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**Meatpacking Safety: Is OSHA  
Enforcement Adequate?**

by

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# MEATPACKING SAFETY: IS OSHA ENFORCEMENT ADEQUATE?

*Michael S. Worrall\**

Preface.....	300
I. Introduction.....	300
II. Working Hands.....	301
III. Meatpacking: Regulated but Dangerous Work .....	301
A. A Definition of Meatpacking.....	302
B. An Overview of the Meatpacking Industry .....	303
IV. Work Safety—The Record.....	305
A. The Nature of Meatpacking Work—The Hazards .....	305
B. Statistical Evidence of Injuries.....	307
C. The Reporting of Injuries: Is it Adequate?.....	309
D. Safety and Speed.....	310
V. Regulation of the Meatpacking Industry—A Historical Overview.....	310
VI. The Occupational Safety and Health Administration Act (OSHA) .....	311
A. The History Behind The OSH Act .....	311
B. The Act and its Purpose.....	312
C. What the OSH Act Requires.....	313
D. OSHA Enforcement and Regulation .....	313
VII. Is OSHA Regulation of Meatpacking Adequate?: The Record.....	315
VIII. Factors that Contribute or Detract from OSHA Effectiveness .....	316
A. Budget .....	316
B. Executive Branch Point of View .....	317
C. Meatpacking Workers—Who Are They and What Does That Have to Do with Safety? .....	317
IX. Solutions to Meatpacking Safety .....	318
A. Self-Inspection .....	318
B. Labor Solutions .....	320
C. OSHA Reform.....	320
X. Conclusion.....	321

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## PREFACE

There were several events leading to my interest in the topic of safety in meatpacking plants. In 2002, I read Eric Schlosser's *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL*.<sup>1</sup> Of all the topics covered in that book, I was most affected by the chapter, "The Most Dangerous Job"—in which Schlosser described workers being crippled, maimed or, in some instances, killed on the job.<sup>2</sup> I was troubled by the thought that people are still working under such conditions, seemingly as if they are cogs in a machine, waiting to be replaced. I was reminded of my earliest jobs, working in frozen bread and meat processing plants. In my second year of law school, I took a course on Administrative Law where the effectiveness of the Occupational Safety and Health Administration and other administrative agencies was examined. There, I recalled my years in the insurance industry as a manager dealing with labor issues. I also had first-hand dealings with several federal agencies, so I was able to view administrative law from a business perspective, observing how some agency practices and policies seemed rational where others evidently were not. A discussion of OSHA and meatpacking safety thus merges two topics in which I have an interest: labor and administrative law.

## I. INTRODUCTION

This Note is written to examine the issue of meatpacking safety in the United States. First, it is my contention there *is* a safety problem, manifested by the number of injuries and illnesses in the meatpacking and meat-processing industry. Next, given my perception of a problem in the industry, I will explore some of the safety mechanisms in place to help offset the problem, in particular, regulatory oversight of the industry. This discussion raises certain issues. Is there a need for regulatory oversight? Should meatpackers be left to implement voluntary forms of regulation? If some regulatory oversight is needed, how much? What is the Occupational Safety and Health Administration's ("OSHA") role in meatpacking safety? Is the agency effective in enforcing the maxim of the U.S. Congress that every working man and woman should be assured a safe and healthful working condition?<sup>3</sup> If so, in what ways? Or, if not, why not?

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1. ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* (Perennial 2002).

2. *Id.* at 169-90.

3. *See* Occupational Safety and Health Act, 29 U.S.C. § 651(b) (2000).

## II. WORKING HANDS

Joe Benavidez takes medication every day to control pains he has in both shoulders. "After twelve years in the packinghouse," he says, "I got rheumatoid arthritis. I was about two years away from the packinghouse when the arthritis started bothering me really bad. The pain is in all my joints." He has scars on his hands from operations he had while working at the packinghouse. "My wrists used to swell up so bad. I couldn't hardly move my hands."<sup>4</sup>

After working several months gutting chickens, Donna Bazemore lost feeling in her fingertips—which "progressed to pains shooting up the inside of her arm."<sup>5</sup> Her problems didn't go away, even after surgery: "I couldn't do the littlest tasks around the house, like sweep a floor or stir for long periods of time. I couldn't write six or seven words without having to rest my hand."<sup>6</sup>

Deborah Fink, an anthropologist and former employee at Iowa Beef Packers ("IBP") in Perry, Iowa, tells of a lunch-room conversation with "Don," a fellow worker in his mid-twenties:

I observed that his hands were so badly damaged that he had trouble getting food into his mouth. When I started [talking about] no job being worth his hands, he cut me short, saying that he was a man who earned his pay. Another man supported him, sneering that only women whined about sore hands.<sup>7</sup>

An internal memorandum at a Perdue poultry-processing plant in North Carolina reveals it is standard "procedure for sixty percent of the workforce to visit the company nurse each morning to get painkillers and have their hands wrapped."<sup>8</sup>

## III. MEATPACKING: REGULATED BUT DANGEROUS WORK

The meatpacking and meat product manufacturing industry which, for the purposes of this Article, includes poultry and fish, has the highest rate of re-

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4. CAROL ANDREAS, *MEATPACKERS AND BEEF BARONS: COMPANY TOWN IN A GLOBAL ECONOMY* 66 (U. Press of Colo. 1994).

5. Barbara Goldoftas, *To Make a Tender Chicken Poultry Workers Pay the Price: Once You Know About Working Conditions in a Typical Poultry Processing Plant, You May Never Eat Chicken Again*, *DOLLARS & SENSE*, July 1, 2002, at 14.

6. *Id.*

7. DEBORAH FINK, *CUTTING INTO THE MEATPACKING LINE: WORKERS AND CHANGE IN THE RURAL MIDWEST* 110 (Chapel Hill U. of N.C. Press 1998).

8. Michael J. Broadway, *From City to Countryside: Recent Changes in the Structure and Location of the Meat-and Fish-Processing Industries*, in *ANY WAY YOU CUT IT: MEAT PROCESSING AND SMALL-TOWN AMERICA* 21 (Donald D. Stull et al. eds., U. Press of Kansas 1995).

petitive-motion injuries, compared to other American industrial settings.<sup>9</sup> Through 2000, meatpacking led all private industries in the number of occupational injuries and illnesses reported—as it did throughout the 1990s.<sup>10</sup> Because it is still such a dangerous occupation, greater scrutiny of the methods used to protect workers bears examination. Are existing regulatory policies and procedures adequate? Are there better ways to protect workers? The chief enforcer of meatpacking safety in the United States is the Occupational Safety and Health Administration.<sup>11</sup> How effective is this agency in ensuring safety? Some say OSHA's programs are underfunded, with little measurable effect on safety at work.<sup>12</sup> Others proclaim OSHA has a "command-and-control"<sup>13</sup> philosophy that impedes technological innovation that could increase productivity.<sup>14</sup>

### A. A Definition of Meatpacking

As used in this Note, the term "meatpacking" encompasses all manufacturing of meat products involving the processing of animals.<sup>15</sup> This includes beef, pork, poultry, and fish. While there are some distinctions between these, they involve similar safety risks; as a result, OSHA encourages fish and poultry processors to utilize the meat packing plant guidelines.<sup>16</sup> Working conditions in poultry or fish processing plants are similar to those of beef packers.<sup>17</sup>

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9. See Eric Schlosser, *The Killing Zone*, THE GUARDIAN (London), Feb. 23, 2002, at P26, available at 2002 WL 14615100.

10. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, HIGHEST INCIDENCE RATES OF TOTAL NONFATAL OCCUPATIONAL INJURY AND ILLNESS CASES, PRIVATE INDUSTRY, 2000 (Dec. 2001), at <http://www.bls.gov/iif/oshwc/osh/os/ostb0988.pdf> (last visited Oct. 13, 2004).

11. The term "OSHA," in common parlance has been used to describe both the Occupational Safety and Health Administration Act of 1970 and the Occupational Health and Safety Administration, i.e., the agency that regulates and enforces the OSH Act—which may lead to some confusion. From here forward, I will confine my use of the term OSHA to the regulatory agency and make reference to the Act as "The Act" or "the OSH Act."

12. CHARLES NOBLE, *LIBERALISM AT WORK: THE RISE AND FALL OF OSHA 1* (Temple U. Press 1986); Eric Schlosser, *How to Make the Country's Most Dangerous Job Safer*, THE ATLANTIC MONTHLY, Jan. 2002, available at <http://www.theatlantic.com/issues/2002/01/schlosser.htm>.

13. Sidney A. Shapiro, *Substantive Reform, Judicial Review, and Agency Resources: OSHA as a Case Study*, 49 ADMIN. L. REV. 645, 649 (1997) (citations omitted).

14. James C. Robinson, *The Impact of Environmental and Occupational Health Regulation on Productivity Growth in U.S. Manufacturing*, 12 YALE J. ON REG. 387, 388 (1995).

15. *But see* FINK, *supra* note 7, at 65 (stating that U.S. Census reports distinguish between "packers" whose operations include both kill and processing and "processors" who have no kill operation).

16. See OSHA, U.S. DEP'T OF LABOR, OSHA 3123, ERGONOMICS PROGRAM MANAGEMENT GUIDELINES FOR MEATPACKING PLANTS 22 (1993). Although the U.S. Department of Labor has a separate Standard Industrial Classification ("SIC") for red-meat processing plants

### B. An Overview of the Meatpacking Industry

According to the Bureau of Labor Statistics, 148,100 people were employed in meatpacking in 2000.<sup>18</sup> Another 253,200 worked in poultry processing and slaughtering.<sup>19</sup>

Meatpacking is, increasingly, an industry in rural areas.<sup>20</sup> The slaughterhouses are no longer located in the big city as they once were.<sup>21</sup> Now, meat packers are located in places such as Grand Island, Nebraska,<sup>22</sup> Greeley, Colorado,<sup>23</sup> or Storm Lake, Iowa.<sup>24</sup> Poultry processors are located throughout the rural South in places such as Buena Vista, Georgia.<sup>25</sup> Catfish, too, are processed in the South, for example, in Indianola, Mississippi.<sup>26</sup> Some say this rural move was an attempt by the industry to avoid unions.<sup>27</sup>

Most workers are young, perhaps because the work is so demanding.<sup>28</sup> One worker, having retired at age fifty-five, described the effect of meatpacking work:

The plant closed in 1981, but I left before then. I took early retirement. My body was not capable of doing anything. I can barely walk. My feet hurt. My back hurts . . . I can't tell you where I didn't hurt . . . In fifty-five years I was all burned out. I couldn't do nothing.<sup>29</sup>

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and other meat-processing facilities, similar ergonomic programs are recommended for the industries. *Id.*

17. Broadway, *supra* note 8.

18. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *supra* note 10.

19. *Id.*

20. Donald D. Stull & Michael J. Broadway, *Killing Them Softly: Work in Meatpacking Plants and What it Does to Workers*, in ANY WAY YOU CUT IT: MEAT PROCESSING AND SMALL-TOWN AMERICA 62 (Donald D. Stull et al. eds., U. Press of Kansas 1995).

21. RICK HALPERN, *DOWN ON THE KILLING FLOOR: BLACK AND WHITE WORKERS IN CHICAGO'S PACKINGHOUSES, 1904-54* 247 (U. of Ill. Press 1997).

22. Carol Bryant, *Swift Returning to Town*, THEINDEPENDENT.COM, May 22, 2002, at [http://www.theindependent.com/stories/052302/new\\_ca23.html](http://www.theindependent.com/stories/052302/new_ca23.html) (last visited Sept. 20, 2004).

23. *Id.*

24. See SIERRA CLUB, *CLEAN WATER & FACTORY FARMS, SPOILED LUNCH: POLLUTERS PROFITING FROM FEDERAL LUNCH PROGRAMS*, available at <http://www.sierraclub.org/factoryfarms/report01/ch1.asp#IBP> (last visited Nov. 15, 2004).

25. See Goldoftas, *supra* note 5.

26. Jacqueline Jones, *The Late Twentieth-Century War on the Poor: A View from Distressed Communities Throughout the Nation*, 16 B.C. THIRD WORLD L.J. 1, 5 (1996).

27. See generally Karen Olsson, *The Shame of Meatpacking*, THE NATION, Sept. 16, 2002, at 11 (asserting that meat packers seek to hire cheap labor and discourage unions).

28. SCHLOSSER, *supra* note 1, at 170.

29. FINK, *supra* note 7, at 111.

Another worker, having worked for “an old-line company, reflected that longtime packing workers seldom lived past age sixty-five.”<sup>30</sup> These present accounts are reminiscent of the stories that have been told by meatpacking workers for the last century.<sup>31</sup> Arguably, the work has not changed much during that time.<sup>32</sup> From 1974 to 1986, a period when IBP had fifteen thousand employees, only forty-eight production workers received retirement benefits.<sup>33</sup>

A great number of meatpacking workers are immigrants.<sup>34</sup> The meatpacking industry has been accused of actively courting and recruiting non-United States citizens, providing the immigrants with false documentation.<sup>35</sup> The workers are likewise drawn by the lure of such jobs in what’s known as “demand-pull immigration.”<sup>36</sup> In some plants, the immigrant workforce is as high as ninety percent.<sup>37</sup> An Immigration and Naturalization Service official for Nebraska and Iowa estimated the meatpacking plants in those states employed up to twenty five percent “illegal aliens.”<sup>38</sup>

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30. *Id.*

31. *See, e.g.,* UPTON SINCLAIR, *THE JUNGLE* 99 (Signet Classic, 2001) (finding the lead character of the fictional work, Jurgis, unemployed after working in a slaughterhouse:

In the beginning he had been fresh and strong, and he had gotten a job the first day; but now he was second-hand, a damaged article, so to speak, and they did not want him. They had got the best out of him—they had worn him out, with their speeding up and their carelessness and now they had thrown him away!).

32. *See* Nancy Syverson, *Safety Practices in High-Risk Industries*, INDUS. MAINTENANCE AND PLANT OPERATION, Sept. 1, 2002, at 20.

33. Stull & Broadway, *supra* note 20, at 62.

34. *See* Memorandum from Nebraska Lieutenant Governor David Maurstad to Nebraska Governor Mike Johanns, Review of Working Conditions in Nebraska Meatpacking Plants (Jan. 24, 2000), at <http://gov.nol.org/policy/wborNewsReleases/ltgovmemo.html> (last visited Apr. 15, 2004); *see also* Schlosser, *supra* note 9.

35. Nicholas Stein, *Son of a Chicken Man*, FORTUNE, May 13, 2002, at 136; *see* U.S. GEN. ACCOUNTING OFFICE, GAO/RCED 98-62, COMMUNITY DEVELOPMENT: CHANGES IN NEBRASKA’S AND IOWA’S COUNTIES WITH LARGE MEATPACKING PLANT WORKFORCES 4-5 (1998) (noting that one reason for the large immigrant workforce is because local residents are not willing to work for the wages paid); *see also* ROGER HOROWITZ, “NEGRO AND WHITE, UNITE AND FIGHT!”: A SOCIAL HISTORY OF INDUSTRIAL UNIONISM IN MEATPACKING, 1930-90 277 (U. of Ill. Press 1997) (noting that meatpackers “use federal job training programs to subsidize transportation and training costs” of the Mexicans and Southeast Asian workers they aggressively recruit).

36. Sylvia R. Lazos Vargas, *Missouri, The “War on Terrorism,” and Immigrants: Legal Challenges Post 9/11*, 67 MO. L. REV. 775, 777-78 (2002) (noting the meatpacking industry acts as a magnet for legal and illegal immigrants from Mexico and Central America due to the great disparity in wages between the immigrant’s home country and the U.S.) (citations omitted).

37. Olsson, *supra* note 27.

38. U.S. GEN. ACCOUNTING OFFICE, *supra* note 35, at 2.

There is tremendous turnover in the industry, suggesting that injuries may be a partial cause of that turnover.<sup>39</sup> Employees typically stay in their meatpacking jobs “for only six months or a year.”<sup>40</sup> Giant poultry processor, Tyson, for example, has an annual turnover rate between forty and one hundred percent.<sup>41</sup> A study of meatpacking plants in Nebraska and Iowa shows turnover rates of eighteen to eighty three percent.<sup>42</sup> A shortage of staff may exacerbate safety problems.<sup>43</sup>

#### IV. WORK SAFETY—THE RECORD

##### A. *The Nature of Meatpacking Work—The Hazards*

Meatpacking is labor-intensive, as it has been for over a century; it is difficult and physically demanding.<sup>44</sup> “[T]he knife, the meat hook, and the steel remain the basic tools of the industry.”<sup>45</sup> As a result, the most common injuries are lacerations, and some injuries even result in death.<sup>46</sup> Cumulative trauma (or repeated trauma) disorders (“CTDs”) are common as well.<sup>47</sup> CTDs are a “class of musculoskeletal disorders involving damage to the tendons, tendon sheaths, synovial lubrication of the tendon sheaths, and the related bones, muscles, and nerves of the hands, wrists, elbows, shoulders, neck, and back.”<sup>48</sup> CTDs include, but are not limited to, injuries such as carpal tunnel syndrome, “trigger finger” or simply, back and shoulder problems.<sup>49</sup> CTDs make up almost half of the occupationally-related illnesses reported each year to the Bureau of Labor Statistics.<sup>50</sup>

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39. Stull & Broadway, *supra* note 20, at 69-70.

40. Michael Riley, *Woes at Swift Blamed on Pace: “Speed Valued Above All Else,” Workers Say*, DENV. POST, Nov. 26, 2002, at A-01.

41. Stein, *supra* note 35.

42. GEN. ACCOUNTING OFFICE, *supra* note 35, at 5.

43. Schlosser, *supra* note 9.

44. Memorandum from David Maurstad, *supra* note 34.

45. Stull & Broadway, *supra* note 20, at 62.

46. See David Hendee, *Authorities Seek IBP Meeting: The Dakota County Attorney Isn't Pleased with How the Meat-Packer Handled the Death of a Plant Worker*, OMAHA WORLD-HERALD, Nov. 2, 1999, at 9 (reporting a worker on the carcass line may have slipped and fallen on his knife—which punctured his heart); see also Nancy Cleeland, *Need for Speed Has Workers Seething Labor: Production Pace is Emerging as a Top Health Concern for Low-Wage Employees*, L.A. TIMES, Jun. 19, 2002, at A1 (reporting that an Excel worker died after slicing open his chest and OSHA gave the company a written warning).

47. SCHLOSSER, *supra* note 1, at 173.

48. OSHA, U.S. DEP'T OF LABOR, *supra* note 16, at 20.

49. SCHLOSSER, *supra* note 1, at 173.

50. OSHA, U.S. DEP'T OF LABOR, *supra* note 16, at 1.

Meatpacking workers often engage in repetitive motions, such as cutting with their knives every two to three seconds or approximately ten thousand cuts during an eight-hour shift.<sup>51</sup> One description of work in a poultry processing plant finds:

human hands . . . must make the same knife or scissors cut to slit open carcasses from anus to breast or the same twist of the hand to yank out viscera at a grueling pace, set by a relentless conveyor belt and reinforced by circulating foremen, while workers are standing in pools of water and grease in temperatures that range from freezing to ninety-five degrees and being pelted by flying fat globules or dripping blood.<sup>52</sup>

Workers in the fish industry are known to “rip and gut as many as 20,000 fish a day.”<sup>53</sup>

In addition to working with knives, meatpacking workers often suffer injuries from the repetitive lifting of heavy weights. For example, Jimmy Apodaca, an Excel employee before he was injured, would lift bags of meat weighing up to forty pounds, then bend, twist, and slide the bags into a cryovac machine—at the rate of one every three seconds.<sup>54</sup> Over time, CTDs may leave a worker “functionally crippled.”<sup>55</sup>

OSHA has identified the following work-related factors as contributing to CTDs, most which are commonly associated with meatpacking:

- (1) Repetitive or prolonged physical activities;
- (2) Forceful exertions, usually with the hands (including tools requiring pinching or gripping);
- (3) Awkward postures of the upper body, including reaching about the shoulders or behind the back, and twisting of the wrists to perform tasks;
- (4) Continued physical contact between the worker’s body and work surfaces; e.g., contact with edges;
- (5) Excessive vibrations from power tools; and
- (6) Cold temperatures.<sup>56</sup>

Besides cuts and repetitive motion injuries, meatpacking workers may be exposed to dangerous machinery that can result in the loss of limb or life when

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51. SCHLOSSER, *supra* note 1, at 173.

52. Marc Linder, *I Gave My Employer a Chicken that Had No Bone: Joint Firm-State Responsibility for Line-Speed Related Occupational Injuries*, 46 CASE W. RES. L. REV. 33, 36-37 (1995).

53. Jones, *supra* note 26, at 6 (citations omitted).

54. See *Excel Corp. v. Apodaca*, 81 S.W.3d 817, 819 (Tex. 2002) (finding, in spite of the facts given, that Apodaca did not prove causation between the work and his injuries, *id.* at 822).

55. ANDREAS, *supra* note 4, at 174.

56. OSHA, U.S. DEP’T OF LABOR, *supra* note 16, at 8.

proper safety measures are not used.<sup>57</sup> The many cuts and other injuries on the job, and the danger of the work, suggest the following question: are meatpacking workers bargaining with a “pound of flesh” for the sake of a job?<sup>58</sup>

### B. Statistical Evidence of Injuries

Meatpacking has the dubious distinction of leading all private industries in the number of occupational injuries or illness reported.<sup>59</sup> Approximately one in four employees are injured or struck ill each year.<sup>60</sup> In Iowa, for example, an average of 9.8 injuries or illnesses are reported by all private sector employees per one hundred full time employees.<sup>61</sup> In manufacturing, the rate is sixteen per one hundred full time employees.<sup>62</sup> But in meatpacking, the rate leaps to fifty one per one hundred full time employees.<sup>63</sup> Meatpacking plants have a poor record regarding CTDs (carpal tunnel, white finger, tendonitis, etc.).<sup>64</sup> As of 1992, CTDs were rapidly growing by comparison to other work injuries.<sup>65</sup> The frequency of these injuries in meatpacking has continued to grow over the years.<sup>66</sup> More recently, however, the rate of injuries appears to have declined, as shown in Table 1.

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57. See, e.g., Melanie Brandert, *Pork Plant's Penalty: \$36,300*, ARGUS LEADER (Sioux Falls, S.D.), Jan. 10, 2001, at 1B (reporting on a worker who lost one leg below his knee and the other above his knee after he was caught in a grinder and the employer was fined for failing to enforce the use of a lock); SCHLOSSER, *supra* note 1, at 26 (listing numerous gruesome accounts of accidents in meatpacking plants).

58. See WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* act 1, sc. 3 (in which a pound of flesh is given in consideration for a loan).

59. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *supra* note 10.

60. See *id.*

61. Frank Santiago & Thomas Beaumont, *IBP Officials Accused of Delaying Care: Lawsuit Claims Some Workers Were Denied Medical Treatment*, DES MOINES REG., Dec. 14, 1999, at 3M.

62. *Id.*

63. *Id.*

64. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *REPETITIVE TASKS LOOSEN SOME WORKERS' GRIP ON SAFETY AND HEALTH* (Aug. 1994), available at <http://www.bls.gov/iif/oshwc/ossm0005.pdf>.

65. *Id.*

66. Stull & Broadway, *supra* note 20, at 64.

Table 1. Incident rates of total non-fatal occupational injury and illness cases, in meatpacking plants<sup>67</sup>

Year	Average Annual Employment	Incident Rate [per 100 full-time workers]
2001	N/A	20.0 <sup>68</sup>
2000	148,100	24.7 <sup>69</sup>
1999	147,600	26.7 <sup>70</sup>
1998	149,400	29.3 <sup>71</sup>
1997	149,500	32.1 <sup>72</sup>
1996	147,200	30.3 <sup>73</sup>
1995	143,500	36.6 <sup>74</sup>
1994	137,600	36.4 <sup>75</sup>
1993	N/A	39.0 <sup>76</sup>

The American Meat Institute (“AMI”), representing the meatpacking industry, has proclaimed significant reductions in the rate of illness and injury,

67. This chart represents meatpacking only, separate from poultry or other meat processing.

68. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, HIGHEST INCIDENCE RATES OF TOTAL NONFATAL OCCUPATIONAL INJURY AND ILLNESS CASES, PRIVATE INDUSTRY, 2001 (Dec. 2002), at <http://www.bls.gov/iif/oshwc/osh/os/ostb1109.pdf> (last visited Oct. 23, 2004).

69. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, *supra* note 10.

70. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, HIGHEST INCIDENCE RATES OF TOTAL NONFATAL OCCUPATIONAL INJURY AND ILLNESS CASES, PRIVATE INDUSTRY, 1999 (Dec. 2000), at <http://www.bls.gov/iif/oshwc/osh/os/ostb0867.pdf> (last visited Oct. 23, 2004).

71. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, INDUSTRIES WITH THE HIGHEST NONFATAL TOTAL CASES, INCIDENCE RATES FOR INJURIES AND ILLNESSES, PRIVATE INDUSTRY, 1998 (Dec. 1999), at <http://www.bls.gov/iif/oshwc/osh/os/ostb0754.pdf> (last visited Oct. 23, 2004).

72. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, INDUSTRIES WITH THE HIGHEST NONFATAL TOTAL CASES, INCIDENCE RATES FOR INJURIES AND ILLNESSES, PRIVATE INDUSTRY, 1997 (Dec. 1998), at <http://www.bls.gov/iif/oshwc/osh/os/ostb0636.pdf> (last visited Oct. 23, 2004).

73. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, INDUSTRIES WITH THE HIGHEST NONFATAL TOTAL CASES, INCIDENCE RATES FOR INJURIES AND ILLNESSES, PRIVATE INDUSTRY, 1996 (Dec. 1997), at <http://www.bls.gov/iif/oshwc/osh/os/ostb0511.pdf> (last visited Oct. 23, 2004).

74. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, INDUSTRIES WITH THE HIGHEST NONFATAL TOTAL CASES, INCIDENCE RATES FOR INJURIES AND ILLNESSES, PRIVATE INDUSTRY, 1995 (Mar. 1997), at <http://www.bls.gov/iif/oshwc/osh/os/ostb0336.pdf> (last visited Oct. 23, 2004).

75. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, INDUSTRIES WITH THE HIGHEST NONFATAL TOTAL CASES, INCIDENCE RATES FOR INJURIES AND ILLNESSES, PRIVATE INDUSTRY, 1994 (Dec. 1995), at <http://www.bls.gov/iif/oshwc/osh/os/ostb0150.pdf> (last visited Oct. 23, 2004).

76. *Id.*

attributing this to voluntary, industry-specific worker safety and ergonomics programs.<sup>77</sup>

### C. The Reporting of Injuries: Is it Adequate?

Even with the high number of injuries reported in the meatpacking industry, some believe injuries are vastly underreported.<sup>78</sup> Undocumented workers, of which there are many in the industry, have a disincentive to report problems for fear they might be deported.<sup>79</sup> Even if they have legal status, many immigrant workers fear losing a job paying more than they made in their home country.<sup>80</sup> Immigrants with an H-2B visa, enabling them to enter the U.S. for the purpose of working for a specific employer, are at the mercy of that employer.<sup>81</sup> Language and cultural differences undoubtedly also hinder the reporting of injuries.<sup>82</sup>

Some analysts have found great deficiencies in the statistics reported by the Bureau of Labor Statistics (“BLS”).<sup>83</sup> Statistics come directly from employers, who may have an incentive to underreport injuries.<sup>84</sup> “Improperly maintained records can benefit the employer by making its record look good, thereby lessening the chances of an OSHA safety investigation at the plant.”<sup>85</sup> In addition, the sources of the BLS numbers are not shared with OSHA, so OSHA cannot validate their accuracy.<sup>86</sup> It may be difficult to measure OSHA’s effectiveness if accurate and reliable reporting does not exist.<sup>87</sup> Anthropologist Donald Stull, who has studied and reported on the meatpacking industry for the past fifteen years, notes its practices have not changed.<sup>88</sup>

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77. AM. MEAT INST., FACT SHEET: WORKER SAFETY IN THE MEAT AND POULTRY INDUSTRY (Apr. 2004), available at [http://www.meatami.com/content/presscenter/factsheets\\_Infokits/FactSheetWorkerSafety.pdf](http://www.meatami.com/content/presscenter/factsheets_Infokits/FactSheetWorkerSafety.pdf).

78. See, e.g., SCHLOSSER, *supra* note 1, at 172.

79. *Id.* at 174.

80. *Id.*

81. Bob Hall, *The Kill Line—Facts of Life, Proposals for Change, in ANY WAY YOU CUT IT: MEAT PROCESSING AND SMALL-TOWN AMERICA* 215 (Donald D. Stull et al. eds., U. Press of Kansas 1995).

82. See Steven Greenhouse, *Hispanic Workers Die at Higher Rate*, N.Y. TIMES ABSTRACTS, July, 16, 2001, at A11.

83. Marc Linder, *Fatal Subtraction: Statistical MIAs on the Industrial Battlefield*, 20 J. LEGIS. 99, 118 (1994) (citations omitted).

84. See *id.*

85. WARREN FREEDMAN, *THE LAW AND OCCUPATIONAL INJURY, DISEASE, AND DEATH* 97 (Quorum Books 1990) (citations omitted).

86. Linder, *supra* note 83.

87. DON J. LOFGREN, *DAANGEROUS PREMISES: AN INSIDER’S VIEW OF OSHA ENFORCEMENT* 197 (ILR Press 1989).

88. Olsson, *supra* note 27.

### D. Safety and Speed

Meatpacking plants have continued, over time, to increase their rate of production. A few decades ago, a plant might slaughter 175 cattle per hour.<sup>89</sup> “Today, some plants slaughter up to 400 cattle an hour.”<sup>90</sup> A John Morrell plant in Sioux Falls, South Dakota, increased its slaughter of hogs from 640 per hour in the late 1960s to 1,065 in 1986—without increasing the number of workers.<sup>91</sup> Workers at meatpacking plants have reported an environment in which they are constantly pressured to keep moving—where they are sometimes insulted or humiliated in order to keep up with production.<sup>92</sup> One worker relates: “From the time you enter, you’re told that if the plant stops ten minutes, the company will lose . . . millions of dollars.”<sup>93</sup> Many studies have shown a correlation between production speed and CTDs.<sup>94</sup> Nevertheless, the industry has often been slow in recognizing the connection between the work and CTDs, while at the same time making workers feel as if any problems are a result of personal faults.<sup>95</sup> Because the sharpness of the knife is so important in avoiding injuries, workers sometimes bring home their implements, spending forty minutes or more sharpening them each night.<sup>96</sup>

## V. REGULATION OF THE MEATPACKING INDUSTRY—A HISTORICAL OVERVIEW

Before the 1920s, injured workers in packinghouses were simply sent home.<sup>97</sup> Then, as now, speed on the line was a safety issue.<sup>98</sup> Later, some large plants were known to have on-site infirmaries to treat the “cuts, bruises, and broken bones” resulting from job accidents.<sup>99</sup> Illness as well as injury was prevalent in the packinghouses where pulmonary and dermatological diseases such as “hog itch” and “pickle hands” were known to exist.<sup>100</sup> Although most states had work-safety laws in place by 1920, they were scarcely enforced.<sup>101</sup> For the next fifty

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89. SCHLOSSER, *supra* note 1, at 173.

90. *Id.*

91. HOROWITZ, *supra* note 35.

92. Riley, *supra* note 40.

93. *Id.*

94. Hall, *supra* note 81, at 225.

95. ANDREAS, *supra* note 4, at 119.

96. SCHLOSSER, *supra* note 1, at 173.

97. HALPERN, *supra* note 21, at 93.

98. *Id.* at 42.

99. *Id.* at 93.

100. *Id.* at 94.

101. ROBERT MORAN, OCCUPATIONAL SAFETY AND HEALTH ACT § 2.01 (Matthew Bender & Co., Inc. 2004).

years, safety programs were unevenly administered and few had resources adequate for enforcement.<sup>102</sup> By the 1960s, eight states still had no identifiable occupational health program.<sup>103</sup> The number of state safety inspectors across the country totaled less than half the number of game and fish wardens.<sup>104</sup> Prior to 1949, the primary enforcement mechanism was tort law. Prior to the enactment of the Occupational Safety and Health Administration Act in 1970, safety was the province of the states, and their mechanism for enforcement was their respective workers' compensation laws.

Along the way, some employers, as well as labor unions, sought to promote job safety.<sup>105</sup> This probably gave some impetus to the creation of a national labor safety act.

## VI. THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ACT (OSHA)

### A. *The History Behind The OSH Act*

President Lyndon Johnson proposed a comprehensive safety program in 1968.<sup>106</sup> This was generally opposed by industry, citing progress in voluntary programs and state regulation.<sup>107</sup> The industry also argued there was no sudden emergency requiring federal intervention.<sup>108</sup> Federal regulation would be “‘intrusive’, making a ‘federal case’ out of many matters that could be satisfactorily resolved at the plant level.”<sup>109</sup> Finally, employees or their representatives, i.e., unions, might be tempted to use a safety law for “ulterior objectives”—presumably to gain leverage in other labor issues.<sup>110</sup> President Johnson's proposals failed that year, but newly elected President Nixon picked up the mantle, asking Congress to pass a federal bill.<sup>111</sup> Still, [b]usiness lobbyists refused to admit the need for change and chose to deny the problem and defend the existing private professional groups and state and local regulatory efforts despite their obvious failures. They blamed the workers themselves or questioned the motives of

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102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* § 2.02.

106. BENJAMIN W. MINTZ, *OSHA: HISTORY, LAW, AND POLICY* 5 (BNA 1984).

107. *Id.* at 10 (citations omitted).

108. *Id.* at 13.

109. *Id.*

110. *Id.*

111. *Id.*

the labor movement. The influx of younger workers and the breakdown in labor discipline caused increased accident rates, they maintained.<sup>112</sup>

The arguments made by the industry at that time have occasionally been used by critics of OSHA over the years.<sup>113</sup> Even today, workers are sometimes blamed for their own injuries, with some OSHA critics attributing the increase in repetitive motion injuries to off-duty sports.<sup>114</sup> Regardless, after considerable and contentious debate, the Act was signed into law by President Nixon on December 29, 1970.<sup>115</sup>

### B. *The Act and its Purpose*

The Legislative History of the OSH Act reveals:

“[t]he purpose of [the act] is to reduce the number and severity of work-related injuries and illnesses which, despite current efforts of employers and government, are resulting in ever-increasing human misery and economic loss.”<sup>116</sup>

The bill would achieve its purpose through . . . the development and administration, by the Secretary of Labor, of uniformly applied occupational safety and health standards.<sup>117</sup>

The final bill, however, finds worker safety a concern only with respect to the harm it would bring to interstate commerce.<sup>118</sup>

During the hearings on the bill leading to the Act, it was noted that 14,500 persons were killed each year from industrial accidents.<sup>119</sup> During the four years prior to the Act, more Americans were killed on the job than in the Vietnam War.<sup>120</sup> The number of disabling injuries in the United States, moreover, had increased twenty percent since 1958.<sup>121</sup>

The Senate Report on the Act noted that many employers had shown an “exemplary degree of concern for health and safety in the workplace,” but it also noted that many were not so concerned.<sup>122</sup> The conscientious employer was at a

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112. NOBLE, *supra* note 12, at 83.

113. MINTZ, *supra* note 106, at 13.

114. NAT'L CTR. FOR POLICY ANALYSIS, OSHA TARGETS REPETITIVE MOTION IN THE WORKPLACE (citing Laura M. Litvan, *Repetitive Regulation Syndrome*, INVESTOR'S BUS. DAILY, July 18, 1997), at <http://www.ncpa.org/pd/budget/july97j.html> (last visited Sept. 20, 2004).

115. MINTZ, *supra* note 106, at 1.

116. S. REP. NO. 91-1282, at 1 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5177, 5177.

117. *Id.*

118. *See* Occupational Safety and Health Act, 29 U.S.C. § 651(b)(3) (2000).

119. S. REP. NO. 91-1282, at 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5177, 5178.

120. *Id.*

121. *Id.*

122. *Id.* at 4, *reprinted in* 1970 U.S.C.C.A.N. 5177, 5180.

competitive disadvantage.<sup>123</sup> Particularly, where there was a long time between exposure to the workplace hazard and the manifestation of illness, the employer had no economic incentive to expend money on safety, not even to reduce workmen's compensation costs—because the employer would seldom have to pay for the consequence of poor safety precautions.<sup>124</sup>

### C. *What the OSH Act Requires*

The Act calls for the creation of standards of safety and health and for the inspection of work sites “without delay and at reasonable times.”<sup>125</sup> It also requires employers to keep and maintain accurate records of workplace injuries and illnesses other than those that are minor, requiring only first-aid treatment.<sup>126</sup> Employers must also post notices informing employees of their obligations and rights under the Act.<sup>127</sup>

A state may establish its own health and safety law, but it must obtain approval from OSHA.<sup>128</sup> As of 1996, there were twenty one states with their own programs.<sup>129</sup> In these states, the federal OSHA has little or no role.<sup>130</sup>

### D. *OSHA Enforcement and Regulation*

OSHA enforces safety in several ways: (1) by encouraging employers and employees to reduce workplace hazards and put into place, or improve, existing safety programs; (2) through research of occupational health and safety; (3) by establishing responsibilities and rights for employers and employees; (4) through the maintenance of a reporting and recordkeeping system that tracks workplace injuries; (5) through training programs; (6) in its development of health and safety “standards” and enforcement thereof; and, (7) in its analysis and review of state safety programs.<sup>131</sup>

An employee faced with an unsafe condition must inform his employer of the hazard.<sup>132</sup> He may, however, refuse to continue working if, in good faith,

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123. *Id.*

124. *Id.*

125. BUREAU OF NAT'L AFFAIRS, THE JOB SAFETY AND HEALTH ACT OF 1970 7 (BNA 1971).

126. *Id.*

127. *Id.*

128. MORAN, *supra* note 101, at § 1.03.

129. *Id.* (citations omitted).

130. *Id.* (citations omitted).

131. OSHA, U.S. DEP'T OF LABOR, OSHA 2056-07R, ALL ABOUT OSHA 3 (2003), available at <http://www.osha.gov/Publications/osha2056.pdf>.

132. FREEDMAN, *supra* note 85 (citations omitted).

he believes a condition presents “a real danger of serious injury, disease, or death.”<sup>133</sup>

The primary benchmark for safety under the Act is the “standard.” A standard requires “conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.”<sup>134</sup> The creation of a standard arguably “clarifies the law in advance and avoids the imposition of new and often unexpected liability on a case-by-case basis.”<sup>135</sup> A standard also allows OSHA to take comments and consider public views before promulgating a final rule.<sup>136</sup>

In effecting a standard, OSHA does not need to do a cost-benefit analysis to show a reasonable relationship between employer costs and employee benefits. Congress, determined that standards were necessary to prevent material health development to create a safe working environment, even though the standards may impose substantial costs upon employers.<sup>137</sup>

One of the most powerful tools held by OSHA is its power to inspect an employer’s worksite.<sup>138</sup> Generally, inspections occur without advance notice to the employer.<sup>139</sup> OSHA’s inspection priorities are as follows: (1) situations of imminent danger; (2) catastrophes involving the hospitalization or death of three or more employees; (3) complaints; (4) planned inspections of high-hazard industries; (5) random selection of low-hazard and non-manufacturing sites; and, (6) follow up inspections.<sup>140</sup> If OSHA finds violations in an inspection, it may impose fines.<sup>141</sup> In order to do so, it must develop substantial evidence for the record.<sup>142</sup> A serious violation in which “there is a substantial probability that death or physical harm could result” can result in a fine up to \$7,000 which may be adjusted downward for good behavior.<sup>143</sup> Inspectors also set dates by which vio-

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133. *Id.* (citations omitted).

134. MINTZ, *supra* note 106, at 37.

135. *Id.*

136. *Id.*

137. FREEDMAN, *supra* note 85, at 96 (citing *Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490 (1981)).

138. See Randy S. Rabinowitz & Mark M. Hager, *Designing Health and Safety: Workplace Hazard Regulation in the United States and Canada*, 33 CORNELL INT’L L.J. 373, 385 (2000).

139. OSHA, U.S. DEP’T OF LABOR, *supra* note 131, at 21.

140. *Id.* at 22.

141. *Id.* at 26.

142. FREEDMAN, *supra* note 85, at 96.

143. OSHA, U.S. DEP’T OF LABOR, *supra* note 131, at 26.

lations must be corrected, in consultation with the employer.<sup>144</sup> A private right of action under OSHA is generally not available to an employee.<sup>145</sup>

## VII. IS OSHA REGULATION OF MEATPACKING ADEQUATE?: THE RECORD

OSHA, in its thirty-plus year history, has faced considerable criticism. In 1983, at a National Beef plant in Liberal, Kansas, two workers were attempting to clean a "blood-collection" tank when toxic fumes from the tank ended their lives.<sup>146</sup> OSHA fined the company \$960 while asking for a safer cleaning routine.<sup>147</sup> They followed up with a single safety inspection.<sup>148</sup> Three more workers died when they tried to clean the same tank eight years later.<sup>149</sup> This time, the company was fined \$1.5 million.<sup>150</sup> In 1988, OSHA was widely criticized in the press for its poor performance record, "[s]pecifically, the complaints centered about . . . 'its inexperienced inspectors, and for reporting rules that allow potentially disastrous accidents to go unchecked.'"<sup>151</sup>

OSHA has shown more interest in repetitive motion injuries since 1988—levying fines against John Morrell (\$990,000), IBP (\$975,000, for purposely hiding worker injuries and illnesses), Monfort (\$1.1 million, for egregious safety violations), and Con-Agra (\$425,000, for record keeping violations) between 1988 and 1991.<sup>152</sup> Although the industry has reportedly made changes in response to these adverse findings, the number of reported injuries has continued to rise.<sup>153</sup>

In 1991, in Hamlet, North Carolina, twenty five workers were killed, and many more injured, from a fire at the Imperial Food Products chicken-processing plant.<sup>154</sup> Exit doors at the plant were locked.<sup>155</sup> The state occupational safety office had not inspected the plant in its eleven years of operation.<sup>156</sup>

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144. LOFGREN, *supra* note 87, at 4.

145. FREEDMAN, *supra* note 85, at 96.

146. Stull & Broadway, *supra* note 20, at 65.

147. *Id.*

148. *Id.*

149. *Id.* at 66.

150. *Id.*

151. FREEDMAN, *supra* note 84, at 97.

152. Stull & Broadway, *supra* note 20, at 66-67.

153. *Id.* at 67.

154. Broadway, *supra* note 8.

155. *Id.*

156. *Id.*

## VIII. FACTORS THAT CONTRIBUTE OR DETRACT FROM OSHA EFFECTIVENESS

## A. Budget

In recent years, OSHA's budget has seen a steady increase, as indicated by Table 2.

Table 2. OSHA Budget: 1997-2003<sup>157</sup>

Fiscal Year	OSHA's Total Budget (in U.S. dollars)
1997	325 million
1998	336 million
1999	353 million
2000	388 million
2001	426 million
2002	443 million <sup>158</sup>
2003	450 million <sup>159</sup>

Nevertheless, when adjusted for inflation, OSHA's budget has remained largely the same since 1982.<sup>160</sup> As of 2000, OSHA had fewer employees than it did in 1971, and nearly eight hundred fewer employees than it had in 1980.<sup>161</sup> In a 1989 General Accounting Office (GAO) study, it was determined that "OSHA employed about 1,100 inspectors to enforce health and safety standards for over 3.6 million employers in the United States."<sup>162</sup> OSHA has been described as an

157. NAT'L ROOFING CONTRACTORS ASSN., OSHA'S BUDGET (Oct. 2001), at <http://www.nrca.net/government/position/budget.asp> (last visited Oct. 11, 2004).

158. OSHA, U.S. DEP'T. OF LABOR, 2003 BUDGET AUTHORITY (2003), at [http://www.dol.gov/\\_sec/budget2003/agencies.htm#osha](http://www.dol.gov/_sec/budget2003/agencies.htm#osha) (last visited Oct. 11, 2004).

159. OFFICE OF MGMT. AND BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT: 2005, DEPARTMENT OF LABOR (2004), at [http://www.whitehouse.gov/omb/budget/fy2005/sheets/27\\_13.xls](http://www.whitehouse.gov/omb/budget/fy2005/sheets/27_13.xls) (last visited Oct. 11, 2004).

160. Sidney A. Shapiro & Randy Rabinowitz, *Voluntary Regulatory Compliance in Theory and Practice: The Case of OSHA*, 52 ADMIN. L. REV. 97, 98 (2000).

161. *Id.* at 98-99.

162. GEN. ACCOUNTING OFFICE, GAO/HRD-91-9FS, OCCUPATIONAL SAFETY & HEALTH: INSPECTORS' OPINIONS ON IMPROVING OSHA EFFECTIVENESS 10 (1990), available at <http://archive.gao.gov/d22t8/142643.pdf>.

agency of “limited means.”<sup>163</sup> The present administration, under President G.W. Bush, intends to cut eighty three jobs from OSHA’s roster—while expanding the number of workplace inspections and increasing compliance with safety regulations, with a reduced budget.<sup>164</sup>

### B. *Executive Branch Point of View*

Many employers have traditionally had an adversarial relationship with OSHA—finding its enforcement mechanisms costly and ineffectual. Political considerations seem to exert a strong influence over whether OSHA takes action to enforce its regulations.<sup>165</sup> Under the Clinton administration, an ergonomics standard was issued, one that had been over ten years in the making.<sup>166</sup> President Bush, shortly after taking office, signed legislation killing the standard.<sup>167</sup> More recently, OSHA has formed “alliances” with many industry groups, including AMI.<sup>168</sup> The AMI is an association “representing the interests of meat and poultry slaughterers and processors and their suppliers throughout North America.”<sup>169</sup>

### C. *Meatpacking Workers—Who Are They and What Does That Have to Do with Safety?*

Although the industry has received some publicity with regard to its safety record, the safety of the industry has not been at the forefront of the news.<sup>170</sup> This may result in part from a society that does not consider occupational health and safety a serious matter.<sup>171</sup> Presidents have used OSHA both “as

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163. See generally Rabinowitz & Hager, *supra* note 138, at 390 (noting that employees have many rights under the Act, but limited means to enforce them).

164. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC, BUSH’S OSHA TO CUT JOBS (Mar. 5, 2002), available at [http://www.ibew.org/stories/02daily/0203/020305\\_OSHA.htm](http://www.ibew.org/stories/02daily/0203/020305_OSHA.htm) (last visited Sept. 20, 2004).

165. FREEDMAN, *supra* note 85, at 97.

166. AFL-CIO, OSHA REACHES OUT TO INDUSTRY GROUPS BUT SHUTS WORKERS, UNIONS OUT OF MOST SAFETY AND ERGONOMICS ACTIVITIES (2002), at <http://www.aflcio.org/yourjobeconomy/safety/ns12062002.cfm?RenderForPrint=1> (last visited Sept. 20, 2004).

167. *Id.*

168. *Id.*

169. Letter from AMI to Terry Miller, Secretariat, National Safety Council (July 15, 1998), available at [http://www.meatami.com/content/contentgroups/Labor\\_Environment1/worker\\_safety/Ergonomics1/ansiz365.pdf](http://www.meatami.com/content/contentgroups/Labor_Environment1/worker_safety/Ergonomics1/ansiz365.pdf).

170. See SCHLOSSER, *supra* note 1 (stating there has not been a public outcry over the issue).

171. Ralph Nader, *Occupational Safety and Health Act*, 31 HOUS. L. REV. 1, 2 (1994).

a political weapon and as a means of communicating to business their position on business climate, rather than safety climate."<sup>172</sup>

The lack of public concern may stem, in part, from the fact that most meatpacking employees are poor, many are immigrants struggling to survive, and most are now employed in rural locations. Arguably, powerless workers are not newsworthy.<sup>173</sup> Some might say they are invisible to the public eye.<sup>174</sup> Immigrant workers, of which there are many in the industry, now face the loss of labor protections in light of a recent Supreme Court decision that found that "immigration law takes precedence over labor law"—holding that an undocumented worker, who was illegally fired for his union activities, was not entitled to any back pay.<sup>175</sup> Among other things, the reasoning in the case may be used by employers to challenge workers' compensation claims.<sup>176</sup> Yet, the industry seems to rely on immigrant and undocumented workers to supply its labor force.<sup>177</sup> Some workers are enticed by radio advertisements.<sup>178</sup> Others are said to come by company buses.<sup>179</sup> Some packing plants are reported to have an undocumented work force of greater than fifty percent, warranting INS investigation.<sup>180</sup>

## IX. SOLUTIONS TO MEATPACKING SAFETY

### A. *Self-Inspection*

Many employers call for self-inspection as the solution to safety. They seek to replace traditional "adversarial regulation and enforcement policies" with "consensus and cooperation."<sup>181</sup> They argue that voluntary compliance is more

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172. *Id.*

173. *Id.* at 6.

174. See Lenni B. Benson, *The Invisible Worker*, 27 N.C. J. INT'L L. & COM. REG. 483, 484 (2002) (using the term "invisible worker" specifically in reference to immigrants but the principle can be applied as well to most of the low wage, largely powerless, workforce in the meatpacking industry).

175. Abby Scher, *When Is a Labor Law Violation Not a Labor Law Violation?*, DOLLARS & SENSE, Sept. 1, 2002, at 9 (referring to *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 151 (2002)).

176. *See id.*

177. See Carey Gillam, *Tyson Charges 'Tip of the Iceberg': Industry Experts Say Meat Processors Skirt Immigration Law, Call for Policy Reform*, HOUSTON CHRONICLE, Dec. 23, 2001, at 2.

178. See, e.g., *Magana v. IBP, Inc.*, No. 00-1742, 2002 WL 31307409, at \*1 (Iowa Ct. App. Oct. 16, 2002).

179. See Gillam, *supra* note 177.

180. *See id.*

181. Rabinowitz & Hager, *supra* note 138, at 374.

efficient than traditional approaches.<sup>182</sup> It is, moreover, less intrusive.<sup>183</sup> Some have even called for the abolition of OSHA, arguing that economic incentives, by themselves, will protect workers.<sup>184</sup> Economic incentives take the form of (1) higher wages paid to workers in more hazardous jobs; and (2) in the workers' compensation paid to workers who are hurt.<sup>185</sup>

These same arguments, however, were used in the bitter fight against the enactment of OSHA. Some employers were conscientious about safety, but others were not. Those who were not concerned about safety could have an economic advantage over those who were. In addition, some analysts find the voluntary approach could not replace the traditional compliance approaches in all respects.<sup>186</sup> The influences that would promote voluntary compliance are not generally present in industries involving occupational safety.<sup>187</sup> According to one report, "a significantly declining rate of injuries at plants [that] OSHA inspected is almost entirely due to inspections that impose penalties."<sup>188</sup>

OSHA's present administration seems at least partially amenable to the idea of self-inspection—to the point of displaying industry claims for effective self-inspection on the OSHA website.<sup>189</sup> At times, OSHA's relationship with the industry has seemed rather close. For example, OSHA's safety director in 1987, Barry White, told a group of meat company executives that he would change safety standards that "appear amazingly stupid to you or overburdening or just not useful."<sup>190</sup> He further stated, "I know very well that you know more about safety and health in the meat industry than I do . . . [a]nd you know more about safety and health in the meat industry than any single employee at OSHA."<sup>191</sup>

There is a natural conflict between safety and profits.<sup>192</sup> The speed of a production line is directly related to the profits made by a meatpacker.<sup>193</sup>

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182. See Shapiro & Rabinowitz, *supra* note 160, at 100.

183. *Id.*

184. Sidney A. Shapiro, *The Necessity of OSHA*, 8 KAN. J.L. & PUB. POL'Y 22, 22 (Spring 1999).

185. *Id.*

186. Shapiro & Rabinowitz, *supra* note 160, at 100.

187. *Id.* at 101.

188. NEVILLE C. TOMPKINS, *A MANAGER'S GUIDE TO OSHA 37* (Crisp 1993) (citing a report from the National Bureau of Economic Research).

189. See OSHA News Release, *Ergonomics Guidelines Announced for Poultry Processing Industry* (Sept. 2, 2004), available at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=11011](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=11011).

190. SCHLOSSER, *supra* note 1, at 179.

191. *Id.*

192. See Linder, *supra* note 83, at 102.

193. Schlosser, *supra* note 9.

### B. Labor Solutions

In enacting OSHA, Congress found that the most effective safety programs were those in which employees participated in their design and administration.<sup>194</sup> Today, the Department of Labor still recommends employee involvement.<sup>195</sup> Such involvement may be increased through union representation. Indeed, some opine industrial unionism is particularly suitable for the meatpacking industry.<sup>196</sup> Where union representation is lacking, packinghouses have increased the speed of the work, leading to greater injury.<sup>197</sup> The strength of the labor union movement in meatpacking, however, saw a dramatic decline in the 1980s, brought about in part by the increased consolidation of the industry and the political and regulatory climate fostered by the Reagan Administration.<sup>198</sup> Meatpackers threatened to close plants or declare bankruptcy in order to gain concessions or to void contracts.<sup>199</sup> The demise of labor unions in the industry has also been made possible by a great mass of migrant workers into the United States from other countries.<sup>200</sup> Different ethnicities often serve to inhibit cooperation amongst workers, making them less resistant to company policies.<sup>201</sup>

### C. OSHA Reform

OSHA might consider setting standards for CTDs or they could aggressively enforce OSHA's general duty clause, which requires employers to provide safe workplaces.<sup>202</sup> Professor Lenni Benson suggests, however, that "government enforcement alone will never be sufficient"—that other incentives in the realm of private rights of action, for example, are needed.<sup>203</sup>

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194. S. REP. NO. 91-1282, at 11 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5177, 5187.

195. OSHA, U.S. DEP'T OF LABOR, *supra* note 16, at 3.

196. HOROWITZ, *supra* note 35, at 283.

197. *See* HALPERN, *supra* note 21, at 42.

198. HOROWITZ, *supra* note 35, at 266.

199. *Id.* at 266, 267.

200. Farshad Araghi, *The Great Global Enclosure of Our Times: Peasants and the Agrarian Question at the End of the Twentieth Century*, in *HUNGRY FOR PROFIT: THE AGRIBUSINESS THREAT TO FARMERS, FOOD, AND THE ENVIRONMENT* 154 (Fred Magdoff et al. eds., Monthly Review Press 2000).

201. HOROWITZ, *supra* note 35, at 282.

202. Hall, *supra* note 81, at 229.

203. Benson, *supra* note 174, at 496.

## X. CONCLUSION

The evidence shows that safety is still a major issue at meatpacking plants across the United States. The Occupational Safety and Health Administration Act declares its purpose and policy “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”<sup>204</sup> The agency, OSHA, arguably isn’t meeting the standard set by Congress with regard to safety in the meatpacking industry. This could be a result of the lack of budget resources, inefficient management of the agency and its processes, political pressure from the industry at the expense of workers, or a combination of these factors.

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204. Occupational Safety and Health Act, 29 U.S.C. § 651(b) (2000).