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# THE LIGHTER SIDE OF THE GREEN MOVEMENT: THE THREE STOOGES AS EARLY ENVIRONMENTALISTS

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Aristotle's *Rhetoric*,<sup>1</sup> written 2400 years ago, explained that there are three important aspects to any persuasive presentation. He called them the logos, the ethos, and the pathos. The logos is the logic or reason of the argument. The ethos is the character or integrity of the speaker. The pathos is the emotional content of the presentation.<sup>2</sup>

In attempting to make persuasive arguments in court, lawyers are well aware of the need to draw upon all of these components of persuasion. Arguments are always structured to at least appear logical; lawyers jealously guard their credibility; and emotional appeals are common. We most often think of the emotion of sympathy, but effective advocates use anxiety, love, fear, excitement, joy, tension, anger, and even humor to be persuasive.<sup>3</sup>

Like lawyers in court, judges use emotions, including humor, to make points in their opinions.<sup>4</sup> Similarly, law professors often strive for humor in the classroom. Authors of law review articles, however, rarely appeal to emotion,<sup>5</sup> and humor in

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1. ARISTOTLE, *RHETORIC* bk. 2, ch. 1 (W. Rhys Roberts trans.), in *THE BASIC WORKS OF ARISTOTLE* 1380 (Richard McKeon ed., 1941).

2. *Id.*; see John W. Cooley, *A Classical Approach to Mediation — Part I: Classical Rhetoric and the Art of Persuasion in Mediation*, 19 *DAYTON L. REV.* 83, 89-90 (1993) (setting forth and defining the original Greek terms).

3. Others have noted the persuasive power of humor:

Humor can be an exceedingly persuasive device. It can convey succinctly a desired point with a facility that might not otherwise be achieved. Humor often resonates on many levels, including one of irony, which in turn may bring legal analysis to life. Moreover, the way in which humor conveys legal thought may be profoundly more human and accessible than purely detached inquiry. The appeal of humor is simple but significant: it helps people communicate and enjoy communicating.

J.T. Knight, Comment, *Humor and the Law*, 1993 *WIS. L. REV.* 897, 908 (footnote omitted).

4. See Adalberto Jordan, *Imagery, Humor, and the Judicial Opinion*, 41 *MIAMI L. REV.* 693 (1987); Marshall Rudolph, *Judicial Humor: A Laughing Matter?*, 41 *HASTINGS L.J.* 175 (1989) (questioning whether humor is appropriate in such a situation); David A. Golden, Comment, *Humor, the Law, and Judge Kozinski's Greatest Hits*, 1992 *B.Y.U. L. REV.* 507.

5. Max Stier, et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 *STAN. L. REV.* 1467, 1469 (1992) ("The commentators consider most law review articles to be devoid of passion, and believe that the precious few that do not suffer from this defect are so laden with jargon that they are unintelligible."); see also W. Lawrence Church, *A Plea for*

law review articles is virtually nonexistent.<sup>6</sup> As one commentator has put it, law reviews "stand out as an anomaly from the rest of the profession and 'popular' society, not only in their unwillingness to laugh at themselves, but in their unwillingness to laugh at all."<sup>7</sup> The lack of humor in law review articles was noted more than fifty years ago,<sup>8</sup> but the situation remains largely unchanged.<sup>9</sup>

The absence of humor is particularly noticeable in environmental law scholarship.<sup>10</sup> It sometimes seems that environmentalists are afraid to express a sense of humor, lest they be considered something less than serious. The rule seems to be that a dire outlook is needed in order to assure that the environmental presentation is impressive.<sup>11</sup>

There are, of course, some very entertaining environmental writers and speakers.<sup>12</sup> When, however, one hears entertaining environmental stories, they often are built on the general premise that "evil people" are persecuting the selfless,

*Readable Law Review Articles*, 1989 WIS. L. REV. 739, 739 (referring to the "numbing, legal/bureaucratic style that has typified legal writing for decades").

6. See Knight, *supra* note 3 (exploring why there is a dearth of humor in law review articles and suggesting that humor should be more often employed). There are, of course, notable exceptions. Perhaps the most famous humorous law review article is Comment, *Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975); see also C. Steven Bradford, *The Gettysburg Address as Written by Law Students Taking an Exam*, 86 NW. U. L. REV. 1094 (1992); Paul L. Caron, *Tax Myopia, or Mamas Don't Let Your Eabies Grow Up to Be Tax Lawyers*, 13 VA. TAX. REV. 517 (1994) (describing perfectly one of the tax professors on my faculty); James D. Gordon III, *Humor in Legal Education and Scholarship*, 1992 B.Y.U. L. REV. 313; James D. Gordon III, *Interplanetary Intelligence About Promissory Notes as Securities*, 69 TEX. L. REV. 383 (1990); Wayne R. LaFave, *Mapp Revisited: Shakespeare, J., and Other Fourth Amendment Poets*, 47 STAN. L. REV. 261 (1995); *Symposium on Humor and the Law*, 17 NOVA L. REV. 661 (1993).

When humor is found, it is most likely to be in the title. See Knight, *supra* note 3, at 906 n.53. See generally Richard B. Cappalli, *The 1990 Rose Awards: The Good, the Bad, the Ugly — Titles for Law Review Articles*, 41 J. LEGAL EDUC. 485 (1991). My personal favorite is Erik S. Jaffee, Note, *"She's Got Bette Davis[s] Eyes": Assessing the Nonconsensual Removal of Cadaver Organs Under the Takings and Due Process Clauses*, 90 COLUM. L. REV. 528 (1990).

7. Knight, *supra* note 3, at 907; see *id.* at 899 (noting that the lack of humor in law reviews is unique, because "[h]umor plays an established role in other aspects of legal life").

8. See Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 40 (1936-37) ("[F]ar be it from the law reviews to be any party to the chucking of a snowball or the judicious placing of a banana-peel").

9. See generally Knight, *supra* note 3, at 740 (suggesting that "the problem seems to be growing worse"). This was also Professor Rodell's conclusion when he revisited law reviews 25 years after his original piece. See Fred Rodell, *Goodbye to Law Reviews — Revisited*, 48 VA. L. REV. 279 (1962).

10. See Bradford, *supra* note 6, at 1099 n.26 ("Why is the environmental movement putting so much of the blame for the destruction of the world's forests on logging companies and Brazilian farmers, instead of where it rightfully belongs — the law reviews?").

11. See P.J. O'Rourke, *All the Trouble in the World: The Lighter Side of Overpopulation, Famine, Ecological Disaster, Ethnic Hatred, Plague, and Poverty* 171 (1994) ("People with a mission to save the earth want the earth to seem worse than it is so their mission will look more important. In fact, there's some evidence that these people want the earth to be worse than it is.").

12. Professor Oliver Houck of Tulane, for instance, is very engaging, both in his lectures and in his writing. See, e.g., Oliver A. Houck, *The Secret Opinions of the United States Supreme Court on Leading Cases in Environmental Law, Never Before Published!*, 65 COLO. L. REV. 459 (1994).

dedicated environmentalist. Thus, there is the story about the environmentalist who approaches a person wearing a fur coat and asks, "Did you know that dozens of small animals were killed to make that coat?" The person in the fur coat then responds, "Yes, I knew that. I just didn't know anyone else knew that. Now I'll have to kill you too."<sup>13</sup>

Perhaps it was inevitable that humor would play only a negligible role in the environmental community. The modern environmental movement has been variously dated to the passage of the Freedom of Information Act in 1966;<sup>14</sup> the Wilderness Act of 1964;<sup>15</sup> the Wild and Scenic Rivers Act of 1968;<sup>16</sup> the Endangered Species Act of 1966;<sup>17</sup> the administrative hearings and litigation in 1967 concerning Consolidated Edison's plan to build a hydroelectric dam on the Hudson River; the litigation concerning DDT on Long Island and in Wisconsin in the late 1960s; the first Earth Day, April 22, 1970; and a 1969 photograph of a dead sea bird covered with oil on the beach at Santa Barbara, California.<sup>18</sup> Most people, however, trace the modern environmental movement to publication of a book in 1962.<sup>19</sup>

Rachel Carson's *Silent Spring*<sup>20</sup> was the first book to bring the topic of environmental pollution to the public forefront. It dramatized the danger of pesticides and heightened public awareness about the environment. The first chapter, entitled "A Fable for Tomorrow," told of an American town which had once been thriving, but where plants, animals, and people were now all dying. The culprit, of course, was

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13. I heard this related at an Association of American Law Schools conference a few years ago during the Environmental Law Section meeting. Similarly, others have altered a line from Gilbert & Sullivan's *The Mikado*:

I have got a little list — I have got a little list. Of societies [sic] offenders who might well be underground.

And who never would be missed — who never would be missed.

They're just environmentalists.

We can do it with no risk!

John E. Bonine, *Environmental Law Symposium: Speeches and Comments: A Voice From the Wilderness, Calling Your Name*, 6 YALE J. ON REG. 393, 395 (1989).

14. Pub. L. No. 89-487, 80 Stat. 250 (1966) (codified as amended at 5 U.S.C. § 552 (1994)).

15. Pub. L. No. 88-577, 78 Stat. 890 (codified as amended at 16 U.S.C. §§ 1131-1136 (1994)).

16. Pub. L. No. 90-542, 82 Stat. 906 (codified as amended at 16 U.S.C. §§ 1271-1285 (1994)).

17. Pub. L. No. 89-669, §§ 1-3, 80 Stat. 926, 926 (repealed 1973).

18. Bonine, *supra* note 13, at 396.

19. Roland S. Homet, Jr., "Getting the Message": *Statutory Approaches to Electronic Information Delivery and the Duty of Carriage*, 37 FED. COM. L.J. 217, 228 (1985) ("[W]ithout a publisher for Rachel Carson's *Silent Spring* there might never have been an American environmental movement."); Zygmunt J.B. Platter, *From the Beginning, a Fundamental Shift of Paradigms: A Theory in Short History of Environmental Law*, 27 LOY. L.A. L. REV. 981, 981 n.1 (1994) ("Rachel Carson's *Silent Spring* was arguably the most important single trigger of the environmental great awakening, the scientific treatise that brought ethnological consciousness into the American main streams."); A. Dan Tarlock, *The Nonequilibrium Paradigm in Ecology and the Partial Unraveling of Environmental Law*, 27 LOY. L.A. L. REV. 1121, 1126 (1994) (stating that *Silent Spring* was "perhaps the book most responsible for the environmental movement").

20. RACHEL CARSON, *SILENT SPRING* (1962).

modern pesticides.<sup>21</sup> In what she called "the other road,"<sup>22</sup> Carlson argued for the development of pesticide policies based on the biological understanding of pests as living organisms. The then current approach, she argued, was "Stone Age" science, "born of the Neanderthal age of biology and philosophy" and it was "our alarming misfortune" that these "terrible weapons had been turned against the earth itself."<sup>23</sup>

The picture painted by Carlson was bleak and set the tone for the environmental movement of the future. *Silent Spring* was effective because it scared people into action. Subsequent generations of environmentalists learned this lesson and continued to offer frightening scenarios. Consider the following statement by Stephen Schneider of the National Center for Atmospheric Research and author of the book, *Global Warming: Are We Entering the Greenhouse Century?*:<sup>24</sup>

On the one hand, as scientists, we are ethically bound to the scientific method, in effect promising to tell the truth, the whole truth, and nothing but — which means that we must include all the doubts, the caveats, the ifs, ands, and buts. On the other hand, we are not just scientists, but human beings as well. And like most people we'd like to see the world a better place, which in this context translates into our working to reduce the risk of potentially disastrous climatic change. To do that *we need to get some broad based support, to capture the public's imagination. That, of course, entails getting loads of media coverage. So we have to offer up scary scenarios, make simplified, dramatic statements, and make little mention of any doubts we might have.* This "double ethical bind" we frequently find ourselves in cannot be solved by any formula. Each of us has to decide what the right balance is between being effective and being honest. I hope that means being both.<sup>25</sup>

Thus, it is not surprising to find a recent publication referring to "Carlson's assertion[s] and those of her doom-saying environmentalist prodigy."<sup>26</sup>

Imagine however, if rather than tracing the modern environmental movement to a gloomy portrait of the future, we were able to trace it to a more gentle, even comic, beginning. Imagine if, instead of finding its roots in a serious and somber text, environmentalism could be traced back to a lighthearted motion picture, at least

21. *Id.* at 13-15.

22. *Id.* at 244.

23. *Id.* at 261-62.

24. STEPHEN H. SCHNEIDER, *GLOBAL WARMING: ARE WE ENTERING THE GREENHOUSE CENTURY?* (1989).

25. Jonathan Schell, *Our Fragile Earth*, *DISCOVER*, Oct., 1989, 44, 47 (emphasis added). Schneider's remarks have led one commentator to charge that what is written and stated on global warming "is almost always from environment fanatics more interested in dramatic statements than in being honest." See Ronald J. Rychlak, *Thermal Expansion, Melting Glaciers, and Rising Tides: The Public Trust in Mississippi*, 11 *MISS. C. L. REV.* 95, 96 n.6 (1990) (quoting radio personality Paul Harvey); see also Robert J. Samuelson, *The Rise of 'Ecorealism': Let's Not Deny the Good News About the Environment*, *NEWSWEEK*, Apr. 10, 1995, at 46 (stating that environmentalists "remain addicted to alarmism").

26. Michael Fumento, *DDT's Cancer Connection*, *CEI UPDATE*, Oct. 1994, at 3.

partially aimed at children. What if, rather than Rachel Carson, modern environmentalists traced their roots to the Three Stooges?

This may be surprising to those who are unfamiliar with their work, but the Three Stooges engaged in a great deal of social commentary. From Depression-era problems to international crises, emerging concerns of the day were often depicted in Three Stooges films. It would, in fact, be in keeping with their history for the Three Stooges to address emerging environmental concerns in the 1960s. The evidence indicates that this is what they did.

### *The Six Three Stooges*

The Three Stooges made more film appearances than any other comedy team in history.<sup>27</sup> They are best known for the 190 "shorts" they made between 1934 and 1958. These were approximately fifteen-to-twenty-minute "two-reelers," which were typically shown before the feature presentation at a movie theater. One of those shorts, *Men in Black*,<sup>28</sup> was even nominated for an Academy Award.<sup>29</sup> They also starred in five full-length motion pictures, appeared in sixteen other feature films as a team, had their own 1960s cartoon series, made numerous television appearances, and each of them appeared, at least occasionally, as a solo act.<sup>30</sup> Before making films, however, the Three Stooges were headline performers on the vaudeville circuit, and they made personal appearances throughout their career. They were, as such, America's longest running comedy team.<sup>31</sup>

The history of the Three Stooges traces back to comedian Ted Healy (born Charles Ernest Lee Nash), who formed an ensemble group in 1925. Although he is remembered today primarily for his role in the formation of the Three Stooges, Healy was "one of the most innovative performers vaudeville ever produced."<sup>32</sup>

[D]uring his day, Healy was one of the top comedians in the business. By the late 1920s, Healy was one of the most popular performers in vaudeville. He established himself as a great improvisational comic, and his style and mannerisms were quickly imitated by dozens of vaudeville gagsters. Milton Berle, for example, is among the many comedians who patterned himself after Healy. Even today, Berle cites Healy as his show business "idol."<sup>33</sup>

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27. Marvin Kitman, *A Time Slot for Stooges*, *NEWSDAY*, Nov. 5, 1990, at 11.

28. *MEN IN BLACK* (Columbia Pictures 1934).

29. JEFFREY FORRESTER, *THE STOOGES CHRONICLES* 41 (1981) [hereinafter *CHRONICLES*].

30. See generally JEFFREY FORRESTER, *THE STOOGEPHILE TRIVIA BOOK* (1982).

31. *Biography: The Men Behind the Mayhem* (Arts & Entertainment Network television broadcast, Mar. 6, 1995) [hereinafter *A & E Biography*].

32. *CHRONICLES*, *supra* note 29, at 29.

33. *Id.* at 27. Some of the generosity that the Stooges were to show later in their life could have been prompted by Ted, who was called by one former supporting actor "the most generous man I ever came in contact with. . . . He was so wrapped up in helping people; his only love in life was helping people out." *Id.* at 29. Unfortunately, he also had a serious drinking problem that affected his personality and led to an early death. *Id.* at 34-35.

The act was billed under various names, but most prominently as Ted Healy and his Stooges.<sup>34</sup> In the early years, the act changed personnel frequently, with over a dozen different performers filling the "Stooge" roles at various times.<sup>35</sup> In fact, there was once even a "Stoogette."<sup>36</sup> The combination that made it big with Ted Healy, however, consisted of two brothers, Moe and Shemp Howard, and their partner Larry Fine.

After a year of top vaudeville bookings in 1928, and a year on Broadway in 1929-30,<sup>37</sup> Ted took the act to Hollywood to try to make it in the movies. Ted and the Stooges signed a one year contract with MGM, during which time they made appearances in shorts and in features, sometimes with Ted and sometimes without.<sup>38</sup> During this year, the Stooges had supporting roles in films with performers such as Clark Gable, Fred Astaire, Joan Crawford, Greta Garbo, John Barrymore, Jimmy Durante, Zasu Pitts, and Laurel & Hardy.<sup>39</sup> Ultimately, however, tensions rose to the surface when the Stooges began to outshine Ted.<sup>40</sup> After a breakup and reunion with Ted,<sup>41</sup> the Stooges decided once and for all to go it alone. Thus was born the film team of Moe, Larry, and Curly (who replaced Shemp), widely recognized as the original Three Stooges.

### *Moe*

Moe Howard (born Moses Harry Horwitz) was the true leader of the Three Stooges from the time they split with Ted Healy until the act came to an end with Larry's stroke in 1971.<sup>42</sup> As the onscreen boss of the team,<sup>43</sup> Moe was sometimes

34. The Stooges were also sometimes called Racketeers or Southern Gentlemen, and their skits featured more music than did most later Stooge productions. See Andy Wickstrom, "Lost Stooges" Video Traces Act to its Hollywood Beginnings, CHL. TRIB., May 12, 1990, Weekend Chicago section, at 12.

35. FORRESTER, *supra* note 30, at 28.

36. Wickstrom, *supra* note 34, at 12 (identifying Bonnie Bonnell as the Stoogette).

37. The Broadway show, *A Night in Venice*, was closed by the Great Depression in 1930. CHRONICLES, *supra* note 29, at 29.

38. CHRONICLES, *supra* note 29, at 34.

39. JAMES CARONE, *STROKE OF LUCK 85* (1973) (as told by Larry Fine); Wickstrom, *supra* note 34, at 77.

40. There were some bitter disputes, which especially hurt Moe, who had considered Ted almost a brother. MOE HOWARD, MOE HOWARD AND THE THREE STOOGES 22 (1977).

41. During the breakup, the Stooges were billed as Howard, Fine and Howard — the Three Lost Souls. The reunion is most notable because Shemp, having been offered some good roles in Hollywood, refused to go back with Ted. He was replaced by his younger brother, Curly Howard.

42. There were also a few other acts that used the Stooge name. In the late 1930s, after Ted Healy died, three of his supporting actors toured under the name The Three Stooges (as did yet a third group from this era). CHRONICLES, *supra* note 29, at 32, 49. In the 1970s, The New Three Stooges, consisting of Joe DeRita (who worked with Moe and Larry as one of the replacements for Curly and Shemp), Mousie Garner (who was one of Ted Healy's Stooges in the early days), and Frank Mitchell, made a few personal appearances. HOWARD, *supra* note 40, at 180. The act was cancelled after a short run due to Joe DeRita's failing eyesight. *Id.* at 106 (noting that Moe declined DeRita's offer of a share of the profits). Also, there was almost a Stooges revival in the mid 1970s, featuring Joe DeRita, Moe Howard, and Emil Sitka (a longtime supporting actor in Stooge films). Sitka was to play the Larry role, but shortly after press releases were issued and publicity shots were taken, Moe fell ill and died. *Id.* at 106.

43. After the Stooges split from Ted Healy, there was a brief period of time before each found his

known as the "First Stooge."<sup>44</sup> He also managed the team's offscreen business. This began when Moe signed a contract binding the act to Columbia on the same day that Larry signed a contract binding them to Universal.<sup>45</sup> After sorting out that true-life Stooges-style mess, everyone agreed to let Moe handle the business side of the operation.<sup>46</sup>

Moe was a good man to have at the helm. He was a good businessman,<sup>47</sup> but he was also a caring family man.<sup>48</sup> "He would always look after [his younger brother and co-Stooge] Curly."<sup>49</sup> As a boy, Moe was teased both for the long locks that his mother made him wear and for his Jewish heritage.<sup>50</sup> He also spent part of his youth with a very serious disability. Moe lost his sight and was blind for 11 months when he was about three years old.<sup>51</sup> While making one of the early shorts with Curly, he had another fairly serious eye injury when a bazooka backfired and shot soot into his eyes.<sup>52</sup> This made Moe very appreciative of and cautious about his health. These experiences also made him sensitive to the needs of others, despite his onscreen persona.

Moe was very dedicated to the many charitable activities that the Stooges undertook during their career.<sup>53</sup> He would often oversee fundraising drives for charitable organizations.<sup>54</sup> He and others who worked on the Stooges' set would collect contributions for charities and clothing for the poor.<sup>55</sup> With his wife, he "would call on friends in the toy and garment business to donate their wares to the Spastic Children's House, a home for children with cerebral palsy."<sup>56</sup> During and after the Great Depression, he also bought groceries for those who were less well off.<sup>57</sup>

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special role in the act. Moe eventually assumed the boss role previously played by Ted Healy and adopted many of Ted's mannerisms, such as slapping the others around. Wickstrom, *supra* note 34, at 77.

44. Telephone Interview with Frank E. Reighter, co-sponsor, annual Three Stooges convention (Nov. 15, 1995); see *A & E Biography*, *supra* note 31.

45. HOWARD, *supra* note 40, at 67.

46. CHRONICLES, *supra* note 29, at 31.

47. *On View: The Best Years of Our Stooges*, L.A. TIMES, Oct. 28, 1990, TV Times, at 77.

48. THE MAKING OF THE STOOGES: THE COMPLETE 50 YEAR STORY OF THE KINGS OF SLAPSTICK COMEDY (Karl Home Video 1983) (narrated by Steve Allen) [hereinafter MAKING OF THE STOOGES].

49. Jeff Williams, *Untitled Article*, Gannett News Serv., Aug. 8, 1989, available in LEXIS, News Library, GNS File.

50. HOWARD, *supra* note 40, at 17.

51. *Id.* at 12-13.

52. See JOE BESSER, NOT JUST A STOOGES 175 (1984); CHRONICLES, *supra* note 29, at 17-18.

53. See *infra* notes 150-53 and accompanying text.

54. TOM HANSEN WITH JEFFREY FORRESTER, STOOGES MANIA 33 (1984) [hereinafter HANSEN]. Even after his death, Moe contributed to charity. His family auctioned off his cancelled checks to autograph seekers, and the profits (more than \$41,000) went to the City of Hope Medical Center in Los Angeles. David R. Sands, *Satisfaction's a Signature for These Collectors*, WASH. TIMES, May 30, 1991, at C1; Michael Small, *Slapstick Legacy*, PEOPLE, Mar. 26, 1984, at 120.

55. *On View: The Best Years of Our Stooges*, *supra* note 47, at 77.

56. Williams, *supra* note 49.

57. HANSEN, *supra* note 54, at 33.



As for his environmental interests, Moe had a long standing affinity for nature and the outdoors. As a young man, he helped out by working at the family farm between his vaudeville dates.<sup>58</sup> His hobbies included gardening and making hooked rugs.<sup>59</sup> He also enjoyed fishing.<sup>60</sup>

Moe planted a Victory Garden at his home where he grew potatoes, onions, green peppers, corn, tomatoes, and various spices.<sup>61</sup> Both Moe and his brother Shemp attempted to raise chickens as well, but Moe had a very difficult time when it came to "harvesting" them.<sup>62</sup> He also served as an air raid warden and conducted drills at home in California.<sup>63</sup> When the opportunity presented itself, Moe even entertained soldiers in his home.<sup>64</sup>

Although chicken farming might not have worked out well, Moe was a solid businessman. Unlike Larry, who spent his last years at a home supported by the film industry, Moe died (in 1975) as a millionaire. Larry, in fact, often joked that Moe "owned most of North Hollywood."<sup>65</sup>

### Larry

Larry Fine (born Louis Feinberg) played the role as the middle man or peacemaker of the Three Stooges.<sup>66</sup> As such, he was sometimes called the "Second Stogie."<sup>67</sup> Because the act survived Curly's stroke, Shemp's death, and Joe's retirement, but not Larry's stroke, he has also been called the "indispensable Stogie."<sup>68</sup>

Larry was described as "happy-go-lucky"<sup>69</sup> and "a warm, likable human being."<sup>70</sup> He began his craft as a child actor in vaudeville, playing the violin, singing, and dancing. He took up the violin as a toddler after his arm was seriously injured in an acid spill.<sup>71</sup> His father encouraged young Larry to play the violin to help strengthen his weakened arm.

Like Moe, Larry was part of the team from the 1920s with Ted Healy until the act came to an end (with Larry's stroke) in 1971. While most of the business and

58. HOWARD, *supra* note 40, at 29.

59. FORRESTER, *supra* note 30, at 2.

60. While hunting is very controversial in some environmental circles today, it is clear that hunters have long been very concerned about preservation and conservation of natural areas.

61. HOWARD, *supra* note 40, at 126.

62. He was unable to eat any chicken for months after his chicken farming experiment. *Id.* at 126-27.

63. *Id.* at 131.

64. *Id.*

65. HANSEN, *supra* note 54, at 17.

66. The voice of Stimpny the Cat, of the modern cartoon show *Ren & Stimpy*, is based on Larry of the Three Stooges. *A & E Biography*, *supra* note 31.

67. Telephone Interview with Frank E. Reighter, *supra* note 44; see *A & E Biography*, *supra* note 31.

68. Telephone Interview with Frank E. Reighter, *supra* note 44; see *A & E Biography*, *supra* note 31.

69. MAKING OF THE STOOGES, *supra* note 48.

70. CHRONICLES, *supra* note 29, at 19.

71. CARONE, *supra* note 39, at 15-16.

charitable activities of the Stooges are appropriately credited to Moe, Larry was also a very generous man. For instance, after Curly's stroke, Larry, though not related to Curly, joined with Curly's brothers Moe and Shemp and contributed part of each paycheck to Curly.<sup>72</sup> Later, when Shemp's widow sued the Stooges for a percentage of their earnings,<sup>73</sup> she noted Larry's continued friendliness toward her, despite hard feelings on the part of Moe.<sup>74</sup>

After a disabling stroke in 1971, Larry, like Curly before him, moved into the Motion Picture Country Home. This facility, which Larry praised in his book,<sup>75</sup> was financed by the motion picture industry for actors and motion picture workers who needed help. Confined to a wheelchair, Larry used his last years to write an autobiography and make personal appearances at local high schools and colleges.<sup>76</sup> He also entertained the other patients at the home and took up drawing, painting, and mosaic work.<sup>77</sup> Like Moe, he passed away in 1975.

### Curly<sup>78</sup>

The most popular Stooge of all time was Curly Howard (born Jerome Horwitz, but known to friends and family as Babe).<sup>79</sup> According to Steve Allen, he was

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72. Unfortunately, not all heirs of the trio have been as generous. See *When it Comes to Getting Your Share: Just Say Moe*, NAT'L L.J., Dec. 26, 1994-Jan. 2, 1995, at A23 (Moe's heirs ordered to pay \$1 million to heirs of Larry and Curly-Joe DeRita).

73. Shemp's widow, Babe Howard, argued that the team (including Shemp) had paid a percentage to Curly during his incapacitation, but that they had never paid any money to Shemp's family after his death. CHRONICLES, *supra* note 29, at 83.

74. FORRESTER, *supra* note 30, at 5-7. Accumulating money never seemed to be a priority with Larry. He is said to have spent most of his paycheck on luxuries and racehorses. MAKING OF THE STOOGES, *supra* note 48.

75. CARONE, *supra* note 39, at 252-53.

76. CHRONICLES, *supra* note 29, at 102.

77. HOWARD, *supra* note 40, at 180.

78. In some early billings, it was spelled "Curley."

79. Curly was clearly the most popular "third stooge." JOAN HOWARD MAURER, *CURLY: AN ILLUSTRATED BIOGRAPHY OF THE SUPER STOOGUE* 40 (1985). He has been credited with influencing comedians from Abbott & Costello to John Belushi. See *id.* at 180 (quoting Washington Post columnist Margaret Engel to the effect that Curly had influenced John Belushi); FORRESTER, *supra* note 30, at ix (stating that John Candy was greatly influenced by the Three Stooges); MAURER, *supra*, at 9 (containing pop star Michael Jackson's tribute to Curly and the Stooges). Moe noted many of Curly's mannerisms in Lou Costello's performances. HOWARD, *supra* note 40, at 67. There is a certain irony, in that Abbott & Costello sidekick Joe Besser later went on to fill the "third Stooge" role vacated by Curly and Shemp. See *infra* notes 118-37 and accompanying text. Even Donald O'Connor admitted to "stealing" a dance move from Curly and using it in the movie *Singing in the Rain*. MAURER, *supra*, at 192.

Perhaps because of their slapstick style of comedy, much of Curly's talent has gone unrecognized. He has been called "the most under appreciated comic performer." HANSEN, *supra* note 54, at 18 (quoting syndicated columnist Gray Deeb). His fans, no doubt prefer the description of Curly as a "rebel without a cause, or for that matter even an excuse." MAURER, *supra*, at 193.

As evidence of his popularity, most theatrical Three Stooges festivals advertise that they feature all "Curlys." But see John Volland, *Morning Report: TV & Video*, L.A. TIMES, July 25, 1988, pt. 6, at 2 (reporting on a "Shemp-a-thon"). The magic/comedy team Penn & Teller had a bit of fun with this in their motion picture, *PENN & TELLER GET KILLED* (Warner Bros. 1989). When Teller is kicked out of the houseboat so that Penn can be alone with his female bodyguard, Teller goes to a Three Stooges

"one of the few true, but seldom recognized comic geniuses."<sup>80</sup> Curly was the younger brother of both Moe and Shemp and the first of four "Third Stooges" to appear in a Three Stooges film.<sup>81</sup> Curly was described as "a pretty fun loving guy. . . . He drank a lot, and he threw his money away; he loved to have a good time."<sup>82</sup> He appeared in ninety-seven Three Stooges shorts between the years of 1934 and 1946. He also made a brief cameo appearance in one of the "Shemp" Three Stooges shorts, *Hold that Lion*,<sup>83</sup> after suffering a debilitating stroke in 1946.<sup>84</sup>

Like Moe, Curly loved the outdoors. As a boy, he spent a good deal of time growing up on a farm,<sup>85</sup> and he spent many summer hours at the beach.<sup>86</sup> He also enjoyed hunting. In 1916, he accidentally shot himself in the foot with a .22 caliber rifle.<sup>87</sup> The foot almost had to be amputated, and he was left with a permanent limp. Moe later suggested that efforts to ease the pain he felt from this injury may have contributed to Curly's affinity for alcohol.<sup>88</sup>

Curly was tremendously fond of animals. Even at the height of Three Stooges popularity, Curly's first priority was always his dogs.<sup>89</sup> According to his former wife, Elaine Diamond, it was typical for him to buy a new dog in each city where the Stooges toured. He would then send the dogs home to Los Angeles.<sup>90</sup> In a profile prepared for a Three Stooges trivia book, under aversions for Curly is listed: "Hated mistreatment of animals."<sup>91</sup>

Interestingly, although he is known for his short "buzz" haircut, Jerome (or Jerry) had relatively long brown hair and a mustache when he auditioned for a part with the Stooges. Ted Healy was in charge at that time, and he questioned how this appearance would fit with the distinctively comic hair of Larry and Moe. Jerome

festival advertising that it is all "Shemps." *Id.* In actuality, when a Shemp short has accidentally been included in an all-Curly festival, fans have occasionally become violent. HANSEN, *supra* note 54, at 37. Surprisingly, in the motion picture *STOOGEMANIA* (Paramount Pictures 1985), Shemp is featured more prominently than Curly.

80. MAKING OF THE STOOGES, *supra* note 48.

81. Shemp had been the first "third stooge" on stage, and a supporting actor in films featuring other stars, but he did not appear in any Three Stooges films until after Curly had a stroke and left the act. *See supra* notes 37-41 and accompanying text.

82. CHRONICLES, *supra* note 29, at 19.

83. HOLD THAT LION (Columbia Pictures 1947).

84. *See* HOWARD, *supra* note 40, at 149. This short was remade as *BOOTY AND THE BEAST* (Columbia Pictures 1953), and the Curly cameo was included, even though Curly had been dead for a year before it was released. *See* CHRONICLES, *supra* note 29, at 81. Curly also filmed a cameo for the Shemp short *MALICE IN THE PALACE* (Columbia Pictures 1949), but it ended up on the cutting room floor.

85. MAURER, *supra* note 79, at 40.

86. *Id.* at 51.

87. *Id.* at 43.

88. HOWARD, *supra* note 40, at 147.

89. MAURER, *supra* note 79, at 123.

90. MAKING OF THE STOOGES, *supra* note 48; *accord* HOWARD, *supra* note 40, at 59.

91. FORRESTER, *supra* note 30, at 8. Curly once witnessed one of his dogs being run over by a car. He "went berserk with grief" until Moe calmed him by giving him a new puppy. HANSEN, *supra* note 54, at 14; *accord* MAKING OF THE STOOGES, *supra* note 48.

agreed to shave and cut his hair on the ironic condition that he henceforth be known as Curly.<sup>92</sup> Moe felt that this haircut also contributed to some of Curly's personal problems (four unsuccessful marriages and at least twelve different homes).<sup>93</sup>

After Curly's first stroke on April 12, 1945 (the same day that President Roosevelt died), he came back to work, but he was a changed man.<sup>94</sup> He had difficulty remembering his lines and it is possible to notice his lack of energy in the last few films he made with the Stooges.<sup>95</sup> In fact, his attempt to come back too early after this stroke eventually ruined his health completely.<sup>96</sup> His last appearance as a Stooge was in the 1947 short *Half-Wits Holiday*,<sup>97</sup> which was completed without him.<sup>98</sup>

After Curly left the act following a debilitating stroke, each of the reconstituted Three Stooges (Moe, Larry and Shemp) gave him money to help him through this period of his life.<sup>99</sup> Curly finally developed a happy home life and put behind him the late-night drinking and partying that had defined his earlier life. He was the first Stooge to pass away (in 1952) following complications from his earlier strokes.

### *Shemp*

Shemp Howard (born Sam Horwitz), oldest of the three performing Howard brothers, was actually a member of the group before Curly joined the act.<sup>100</sup> Shemp, however, had a falling out with Ted Healy, and Vitaphone presented him with the opportunity to pursue a solo career in Hollywood.<sup>101</sup> He left the act to be replaced by Curly. Although he had a solid solo career,<sup>102</sup> and was featured in many films, such as W.C. Field's *The Bank Dick*<sup>103</sup> and Abbott and Costello's *Africa Screams*,<sup>104</sup> Shemp became best known when he returned to the Stooges after Curly suffered his debilitating stroke in 1946.<sup>105</sup> Between 1946 and 1955,

92. HOWARD, *supra* note 40, at 60.

93. *Id.* at 147.

94. CHRONICLES, *supra* note 29, at 20, 59.

95. *See id.* at 59.

96. *Id.* at 61.

97. HALF-WITS HOLIDAY (Columbia Pictures 1947). Curly's cameo appearance in HOLD THAT LION (Columbia Pictures 1947) was primarily intended as a morale booster for him. CHRONICLES, *supra* note 29, at 64. *See supra* note 84.

98. There was a benefit to Columbia in not having Curly in the last scene. It was a pie fight. Since only Larry and Moe were filmed, this was used as stock footage in later films featuring both Shemp and Joe. CHRONICLES, *supra* note 29, at 73.

99. CARONE, *supra* note 39, at 172.

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

101. Shemp became a regular in the Joe Palooka films, as Knobby Walsh. HOWARD, *supra* note 40, at 57.

102. Shemp did a fair amount of work with the Bowery Boys, assuming the role as their comedy mentor. In fact, Huntz Hall called Shemp his professional idol and much like a father. THE BOWERY BOYS SCRAPBOOK (Unique Books, Inc. 1994) (video collection).

103. THE BANK DICK (Universal Pictures 1939).

104. AFRICA SCREAMS (United Artists 1949).

105. Shemp's solo career was going quite well when Curly had to retire, but he was under contract with Columbia and Columbia assigned him to the Stooges. CHRONICLES, *supra* note 29, at 63.

Shemp appeared in seventy-seven Three Stooges shorts and made numerous personal appearances with the Stooges.

Although Curly would achieve greater fame in the "Third Stooge"<sup>106</sup> role,<sup>107</sup> Shemp was viewed by those who knew him as the most naturally funny and the most likeable of the Stooges.<sup>108</sup> Bud Abbott, of Abbott and Costello, once called Shemp, "the funniest guy in the business."<sup>109</sup> He was also described as the "gentlest and most sensitive of the Stooges."<sup>110</sup> In World War I, he served in the army and was an amateur boxer. It has politely been suggested that this is what gave his face such "character." He was, in fact, once named the ugliest man in Hollywood.<sup>111</sup>

Off screen, Shemp was a family man.<sup>112</sup> He was known for being "gentle and generous."<sup>113</sup> One example of his generosity is that after his agent died in the 1940s, Shemp continued to give a percentage of his movie salary to the agent's widow on a voluntary basis.<sup>114</sup>

Shemp suffered a stroke in 1952.<sup>115</sup> While he was able to continue working, he had noticeably less energy. This was at least partially disguised by the use of more stock footage to fill out the shorts.<sup>116</sup> This practice became so common that even after Shemp died of a heart attack in 1955, the studio was able to use doubles and old films clips to turn out several new two-reelers featuring Moe, Larry and Shemp.<sup>117</sup>

### Joe

Moe and Larry almost disbanded the act when Shemp died, but when comedian Joe Besser agreed to sign on,<sup>118</sup> the act was saved.<sup>119</sup> Joe was the most prolific of the third Stooges. He had started in show business as a child when he ran away

106. BESSER, *supra* note 52, at front cover (describing the book as the autobiography of the "most prolific third stooge").

107. By the time Shemp joined the Stooges, Columbia was cutting costs on its two-reelers. This made elaborate sight gags, high points in many of the Curly shorts, impossible in the Shemp shorts. LEONARD MALTIN, *THE GREAT MOVIE SHORTS* 129 (1972).

108. FORRESTER, *supra* note 30, at 13. According to longtime Stooge extra Emil Sitka, "He was the one Stooge who was in demand by other studios. . . . He was the funniest of them all." *On View: The Best Years of Our Stooges*, *supra* note 47, at 77.

109. CHRONICLES, *supra* note 29, at 63.

110. *Id.* at 21.

111. This was part of publicity stunt by his agent. HANSEN, *supra* note 54, at 55.

112. *A & E Biography*, *supra* note 31.

113. FORRESTER, *supra* note 30, at 13.

114. *Id.* at 13. As noted earlier, he also contributed money to support Curly. *See supra* note 99.

115. CHRONICLES, *supra* note 29, at 77-79.

116. *Id.* at 79.

117. *Id.* at 85.

118. Besser was already under contract with Columbia, and it has been suggested that Columbia essentially made the choice for the Stooges. *Id.* at 85.

119. Joe had actually been a longtime friend of Shemp. They had met in 1932, and they even appeared together in an Abbott & Costello film, *AFRICA SCREAMS* (United Artists 1949). BESSER, *supra* note 52, at 167.

with magician Howard Thurston.<sup>120</sup> By the time he joined the Stooges he was well known to American television viewers as Stinky, the next door neighbor to Abbott & Costello on their television program.<sup>121</sup> He had also appeared in more than forty feature films and several television programs.

"Joe" served the shortest stint of any Stooge.<sup>122</sup> He joined the Three Stooges in 1956 and appeared in only sixteen of their two-reelers. Although the Three Stooges were awarded the Topliner Award as the best and most profitable two-reel comedy films exhibited from 1950 to 1960,<sup>123</sup> the market for two-reelers declined dramatically in the 1950s. By the time Joe joined the act, Columbia was the only motion picture studio still producing shorts,<sup>124</sup> and the Stooges had outlasted every other comic act in the Columbia shorts department.<sup>125</sup> Because of this, the budget for the Stooges shorts was slashed,<sup>126</sup> and the quality of the productions was not what as it had been in the past. These are generally considered the weakest shorts in the Stooges' body of work,<sup>127</sup> but Joe was not to blame. The shorts had a very small budget, relied heavily on old stock footage (fortunately, Joe's build was similar to Curly's), and were sometimes filmed in only one day.<sup>128</sup> In fact, film critic Leonard Maltin said that the "Joe" shorts had "one saving grace — Besser's comedic talent."<sup>129</sup>

The Stooges made their last two-reeler in December 1957 (though the studio had enough material already filmed to continue releasing shorts until early 1959),<sup>130</sup> ending a twenty-four-year relationship with Columbia Pictures.<sup>131</sup> Moe and Larry wanted to continue with personal appearances, but Joe's wife suffered a heart attack in late 1957, and he was unwilling to leave her.<sup>132</sup> He also was scheduled to appear in the Bing Crosby motion picture *Say One For Me*,<sup>133</sup> so he could not go on the road.<sup>134</sup> Accordingly, in 1958 Joe returned to a solo career. Later, in the 1960s and 1970s, Joe did a great deal of voiceover work for Saturday morning cartoons.<sup>135</sup> This allowed Joe to stay home with his wife and pursue his hobby of

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120. Burt A. Folkart, *Comedian Joe Besser, Three Stooges Member in the '50s, Dies at 80*, L.A. TIMES, Mar. 2, 1988, pt. 1, at 3.

121. BESSER, *supra* note 52, at 153-66.

122. At least one wire service completely fouled up his obituary, claiming that Joe "played the shaven-headed Curly." *Joe Besser, of the Three Stooges, Dies*, Reuters, Mar. 1, 1988, available in LEXIS, News Library, Reuna File. Joe played Joe. He was bald, but he did not shave his head. He had a "horseshoe" of hair around his crown.

123. CARONE, *supra* note 39, at 257.

124. BESSER, *supra* note 52, at 170.

125. CHRONICLES, *supra* note 29, at 79.

126. BESSER, *supra* note 52, at 170.

127. See CHRONICLES, *supra* note 29, at 89.

128. MALTIN, *supra* note 107, at 130; CHRONICLES, *supra* note 29, at 91.

129. MALTIN, *supra* note 107, at 130.

130. *Id.* at 130.

131. BESSER, *supra* note 52, at 181.

132. *Id.* at 181.

133. SAY ONE FOR ME (Twentieth-Century Fox 1959).

134. CHRONICLES, *supra* note 29, at 91.

135. BESSER, *supra* note 52, at 201.

repairing toys for neighborhood children.<sup>136</sup> He, in fact, cited children as his "one inspiration" in show business."<sup>137</sup> Joe passed away in 1988.

### *Curly-Joe*

Curly-Joe DeRita (born Joseph Wardell) was the final addition to the Three Stooges act. Like Joe Besser, Joe DeRita was a well-established comedian in his own right. Born into a show business family, Joe began performing as a child in a dance act with his sisters. He later became one of the biggest stars in postwar burlesque. During World War II he entertained troops overseas, often working with Bing Crosby as his straight man.<sup>138</sup> He joined Harold Minsky's burlesque outfit after the war and became the leading comic in the troop.<sup>139</sup> That is how he came to the attention of Moe and Larry.<sup>140</sup>

Joe had to break into an already established act, but his physical resemblance to Curly helped. He already wore his hair in a short crewcut,<sup>141</sup> and he adopted the name Curly-Joe. His natural talent helped propel the Stooges to new levels of stardom. It was with Curly-Joe that the Stooges finally got the opportunity to make the full-length motion pictures that they had long wished to make.<sup>142</sup> They also starred in a television cartoon series, which used live action film of the Stooges to introduce the cartoon Stooges.<sup>143</sup>

Curly-Joe stayed with the act from 1958 until Larry's stroke brought down the final curtain on the Three Stooges. In fact, Curly-Joe briefly put together a new Three Stooges act with two new partners in the 1970s. Unfortunately, this new act did not last long.<sup>144</sup> Curly-Joe was the last Stooge to pass away when he died in 1993.

### *The Act*

The Stooges were caring men who had some method behind their madness. Their biographies alone suggest that they had the lifetime experiences which would make them sensitive to the world around them. For instance, Larry (acid spill), Curly (gun shot) and Moe (blindness) each suffered serious injuries or medical problems in their youth. Larry, Moe, Curly, and Shemp were all of Jewish origin, and they suffered occasional acts of discrimination. Curly clearly had a special affinity for

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136. FORRESTER, *supra* note 30, at 15.

137. CHRONICLES, *supra* note 29, at 21 ("I've always had fun with kids, . . . They've been good to me, and I've always enjoyed them. It's kind of a mutual thing.").

138. FORRESTER, *supra* note 30, at 18.

139. *Id.* at 18.

140. In fact, Moe had wanted to hire Curly-Joe earlier, when they hired Joe Besser, but the deal could not be put together due to contractual obligations. HOWARD, *supra* note 40, at 152.

141. CHRONICLES, *supra* note 29, at 95.

142. HOWARD, *supra* note 40, at 165.

143. A total of 156 five-minute cartoons were produced. HOWARD, *supra* note 40, at 175. A different Three Stooges cartoon series was produced in the early 1980s, after Moe and Larry had both died. *Id.* at 111.

144. *See supra* note 42.

animals. Joe Besser seemed especially interested in the happiness of children. Moe and Shemp both tried their hand at some farming, and all of the Howard brothers had a love for the outdoors.

The experience of growing up with this affinity for nature and the outdoors would naturally shape their attitudes about the environmental movement in years to come. "Since they were brought up . . . in view of Staten Island, they were familiar with the channels across from their birthplace and probably would have shared . . . indignation . . . over the fouling of these waters."<sup>145</sup> In fact, Moe reflected an unusual awareness for the time about water pollution as early as 1944, when upon the American invasion of Normandy, he noted, tongue-in-cheek, "I hope all the landing crafts don't mess up that nice, clean English Channel."<sup>146</sup>

The Stooges' experiences with racial discrimination gave them an insight uncommon for their era. In his autobiography, Larry mentioned his concern about accepting a booking in West Virginia, due to fear that his Jewish appearance might prompt action by the Ku Klux Klan.<sup>147</sup> Similarly, Moe reported in his autobiography that as a boy he was constantly in fights, and at least sometimes it was due to his being taunted about his Jewish heritage.<sup>148</sup> Perhaps these experiences gave them the courage to oppose discrimination against others, which they did.

In 1931, the Three Stooges were booked to play in Jacksonville, Florida. After moving the trunks, scenery, and baggage into the theater, Moe went outside for a walk. A black man who appeared to be about eighty years old was walking toward him. When they met, the older man jumped off the sidewalk and into the street. Not knowing why he jumped, and thinking that perhaps the man had seen a snake, Moe also jumped into the street. The elderly man then jumped back onto the sidewalk, as did Moe. After repeating this sequence a couple of times, Moe grabbed the man by his arm and asked, "What the hell is going on, Pop? Why are you leaping up and back like a jumping jack?"

The man responded, "Sir, in this city a black man mustn't walk on the same side of the street as a white man."

Moe then responded, "Mister, this is not my city, but it's my country and I can walk with any man I chose to." Moe then put his arm about the elderly man's shoulder and forced him to walk with Moe around the corner.

The elderly black man said, "Man, you seem nice, but you're liable to get us killed."

Later, when Moe went back to the theater, the stage hands refused to talk to him. Although people were already coming into the theater for the show, the manager took their pictures down and painted through their names on the bill. The manager explained, "Your baggage and trunks have gone back to the station; here is your music, and salary check. We don't want any nigger lovers in our theater or in our city, so get moving before you get in *big* trouble."<sup>149</sup>

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145. Martin Abramson, *Don't Knock the 3 Stooges*, NEWSDAY, Mar. 31, 1990, at 14.

146. *Id.*

147. CARONE, *supra* note 39, at 27.

148. HOWARD, *supra* note 40, at 15-17.

149. *Id.* at 53-54 (noting also that one of the stage hands apologized to Moe for his behavior 40



Throughout their careers, the Stooges devoted much time and money to various good causes. They made many personal appearances visiting children in hospitals. Their favorite charity was the Spastic Children Guild, which supported children with cerebral palsy. They subsidized a wing of the Guild Hillside House in Santa Barbara, California by making substantial annual contributions to the Guild.<sup>150</sup> In supporting the Guild, the Stooges obtained help from Danny Thomas, Jerry Lewis, and Red Skelton.<sup>151</sup> The Stooges also regularly played in charity celebrity baseball games,<sup>152</sup> despite their relatively small physical size.<sup>153</sup>

### *Violence*

If they were truly compassionate and enlightened men, one might ask about the violence found in the Three Stooges act. A New York Times reviewer wrote that the Stooges "frequently made slapstick violence so hilarious it hurt."<sup>154</sup> In fact, the Stooges were roundly criticized for being overly violent when their shorts became popular with children in the late 1950s and 1960s.<sup>155</sup> Curly's out-of-control antics, in particular, tended to be popular with young men who attended movies when these shorts were shown in theaters.<sup>156</sup> Along with that came some mild violence.<sup>157</sup> The violence did not, however, become an issue until later.

The real problem developed when the long-running contract with Columbia came

years later). The painting out of names on the bill was reenacted in an MGM short the Stooges made with Ted Healy, *Beer and Pretzels* (Metro-Goldwyn-Meyer 1934).

150. HANSEN, *supra* note 54, at 48.

151. *Id.* at 48. Of course, Danny Thomas with St. Jude Hospital in Memphis, Jerry Lewis with his annual Muscular Dystrophy Association Telethons, and Red Skelton with numerous charity appearances each went on to do tremendous public service of their own.

152. *Id.* at 89. Moe was a particularly good athlete. In the early 1920s, he appeared in 12 two-reeler sports comedies with legendary professional baseball player Honus Wagner. *Id.*

153. Joe DeRita was five-foot-three-and-a-half-inches tall, Moe and Larry were five-foot-four-inches, Shemp and Curly were five-foot-five-inches, and Joe Besser was almost five-foot-six-inches. *Id.* at 65.

154. Tom Kuntz, *Word for Word/The Three Stooges: Thoughts on the Social Significance Of Getting Hit With a Pie. Seriously*, N.Y. TIMES, July 10, 1994, § 4, at 7.

155. A number of performers obtained parts in these shorts and then later went on to quite successful careers. The list includes Walter Brennan, Lucille Ball, Lloyd Bridges, and Dan Blocker. HANSEN, *supra* note 54, at 41-43.

156. See MAURER, *supra* note 79, at 177. Even today, men tend to enjoy the Three Stooges more than women do.

The Three Stooges are a sex-linked taste. Boys think they are funny. Girls think they are stupid and violent. It has always been that way and probably always will be. Nurture may explain some of the difference, but not all. I fully expect to pick up the paper one day and read that scientists have discovered a Three Stooges gene on the Y chromosome. Charles Stein, *The Three Stooges: Funny or Not?*, BOSTON GLOBE, Feb. 22, 1993, at 30; see also Gordon Monson, *The Stooges Live on Nyuk, Nyuk, Nyuk; Low Humor's Last Laugh Isn't in Sight*, ORLANDO SENTINEL TRIB., Mar. 10, 1990, at E1 ("It is the stuff of which male bonding is made. . . . [T]he bumbling trio represent almost everything a woman finds repulsive in a man."). In the movie *Penn & Teller Get Killed*, Penn makes note of this gender difference when he learns (to his delight) that his new love interest likes the Three Stooges. *PENN & TELLER GET KILLED* (Warner Bros. 1989).

157. When Shemp replaced Curly, the violence may have even increased to offset the lack of elaborate sight gags, which the studio would no longer finance. MALTIN, *supra* note 107, at 130.

to an end. The Stooges were at the low point of their career. Their personal appearances were less frequent and they were paid far less than in the early days. At this time, when the future looked most bleak, Columbia released the old shorts to local television through its subsidiary, Screen Gems.

Columbia did not expect much from the Stooges shorts.<sup>158</sup> Soon, however, stations all over the nation discovered that Three Stooges shorts were a hit, especially with children.<sup>159</sup> While television did much harm to many live performers, it saved the Three Stooges.<sup>160</sup> The Stooges became the favorites of a whole new generation, and that relationship continued as these baby boomers grew into adulthood.<sup>161</sup> Although the Stooges did not receive royalties from these broadcasts, they were back in the public eye.<sup>162</sup> The boost in popularity revived their act and provided them with the clout they needed to make a feature-length film, a desire that had long evaded them.<sup>163</sup>

Although television revived their sagging career, it also opened the Stooges up to some new criticisms. The shorts — which Columbia released as children's television programming years after they were shot — "weren't originally made for kids. They were made as fillers for theaters."<sup>164</sup> The Stooges had developed the act in vaudeville, and by those standards the act was fairly tame.<sup>165</sup> It was not until the Stooges began making full-length motion pictures that they began aiming their humor more directly at children. In these later feature-length movies, the violence (which, at its very worst, is very tame compared to today's standards)<sup>166</sup> was cut

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158. CHRONICLES, *supra* note 29, at 95.

159. Columbia capitalized on this popularity by repackaging several old Curly shorts as a new feature length film, STOP, LOOK AND LAUGH (Columbia Pictures 1960). The film led to a lawsuit between Columbia and the Stooges.

160. HANSEN, *supra* note 54, at 18.

161. See MAURER, *supra* note 79, at 183.

162. Unfortunately for the Stooges, there was no provision for television residuals when the shorts were originally made. Thus, they did not receive royalties from these old shorts. Only the feature length films made in the 1950s and 1960s generated residuals for the Stooges in their later years. CARONE, *supra* note 39, at 257. A video my children have features the Three Stooges cartoons from the 1960s. The package indicates that these, too, are in the public domain. Throughout their career, the Stooges made most of their money from personal appearances. CHRONICLES, *supra* note 29, at 40.

163. HOWARD, *supra* note 40, at 165.

164. Steve Chawkins, *The 3 Stooges' 2nd Banana Is Still Nyuking It Up in Camarillo*, L.A. TIMES, Nov. 23, 1989, Ventura County section, pt. J, at 10 (quoting Stooge supporting actor Emil Sitka). Even today, the Stooges are most popular with adult audiences. FORRESTER, *supra* note 30, at 33.

165. HENNY YOUNGMAN, TAKE MY LIFE, PLEASE 61 (1991) ("[T]he Three Stooges would have to be considered reserved in comparison [to other early vaudeville comedians].").

166. "Critics may say they were violent, but by today's standards they're mild. Their violence was immediate and not lasting, not brutal. It was slapstick, good clean fun." Fred Ferretti, *Three Stooges Nostalgia is Today's Newest Fad*, N.Y. TIMES, Mar. 4, 1983, at B-6. In the motion picture STOOGEMANIA (Paramount Pictures 1985), a doctor unsuccessfully tries to cure Three Stooges addicts. A bit of fun is had when the doctor encourages the addicts to watch different shows, which are all much more violent than the Three Stooges.

way back.<sup>167</sup> The shorts, however, were somewhat more violent than most other children's programming of that era.

In his autobiography, Joe Besser suggests that he may have done the Stooges a favor by causing them to tone down the mayhem in their act.<sup>168</sup> He agreed to join the Stooges only after being assured that he would not be subjected to physical abuse.<sup>169</sup> Others have pointed to Curly-Joe's simple style and the age of Larry and Moe by the 1960s.<sup>170</sup> Whatever the reason, by the 1960s, when the Stooges were aiming their work more at children, Moe would always take time at their personal appearances to caution children not to try the stunts that they saw the Stooges do.<sup>171</sup>

Probably the most notorious act of violence by the Stooges was the two-finger eye-poke. This actually developed during an argument over a card game. Shemp accused Larry of cheating and when Larry denied it, Shemp stood up and stuck two fingers into Larry's eyes. When Moe saw this, he fell over backwards in his chair laughing.<sup>172</sup> This became a staple in their act from the 1920s until they abandoned it in the 1960s due to parental pressure.<sup>173</sup> In fact, in *Around the World in a Daze*,<sup>174</sup> the Stooges even made a joke about the absence of the eye poke. Moe scolds an imitator, saying, "we don't do that one anymore."<sup>175</sup> The other "violent" act associated with The Three Stooges is the pie fight. Despite their reputation, actual pie fights occurred in only five of their two-reelers.<sup>176</sup> Moreover, the violence found in Stooges shorts tended to be directed at one another, not outsiders. Stooges' violence "was usually restricted to the Stooges themselves with the idea that the Stooges were not themselves *real* characters. Thus, any subsequent physical violence could not be considered real."<sup>177</sup>

When violence was directed at an outsider, it was usually done for a reason. "They were almost always well-mannered and well-meaning with others if not among themselves. In the absence of malice, it was their sense of honor that led to most of those pie fights."<sup>178</sup> Thus, it is a mistake to quickly accept the proposition

167. See CHRONICLES, *supra* note 29, at 100 (quoting Moe noting the reduction in violence). The 1960s cartoon series, *The New Three Stooges*, also was aimed at children and also had very little violence. *Id.* at 102.

168. See BESSER, *supra* note 52, at 172.

169. Folkart, *supra* note 120, at 3.

170. MAKING OF THE STOOGES, *supra* note 48 (noting that the Stooges became more "childlike").

171. CHRONICLES, *supra* note 29, at 100.

172. HOWARD, *supra* note 40, at 46. Moe also confirmed that Larry was, in fact, cheating. *Id.*

173. FORRESTER, *supra* note 30, at 76; CHRONICLES, *supra* note 29, at 100.

174. THE THREE STOOGES GO AROUND THE WORLD IN A DAZE (Columbia Pictures 1963).

175. See CHRONICLES, *supra* note 29, at 100.

176. Kuntz, *supra* note 154. It is no surprise to find that the first pie fight, in the short SWEET PIE AND PIE (Columbia Pictures 1941), occurred between the Stooges and others at a "high society" party. *Id.* See *infra* notes 183-84 and accompanying text.

177. CHRONICLES, *supra* note 29, at 49.

178. Phil Rosenthal, *The Three Stooges Live on Nyuk, Nyuk, Nyuk; A Fan: Shtick Hits a Basic Funny Bone*, ORLANDO SENTINEL TRIB., Mar. 10, 1990, at E1.

that the Three Stooges were violent, without stopping to look at these other factors, especially when one considers what the Stooges were trying to say in their films.

### *Messages in the Mayhem*

The Three Stooges were known for their broad physical humor, but as the late comedian John Candy noted, "the magic of their humor was in their subtlety."<sup>179</sup> Their message was sometimes so subtle that it was missed. "The Three Stooges are not often cited for their subtle and profound statements about humanity, much less their impact on major historical events . . . ."<sup>180</sup> Some commentators have even written that "the argument that, over time, the humor of the Three Stooges conveys some meaning of deep philosophical significance is conceptually unsatisfactory."<sup>181</sup> Perhaps their message was not one of deep philosophical significance, but there certainly was a good deal more social commentary than is usually recognized.

If one looks closely at the Three Stooges films, there are three important themes: the Great Depression, Hitler and World War II, and the environmental movement. These themes were important at different times in their career. In the 1930s, the shorts usually focused on poverty and themes related to the Depression. In the 1940s, much humor revolved around Axis leaders portrayed as buffoons and American G.I.s returning to postwar America. In the 1950s, budget cuts and personnel changes caused the Stooges to flounder, as they tried their hand at political satire, adult situations, and situation comedy,<sup>182</sup> so they never really developed an effective theme. In the 1960s, particularly in the latter half of that decade, after the Stooges had turned to feature length motion pictures and started aiming their comedy more directly at children, the emerging theme was environmental. To best understand the messages, one should look at their work in each of these eras.

### *The Great Depression*

Art can have an important effect on society. The Stooges seem to have recognized this from their earliest Depression-era films. Financial concerns were often at the heart of the plot in early Stooges films. Typically, the story would begin with the boys in search of housing, jobs, or a hot meal. Sometimes they would get jobs or learn of an inheritance. The most popular Stooges story premise was an adaptation of the Pygmalion controversy of heredity versus environment,<sup>183</sup>

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179. FORRESTER, *supra* note 30, at ix.

180. John Carman, *Scholar says Stooges' Hitler Beat Chaplin to Punch*, S.F. CHRON., Mar. 20, 1992, at C9.

181. Catherine L. Amspacher & Randel S. Springer, Note, *Humor Defamation and Intentional Infliction of Emotional Distress: The Potential Predicament for Private Figure Plain Tips*, 31 WM. & MARY L. REV. 701, 731 (1990).

182. MALTIN, *supra* note 107, at 130 (concluding that they were successful only at political humor, especially in *THREE DARK HORSES* (Columbia Pictures 1952), which was released during the presidential campaign).

183. This was the basis for at least three of their shorts. FORRESTER, *supra* note 30, at 56.

in which the unemployed and uneducated Stooges would be placed into an upper-class setting.

Low-life ruffians were thrust into high-society settings and quickly made shambles of the elitist climate. The result in each case was the same — society matrons and patrons were quickly relegated to the level of the ruffians and made to look foolish,

. . . [T]he Stooges — amid their slapstick nonsense — were making a meaningful and calculated contribution to the prevailing political climate of the time.<sup>184</sup>

They were also doing it in their own way. "[T]he Marx Brothers were being insubordinate to undermine pomp and pretense, but the Three Stooges acted the way they did because they were louts who didn't know better."<sup>185</sup> These themes were important to Depression-era audiences. "Larry, Moe and Curly lifted the morale of Americans during the economically depressed Thirties by targeting aristocratic snobs."<sup>186</sup>

Although it was not always obvious, no less than thirty-four of the Stooges' films dealt with racism and economic hardship during the Great Depression.<sup>187</sup> One commentator, on the social implications of these films, has noted:

The Three Stooges were major contributors to the anti-aristocracy/wealth theme so prevalent in the Depression-era films. Just as the Stooges contributed to anti-Nazi sentiment in America in the late '30s and early '40s, they also made significant contributions to uplifting the morale of Americans during the economic crisis of the Great Depression.<sup>188</sup>

Although it may be largely lost on today's audiences, the Three Stooges were making an important and calculated contribution to the political climate of the 1930s.<sup>189</sup>

The appeal of the Three Stooges during the Depression may have been in how they were, in Curly's words, "victims of circumstance."<sup>190</sup> One observer, commenting on Curly's motivation noted that he was like a little child, "unable to make any

184. Kuntz, *supra* note 154.

185. Jay Stone, *Don't Like the 3 Stooges? Oh, a Wisenheimer, Huh?*, VANCOUVER SUN, Jan. 6, 1993, at C7.

186. Tom Jackson, *Enough Already*, TAMPA TRIB., Dec. 11, 1994, at 2.

187. Ken Hoff, *Pro Wrestling Takes a Real Dive*, HOUSTON POST, Apr. 9, 1994, at F1.

188. *Oh Wiseguy Eh? Professor Takes Three Stooges Seriously: Sixtieth Anniversary of Trio Observed*, DALLAS MORNING NEWS, July 10, 1994, at 8A [hereinafter *Professor Takes Three Stooges Seriously*] (from the New York Times News Service) (quoting Donald B. Morlan, *A Pie in the Face: Three Stooges Anti-Aristocracy Theme in Depression Era American Film*, Address Before the Popular Cultural Association, Bowling Green State University, Bowling Green, Ohio (Apr. 1994)).

189. *Id.*

190. Curly's famous tagline, of course, was, "I'm a victim of 'soicumstance.'" MAURER, *supra* note 79, at 33, 114.

impact on his environment. It was the environment that was always attacking him, always surprising him."<sup>191</sup>

[L]ife always acted on him and he always reacted to it. He was never able to predict or foresee anything. He could never tell consequences. On film, he would get into a jam and we would see him walking into it but he never saw it himself. And if you ask who needs protecting in this world, it's people who cannot see the consequences of their actions. That is why parents watch their kids. They know what happens when you walk in traffic.<sup>192</sup>

The Howard Brothers came from an eastern European tradition.<sup>193</sup> They understood hardship and presented Depression-era audiences with a theme that was very topical. The typical Stooges' theme involved matters that were beyond the boys' control. Many Americans felt that way about the Depression.

### *World War II*

As the nation moved out of the Great Depression and into the war years, the Three Stooges continued their act, with new targets and new messages. The Stooges' interest in world events was piqued in the summer of 1939, when they traveled to Europe for a series of engagements. At this time, Adolf Hitler's aggression was drawing the world to the brink of war. The Stooges cut their trip short at the urging of the United States Consulate Office in London.<sup>194</sup> They were able to book passage on the *Queen Mary*, which was the last major ship to leave England prior to the war. Four days after the Stooges arrived in New York, England declared war on Germany.<sup>195</sup>

The United States, of course, did not become directly involved in the war until December 1941. In America at that time, the isolationists were very influential and cautious about what the motion picture industry was producing. Senators Gerald P. Nye of North Dakota, Burton K. Wheeler of Montana, and Bennet Clark of Missouri led the attack with the establishment of a specially impaneled subcommittee of the Senate Interstate Commerce Committee. That subcommittee was charged with investigating "war propaganda disseminated by the distribution, or exhibition of motion pictures."<sup>196</sup> Fortunately for the Stooges, the committee paid no attention to comedy shorts.<sup>197</sup>

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191. *Id.* at 172.

192. *Id.* at 173.

193. *Id.* at 174.

194. CARONE, *supra* note 39, at 112-13.

195. *Id.* at 113-14.

196. Kuntz, *supra* note 154.

197. *Id.*

The Three Stooges were the first film actors to impersonate (and openly mock) Adolf Hitler.<sup>198</sup> In fact, several of their two-reelers from the 1940s dealt with war themes.

The Stooges were virtually getting away with murder at a time when even the slightest hint of anti-Nazi sentiment in a feature film was sure to draw the wrath of the isolationists.

*You Nazy Spy*, the forty-fourth in the series of 190 Columbia Stooges Shorts, was released to theaters on January 19, 1940 — nearly two years prior to the Japanese bombing of Pearl Harbor and at a time when any serious effort to pan Germany or Hitler would receive immediate opposition. The short beat [Charlie] Chaplin's *The Great Dictator* to the screen by nine months and, contrary to the belief of many film historians, it was Moe Howard who was the first film actor to ridicule Hitler on screen, and not the immortal Chaplin.<sup>199</sup>

In the "routinely masterful Stooges spoof"<sup>200</sup> *You Nazy Spy*<sup>201</sup>, Moe plays Moe Hailstone, a wallpaper hanger (like Hitler) who is installed by storm troopers as dictator of a country called Moronika. He burns books, sends enemies to "concentrated camps," and installs his friends as Minister of Propaganda and Minister of War. Larry plays the part of Nazi propagandist Joseph Goebbels and Curly plays Field Marshal Hermann Goering.<sup>202</sup> "[T]he short is full of biting sarcasm, aimed primarily at ridiculing Hitler's twisted logic and ever-increasing tyranny."<sup>203</sup> The Stooges poke fun at the Nazi salute, the Beer Hall Putsch, the swastika, the goose step, Hitler's moustache, and even his impassioned vocal pattern. As one reviewer said, "The Stooges really stuck it to Adolf."<sup>204</sup>

One year later, still well before the United States was involved in the war, the Stooges came out with another Hitler spoof, *I'll Never Heil Again*.<sup>205</sup> Other war-related shorts, such as *Higher Than a Kite*,<sup>206</sup> *Back From the Front*,<sup>207</sup> and *No Dough, Boys*<sup>208</sup> continued through the war years. These films were very influential

198. *American Topics*, INT'L HERALD TRIB., July 18, 1994, available in LEXIS, News Library, Curmws File.

199. *Professor Takes Three Stooges Seriously*, supra note 188 (quoting Donald B. Morlan, Slapstick Comedy Contributions to Pre-WWII Film Propaganda: The Three Stooges and Abbott & Costello, Address Delivered to the American Culture Association and Popular Culture Association, New Orleans, La. (Apr. 10, 1993)). Chaplin did encounter opposition in the development of *The Great Dictator*. See CHARLES CHAPLIN, MY LIFE IN PICTURES 268 (1975).

200. Carman, supra note 180, at C9.

201. YOU NAZTY SPY (Columbia Pictures 1940).

202. See Jeff Strickler, *Hot Topics*, STAR TRIB., July 29, 1992, at 1E.

203. CHRONICLES, supra note 29, at 51.

204. John Carman, *Stooges First to Mock Hitler*, S.F. CHRON., Mar. 19, 1992, at E1.

205. I'LL NEVER HEIL AGAIN (Columbia Pictures 1941). This time, there were even arm bands with symbols that looked almost exactly like a swastika. HOWARD, supra note 40, at 117.

206. HIGHER THAN A KITE (Columbia Pictures 1943).

207. BACK FROM THE FRONT (Columbia Pictures 1943).

208. NO DOUGH, BOYS (Columbia Pictures 1944).

in shaping American attitudes. "Slapstick comedy was immensely popular as an art form in the late '30s and early '40s. . . . Three Stooges comedies played to far more patrons than a single film due to the practice of showing short subjects with a variety of feature films in multiple theaters in a single market."<sup>209</sup> In addition to Moe's comic impersonation of Hitler, Curly's impersonation of Benito Mussolini has been identified as one of the reasons why many Americans still tend to think of Mussolini as a buffoon.<sup>210</sup>

During the war, the Stooges continued to produce shorts, and when they were not actively filming, they made appearances at various military camps and in USO shows.<sup>211</sup> One World War II tour paired the Stooges with Morton Downey and his band.<sup>212</sup> According to Moe, "We played every Army, Navy, and Air Force installation from Maine to Pensacola."<sup>213</sup> The boys were, in fact, preparing to leave for a tour of European military bases in 1945, when Curly suffered his first stroke.<sup>214</sup>

#### *After the War*

After the war, the Stooges continued to reflect the society in which they lived. Many of the Stooges shorts from this era, like *G.I. Wanna Go Home*,<sup>215</sup> dealt with the problems faced by soldiers returning home after the war and trying to establish a normal life.

The Stooges also continued to use their art for good purposes. One way they tried to help was by using their influence to encourage children to develop good habits. For example, they were featured on a series of trading cards in 1959. On the front side of the card would be a picture featuring a scene from one of their shorts, and on the back there were either jokes or information about the Three Stooges.<sup>216</sup> While these were obviously written and prepared by people other than the Stooges, it is worth noting that some of the cards contained advice for children. For instance, card number 78 says: "The busy schedule that the Three Stooges must keep means they must stay in top physical condition. Larry, Moe, and Curly do this by getting plenty of sleep and eating three good meals a day. They hope all their fans will do the same."<sup>217</sup> Similarly, in an early Porky Pig cartoon, the Three Stooges — depicted on three cigars — join forces with Nick O'Teen and caution a young boy (Porky Pig) on the hazards of tobacco.<sup>218</sup> As late as 1968, the

209. Kuntz, *supra* note 154.

210. Bob Tutt, *WWII Remembered: An Ignominious Far from Glory: Mussolini Made Dictatorship Respectable Until the War*, HOUSTON CHRON., Aug. 7, 1993, at A-24.

211. CARONE, *supra* note 39, at 171.

212. HOWARD, *supra* note 40, at 113.

213. *Id.* at 113. Moe was later to remember this as one of the high points of his career. *Id.*

214. CARONE, *supra* note 39, at 171 (noting also that this was the same day that President Franklin Roosevelt died).

215. *G.I. WANNA GO HOME* (Columbia Pictures 1946).

216. Interestingly, while the cards promoted the film *HAVE ROCKET, WILL TRAVEL* (Columbia Pictures 1959), which featured Curly-Joe as the third Stooge, the cards featured Curly (who had passed away, but was then appearing on local television shows) as the third Stooge.

217. HANSEN, *supra* note 54, at 77 (reprinting the backs of four cards).

218. *WHOLLY SMOKE* (Leon Schlesinger Productions 1938) (Looney Tunes animated cartoon



Stooges made one final film short promoting the sale of U.S. Savings Bonds.<sup>219</sup> Thus, throughout their career, the Three Stooges used their comedy to reflect or comment on issues of the day, and they also tried to be responsible citizens and use their influence in positive ways.

### *The Stooges as Environmentalists*

It is always possible to argue, as others have, that "the humor of the [Three] Stooges" is important "[i]n this day and age of global warming and political cooling."<sup>220</sup> There is, however, much more to the environmental aspect of the Three Stooges than that. The Stooges were good men who often addressed serious concerns of the day, like Hitler and the Great Depression, in their comedy. They also attempted to make the world a better place. It is only natural that they would begin to consider the environment in the 1960s, and that is precisely what they did. "Highbrow critics may not have appreciated the Stooges' comedy style, but they have never accused them of being enemies of the environment."<sup>221</sup>

The Three Stooges flirted with environmental themes in several of their feature length films.<sup>222</sup> For instance, the plot lines in both *Snow White and the Three Stooges*<sup>223</sup> and *Around the World in a Daze*<sup>224</sup> lent themselves to a good deal of nature photography. The Stooges also used *Around the World in a Daze* to introduce children to many different cultures. Perhaps more interesting was *Have Rocket, Will Travel*.<sup>225</sup> In this movie, Moe, Larry and Curly-Joe travel to Venus in a rocket. On Venus, they meet an endangered species — a unicorn — who sadly tells them, "Alas, I am the last of my line." When Curly-Joe mistakenly calls her a horse, she explains that "horses are slaves." She refuses to go with the boys when they seek out higher forms of life, because she fears that she too will be enslaved. The "higher form of life" turns out to be a robot who has built a city with electrical energy. Making a different environmental point, the robot explains to the boys, "energy is not to be wasted." Fittingly, the film ends with the Stooges creating havoc at a society party thrown in their honor.

The Stooges really jumped into environmental issues in their last starring feature-length motion picture, *The Outlaws Is Coming*.<sup>226</sup> This film begins with Larry,

distributed by Warner Bros. Pictures).

219. HOWARD, *supra* note 40, at 186.

220. TOM DEMICHAEL, LOVE THOSE STOOGES: TRIVIA CHALLENGE AND REFERENCE GUIDE viii (1993).

221. Abramson, *supra* note 145, at 14.

222. There is an interesting environmental reference in one of the Joe Besser shorts, QUIZ WHIZ (Columbia Pictures 1958), when Joe invests his contest winnings in Consolidated Fujiyama California Smog Bags.

223. SNOW WHITE AND THE THREE STOOGES (20th Century-Fox 1961).

224. THE THREE STOOGES GO AROUND THE WORLD IN A DAZE (Columbia Pictures 1963).

225. HAVE ROCKET, WILL TRAVEL (Columbia Pictures 1959).

226. THE OUTLAWS IS COMING (Columbia Pictures 1965). The grammatical error is obviously intended. At some places in Moe Howard's autobiography, there is also an apparently intentional error in capitalization, with both letters of the word "is" being capitalized. See HOWARD, *supra* note 40, at

Moe, and Curly-Joe working for a Boston newspaper. When word reaches the newspaper that buffalo are being slaughtered, they and their cowardly boss (played by Adam West, who would later go on to greater fame in the Batman television series) are sent west for the express purpose of saving the buffalo from extinction. As their boss explains, "the buffalo is the most noble of native beast remaining on this continent." The balance of the film relates to their antics as they try to find the cause of the buffalo problem and put a stop to it.

The themes underlying this movie are somewhat unusual for a Three Stooges production. Unlike many westerns of that era, the true culprits in the story are not "the Indians," but rather a group of outlaws who hope to provoke the Indians and sell them guns. The plot is that these outlaws want to exterminate buffalo, and thereby cause the Indians to retaliate against the white settlers. The outlaws then hope to take advantage of the chaos and profit by selling arms to the Indians.

Throughout the movie there are many environmental themes. On learning that the town saloon is running a contest (sponsored by the outlaws) to see who can kill the most buffalo, the Adam West character, clearly shaken, says "a buffalo contest, why this is contemptible, inhuman. I am warning you sir, if this shameful practice isn't stopped immediately, I shall wire full details to my employer, the Society of American Wildlife, and the United States Government." The Three Stooges nod their heads in agreement.

While the treatment of native Americans might not pass all of today's politically correct standards, they were treated with more respect and dignity than was typical of western movies of that era. For instance, when the outlaws attempt to speak to the Indians in broken English, the chief's son (played as a beatnik/poetry graduate from Alabama U. by Henry Gibson)<sup>227</sup> tells the outlaw to speak normally. Additionally, when the outlaws conclude a "thunder wagon" sale to the Indians, the chief refuses to shake the hand of the outlaw, saying, "I'll do business with you but I won't shake your hand."

The treatment of women in this motion picture is also interesting. In *The Outlaws Is Coming*, the Adam West character becomes sheriff of the western town, but he must continually be rescued by the sharp shooting love interest played by Nancy Kovack. In fact, he even faints one time because of his fear related to a gun battle. Originally thinking that he was shot, Nancy Kovack comes to his rescue, but is left

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180, 181, 184. *But see id.* at 175 (only the first letter capitalized).

227. Henry Gibson would later go on to be better known in the television program *Laugh-In*. On that show, he regularly read or sang poetry. One of the poems he presented went as follows:

I've got DDT in me.  
Inside me there's DDT.  
If you could see inside of me,  
then you'd see DDT.  
Which is alright, I guess,  
if you like to swallow live bugs.

HARRY CASTLEMAN & WALTER J. PODRAZIK, WATCHING TV: FOUR DECADES OF AMERICAN TELEVISION 198-99 (1982).

quite unimpressed when she finds out that he had simply fainted. He, of course, is later redeemed in her eyes.<sup>228</sup>

Being a western, and being the Three Stooges, you can expect some degree of violence, but *The Outlaws Is Coming* has been noted as a particularly nonviolent Three Stooges picture.<sup>229</sup> By this time in their career, the Stooges had greatly toned down the violence, especially things like the famous eye-poke.<sup>230</sup> Even though an old-fashioned shootout climaxed the film, it contained uncharacteristically little violence overall.<sup>231</sup>

One of the recurring themes in *The Outlaws Is Coming* is Curly-Joe's ability to communicate with all types of animals. Again, this is an environmental theme. As the boys travel from Boston to Wyoming, he blows on his bullhorn to verify that they are indeed approaching buffalo territory. Late in the film, when the outlaws are trying to convince the Indians that the buffalo are all gone, Curly-Joe again uses his horn to attract them and prevent war from breaking out. At the end of the movie, Curly-Joe gives the horn to the Indian chief.

Although *The Outlaws Is Coming* came out after Rachel Carson wrote *Silent Spring*,<sup>232</sup> it came before such environmentally themed films as *Bless the Beasts and the Children*<sup>233</sup> and *Born Free*<sup>234</sup> (1966). Granted, one motion picture might not be sufficient to establish the Stooges as the first modern environmentalists, but this did contain many of the themes that were to become important in environmental circles. Since this was their last theatrical release, there is no way to know where they may have gone with this issue. Their next big project, however, which went uncompleted, gives us some clues.

After *The Outlaws Is Coming*, the Stooges began work on a pilot for a television series to be known as *Kooks Tour*<sup>235</sup>. The plot line was that the Stooges and a black Labrador Retriever would tour the world with a camper, a boat, and an "anti-pollution vacuum cycle."<sup>236</sup> Moe wrote glowingly about "driving through the Northwest seeking location spots for filming . . ."<sup>237</sup> He wrote that it "was a fresh and thrilling experience, shooting a film out in the fresh air in beautiful virgin

228. The Stooges' first short for Columbia (featuring Moe, Larry, and Curly) was entitled *WOMAN HATERS* (Columbia Pictures 1934). This short, done entirely in verse, featured the Three Stooges vowing that they would never fall in love or get married. Of course, one woman convinces each of the Stooges to propose to her. Thus, the woman ultimately holds the upper hand.

229. FORRESTER, *supra* note 30, at 88-89.

230. *See supra* notes 168-77 and accompanying text.

231. FORRESTER, *supra* note 30, at 89.

232. RACHEL CARSON, *SILENT SPRING* (1962). It may be interesting to note that in the two-reeler *ANTS IN THE PANTRY* (Columbia Pictures 1936), the boys played exterminators who planted pests in order to drum up business. This was plot remade with Shemp in *PEST MAN WINS* (Columbia Pictures 1951). They also played exterminators in *TERMITES OF 1938* (Columbia Pictures 1938).

233. *BLESS THE BEASTS AND CHILDREN* (Columbia Pictures 1971).

234. *BORN FREE* (Columbia Pictures 1966).

235. *See HOWARD, supra* note 40, at 175.

236. Moe's autobiography has a picture of the "anti-pollution vacuum cycle" on which the Stooges were going to ride. *HOWARD, supra* note 40, at 187.

237. *Id.* at 175.

country rather than the stuffy, confined stages to which we had become accustomed.<sup>238</sup>

According to Larry, "the story line of this film shows us [the Three Stooges] retiring from the screen and traveling around the country as normal civilians. The theme is to show people how beautiful our country is, and how not to hunt and fish."<sup>239</sup> The pilot showed "the boys traveling across the country, pointing out the natural beauty of America's outdoors. The approach was decidedly relaxed, as the boys, supposedly retired from performing, tour the country and share its marvels with their viewers."<sup>240</sup>

Unfortunately, the *Kooks Tour* project was cut short due to Larry's stroke.<sup>241</sup> Although the pilot was largely completed, *Kooks Tour* was never released to theaters or aired on television.<sup>242</sup> Thus, neither that project, nor subsequent ones that might have continued with environmental themes were able to have a significant impact on the youth of that era. The important thing, however, is that the Stooges were addressing these early environmental themes well before much of mainstream America had taken note of the environment. Moreover, the message did reach the public in their last theatrical release, *The Outlaws Is Coming*. Unlike the earlier two-reelers, this film was aimed at children. Thus, a whole generation of young Americans was introduced to environmental concerns from this most unlikely of sources, and the lessons were fun.

### Conclusion

If the Three Stooges were able to incorporate environmental messages into their work, and thereby help, in Larry's words — "show people how beautiful our country is,"<sup>243</sup> then it is clearly possible to combine a discussion of environmental issues with humor. This does not mean that logic should be abandoned; logic and humor are not mutually exclusive. To be persuasive, advocates can and should use all three elements of persuasion: logic, emotion, and credibility.

Perhaps some witnesses to the current environmental situation are afraid that they will lose credibility if they are too lighthearted.<sup>244</sup> Thus, the easier emotion is outrage. Often, however, those who are outraged about the environment are depicted

238. *Id.*

239. CARONE, *supra* note 39, at 230. It is only fair to note that many hunters and fishermen are very strong protectors of the environment. At least early in their careers, the Three Stooges enjoyed fishing. HOWARD, *supra* note 40, at 113 (reporting of catching about 80 pounds of red snapper and 20 trigger fish in one day). Moreover, Curly was a hunter. See *supra* note 86 and accompanying text.

240. CHRONICLES, *supra* note 29, at 102.

241. FORRESTER, *supra* note 30, at 97.

242. Clips of it have, however, been broadcast. See Rick Kogan, *Nyuk, Nyuk, Nyuk: Special Pays Homage to the Three Stooges*, CHI. TRIB., Oct. 31, 1990, at C-9 (referring to an upcoming television special on the Stooges which would include clips of a "never-before-seen pilot for a TV show"). Moreover, an 8mm version of the film was released to the general public.

243. CARONE, *supra* note 39, at 230.

244. This is not an insignificant concern when one decides to write on a topic such as the Three Stooges.

as Chicken Littles, running around proclaiming that the sky is falling. This does not help people take the message more seriously, and it can even have the opposite impact when it leads to the loss of credibility.

A scowl is not more persuasive than a smile, and effective arguments can be made with a positive disposition. Rachel Carlson may have needed to shock us to get our attention, but take a lesson from the clowns. Positive action often requires gentle persuasion that can best be accomplished with humor. It is a persuasive technique that needs to be employed more often, particularly in the environmental arena.