief at 9, *Delgado*, 85 Cal. Rptr. 2d 838 (1999) (No. B-117790).

respondent [AMC] encouraged Aiolentuna towards violence.”⁵⁴ Thus, it found that Delgado was not a foreseeable victim of AMC’s alleged negligence.⁵⁵

The tribunal explained, in dicta, that because the purpose of the movie rating system is to protect children from viewing questionable movies, a duty is owed to the parents of the viewing child, but “it was not designed or intended to protect society at large.”⁵⁶ Thus, while the theater may have breached a duty to Aiolentuna’s parents, the defendant owed no duty of care to the parents of Delgado.⁵⁷

In support of this conclusion, the court cited *Abrams v. City of Rockville*.⁵⁸ In *Abrams*, a seven-year-old girl was permitted by school teachers to view the PG-rated movie *Poltergeist*, in an after-school program.⁵⁹ As a result of viewing the film, the girl suffered sleeplessness and nightmares.⁶⁰ The *Abrams* court determined that the teachers and the school owed a duty to the girl and her parents “to refrain from causing harm to her.”⁶¹

Drawing from *Abrams*, the court concluded that AMC owed no duty to the plaintiffs to prevent Aiolentuna from viewing the R-rated movie without an adult, but that it might owe a duty to the parents of the viewing child should he or she be injured.⁶² Thus, in post-*Delgado* rulings, it is conceivable that parents of minors claiming their children were harmed by being admitted into an R-rated movie may clear the duty hurdle and force courts to grapple with the issue of causation.

Second, the plaintiffs’ alternative argument was based on the theory of premises liability, which the court quickly discarded.⁶³ Under premises liability, property owners will be held liable “for a third party’s criminal conduct where the” owners did not “exercise reasonable care

54. *Delgado*, 85 Cal. Rptr. 2d at 841. Similarly, the court rejected plaintiffs’ reliance on *Hoyem v. Manhattan Beach School District*, 150 Cal. Rptr. 1 (Ct. App. 1978). In *Hoyem*, the court held that parents have a cause of action against the school district when their child sustains injuries after leaving the school premises during school hours without authorization. *Hoyem v. Manhattan Beach Sch. Dist.*, 150 Cal. Rptr. 1 (Ct. App. 1978). The plaintiffs in *Delgado* cite this decision to represent the notion “that a property owner’s duty of care can extend to acts beyond its property line.” *Delgado*, 85 Cal. Rptr. 2d at 841. The *Delgado* court discarded this notion, however, because the issue in the instant case was to *whom* the duty was owed, not whether the duty reached the fatal shooting. *See id.*

55. *See Delgado*, 85 Cal. Rptr. 2d at 841.

56. *Id.*

57. *See id.*

58. *See id.* (citing *Abrams v. City of Rockville*, 596 A.2d 116 (Md. App. 1991)).

59. *See Abrams*, 596 A.2d at 121-22.

60. *See id.* at 118.

61. *Id.* at 122.

62. *See Delgado*, 85 Cal. Rptr. 2d at 841. Yet, despite the narrow proposition for which the *Delgado* court referred to it, the *Abrams* decision is more apt to be characterized as enlarging, rather than limiting the duty element. In fact, the *Abrams* court itself endorsed the obligation of a duty upon a school and its teachers to “refrain from causing” its students harm by showing the children a horror movie. *See Abrams*, 596 A.2d at 122. Thus, it is odd that the *Delgado* court hand-picked the Maryland decision of *Abrams* as a model for restricting the duty element.

63. *See Delgado*, 85 Cal. Rptr. 2d at 841-42.

over property they owned or controlled.”⁶⁴ The plaintiffs argued that California case law extends the “property owner’s duty in the context of injuries occurring *off* the premises . . . [to include injuries where] . . . the harm was foreseeable and . . . where there was a functional connection between the owner’s conduct and the injury.”⁶⁵ Thus, the plaintiffs asserted that although Delgado was not actually on AMC’s property, a “functional connection”⁶⁶ existed between the theater’s failure to conform with its own policies and the Delgados’ son’s murder.⁶⁷

In support of this contention, the Delgados relied on *McDaniel v. Sunset Manor Co.*⁶⁸ In *McDaniel*, a child wandered onto the defendant’s land through an opening in a fence and nearly drowned in a nearby creek on the property.⁶⁹ The court held that the landlord owed a duty to keep the fence in upright condition.⁷⁰ The court in the instant case, however, rejected the plaintiffs’ claim of a “functional connection,” because in *McDaniel* liability was imposed as a result of a defective condition of the owner’s land, unlike here where the physical condition of the theater was not in dispute.⁷¹ Thus, since a physical defect in AMC’s theater did not cause the injury, AMC could not be held liable.⁷²

In sum, the court was not persuaded that AMC owed a duty of care to the plaintiffs’ son,⁷³ under negligence or under the more stringent standard of premises liability.⁷⁴ The court concluded the movie rating system did not result in the creation of a duty that ran to Delgado’s family.⁷⁵ In addition, the *Delgado* tribunal rejected any inference under premises liability that a “functional connection” existed between the theater and the murder because the physical condition of the movie theater was not a cause of the violence.⁷⁶

A. *The Time was Ripe for Bold Judicial Intervention*

Due in large part to the string of school shootings, the *Delgado* ruling was handed down at perhaps the height of national skepticism against movie violence. A Gallup Poll taken shortly after the Colum-

64. *Id.* at 841.

65. Appellant’s Opening Brief at 15, *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838 (1999) (No. B-117790).

66. *Delgado*, 85 Cal. Rptr. 2d at 841. The court described “functional connection” to mean a “formulation of the well-established rule that premises liability can exist for injuries suffered off premises if a dangerous condition on the property substantially caused the injuries.” *Id.* at 842 n.2.

67. *See id.* at 841.

68. *See id.* at 842. (citing *McDaniel v. Sunset Manor, Co.*, 269 Cal. Rptr. 196 (Ct. App. 1990)).

69. *See McDaniel*, 269 Cal. Rptr. at 197.

70. *See id.* at 200-01.

71. *Delgado*, 85 Cal. Rptr. 2d at 842.

72. *See id.* at 841.

73. *See id.* at 841-42.

74. *See id.*

75. *See id.* at 841.

76. *See id.* at 842.

bine High School shooting found that eighty-one percent of American adults believed violent entertainment contributed to societal violence.⁷⁷ Another survey released a month after the Littleton, Colorado tragedy found that seventy percent of adult respondents believed non-news television aired too much violence.⁷⁸

Despite rising concern regarding movie violence, the United States Congress and the California Legislature have failed to enact laws to address this growing anxiety. In fact, no American legislative or judicial body to date has determined that a movie may drive a person to commit a violent act. Yet, confronted with the daunting task of curbing movie violence, the *Delgado* tribunal could have drawn guidance from the similarly postured New Jersey Supreme Court in its 1959 landmark decision of *Rappaport v. Nichols*.⁷⁹

In *Rappaport*, a tavern owner was sued under ordinary negligence for harm caused by a minor who had been served alcohol at the establishment.⁸⁰ The intoxicated adolescent then killed another by negligently operating his automobile.⁸¹ The decedent's estate filed suit against the tavern.⁸² The *Rappaport* court held that by serving the minor alcohol, the tavern owner may have caused the accident which killed the third party.⁸³ Not only did the court hand down this decision in the absence of legislative direction, but the ruling was contrary to the prevailing view of the day.⁸⁴

Fueling the New Jersey Supreme Court's decision was the rise of drunk driving-related traffic accidents.⁸⁵ In the aftermath of *Rappaport*, "courts began to recognize a common-law duty owed by dramshop operators and other vendors of alcoholic beverages to anyone who might foreseeably suffer harm at the hands of a patron to whom the dramshop had negligently served alcohol and who negligently drove an automobile."⁸⁶ Furthermore, courts have expanded dramshop liability principles beyond commercial dramshops⁸⁷ to embody social hosts,⁸⁸ employ-

77. See Dan Hulbert, *Scared New World; Parents Decry Lack of Control over Film Violence*, ATLANTA J. & CONST., Nov. 30, 1999, at 1D.

78. See Elsa C. Arnett & Aaron Epstein, *Hollywood, Washington at War Over Free Speech*, DAILY NEWS OF L.A., June 20, 1999, at N1.

79. 156 A.2d 1 (N.J. Sup. Ct. 1959).

80. See *id.* at 3.

81. See *id.*

82. See *id.*

83. See generally *id.*

84. See *id.* at 4. ("Most of [the earlier court rulings], while acknowledging the justness of the common law principles which generally result in the imposition of liability for negligent conduct which causes injury to others, have rejected such claims.")

85. See JOSEPH A. PAGE, THE LAW OF PREMISES LIABILITY 316 (2d ed. 1988).

86. *Id.* (citing *Rappaport*, 156 A.2d at 1; *Waynick v. Chicago's Last Dep't Store*, 269 F.2d 322 (7th Cir. 1959), cert. denied 362 U.S. 902 (1960)).

87. Gary T. Schwartz, *The Beginning and the Possible End of the Rise of American Tort Law*, 26 GA. L. REV. 601, 650 (1992).

88. See *id.* at 651.

ers,⁸⁹ and even gas stations.⁹⁰ Correspondingly, in California, a person who sells alcohol to a minor, who subsequently operates a vehicle while intoxicated, is guilty of a misdemeanor.⁹¹

Since the *Rappaport* decision, several courts have recognized a cause of action for a third party against one that sells liquor to an intoxicated person, who subsequently injures the third party.⁹² In short, dramshop liability has evolved from a daring decision by the New Jersey Supreme Court into a widely accepted theory of liability nationwide.

Similar to the New Jersey tribunal in *Rappaport*, the *Delgado* court was presented with an opportunity to curb a well-recognized societal harm. Despite legislative and adjudicative bodies' reluctance to address the spreading concern of movie violence, a majority of Americans supported restrictions designed at toning down violent films.⁹³ The tribunal, however, stayed the traditionalist course by refusing to recognize AMC owed a duty to the plaintiffs.

B. Looking Beyond Duty to the Impenetrable Wall of Causation

In its concise analysis of the plaintiffs' claim of negligence, the *Delgado* court's focus was directed squarely at the duty element.⁹⁴ Yet, by

89. See *id.* n.243 (citing JOSEPH A. PAGE, THE LAW OF PREMISES LIABILITY § 12.21 on social host liability and § 12.23 on employer liability).

90. See Schwartz, *supra* note 87, at 650 (citing *O'Toole v. Carlsbad Shell Service Station*, 247 Cal. Rptr. 663 (Ct. App. 1988)).

91. See CAL. BUS. & PROF. CODE § 25658 (Deering 1999) provides in pertinent part:

(a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing an alcoholic beverage for a person under the age of 21 years and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

Id.

92. See Julia A. Harden, *Dramshop Liability: Should the Intoxicated Person Recover for His own Injuries?*, 48 OHIO ST. L.J. 227, 227 (1987) (citing *Marusa v. District of Columbia*, 484 F.2d 828 (D.C. Cir. 1973); *Buchanan v. Merger Enter., Inc.*, 463 So. 2d 121 (Ala. 1984); *Ontiveros v. Borak*, 667 P.2d 200 (Ariz. 1983); *Davis v. The Flamingo Club, Inc.*, 532 P.2d 975 (Colo. Ct. App. 1974); *Davis v. Shiappacossee*, 155 So. 2d 365 (Fla. 1963); *Ono v. Applegate*, 612 P.2d 533 (Haw. 1980); *Algeria v. Payonk*, 619 P.2d 135 (Idaho 1980); *Elder v. Fisher*, 217 N.E.2d 847 (Ind. 1966); *Lewis v. State*, 256 N.W.2d 181 (Iowa 1977); *Adamian v. Three Sons, Inc.*, 233 N.E.2d 18 (Mass. 1968); *Thaut v. Finley*, 213 N.W.2d 820 (Mich. Ct. App. 1973); *Trail v. Christain*, 213 N.W.2d 618 (Minn. 1973); *Ramsey v. Anctil*, 211 A.2d 900 (N.H. 1965); *Lopez v. Maez*, 651 P.2d 1269 (N.M. 1982); *Berkeley v. Park*, 262 N.Y.S.2d 290 (1965); *Hutchens v. Hankins*, 303 S.E.2d 584 (N.C. Ct. App. 1983); *Mason v. Roberts*, 294 N.E.2d 884 (Ohio 1973); *Campbell v. Carpenter*, 566 P.2d 893 (Or. 1977); *Jardine v. Upper Darby Lounge No. 1973, Inc.*, 198 A.2d 550 (Pa. 1964); *Mitchell v. Ketner*, 393 S.W.2d 755 (Tenn. Ct. App. 1965); *Dickinson v. Edwards*, 716 P.2d 814 (Wash. 1986); *Callan v. O'Neil*, 578 P.2d 890 (Wash. Ct. App. 1978); *Sorensen by Kerscher v. Jarvis*, 350 N.W.2d 108 (Wis. 1984); *McClellan v. Tottenhoff*, 666 P.2d 408 (Wyo. 1983)).

93. Kenneth Turan, *Movies*, L.A. TIMES, Aug. 22, 1999, at 8. A CNN/USA poll found that eighty-one percent of those surveyed were in favor of stricter regulations on the violence portrayed in movies. See *id.*

94. See *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838, 840 (Ct. App. 1999).

determining that no duty was owed to the plaintiffs, the court bypassed an opportunity to analyze the issue of causation. The causation element of negligence requires a reasonable link between the defendant's act and the plaintiff's injury.⁹⁵ While much debate surrounds whether a movie can actually incite a minor to engage in a violent act, statistical data and real-life tragedies suggest media violence has a motivating effect on its young audience.⁹⁶

An analysis conducted by the American College of Forensic Psychiatry in 1998 reviewed nearly 1,000 studies and found all but eighteen demonstrated that screen violence leads to real violence.⁹⁷ Not surprisingly, twelve of the eighteen studies, which found no link between media violence and real life, were funded by the television industry.⁹⁸ In 1972 and 1982, the United States Surgeon General determined that media violence "contributed to antisocial behavior."⁹⁹ Furthermore, the American Medical Association, the American Academy of Child and Adolescent Psychiatry, the National Institute of Mental Health, the American Psychological Association, and the American Academy of Pediatrics unanimously concluded that on-screen violence spills over into the real world.¹⁰⁰

Support for such a causal link is illustrated not only in empirical studies, but is also evidenced in American schools and streets. For instance, a made-for-television movie entitled *Born Innocent* portrayed a woman being raped with the handle of a plumber's helper.¹⁰¹ Four days after the airing of the movie, nine-year old Olivia N. was attacked and sexually assaulted with a bottle on a California beach.¹⁰²

In Mississippi, a young couple reenacted scenes from the ultra-violent film *Natural Born Killers*.¹⁰³ Inspired by the bloody shooting spree portrayed in the movie, the pair embarked on a drug-induced murder orgy, which left a devoted husband of 40 years dead and a mother of three paralyzed from the neck down.¹⁰⁴ When asked about their motive, the woman believed her accomplice "was fantasizing from the movie *Natural Born Killers*."¹⁰⁵ Moreover, serving as an ominous prophecy, *Natural Born Killers* director Oliver Stone said of his movie, "[T]he most pacifistic people in the world said they came out of this

95. See KEETON, *supra* note 37, § 41, at 263.

96. See Grossman, *supra* note 5, at L15.

97. See *id.*

98. See *id.*

99. Massing, *supra* note 2, at 23A.

100. See *id.*

101. See Olivia N. v. National Broad. Co., 141 Cal. Rptr. 511, 512 (Ct. App. 1977).

102. See *id.*

103. See Mark Miller, *Can Pistols Get Smarter?*, NEWSWEEK, Aug. 2, 1999, at 42.

104. See *id.*

105. *Id.*

movie and wanted to kill somebody.”¹⁰⁶

Similarly, in the movie *Basketball Diaries*, a scene where the protagonist opened fire on his classmates and a school teacher was criticized as providing the impetus behind the West Paducah, Kentucky massacre.¹⁰⁷

Even with statistics and real-life accounts signifying a link between violence on the big screen and violence in society, the *Delgado* court steered clear of the causation argument. Not only could the *Delgado* court have drawn upon ample examples and studies signaling a connection between movie violence and murder, the case itself was laden with evidence which would have permitted the court to bridge the causation gap.¹⁰⁸ Aiolentuna’s very words while viewing the movie pave the way for a causation finding: “I’m going to have to go and shoot somebody.”¹⁰⁹ Additionally relevant was the brief period of time which had elapsed between the movie and the murder, further bolstering the plaintiffs’ argument under causation.¹¹⁰

The wealth of empirical evidence linking vicious movies to violence, the short span between the close of the movie and the killing and especially Aiolentuna’s own words, joined to give the court the foundation to expose a causal link. Nonetheless, because the tribunal refused to recognize a duty owed to the plaintiffs, the court evaded the causation discussion.

V. CONCLUSION

Delgado v. American Multi-Cinema, Inc., is unlikely to attract notice immediately. The court’s indifferent treatment of the case guarantees as much. *Delgado* will likely be remembered, if at all, for its apprehensive and hurried treatment of a claim, worthy of more than a cursory analysis.

Quite simply, America was primed for judicial pragmatism to bridle the hazards brought about by movie violence. The court had numerous studies to draw upon linking movie violence and real-life violence by minors. Most compelling, however, was that the facts were custom-tailored for expanding the scope of duty under negligence. The minor acted almost immediately after the movie and his own words—“I’m going to have to go and shoot somebody”—verify that the movie

106. *Id.*

107. See Martha Woodall, *Video Games Rating System Still Eludes Most Parents*, SAN DIEGO UNION-TRIB., Dec. 19, 1999, at E-5; see also Joe Adcock, *Mastrosimone Takes Aim at Horror of School Killings in ‘Bang, ‘Bang*, SEATTLE POST-INTELLIGENCER, Aug. 6, 1999, at 14.

108. See generally *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838 (Ct. App. 1999).

109. *Delgado*, 85 Cal. Rptr. 2d at 839.

110. Appellant’s Opening Brief at 4, *Delgado v. American Multi-Cinema, Inc.*, 85 Cal. Rptr. 2d 838 (1999) (No. B-11790).

inspired his behavior.

However, unlike the pragmatic New Jersey court in *Rappaport* attacking a known societal ill of drunk driving, the *Delgado* tribunal cautiously took the road most traveled.

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