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## View at your Own Risk: Gang Movies and Spectator Violence

Stephanie J. Berman

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# VIEW AT YOUR OWN RISK: GANG MOVIES AND SPECTATOR VIOLENCE

## I. INTRODUCTION

On his way home from work in a Boston area ski shop, sixteen-year-old Marty Yakubowicz was confronted by an intoxicated teen-ager returning from viewing the film *The Warriors*.<sup>1</sup> The teen told Marty, "I want you, I'm going to get you"—a line from the movie; then the teen fatally stabbed Marty.<sup>2</sup>

Approximately one month later, on March 24, 1979, fifteen-year-old Jocelyn Vargas headed for the bus home after seeing the San Francisco premiere of *Boulevard Nights*.<sup>3</sup> Caught in the crossfire between two rival gangs who were also leaving the theater, she sustained a gunshot wound in the neck.<sup>4</sup>

Both of these incidents arguably present examples of life imitating art.<sup>5</sup> These youths had viewed gang-themed motion pictures containing violent acts that likely triggered their subsequent violent behavior. While *The Warriors* and *Boulevard Nights* both depicted the lifestyles of Hispanic gang members,<sup>6</sup> more recent films focusing on the prevalence of black gangs in the United States have sparked similar violent acts at movie theaters across the country. The films *Colors*,<sup>7</sup> *New Jack City*,<sup>8</sup> and *Boyz N the Hood*,<sup>9</sup> released in April 1988, March 1991, and July 1991 respectively, have instigated a controversial debate over the relationship between on-screen violence and real-life violence occurring in and around theaters screening these "gang" movies.<sup>10</sup> Most recently, the January 1992 release of the "urban action" film *Juice* reinvigorated the debate over the violent tendencies aroused by gang films.<sup>11</sup>

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1. *THE WARRIORS* (Paramount Pictures 1979).

2. *Yakubowicz v. Paramount Pictures Corp.*, 536 N.E.2d 1067, 1070 (Mass. 1989).

3. *BOULEVARD NIGHTS* (Warner Brothers 1979).

4. Paul Wilner, *A Real-Life 'Boulevard Night'—A Constitutional Nightmare*, L.A. HERALD EXAMINER, Dec. 30, 1982, at A1.

5. Priscilla Painton, *When Life Imitates Art*, TIME, Mar. 25, 1991, at 19.

6. See, e.g., Charles Schreger, *Gang Movies Stir Controversy*, L.A. TIMES, Mar. 28, 1979, § IV, at 14; Lois Timnick, *Experts Fear Film's Impact on Chicano Gang Members*, L.A. TIMES, Apr. 2, 1979, § I, at 3.

7. *COLORS* (Orion Pictures 1988).

8. *NEW JACK CITY* (Warner Brothers 1991).

9. *BOYZ N THE HOOD* (Columbia Pictures 1991).

10. Suzanne Rosencrans, *Fighting Films: A First Amendment Analysis of Censorship of Violent Motion Pictures*, 14 COLUM.-VLA J.L. & ARTS 451, 471-72 (1990).

11. *JUICE* (Paramount Pictures 1992); see *infra* notes 223-32 and accompanying text.

Are gang films responsible for the violence that all too often accompanies their release? One group of concerned community and church leaders believes a definite link exists between the violent nature of these films and the violent actions carried out by moviegoers.<sup>12</sup> Another faction, composed predominantly of filmmakers and distributors, steadfastly opposes this view. They blame the violence on deeply rooted societal problems such as unemployment, poverty, illiteracy and despair.<sup>13</sup>

Marty Yakubowicz, via his father in a wrongful death action, and Jocelyn Vargas, along with her mother, brought lawsuits against the parties they believed should be held responsible for injuries caused by third parties who had viewed the gang-related motion pictures *The Warriors* and *Boulevard Nights*.<sup>14</sup> Yakubowicz sued Paramount Pictures, which distributed *The Warriors*, and the Saxon Theatre Corporation, which owned the Boston theater screening the film.<sup>15</sup> Vargas sued the executive producer, producer, director, and production company of *Boulevard Nights*.<sup>16</sup> The courts in both *Yakubowicz v. Paramount Pictures* and *Bill v. Superior Court* (the Vargas case) upheld summary judgment for the respective defendants after finding no viable basis for imposing liability.<sup>17</sup> Both courts relied on the strength of the First Amendment's guarantee of freedom of expression to protect the films' content.<sup>18</sup>

This comment explores the various causes attributed to spectator violence and the difficulty of pointing to any one definitive factor behind violent behavior accompanying gang movies. Additionally, this comment examines how the *Yakubowicz* and *Bill* courts reached their conclusions and analyzes these decisions in the context of the more recent and prolific acts of violence accompanying the release of the black gang movies *Colors*, *New Jack City*, and *Boyz N the Hood*. While the subject matter of these and other gang-related films has been challenged on the basis that it incites violence, this comment shows that the case law and policy rationales behind the First Amendment protect the making of gang movies as freedom of expression. Certainly, these First Amendment arguments support the principle that government censorship of vio-

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12. See Timnick, *supra* note 6, at 22; John Crust, *L.A. Police Go to the Movies*, L.A. HERALD EXAMINER, Apr. 15, 1988, at A3.

13. Doug McHenry & George Jackson, *Don't Blame Our Movie for Violence Breaking out in the Streets*, L.A. DAILY JOURNAL, May 24, 1991, at 6; David Robb, *H'w'd NAACP Says 'New Jack' Not Responsible for Violence*, VARIETY, Mar. 15, 1991, at 3.

14. *Yakubowicz*, 536 N.E.2d 1067; *Bill v. Superior Court*, 187 Cal. Rptr. 625, 634 (1982).

15. *Yakubowicz*, 536 N.E.2d at 1068.

16. Jim Harwood, *Pic Producers off Legal Hook*, VARIETY, Dec. 29, 1982, at 1.

17. *Yakubowicz*, 536 N.E.2d at 1072; *Bill*, 187 Cal. Rptr. at 634.

18. *Yakubowicz*, 536 N.E.2d at 1071; *Bill*, 187 Cal. Rptr. at 629.

lent films would create an unjustifiable chilling effect on the selection of film subject matter.<sup>19</sup> Therefore, although studios and filmmakers should not be held liable for injuries inflicted by viewers of their motion pictures, someone must take responsibility to diminish and hopefully eradicate violent behavior in and around theaters. In this regard, this comment recommends that studios and/or producers assume responsibility for preventing potentially violent incidents by providing adequate security protection at all theaters screening motion pictures likely to cause volatile audience reactions.

## II. WHAT CAUSES SPECTATOR VIOLENCE?

The phrase "spectator violence" has been coined to describe acts of violence committed by patrons of sporting events, concerts and motion pictures.<sup>20</sup> Numerous factors influence some gang movie patrons to engage in acts of violence against fellow moviegoers and others both during and following the showing of the film. Although some experts argue that the films themselves are responsible for this violence,<sup>21</sup> others target societal conditions as the true culprit.<sup>22</sup> However, the cause most frequently articulated is that the openings of these films bring rival gang members together in one location.<sup>23</sup> Whatever the explanation, it is most likely that more than just one of the reasons suggested is responsible for the outbreaks of violence that all too often accompany the release of volatile gang-themed motion pictures.

### A. Gang Movies Are the Culprits

The most popular gang-themed movies include *The Warriors*,<sup>24</sup> *Boulevard Nights*,<sup>25</sup> *Colors*,<sup>26</sup> *New Jack City*,<sup>27</sup> and *Boyz N the Hood*.<sup>28</sup>

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19. See *infra* notes 172-81 and accompanying text.

20. See, e.g., Guy Livingston, *NATO Prez, Par Lawyer Back 'Warriors' at Mass. Hearing*, VARIETY, Mar. 14, 1979, at 26; see also Bradley C. Nielsen, *Controlling Sports Violence: Too Late for the Carrots—Bring on the Big Stick*, 74 IOWA L. REV. 681, 687-88 (1989), for discussion of spectator aggression at sporting events.

21. Painton, *supra* note 5.

22. See, e.g., David Sterritt, *'Boyz N the Hood' Boosts Debate on Urban Violence*, CHRISTIAN SCI. MONITOR, July 22, 1991, at 11; Robb, *supra* note 13; Doug McHenry & George Jackson, *Missing the Big Picture*, N.Y. TIMES, Mar. 26, 1991, at A23.

23. See *infra* notes 70-74 and accompanying text.

24. THE WARRIORS (Paramount Pictures 1979). *The Warriors* is about a night of urban combat between New York City street gangs. Schreger, *supra* note 6; *The Flick of Violence*, TIME, Mar. 19, 1979, at 39.

25. BOULEVARD NIGHTS (Warner Brothers 1979). *Boulevard Nights* examines an East Los Angeles Hispanic neighborhood. Schreger, *supra* note 6.

26. COLORS (Orion Pictures 1988). *Colors* depicts a pair of gang-unit police officers crack-

Well-known actors Sean Penn and Robert Duvall star in *Colors*. *New Jack City* features rap artist Ice-T and sex-symbol actor Mario Van Peebles. *Boyz N the Hood* was written and directed by a highly acclaimed young black filmmaker,<sup>29</sup> and "has a title that gangs recognize from a popular song and an L.A. [Los Angeles]-based rap artist [Ice Cube, in a leading role] who is known throughout the gang community."<sup>30</sup> Because of their generous budgets and prominent stars, these films may very well have the effect of "glamorizing" gangs.<sup>31</sup>

According to one civic leader, Reverend James Dixon of the Northwest Community Baptist Church in Houston, Texas, movies like *New Jack City* glamorize crime and influence "young blacks who are already in trouble."<sup>32</sup> At the time *Colors* was released, it drew criticism from many groups. Wes McBride, president of the California Gang Investigators Association; the Guardian Angels, a self-styled anti-crime group; and Willis Edwards, president of the Beverly Hills/Hollywood chapter of the NAACP, all attacked the movie and urged that it be withdrawn from release.<sup>33</sup> McBride vehemently declared that *Colors* would "leave dead bodies from one end of this town [Los Angeles] to the other."<sup>34</sup>

Some social scientists believe that young people, particularly gang members, find it easy to identify with the violence depicted on-screen.<sup>35</sup> In discussing *The Warriors* shortly after its release, Dr. George Gerbner, Dean of the Annenberg School of Communications at the University of Pennsylvania, explained that people who are predisposed to think of themselves as the characters they see portrayed on screen selectively choose film as their preferred viewing medium.<sup>36</sup> As a result, young people with violent inclinations often idealize the gang violence depicted in film.<sup>37</sup> Gang members may be attracted to gang movies to learn new

ing down on violence between warring black and Latino Los Angeles gangs. Patrick Goldstein, 'Colors'—A Gang Film That's Caught in a Crossfire, L.A. TIMES, Apr. 14, 1988, at F1.

27. NEW JACK CITY (Warner Brothers 1991). *New Jack City* is the story of the rise and fall of a black cracklord. Painton, *supra* note 5.

28. BOYZ N THE HOOD (Columbia Pictures 1991). *Boyz N the Hood* is about a group of young black men in gang-plagued South Central Los Angeles. Richard W. Stevenson, *An Anti-Gang Movie Opens to Violence*, N.Y. TIMES, July 14, 1991, § 1, at 10.

29. John Singleton wrote and directed *Boyz N the Hood*. Alan Light, *Not Just One of the Boyz*, ROLLING STONE, Sept. 5, 1991, at 73.

30. David J. Fox, *Violence Fails to Slow 'Boyz'*, L.A. TIMES, July 15, 1991, at B1, B5.

31. *Gang Violence: Color It Real*, PEOPLE, May 2, 1988, at 42.

32. Painton, *supra* note 5.

33. Goldstein, *supra* note 26.

34. *Id.*

35. See *infra* notes 36-41 and accompanying text.

36. *Film & Social Responsibility*, VARIETY, Feb. 21, 1979, at 3.

37. *Id.*

techniques and improve their gang-banging<sup>38</sup> skills.<sup>39</sup> Arguably, some gang motion pictures glamorize violence and motivate young gang members to engage in imitative violent acts.<sup>40</sup> The likelihood of imitative behavior depends, however, on the individual as well as the circumstances surrounding a film's screening.<sup>41</sup>

Although analysis of psychological research on violence related to films is beyond the scope of this paper, the type of research done by social scientists in this area is worth mentioning.<sup>42</sup> Research focusing on whether viewers imitate criminal or tortious acts depicted on television and in film, and the extent of this imitation, has legal significance. Unfortunately, it is the kind of research least often done.<sup>43</sup> Typically, social scientists seem to rely on inferences drawn from generic research based on abstract acts of violence, rather than actual violent films.<sup>44</sup>

Gang members may also point to gang movies as the impetus behind acts of gang violence, albeit for different reasons than the authorities noted above. These gang members do not rely on assertions that high-budget gang movies "glamorize" gang violence. Instead, they assert that inaccurate portrayals of various gang sets<sup>45</sup> are more likely the cause of the trouble. A fifteen-year-old gang member from South Central Los Angeles stated that *Colors*' inaccuracies instigated an influx of gang activity because the movie was "a green light to kill or be killed."<sup>46</sup> This viewpoint is probably close to the truth in many cases. When Stockton's Deputy Police Chief described a suspect's motivations in the shooting death of a rival gang member outside a Stockton, California theater showing *Colors*, he noted that the suspect and his two companions were unhappy with the film's portrayal of their gang, the Bloods, on the losing end.<sup>47</sup> This example clearly demonstrates how volatile inter-gang relations are, as well as how activists can never completely pinpoint the specific causes of spectator violence at gang films.

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38. "Gang-banging" means being in a gang. LÉON BING, *DO OR DIE* 20 n.8 (1991).

39. Seth Mydans, *Film on Gangs Becomes Part of World It Portrays*, N.Y. TIMES, Mar. 13, 1991, at A16.

40. Painton, *supra* note 5.

41. See *infra* note 67 and accompanying text.

42. For a thorough discussion of the research on media-influenced violence, see Emily Campbell, Comment, *Television Violence: Social Science vs. The Law*, 10 LOY. L.A. ENT. L.J. 413 (1990).

43. Campbell, *supra* note 42, at 430.

44. *Id.* at 430-31.

45. "Sets" are particular gang cliques. LÉON BING, *DO OR DIE* 21 n.9 (1991).

46. *Id.* at 205.

47. Andy Furillo, *L.A. Man Hunted in 'Colors' Slaying*, L.A. HERALD EXAMINER, Apr. 26, 1988, at A3.

### B. Movie Marketing Techniques Incite Violence

Provocative and exploitative advertising may also be partly responsible for the rash of violence that accompanies the release of virtually every heavily marketed gang movie. Television commercials, theatrical trailers and print advertisements tend to promote the violent and sensationalist aspects of films such as *New Jack City* and *Boyz N the Hood*.<sup>48</sup> For example, one trailer touting *Boyz N the Hood* announced: "There's a war going on, and CNN isn't covering it."<sup>49</sup> The promotion of action films through emphasis of their violent content is certainly nothing new. A 1979 print advertisement for *The Warriors* read: "These are the Armies of the Night. They are 100,000 strong. They outnumber the cops five to one. They could run New York City. Tonight they're all out to get the Warriors."<sup>50</sup> *The Warriors* in 1979 and *Boyz N the Hood* in 1991 both triggered a rash of violent activity in and around theaters screening these films.<sup>51</sup>

Advertisements overemphasizing the violent nature of a film may powerfully influence the real-life violent reactions frequently accompanying the release of gang-themed films. Advertising campaigns that focus on the action and violence components of films often give potential viewers a misleading impression of the film. Rapper Ice Cube, star of *Boyz N the Hood*, noted of the expectations created by *Boyz'* action-packed trailers, "They'll [audiences] come expecting one type of movie, but they're gonna get something very different."<sup>52</sup> Some black marketing experts predicted that the violence at screenings of *Boyz N the Hood* and *New Jack City* would result in tamer advertising campaigns for movies made by black filmmakers in general.<sup>53</sup>

However, violence-depicting advertising continues to prevail, most recently in connection with the "urban action" film *Juice*,<sup>54</sup> released in January 1992. Advertisements for *Juice*, a story of four young men fac-

48. John Hartl, *New Black Cinema—Violence Has Distorted the Hopeful Messages of an Emerging Genre*, SEATTLE TIMES, July 18, 1991, at F1.

49. Joanne Lipman & Alix M. Freedman, *Ads for 'Boyz' Create Debate over Violence*, WALL ST. J., July 16, 1991, at B1.

50. *The Flick of Violence*, *supra* note 24.

51. *See id.*; *see also Trail of Trouble for 'Boyz' Screenings Across the Nation*, HOLLYWOOD REP., July 15, 1991, at 6.

52. Lipman & Freedman, *supra* note 49, at B6.

53. *Id.* Ken Smikle, Chicago-based publisher of *Target Market News*, a trade publication that covers marketing to blacks, remarked in response to the *Boyz N the Hood* advertising campaign: "All black films aren't the same, but the advertising for many of them would suggest they are focusing on just the violence." Smikle believes Hollywood will begin to focus on "human interest elements and universal themes." *Id.*

54. *JUICE* (Paramount Pictures 1992).

ing poverty in Harlem, depict the four leading actors in a blue haze, with the film's name in red.<sup>55</sup> Blue and red are the primary colors of rival gangs in Los Angeles.<sup>56</sup> Additionally, *Juice's* print advertisement originally showed one of the film's main characters brandishing a gun, until Paramount Pictures, the film's distributor, removed the gun from the advertisement, allegedly because it was "strong enough without the gun."<sup>57</sup> The theatrical trailer for *Juice* was also dominated by violent scenes. The trailer contained two robberies, an apparent killing, three gunshots and a chase scene with police. It also featured characters exclaiming: "If you want respect you have to earn it" and "You have to be willing to stand up and die for it."<sup>58</sup> Los Angeles Detective John St. John, who works with Los Angeles gangs, likened the *Juice* advertisement to "waving a red flag in front of a bull."<sup>59</sup>

Because the movie industry's main motive is profit, advertising executives for gang-themed or so-called "urban action" films may be under pressure to create theatrical trailers and print advertisements that exaggerate their actual violent content. Sensationalized trailers and advertisements may create greater interest in these films, translating into higher box office returns. As William Upton, a Los Angeles gang counselor, explained, "Hollywood has learned that the best [advertisements] are the violent ones . . . ."<sup>60</sup> Violent advertisements for movies will almost certainly attract a disproportionate number of persons prone to violent behavior, such as gang members.<sup>61</sup> Moreover, like any other group, gang members are intrigued by a film whose subject matter pertains to them. Consequently, gang members turn out in large numbers for the opening night of such a movie, perhaps viewing the evening as an "event" of personal interest.<sup>62</sup>

### C. *Society Is at the Root of the Violence*

The violent activity that has accompanied the opening of gang-themed motion pictures such as *Boyz N the Hood* may be a reflection of

55. David J. Fox, 'Juice' Ads Raise Fears of Violence, L.A. TIMES, Jan. 13, 1992, at F1.

56. *Id.*

57. Joseph McBride, *Par Downplays Acts of Violence at 'Juice' Openings*, VARIETY, Jan. 20, 1992, at 6.

58. Anita M. Busch & Andrea King, *Paramount Marketing Plan for 'Juice' Comes Under Fire*, HOLLYWOOD REP., Jan. 10, 1992, at 6.

59. *Id.* at 1, 6.

60. Fox, *supra* note 55, at F1. William Upton is the head gang and drug counselor for the Los Angeles-based Mothers Against Gangs in Communities.

61. See *supra* notes 48-52 and accompanying text; see also *supra* notes 35-41 and accompanying text, addressing why gang members are attracted to gang-themed motion pictures.

62. See *infra* note 73 and accompanying text.



what is wrong in urban America.<sup>63</sup> Advocates of this rationale steadfastly maintain that the films themselves are not to blame. According to the producers of *New Jack City*, "The real cause of violence at the theaters is not cinematic images of drug culture, but decades of poverty in our communities. Chronic unemployment, inadequate education, dilapidated housing, poor health care, a lack of public services and an apathetic political bureaucracy do not breed civility."<sup>64</sup> The societal reasons articulated above are also influential in encouraging young people to join gangs. In Los Angeles alone, there are over 850 gangs.<sup>65</sup> This is strong evidence that when society wreaks havoc with their lives, young people in scarred communities will turn to gang life for solace. Gang members who engage in acts of violence accompanying the release of gang films may act out of anger and despair, hoping to gain notoriety and the respect of other gang members.

#### D. *Spectator Violence Results from Poor Crowd Control and Rival Gangs Congregating in One Place*

Envision hundreds of eager young people anxiously waiting in line at a theater for up to two hours to see *New Jack City* on opening night. When the theater finally realizes the showing is sold out, these youths are turned away from the theater with no sense of satisfaction for their expenditure of time. Frustrated, these youths proceed to rampage through the mostly upscale Westwood district of Los Angeles, breaking windows and looting stores. In March 1991, after this destructive incident actually occurred, the theater's parent company pulled the film from its Westwood location.<sup>66</sup>

Blame for this incident can be placed largely on poor crowd control measures. To make matters worse, just prior to this Westwood melee, the release of a home video depicting police brutality had embroiled relations between the black community and the Los Angeles police.<sup>67</sup> The black youths who were turned away from *New Jack City* that fateful night were on edge even before they learned the film was sold out.

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63. *Shooting a Messenger*, L.A. TIMES, July 16, 1991, at B6. "Banning 'Boyz N the Hood' won't stop the shooting. The film's message—that gangbanging is senseless—deserves widespread play. The violence is regrettable, the film is not." *Id.*

64. McHenry & Jackson, *supra* note 22. See also Robb, *supra* note 13; Sterritt, *supra* note 22.

65. Lipman & Freedman, *supra* note 49, at B6.

66. David J. Fox, 'New Jack City' Distributor Paying for Added Security, L.A. TIMES, Mar. 16, 1991, at B3.

67. John L. Mitchell & David J. Fox, *Theater Pulls Movie Linked to Rampage*, L.A. TIMES, Mar. 12, 1991, at B8.

Should the violence be blamed on the presence of crowds alone, or on the convergence of hundreds of rival gang members on one movie theater? *Boulevard Nights* producer Tony Bill cites lack of crowd control as the reason for the spate of violence accompanying the release of his film and other gang movies: "I don't think the picture lends itself to creating violence any more than Woodstock, or baseball games, or any gatherings which attract large groups of people. If somebody slugs it out at the ballpark, no one should be surprised if the same thing happens at a movie theatre."<sup>68</sup> Similarly, after the January 1992 opening of *Juice*, a Paramount Pictures spokesman noted, "The sad fact is that violence has come to the movie theaters, just as it has come to rock concerts and other forms of entertainment."<sup>69</sup> These commentators seem to blame the violence accompanying gang movies on inadequate crowd control measures.

Although this explanation may be partly true, it is also likely that outbreaks of spectator violence stemming from the opening of gang-themed motion pictures result from mounting tensions between rival gang members congregating in one place. Los Angeles is the movie capital of the world, but there are few, if any, theaters in the city's poor urban neighborhoods where many rival gangs live and combat with each other.<sup>70</sup> Because of the shortage of movie theaters in these gang territories, gang members from different sets frequent the same theaters screening the movies they wish to see. Violence is inevitable at those theaters attended by rival gang members.<sup>71</sup> Apparently, for the opening of *Boyz N the Hood*, gang members in Los Angeles decided not only what to wear but also what armaments to bring along.<sup>72</sup>

There is nothing unusual about gang youths being eager to see motion pictures about themselves. Whenever movies are made about a particular group in society—lawyers, students, producers, psychiatrists, or teachers—disproportionately large numbers of that group go to see those movies.<sup>73</sup> Based on this premise, it is no wonder that gang members turned out in droves to see movies such as *The Warriors*, *Boulevard Nights*, *Colors*, *New Jack City* and *Boyz N the Hood*. The acts of violence accompanying the release of these films become more understandable after one takes into account the hostilities between rival gangs who are out

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68. '*Boulevard Nights*' Not Responsible for Violence, Says Bill, HOLLYWOOD REP., Mar. 29, 1979, at 4.

69. McBride, *supra* note 57.

70. Sterritt, *supra* note 22; Bill Kenkelen, *Hell-bent into Tomorrow's Nightmare*, NAT'L CATH. REP., May 20, 1988, at 19.

71. Lipman & Freedman, *supra* note 49, at B6.

72. Stevenson, *supra* note 28.

73. Schreger, *supra* note 6.

of their respective territories.<sup>74</sup>

Explanations for the causes of spectator violence at gang motion pictures are conflicting and diverse. Social scientists themselves do not agree. Some studies indicate that viewing violent movies may lead to criminal behavior at large, while others predict a completely opposite effect.<sup>75</sup> Probably the best explanation for the outbreak of spectator violence accompanying gang films is the composition of the audiences these films attract. In explaining the violent response to *The Warriors*, one Paramount Productions executive may have put it best: "If you bring that sort of crowd into the moviehouse, you will have the same trouble with *The Sound of Music*."<sup>76</sup>

### III. THE CASE LAW

Should theater owners, producers and/or motion picture studios be liable for injuries inflicted upon theater patrons and members of the general public by third parties who have viewed gang movies prior to engaging in the violent acts? The case law on the subject, although limited, answers this question with a resounding no.<sup>77</sup> A year before analyzing the question of spectator violence in relation to film, the courts had addressed this issue with regard to television programs. The 1981 *Olivia N. v. National Broadcasting Co. ("NBC")*<sup>78</sup> decision found the defendants not liable for injuries inflicted on a young girl which were allegedly inspired by a particularly violent scene in NBC's television movie *Born Innocent*. The *Bill v. Superior Court* decision the following year and the *Yakubowicz v. Paramount Pictures Corp.* decision in 1989 extended to the motion picture industry the protections that the *Olivia N.* decision had accorded to the television industry.<sup>79</sup>

#### A. *Bill v. Superior Court*

Fifteen-year-old Jocelyn Vargas watched *Boulevard Nights*, a

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74. Violent incidents between rival gangs have frequently occurred in public places. A melee broke out between members of two warring gangs at a West Covina, California shopping mall on February 24, 1992. One bystander and one gang member were injured. Vicki Torres, 2 *Hurt in Gang Gunfire at Mall in West Covina*, L.A. TIMES, Feb. 26, 1992, at A1.

75. Mary B. Cook, Note, *The Censorship of Violent Motion Pictures: A Constitutional Analysis*, 53 IND. L.J. 381, 386 n.33 (1977-78).

76. *The Flick of Violence*, *supra* note 24.

77. See *Bill*, 187 Cal. Rptr. 625; *Yakubowicz*, 536 N.E.2d 1067.

78. 74 Cal. App. 3d 383, 141 Cal. Rptr. 511 (1977), *stay denied sub nom.* National Broadcasting Co. v. Niemi, 434 U.S. 1354 (1978) (Rehnquist, Cir. J.), *cert. denied*, 435 U.S. 1000 (1978), *argued* 178 Cal. Rptr. 888 (1981).

79. Wilner, *supra* note 4, at A11; *Yakubowicz*, 536 N.E.2d 1067 (Mass. 1989).

Warner Brothers release, on March 24, 1979, at the Alhambra Theater in San Francisco. When she left the theater to catch a bus home, she was shot by someone who was allegedly a "member of the general public prone to violence . . . who had been attracted to [the] said Alhambra Theater by the showing of [the] said violent movie . . . ."80 Vargas and her mother filed suit against the filmmakers: executive producer Tony Bill; producer Bill Benenson; director Michael Pressman; and Eastside Productions, a corporate entity owned by Bill and Benenson, which provided the filmmakers' services to Warner Brothers.<sup>81</sup>

The case raised two causes of action. In the first cause of action, the plaintiffs alleged that Bill, Benenson, Pressman and Eastside knew or should have known that, because the movie was violent, it would attract violent people who carried weapons and were apt to cause grave bodily injury to other persons at or near the movie theater.<sup>82</sup> Further, the plaintiffs alleged that the failure to warn Jocelyn Vargas of these facts and the failure to take steps sufficient to protect patrons at or near the theater constituted negligent behavior on the part of the defendants.<sup>83</sup> In a second cause of action, the plaintiffs alleged that because the defendants willfully allowed the movie to be shown to members of the general public, the defendants impliedly represented that *Boulevard Nights* could be viewed in safety and that patrons could rely on their representations, as had Vargas.<sup>84</sup>

The California Court of Appeal concluded that film producers have no duty to warn potential patrons of a film's attendant risks, such as the possible violent behavioral reactions of third parties, because such a requirement would have a chilling effect on the selection of film subject matter.<sup>85</sup> Additionally, the court held that producers have no duty to provide security outside every theater screening their film.<sup>86</sup> Based on these considerations, the court granted summary judgment to the defendants.<sup>87</sup>

### B. Yakubowicz v. Paramount Pictures Corporation

After finishing his shift at a Boston area ski shop the night of Febru-

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80. *Bill*, 187 Cal. Rptr. at 626.

81. *Id.* at 626-27.

82. *Id.* at 626.

83. *Id.*

84. *Id.*

85. *Bill*, 187 Cal. Rptr. at 629.

86. *Id.* at 633.

87. *Id.* at 634.

ary 15, 1979, Marty Yakubowicz headed to the subway to go home.<sup>88</sup> While Yakubowicz had been at work, Michael Barrett and Barrett's two friends had been at the Saxon Theatre viewing two consecutive screenings of *The Warriors*.<sup>89</sup> Yakubowicz and Barrett arrived at the same subway station at about the same time. While waiting for the subway, Yakubowicz recognized some friends and joined them for the ride home.<sup>90</sup> Barrett's group had a history of arguments and tension with Yakubowicz' circle of friends. On the subway, Barrett tried to engage Yakubowicz in a fight, exclaiming, "I want you, I'm going to get you," purportedly in imitation of a scene from *The Warriors*.<sup>91</sup> Barrett stabbed Yakubowicz as they departed the subway.<sup>92</sup> Marty Yakubowicz died the next morning.<sup>93</sup>

Yakubowicz' father, as administrator of his son's estate, brought suit against Paramount Pictures, distributor of *The Warriors*, and Saxon Theatre Corporation, the owner of the Boston theater where Barrett saw the film.<sup>94</sup> Count one of the complaint alleged that the way Paramount produced, distributed, and advertised the film induced viewers to commit violent acts in imitation of the violence in the film.<sup>95</sup> Counts two and four alleged that both Paramount and Saxon caused Marty Yakubowicz' death by continuing to show the film even after learning of unprecedented violent acts at or near other theaters exhibiting the film.<sup>96</sup> The third and final count relevant to this discussion alleged that Paramount failed to warn theaters and public officials of the danger of violence and to take reasonable steps to protect persons at or near the theater.<sup>97</sup>

The Supreme Judicial Court of Massachusetts affirmed the trial court's grant of summary judgment for the defendants.<sup>98</sup> Although the court found that Paramount and Saxon Theatres owed a duty of reasonable care to members of the public with respect to producing, exhibiting, and advertising films,<sup>99</sup> the court concluded that the defendants had not violated their duty.<sup>100</sup> The court also held that "[a] fatal assault occur-

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88. *Yakubowicz*, 536 N.E.2d at 1070.

89. *Id.* at 1069.

90. *Id.* at 1070.

91. *Id.*

92. *See supra* note 2 and accompanying text.

93. *Yakubowicz*, 536 N.E.2d at 1070.

94. *Id.* at 1068.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Yakubowicz*, 536 N.E.2d at 1068-69.

99. *Id.* at 1071.

100. *Id.*

ring miles from the theatre . . . could not be attributed to a failure to 'protect [people] at or near the theatre' or a failure to warn Saxon or public officials of the dangers of film-related violence."<sup>101</sup>

#### IV. LIABILITY FOR TORT NEGLIGENCE

##### A. *Establishing a Negligence Cause of Action*

A plaintiff seeking to establish a cause of action founded upon negligence in tort must successfully demonstrate that the following elements have been satisfied: (1) the existence of a legal duty requiring the person to conform to a certain standard of conduct; (2) a breach of that legal duty; (3) a reasonably close causal connection between the conduct and the resulting injury, known as proximate cause and including cause in fact; and (4) actual loss or damage resulting from plaintiff's injury.<sup>102</sup>

A duty or obligation recognized by tort law requires an actor to conform to a particular standard of behavior toward others.<sup>103</sup> Courts evaluate a variety of factors to determine whether the foreseeable risk of harm and the gravity of the harm outweigh the conduct's social value.<sup>104</sup> Typically, the foreseeability of an injury occurring as a result of one's act or conduct is the most important factor in a court's negligence calculus. Courts have held that actors generally have a duty to anticipate and protect against the conduct of others.<sup>105</sup> Under this theory, the plaintiff in *Yakubowicz v. Paramount Pictures*<sup>106</sup> argued that Paramount Pictures and Saxon Theaters had violated their respective obligations of reasonable care toward audiences.<sup>107</sup> Just days before Marty Yakubowicz died from a stab wound inflicted by an intoxicated youth who had just seen *The Warriors*, two other youths had been killed near theaters showing the film in Palm Springs and Oxnard, California.<sup>108</sup> Therefore, the plaintiff argued, Paramount had been put on notice that the distributed film triggered violence.<sup>109</sup> A Paramount executive telegraphed his district and branch managers, ordering them to advise all theaters screening the

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101. *Id.* at 1072.

102. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 30, at 164-65 (5th ed. 1984).

103. *Id.* at 164.

104. E. Barrett Prettyman, Jr. & Lisa J. Hook, *The Control of Media-Related Imitative Violence*, 38 FED. COMM. L.J. 317, 347 (Jan. 1987).

105. KEETON ET AL., *supra* note 102, § 33, at 197-98.

106. 536 N.E.2d 1067 (Mass. 1989).

107. *Id.* at 1068.

108. *The Flick of Violence*, *supra* note 24.

109. *Yakubowicz*, 536 N.E.2d at 1069.

film to hire security guards at Paramount's expense.<sup>110</sup> Subsequently, the Boston theater where Yakubowicz' killer saw *The Warriors* accepted Paramount's offer for security protection, although Paramount did not receive notice of the theater's acceptance until after Yakubowicz' death.<sup>111</sup>

The Supreme Judicial Court of Massachusetts refused to impose liability on either Paramount or Saxon, holding that neither had violated their duties of reasonable care.<sup>112</sup> Because the altercation that resulted in Yakubowicz' death had occurred at a nearby subway station,<sup>113</sup> and not at the theater itself, the plaintiff was unable to prove proximate cause. To satisfy the proximate cause standard, the plaintiff would have had to prove that Paramount or Saxon was under a duty to protect the plaintiff from violent reactions occurring at locations removed from the theater.<sup>114</sup> Although Paramount did take affirmative action to prevent the occurrence of any more violent incidents potentially motivated by their film, it was certainly not expected to provide security throughout the neighborhood adjacent to the theater.

### B. Intervening Causes: Time and Space Problems

The *Yakubowicz* case illustrates the problems that often confront plaintiffs trying to establish a causal connection between the defendant's conduct and the plaintiff's injury. Intervening causes may enter the equation and break the chain of causation necessary to impose liability on the defendant "actor."<sup>115</sup> The behavior of the audience member who killed Marty Yakubowicz some distance from the theater screening *The Warriors* constituted an intervening cause.<sup>116</sup> Remoteness in time or space gives rise to the likelihood that other intervening causes have assumed responsibility for a plaintiff's injury.<sup>117</sup>

Temporal and spatial proximity problems have also arisen in other imitative and instigated violence cases. For example, *Olivia N. v. National Broadcasting Co.* involved an alleged instance of imitative violence resulting from the airing of a television movie.<sup>118</sup> While the movie *Born Innocent* aired on September 10, 1974, the allegedly imitative violent act

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110. Jonathan M. Hoffman, *Soldiers of Misfortune*, THE BRIEF, Summer 1991, at 49.

111. *Yakubowicz*, 536 N.E.2d at 1069.

112. *Id.* at 1072.

113. Charles Schreger, *Keeping an Eye on 'Warriors'*, L.A. TIMES, Feb. 26, 1979, at 1.

114. See KEETON ET AL., *supra* note 102.

115. Prettyman & Hook, *supra* note 104, at 364-65.

116. *Yakubowicz*, 536 N.E.2d at 1070.

117. KEETON ET AL., *supra* note 102, § 43, at 282-83.

118. 141 Cal. Rptr. 511 (1977).

did not occur until September 14, 1974.<sup>119</sup> This distance in time made proximate cause attenuated at best.<sup>120</sup> In these types of cases, the shorter the time period, the greater the presumption of causation.<sup>121</sup> Conversely, the more time that passes between the program or motion picture and the act leading to injury, the less successful plaintiffs will be in proving proximate cause without intervention by other causes.<sup>122</sup>

The plaintiff in *Bill* encountered a similar problem involving physical proximity to the theater location. Jocelyn Vargas was shot after departing the theater and heading toward the bus to take her home.<sup>123</sup> Because she was not shot inside the theater showing *Boulevard Nights* nor in its immediate vicinity, Vargas failed to establish proximate cause. Additionally, the *Bill* court found that the defendants were under no duty to warn the public that *Boulevard Nights* would attract individuals prone to violence, nor were they under any duty to provide security at the theater showing the film.<sup>124</sup> The court considered the possible ramifications of imposing liability on film producers:

If . . . they were held to have a duty to warn potential patrons of the risk of attending their movie, they would have to anticipate that the warning would deter substantial portions of the public from attending it . . . . And if, under such circumstances, they were held to be responsible for providing security protection at and in the vicinity of every theater at which the movie is shown, including public streets, the attendant costs might be substantial indeed. It is thus predictable that the exposure to liability in such situations would have a chilling effect upon the selection of subject matter for movies . . . .<sup>125</sup>

Certainly, gang-themed films that accurately portray the tragedies of gang violence are usually socially redeeming and typically reflect an anti-gang sentiment.<sup>126</sup> For instance, *Boyz N the Hood* emphasized the importance of strong family guidance for youths growing up in gang-infested neighborhoods by focusing on the teenage protagonist's relation-

119. *Olivia N. v. National Broadcasting Co.*, 178 Cal. Rptr. 888, 890-91 (1981).

120. Intervention of other causes is increasingly likely to occur where there is a significant time lapse between the triggering event and infliction of injury. *KEETON ET AL.*, *supra* note 102, at 283 n.20.

121. *Prettyman & Hook*, *supra* note 104, at 381.

122. *Id.*

123. *Wilner*, *supra* note 4.

124. *Bill*, 137 Cal. App. 3d 1002, 1013-14 (1982).

125. *Id.* at 1008.

126. *McHenry & Jackson*, *supra* note 13.



ship with his father.<sup>127</sup> As a potential solution to the problem of spectator violence accompanying the release of gang movies, in lieu of court imposed liability for negligence, state and federal legislative bodies may institute a statutory affirmative duty requiring studios and producers to provide security protection at theaters screening violent-themed films.

### C. *Ticket Holder as Invitee*

The duty of care owed by a property owner to his or her visitors depends largely upon the status of the visitor as either a trespasser, licensee, or an invitee.<sup>128</sup> A movie ticket-holder may decide to bring an action against a theater owner for injuries sustained on the theater property. In order to make a valid claim, however, the plaintiff must be entitled to classification as an invitee.<sup>129</sup>

Trespassers, licensees and invitees comprise a continuum along which the property owner's obligation of protection increases in direct proportion to the legal status of the visitor.<sup>130</sup> Trespassers—persons who come upon another's land without permission—are the lowest on the totem pole of legally afforded protection.<sup>131</sup> Thus, trespassers largely assume the risk of what they may encounter on another's property and are expected to look out for themselves.<sup>132</sup> Licensees—persons permitted to enter upon land but who do so for their own purpose or benefit—are afforded minimal protection under the law.<sup>133</sup> Like trespassers, licensees generally assume the risk of whatever they may encounter, although they are entitled to warnings of hidden dangers known to possessors of land.<sup>134</sup>

Invitees have the highest legal status of all categories of visitors.<sup>135</sup> Invitees are persons who enter another's premises upon invitation, either express or implied, for business purposes that concern the property owner.<sup>136</sup> Theater patrons are considered invitees because they purchase tickets and confer pecuniary benefits upon theater owners.<sup>137</sup> Theater owners have a duty to exercise reasonable care for the safety of their

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127. Sterritt, *supra* note 22.

128. See KEETON ET AL., *supra* note 102, § 58, at 393-99.

129. RAYMOND L. YASSER, *TORTS AND SPORTS* 32 (1985).

130. KEETON ET AL., *supra* note 102, § 58, at 393.

131. *Id.*

132. *Id.*

133. *Id.* at 412-14.

134. *Id.* at 412, 414-15.

135. KEETON ET AL., *supra* note 102, § 61, at 419.

136. *Id.*

137. *Id.*

patrons.<sup>138</sup> Owners must exercise this duty of care both in examining the theater premises to discover potentially hidden dangers and in protecting the invitee from dangerous conditions that are foreseeable to the owner from the arrangement or use of the property.<sup>139</sup>

Theater owners are under no obligation, however, to protect the invitee against dangers that are known and obvious.<sup>140</sup> This is somewhat problematic for the film patron seeking to recover damages for injuries. Similarly, sports arena owners are under no obligation to warn spectators at sporting events of any known dangers.<sup>141</sup> Thus, spectators at athletic events are expected to assume the risks of injury commonly associated with observing the sport.<sup>142</sup> It would appear to follow by analogy that spectators at motion pictures also assume the risks commonly associated with observing gang-themed films. Does this mean that the person who goes to see *Boyz N the Hood* must protect himself or herself because some film patrons who viewed previously released films with similar themes (i.e., *Colors* and *New Jack City*) were injured or killed at or near the theaters? The answer to this question is still unclear. The rule exonerating owners from their reasonable care duties towards invitees is not fixed and must be analyzed in light of all surrounding circumstances.<sup>143</sup>

Movie patrons may be unaware of the risks associated with attending particular films, especially those with provocative themes that are likely to attract gang members and persons prone to violence. When *The Warriors* opened in February 1979, few people could have predicted the violence that attended its release and took the life of Bostonian Marty Yakubowicz. Gang-themed movies have since become much more prevalent in the film industry. While most people have probably heard about the bouts of violent activity accompanying *Colors*, *New Jack City* and *Boyz N the Hood*, they still may be unaware of a film's specific subject matter until they view the film itself. Because people often go to the theater uninformed, they may not realize that the film of their choice is not what they believed it would be. For example, moviegoers may not be aware that *Juice* is not about O.J. Simpson, but is actually about four young black men surviving in Harlem. For this reason, it is difficult to assert that movie patrons must assume the risk of potentially fatal injury that frequently accompanies the release of gang movies.

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138. *Id.* at 425.

139. KEETON ET AL., *supra* note 102, § 61, at 426.

140. *Id.* at 427.

141. YASSER, *supra* note 129.

142. *Id.*

143. KEETON ET AL., *supra* note 102, § 61, at 427.

To further complicate the matter, property owners are only under a duty to act as reasonable persons to avoid harm to their invitees at the hands of third parties, whether these third persons are invitees or trespassers.<sup>144</sup> This means that an owner is required to take action when he has reason to believe, based on past experience, that the conduct of third parties will be dangerous to his invitees.<sup>145</sup> Usually, a warning is considered to be sufficient.<sup>146</sup> Based on past experience, theater owners across the country have every reason to believe that gang-themed movies trigger some particularly volatile people to react by inflicting violence upon others. Under the law as it presently stands, issuing a safety warning to all persons viewing *Boyz N the Hood* or any other gang-themed movie is apparently sufficient to fulfill the duty owed by a theater owner to his patrons.<sup>147</sup> This warning, however, will not deter most interested people from seeing an allegedly "dangerous" or "violent" film. Rather, it is likely that the mere existence of a warning will attract persons prone to violence or trouble in general to attend the movie as soon as it opens. Some thrill-seekers will find the prospect of violence at the movie theater an intriguing invitation.

#### *D. Consent by Paying for Ticket*

Movie patrons must pay an admission fee to gain entrance into a theater to watch a particular film. Therefore, a distinction may be made between films shown in theaters and free television viewed at home.<sup>148</sup> While people who go to a movie theater make a conscious and deliberate choice to pay the ticket price, television viewers can watch virtually any program free of charge, with the exception of cable programming.<sup>149</sup> Television viewers can change channels to locate shows they desire to watch. Filmmakers and distributors may decry liability for injuries to movie patrons because moviegoers consent to seeing films by purchasing tickets. Moviegoers, because they pay an admittance fee to see a specific film of their own choosing, arguably should not have the right to claim that the film has caused them to act in a manner for which they should not be held responsible.<sup>150</sup> Similarly, movie patrons may lose their right to bring negligence actions against filmmakers, studios, and theater owners for any violent or injurious acts inflicted on them by other theater-goers.

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144. *Id.* at 428.

145. *Id.*

146. *Id.*

147. See KEETON ET AL., *supra* note 102, § 58, at 393-99.

148. Prettyman & Hook, *supra* note 104, at 380.

149. *Id.*

150. See *supra* note 148 and accompanying text.

However, Marty Yakubowicz and other victims of violent acts who did not see the movie in question but were preyed upon by someone who did, do not confront the same legal obstacle that may be erected for victims of violence who paid money to see the film. Additionally, movie patrons who pay to see a film for their personal viewing pleasure and thus consent in some sense should not automatically be prevented from pursuing an action for negligence against those responsible for making and distributing the film.<sup>151</sup> For example, while an amusement park patron pays an admission fee, this does not mean the patron has consented to any and all injuries that may occur throughout the course of his or her visit. As discussed above, the main problem for movie patrons attempting to bring actions for negligence stems from the tendency for time and space to intervene between the screening of the film and the actual injury inflicted.<sup>152</sup>

Professor Michael I. Spak, in his 1981 article *Predictable Harm: Should the Media Be Liable?*,<sup>153</sup> asserts, as an alternative solution, that tort liability for harm resulting from the television or film depiction of unique acts of violence could be created by judicial decision or legislative enactment. He has developed a model negligence cause of action specifically for such imitative acts of violence, which reads as follows:

Any person, partnership, joint venture, or corporation that produces any work designed to be shown to the public will be liable for the physical harm caused to a member of the public as a result of the showing of that work if:

(a) it is shown by clear and convincing evidence that the proximate cause of plaintiff's injuries was a reaction by some member of the public to viewing the work;

(b) it is shown by clear and convincing evidence that the act that was reproduced was excessively violent in fact; and

(c) the producers knew or should have known that the depiction of this violent act created a probability of it being reproduced in society.<sup>154</sup>

Spak's negligence theory would force producers of film and television to hesitate before creating works depicting uniquely detailed acts of violence. The imitative violence that led to the *Olivia N. v. National*

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151. For an interesting alternative solution propounded by Professor Michael I. Spak, see *infra* notes 153-57 and accompanying text.

152. See *supra* notes 115-23 and accompanying text.

153. Michael I. Spak, *Predictable Harm: Should the Media Be Liable?*, 42 OHIO ST. L.J. 671 (1981).

154. *Id.* at 679-80.

*Broadcasting Co.* decision provides an exceptional illustration. In *Olivia N.*, the plaintiff alleged that injuries inflicted upon her by certain juveniles were analogous to an artificial rape scene depicted in the television film *Born Innocent*.<sup>155</sup> An adolescent girl in the film is showering in a community facility when four other girls violently attack her with a "plumber's helper." The film shows the attacker with the plumber's helper making intense plunging motions with the handle of the plunger.<sup>156</sup> The plaintiff in *Olivia N.* alleged that she was attacked by minors and artificially raped with a bottle in imitation of the rape scene in *Born Innocent*.<sup>157</sup> Despite the seeming similarities between the two acts, it is virtually impossible to ascertain whether the minors who raped Olivia N. watched and copied the violent act depicted in *Born Innocent*. However, instituting Spak's media-specific negligence cause of action would probably result in a substantial chilling effect on the freedom of expression so rigorously guarded by the First Amendment.

#### *E. Seeking a Responsible Film Community*

Should filmmakers and distributors be held responsible for any acts of violence committed as a result of their movies? Certainly Tony Bill, the executive producer of *Boulevard Nights*, and Paramount Pictures, the distributor of *The Warriors*, did not intend for their films to instigate acts of gang violence.<sup>158</sup> However, as time passes and the prevalence of gang activity and violence in our communities increases, the visual media cannot ignore the impact of its products on already volatile elements of society. Actor Edward James Olmos, best known for his role as an inspirational teacher at an inner-city high school in the film *Stand and Deliver*, firmly believes that "[e]very person who makes a movie should take total responsibility for what they show."<sup>159</sup> Olmos may be right on a moral and humanitarian level. This comment shows, however, that on a legal level First Amendment freedom of expression considerations supersede all the arguments against making violent films.<sup>160</sup>

What can filmmakers and studios do about spectator violence occurring in conjunction with the screening of their films? The most recent answer has been to step up security to prevent violence inside and outside

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155. *Olivia N. v. National Broadcasting Co.*, 178 Cal. Rptr. 888, 891 (1981).

156. *Id.*

157. *Id.*

158. Lee Grant, *Guards at 'Warriors' Sites*, L.A. TIMES, Feb. 15, 1979, § IV, at 23; *'Boulevard Nights' Not Responsible for Violence, Says Bill*, *supra* note 68.

159. Bob Pool, *Screen Violence Would Stop If It Didn't Sell Tickets, Filmmakers Say*, L.A. TIMES, Nov. 3, 1991, at B6.

160. See *infra* notes 165-76 and accompanying text.

theaters.<sup>161</sup> The distributors of *New Jack City* and *Boyz N the Hood* took security matters into their own hands by paying for extra security at all theaters requesting it after the films opened to violence.<sup>162</sup> After the Westwood Village melee erupted when hundreds of anxious youths were turned away from the theater screening *New Jack City*, Warner Brothers honored the film's producers' request to pay for security at any theater requesting it.<sup>163</sup> Similarly, Columbia Pictures offered to pay for additional security at any theater screening its controversial *Boyz N the Hood*, after one murder and thirty-three injuries occurred at twenty different theaters.<sup>164</sup> Taking adequate security precautions from the day a gang-themed motion picture first opens probably provides the most feasible solution to combat the problem of spectator violence.

#### V. FIRST AMENDMENT PROTECTION FOR GANG FILMS

The United States Supreme Court has stated, "Films are no less protected by the First Amendment than other media of expression."<sup>165</sup> The First Amendment guarantee of freedom of expression protects the right of filmmakers to make films addressing controversial subjects.<sup>166</sup> Merely because a select number of the film audience may be prone to imitate the violence they see depicted in gang-related movies, filmmakers cannot be stifled in their creative endeavors to make socially relevant films. As the court stated in *Yakubowicz*, "[I]t is simply not acceptable to a free and democratic society . . . to limit and restrict . . . creativity in order to avoid the dissemination of ideas in artistic speech which may adversely affect emotionally troubled individuals."<sup>167</sup>

Though the courts have paramount concerns with upholding the First Amendment's guarantees, they do recognize that the release of every gang movie potentially puts people's lives (largely young people) in danger.<sup>168</sup> Yet, the courts are hesitant to place restrictions on the protections afforded filmmakers by the First Amendment. For instance, in *Zamora v. Columbia Broadcasting System*,<sup>169</sup> the plaintiff parents, Frank

161. See *infra* notes 228-39 and accompanying text.

162. Stevenson, *supra* note 28; Fox, *supra* note 66.

163. Fox, *supra* note 66.

164. *Shooting a Messenger*, L.A. TIMES, July 16, 1991, at B6.

165. *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948).

166. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952); *Paramount Pictures, Inc.*, 334 U.S. at 166.

167. *Yakubowicz*, 536 N.E.2d at 1072 (quoting *McCullum v. CBS, Inc.*, 202 Cal. App. 3d 989, 1005-06).

168. See *Trail of Trouble for 'Boyz' Screenings Across the Nation*, *supra* note 51; Grant, *supra* note 158; Mydans, *supra* note 39.

169. 480 F. Supp. 199 (S.D. Fla. 1979).

and Yolanda Zamora, and minor child Ronny Zamora, alleged that the cumulative effects of viewing television violence on all three major networks had caused Ronny to kill his eighty-three-year-old neighbor. Holding in the defendant's favor, the court espoused the importance of the First Amendment: "It is the lens through which the operations of government are viewed and the support and protection for the commentary which may result. Thus any action legislative or otherwise which has as its purpose placing limitations upon freedom of expression must be viewed with suspicion."<sup>170</sup> Accordingly, the *Zamora* court rejected the plaintiffs' argument on First Amendment grounds.<sup>171</sup>

### A. *Chilling Effect*

A major concern of the courts in protecting material communicated through television and films is the chilling effect that the imposition of unlimited liability would probably create on the selection of subject matter for television programs and motion pictures.<sup>172</sup> In rejecting plaintiffs' claim, the *Zamora* court realistically contemplated the effect that self-censorship would have on the media:

[T]he liability sought for by the plaintiffs would place broadcasters in jeopardy for televising Hamlet, Julius Caesar, Grimm's Fairy Tales; more contemporary offerings such as All Quiet on the Western Front, and even The Holocaust, and indeed would render John Wayne a risk not acceptable to any but the boldest broadcasters.<sup>173</sup>

Even without judicially imposed liability, film studios may very well respond to the surge of violence accompanying gang movies by imposing internal limitations on the kinds of films they approve for production. Peter Dekom, a Hollywood attorney who represents black filmmakers, stated, "It's going to take more to get over that threshold, to get the green light. Nobody wants to say, 'Gee, I green-lighted a movie that got six people killed.'"<sup>174</sup> Court-created liability would only exacerbate this subtle chilling effect.

Courts do not want to dampen the vigor or limit the variety of public debate.<sup>175</sup> Although, unfortunately, certain films may trigger some

170. *Id.* at 203.

171. *Zamora*, 480 F. Supp. 199.

172. Barbara A. Sternberg & Aaron J. Weissman, *Television Violence: Censorship and the First Amendment*, 12 U. WEST L.A. L. REV. 81, 95 (1980).

173. *Zamora*, 480 F. Supp. at 206.

174. Courtland Milloy, *Screening out Violence*, WASH. POST, July 16, 1991, at D3.

175. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279 (1964).

people to act violently, the American public does have a right to formulate its own viewing choices without government intrusion.<sup>176</sup> It would be extremely difficult for any legislative body to determine which films could spawn violent behavior.<sup>177</sup> Moreover, most makers of gang-themed movies vigorously assert that their productions convey anti-gang messages. Because “[n]ot a single character in the film [*New Jack City*] who comes into contact with drugs . . . survives with his or her life intact,” the producers of *New Jack City* assert that their film “vilifies” drug culture.<sup>178</sup> Clearly while some people may gain positive insights from viewing a gang film depicting the negative effects of gang activity, others may come away convinced that gang violence is exciting and glamorous.<sup>179</sup> As the United States Supreme Court once stated, “What is one man’s amusement, teaches another’s doctrine.”<sup>180</sup> Imposing a duty upon movie producers to avoid any scenes that could potentially instigate violent reactions in a few individuals would result in “timidity and blandness in programming that few of us would be prepared to accept.”<sup>181</sup>

### B. Violent Motion Pictures as Fighting Words?

Based on First Amendment concerns, courts have ardently refused to impose liability on filmmakers and/or studios for acts of violence committed in conjunction with screenings of their films.<sup>182</sup> Imposing liability would spawn the precise type of government censorship the First Amendment was designed to avoid.<sup>183</sup> As a way around the First Amendment, however, it has been suggested that violent motion pictures tending to instigate viewers to engage in actual violence and criminal acts should be classified along with other established categories of nonprotected speech.<sup>184</sup>

The United States Supreme Court, in *Chaplinsky v. New Hampshire*,<sup>185</sup> singled out specific categories of speech as not representing “speech” protected by the First Amendment. These categories include

176. Hoffman, *supra* note 110, at 48.

177. See, e.g., Rosencrans, *supra* note 10, at 452, for discussion of the possible link between the film *Taxi Driver* and John Hinckley’s assassination attempt on former President Ronald Reagan.

178. McHenry & Jackson, *supra* note 22.

179. See *supra* notes 24-39 and accompanying text.

180. Winters v. New York, 333 U.S. 507, 510 (1943).

181. Prettyman & Hook, *supra* note 104, at 380.

182. See, e.g., Bill v. Superior Court, 187 Cal. Rptr. 625 (1982); Yakubowicz v. Paramount Pictures Corp., 536 N.E.2d 1067 (Mass. 1989).

183. Hoffman, *supra* note 110, at 23.

184. Cook, *supra* note 75, at 391.

185. 315 U.S. 568 (1942).



words that are not an essential part of any exposition of ideas, words whose very utterance inflicts injury and words that tend to incite an immediate breach of the peace.<sup>186</sup> In *Chaplinsky*, the Supreme Court upheld the conviction of a Jehovah's Witness for calling a city marshal a "damned Fascist" and "God damned racketeer" under a statute providing that "[no] person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place . . . ."<sup>187</sup> The Court held that the words at issue were "fighting words" and not protected by the First Amendment. The traditional non-protected classes of speech include lewd and obscene words, profanity, libelous speech, and insulting or "fighting" words.<sup>188</sup> "Fighting words" are those that offer a provocative, emotional message intended and likely to incite an *immediate* violent response, having no intellectual content to be conveyed to the listener.<sup>189</sup>

The question arises whether violent motion pictures, particularly the gang-themed films discussed in this comment, may be categorized as nonprotected fighting words because such films often spark violence. Thus far no court has classified violent movies as unprotected fighting words.<sup>190</sup> Certainly, these films may provoke viewers to engage in acts of violence, but the Court has narrowly limited the fighting words category to personal face-to-face confrontations likely to trigger physical violence.<sup>191</sup> Screening motion pictures clearly does not involve any actual confrontation between viewer and filmmaker and any ensuing violence does not occur *immediately* after the words and acts are conveyed on-screen. Because of this temporal and spatial distance between filmmaker and audience, courts would have difficulty extending the application of the fighting words test to motion pictures.<sup>192</sup> Instead, the fighting words exception to speech protected under the First Amendment was intended to prevent angry citizens from engaging in fights or hurling insults at policemen.<sup>193</sup>

Moreover, speech constitutes fighting words only if it does not convey an intellectual message to the audience.<sup>194</sup> The films *The Warriors*,

186. *Id.* at 572.

187. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-10, at 849-50 (2d ed. 1988).

188. *Chaplinsky*, 315 U.S. at 572.

189. JOHN E. NOWAK ET AL., CONSTITUTIONAL LAW § 16.38, at 943 (3d ed. 1986).

190. *See, e.g.*, *Bill v. Superior Court*, 187 Cal. Rptr. 625 (1982); *Yakubowicz v. Paramount Pictures Corp.*, 536 N.E.2d 1067 (Mass. 1989).

191. Rosencrans, *supra* note 10, at 465-66.

192. *Id.* at 467.

193. Cook, *supra* note 75, at 383.

194. *See supra* note 189 and accompanying text.

*Boulevard Nights*, *Colors*, *New Jack City* and *Boyz N the Hood* cannot be described as lacking important social content. Their messages may be subtle, but these films are intended to demonstrate the destruction and despair that accompany gang involvement and its attendant violent activity.<sup>195</sup> This serves the First Amendment's invaluable purpose of protecting vigorous public debate and diverse presentations of conflicting ideas. The First Amendment protection afforded motion pictures of this nature enables important messages to be conveyed in the guise of urban action films that attract wide audiences. Some people will always react adversely to onscreen acts of violence; however, violent motion pictures do not lose their First Amendment protection merely because they have a "tendency to lead to violence."<sup>196</sup> They must fall into one of the unprotected categories of speech or meet one of the court-created tests justifying suppression.<sup>197</sup> These tests include the "clear and present danger" line of cases and those involving prior restraint.

### C. *Clear and Present Danger Test*

The "clear and present danger" test was first articulated in *Schenck v. United States*.<sup>198</sup> Justice Holmes wrote for the Court: "The question in every case is whether the words used are used in such circumstances and are of such a danger as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."<sup>199</sup> The *Schenck* case involved a violation of the Espionage Act of 1917, which Congress promulgated in response to domestic unrest.<sup>200</sup> The appellant in *Schenck* was convicted of conspiracy to violate the Act after he mailed leaflets to men eligible for military service espousing the draft's violation of the Thirteenth Amendment.<sup>201</sup> Concluding that restraint of freedom of expression was justified to prevent threats of grave and immediate danger to national security, Holmes upheld the convictions.<sup>202</sup>

Fifty years after *Schenck*, the Court clarified and strengthened the "clear and present danger" test in its *Brandenburg v. Ohio*<sup>203</sup> decision.<sup>204</sup> The Court held that advocacy of violence was protected as long as the

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195. See *supra* notes 126-27 and accompanying text.

196. *Yakubowicz*, 536 N.E.2d at 1071 (quoting *Hess v. Indiana*, 414 U.S. 105, 109 (1973)).

197. See *infra* parts V.C-D.

198. 249 U.S. 47 (1919).

199. *Schenck v. United States*, 249 U.S. 47, 52 (1919).

200. NOWAK ET AL., *supra* note 189, § 16.13, at 854-55.

201. *Id.*

202. *Id.*

203. 395 U.S. 444 (1969).

204. NOWAK ET AL., *supra* note 189, § 16.15, at 863.

advocacy did not incite people to *imminent* action.<sup>205</sup> Under the *Brandenburg* standard, a state could take speech out of First Amendment protection only if it proved that: (1) the speaker *subjectively intended* incitement; (2) the words used, in context, were *likely to produce* imminent, lawless action; and (3) the speaker's words *objectively encouraged* incitement.<sup>206</sup>

How does the *Brandenburg* test apply to violent films? Can a film be said to "incite" viewers to violence? Would such violence be considered "imminent"? The *Yakubowicz* court refused to find *The Warriors* to be unprotected incitement within the meaning of *Brandenburg*.<sup>207</sup> While the court noted that *The Warriors* is "rife with violent scenes," it also observed that the film "does not at any point exhort, urge, entreat, solicit, or overtly advocate or encourage unlawful or violent activity on the part of its viewers. It does not create the likelihood of inciting or producing 'imminent lawless action' that would strip the film of its First Amendment protection."<sup>208</sup> Although Marty Yakubowicz was fatally stabbed by a teen-ager who had just seen *The Warriors*, a story of urban combat, the film itself did not "command [the teen] to any concrete action at any specific time."<sup>209</sup>

The California Court of Appeals' discussion in *McCullum v. CBS, Inc.* ("McCullum")<sup>210</sup> of the *Brandenburg* requirements presents an appropriate analogue to the *Yakubowicz* court's explanation. In *McCullum*, a teen-ager's parents alleged that their son's suicide was inspired by the lyrics of an Ozzy Osbourne<sup>211</sup> song, and sought to impose liability on Osbourne and his record company. In rejecting the claim, the *McCullum* court emphatically held:

[M]usical lyrics and poetry cannot be construed to contain the requisite "call to action" for the elementary reason that they simply are not intended to be and should not be read literally on their face, nor judged by a standard of prose oratory. Reasonable persons understand musical lyrics and poetic conventions as the figurative expressions which they are. No rational person would or could believe otherwise nor would they mistake musical lyrics and poetry for literal commands or direc-

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205. *Id.*

206. *Id.* at 864.

207. *Yakubowicz*, 536 N.E.2d at 1071.

208. *Id.*

209. *Id.*

210. 249 Cal. Rptr. 187 (1988).

211. Ozzy Osbourne is a rock musician. "Plaintiffs allege that Osbourne is well known as the 'mad man' of rock and has become a cult figure." *McCullum*, 249 Cal. Rptr. at 189.

tives to immediate action. To do so would indulge a fiction which neither common sense nor the First Amendment will permit.<sup>212</sup>

Similarly, it is unreasonable to contend that *The Warriors* and other gang-related movies entreated audiences to imitate or emulate any violent acts depicted in the films. Like songs, films such as *The Warriors* are typically made for entertainment, although they may also convey important societal messages. Most recently, *New Jack City* and *Boyz N the Hood* illustrated the tendency of filmmakers to create films that are simultaneously entertaining and meaningful. *New Jack City* focused on the devastation emanating from drug involvement and criminal behavior,<sup>213</sup> and *Boyz N the Hood* concentrated on the life and death dichotomy between those who are able to abstain from gang activity and those who inevitably succumb to it.<sup>214</sup> The beneficial messages contained in these films should not be circumscribed by the violent acts of a few impressionable individuals. Gang-related films that do not overtly advocate violent activity do not meet the clear and present danger standard, and thus may not be suppressed under the *Brandenburg* test.

#### D. Prior Restraints

Speech that is otherwise protected by the First Amendment may be suppressed through prior restraints.<sup>215</sup> Prior restraints, however, are heavily frowned upon because they inhibit speech even before it occurs. Thus, the doctrine of prior restraints bars attempts to suppress speech prior to publication.<sup>216</sup> Although the First Amendment is not an absolute bar to prior restraints, the Supreme Court has emphatically stated that any "system of prior restraints comes to this Court bearing a heavy presumption against its constitutional validity."<sup>217</sup> The Supreme Court first enunciated this doctrine in *Near v. Minnesota*.<sup>218</sup> In *Near*, the defendant publisher of *The Saturday Press* published several articles that were both critical of local officials and anti-Semitic in nature. The trial court issued a permanent injunction against the defendant under a state statute that permitted the enjoining as a nuisance of any "malicious, scandalous and defamatory newspaper, magazine or other periodical."<sup>219</sup>

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212. *Id.* at 194.

213. McHenry & Jackson, *supra* note 22.

214. *Shooting a Messenger*, *supra* note 164.

215. TRIBE, *supra* note 187, § 12-34, at 1039-42.

216. *Id.* at 1041.

217. *Id.*

218. 283 U.S. 697 (1931).

219. NOWAK ET AL., *supra* note 189, § 16.17, at 869.

The highest state court affirmed the conviction, thus facilitating a system of prior restraints. The Supreme Court reversed, however, basing its decision on the important presumption that the primary purpose of the freedom of the press guarantee was to prevent prior restraints on publication.<sup>220</sup>

According to the Supreme Court, prior restraint is only *potentially* justified in three exceptional situations.<sup>221</sup> The first, known as the "Near Troop Exception," permits prior restraint where it is necessary for the government to prevent interference with its recruiting activities and to withhold publication of sailing dates or the number and location of troops.<sup>222</sup> The second exceptional case arises where decency standards may require prior restraint on obscene publications that fall below the permissible standard.<sup>223</sup> Last, prior restraint may be justified where it is necessary to avoid "incitements to acts of violence and the overthrow by force of orderly government."<sup>224</sup> Because prior restraint may be justified only in the above limited circumstances, it is extremely doubtful that prior restraint could be instituted against a particular film or filmmaker, especially in light of the courts' First Amendment concerns.

Virtually any form of prior restraints would have a dangerous chilling effect on the creativity of writers, artists, and filmmakers. Materials would be edited "so profusely that only innocuous and vacuous messages [would] be conveyed."<sup>225</sup> The ratings system used for American motion pictures already constitutes a variation on a prior restraint system. Sponsored by the Motion Picture Association of America, the system labels pictures according to the level of their sexual, violent, or profane speech content.<sup>226</sup> In effect, this prevents the wide release of films containing explicit language or sexual behavior by designating them as "NC-17"<sup>227</sup> and may significantly impact the commercial success of a given film. Based on the negative connotation often associated with a strict rating, filmmakers may be discouraged from making films that will not survive at the box office.

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220. *Id.* at 870.

221. *Id.*

222. *Id.*

223. *Id.*

224. NOWAK ET AL., *supra* note 189, § 16.17, at 870.

225. Rosencrans, *supra* note 10, at 462.

226. Robert W. Welkos, *Mahoney to Propose New Code for Films, TV*, L.A. TIMES, Jan. 29, 1992, at B8.

227. *Id.*

## VI. A RECENT DISPLAY OF SPECTATOR VIOLENCE

On January 17, 1992, Paramount Pictures released the "urban action" film *Juice*. Taking into account the violence triggered by *New Jack City* and *Boyz N the Hood*, Paramount provided theaters screening *Juice* additional security free of charge as well as extra prints of the film to show to community leaders.<sup>228</sup> Theater owners also hoped to avoid violence at *Juice's* opening by staggering their movie schedules to show the film at earlier hours.<sup>229</sup> Theaters in especially volatile areas such as Westwood (the scene of the *New Jack City* fracas) and Universal City (the site of a *Boyz N the Hood* shooting) opted not to screen the film.<sup>230</sup> Other theaters in Los Angeles, normally a hotbed of gang activity upon the release of any highly promoted gang-themed film, reported no violent incidents.<sup>231</sup>

Unfortunately, violence flared at theaters showing *Juice* in several other cities after the film premiered. A sixteen-year-old girl standing near the theater line for *Juice* was killed by a stray bullet from a gang-related altercation in Chicago.<sup>232</sup> An eighteen-year-old man was paralyzed from the chest down after he was shot coming out of a theater in suburban Philadelphia.<sup>233</sup> A theater in East Lansing, Michigan cancelled the film after two groups of youths had a gunfight in the theater lobby.<sup>234</sup> Gunfire erupted in a Boston theater after a moviegoer was robbed.<sup>235</sup> A fight involving fifty to one hundred persons broke out in a theater and spilled over into the parking lot in Little Rock, Arkansas.<sup>236</sup> The violence came to a halt nationwide after the film's Friday night premiere.<sup>237</sup>

While Paramount expressed concern about the violent acts accompanying *Juice*, it lauded audiences and exhibitors for the "relatively few and isolated" incidents that occurred on the film's opening night at the 1,089 sites screening the film.<sup>238</sup> Although *Juice's* release did meet with various acts of violence across the country, the film opened to substan-

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228. Busch & King, *supra* note 58, at 69.

229. Fox, *supra* note 55, at F5.

230. *Id.*

231. McBride, *supra* note 57.

232. *Id.*

233. *Id.*

234. *Morning Report*, L.A. TIMES, Jan. 20, 1992, at F2.

235. *Id.*

236. McBride, *supra* note 57.

237. *Morning Report*, *supra* note 234.

238. McBride, *supra* note 57.

tially less violence than did either *New Jack City* or *Boyz N the Hood*.<sup>239</sup> Paramount and theater owners took precautionary steps before *Juice* even made it to the screen. With *Juice* as an example, it appears that progress can be made toward diminishing film violence while at the same time sustaining the importance of filmmaker freedom of expression.

## VII. CONCLUSION

Whether or not the making of gang movies is restricted, young people, especially those involved in gang activity, will not stop killing one another. Similarly, the cancelling of screenings of volatile films like *The Warriors*, *Boulevard Nights*, *Colors*, *New Jack City*, and *Boyz N the Hood* will not reduce violence among rival gang members. From the realistic standpoint of pure box office profit, these "urban action" films draw wide audiences and bring considerable revenue to their makers and distributors. One studio executive noted that, because we live in a commercial world, violent films will continue to be made unless the public stops attending them.<sup>240</sup> Since this prospect seems unlikely in the near future, the movie-going public, and particularly those persons with violent propensities, will continue to provide an audience for these movies.

The gang-themed motion pictures *The Warriors*, *Boulevard Nights*, *Colors*, *New Jack City* and *Boyz N the Hood* offered positive anti-gang messages to those who chose to recognize them. In particular, *Boyz N the Hood* has been lauded for poignantly depicting the importance of strong familial relationships while capturing the despair caused by drug use and gang activity.<sup>241</sup> Film distributors, producers, and promoters should take affirmative action to condemn all acts of violence stemming from gang activity.<sup>242</sup> They should also emphasize the strong anti-gang messages of their films and take greater steps to secure the safety of movie patrons at theaters. Film distributors should not wait until violent incidents have occurred following the opening of their motion pictures to provide security protection at the theaters showing their films. Instead, they should evaluate each violent film prior to its release for its

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239. See Mydans, *supra* note 39; *Trail of Trouble for 'Boyz' Screenings Across the Nation*, *supra* note 51.

240. Pool, *supra* note 159 (quoting Mike Medavoy, chairman of Tristar Pictures).

241. See, e.g., *Shooting a Messenger*, *supra* note 164; Fox, *supra* note 30, at B6; Sterritt, *supra* note 22.

242. Black filmmakers and theater owners met at a Las Vegas convention to discuss solutions to ease tensions at theaters playing black films. The filmmakers challenged exhibitors to cooperate with them by showing a series of public service announcements they intend to produce. Jack Mathews, *Media Blamed for Black Films' Violent Label*, L.A. TIMES, Feb. 22, 1992, at F1.

propensities to incite violent gang behavior and furnish security protection accordingly from the initial date of release.

Finally, local groups, state legislatures and/or a special congressional commission should consider investigating the problem of spectator violence accompanying the release of films depicting gang violence. These legislative bodies should enact appropriate regulatory legislation, which still preserves filmmaker freedom of expression, to diminish the volume of violent incidents upon the release of films of this nature.

*Stephanie J. Berman*



