
THE PRODUCER

by **DAVID PUTTNAM**, the Oscar-winning producer of *Chariots of Fire*, *The Killing Fields*, *Midnight Express*, *Local Hero* and *The Mission*. He was chairman of Columbia Pictures from 1986 to 1988 and now works principally in the field of education and the creative industries, serving in England as chairman of the General Teaching Council (GTC), as chairman of the National Endowment for Science, Technology and the Arts (NESTA), and as chancellor of the University of Sunderland. In 1995 he received a knighthood for his services to the British film industry, and in 1997 he was appointed to the House of Lords. He divides his time between England and a home in Ireland.

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The actual job of putting a film together has barely changed since the days when the Lumière brothers created the very first moving images more than one hundred years ago. It involves the same disappointments, the same problems and similar triumphs. What has changed, and changed dramatically, is the sheer complexity of it all, particularly in the legal, contract and copyright areas. So one of the basic skills that producers must develop is the ability to work across a range of very different activities, managing very different types of people in sometimes very different circumstances.

There are almost as many ways of functioning as a producer as there are producers. Sensible producers devise a working system that maximizes their personal strengths—personality, knowledge, talent—and minimizes their weaknesses, bringing in people to compensate for those weaknesses. It's dangerous, in fact (and not particularly helpful), to mandate a way of producing pictures or to try to be someone else's type of producer. I admonish the reader to take the following observations as mere advice and to strike out on one's own to develop a personal style of producing.

In many respects I am something of a throwback. I started out working in an advertising agency where, as an account executive, I was discouraged from having very much input into the creative process. Luckily I was able to reconstruct the job in such a way as to give myself a fair amount of say as to who wrote and designed the ads I worked on. Coming to movies from this experience, I had the confidence to apply the same skepticism and re-

construct the role of the producer in a way that offered the type of creative satisfaction that I was seeking.

The first film I produced, *Melody*, fell together more by luck than by judgment. Although I was more of a passenger, I made sure to pay close attention to the process, and didn't make too much of a fool of myself. The second film (*The Pied Piper*) was just the opposite, a catastrophe. I learned a great deal from my mistakes and completely revised my thinking. In those days a producer's job was simply packaging. I decided that if I was going to have ghastly experiences like this second picture, I'd like them to be my fault, instead of trying to ride herd on a situation over which I had no real control. As a result, on the third film, *That'll Be the Day*, I set the parameters around which I've worked ever since: very hands-on, very involved, with semiautobiographical story elements that I can specifically relate to. Now let me tour through the picture-making process and explain how I applied these parameters to the job of producing.

With few exceptions I would generally either conceive of my stories or find them in newspapers. *Chariots of Fire*, *Local Hero* and *The Killing Fields* all had their origins in this type of research. It's impossible to explain why one story intuitively imposes itself on your imagination rather than another—a bit like trying to justify falling in love with one woman in a room in which many would seem equally attractive. This is organic and should stay that way!

The casting of screenwriters to fit material stems from reading vast numbers of screenplays, becoming familiar with writers and their craft and knowing the tone and content you want. Monte Merrick was chosen for *Memphis Belle*, a movie with ten major roles, because I had read a screenplay of his wherein he juggled several characters, giving them all quite specific identities.

In my development process I would normally pay for an option to buy the chosen material, say an original screenplay, making sure to have the right to extend the option period for a smaller additional sum of money, whether or not the extension money is applied against the purchase price. Because I'd work slowly, my option period would be longer than most, normally covering two years, extendable for a third.

In terms of cutoffs in a screenplay deal I would be quite singular: I'd normally stay with a writer over many, many drafts. Over the years I've observed that the batting average of writers coming in and rewriting is low. This puzzled me until I went to Columbia. There it was clear that a studio executive has an average of forty minutes for a script conference and is under great pressure to report progress at weekly production meetings. The easy way to apparent "action" is to decide to replace a writer in the course

of that script conference rather than taking the time necessary for the complex, tedious, difficult task of properly developing a screenplay from one draft to the next. Unless a writer feels "written out," I would try to stick with the same one, since that person probably understands the story problems and solutions better than anyone and, I would hope, remains eager to implement them; it's the devil you know as opposed to the devil you don't know—and probably can't afford!

A fundamental task of a producer is to make the project as risk-averse as possible. My advice is to bring in bargains, relatively inexpensive pictures on or under budget, since you can't mandate the success of a movie. Here is where the American system is forgiving and the European system is not. In the American system, if you deliver a *good* movie in a timely and responsible manner but the picture fails at the box office, you are not regarded as a failure. With the next project you are remembered as the person who delivered the last picture properly. In Europe, no matter how well you produce a film, if it's not a critical or commercial success, there is the smell of failure about *you*, and the next project may suffer.

The key to remaining stable is being prepared to think the unthinkable, being prepared to "walk away from this picture," which can be an expression of either power or sacrifice. I've done it a few times and saved myself an awful lot of grief, most notably on *Greystoke*. During preproduction I suddenly realized I didn't know *how* to produce the film; it was too complex. I didn't believe it could be done for the amount that Warner Bros. wanted to spend, and I didn't want to be on the sharp end of their disappointment. I walked away and saved myself a year or more of deep pain.

Once a project is green-lighted, there are certain dangers to watch for. One is being pushed into a fixed release date, which is lethal for a producer. This got to be known as "shooting a release date" and doesn't happen very often (though there are well-publicized examples). Once a producer is trapped into this, all of the normal controls that exist in the making of a movie can go out the window. Another danger is building the film's existence around one important cast name. Once this occurs, you are to a very great extent at that person's mercy. There are several films that never got beyond the development stage because of the rewriting demands of major actors who were attached too early on.

Another danger is the pressure to deliver a budget before locations have been adequately scouted. This is always counterproductive, since a cheaper way of making the movie results from a full assessment of all the possible locations with the production designer and director. Money wisely spent in preproduction is an *investment*. Spending an extra \$100,000 in preproduc-

tion can save \$1 million during shooting. Sometimes it's difficult for studios to understand this, since preproduction expenses seem like high-risk money (in that there's still a chance the picture can be canceled), but their attitude and their professionalism in this respect is steadily improving.

My advice in budgeting is: Don't lie to yourself. The temptation is there, especially if a picture won't go forward if it's budgeted over a certain figure. When you begin to trim a budget to reach a financier's rigid number, you start questioning items, which *can* lead to disaster. Do we really need a unit doctor? Do we need a standby ambulance? No, until something goes wrong, just as with insurance. On location for *Memphis Belle* there was a plane crash, and three fire engines raced to the scene in seconds. At that moment I realized that if anyone had asked during preproduction whether we needed three fire engines standing by, the answer probably would have been to cut back and save money. After that I wrote to Warners suggesting a firm corporate policy that, notwithstanding budgetary pressures, certain areas should *never* be cut, including medical, security and fire. In this way if someone is irresponsible enough to cut back in those areas and there is an accident, a company can honestly point to this rule in their terms of business and protect themselves.

In scheduling the same rule applies: Don't lie to yourself. Also, keep aside some sequences that you know you could complete the movie without and place them at the end of the schedule. In other words, don't find yourself shooting sequences in week 2 that, if push came to shove, you could drop. Keep them tucked into the end of the schedule so that they can be deleted if need be. They can also act as a valuable spur to a tired director! On *Chariots of Fire* I made a scheduling decision that turned out wonderfully well in hindsight. There was a rather tenuous financing arrangement involving two companies who were funding it not out of any particular enthusiasm but because of other, more complex commitments. I wanted to impress them, so I scheduled a rather big production sequence for the first week. Sure enough, in week 2, when problems began to arise, I had something wonderful to show them. There was a sense of relief on the part of the financiers, who later generously agreed to invest additional money.

This leads to another bit of advice: While it can be important to shoot a complicated production sequence in the first week to get it behind you, tuck it into Thursday or Friday. It takes at least seventy-two hours for a crew to get to know each other. It may appear as if everyone is functioning properly that first Monday morning, but the real work won't emerge until Wednesday. You've got to be emotionally and, if possible, financially prepared literally to throw away the first two days of shooting.

The producer has one absolutely crucial week on a movie: it may even come down to three days: the Wednesday, Thursday and Friday of the second week. All the most fundamental decisions will have to be made within that time. Whatever is going wrong must either be changed then or you will be stuck with those problems for the duration of the production.

Two examples involve the relationship with the director and the working rhythm of the film, both of which become established very quickly. As producer you should already have done your homework and learned about the director's style and the other artists' abilities by asking those who have worked with them in the past. Your choices should have been based on this *and* on intuitive judgment. Certainly problems during that precious first week of shooting will ring alarm bells in your head, since they may well be contrary to those early assumptions. If need be, this is the time to have a confrontation with the director. There is a week's rushes to look at, enough material to judge the competency of the director as expressed through the visual style and the performances. If changes are required, there is this narrow window of opportunity; now's the time. If the working rhythm indicates, when charted out through the schedule, that you will be two weeks over, it must be adjusted, with the director's cooperation, by the end of that second week, or you *are* destined to go over.

Once a film has started shooting, the pivotal relationship is between the producer and the director. The best "in-production" relationship I ever had was with Roland Joffe on *The Killing Fields*. Because it was an enormously complicated film, we would dine together almost every night, talking over that day's problems and the next day's challenges, and that was very productive. There was never any equivocation. When we had crises, he totally understood them; when things were working well, he knew why. The key is trust. If the director suspects the producer is likely to lie about having more money (or less resources) available than there actually is, the basis of the relationship will be undermined quickly. It is demoralizing for a director to think the producer has a hidden agenda, just as it is demoralizing for a producer to believe the studio has another agenda altogether.

Let me emphasize that once a film is green-lighted, the key is absolute trust. A producer must have the confidence to be able to say to the director, "This is not working," and the director must have the confidence to respond, "How am I going to dig my way out of this?" Then you work together to dig your way out. There *will* be crises; there's never been a movie made without crises. It's the ability to deal with those crises that is the making of a good or a bad producer. Once a film starts, producing is, for the most part, crisis management; you have no other real function. In most other respects you're in the way!

During shooting I would try to time my appearances so that they would have some relevance. I'd try to be there at the beginning of the day (if you're there, why isn't everyone else?), during lunch and at the end of the day. It is very good for the crew to see the producer lunching with the director and other artists, for it communicates a sense of continuity, of family. I would always reserve the right to decide what time the movie wraps, rather than hand that over to the director. If that is lost, you have effectively lost budgetary control of the film. If the director decides how long to shoot, the director controls the budget. There are exceptions. On a shoot in Hungary we took out a completion bond with a local studio, so I didn't have to look at my watch once. Whether we wanted to wrap at six or at nine, we had a fixed cost; any overage was their problem.

The core working group from the producer's perspective during shooting is the production manager, first assistant director and production accountant. They're your SWAT team, who help sort out your problems. With their input you bring a series of sensibly thought-out options to the director, and the director decides among those options. As an example, on *The Duellists* we were behind from day 1 due to weather. I would meet with Ridley Scott every night and discuss options to get back on schedule, such as condensing a sequence and moving on after lunch or cutting the size of a crowd, and he would decide.

Let's consider the issue of going over budget. As noted earlier, the first line of defense is to recognize the pattern early (again, by the beginning of week 2) and confer with the director in order to correct it by reworking the schedule or your shooting system in order to catch up. But what if the picture is clearly better off for going over one week? In that case, instead of trying to hold to the schedule, you must pay for the overage by imposing savings from other below-the-line categories. Either decision is made by working closely with your SWAT team and presenting the alternatives to the director. It's important not to become ideological about it, not to see it as a war between producer and director, because like it or not, you're in it together.

In the unlikely event that the director does not respond constructively in the face of such an overage, you have a battle on your hands. It also means you've made a flawed judgment in selecting that director. One of the things I would try to do in preproduction is to feel out that type of issue, to create one or two minicrises to see how the director reacts. During the location reconnaissance ("recce"), if option A is closed down, how flexible is the director in exploring option B? What you don't want is a "pussycat" director—"Everything is fine, whatever you say"—because that kind of lack of conviction will end up on the screen. The ideal director is

someone who is decisive and flexible: firm in what he or she wants; flexible in understanding the nature of the producer's problems and in helping solve or at least address them.

The value of choosing to work on location is realism. Another important element, especially in exotic locations, is the ability to photograph indigenous people rather than shipping in extras. Since travel time is wasted time, another concern is how close the crew lives to the location. If travel time is an hour and a half, that means three hours are wasted each day, and that's both expensive and stupid; every fourth day is effectively wasted.

Currency is another issue on distant locations, and my advice is to buy currency forward. Once you *know* what the picture is going to cost, buy the currency for the entire location schedule; don't be a victim of fluctuation. As an example, assume the pound moves against the dollar from \$1.40 to \$1.61 over several weeks. If the movie is budgeted in dollars but you are spending pounds, the cost of your dollars has escalated by some 15%, a heavy unforeseen overage. To avoid this, convert your financing into the local currency as soon as possible. (If a studio balks, reach agreement with them such that they can keep any benefit from fluctuation but that they protect you from any losses.) Don't play the currency market—it's not your job, and you've got a movie to produce.

Logistics are extremely important, since shooting on location is parallel to a military operation, calling for moving great numbers of people and equipment, keeping lines of communication open, seeing that everyone is well fed and maintaining flexibility so that plans can be changed at short notice.

As producer you have the absolute obligation to keep the crew happy, well fed and not exploited in terms of working ridiculous hours, which may become counterproductive, making them tired and irritable. At the end of week 2 it's a good idea to throw a little unit party, which brings people together and consolidates relationships. One should be reasonably quick to criticize but even faster to praise. I would advocate a "slush fund" in a budget of perhaps 1% of the budget from which you can buy small things such as birthday presents or a round of drinks or award bonuses where deserved, all of which, in addition to a couple of unit parties, generate good morale and a sense of well-being.

Outsiders wonder why so many people are needed on location. In my experience there are in reality seldom more people than are necessary, especially in support staff, who can always fill in where needed. The most expensive element in shooting a film is *time*. The addition of an extra person can often fill a gap so that every given hour in the day is properly used. Don't scrimp with your key personnel. Beware of bargains. If proper plan-

ning with an experienced director of photography avoids *one* day's error, he has paid for himself.

During production it's important to prepare a weekly progress report reflecting the budget changes, specifying over- and under-budget shifts from the previous week. I would force myself to spend half a day a week on this. In every area where the change is significant I'd write a detailed explanation. This is not only for the record: I have found that writing about these problems would make me address them head-on and search for solutions in the coming week. I'm a great believer in putting thoughts on paper.

If you've prepared properly and done your numbers right, the relationship with the financier during production should be amiable. Stay in contact through phone calls every week or so, reporting progress. I would adamantly resist sending rushes back to the studio; they have every chance of being misinterpreted. The *only* people who can really understand the rushes are the director and the editor and, to a limited degree, the producer. Rather, after a few weeks I'd send them a series of selected takes, to offer a flavor of the movie. On *Midnight Express* the rushes for two out of the first three days were unusable. Had Columbia seen that material, they might have panicked. Luckily we were on location in Malta and were able to cover by rescheduling and get back on track. Crews are great at covering for each other!

Editing normally begins *during* shooting, and your relationship with the editor is most important. I've done three-quarters of my films with the same two editors and would trust them implicitly. The director must come to trust the editor's judgment as well. But let me emphasize that the director-editor rapport must be such that the editor tells the director the *truth*. If the rushes aren't working, the editor is the first person who knows it and must be comfortable enough in the relationship to convey that to the director. Bluntly, the editor must not be someone who looks to the director to remain employed. On location we would see rushes on video, so the daily call to the editor at home base to assess the quality of the rushes would be vital. On *Mahler* I asked Ken Russell if he wanted to look at the rushes. He asked if we had any room in the schedule to reshoot, and I said no. Then he said, "What's the point in looking at the rushes?"

I would try to bring the composer on very early, if possible at the screenplay level. The three essential creative contributions on a movie exist on two tiers. On the first tier is the director, writer and composer, followed by the trio of production designer, editor and cameraman. What you see on the screen is an amalgam of their work, and the producer's job is to ride herd on them. In the case of *Chariots of Fire* it's hard to say what

the movie would have been like without Vangelis's brilliant score. Since I happen to enjoy music, my research into finding composers was a constant delight. On *The Killing Fields* we decided that, visually, many sequences would end with machinery wiping the human element off screen. We sought a cacophony of sound, and I thought of Mike Oldfield's *Tubular Bells*. He was keen to do the film and came on board before shooting started.

Now let us assume we have completed principal photography on schedule and we turn to the final phase, postproduction. It's important to do postproduction close to home, which in my case is in England. This way you are familiar with all the elements and can maintain control. I'd worked with the same dubbing mixer for twenty years, and there was a mutual trust and a shorthand that developed.

During the latter stage of postproduction there is the question of when to preview. We would do a rough, four-day mix to give a sense of the sound track, including some music, for the previews. Only after the previews would we do the full-blown sound mix, finely detailed.

Previews are immensely valuable. It's the first time you learn how your preconceptions fit with those of the actual audience. First, the film will *feel* long. Individual cuts, scenes, moments and rhythms you've grown to like will have to be adjusted, because you can feel the audience wanting the film to move on. Next, you forget how smart the audience is, and find that the opening reel is far too expository; you just don't need that body of exposition. I would always try to leave some money in the budget for reshooting a couple of days of odds and ends, useful inserts learned about in the previews. This "shooting to the cut" is remarkably economical (with an almost 1:1 shooting ratio) and can solve enormous problems. Not every studio will agree to this, but it's extremely valuable and often comes down to a measure of their enthusiasm for the picture.

What's the ideal preview audience? It depends on the picture. We previewed *Memphis Belle* to very broad audiences and took our chances. On *Meeting Venus* we previewed to preselected audiences of people who had seen films like *Dangerous Liaisons* or *Reversal of Fortune*. Before I would preview for the studio in Los Angeles, I would pre-preview in the U.K. to discover obvious problems and make adjustments in advance.

There are two types of preview: for production and for distribution. The production preview would point up the strengths and weaknesses of the movie and allows us to make improvements before the final mix. Then you lock the film and move to the marketing and distribution issues. For distribution previews we would show essentially a finished movie and would be addressing marketing decisions and market positioning.

Conferring with marketing executives is an ongoing process. After the film is locked in, the key relationships for me would become the head of marketing, the person who cuts the trailers and does the print ads, and the head of distribution, who handles the release pattern and theatre dates. I would trust these executives totally and prefer to bow to their expertise. If we disagree, I would on balance rather have them misjudge a movie and remain confident in me as a colleague than win some hysterical disagreement over a specific movie and destroy the relationships. Also, since I would not be prepared to accept interference in *my* area, I would in fairness take a similar view and respect what they do.

Approaching the release date, marketing expenses are committed, theatres are committed and tension is enormous. You die a little, because there's not much you can do to affect the outcome! If a picture opens stronger than expected, rejoice and chase it with resources to maximize it. At this point significant sums of money must be available to drive it over the top. If a picture opens poorly and it is in broad release, there's *nothing* you can do. If it is in platform release, there may be ways to rescue it if reviews are good and exit surveys are positive. Perhaps the movie can be repositioned through recutting the trailer and rethinking the advertising campaign.

Once a picture is released, it takes on a life of its own as it proceeds through the varied release patterns and viewing formats to the increasing movie audience around the world, making, one sincerely hopes, some kind of positive impact.

THE SCREENWRITER

by **WILLIAM GOLDMAN**, a distinguished novelist and also a screenwriter who has won Academy Awards for his original screenplay *Butch Cassidy and the Sundance Kid* and for his adaptation of *All the President's Men*. He has adapted his novels *Marathon Man*, *Magie*, *Heat* and *The Princess Bride* for the screen and has written the screenplays for *Harper*, *The Hot Rock*, *A Bridge Too Far*, *Misery*, *Maverick*, *The Chamber*, *The Ghost and the Darkness*, *Absolute Power* and *Hearts in Atlantis*. Among his other novels are *The Temple of Gold*, *Soldier in the Rain*, *Boys and Girls Together*, *Tinsel*, *Control* and *The Color of Light*. His nonfiction books include *Adventures in the Screen Trade: A Personal View of Hollywood and Screenwriting*, *Which Lie Did I Tell? More Adventures in the Screen Trade* and *Hype and Glory*, which deals with his experiences as a judge at the Cannes Film Festival and the Miss America contest.

What movies get made reflect the executive mentality; what movies are successful reflect the audience.

Writers have always been secondary in Hollywood. But ask *any* director and he will tell you he is only as good as his screenplay. There is no picture without a script. When you read that a producer announces a new \$75 million picture from a novel he has bought, that's nonsense. No one knows what a film will cost until there is a screenplay. There is no film; there is no anything at all in this world until there is a screenplay. A screenplay is gold.

Hollywood is constantly shifting. It's a whole new and unpredictable ball game. Now one can write anything. Since no one knows anymore what will or won't go, almost anything has a chance of getting made. Now it seems possible for a writer to say what he wants through film and make a living at it.

One of the things that no one tells an eager author in college is that if he writes a novel, the chances are that he won't get it published. And if he does get it published, he might make five thousand dollars or maybe even ten. It takes years and years to become an established fiction writer, and one can hardly support a family that way. There aren't more than a handful of writers who can actually make a living out of hardcover fiction writing. Film writing, on the other hand, not only pays, it overpays. And it is a way for one to exercise his craft and still feed his children—both critical aspects of a writer's life.

There is more interest in screenwriters today than ever before because of money. People are beginning to wonder why screenwriters get so much money, since the star makes up his part and the director has all the visual

concepts. The answer is that it all starts with the word: the screenplay. The reason that the director gets all the publicity is because he's the most visible person during shooting, which is the only time the press is allowed around a picture. They are not present during preshooting, when the writer, producer and director are working on the script or are assembling the cast with the help of the casting director. No one is present postshooting, when the editors and composer are working their magic. And though the press may be on the set during a day's shooting, they're not around the night before, when that day's schedule is mapped out. At this critical session, the production designer will say, "We must have the door here," and the cinematographer will say, "Well, if you move the door here, I can give you this shot coming in, which will scare everybody," and the director will agree or disagree, or he won't know. He's just one of many people going down the river on this boat, hoping they get past the rapids.

Movies are a group endeavor. There is a group of six or eight technicians who are essential to the collaborative process: the writer, director, cinematographer, editor, production designer, producer, production manager and sometimes the composer. As for writers, we are more essential than the public gives us credit for, but no more essential than the other technicians. But our visibility is low because few of us go out on publicity junkets. Basically we are very dull people.

Some authors start out, no doubt, knowing they want to write screenplays. I am basically a novelist, and I fell into screenplay writing rather by misinterpretation. It happened at a time when I was in the middle of a monstrous novel called *Boys and Girls Together*. I was hung up in the thing, and to try to unstick myself, I wrote a ten-day book called *No Way to Treat a Lady*, which was published under another name. It is a short book with fifty or sixty chapters. Cliff Robertson got hold of it and thought it was a screen treatment rather than a novel. At the time he had a short story called *Flowers for Algernon*, which eventually became *Charly*. He asked me to do the screenplay, but when he saw the results, he promptly fired me, hired a new writer and went on to win the Oscar for Best Actor.

The whole sequence of events did prompt me to learn more about screenwriting. I bought the only book available—called *How to Write a Screenplay*, or some such title—and discovered that screenplays are unreadable. The style is impossible and must be dispensed with. It always has those big capital-letter things that say, "EXT. JOHN'S HOUSE. DAY." I realized that I cannot write this way. Instead I use run-on sentences. I use the phrase *cut to* the way I use *said* in a novel—strictly for rhythm. And I am perfectly willing to let one sentence fill a whole page. Here's an example from the ending of *Butch Cassidy and the Sundance Kid*:

BUTCH
streaking, diving again, then up, and the bullets
landing around him aren't even close as--

CUT TO:

SUNDANCE
whirling and spinning, continuing to fire and--

CUT TO:

SEVERAL POLICEMEN
dropping for safety behind the wall and--

CUT TO:

BUTCH
really moving now, dodging, diving, up again and--

CUT TO:

SUNDANCE
flinging away one gun, grabbing another from his
holster, continuing to turn and fire and--

CUT TO:

TWO POLICEMEN
falling wounded to the ground and--

CUT TO:

BUTCH
letting out a notch, then launching into another dive
forward and--

CUT TO:
SUNDANCE

whirling, but you never know which way he's going to spin and--

CUT TO:

THE HEAD POLICEMAN

cursing, forced to drop for safety behind the wall and--

CUT TO:

BUTCH

racing to the mules, and then he is there, grabbing at the near mule for ammunition and--

CUT TO:

SUNDANCE

throwing the second gun away, reaching into his holster for another, continuing to spin and fire and--

CUT TO:

BUTCH

who has the ammunition now and--

CUT TO:

ANOTHER POLICEMAN

screaming as he falls and--

CUT TO:

BUTCH

his arms loaded, tearing away from the mules and they're still not even coming close to him as they

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fire and the mules are behind him now as he runs and cuts and cuts again, going full out and--

CUT TO:

THE HEAD POLICEMAN

cursing incoherently at what is happening and--

CUT TO:

SUNDANCE

whirling faster than ever and--

CUT TO:

BUTCH

dodging and cutting and as a pattern of bullets rips into his body he somersaults and lies there, pouring blood and--

CUT TO:

SUNDANCE

running toward him and--

CUT TO:

ALL THE POLICEMEN

rising up behind the wall now, firing, and--

CUT TO:

SUNDANCE

as he falls.

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In this sequence I've used the proper form, but I never want to let the reader's eye go—it's all one sentence.

A writer needs to find his own style, something he is comfortable with. For example, I use tons of camera directions, all for rhythm. It often upsets the directors, who shoot the scenes the way they want them anyway. But it *looks* like a screenplay, and yet it is *readable*. The standard form cannot be read by man or beast.

Anyone wanting to be a screenwriter should write a screenplay—not an outline or a screen treatment or a novel that then has to be adapted. A studio can have over a million dollars tied up in a property between the time it is purchased as a novel and the time a script is ready. And this is aside from subsequent production costs. If an author writes a screenplay, it is already there to be seen and judged. The company can say right off, "Yeah, we'll shoot it," or "No, we won't." If it sells, it pays the bills. And besides this essential aspect, it is a legitimate and honorable kind of piece to write.

Background reading and research can be important for a writer. For one thing, sometimes he just stumbles upon something that really grabs him and that he knows he wants to do something with. It was way back in 1958 or '59 that I first came across the material about Butch Cassidy and was moved by it and knew I wanted someday to write a movie about it. I continued researching the subject off and on for ten years, finding things to read that added background and depth. There is a lot available on Cassidy but almost nothing on Longbaugh (Sundance). Larry Turman, a good friend, who produced *The Graduate*, was very important in helping me to structure it.

Since I am basically a novelist, it never occurred to me to ask for advance money on "spec" based on an outline that I might sell to someone. I just wrote as if I were writing a novel. This is an unusual occurrence, at least for a Class A picture. The professional screenwriter doesn't usually just write an original screenplay and then look for a market. If he makes his living as a screenwriter, what he probably does is "buckshot" it. That is, he writes ten outlines and circulates them, hoping that one of the ten clicks and someone gives him money for it. He then writes the full screenplay with financial backing.

I wrote the first draft of *Butch Cassidy and the Sundance Kid* in 1965 and showed it to a few people, none of whom was interested. I rewrote it, really changing very little, and suddenly, for whatever reason, everyone went mad for it. Five out of the seven sources in Hollywood who could buy a screenplay were after it. It was this unexpected competition—not my particular skill with the rewrite—that sent the price so high.

Authors who write in various other forms of fiction and nonfiction besides screenplays often have two agents, one on each coast. The one on the West Coast handles the film material, while the New York agent handles all of the other manuscripts. My Hollywood agent at the time, the marvelous Everts Ziegler, handled all negotiations for *Butch Cassidy*. My only contact with the deal was that he called me in New York every day to keep me posted on the bidding and warned me to stand by the phone to get his call when the bidding was over. It was up to me to give the final okay. The screenplay was finally bought by Fox.

No doubt many authors write a film imagining a certain actor in a specific role. Right from the beginning I had Paul Newman in mind. Actually as I wrote the picture originally, I saw Paul Newman and Jack Lemmon in the main roles. Jack Lemmon had just done a movie called *Cowboy*, and I thought he would do a fine Butch Cassidy. Paul Newman had done a movie about Billy the Kid, and I saw him as the Sundance Kid. As the years went on, Lemmon disappeared from my mind, but Newman agreed that he would play the Sundance Kid. Then, when George Hill (who was eventually signed as director) read the script, he mistakenly assumed that Newman was going to play Butch. When that happened, Newman, who wasn't really eager to play Sundance, was delighted to change roles. Then the long search began for the actor who would play the Sundance Kid. Every star in Hollywood was up for it. There were arguments about certain choices. Under such circumstances an author doesn't have very much power. Long ago Hollywood decided that the way to keep people quiet is to overpay them. An author paid all that money should go home and count it and be content. I was in there arguing, and so were others who had more influence, notably Newman and Hill. We finally won the battle, and Robert Redford, who in those days was not nearly so well known as some of the other candidates, got the part.

I was really fortunate. Overall I happened to be delighted with *Butch Cassidy*. In many ways it is better than what I wrote; in many ways it isn't; and in many ways it's different. My script was much darker and, I think, would not have been so successful. And most of the credit for its coming off so well I give to George Roy Hill, the director.

Butch Cassidy is an example of an original screenplay. I've also adapted my own novels (*Marathon Man*, *Magic*, *The Princess Bride*) and books written by others (*Misery*, *All the President's Men*, *A Bridge Too Far*). The hardest thing to write is an original because it's creative; the easiest thing is an adaptation of somebody else's. On a straight adaptation, I don't have to deal with the anguish of the original writer. But when I'm adapting my own work, I think, "That was so hard to write, I'd like to keep it." I'm not as

ruthless as I should be. The Faulkner phrase "You must kill all your darlings" is basically true.

For example, one scene in *Marathon Man* that I cared about was the run. The hero runs along and fantasizes that legendary runners come alongside him and get him out of a scrape. In the first draft screenplay, I wrote it as a fantasy, as in the book. John Schlesinger, the director, said, "I can't shoot this; it's a literary conceit and it won't play." When a director says, "I don't know how to make that play," it's best to change it, rather than risking that his uncertainty will show through in the film.

The assignment on *A Bridge Too Far* was unique because it was financed not by a studio but by one man, Joseph E. Levine. In order for the story to be told properly and for it to be faithful to Cornelius Ryan's book, one had to have a lot of stars. The use of stars would help the audience organize the several parallel stories to be told. This affected the writing of the screenplay since, in a scene of two characters talking, if the scene legitimately belonged to character A but character B was cast with a star, I would flip the scene so that it would favor character B.

Films that become successful tend to reinforce our expectations; films that are not as successful but are equally competent tell audiences things they don't want to know. For example, everyone in this country thinks of *A Bridge Too Far* as being a commercial failure. In fact, it was a giant success in Japan and Great Britain and did very well all over the world, except for the United States. It told Americans something they didn't want to know: Battles and wars can be lost. All over the world people have lost wars and know that kind of suffering and agony firsthand; we don't.

On *All the President's Men*, if there was a contribution in the screenplay that was valid, it was deciding to end the film in the middle of the book, on a less-than-triumphant note for Woodward and Bernstein. Instead of having them get saved by the cavalry at the end, the idea was to have the audience apply what they knew and fill in the ultimate victory. No one knew at the time that *President's Men* would become a very successful film. People were saying, "Haven't we had enough of Watergate?" Nobody knows what's going to work. Hollywood is based on a search for past magic. "Redford and Newman worked twice (*Butch Cassidy* and *The Sting*); if we could only get Redford and Newman in a picture we'd all be rich." The reality is that nobody knows. One can guess that a movie about some robots in the future will work, and that George Lucas will handle it well, but Universal didn't think so. They passed on *Star Wars* when they had *American Graffiti*.

How close is a writer allowed to the actual production? To a degree the answer lies in how big a writer he is. The bigger the name, the more likely he is to have a say about the details of production. Generally, the answer is

that the writer gets as close to the production as his director allows. The production is really the director's baby. If he has faith in the author's judgment, the director will be more willing to tolerate his presence during filming. If the director doesn't want him, there is nothing the writer can do about it.

An author is blessed if he has a director who is interested in working closely with him as he prepares for production. The time when the author is most essential is in the story conferences with the director prior to filming. It is during these very crucial days that he tells the director over and over again exactly what he meant. Talking it all out in minute detail with the director can clarify the content and ensure the director's chance of a clean and accurate interpretation. It is during these conferences that scenes are cut, added or otherwise modified. In *Butch Cassidy*, for example, the screenplay was changed, but never basically. Certain scenes were cut; the musical numbers were added, but the thing that makes the movie work—the basic relationship established between the two men—was left essentially unchanged.

In one specific instance I had written an atrocious scene, the opening scene of Robert Redford and the card game. Everyone said, "Get rid of it! It stinks!" And I kept saying, "I know it stinks, but it's the best I can do." And all the time I was going through that pressure, George Hill kept saying, "You're not going to change it!" George knew how to make it play. He took the scene and put it in sepla, which gave it an old look. And he had what is probably the longest close-up in modern film history on Bob Redford. It's about ninety seconds of solid Redford, and the scene really plays. He gets a tremendous tension out of it. This is a striking example of how a good director can take even a rotten scene and make it work.

I went out to Hollywood in June 1968. George Hill was already there. For about ninety days, he and I met every day, spending most of each day talking about every aspect of the script and coming up with ideas for it. These meetings lasted until mid-September and included a two-week rehearsal period prior to actual filming. Until the filming began, I was involved in many decisions that were made, but the final work necessarily was that of the director. I returned in the middle of production for one week of shooting at the studio between location work in Utah and Colorado and in Mexico. On this visit I saw four or five hours of rushes that George had shot in Utah and Colorado and gave him my reactions. That basically was my contact with the production of the film.

My own feeling is that I don't want to be around on a film I have written. There are times when an author can be helpful. In *Butch Cassidy*, for example, there were a couple of scenes misdone. Had I been around, I

could have said, "Oh, no, no, no, no—I meant this." You see, they were actually miswritten, and I didn't realize it until I saw them on film. They are not, incidentally, in the final film. Had I been around, I could have said, "I miswrote that. Don't play what I wrote; play it this way."

Generally, however, I don't like to be around for two reasons. First of all, because I am the screenwriter, nobody really wants me around. If a line is misspoken with the proper emotion or spoken properly without the proper emotion, there can be problems. The writer thinks the actors are ruining his lines, and the actors resent the author's presence. And similar tensions can arise between director and author over interpretation. Second, although there is nothing more exciting than your first day on a movie-star-laden set seeing all your dreams come true, by the second day you are bored with it. By the third day everything is so technical that you are ready to scream, "Let me out of here!" The idea of standing around for seventy-two days of shooting, bothering people and saying such insignificant things as "The line is 'There's the fireplace,' not 'Where's the fireplace,'" is madness. Since the author just doesn't know when he might be really helpful, he might as well stay away and avoid the agony for himself and everyone else.

In *Adventures in the Screen Trade* I wrote that nobody knows anything in the movie business because no one can predict popular taste. In 1999, *The Blair Witch Project* was one of the most profitable movies. The distributor was an independent company, Artisan. Studio executives were scratching their heads, wondering "How did we miss on that one?" The fact is they don't know, since they're in this blizzard, and the snow won't ever stop coming down on them. It's a fascinating business to watch from a distance, and I'm glad I never had to be a studio executive.

What movies get made reflect the executive mentality; what movies are successful reflect the audience. I have no idea what they will like; I try to write a screenplay that I will like, and I pray. If I want to continue working in pictures, it's essential first that my screenplay gets made and second that it gets made properly. After all, the business pays attention only to writers who write movies that are commercially viable. But, beyond it all, nobody really knows which films will be big. There are no sure-fire commercial ideas anymore. And there are no unbreakable rules. Classically, westerns have villains. *Butch Cassidy*, however, the most successful western ever made, has no tangible villain, no confrontation in the usual sense. Perhaps the success for the movie with kids is in the concept of the "super posse," a force that follows them and makes them do terrible things that they cannot control.

My advice to screenwriters starting out is hustle, pester, embarrass

yourselves to get to any contact in the business you can, and move to Los Angeles, because that's where the business is. Also, you must be able to handle rejection.

Over the years, my writing habits haven't changed. I go to the office every day, if only to check out sports scores. When I am working on a screenplay, it's seven days a week. I start at three pages a day and won't stop until I've done the three pages. This is after months of working out the story structure which I place on my wall in the form of twenty-five or thirty connective phrases. Gradually, once the characters become more familiar and I gain more confidence, I'll write four or five pages a day, and then have half a script. Although I don't like my writing, alas, I do like to finish, so I tend to generate more pages per day as I'm heading for the ending.

If screenwriting were the only kind of writing I did, however, I think I would find it desperately frustrating. When I write a novel, I take it to my editor. He says, "This stinks and I want you to change it." If I agree with him, I say, "Okay," and I change it. If I don't agree with him, I can say, "Good-bye." It is my baby and I can fight to the death. I can either not get it published at all or get it published as I want elsewhere. At least it is *my* fight to make if I choose. In films an author doesn't have that right. In films he must assume the director or producer will be ultimately responsible for what the finished product is and whether it works or not. And, of course, there is no guarantee that he will get a director or producer who will listen to him.

One thing that really pleases me about movies today is that advertising and publicity and critical reviews don't mean anything anymore. *Butch Cassidy* opened in New York to pretty bad notices but tremendous business. Happily, the reviews are totally unimportant on a film. No one except maybe the critic's mother is going to go to a film or stay away from a film because the critic says it's good or bad. Movie audiences will not be lectured to. It is a golden time.

THE FINISHING TOUCH: THE COMPLETION GUARANTEE

by **NORMAN G. RUDMAN**, who is Of Counsel to the law firm of Stein & Flugge, LLP, in Los Angeles. He was educated at UCLA and the Boalt Hall School of Law (UC Berkeley) and has written and lectured on a variety of subjects including constitutional law, bankruptcy, divorce and the development, financing and production of feature films. Involved as counsel in many motion picture productions, he has also served as executive producer of several films.

and **LIONEL A. EPHRAIM**, senior vice president, Cinema Completions International in Studio City, which has provided completion bonds for numerous films, including Academy Award-winners *The English Patient*, *Crouching Tiger, Hidden Dragon* and *Traffic*. Before joining CCI, he served as president, west coast, of the Motion Picture Bond Company and as president of Percentprises Completion Bonds. A member of the Directors Guild, Mr. Ephraim began his career as associate producer of *The Mary Tyler Moore Show*, built the production arm of MTM Enterprises and produced many TV and feature films.

It can fairly be said that the cost of guaranteeing completion is the only cost of producing a movie that has actually shrunk, at least when measured as a percentage of budget, since the last edition of this book.

For producers and their investors, the motion picture business is a risky, highly speculative business. The investors take risks on many factors: on the creative capabilities of the writer, producer, director and actors and on the ability to secure distribution and compete in the marketplace, to name a few of the more obvious. But the single risk that any investor will find intolerable is the risk that a picture will not be completed. In the production of any motion picture, whether a studio project or an independent venture, the need is always present to assure that what is started will be finished. That is where the issue of "completion" enters into the structuring of a motion picture deal.

If a studio-financed picture goes over budget, for whatever cause, there is reasonable certainty that the studio has the financial strength to cover the extra costs. For undertaking the risk of over-budget costs, the studio may add to the budget or retain a contractual right to recoup a cost item in the area of 5% to 6%. Further, the studio may invoke contractual penalties against the producer and/or director for any excess costs unless such costs result from studio-approved enhancement such as content not found in the approved screenplay prior to shooting or a studio-approved increase in the number of shooting days.

Assume a studio picture budgeted at \$50 million. In addition to the producer's fee and overhead allowance, the producer's deal with the studio would typically give him or her a share of the net profits of the picture, say

50%, reducible for profits paid to other talent to a floor of perhaps 20% of 100% as defined in the studio's standard PFD (production, financing and distribution) agreement. (For details of a sample PFD agreement, see article by Stephen M. Kravit, p. 194.) Assume this is a generous studio that allows the producer a 10% contingency over the going-in budget so that he or she is not penalized if the picture comes in at a negative cost of up to \$5 million. What happens if the cost reaches \$56 million? One of the consequences may be that the producer's profits are, by contract, delayed while the studio recoups not only the \$56 million (plus, of course, all distribution expenses, interest and distribution fees) but also double the over-budget costs, or an additional \$1 million, before profits are deemed to have been reached. Or the producer may be required to agree that part of his or her fee be payable on a deferred basis and that, to the extent the picture goes over budget, such deferment is paid to the studio to cover the excess costs, rather than to the producer.

The specifics will, of course, depend on the producer's bargaining power vis-à-vis the studio, and what has been said with regard to the producer's deal might, in certain cases, apply to the director's as well. The point is that the studio will take the budget seriously; hence, if the costs run over, the studio is likely to believe either that the budget was false to begin with or that the producer did not manage the production competently. In either event it will likely want to spread the burdens of the extra costs to those most directly responsible.

In independent production the need for completion protection can be fulfilled in a variety of ways. A producer may be capable of meeting excess costs out of his or her own pocket; the deal with investors may permit an overall; a standby commitment may be in place for over-budget financing on certain terms; or a producer may deal with a company whose business it is to provide a completion guarantee. Indeed, of late it has become a familiar practice even for studios to use outside completion guarantees.

A producer who is strong enough financially to sign a personal guarantee of completion is generally strong enough on the line to assure that the picture comes in without invading personal resources. This type of completion assurance can be as simple as the producer informally assuring investors that he or she will complete the picture.

A second form of completion assurance is simply an overall from investors. For example, if investors are organized into a limited partnership, the partnership agreement may permit going back to the investors for an extra 10% or 20% of their investment in order to meet overbudget costs.

A third approach might be a standby commitment to invest over-budget costs as called for. Assume an independent picture is budgeted at \$8

million. The standby investor, for a negotiated cash fee or other consideration, might commit to provide an additional amount up to, say, \$2 million. If called upon to put up any of that money, he might be entitled to take over production. (The completion guarantor, the fourth general category of completion assurance, is also likely to reserve the right to take over control of the production, without interfering with the ownership of the production.) The principal distinction between the standby investor and the completion guarantor is that the standby investor will normally obtain a recoupment position prior to or at least equal to the people who put up the \$8 million for the principal budget, and a profits interest in the picture besides. The profits interest is likely to be calculated at a better rate (say, double) than what the original investors would receive. (That profits interest would normally come out of the producer's share rather than the financiers' share of the profits.) If the original investors were receiving 50% of the profits for their \$8 million, each would have one percentage point of profit for every \$160,000 of money invested. If an investor put up \$400,000 he would be entitled to 2% of the net profits of the picture. But let's assume that \$400,000 of the standby investor's money is used. On the standby deal hypothesized above, he or she would be entitled to five points of profit for that \$400,000, but out of the producer's end, not that allocated to the principal financiers.

We distinguish between a standby investment and a completion guarantee because the standby investment dilutes or postpones the recoupment position of the original investors while the completion guarantee does not. Further, the completion guarantee as it has developed does not require the producer to give up any profits for the use of the guarantor's money, although those profits will be delayed or deferred until after the guarantor recoups its investment. On the other hand, the standby investor may be willing to pay for the costs of enhancing a picture. The completion guarantor will not. The standby-investor format might provide acceptable completion assurance to equity investors. It would not satisfy a bank if a bank were putting up any of the production money, because the bank would not accept any position other than first recoupment and would want to be assured either of successful delivery of the picture or of payback if the project were to be abandoned. For the same reason, it would not satisfy most distributors putting up production money in the form of negative pickups or distribution licenses.

As another example, assume it actually cost \$9 million to make the picture budgeted at \$8 million, and that the standby investor advanced the \$1 million over-budget costs. Assume further that the distributor has collected film rentals that, after deduction of distribution fees, print and

advertising costs and other distribution expenses, leave \$2 million of "producer's share" to be devoted to recoupment of production costs. If the picture had been brought in on budget or, as is explained below, if the over-budget costs had been paid for under a typical completion guarantee, that \$2 million would be divided pro rata among the investors who funded the budget. Each would receive roughly one-fourth of his money at this point. But if a standby investor put up \$1 million (because the picture actually cost \$9 million to complete), under a deal calling for his recoupment prior to the original investors, the first \$1 million plus interest of that \$2 million goes to him. That leaves only \$1 million to be divided among the original investors of \$8 million, who would get back roughly 12% instead of 25%. Similarly, if the standby investor's deal calls for recoupment pro rata with the principal investors, then the \$2 million recoupment is divided among \$9 million of investors, making a return of roughly 22% of investment. Thus the standby investment commitment is not a completion guarantee, because *the essence of a completion guarantee is that the investors will get a finished picture for the budget amount they have financed*. If their recoupment is subordinated by the prior, or diluted by the concurrent (even if pro rata), recoupment of a standby investor, they have not had the benefit of their original bargain in that respect.

A fourth category of completion assurance is the only one properly entitled to be called a completion guarantee. It is common in the industry to refer to such a guarantee as a bond, and indeed, several companies in the completion-guarantee business use the word *bond* as part of their corporate names. This is a specific type of over-budget insurance underwritten by an insurance carrier. For example, the completion guarantees furnished by Cinema Completions International are underwritten by Continental Casualty Company, a division of CNA.

The typical completion guarantee is a three-sided transaction among bank, producer and guarantor. The guarantor guarantees to the bank the producer's performance of the conditions of the loan agreement. It is not uncommon that completion guarantees are issued in two-sided (producer-guarantor) transactions, where the production financing comes not from bank loans but from equity investment or direct studio financing that is circumscribed by direct studio involvement in production. Here the guarantor may in effect be guaranteeing the performance of the producer to the producer himself, or to a party so closely allied with the producer as to be chargeable with the producer's actions. The differences between three- and two-sided transactions are most clearly seen in the framing of issues in disputes over whether a guarantor is responsible for an over-budget cost.

To illustrate how a three-sided completion guarantee works, let's turn

to an example of an independent picture budgeted at \$10 million. To raise that money, assume the producer makes a pickup deal with an American distributor for theatrical, pay-TV and free-TV rights in the United States and Canada for \$5 million, payable on delivery of the picture. A foreign-sales representative may sell distribution rights in twenty-five territories in the world and come back with as many contracts, some for \$5,000, some for \$100,000, making a total package of \$3 million, all payable on delivery. And a video distributor might commit the remaining \$2 million. Ignoring, for ease of illustration, such complicating factors as interest, discounts, fees, commissions, compensating balances and the like, these numbers round out the \$10 million budget. With the exception of relatively nominal down payments, these contracts will usually be payable not on signing but only on or after the delivery of the specific picture. The contracts will not be collectible if the delivered picture does not meet specified conditions, such as that it must be based on a specific screenplay, directed by a certain director, have specific stars and running time, meet first-class technical requirements and be delivered by a specific outside date. The producer takes the contracts to a bank that deals in motion picture transactions and "discounts" them, that is, tenders them as security and the source of repayment for the \$10 million production loan.

What is the bank going to require in order to make the \$10 million loan? It would be an unusual producer whose credit was good enough to support such a loan. All the bank can look to for payment is the fulfillment of the conditions set forth in the various (often numerous) distribution contracts. If it is assured that those conditions will be met, it may make the production loan. Furnishing such assurance is the function of the completion guarantor. Naturally it is the bank's burden to satisfy itself as to the creditworthiness of the paper against which it is lending. Since the producer is the borrower, the completion guarantee enhances the producer's creditworthiness and allows the bank to lend money (via notes, letters of credit or contracts) to the production. And the delivery conditions that must be fulfilled to make notes collectible, letters of credit draftable or contracts enforceable are what the completion guarantor guarantees.

As earlier observed, banks will make loans against distribution contracts only if they, and only they, have recourse to those contracts until their loans are repaid in full. For this reason the completion assurances of a so-called standby investor will not be acceptable to a bank if the investor has a recoupment position ahead of or even equal to the bank's. Professional completion guarantors, such as Cinema Completions International or Film Finances, have accepted this fixed truth. They offer a standard completion guarantee format involving subordinated recoupment that

will very likely be acceptable, depending, of course, on the bank's assessment of the specifics of the guarantor's contract and financial responsibility. Professional completion guarantors have learned to live with having recoupments of their advances, if any, subordinated to the bank or distributor recoupments or, if need be, to equity investors.

The producer in search of a completion guarantee has several markets to explore. The guarantors are highly competitive, so much so that it can fairly be said that the cost of guaranteeing completion is the only cost of producing a movie that has actually shrunk, at least when measured as a percentage of budget, since the last edition of this book.

Historically, when the completion-guarantee business began and guarantors were conceived of as standby investors, the typical cost of a bond was 5% of direct-cost budget. When banks began to play a larger role in financing films, as described above, guarantors were compelled to accept the enlarged risks of subordinated recoupment. As a consequence, their fees increased to an average of 6% of budgeted direct costs. Quietly producers began to rebel, especially those producers of demonstrated competence (and good fortune) whose films usually finished on schedule and within budget. Guarantors then devised the "no-claim bonus" as an inducement to keep those producers coming back. Originating as a modest credit for a successful production that the producer could utilize against the cost of the guarantee on the next project, the "no-claim bonus" evolved over time into a refund of 50% of the guarantee fee paid on each successfully produced picture. The refund could be collected immediately upon timely delivery of the picture and release of any right to call on the guarantor for funds.

The current state of affairs is that guarantees are priced in the neighborhood of 5% to 6% of budgeted costs. One half of that amount goes to the guarantor as its fee; the other half is held in reserve by the bank, to be paid to the guarantor only in the event that the guarantor is called upon to put funds into the picture. If that reserved amount is not used, it would customarily be applied to reduce the cost of the picture.

It is also standard for the guarantor to require a 10% contingency in the approved budget, so that it advances no funds until the picture goes 10% over budget, much like a 10% insurance deductible. But that 10% contingency is not free and clear for the producer to use at will; rather, it is defined to cover those events that are unexpected and outside the control of the producer.

Of late, a new permutation of the completion-guarantee pricing formula has arisen. Over the years most, if not all, professional guarantors have relied on financial backing from insurance companies. Of course,

every production needs a wide range of insurance coverages. The typical producer's package policy includes such coverages as cast, negative and faulty stock, workers compensation, liability and equipment; extraordinary conditions may suggest such coverages as foreign business interruption or adverse weather conditions; errors and omissions coverage will be a *sine qua non* for distribution and often for financing. Often this package is offered by the same insurance interests who have backed the guarantors. It is thus a natural development that some completion guarantors have also become markets for the procurement of insurance coverage combined with completion guarantees. Thus far this development has generally been financially beneficial for producers. Combined rates have been less than the total of separately purchased completion guarantees and insurance. So long as the completion-guarantee business remains competitive, that condition should persist.

When a producer approaches a guarantor for a bond, the guarantor will commence an inquiry to satisfy itself that the picture qualifies and to determine the price it will quote. The inquiry begins with an examination of the screenplay, budget, shooting schedule, rights documents, principal employment and facilities agreements, backgrounds of the key personnel and any and all supporting materials that bear upon the budget, production schedule and delivery requirements.

To a completion guarantor a screenplay is a legal document, signed off by the distributor, lender, bonder, producer and director, analogous to what the plans and specifications for a building are to a construction firm. The guarantor regards the screenplay not merely as a story to be told on film but as the definitive description of the qualities and characteristics to be embodied in that film, including specific action, sets, props, locations, costumes and effects, among other elements. Like the screenplay, the budget, schedule, production board and delivery schedule are of vital importance. The guarantor will be concerned with the whole panoply of issues that may affect the bottom-line question of whether the picture can be completed and delivered at the price, on the schedule and to meet the requirements of the distribution agreements being financed. The inquiry may range from the obvious (is the cast budget large enough to pay the prices of the stars promised to the distributors?) to more subtle matters. For example, a guarantor once deemed it necessary to decline to guarantee a picture scheduled for exterior shooting on a school campus during summer vacations because the school refused to allow shooting to continue past opening of the fall term, and weather-service records suggested that rain would probably delay shooting long enough to cast doubt on the producer's ability to finish filming at that location before the stop date. Few

problems that emerge from such an inquiry require so drastic a response. Most lend themselves to cure by the negotiation of adjustments in budgeting, scheduling or staffing. If the distribution agreement calls for delivery of an interpositive and internegative, but the budget allowances for film and lab are too small, the solution is to find the extra money somewhere else. If the star has another commitment to follow this film, and therefore a stop date, reboarding to schedule his scenes to be shot with ample cushion for delays may cure the concern that the stop date might arrive before his services are completed. In addition to reviewing the documents, the guarantor in "vetting" the project may well want to meet with the producer, director, cinematographer or production manager to thrash out anticipated production problems and proposed solutions.

The guarantor's objective is to bring the picture in within the budget and on schedule, thereby fulfilling the delivery requirements of the various distribution contracts. Therefore it is the specific proposed picture disclosed by the screenplay and production plan that becomes the subject of the guarantee, just as it is the subject of the distribution contracts and the production loan. The difference between the guarantor's objectives and those of the bank and the distributors in this respect is that the latter normally have no responsibility for costs beyond their loan or pickup commitments. They can hardly be expected to object if the picture's cost zooms far beyond budget. The guarantor, however, has such responsibility if the cost of the specific guaranteed picture escalates and will, therefore, resist being charged for cost escalations that are voluntarily or incompetently incurred by the producer. Changes in script, new locations, unscripted effects—all such things in the nature of enhancement of the picture will be outside the guarantee and will not be permitted by the guarantor. The only additions or enhancement that would be allowed during shooting are those that are budgeted and approved by the guarantor, distributor and producer.

In reviewing a proposed picture to be guaranteed, the guarantor will want, among other requirements, to see the budget proved, will be suspicious of round figures and will find the word "allowance" in a budget intolerable. The budget will be closely analyzed in relation to the screenplay, the shooting schedule and the professionalism of the principal creative, production and business personnel.

The completion guarantor will have to be satisfied with the director, cinematographer, production manager, location manager, production designer and stars, among others. Does the cinematographer have a history of taking too long to light every shot? Does the director show up on the set without a shot list, so that there is downtime between setups? If the same

person is going to star in and direct the picture and the director must be replaced during shooting, will the star show up on the set? Is the director married to the star?

Another issue the guarantor is wary of is a "sweetheart deal" whereby the producer is acquiring some essential service (such as postproduction facilities) on a better-than-prevailing-rate basis. If the sweetheart nature of the deal is what brings the budget down, then the picture is almost certain to go over budget if the sweetheart deal falls out. All of these issues and more must be resolved to the satisfaction of the completion guarantor before the guarantee will be issued.

Aside from the fee, what does the producer give up to the guarantor? Guarantors normally require that they be vested with certain powers to police and oversee the course of production in order to keep it to schedule and budget. Included among such powers may be the right to cosign production-account checks; to observe on the set during shooting; to screen all the rushes; to sit in on all production meetings; to review the books; to receive on a timely basis copies of all production reports, such as camera, sound, production manager and script supervisor reports; to demand and receive answers to questions, and to become coinsured under all the production's insurance. This way the completion guarantor can review the financial status of the picture on a daily or weekly basis, in partnership with the production company, to anticipate and correct potential overbudget incidents. In case of trouble, the completion guarantor can exercise the right to take over control of the production and, if need be, to fire personnel whose performance is below par (subject, of course, to the requirements of distribution, collective bargaining and other relevant agreements). Despite the competitiveness of the completion-guarantee business, it has been next to impossible for any producer to convince a prospective guarantor to forgo any of these rights and powers during the negotiation process. Yet, though the guarantee documentation will almost inevitably contain all of these rights and powers, a guarantor once vested with them is unlikely to throw its weight around. It is only in that most rare case of extreme and otherwise unavoidable jeopardy that a guarantor is likely to exercise its takeover right, and so long as the producer, director and their cast and crew are responding to the exigencies of production with diligence and competence, the guarantor will content itself with keeping a watchful eye on things and offering counsel and assistance in solving problems as they arise. Most have ample qualifications and experience to bring to bear in doing so, and most prefer to be regarded as a resource to be called upon in bringing to fruition the picture the producer and director want to make and the distributor wants to distribute rather than as an assassin lurking in the shadows.

The typical completion-guarantee transaction contains many documents, including a complex one between the producer and the completion guarantor that details the completion guarantor's rights. The guarantee itself is likely to be a simple and straightforward document in favor of the bank, whereby the guarantor undertakes to assure completion and delivery of the picture. The guarantee may also provide that, in the event the guarantor is impelled to declare a production hopeless and abandoned, the guarantor will simply repay the bank its production loan. Abandonment is rarely invoked because it is simply too expensive.

Essentially the guarantee has both time and money aspects. Not only does the guarantor undertake to assure delivery of a specifically described film, the guarantor undertakes to deliver it by a prescribed date. Distributors who have committed to take the picture will ordinarily have conditioned their commitments on delivery by a specific date, because they will have begun the process of booking theatres and preparing their advertising and publicity campaigns while production proceeds. Moreover, production is a labor-intensive activity; hence the more time it takes, the more money it costs. It follows that an understanding of completion guarantees requires an understanding of why pictures sometimes run over budget. The reasons may vary:

- *Some budget elements may have been underestimated.* Although guarantors prefer to deal with budgets priced out in concrete terms based on actual deals or on generally prevailing rates, some budget categories are often not contracted until well after the guarantee has been issued. In the interim, prices may rise. This eventually might affect the costs of services or facilities needed in postproduction or even during shooting. So simple an item as the cost of money may be a variable. Assume a \$10 million budget and a picture to be shot on a foreign location. Assume that 40% of the picture's budget is to be expended in the local currency, for local cast, crew, facilities, housing and the like. If the producer has not purchased all of the local currency expected to be used at the exchange rates prevailing when the budget is approved and, later, those rates change 10% to the detriment of the dollar, the cost of the picture may rise several hundred thousand dollars. Yet, buying the foreign currency in advance might cost the producer the ability to save money if the value of the dollar rises. A completion guarantor may be expected to seek protection against such eventualities either by requiring the producer to make protective deals early on, if such exclusion does not cause the bank to object, by excluding such variations from its risk.

- *Unforeseen events may intrude.* Adverse weather or labor difficulties may crop up. Suppose the picture was budgeted to be shot nonunion. Even if the budgeted wage and salary scales were at union minimums or better, the producer did not budget to pay union overtime, fringes, vacation pay or penalties or to hire the full complement of people a union contract might require. Also suppose the producer hired certain key people who happen to be members of the union and, upon learning of the production, the union has told those people they may not work for a nonsignatory employer. The producer may then face a Hobson's choice, between delaying production while trying to hire replacements and negotiating a hasty adherence to the union's collective-bargaining agreement. The latter choice might increase the cost 30% or so in the affected labor categories; the former choice will also be expensive, though it is impossible to predict how much it will cost. If the guarantor had not required a separate contingency to cover this possibility, the guarantor would be responsible for these overages.

- *The pace of shooting may be slower than expected.* It has been said, perhaps apocryphally, that on the first day of principal photography a picture will usually be a week behind schedule. Inevitably, as the time required for shooting increases, so, too, does the negative cost. While some flat deals may be made, or "free" periods negotiated in connection with some engagements, most cast and crew hirings are done on a daily or weekly rate, and most stages, locations, facilities and equipment are rented on a time basis as well. The causes for delay are so many and varied as to be impossible to exhaust or even classify. Ten-peramental stars, obsessed directors, poky camera crews, feuds between key personnel and a multitude of other such phenomena are all within experience. Although no completion guarantee was involved, one of the most celebrated of the industry's experiences with a production that could not be kept within bounds monetarily or temporally is chronicled in Steven Bach's book *Final Cut*. It details a sobering account of Murphy's law enforced with a vengeance. Other tales of similar woes abound. Perhaps it is human nature to dismiss from mind the overwhelming number of films that have been routinely and economically brought in by application of the competence and professionalism of their makers. Only the catastrophes grow legendary. For example, on a certain picture one scene required forty-five takes. The scene, set in a pool hall over a table, required dialogue between the female and male leads while he made a difficult trick

shot. Because the male lead was rather accomplished with a cue stick, the scene was not to be cheated with inserts. In the early takes he made the shot consistently, but she had trouble with her lines, sometimes misspeaking, sometimes stepping on his lines. After a break the dialogue went fine, but he was tired and kept missing the shot. The day's shooting extended to over twelve hours, and at the end of it only a fraction of the day's scheduled pages were in the can. That loss of time in itself posed no insurmountable problem. Had similar losses, for similar or different reasons, occurred again and again, however, the obvious cumulative impact might have been difficult to bear.

- *Illness, accidents and force majeure may intervene.* Cast insurance on most pictures covers only a few people. Unless special provisions are made and extra premiums paid, the cast insurance policy will cover only the top three or four stars and the director and producer. The theory is to cover those people whose performances on the film would be extraordinarily expensive to replicate or whose unavailability would paralyze the production, not merely delay it some. The completion guarantor bears the more comprehensive risk of delays caused by illness or injury to people not covered by cast insurance. Moreover, cast insurers will sometimes exclude from the risks they assume any losses that may result from the age of elderly actors, or known health defects that may afflict a person covered, or known insalubrious habits in such a person's history. If despite the cast insurer's warning the producer hires an actor with a heart condition or one with a history of substance abuse, the cast insurer will not bear or share in the extra cost if the risk posed by that condition becomes reality. Therefore, the completion guarantor will not approve the hiring of this actor unless the producer is able to remove the exclusion on such actor by paying an extra premium.

Force majeure events, such as war, civil disturbance, labor dispute, fire, flood and the like, are both impossible to predict and costly. Most distribution agreements will allow a modest and limited extension of the delivery date for an event of force majeure, hence it would be possible to collect on the distributor's cash commitment despite some tardiness in delivery if the delay was the result of such an event. But even where this is so, the additional costs incident to an event of force majeure are the guarantor's concern.

- *Enhancement.* It is not uncommon in the production of films that what is scripted is not shot and what is shot was not originally

scripted. Although the script, budget, shooting schedule and other documents evidencing the production plan were supposed to be final when the guarantee was issued, subject only to minor variations responsive to the exigencies of production, a screenwriter may be kept on tap during the shoot. Ostensibly, when this happens, the purpose is to keep the dialogue fresh. Dialogue is inexpensive. What often happens, however, is that shooting discloses weaknesses in the plot line or characterizations, and some effort must be made to strengthen the weak spots. Hence one may find new scenes written, new characters introduced, new locations, sets, props and action. These are not inexpensive. The producer may believe them essential to the making of a picture as good as he intended at the outset. In the eyes of the guarantor, however, the producer is welcome to them, but at his own cost, unless the producer can save the equivalent amounts in other areas.

New writing is only illustrative of the ways in which the scope of a production may be enlarged from what was guaranteed. Others include expansion of stunts or special effects, augmentation of the initially conceived music score (what director can resist the lure of a soundtrack crammed full of the sounds of hit records of the period being filmed?) or adding stars in cameo roles to the cast.

There are certain areas of controversy characteristic of completion guarantees. The most common issue in the area of claims is the difference between a legitimate over-budget cost, part of making the picture as contemplated and guaranteed, versus enhancement. In the three-sided transaction the guarantor usually has no choice but to finish the picture. If the guarantor has failed to police the production, and the producer has thereby succeeded in raising the cost of the picture by enhancing it, the guarantor is still obligated to the bank to make delivery notwithstanding over-budget costs. The guarantor may have to advance these costs and then bring an action against the producer to collect that portion of the extra costs occasioned by enhancement rather than by legitimate over-budget contingencies. In a two-sided transaction the issue may also arise in the context of a lawsuit by the producer (or a closely allied financier) against the guarantor, wherein the guarantor raises the defense that the costs in question are enhancement costs rather than legitimate over-budget costs.

Another source of dispute may be diversion of a picture's budgeted production funds to some purpose other than payment of the production's expenses. The possibilities are limitless. They include the charging of

travel to the budget where the travel is actually related to another project or a personal frolic of the producer; concealment of personal debt repayment in checks to vendors ostensibly for materials or equipment for the production; and purchase, rather than rental for the limited period of production, of long-term capital assets out of the budget. While the completion guarantor's watchword is always vigilance, such occurrences will have different ramifications in the two-sided as against the three-sided transaction. If, in the two-sided transaction, someone on the production team has succeeded in diverting funds from the production budget to some other purpose, resulting in a need for additional cash for completion, the guarantor may simply refuse to put it up. The guarantor could rely for a defense on the producer's own default by failing to devote the production budget solely and exclusively to the production of the picture. But this wouldn't be so if the guarantor's obligation is owed to a bank. Here the guarantor still must finish and deliver the picture and look to its own devices to attempt to retrieve any diverted funds from the producer.

The remarkable fact, considering the complexity and scope of feature film production, is that there are few such disputes. The guarantees of the established guarantors are rather routinely accepted, relied upon and performed, and guarantors make payment of substantially more money to producers or investors in the form of "no-claim bonuses" or rebates than on over-budget claims.

The completion guarantee, as developed in the industry, is only one of several possible ways of assuring that the picture will be finished. It is probably the most satisfactory approach for independently financed pictures. The concept of the completion guarantee is very much in the minds of bankers considering entrance into motion picture work, securities brokers as they review movie financing through public issues and investment counselors as they give advice on private placements. Since even the most competently prepared budget is at best only an estimate of what it will take to bring a picture in, pictures do go over budget and over schedule, notwithstanding the best intentions and efforts of all involved. For that exigency, the completion guarantee provides a significant measure of protection.