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The Danger of Illusion: A Critique of Safety Regulations in the Television and Motion Picture Industry

By SHAWN M. CHRISTIANSON*
S. CLAIRE SOPER**

The cost of a thing is the amount of what I will call life which is required to be exchanged for it, immediately or in the long run.

—Henry David Thoreau, *Walden*

I Introduction

In the early morning hours of July 23, 1982, actor Vic Morrow and two children, Renee Shinn Chen and Myca Dinh Le, were killed in an accident during the filming of the four-segment movie, "Twilight Zone."¹ Witnesses described the accident as occurring when an "explosive fireball . . . damaged the helicopter's tail rotor, sending the aircraft spiraling into the streambed that Morrow and the two children were crossing as part of a movie combat scene." All three actors were killed instantly.²

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1. L.A. Times, July 27, 1982, § II (Metro), at 1, col. 5.

2. *Id.* Since the July 23, 1982 accident, the California Division of Occupational Safety and Health (CAL/OSHA) has assessed fines totalling \$62,375 against John Landis, the director of the film, and others, for 36 violations of the safety code. Landis, production executives Dan Allingham and George Folsey, and Warner Bros. studios have each agreed to pay the maximum fine of \$5000 assessed against them by the State Labor Commissioner for violations of state labor laws. Landis, Folsey, Allingham, special effects coordinator Paul Stewart, and Dorcey Wingo, the helicopter pilot, were charged with involuntary manslaughter in Los Angeles County Grand Jury indictments. On April 23, 1984, Landis, Wingo, and Stewart were ordered to stand trial on the involuntary manslaughter charges. The charges against Allingham and Folsey were dismissed. If convicted, the three face maximum prison terms of six years.

Wrongful death suits brought by the parents of the two children, including a \$200 million suit brought by the parents of Renee Chen are pending. A similar suit by the daughters of Vic Morrow was settled in December 1983. Terms of the settlement were not released.

The Federal Aviation Administration has revoked Wingo's pilot's license for "care-

The "Twilight Zone" accident immediately became the focus of intense media, legislative, and public interest,³ and yet, it is only the most recent in a series of tragic accidents to strike Hollywood.

On June 25, 1980, actress-stuntwoman Heidi Von Beltz was left a quadriplegic when a car crashed during the filming of the movie "Cannonball Run."⁴ The accident occurred when the sports car in which Von Beltz was a passenger veered out of control and crashed head-on into one of the oncoming vehicles.⁵ A \$1.1 million workers' compensation settlement was approved for the actress, making it the largest workers' compensation award in United States history.⁶ In addition, between June 1980 and January 1981, three camera operators died in film-related accidents.⁷ Unofficial Screen Actors Guild (SAG) statistics report that in 1982, 200-250 injuries occurred during the production of motion pictures.⁸

This note surveys and analyzes the system of regulation which affects the safety of employees working in the motion picture and television industry. It focuses on California laws and regulations, and intra-industry promulgations which govern film safety. Additionally, it critiques the shortcomings and omissions in the state legislation and offers proposals for enhancing employee safety.⁹

II

Background

While a review of the injury and illness data for the motion picture and television industry does not "[indicate] that this is an industry which has as high a number of injuries and ill-

less or reckless" flying on the set and Landis and Folsey have been replaced as the director and producer of "Dick Tracy," a film on which they were to begin shooting in October 1983.

The film, "Twilight Zone," premiered on July 25, 1983, the day the indictments were handed down, with the fatal scene excised.

3. L.A. Times, July 30, 1982, § VI (Calendar) at 1, col. 2.

4. See Complaint at 7-11, Von Beltz v. Cannonball Productions, No. 370 583, Los Angeles Super. Ct. (June 15, 1982).

5. L.A. Times, Jan. 4, 1983, § II (Metro), at 1, col. 1.

6. S.F. Chronicle, Jan. 4, 1983, § I, at 2.

7. Farr, *Are The Thrills Worth Dying For?* T.V. GUIDE, Mar. 13, 1982, at 4-5.

8. Miranda Dunne, *Hollywood Hazards*, KPIX-Channel 5 Eyewitness News, Feb. 10, 1982, Segment 1.

9. Although there is an entire body of law protecting the safety of children working in film, this note will not discuss the industry's child labor laws.

nesses as that of agriculture, construction or heavy manufacturing,"¹⁰ any statistics regarding accidents in the film industry must be viewed with caution due to the difficulty of obtaining accurate and complete statistics.¹¹ As one commentator has noted, "[n]obody knows the true accident statistics. . . . A tremendous number of people are hurt but the studios don't want accidents reported [T]he studios can either hide the cost, or they can have it insured. In the meantime, they break every safety rule in the book."¹²

The SAG Stunt and Safety Committee reported that between October 1981 and October 1982, the Guild "received over a hundred film company accident reports on injuries to SAG members incurred on the sets in town or on location

10. *Employee Safety in California's Motion Picture and Television Industry: Joint Hearing of the Assembly Labor and Employment Committee and the Senate Industrial Relations Committee*, Oct. 8, 1982, at 61 (statement of Art Carter, Chief of CAL/OSHA) [hereinafter cited as *Film Safety Hearing Transcripts*]. All position designations (i.e. Chief of CAL/OSHA, Assemblyman) are pertinent to the date on which the joint hearings took place. Subsequent changes in position are not noted.

11. Statistics must be considered in light of their industry specificity, timeliness, and reporting method. The most complete official information to date is provided through CAL/OSHA, although more industry specific, current, and complete statistics rest with the Screen Actors Guild (SAG). SAG statistics, which are not yet public information, report 200-250 production-related injuries, either fatal or otherwise, for 1982. See Dunne, *supra* note 8. However, these statistics would not include film performers such as the two children killed in the "Twilight Zone" accident because they were not SAG members. See S.F. Chronicle, Dec. 25, 1983, (Datebook), at 25, col. 2. The CAL/OSHA statistics from 1980, on which Art Carter based his assessment of the accident rate in the film industry, include only injuries stemming from *motion pictures*, filmed either for television or theaters. Thus, any accidents which occurred during production of weekly television serials, such as "CHiPs" or "Dukes of Hazzard" would be omitted. Under the rubric of motion pictures, the accident statistics include motion picture distribution as well as production, so an injury to a popcorn vendor would appear in the same compilation as an injury to a stuntman. There has been no differentiation made between motion picture production and theater distribution since 1975. Also, it is notable that the illness-injury rate from CAL/OSHA statistics includes all of the industry's employee exposure hours instead of only the production-oriented hours. Thus, because large studios employ many office workers, the total employee hours may be skewed away from production-oriented statistics. This would keep the total injury rate low in the motion picture industry when the actual production-related injury rate may be significantly higher. The injury-illness findings of the 1980 CAL/OSHA statistics suggest that there were an average of 60,800 persons annually employed in the motion picture industry and 7.1 out of 100 full-time workers missed at least one day of work due to a job-related illness or injury. The workers' compensation statistics for 1980, a separate table entitled "disabling work injuries," indicate that 1,020 injuries occurred in the motion picture industry, resulting in lost or restricted activity workdays. Interview with Karen Jones, Research Manager of the Division of Labor Statistics and Research of Work Injury and Illness Statistics Section, in San Francisco (Feb. 23, 1983).

12. Farr, *supra* note 7, at 8.

[A]dditional information of safety or the lack of it, has come from various stunt organizations and individuals who have observed accidents on the sets, which went unreported officially. . . ."¹³ The under-reporting of accidents on Hollywood sets is often attributed to the status of camera operators and stunt performers as free-lancers who are dependent on the industry's goodwill for employment. They are "hired for individual productions . . . and their livelihoods often depend on carefully cultivated relationships with employers." As one veteran stuntman noted, "[i]t takes a long time to get into this business, and no one wants to get out of it overnight."¹⁴

Although the frequency of accidents is difficult to verify, the potential for severe injury is acknowledged:

Statistics compiled by the Department of Industrial Relations indicate that the injury rate for the motion picture and television industry is not disproportionate and that for the most part the industry has been successful at reducing hazards to workers. However, the potential for injury, especially with respect to the staging of stunts, is so substantial and involves such calculated and planned risks that periodic legislative inquiry is warranted.¹⁵

The potential for severe injury stems from the unique nature of the motion picture and television industry. The film industry's foundation is illusion, and the problems inherent in recreating the make-believe have escalated as the public's appetite for ever more spectacular stunts has increased.¹⁶ The thrills that ensure successful box office draw and impressive televi-

13. *Film Safety Hearing Transcripts*, *supra* note 10, at 38-39 (statement of Robert Herron, Chairman of SAG Stunt and Safety Committee).

14. London, *safety first, last or if ever?* L.A. Times, Feb. 6, 1983, (Calendar), at 1, col. 1. This problem was emphasized by Ed Asner, President of SAG, prior to the contract talks between SAG and the Alliance of Motion Picture and Television Producers (AMPTP) in May 1983. He suggested that, while toughening safety standards is a major concern, the issue goes much deeper. He described the problem as "unspoken psychological peer pressure" and emphasized that SAG members must "learn how to say 'no' when it's requisite for the safety of life and limb. We [SAG] have to teach ourselves to blow the whistle on safety problems" L.A. Times, May 17, 1983, (Calendar), at 6, col. 1.

15. *Film Safety Hearing Transcripts*, *supra* note 10, at i (introductory letter by Assemblyman Chet Wray, Chairman of Assembly Committee on Labor and Employment, and Senator Bill Greene, Chairman of Senate Committee of Industrial Relations).

16. London, *The Stunt Man: Issue of Safety v. Spectacle*, L.A. Times, Feb. 7, 1983, (Calendar), at 1. As director Paul Stanley noted, "[w]e're in the business of creating illusions. But illusions take time—you have to sit down with the art director, the stunt people and the camera operators. On some shows now, they just go for reality." *Id.* at 2.

sion ratings "require the filming of scenes which appear dangerous and exciting. Thus, there is pressure on producers within the industry to escalate the realism and hazardous appearance of stunts and action scenes."¹⁷

This escalation has led many professionals, such as camera operators and stunt people, to complain that in order to achieve bigger and more spectacular stunts "some employers will ignore wisdom and the counsel of experts,"¹⁸ placing the employees in positions of great peril sometimes resulting in serious injury or death.

The quest for the sensational is not the only employer motivation that occasionally overrides safety considerations. Cost is also a major concern:

[S]afety . . . is a touchy subject because it is tied partly to profits. Television shows run on tight budgets and schedules; and a director, eager to please his producer . . . might not take the time necessary to set up a complicated stunt safely, or spend the money to rent a camera lens that would keep a camera operator farther from the action.¹⁹

Motion picture directors are faced with the same demands of adhering to time and budget constraints.²⁰ Also, the increased incidences of actors performing their own stunts, often without proper training or experience, has added to the perils of filmmaking.²¹

Although stunt work is inherently dangerous, it is not necessarily unsafe. On the contrary, "spectacular stunts need not be unsafe if set up correctly, by experienced people, given a proper amount of time."²² The motion picture and television industries are vital to the California economy²³ and should be encouraged, indeed invited, to work in the state. However, equally vital are the needs and rights of the employees of this

17. *Film Safety Hearing Transcripts*, *supra* note 10, at 8 (introduction by Peter Cooley, Senior Consultant, Assembly Committee on Labor and Employment).

18. *Id.* at 36-37 (statement of James Nissen, SAG Safety Director and Assistant National Executive Secretary).

19. Farr, *supra* note 7, at 6.

20. *Film Safety Hearing Transcripts*, *supra* note 10, at 46 (statement of Arthur Hiller, Directors Guild of America).

21. See Dunne, *supra* note 8 (statement of actor Kent McCord).

22. *Film Safety Hearing Transcripts*, *supra* note 10, at 39 (statement of Robert Herron).

23. Production of motion pictures contributed \$3.8 billion of revenue to the State of California in 1979. Telephone interview with Kristan Wagner, State of California Motion Picture Council (Feb. 14, 1983).

industry who deserve to be safeguarded against exposure to truly unsafe working conditions.

III

California Laws and Regulations Governing Motion Picture Safety

Currently there is no California legislation tailored to govern safety in the television and motion picture industry. California administers its occupational safety and health program pursuant to the provisions of the federal Occupational Safety and Health Act (OSHA) enacted in 1970.²⁴ California's plan for total enforcement of OSHA, the California Occupational Safety and Health Act (CAL/OSHA),²⁵ was approved and adopted in 1973. CAL/OSHA applies to virtually all workers in the state, including members of the television and motion picture industry.

OSHA's purpose, as stated in the Act, is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources"²⁶ Thus, the announced goal of OSHA is to prevent accidents, rather than to police the industry in order to punish violators of safety standards. The language used by Congress indicates that the goal of this safety regulation is "absolute safety" at all costs, and no mention is made of the potential expense of adhering to such regulation.²⁷

OSHA permits a state to regulate occupational safety and health within its borders, so long as the standards adopted are *at least* as effective as the federal standards which have been promulgated.²⁸ Because CAL/OSHA meets the minimum federal requirements, there is no conflict between the state and federal OSHA authorities.²⁹

24. 29 U.S.C. § 651(b) (1976).

25. CAL. LAB. CODE §§ 6300-6708 (West Supp. 1982). CAL/OSHA is used to refer both to the California statute and to the agency charged with enforcing it, depending on the context.

26. 29 U.S.C. § 651(b) (1976).

27. For a discussion of the debate between "absolute" and "cost-benefit" approaches to safety, see Marten, *Regulation of the Transportation of Hazardous Materials: a Critique and a Proposal*, 5 HARV. ENVTL. L. REV. 345, 359-61 (1981).

28. CAL. LAB. CODE § 142.3(a) (West Supp. 1982).

29. CAL. LAB. CODE §§ 140-147.1 (West Supp. 1982). The state Occupational Safety and Health Standards Board may impose higher standards than has the federal government and it has done so in several areas, including control of pesticides and hazard-

The rules of the California Occupational Safety and Health Standards Board, codified in title 8 of the California Administrative Code entitled Industrial Relations,³⁰ pertain to safety in all industries. They are typified by technical mandates relating to specific industries, such as construction and electrical safety orders. Title 8 of the California Administrative Code consists of five lengthy volumes; the employer charged with ensuring safety on the television or motion picture set must be familiar with each of the technical areas covered by title 8 in order to recognize violations of the safety standards.

Currently there are no specific rules regulating safety in the television and motion picture industry in title 8 of the California Administrative Code. There is, however, a general duty of employers and employees to promote safety and health in employment under California Labor Code sections 6400 and 6401.³¹ These sections require an employer to provide a reasonably safe and healthful place of employment, to furnish safety devices and safeguards, and to use reasonably adequate methods to ensure safety.

Because the provisions of OSHA apply only to proceedings against employers, the identity of the statutory employer when an accident occurs is an important issue. The term "employer" is defined in Labor Code section 3300(c) as "[e]very person including any public service corporation, which has any natural person in service."³² The "employer" on a television or movie set is usually the producer, but his status may be indefinite due to the relationship between the producer and the director, contractual relationships regarding the financing of the production, and contractual relationships between producers and stunt contractors who provide their own crew members.³³

In addition to the general responsibility of the employer to provide a safe working environment for his employees, the employee has a statutory right to refuse to perform a task because of fear of death or serious injury.³⁴ However, in an industry

ous materials in the work place. Interview with Richard Stevens, Public Information Officer of CAL/OSHA, in San Francisco (January 1983).

30. CAL. ADMIN. CODE tit. VIII (1983).

31. CAL. LAB. CODE §§ 6400, 6401 (West Supp. 1982).

32. CAL. LAB. CODE § 3300(c) (West 1971).

33. The historical difficulty of determining employer responsibility in these more complex employment relationships will be addressed in Part VI, along with other criticisms of the current regulatory system. See *infra* text accompanying notes 106-118.

34. CAL. LAB. CODE § 6311 (West Supp. 1982). Camera operators may also base

such as the motion picture and television industry, where the employee's future livelihood may depend upon appeasing management, the personal choice to refuse to perform is weakened.

Anyone who violates any of the rules of the California Occupational Safety and Health Standards Board may be subject to civil or criminal penalties. Alleged violations are classified as either serious,³⁵ general,³⁶ or regulatory.³⁷ Depending on the circumstances, violations may also be designated as repeat³⁸ or willful.³⁹ Serious, repeat, and willful violations always receive penalties. The maximum civil penalty for willful or repeat violations is \$10,000 for each violation.⁴⁰ The maximum penalties for violations may be adjusted downward if the Division of Occupational Safety and Health determines that a lesser fine is appropriate under the circumstances.⁴¹

Criminal penalties may be imposed if an employer or employee willfully violates an OSHA standard or order. A willful violation causing death or permanent or prolonged impairment to an employee carries a maximum fine of \$10,000 or imprisonment of not more than six months, or both. If the violation is a second offense, the penalty escalates to \$20,000 and/or imprisonment of not more than one year.⁴²

refusal to do a shot, which endangers them or anyone else, on a provision in their contracts. However, cinematographer Brianne Murphy pointed out that the provision is meaningless because, "[y]ou can say no, but you won't work tomorrow." L.A. Times, July 30, 1982, § VI (Calendar) at 9, col. 3.

35. A serious violation is defined as one which presents "substantial probability" that an employee will suffer "death or serious physical harm . . . unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." CAL. LAB. CODE § 6432 (West Supp. 1982).

36. A general violation is one which does not fit the definition of serious, but which does affect the safety and health of employees. CAL. LAB. CODE § 6427 (West Supp. 1982).

37. A regulatory violation is one that pertains to permits, posting, recordkeeping, or reporting requirements as established by OSHA. CAL. LAB. CODE § 6431 (West Supp. 1982).

38. CAL. LAB. CODE § 6429 (West Supp. 1982).

39. *Id.*

40. *Id.*

41. Adjustments are based on some or all of the following: (1) the gravity of the violation; (2) the size of the business as determined by the number of employees; (3) the good faith of the employer as demonstrated by the quality and extent of the safety program the employer has in effect, and the evidence of the employer's effort to comply with the Occupational Safety and Health Act; (4) the business's or employer's history of previous violations; (5) whether the employer is making a good faith effort to eliminate quickly an alleged violation.

42. CAL. LAB. CODE § 6425 (West Supp. 1982). Certain hazards on the set do not fall

IV

Labor and Management Measures to Enhance Employee Safety

A. Intra-Industry Directive Orders

Although the California legislature and CAL/OSHA have primary responsibility for the promulgation and enforcement of regulations protecting worker safety within the state, voluntary intra-industry steps have also been taken to address film industry safety problems. Both labor and management have established safety committees in an effort to enhance employee safety.

The best known, and historically the most influential of these committees, is the Motion Picture and Television Safety Committee, formed by the Alliance of Motion Picture and Television Producers (AMPTP) under the auspices of the Contract Services Administration Trust Fund (CSATF).⁴³ The purpose of the Motion Picture and Television Safety Committee, founded in June 1965, is to "benefit . . . employees of the Motion Picture and Television Industry . . . [and] to reduce the number and severity of all types of injuries from occurring in both post production and production operations."⁴⁴ This committee, sometimes referred to as the Labor-Management Safety Committee of the Motion Picture and Television Film Industry, establishes guidelines, publishes bulletins, and distributes pamphlets pertaining to safety standards within the motion picture and television industry.⁴⁵

within the parameters of CAL/OSHA. Among the state and federal bodies with concurrent responsibility for regulation of film safety are: the Federal Aviation Administration (FAA), which regulates helicopters and other aircraft; the National Transportation and Safety Board (NTSB), charged with investigating civil aircraft accidents and reporting on their probable causes; and the State Highway Patrol's Department of Motor Vehicles, which establishes standards for accidents involving moving vehicles. A comprehensive analysis of the standards set by these governmental bodies is beyond the scope of this note.

Use of wild animals, explosives, pyrotechnics, guns and other instruments for special effects on the set is controlled by the intra-industry directive orders discussed in Part IV *infra*, by the State Fire Marshal and by the federal government which licenses gun dealers.

43. *Film Safety Hearing Transcripts*, *supra* note 10, at 11 (introduction by Peter Cooley).

44. *Id.* at 56.

45. Examples of these pamphlets are entitled *Recommended Safety Procedure Pertaining to the Shoulder Mounted Camera* and *Working With Animals in the Motion Picture and Television Film Industry*.

The bulletins and pamphlets developed and distributed by the Labor-Management Safety Committee are referred to as directive orders, but actually function as little more than recommendations. For example, the Committee to Investigate Safety Aspects of Camera Insert Cars,⁴⁶ organized under the auspices of the Motion Picture and Television Safety Committee, addressed the major areas of safety concern associated with the use of such vehicles, and issued safety bulletins regarding their findings in July 1981.⁴⁷ Yet in October 1982, James Nissen, SAG Safety Director and Assistant National Executive Secretary, identified insert cars as a "major [area] of concern" and called for the establishment and enforcement of legislative standards relating to various aspects of insert car operation.⁴⁸ Thus, it is not surprising to find that the Labor-Management Safety Committee is generally considered to be ineffective.

One reason, perhaps, for this perceived impotence is the make-up of the committee, which, despite its membership of employer and union representatives, is unable to do more than promulgate recommendations. Two union participants stated that the committee lacks both "teeth"⁴⁹ and "backbone . . . to enforce the things that we spend months going over and working on."⁵⁰ Additionally, a spokesman for the committee admits that it has "little or no contact with . . . [independent] producer[s]."⁵¹ The level of participation of the committee is controlled by the producers who determine both the frequency and continuity of the meetings.⁵² Despite a statement of purpose which purports "historically . . . monthly meetings . . . since June of 1965,"⁵³ these meetings were abruptly terminated recently without explanation—a termination viewed with frustration by members of the Screen Actors Guild Stunt and

46. Insert cars are modified vehicles which carry cameras and crew members to follow the action shots and record the scene. *See Film Safety Hearing Transcripts*, *supra* note 10, at 34.

47. *Id.* at 21-27.

48. *Id.* at 32 (statement of James Nissen). Mr. Nissen here refers to transportation as the "major area of concern" but identifies insert cars as the focal point for his transportation concerns at 34.

49. *See Film Safety Hearing Transcripts*, *supra* note 10, at 132 (Transcript of Hearing, Oct. 8, 1982) [hereinafter cited as Transcript of Hearing].

50. *Id.* at 118.

51. Transcript of Hearing, *supra* note 49, at 96.

52. *See Film Safety Hearing Transcripts*, *supra* note 10, at 39 (statement of Robert Herron).

53. *Id.* at 57.

Safety Committee.⁵⁴

B. Additional Industry Safety Committees

The Directors Guild of America (DGA) also formed a Committee on Safety. Its activities consist largely of inviting union representatives to attend as guests weekly meetings to discuss their perceptions of safety problems. This practice is intended to assist the DGA Committee on Safety in formulation of recommendations.⁵⁵

On the employee side, committees have also been formed to address industry safety problems. The National Stunt and Safety Committee of SAG, formed over two years ago, has a membership of over 140 actors, stunt players, and stunt coordinators.⁵⁶ This committee established a three-man accident investigation team with the purpose of "determining the probable cause of the numerous accidents that have happened to SAG members over the past couple of years."⁵⁷ This accident investigation team aided the National Transportation Safety Board (NTSB) and the Federal Aviation Administration (FAA) in the "Twilight Zone" investigation.⁵⁸

The International Photographers, Local 659 and two leading Hollywood stunt associations formed an ad hoc safety committee in an attempt to draw the attention of the entire Hollywood community to the dangers to crew members in film production. They also urged the movie studios to adopt more stringent safety measures. This committee met with strong resistance from producers and studio executives but has had greater success since the "Twilight Zone" accident escalated the industry's safety awareness.⁵⁹ The chairman of this committee noted that "[t]he most dramatic change is in communication Because safety isn't such a dirty secret any longer, there's a lot more talking and cooperation on sets."⁶⁰

C. Collective Bargaining and Contracts

Collective bargaining is another important facet of the intra-

54. *Id.* at 39 (statement of Robert Herron).

55. *Id.* at 79 (letter from Elliot Silverstein to Robert Marta).

56. *Id.* at 38 (statement of Robert Herron).

57. *Id.*

58. *Id.*

59. London, *supra* note 14, at 22-23.

60. *Id.* at 1.

industry approach to safety regulation. The Screen Actors Guild, a member of the AFL-CIO, represents over fifty thousand stunt people and actors in motion picture, television, and commercial and industrial film. The language of the SAG contract states that players employed under the contract "shall, to the extent possible, not be placed in circumstances hazardous or dangerous to the individual."⁶¹

The technical personnel necessary to produce a motion picture, including camera operators, first aid technicians, and special effects people, are represented by their own individual unions, but bargain jointly with the Association of Motion Picture and Television Producers through the International Alliance of Theatrical and Stage Employees (IATSE). During contract negotiations in October of 1982, Local 767, the Motion Picture First Aid employees, attempted to establish a minimum number of first-aid personnel that must be assigned to productions, an area traditionally left to the discretion of production company executives. This figure would have varied depending on the number of people in the production company or with the number of concurrent stunts being done.⁶² The producers' negotiating team refused to establish such a standard and declined further discussion of the matter. Thus, the extent to which a contract can protect SAG and IATSE members depends on their success in the negotiation process. The question has been raised whether safety is too important an aspect of motion picture and television employment to be relegated to just another item on the bargaining table.⁶³

D. Major Studio Safety Directors

An additional step taken by individual major studios to enhance employee safety has been the appointment of safety directors to oversee working conditions on their production sets. At Paramount Pictures Corporation, the appointment of a safety director in October 1979, at a point when the company ranked fifteenth out of eighteen subsidiaries of Gulf Western Industries, Inc. in losses resulting from workers' compensation claims, resulted in an 89% reduction in similar losses within a

61. *Film Safety Hearing Transcripts*, *supra* note 10, at 31 (statement of James Nissen).

62. *Id.* at 72 (letter from Marvin Haffner to Assemblyman Chet Wray).

63. *Id.* at 51 (statement of Robert Marta).

period of only nine months.⁶⁴ While Paramount's success is encouraging, it is not necessarily representative of the industry as a whole, for Paramount's safety director monitors primarily sitcoms requiring virtually no special effects.⁶⁵ Nevertheless, the studio's development of a preventive, effective safety program reflects a spirit of safety awareness beneficial to fostering intra-industry goals of maximizing employee safety.

V

Bringing an Action: Workers' Compensation Claims Versus Common Law Liability

With certain exceptions, the California workers' compensation law⁶⁶ provides an *exclusive* remedy⁶⁷ against the employer for an industrial injury in California. The general workers' compensation provision states that where an "employer—employee" relationship exists and where injury or death to the employee arose out of and in the course of employment, the employer is strictly liable regardless of negligence.⁶⁸

As is discussed in Part VI, the statutory employer on a television or motion picture set is usually determined to be the production company.⁶⁹ In each case it must also be decided whether the injured performer was an independent contractor or a "statutory employee."⁷⁰ This is often an issue in the motion picture and television industry, where stunt persons and camera operators are hired for individual productions on a free-lance basis. Generally, where there is proof that an injured person was performing a service for an alleged employer at the time of injury, it is the employer's burden to show that

64. Dinstein, CAL/OSHA News, *A Safety Program's Impact at Paramount*, at 4 (Feb. 1981).

65. Telephone interview with Ken McGowan, Safety Director, Paramount Pictures Corp. (Jan. 1983).

66. CAL. LAB. CODE §§ 3201-4154 (West 1971). The California Workers' Compensation Act is administered by the Division of Industrial Accidents, one of the six divisions of the Department of Industrial Relations. *Id.* § 56 (West Supp. 1982).

67. *Id.* § 3601 (West Supp. 1982); *id.* § 5300 (West 1971).

68. *Id.* § 3600 (West Supp. 1982).

69. See *infra* text accompanying notes 107-110.

70. See London, *supra* note 14, at 1. The rule in many tort cases is that an employer is not liable for the negligence of an independent contractor of the latter's employees. *E.g.*, Stark v. Weeks Real Estate, 94 Cal. App. 3d 965, 156 Cal. Rptr. 701 (1979); Addison v. Susanville Lumber, Inc., 47 Cal. App. 3d 394, 120 Cal. Rptr. 737 (1975); West v. Guy F. Atkinson Constr. Co., 251 Cal. App. 2d 296, 59 Cal. Rptr. 286 (1967).

the injured person was an independent contractor or otherwise excluded from workers' compensation protection.⁷¹

Courts have used a number of criteria to determine whether a person was an employee or an independent contractor.⁷² The cases that apply these criteria do so inconsistently and often seem result-oriented, finding an employment status that will enable the injured party or his family to receive a large damage award.⁷³ The issue usually turns on factual considerations such as control over the details of the worker's duties, the right to discharge the worker, and the duty to pay the worker's salary.⁷⁴ Each of these practices is viewed in light of custom in the industry.

A number of workers' compensation cases have found in-

71. CAL. LAB. CODE § 3357 (West 1971).

72. The guidelines for determining the existence of an employer-employee relationship are:

- (1) The extent of actual control over the performance of the services by the person for whom the services are rendered; the greater the control the more likely there is to be an employment relationship.
- (2) Whether or not the one performing the services is engaged in a distinct occupation or business; if so, it is likely the worker is an independent contractor.
- (3) Whether the work is usually done under the direction of the employer or by a specialist without supervision; if the work is done under the direction of the employer, the worker is more likely to be considered an employee.
- (4) The amount of skill required; the more skill required, the greater the indication of an independent contractor.
- (5) Whether the person performing the services supplies the instrumentalities of the business; if so, he is likely to be an independent contractor.
- (6) The length of time services are performed; the greater the time, the more likely an employment relationship.
- (7) The method of payment; for example, by the job for independent contractors and by time for employees.
- (8) Whether or not the work done is part of the regular business of the employer; if so, the worker is more likely to be an employee.
- (9) Whether or not the parties believe they are creating an employment relationship.
- (10) Whether the person performing the services is or is not in his own business; if so, the worker is more likely to be an independent contractor.

See RESTATEMENT (SECOND) OF AGENCY § 220 (1958). The Restatement criteria have been approved by the California courts. *Tieberg v. Unemployment Insurance Appeals Bd.*, 2 Cal. 3d 943, 950 & n.4, 471 P.2d 975, 980 & n.4, 88 Cal. Rptr. 175, 180 & n.4 (1970).

73. Frackman, *The Failure to Pay Wages and Termination of Entertainment Contracts in California: Some Implications of the Labor Code*, 52 S. CAL. L. REV. 333, 369 (1979).

74. J. MASTORIS, SUMMARY OF 1979-1980 CALIFORNIA WORKERS' COMPENSATION LAW 3 (1980).

jured performers to be employees.⁷⁵ In *Durea v. Industrial Accident Commission*,⁷⁶ the Industrial Accident Commission concluded that a stunt rider was performing services for a motion picture and television actor as an employee. The Commission considered it important that the actor supplied the props, had general supervision and immediate control of the details of the performance, and prepared and arranged the show in which the stuntman was hired to assist.

Similarly, in *Locklear v. William Fox Vaudeville Co.*,⁷⁷ a stunt aviator/motion picture actor was found to be an employee rather than an independent contractor. The case turned on the fact that the deceased was subject to the direction and control of the defendant company as to the details of his performance, even though the actor was allowed artistic discretion in performing his act and provided his own plane and pilots.⁷⁸

A contrary determination as to employment status has been reached in cases where theatrical companies have hired entertainers to perform at a fixed price for a given number of performances.⁷⁹ In *Brosius v. Orpheum Theatre Co.*,⁸⁰ the California Court of Appeal found that a performer who personally prepared and arranged his act was not an employee within the Workers' Compensation Act because the theatre corporation did not have *complete* control over the performer. Likewise, in *Helekunihi v. Liberty Theatre*,⁸¹ a musical performer was held to be an independent contractor although the theatre manager had demanded changes in the act with which the performer had complied. The court found it to be customary practice in theatrical circles for theatres to suggest changes in the details of acts; therefore, the manager's exercise of this limited degree of control did not establish employee status.⁸²

Where the injured performer seeks damages in excess of

75. *E.g.*, *Seale v. Columbia Pictures Corp.*, 6 Cal. Comp. Cases 306 (1941); *Gitterman v. Twentieth Century Fox Film Corp.*, 5 Cal. Comp. Cases 181 (1940); *Crowson v. H-A Circus Corp.*, 4 Cal. Comp. Cases 52 (1938); *Locklear v. William Fox Vaudeville Co.*, 8 I.A.C. 211 (1921).

76. 206 Cal. App. 2d 691, 699, 23 Cal. Rptr. 902, 906 (1962).

77. *Locklear*, 8 I.A.C. at 211.

78. *Id.* at 212.

79. *E.g.*, *Smith v. Fox Theater*, 20 I.A.C. 17 (1934); *Helekunihi v. Liberty Theatre*, 14 I.A.C. 145 (1927).

80. 16 Cal. App. 2d 61, 66 (1936).

81. 14 I.A.C. 145 (1927).

82. *Id.*

workers' compensation, he may try to argue that he was an independent contractor rather than an employee. This approach was used in *Miller v. Municipal Theatre Ass'n of St. Louis*,⁸³ where actress Ann Miller brought a tort suit against the city of St. Louis and the Municipal Theatre Association of St. Louis for injuries sustained during the play "Anything Goes." The actress based her claim of independent contractor status on the facts that she provided certain "tools of the trade" such as her own hairdresser, that she was paid higher wages than other participants because of her talent and fame, and that she retained and exercised, in accord with industry custom, "creative control"⁸⁴ over her performance.⁸⁵ Basing its decision on all of these factors, the court held that neither the city nor the municipal theatre association had met its burden of proving the affirmative defense that plaintiff was a statutory employee and therefore barred from bringing a tort cause of action.⁸⁶

The injured employee and his family are precluded under the Workers' Compensation Act from bringing an action in tort or contract against the employer unless the employer failed to carry workers' compensation insurance or to otherwise comply with the requirements of the Act.⁸⁷ However, the Workers' Compensation Act does not prohibit common law action against fellow employees.⁸⁸ In order to recover against an employee, the injured party or his family must be able to show that injury or death was caused by a willful and unprovoked act of physical aggression by the other employee, by intoxication of the fellow employee, or, as is probably easiest to prove, by an act sufficient to support a finding of willful and serious misconduct.⁸⁹

Thus, under the current system, workers' compensation pro-

83. 540 S.W.2d 899 (Mo. 1976).

84. Creative control was defined as "the right of a performer with her high status to designate and control the means by which she performs her work in reaching the desired results or effect." *Id.* at 903.

85. *Id.*

86. *Id.* at 906.

87. *Gates v. Trans Video Corp.*, 93 Cal. App. 3d 196, 204, 155 Cal. Rptr. 486, 491 (1979); *Mitchell v. Hizer*, 73 Cal. App. 3d 499, 503, 140 Cal. Rptr. 790, 792 (1977); *Eckis v. Sea World Corp.*, 64 Cal. App. 3d 1, 6, 134 Cal. Rptr. 183, 186 (1976); *Dixon v. Ford Motor Co.*, 53 Cal. App. 3d 499, 503, 125 Cal. Rptr. 872, 874 (1975).

88. CAL. LAB. CODE § 3601 (West Supp. 1982); *Miner v. Superior Court of Fresno County*, 30 Cal. App. 3d 597, 600, 106 Cal. Rptr. 416, 418 (1973); *Lowman v. Stafford*, 226 Cal. App. 2d 31, 39, 37 Cal. Rptr. 681, 685 (1964).

89. CAL. LAB. CODE § 3601 (West Supp. 1982).

vides a limited damage award which can be supplemented by more sizeable tort claims recovered from the director, stunt coordinator and other performers. These employees may in turn seek indemnity from the production company.

VI

Inadequacies in the Current Regulatory System

The current regulatory system described in Part III has not been a complete failure. Statistics suggest that the incidence of injury is no greater in the motion picture and television industry than in other industries.⁹⁰ However, there are striking inadequacies in the current regulatory scheme which compel improvement.

A. Lack of Specific Rules

A major problem with the current law is the absence of specific safety regulations in the motion picture and television industry. The wide variety of situations filmed and the unique nature of the industry require the use of substances and stunts which fall outside of the purview of the general labor laws. Thus, the California Administrative Code and Labor Code are often inapplicable. Certainly, in light of these unusual pressures, the broad mandate to all industries that employers provide a safe working environment for their employees⁹¹ seems to be a contradiction in terms when applied to the film industry. Management *must* sometimes instruct employees to violate sections of title 8 in order to create special effects. For example, filming a James Bond scene or a war movie requires that laws proscribing the use of explosives and firearms be bent or broken. When the CAL/OSHA safety standards do not apply, management and workers use what is known in the industry as "alternative safety," which really amounts to unwritten safety rules or directives found in the industry safety bulletins, coupled with a lot of luck.⁹²

In addition to a dearth of legislation aimed directly at safety in the motion picture and television industry, the applicable regulations governing film safety are voluminous and scattered

90. See *supra* note 10.

91. CAL. LAB. CODE § 6400 (West Supp. 1982).

92. Telephone interview with Robert Marta, Chairman, International Photographers, Local 659 (Jan. 5, 1983).

among many governmental agencies. The result is that the regulations are difficult for employers and employees to track down and equally hard for the agencies to monitor and enforce.⁹³

B. Suggested Reforms: Stricter Penalties, Increased Regulation and Firmer Licensing Requirements

The Assembly Labor and Employment Committee and the Senate Industrial Relations Committee highlighted a number of inadequacies and omissions in the current California laws when they convened in October 1982 to discuss safety in the motion picture and television industry. It was generally agreed by the representatives of SAG, members of the International Photographers, Local 659, and representatives of CAL/OSHA that current fines for safety violations are too low to deter unsafe practices on the set.⁹⁴ It was stated that "producers spend more . . . on coffee and donuts"⁹⁵ than the maximum penalty of \$1,000 for a serious violation or \$10,000 for a willful violation. The feeling among workers and union officials is that production companies violate the laws because they know that, if they are caught, the maximum OSHA penalty will be a small fine.⁹⁶

SAG has isolated four major areas of weakness in the current legislative scheme: lack of first aid on the set, inadequate licensing requirements for insert-car operators, lack of regulation in the areas of props and special effects, and under-enforcement of child labor regulations.⁹⁷

CAL/OSHA does not require that a nurse or other trained medical personnel with extensive first aid equipment be on the

93. *Film Safety Hearing Transcripts*, *supra* note 10, at 32 (statement of James Nissen).

94. *Id.* at 42 (statement of Barrie Howard, Co-Chair SAG Children's Committee); *id.* at 52 (statement of Robert Marta, Chairman, International Photographers, Local 659); *id.* at 64 (statement of Art Carter).

95. *Id.* at 37 (statement of James Nissen).

96. *Id.* at 42 (statement of Barrie Howard).

It should be noted that in a recent L.A. Times article, Robert Herron claimed that there has been a "tremendous upgrade" recently in safety standards and attributed this increase in safety awareness to concern over legal costs. "Everyone thought they were protected, . . . [b]ut 'Twilight Zone' showed that they're not. Anyone can be sued for negligence." London, *supra* note 14, at 1. Perhaps safety awareness will be heightened further in light of the manslaughter charges which have been brought in the Twilight Zone case. See *supra* note 2.

97. *Film Safety Hearing Transcripts*, *supra* note 10, at 32 (statement of James Nissen).

set when stunts are filmed. The only requirement is that someone with a first-aid certificate and suitable facilities for medical assistance be available.⁹⁸ The number of first-aid personnel assigned to a set, and, in some cases, the type of equipment to be used, are left to management's discretion.⁹⁹ SAG contends that licensing requirements for first-aid personnel are not very stringent.¹⁰⁰ According to the First Aid Local 767 of IATSE, there is no requirement that safety personnel be present during off-site film-making on location.¹⁰¹

SAG representatives are also critical of the fact that currently any licensed driver can be hired to drive an insert car.¹⁰² Due to the hazards of overloading the cars with equipment and people, driving at high speeds and taking close turns, SAG representatives believe that legislators should create a special licensing class for insert car drivers. In addition, it is felt that standards should be set regarding the acceptable weight of insert cars and their cargo.¹⁰³

In the area of props and special effects, SAG representatives are concerned that existing licensing qualifications for pyrotechnic technicians are both inadequate and underenforced.¹⁰⁴ They also believe that additional regulations are needed to govern the use of explosives and that legislation should be promulgated to absolutely prohibit use of live ammunition on the set.¹⁰⁵

C. Defining Employer Responsibility

The difficulty of determining the source of employer responsibility for safety under the current regulatory system is a serious drawback.¹⁰⁶ The problem of defining which "employer" is responsible stems in part from the complicated management hierarchy consisting of stunt coordinator, director, and producer.

Directors are responsible for the artistic transformation of

98. *Id.*

99. *Id.* at 72-3 (letter from Marvin Haffner).

100. *Id.* at 32 (statement of James Nissen).

101. *Id.* at 72 (letter from Marvin Haffner).

102. *Id.* at 34 (statement of James Nissen).

103. *Id.*

104. *Id.*

105. *Id.* at 35.

106. *Id.* at 10 (introduction by Peter Cooley); *id.* at 64 (statement by Art Carter); Transcript of Hearings, *supra* note 49, at 108.

written script to film. Their jobs often involve critical judgment calls in deciding whether or not to film a potentially hazardous scene. Under the current regulatory scheme, there is no consistent way to sanction directors who abuse their discretion because directors are not the statutory employers under the labor code.¹⁰⁷

The employer is most commonly the film's producer, who also retains ultimate authority to make changes in the production schedule. One vice-president of production stated that producers "defer to the directors" and suggested that if a situation arose where a stunt coordinator or special effects person complained that the production schedule did not allow them enough time to safely and properly prepare the stunts, sufficient time would be allocated. He also stated, however, that if a camera operator or stunt performer raised a safety issue or objection, "[i]t would be brought to the director's attention normally because he would be the one to see if there could be any compromises made."¹⁰⁸ One union representative explained the producer-director authority relationship in this manner: "While the producer is the employer, the director has a lot of control over who is going to get the job and who is going to get called back." He then suggested that in an instance where employees feel an unsafe situation exists, "personnel [should] have the right to meet in confidence with a representative of a producer without the director being there This would give the personnel the opportunity to communicate with his [sic] *true* employer, the producer, outside of the [earshot] of the director."¹⁰⁹

It must be noted that the producers suggest that stunt performers are often independently responsible for creating hazardous working conditions. In a business where the stunt performer is "only as good as his last stunt," the pressure on these performers to opt for "spectacle over safety" is often very great.¹¹⁰ Also, the producers claim that an over-zealous stunt performer is one factor the producers cannot completely

107. *Id.* at 9 (introduction by Peter Cooley).

108. Transcript of Hearing, *supra* note 49, at 108.

109. *Id.* at 130-31.

Additionally, by contract, every Screen Extras Guild (SEG) membership card requires the inclusion of this provision on its face: "Know your rights in regard to hazardous work. The *producer* must notify you at the time of the call if you will be required to perform hazardous work." *Id.* at 120 (emphasis added).

110. London, *supra* note 16, at 1.

control.¹¹¹

The industry's lack of formal qualification procedures for entering the stunt profession may contribute to this problem. Currently, the only prerequisite for performing stunts is getting hired—perhaps without the training, experience, or skill required for demanding stunts.

Similarly, there are no formal qualifications for the position of stunt coordinator—a role described as “an increasingly vital link in the chain of command as stunts grow more frequent and more dangerous.”¹¹² Paul Baxley, the stunt coordinator on the television show “Dukes of Hazzard,” expressed scorn for stunt performers who are reluctant to attempt his production's daring stunt work. He stated,

These stunt guys who tell you to do “illusions” are stupid. How can you do an illusion of a car flying through the air or smashing into a tree? This is a cruel, violent business, and that's why these guys make \$150,000 a year.¹¹³

It is, however, only the most well-known and consistently employed stunt performers who earn such high yearly incomes.¹¹⁴ More typically, stunt performers and camera operators rue the industry practice of compensating them for participating in life-threatening maneuvers with a sixty dollar bonus.¹¹⁵

Compounding the problems of employer liability are numerous “fly-by-night” independent production corporations. Whereas an established producer from one of the major studios may be relatively visible as the employer, there are “quickly established and folded corporations who exist for the sole purpose of producing one motion picture and then they're gone. They are given a substantial amount of money by a parent corporation which then later will assume no responsibility for any potential tragedy.”¹¹⁶

The employer liability question is also complicated by the independent contractor status of some members of a production crew. This independent contractor defense may be asserted by the producer when an independent stunt coordinator has been

111. *Id.*

112. *Id.*

113. *Id.* at 3.

114. Allen, *They Live to Leap Another Day*, FAMILY SAFETY, Winter 1982-83 at 30. This article states that “a good stunt man can make \$100,000 a year” but seems to suggest that this figure is on the high side of the industry pay scale.

115. London, *supra* note 14, at 22.

116. Transcript of Hearing, *supra* note 49, at 124-25.

contracted with to provide his own crew. According to more recent cases, however, policy considerations dictate that the employer, rather than the independent contractor, be held liable.¹¹⁷ The delegation of responsibility for employee safety is further complicated by the limited liability of individual employers. Producers, for example, are protected by the "corporate veil" of production companies, leaving the distinct impression among workers that responsibility is not being placed where it belongs.¹¹⁸

VII

Proposals for Reforming Film Industry Safety Regulations

The present system for regulation of safety in the motion picture and television industry does not adequately protect that industry's employees. In part, the system has failed because current standards were not promulgated to address the special characteristics of this unique industry. Additionally, the industry's efforts at self-regulation have failed to supplement adequately the existing legislative network. Thus, specific legislation is needed to fill the void which presently exists in this area of the law.

Legislative standards are needed in many of the areas that are currently governed by the directive orders described in Part IV. As was previously stated, these orders are simply guidelines written by management to be applied and enforced by management. Thus, they lack the authority, uniformity, and enforcement mechanisms which legislation on the same subjects would provide. Certainly, most legislators do not have the film industry knowledge and expertise possessed by the members of the Labor-Management Safety Committee who drafted these directives. Therefore, the input of qualified members of the film community should be a vital ingredient in

117. *E.g.*, *Van Arsdale v. Hollinger*, 68 Cal.2d 245, 253, 66 Cal. Rptr. 20, 25 (1968) (employer held liable under the "peculiar risk" doctrine for injuries received by its independent contractor's employee); *Henderson Brothers Stores, Inc. v. Smiley*, 120 Cal. App. 3d 903, 910-15, 174 Cal. Rptr. 875, 877-81 (1981) (employer held liable for the torts of an independent roofing contractor under the "peculiar risk" doctrine); *Castro v. State of California*, 114 Cal. App.3d 503, 509-15, 170 Cal. Rptr. 734, 737-41 (1981) (employer held liable for the injuries of its independent contractor's employee under the "peculiar risk" doctrine).

118. *See Film Safety Hearing Transcripts*, *supra* note 10, at 53 (statement of Robert Marta).

drafting legislation which would, in effect, make the safety directives binding laws.¹¹⁹

A critical area which should become a target for new legislation is controlled use of explosives on the set. It has been alleged that the Vic Morrow accident was caused in part by human error in identifying the potency of a bomb which was used to create a special effect prior to the fatal accident.¹²⁰ Two proposals for regulation of explosives are the dating of bombs stored on the set because they become more explosive over time, and the color-coding of bombs according to their potency so as to reduce the human error factor.¹²¹

A related matter in need of legislative attention is a prohibition on the use of live ammunition on the set. Although blanks are a safe and effective substitute,¹²² live ammunition has reportedly been used on a number of occasions.¹²³

Legislation to require the presence of a safety monitor on the set should also be introduced. The need for this is most strongly illustrated by the current inability of film industry employees to say "no" to a risk, which they perceive to be too great, without jeopardizing future employment in the tight-knit Hollywood community. The safety marshal's role could be compared to that of the welfare worker required by state child labor laws.¹²⁴ Despite the fact that employees of the film industry who have reached the age of majority can, unlike children, protect themselves, they have been put in the untenable position of protecting their lives at the expense of their livelihoods. As workers in the state of California under the protection of CAL/OSHA, these employees have a right to expect "safe and healthful working conditions"¹²⁵ The presence of a safety marshal on those sets where stunts are in progress would help ensure that these employees' lives *and* livelihoods are adequately safeguarded.

119. At present, no legislation has been introduced. The California Legislature is proceeding cautiously in the hope that the industry will respond to legislative pressure with improved self-regulation.

120. L.A. Times, Aug. 18, 1982, § II at 1, col. 4.

121. *Film Safety Hearing Transcripts*, *supra* note 10, at 35 (statement of James Nissen).

122. *Id.*

123. *Id.*

124. See CAL. LAB. CODE § 1396 (West 1971); see also *Film Safety Hearing Transcripts*, *supra* note 10, at 42 (statement of Barrie Howard, SAG Children's Committee).

125. 29 U.S.C. § 651(b) (1976).

In a similar vein, the legislature should set forth laws requiring the presence of adequate first aid personnel on the set, rather than leaving this to the discretion of the producer. Guidelines similar to those suggested by Motion Picture First Aid Employees, Local 767, in recent contract negotiations could be established, tying the number of required first aid personnel to the number of concurrent stunts being performed and the number of people involved.¹²⁶ Additionally, a reasonable supply of first aid equipment should be required on the set instead of being relegated to the producer's discretion.¹²⁷

One of the most inadequate current legislative promulgations is also one of the simplest to rectify—the absurdly low monetary penalties imposed for violations of the rules of the California Occupational Safety and Health Standard Board.¹²⁸ The maximum civil penalties of \$1,000 for serious violations, and of \$10,000 for willful violations must be *substantially* increased if they are to function as a deterrent to unsafe practices in many industries. Fines this trivial do little more than make a mockery of OSHA's penalties, especially when the industry in question is a multi-million dollar employer. As Art Carter, chief of CAL/OSHA testified, "[w]hen you are dealing with any multi-million dollar employer—oil industry, movie industry, contractors, and so forth—to suggest this dollar amount is going to be a deterrent is . . . out of the realm of reasonableness."¹²⁹ Because current motion picture and television productions' operating budgets regularly figure in the multi-million dollar range, the paltry OSHA fines cannot be expected to deter safety code violations. Thus, in order to have any significance as a deterrent to the film industry, and perhaps to other multi-million dollar industries, the civil monetary penalties must be increased with respect to high budget employers.

In addition to the enactment of stricter monetary penalties which would act as a deterrent to unsafe practices in the industry, alternative measures such as suspension and revocation of licenses are strongly recommended. Whereas money to pay fines can be allotted as a predictable business expense, the show would literally not go on if the producer's licenses to hire

126. *Film Safety Hearing Transcripts*, *supra* note 10, at 72 (letter from Marvin Haffner to Assemblyman Chet Wray).

127. *Id.* at 73.

128. See *supra* notes 35-41 and accompanying text.

129. Transcript of Hearing, *supra* note 49, at 141.

actors, camera operators or stunt people were revoked or suspended. Another recommended penalty with a "bite" is forbidding the use of the abused article, such as explosives or ammunition, if the safety regulations governing the article are willfully violated.

Finally, within the industry, steps should be taken to include employee groups as members of the Motion Picture and Television Safety Committee. This would foster a cooperative spirit and enhance equality of representation, thereby ensuring all concerned parties the opportunity to participate in formulation of industry-initiated answers to safety concerns.

VIII Conclusion

The present system of film safety regulation is inadequate to optimize employee safety. The state legislative regulations are scattered throughout numerous codes, making them difficult to locate and enforce. Additionally, they are inapplicable in many situations that arise in motion picture and television filming because of the unique nature of the industry. Intra-industry directives lack both force and enforcement mechanisms, and amount to little more than ineffectual recommendations. Specific laws should be enacted to fill the omissions in the legislative scheme regarding film safety; omissions that have resulted in serious injuries and deaths. The goal of both the industry and the legislature should be to achieve the optimal level of employee safety, thereby "creating merely the *illusion* of danger, not the reality."¹³⁰

130. *Film Safety Hearing Transcripts*, *supra* note 10, at 37 (statement of James Nissen).

