

DISAGGREGATING THE SCARE FROM THE GREENS

Lee Hall^{*†}

INTRODUCTION

When the *Vermont Law Review* graciously asked me to contribute to this Symposium focusing on the tension between national security and fundamental values, specifically for a segment on ecological and animal-related activism as “the threat of unpopular ideas,” it seemed apt to ask a basic question about the title: Why should we come to think of reverence for life or serious concern for the Earth that sustains us as “unpopular ideas”? What we really appear to be saying is that the methods used, condoned, or promoted by certain people are unpopular. So before we proceed further, intimidation should be disaggregated from respect for the environment and its living inhabitants.

Two recent and high-profile law-enforcement initiatives have viewed environmental and animal-advocacy groups as threats in the United States. These initiatives are the Stop Huntingdon Animal Cruelty (SHAC) prosecution and Operation Backfire. The former prosecution targeted SHAC—a campaign to close one animal-testing firm—and referred also to the underground Animal Liberation Front (ALF).¹ The latter prosecution

* Legal director of Friends of Animals, an international animal-rights organization founded in 1957.

† Lee Hall, who can be reached at leehall@friendsofanimals.org, thanks Lydia Fiedler, the Vermont Law School, and Friends of Animals for making it possible to participate in the 2008 Symposium and prepare this Article for publication.

1. See Indictment at 14–16, *United States v. Stop Huntingdon Animal Cruelty USA, Inc.*, No. 3:04-cr-00373-AET-2 (D.N.J. May 27, 2004), available at <http://www.usdoj.gov/usao/nj/press/files/pdf/files/shacind.pdf> (last visited Apr. 26, 2009) (referring to acts allegedly committed by SHAC and the ALF). The indictment of SHAC and some of its proponents refers to the ALF, stating, “On or about August 1, 2002, the SHAC Website posted the following message: ‘The FT Commando Division of the Animal Liberation Front claims responsibility for the destruction of 4 greens and 4 holes at the Meadowbrook Golf Club/PGA Lightpath classic.’” *Id.* at 14–15. The indictment further quotes SHAC as announcing that the cost of the vandalism might “exceed hundreds of thousands of dollars between the damage to the well-maintained golf course, the disruption to the PGA event and to the club itself.” *Id.* at 15. The indictment refers to a posting that read, “FT’s home was donned with anti-HLS and ALF slogans, the words ‘killer’ and ‘murderer leave town’ can be seen all the way across the harbor.” *Id.* at 16. In May 2003, SHAC’s web site announced:

The SHAC campaign has over the last year hit HLS in a multi[-]pronged attack on the workers, shareholders, and clients resulting in all-time low worker morale, a rock bottom share price, and a loss of customer confidence. . . . All day long as workers of HLS come go [sic] they are greeted with screaming protesters who let them know just how much their [sic] worth. Every eight weeks SHAC holds national demonstrations wherein over a thousand protestors show up to the lab, the town center, or a company affiliated with HLS in the area and lay siege to ‘em. [L]arge demonstrations are always followed up with several *home demonstrations of the employees. These tactics combined with the ALF’s series of*

unfolded in Eugene, Oregon, targeting both the ALF and the Earth Liberation Front (ELF).² In 2002, FBI domestic-terrorism section chief James Jarboe said the FBI had ranked the ALF and ELF as the top domestic-terrorism threat, and told Congress they had committed more than 600 criminal acts in the United States since 1996, resulting in damages topping \$43 million.³

I. ANIMAL ENTERPRISE PROTECTION: THE SHAC PROSECUTION

SHAC involved a campaign against a testing firm known as Huntingdon Life Sciences. Founded in 1952, the firm operates in Britain and New Jersey, and “had tested drugs, food additives and industrial chemicals” on rats and mice, dogs, and other animals for companies such as “BASF, Bayer, Bristol Myers Squibb, British Petroleum, DuPont, Pfizer, Shell, and the Society of the Plastics Industry.”⁴ The investigation into SHAC’s protests against this firm generated the highest number of surveillance authorizations of any case in 2003—more than 141,000.⁵

car bombings of workers (at 11 now) and numerous attacks on their homes has . . . a tremendous effect. There is a high turnover rate, and according to court documents several workers are having a hard time even finishing a days [sic] work, or sleeping at night.

Huntingdon Life Sci., Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., 29 Cal. Rptr. 3d 521, 542 (2005) (first omission added). *See also id.* at 531 (noting that SHAC’s website indicates approval of ALF tactics).

2. *See* Defendant Kevin Tubbs’ Memorandum on the Application of U.S.S.G. § 3A1.4 at 1–3, United States v. Tubbs, No. CR 06-60070-AA (D. Or. May 4, 2007), available at http://www.cldc.org/pdf/Tubbs_Memo.pdf (arguing that defendant was not a terrorist and that the ELF and ALF did not harm first responders).

3. *Eco-Terrorism and Lawlessness on the National Forests: Oversight Hearing Before the Subcomm. on Forests and Forest Health of the H. Comm. on Resources*, 107th Cong. 48 (2002) [hereinafter *Eco-Terrorism and Lawlessness*] (statement of James F. Jarboe, Section Chief, Counterterrorism Div., Domestic Terrorism/Counterterrorism Planning Section, Fed. Bureau of Investigation). The North American Earth Liberation Front Press Office—which defines itself as “the public face and voice of the Earth Liberation Front movement”—claims the Earth Liberation Front (ELF) has inflicted damages to companies and government agencies of more than \$150 million. Press Release, N. Am. Earth Liberation Front Press Office, The North American Earth Liberation Front Press Office (NAELFPO) has Returned; The Voice of the Earth Liberation Direct Action Movement! (Oct. 31, 2008), available at <http://www.elfpressoffice.org/naelfpo103108.pdf>.

4. LEE HALL, CAPERS IN THE CHURCHYARD: ANIMAL RIGHTS ADVOCACY IN THE AGE OF TERROR 13 (2006); *Huntingdon Life Sci. Inc.*, 29 Cal. Rptr. 3d at 530.

5. SHAC defendant Jake Conroy’s website states:

After a 4 week trial in New Jersey in February 2006, complete with 141,420 electronic intercepts (making this the largest electronic intercept federal investigation in 2003), 59 CDs of computer data, 555 90-minute audio tapes of wire taps, and 161 video tapes, the defendants were found guilty.

Support Jake Homepage, <http://www.SupportJake.org/> (last visited Apr. 26, 2009).

It was 2004 when a grand jury in New Jersey indicted several of the SHAC campaign's young adherents for conspiracy to violate the Animal Enterprise Protection Act, which was then the current law addressing "animal enterprise" disruptions.⁶ The campaign led a string of companies to close accounts they had established with Huntingdon—including major financial institutions such as Goldman Sachs and Bank of America.⁷ In September 2005, the New York Stock Exchange delayed Huntingdon's listing just before it had been scheduled to take effect, prompting questions from reporters worldwide and speculation that protesters caused the hitch.⁸

The people prosecuted over the SHAC campaign to date have been the easiest ones to trace: people who used a website to research targeted companies or post information about their campaign's legal and illegal actions. According to a 2004 indictment, which named seven individuals and the organization itself:

SHAC is an organization first started in the United Kingdom and then incorporated in the United States. SHAC was formed to interrupt the business of HLS [Huntingdon Life Sciences] and ultimately to force it to cease operations altogether due to its use of animals for research and testing. SHAC has used a multi-pronged attack against HLS targeting its workers and shareholders as well as companies (and their employees) which received services from, or provided them to, HLS.⁹

6. Through the Animal Enterprise Protection Act of 1992, Congress redefined terrorism to include "physical disruption to the functioning of an animal enterprise." Animal Enterprise Protection Act of 1992, Pub. L. No. 102-346, § 2, 106 Stat. 928, 928 (codified at 18 U.S.C. § 43(a)(1) (1994)), *amended by* Animal Enterprise Terrorism Act of 2006, Pub. L. No. 109-374, 120 Stat. 2652 (codified at 18 U.S.C. § 43(a)(1) (2006)).

7. David Kocieniewski, *Six Animal Rights Advocates Are Convicted of Terrorism*, N.Y. TIMES, Mar. 3, 2006, at B3, *available at* 2006 WLNR 3616771.

8. *See, e.g.*, Heather Tomlinson, *Huntingdon Delays Listing After Attacks*, GUARDIAN (London), Sept. 8, 2005, at 19.

Last month Life Sciences Research announced it would step up to the NYSE. Brian Cass, president of Huntingdon, said at the time: "It is gratifying that the company's significant growth . . . over the past several years has enabled us to achieve this important objective."

Yesterday he had no explanation for it being asked to postpone its listing, but said that animal rights extremists had increased their activity in the US recently.

Id. The article also says a "New York yacht club was recently covered in red paint by the [U.S.] branch of the Animal Liberation Front" because some club members worked for a firm that traded in Huntingdon shares. *Id.*

9. Indictment at 2, *United States v. Stop Huntingdon Animal Cruelty USA, Inc.*, No. 3:04-cr-00373-AET-2 (D.N.J. May 27, 2004), *available at* <http://www.usdoj.gov/usao/nj/press/files/pdf/files/shacind.pdf>.

The five-count indictment quoted the SHAC website, describing vandalism at an insurance director's golf green as having been executed by an Animal Liberation Front "Commando Division."¹⁰ Jurors sitting in Newark, New Jersey watched a video of the group's U.S. campaign coordinator at a protest in Boston, warning a target, "The police can't protect you!"¹¹ Notably, the *Boston Globe* had run an editorial in August 2002 just after two other SHAC campaigners "were arraigned in Boston on charges of stalking, criminal harassment, and extortion."¹² The two were accused of targeting an insurance executive whose firm did business with Huntingdon Life Sciences.¹³ The accusation cited them for conducting bullhorn demonstrations at 3:00 a.m. at the target's home, which they threatened to burn down.¹⁴ Prosecutors said the pair also sought to intimidate the executive by making references, by name, to the executive's two-year-old child.¹⁵ After reporting that the FBI describes SHAC as a "domestic terrorist group," the *Globe* declared: "If SHAC activists seek to illuminate the condition of laboratory animals, they have failed. Their own tactics reveal a disturbing willingness to inflict suffering."¹⁶

In 2006, three activists in the federal case heard in Newark were convicted of conspiracy, interstate stalking, and other charges, and were given prison sentences ranging from four to six years.¹⁷ The purpose of the punishment was, as U.S. Attorney Christopher J. Christie from the District of New Jersey put it, to "deter others from crossing the line from lawful protest to criminal conduct."¹⁸ Three more defendants were later convicted for conspiracy to violate the Animal Enterprise Protection Act and, in one case, an additional conviction of conspiracy to harass using a telecommunications device.¹⁹ The federal judge also ordered SHAC and the six individual defendants "to share in the payment of \$1 million in

10. *Id.* at 15.

11. Kocieniewski, *supra* note 7, at B3.

12. Editorial, *Animal Extremism*, BOSTON GLOBE, Aug. 22, 2002, at A14, available at 2002 WLNR 2554843.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Press Release, U.S. Dept. of Justice, Three Militant Animal Rights Activists Sentenced to Between Four and Six Years in Prison (Sept. 12, 2006), available at <http://www.usdoj.gov/usao/nj/press/files/pdf/shac0912rel.pdf>.

18. *Id.*

19. Press Release, U.S. Attorney's Office, Dist. of N.J., Militant Animal Rights Group, Six Members Convicted in Campaign to Terrorize Company, Employees and Others (Mar. 2, 2006), available at http://www.usdoj.gov/usao/nj/press/files/shac0302_r.htm.

restitution to its victim, Huntington [sic] Life Sciences (HLS) of East Millstone, N.J.”²⁰ The first activist to be released left prison in September 2007.²¹

II. THE OPERATION BACKFIRE PROSECUTION

In contrast to the singular focus of the SHAC campaign, the activities in the case that became known as “Operation Backfire” involved opposition to a wide variety of enterprises, including SUV dealers, tree-genetics researchers, and resort developers.²² These activities “left a \$40 million trail of damage in Western states between 1995 and 2001.”²³ In January 2006, Attorney General Alberto Gonzales published the sixty-five-count indictment, seeking to disable the scattered group of eco-militants by imposing enhanced sentences.²⁴ Gonzales told the press, “The indictment tells a story of four-and-a-half years of arson, vandalism, violence and destruction claimed to have been executed on behalf of the Animal Liberation Front or Earth Liberation Front, extremist movements known to support acts of domestic terrorism”²⁵ The media described Operation Backfire as “the largest prosecution of eco-sabotage in U.S. history.”²⁶

Ten years have passed since the most well-known act of the eco-saboteurs: the ELF arson on the site of a Vail, Colorado ski resort scheduled

20. Press Release, U.S. Dept. of Justice, Three Militant Animal Rights Activists Sentenced to Between Four and Six Years in Prison (Sept. 12, 2006), available at <http://www.usdoj.gov/usao/nj/press/files/pdf/shac0912rel.pdf>.

21. See *Prisoners in the Struggle: Support Them!*, EARTH FIRST!, Sept.–Oct. 2007, at 28 (announcing Darius Fullmer’s scheduled release on September 29 from Fort Dix in New Jersey after a 12-month sentence for a “conspiracy charge stemming from his work with” SHAC).

22. Jeff Barnard, *Arsonist Sentenced to 13 Years*, SEATTLE TIMES, May 24, 2007, at B3, available at 2007 WLNR 9790590; see also David O. Williams, *Colorado Conservationists Still Feeling Heat From Vail Arson Fires*, COLO. INDEP., Oct. 19, 2008, available at <http://coloradoindependent.com/11824/10-years-later-colorado-conservationists-still-feeling-heat-from-vail-arson-fires> (“ELF . . . claimed responsibility for more than 20 arsons between 1996 and 2001, including car dealerships, lumber mills, genetic research facilities and wild horse corrals.”).

23. Bryan Denson, *Saboteurs Could be Sentenced as Terrorists*, OREGONIAN, May 22, 2007, at B1, available at 2007 WLNR 9669721.

24. CNN.com, 11 Indicted on Ecoterror Charges, Jan. 20, 2006, <http://www.cnn.com/2006/LAW/01/20/ecoterror.indictments/index.html>. See also Defendant Kevin Tubbs’ Memorandum on the Application of U.S.S.G. § 3A1.4 at 6–7, *United States v. Tubbs*, No. CR 06-60070-AA (D. Or. May 4, 2007), available at http://www.cldc.org/pdf/Tubbs_Memo.pdf (arguing against the application of “terrorist enhancement” because, in part, the government had selectively used enhancement in environmental cases but not “KKK arsons or abortion clinic bombings”); Denson, *supra* note 23, at B1 (stating that U.S. District Judge Ann Aiken explained “that federal sentencing guidelines allow her to consider imposing a ‘terrorism enhancement’ on 10 convicted eco-saboteurs,” if the government could demonstrate that defendants conspired on a “federal crime of terrorism”).

25. CNN.com, *supra* note 24.

26. Denson, *supra* note 23, at B1.

to expand into an “885-acre wilderness where, 15 years prior, Colorado’s last wild lynx had been spotted.”²⁷ The fire caused \$12 million in physical damage and \$13 million in lost revenues, making it the country’s costliest act of eco-sabotage to that date (although insurance was paid to replace the buildings).²⁸

The summer following the fire, federal and local police raided the Ancient Forest Rescue and Earth First! protest camps on Vail Mountain.²⁹ Then the bulldozers moved in.³⁰ Two suspects in the Vail fire were eventually tracked down through the use of an informant; one committed suicide, and the other, Chelsea Gerlach, was sentenced in 2007 to nine years in a federal prison.³¹

Gerlach has since explained that the idea behind the ELF arsons was to help mainstream environmentalism by making it “appear more reasonable.”³² But Gerlach added, “That didn’t really ring true to me from the beginning, and after the fallout from Vail—which turned out to be detrimental to local activism—it was even clearer.”³³

Ryan Bidwell, executive director of Durango-based Colorado Wild, says for Vail-based advocates “there’s still not the trust of the conservation community that there is in other part[s] of the state.”³⁴ Bidwell noted that the federal government used the fires to demonize the entire environmental movement: “I don’t think it really changed the Bush administration agenda, but it probably made their job easier by lumping those actions onto the broad umbrella of terrorism over the last decade”³⁵

III. ACTIVISM AND THE CRACKDOWN DYNAMIC

We are not living in generous legal times. In the years since 2001, undercover New York police officers infiltrated protest groups before the 2004 Republican National Convention, provoking violence.³⁶ Denver police spied on Amnesty International members and others, including “troubled, but unprosecuted, students” and “a 74-year-old nun” who had advocated for

27. McKenzie Funk, *Firestarter*, OUTSIDE MAG., Sept. 2007, available at <http://outside.away.com/culture/200709/chelsea-gerlach-eco-saboteur-1.html>.

28. *Id.*; Williams, *supra* note 22.

29. Williams, *supra* note 22.

30. *Id.*

31. Funk, *supra* note 27.

32. *Id.*

33. *Id.*

34. Williams, *supra* note 22.

35. *Id.*

36. Jim Dwyer, *New York Police Covertly Join In at Protest Rallies*, N.Y. TIMES, Dec. 22, 2005, at A1, available at 2005 WLNR 20736351.

the rights of indigenous people.³⁷ The Maryland State Police “engaged in covert surveillance of local peace and anti-death penalty groups for over a year from 2005 [to] 2006.”³⁸ At certain times between 2004 and late 2006, undercover Maryland State Police agents spied on environmentalists and listed them in a terrorist database.³⁹ And laws to protect hunters from activists have meshed into lawmaking trends that turned such protest into “eco-terrorism” in Pennsylvania.⁴⁰

In December 2007, Rep. Dennis Kucinich (D-Ohio), at the time a U.S. presidential candidate, stated that the proposed Violent Radicalization and Homegrown Terrorism Prevention Act of 2007⁴¹—passed by the House of Representatives but never voted upon in the Senate—was unconstitutional, referring to it as a “thought-crime bill.”⁴² The bill, which aimed to create a federal commission to recommend prevention strategies against what legislators called violent radicalization and homegrown terrorism, has again

37. See Ford Fessenden & Michael Moss, *Threats and Responses: Privacy; Going Electronic, Denver Reveals Long-Term Surveillance*, N.Y. TIMES, Dec. 21, 2002, at A12, available at 2002 WLNR 4425404 (reporting that although the case came to light in 2002, Denver police had been gathering information on unsuspecting local activists since the 1950s).

38. Press Release, Am. Civil Liberties Union, ACLU of Maryland Lawsuit Uncovers Maryland State Police Spying Against Peace and Anti-Death Penalty Groups (July 17, 2008), available at <http://www.aclu.org/police/spying/36025prs20080717.html>.

39. Press Release, Am. Civil Liberties Union, Leaders of Chesapeake Climate Action Network Wrongfully Named as Terrorists, Tracked in Maryland State Police Criminal Database (Oct. 23, 2008), available at <http://www.aclu.org/police/spying/37404prs20081023.html>; see also Press Release, Am. Civil Liberties Union, Documents Shed New Light on Pentagon Surveillance of Peace Activists: Defense Department Tracked Quakers, Student Groups (Oct. 12, 2006), available at <http://www.aclu.org/safefree/spyfiles/27050prs20061012.html> (regarding a number of cases of federal surveillance taking place in various states).

40. Pennsylvania House Bill 213 was enacted in 2006 “to deter politically motivated property destruction with the intent of intimidation” by increasing penalties for special offenses committed with a political motive. Press Release, State of Pa., Governor Signs Ecoterrorism Bill Into Law (Apr. 14, 2006), available at <http://www.state.pa.us/papower/cwp/view.asp?Q=451790&A=11>. A likely source of the term “eco-terror” (also commonly written as “ecoterror”) is Ron Arnold’s book *Ecoterror: The Violent Agenda to Save Nature*, which was published during the push for antiterrorism laws that followed the infamous 1995 attack on the Murrah Federal Building in Oklahoma City. See generally RON ARNOLD, ECOTERROR: THE VIOLENT AGENDA TO SAVE NATURE (1997). Through the Center for the Defense of Free Enterprise, Arnold asks the public to send “evidence, information or tips” about environmentalists who may have acted illegally to the EcoTerror Response Network, which will pass it to law-enforcement agents. Ctr. for the Defense of Free Enterprise, Ecoterror Response Network, <http://www.eskimo.com/~rarnold/ern.htm> (last visited May 13, 2009).

41. Violent Radicalization and Homegrown Terrorism Prevention Act of 2007, H.R. 1955, 110th Cong. (2007).

42. See Jennifer Abel, *The Thought Crime Law*, HARTFORD ADVOCATE (Conn.), Jan. 3, 2008, available at <http://www.hartfordadvocate.com/article.cfm?aid=5068> (reporting that Kucinich deemed the bill “overly broad” and “voted against the bill because it’s ‘unconstitutional’ and ‘a thought-crime bill’”).

raised the specter of unconstitutional surveillance of activists.⁴³ Furthermore, a current spate of domestic-intelligence changes, including a pending Justice Department overhaul of FBI procedures for investigating domestic-terrorism cases, is designed to lock in Bush's federal enforcement policies.⁴⁴ As Bush homeland-security advisor Kenneth L. Wainstein put it, "This is a continuum that started back on 9/11 to reform law enforcement and the intelligence community to focus on the terrorism threat."⁴⁵

Without doubt, the "continuum" has impacted genuine environmental activism. In April 2002, Greenpeace volunteers confronted the movement of mahogany on a ship near Florida, unfurling a banner that read: "President Bush, Stop Illegal Logging."⁴⁶ In July 2003, the Justice Department under John Ashcroft filed federal criminal charges against the whole

43. Violent Radicalization and Homegrown Terrorism Prevention Act of 2007, H.R. 1955, 110th Cong. (2007); *see also* Abel, *supra* note 42 (reporting that the Act sought to curb "violent radicalization" and stem "homegrown terrorism").

44. *See* Exec. Order No. 13,470, 73 Fed. Reg. 45,325 (Aug. 4, 2008) (clarifying and strengthening the roles of federal intelligence agencies); Exec. Order No. 13,355, 69 Fed. Reg. 53,593 (Aug. 27, 2004) (strengthening a variety of intelligence-agency activities); Exec. Order No. 12,333, 46 Fed. Reg. 59,941 (Dec. 4, 1981), *amended by* Exec. Order No. 13,284, 68 Fed. Reg. 4075 (Jan. 23, 2003) (expanding functions and authority of certain Homeland Security officials); *see also* Press Release, White House, Background Briefing by Senior Administration Officials on the Revision of Executive Order 12333 (July 31, 2008), *available at* <http://www.fas.org/irp/news/2008/07/eo-briefing.html> (explaining changes from the previous order). The most recent amendment is designed to effect the first revision of the federal government's rules for police intelligence-gathering since 1993, enabling 18,000 state and local police agencies to easily collect information about people of interest, share it with federal agencies, and retain it for at least ten years. Spencer S. Hsu & Carrie Johnson, *U.S. May Ease Domestic Spying Rules*, WASH. POST, Aug. 16, 2008, at A1, *available at* 2008 WLNR 15373422. Law-enforcement agencies would be allowed to target groups as well as individuals, and to launch a criminal-intelligence investigation based on suspicion that a target is providing material support to terrorists. *Id.* Provisions that punish "material support" enable findings of guilt by association, by imposing liability regardless of an individual's own intentions or purposes, based solely on the individual's connection to others who have acted illegally. *See* David Cole, *The New McCarthyism: Repeating History in the War on Terrorism*, 38 HARV. C.R.-C.L. L. REV. 1, 10-14 (2003). The proposed rule would also allow criminal intelligence assessments to be shared with undefined agencies whenever doing so may avoid danger to life or property—not released only when such danger is "imminent" as currently required. Hsu & Johnson, *supra*, at A1. Authorities also could share results with federal law-enforcement and intelligence agencies. *Id.* Although the proposed changes still require police to show a "'reasonable suspicion' that a target is involved in a crime before collecting intelligence," the American Civil Liberties Union warns that "the proposed rule may be misunderstood as permitting police to collect intelligence even when no underlying crime is suspected, such as when a person gives money to a charity that independently gives money to a group later designated a terrorist organization." *Id.*

45. Hsu & Johnson, *supra* note 44, at A1. New guidelines issued by U.S. Attorney General Michael Mukasey allow investigators to conduct interviews in which agents disguise their identities in an effort to assess national-security threats, without factual indications that a person has ties to a terrorist organization. Carrie Johnson, *Guidelines Expand FBI's Surveillance Powers*, WASH. POST, Oct. 4, 2008, at A3, *available at* 2008 WLNR 18853995.

46. *Bush Administration Case Against Greenpeace Dismissed*, ENV'T NEWS SERV., May 20, 2004, *available at* <http://www.ens-newswire.com/ens/may2004/2004-05-20-01.asp>.

organization.⁴⁷ But many people recognized that the protesters' action educated the public about rainforest wood, and no damage occurred due to the protest.⁴⁸ Ashcroft's charges were widely denounced. The NAACP, American Friends Service Committee, and People for the American Way condemned the prosecution.⁴⁹ In 2004, a federal judge granted a motion from Greenpeace to dismiss the case.⁵⁰

It is eerie to watch the government turn civil disobedience into criminal cases, and uncomfortable to see criminal cases turn into antiterror prosecutions. But when it comes to animal-advocacy activities, current law could conceivably permit law enforcers to jump right from civil disobedience to a terrorist prosecution.

In 2006, the Animal Enterprise Terrorism Act (AETA) was signed into law.⁵¹ The law targets activism that damages or disrupts an animal-use enterprise or connected businesses. Under the AETA, anyone who engages in "force, violence, and threats" that would interfere or cause damage to businesses could be charged with a felony.⁵² This includes acts that could affect the profits of:

- (A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;
- (B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or
- (C) any fair or similar event intended to advance agricultural arts and sciences⁵³

It exempts "lawful economic disruption that results from lawful public, governmental, or business reaction to the disclosure of information about an

47. Kari Huus, MSNBC.com, US Takes Hard Line on Greenpeace, Nov. 14, 2003, <http://www.msnbc.msn.com/id/3475218/>.

48. *Id.*

49. Press Release, Greenpeace, Groups Demand Ashcroft Drop Greenpeace "Sailor-Mongering" Case, Support Americans' Right to Protest (Dec. 11, 2003), available at <http://www.greenpeace.org/usa/press-center/releases2/groups-demand-ashcroft-drop-gr>.

50. ENV'T NEWS SERV., *supra* note 46.

51. Animal Enterprise Terrorism Act of 2006, Pub. L. No. 109-374, 120 Stat. 2652 (codified at 18 U.S.C. § 43 (2006)).

52. 18 U.S.C. § 43(b)(2)–(5) (2006). The Animal Enterprise Protection Act of 1992 targeted "physical disruption to the functioning of an animal enterprise" and "economic damage exceeding \$10,000." 18 U.S.C. § 43(a)(1)–(2) (1994). The Animal Enterprise Terrorism Act of 2006 stretches to encompass any damage or loss of property with no minimum dollar amount, or placing "a person in reasonable fear of . . . death . . . or serious bodily injury" or conspiring to do so. 18 U.S.C. § 43(a)(1), (2)(A)–(C) (2006). It also provides for harsher, escalating penalties. *Id.* § 43(b)(1)–(5).

53. 18 U.S.C. § 43(d)(1)(A)–(C).

animal enterprise”⁵⁴—but today’s question is what “lawful” means. For the law’s language “could make nonviolent acts of civil disobedience into ‘terrorism’ where they substantially affect corporate profits.”⁵⁵ Effective use of “mailings and demonstrations against an animal circus,” for example, could be terrorism under the Act because the mailings and demonstrations are disruptive.⁵⁶ Activists could be subject to electronic surveillance, and people charged under this law could face long jail terms, or at least be forced to spend substantial time and resources arguing that the action was constitutionally protected expression.⁵⁷ Win or lose, those so charged would carry the stigma of being associated, however fallaciously, with terrorism.

And yet the House of Representatives passed the AETA under a “suspension of the rules,” a provision that allows the House to pass noncontroversial bills quickly.⁵⁸ By the time the House approved the AETA, the bill had already passed the Senate by unanimous consent; George W. Bush signed it into law on November 27, 2006.⁵⁹

Reasonable observers may look at the federal government’s breathless policing of animal advocates and environmental activists not so much as national security but as control of the social and economic landscape within its borders. Whereas the State Department currently defines terrorism as “premeditated politically motivated violence perpetrated against non-combatant targets,”⁶⁰ a broader definition is applied in domestic cases;⁶¹ and eco-terrorism is defined by the FBI’s Domestic Terrorism Section as “the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally oriented, sub-national group for

54. *Id.* § 43(d)(3)(B).

55. Lee Hall, Dissident Voice, The Animal Enterprise Terrorism Act May Soon Be Law; How Could This Happen?, Oct. 31, 2006, <http://www.dissidentvoice.org/Oct06/Hall31.htm>.

56. *Id.*

57. *Id.*

58. See U.S. House of Representatives, Comm. on Rules, Majority Office, *Suspension of the Rules*, http://www.rules.house.gov/Archives/suspend_rules.htm (last visited Apr. 9, 2009) (describing the procedure for the Speaker to entertain motions to suspend the Rules and pass legislation and explaining that “[b]ills brought up under suspension of the Rules are referred to as ‘suspensions’”). “The purpose of considering bills under suspension is to dispose of non-controversial measures expeditiously.” *Id.*

59. Hall, *supra* note 55; Animal Enterprise Terrorism Act of 2006, Pub. L. No. 109-374, 120 Stat. 2652 (codified at 18 U.S.C. § 43 (2006)).

60. 22 U.S.C. § 2656f(d)(2) (2006).

61. Section 802 of the USA-PATRIOT Act stipulates that a person or organization can be considered terrorist if they engage in activity intended “to intimidate or coerce a civilian population” and “influence the policy of a government by intimidation or coercion.” Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA-PATRIOT) Act of 2001, Pub. L. No. 107-56, § 106, 115 Stat. 272, 277–78 (amending 50 U.S.C. § 1702(a)(1)(B) and adding 50 U.S.C. § 1702(c)). For related discussion, see Tracy Tullis, Salon.com, Is Briana Waters a Terrorist?, Mar. 27, 2008, http://www.salon.com/news/feature/2008/03/27/briana_waters/print.html.

environmental–political reasons, or aimed at an audience beyond the target, often of a symbolic nature.”⁶² As with the AETA, even threats of violence could constitute terrorism.

Rep. Kucinich rightly opposed AETA’s language, with its likely “chilling effect” on the exercise of the constitutional rights of protest.⁶³ Kucinich voted against the bill, and stated, “I think that it would be important for this Congress to look at the claims of people who are sincere advocates of animal rights.”⁶⁴ Kucinich raised an important point: it is a good bet that most members of Congress had no idea what values the animal-rights platform would actually advance. The Animal Enterprise Terrorism Act, then, is not logically described as reflecting a “cultural war of values” that blogger Will Potter claims to find in the tension between militants and their government.⁶⁵

IV. MISCONSTRUED AND APPROPRIATED VALUES

Arson and incendiary devices do not reflect ideological mindfulness. Most of these devices are environmentally toxic as well as destructive to the homes, paths, and bodies of any animals, human or other, and dangerous to night guards and people who might be asleep in a building when a device is

62. *Eco-Terrorism and Lawlessness*, *supra* note 3, at 50 (statement of James F. Jarboe, Section Chief, Counterterrorism Div., Domestic Terrorism/Counterterrorism Planning Section, Fed. Bureau of Investigation).

63. 152 CONG. REC. H8593 (daily ed. Nov. 13, 2006) (statement of Rep. Kucinich). Kucinich stated:

So I understand the intent here. But I just think that you have got to be very careful about painting everyone with the broad brush of terrorism who might have a legitimate objection to a type of research or treatment of animals that is not humane. So, again, I wanted to express this note of caution about this legislation, but notwithstanding that there are specific statements about protection of the first amendment. This bill is written in such a way as to have a chilling effect on the exercise of peoples’ first amendment rights.

Id.

U.S. Rep. James P. McGovern (D-Mass.) pledged, through a spokesperson, “to work to overturn the measure.” Shaun Sunter, *Animal Protesters Get Results: McGovern Pledges to Help Overturn Animal Terrorism Law*, TELEGRAM & GAZETTE (Worcester, Mass.), Nov. 30, 2006, at B6. But Mimi Brody, Director of Federal Affairs for the Humane Society of the United States (HSUS)—the wealthiest of all organizations dealing with animal-husbandry policy—promptly wrote to McGovern identifying the HSUS as opposed to the law, yet she stated, “We deeply appreciate your recognition of the flaws in this bill. Now that this legislation has been signed into law by the president, we hope that its application will be limited and will not encroach on constitutional rights.” *Id.* Such a comment gives the impression that the HSUS had little interest in getting the Act repealed.

64. 152 CONG. REC. H8593 (daily ed. Nov. 13, 2006) (statement of Rep. Kucinich).

65. See Will Potter, *GreenIsTheNewRed.com*, What is the “Green Scare”?, Sept. 1, 2008, <http://www.greenisthenewred.com/blog/green-scare/> (“In many ways, the Green Scare, like the Red Scare, can be seen as a culture war, a war of values.”).

deployed.⁶⁶ They burn political bridges as well. It is notable that ELF fires at the Detroit and Oakridge forest-ranger stations occurred where activists had been working for years on behalf of the integrity of the forests, and were beginning to achieve results.⁶⁷ How can this situation be framed as a “war of values” between the views of the arsonists and the status quo? What happened to the values of the diligent local activists when the fires started in their area, without their consent?

As for coercive activism carried out in the name of animals used as test specimens, does this reflect the views of Vegan Society founder Donald Watson, who founded a movement based on the boundless potential of humanity to change its destiny by ending exploitation of those who cannot consent to it? The Society defined its work as “in pursuance of its object to seek to end the use of animals by man for food, commodities, work, hunting, vivisection and all other uses involving exploitation of animal life by man.”⁶⁸ This, Watson urged, would both promote the freedom of other animals and improve human culture.⁶⁹ A culture without deliberate exploitation and killing, said Watson, would be the first in our history to “truly deserve the title of being a civilization.”⁷⁰ In contrast to those who see other animals and the planet as mere resources and who have ended up endangering their own species, Watson, a gardener and conscientious objector to war, nurtured human well-being.⁷¹ The SHAC activists, on the other hand, felt obliged to create fear. And to explain the rationale underlying their campaign, SHAC repeatedly stated that the company they singled out had violated animal-handling laws—as though the plain use of animals was not the wrong.⁷² They often project their point, for example, through a complaint over a lab worker who was filmed punching puppies—

66. Operation Backfire defendant Chelsea Gerlach described how a sleeping hunter was discovered in a heated restroom inside one of the buildings scoped out in Vail. Funk, *supra* note 27.

67. See Michael Donnelly, *Green Sabotage as “Terrorism,”* COUNTERPUNCH, May 26–27, 2007, available at <http://www.counterpunch.org/donnelly05262007.html>.

68. Leslie Cross, *Veganism Defined*, WORLD VEGETARIAN FORUM, Spring 1951, at 6–7, available at <http://www.ivu.org/history/world-forum/1951vegan.html> (internal quotation marks omitted).

69. See generally Donald Watson, *Quarterly Magazine of the Non-Dairy Vegetarians*, VEGAN NEWS, Nov. 1944, at 1–4, available at http://www.ukveggie.com/vegan_news/vegan_news_1.pdf (discussing the vegan philosophy and announcing the new vegan lifestyle).

70. Interview by George D. Rodger with Donald Watson, Founder and Patron, The Vegan Society (Dec. 15, 2002), excerpt available at <http://www.foodsforlife.org.uk/people/Donald-Watson-Vegan/Donald-Watson.html>. Donald Watson formed the word “vegan” from the letters at the beginning and end of “vegetarian” and founded the Vegan Society in November 1944. *Id.* See also, Watson, *supra* note 69, at 2 (discussing Watson’s choice of the word “vegan” to describe a lifestyle free of any consumption of animal products).

71. Interview by Vegetarians in Paradise with Donald Watson, Founder and Patron, The Vegan Society (Aug. 11, 2004), available at <http://www.vegparadise.com/24carrot610.html>.

72. HALL, *supra* note 4, at 39.

hardly an animal-rights point.⁷³ After all, the labs themselves—which deem animal use ethically acceptable—forbid that.⁷⁴

Animal testing is unlikely to be stopped as long as licensing a new drug requires the use of 1500 to 3000 nonhuman test subjects to rule out toxic effects.⁷⁵ If testing becomes too politically risky in Britain, it can be outsourced to China, which offers results at low costs, or Singapore, with its “promises of a protest-free environment.”⁷⁶ Removing conscious beings from labs would take a cultural shift in ethical perspectives; and are activists changing minds? Although a minority of the public opposes all animal testing, polls suggest that most people accept the use of other animals to develop human medicines if they believe there is no unnecessary suffering.⁷⁷ Most non-profits reinforce that view, and win public support by investigating suspected cases of egregious abuse.⁷⁸ Militants often follow this pattern, holding up legal welfare violations as justification for their actions. The SHAC website states:

73. *Id.*

74. The company was fined and has denounced the acts. *Id.* at 39–40. SHAC was started in November 1999 by British activists after video footage shot inside HLS, depicting an HLS employee punching a beagle, aired on British television. Richard Alleyne, *Terror Tactics That Brought a Company to its Knees*, DAILY TELEGRAPH (London), Jan. 19, 2001, at 4. After the footage was broadcast, two employees were charged with cruelty to dogs and the laboratory was subject to conditional certification. HALL, *supra* note 4, at 39.

75. See NUFFIELD COUNCIL ON BIOETHICS, THE ETHICS OF RESEARCH INVOLVING ANIMALS 157 (2005), available at www.nuffieldbioethics.org/fileLibrary/pdf/RIA_Report_FINAL-opt.pdf (stating that toxicity tests can entail the use of between 1500 and 3000 animals).

76. HALL, *supra* note 4, at 121.

77. See, e.g., Sarah Freeman, *Public Opinion Test for Animal Research*, YORKSHIRE POST, Mar. 7, 2008, <http://www.yorkshirepost.co.uk/features/Public-opinion-test-for-animal.3854867.jp> (reporting on a recent YouGov poll in Britain that put public acceptance of animal testing at eighty percent).

78. The Humane Society of the United States declares: “We carry out our work on behalf of animals used and kept in laboratories primarily by promoting research methods that have the potential to replace or reduce animal use or refine animal use so that the animals experience less suffering or physical harm.” The Humane Soc’y of the U.S., Statement on Animals in Biomedical Research, Testing, and Education, http://www.hsus.org/about_us/statements/statement_on_animals_in_research.html (last visited May 14, 2009). The Animal Legal Defense Fund (ALDF) has submitted complaints to the U.S. Department of Agriculture to demonstrate violations of the federal Animal Welfare Act, a law that prescribes certain standards of animal handling—thus implicitly accepting that nonhuman animals can be handled for research purposes. See, e.g., *In Oregon, Primate Abuse is USDA-Approved*, THE ANIMALS’ ADVOCATE (Animal Legal Def. Fund, Petaluma, Cal.), Summer 2001, at 8, available at www.aldf.org/downloads/86_advocatesummer01.pdf (asserting that the FDA overlooked animal abuse at a research facility in Oregon); Kathy Benz & Michael McManus, CNN.com, PETA Accuses Lab of Animal Cruelty, May 17, 2005, <http://www.cnn.com/2005/US/05/17/peta.lab/index.html> (reporting that a PETA investigator was hired by a commercial lab and, from April 26, 2004 to March 11, 2005, filmed conditions inside the primate rooms that violated the U.S. Animal Welfare Act—although, according to PETA, “the U.S. Department of Agriculture is empowered to stop this type of abuse”).

HLS has been exposed in five undercover investigations revealing vicious animal cruelty and sloppy, fraudulent science. Among other atrocities, workers were exposed punching 4-month-old beagle puppies in the face, dissecting a live monkey, falsifying scientific data, and violating Good Laboratory Practice laws over 600 times.⁷⁹

A gulf exists between this and a genuine animal-rights perspective. If one is serious about animal rights, the vicious cruelty at a particular site is not the key issue; nor is false data. Turning living, feeling individuals into commodities, making them available for systematic use would never be called good; *this* would be understood as the egregious wrong. But the aim of SHAC appears to be curbing the industry's harshest effects through vigilante tactics. And in the most profound sense, animal advocacy that seems unpredictable and menacing is automatically disengaged from the movement's ethical platform. On multiple levels, SHAC fails to speak for animal rights. Kucinich's "sincere advocates of animal rights," and information related to their values, can barely be heard over the din of coercive rhetoric.

In September 2008, Dr. Jerry Vlasak of the Animal Liberation Press Office distributed a press release announcing that primate vivisection protesters had set a UCLA van afire, placed an incendiary device under another, and stolen three more.⁸⁰ The release quoted a threat to the UCLA regents: "We don't want to have to go further but be assured that we will if need be. —ALF."⁸¹

The release distributed by Dr. Vlasak elaborates: "Despite increased police repression, there is ample evidence to show that the campaign to stop primate vivisection at UCLA is continuing by both legal and illegal activities."⁸² Weirdly, this spokesperson for "animal liberation" willingly connected this spate of illegal acts with "a movement throughout the nation and the world to stop primate experimentation, as well as give primates some legal rights to bodily protection," including a law in Spain "giving certain primates legal rights."⁸³ In today's social and legal context, a release that tries to make a connection between nonhuman rights and illegal conduct can undermine initiatives for expanded rights even as it invokes them.

79. SHAC 7, What is HLS?, <http://www.shac7.com/hls.htm> (last visited May 14, 2009).

80. Press Release, Animal Liberation Front, Another UCLA Van Goes Up in Flames; ALF Takes Credit (Sep. 23, 2008), <http://www.animalliberationfront.com/ALFront/Actions-USA/UCLAVanSept08.htm>.

81. *Id.*

82. *Id.*

83. *Id.*

The most obvious “war of values” here is being waged by advocates of coercion—those who misconstrue the key principles of a social movement—upon advocates for peaceable yet profound social change who never gave their consent to intimidators to represent them. The intimidators seem unable to explain or even comprehend the profound social change envisioned by animal-rights theory. Is it really plausible that a small group of people promoting coercive activism represents the “ideas” held by ethical vegetarians—those who accept the core premise of the animal-rights movement and are committed to the way of living that best reduces the chance for catastrophic climate change in this century⁸⁴—who number well over a million people?⁸⁵

In 2005, Senator James Inhofe invited John Lewis of the FBI to testify to the Senate Committee on Environment and Public Works regarding animal advocacy and eco-militancy. “[T]here is nothing else going on in this country over the last several years,” Lewis declared, “that is racking up the high number of violent crimes and terrorist actions”⁸⁶ Dr. Vlasak reinforced that very view, appearing later before the same committee as an “animal advocate,” and telling Congress that deadly force “would be a morally justifiable solution” against scientists who use nonhuman animals.⁸⁷ Vlasak’s is a solution Machiavelli could love, but one which

84. Whereas most United States residents emit an average of four tons of greenhouse gas (in CO₂ equivalent) each year, a vegan, who avoids resource-costly animal agribusiness, cuts that emission by 1.5 tons on average. Press Release, Univ. of Chi., Study: Vegan Diets Healthier for Planet, People Than Meat Diets (Apr. 13, 2006), available at <http://www-news.uchicago.edu/releases/06/060413.diet.shtml>.

85. There are about a million vegans in the United States alone. Press Release, Vegetarian Times, Vegetarianism in America (n.d.), available at http://www.vegetariantimes.com/features/archive_of_editorial/667 (summarizing the Vegetarianism in America study, in which data collected by the Harris Interactive Service Bureau on behalf of *Vegetarian Times* showed about 0.5% of the population, or one million people, consume “no animal products at all”).

86. *Eco-Terrorism Specifically Examining the Earth Liberation Front and the Animal Liberation Front: Hearing Before the S. Comm. on Environment and Public Works*, 109th Cong. 18 (2005) (statement of John Lewis, Deputy Assistant Director, Fed. Bureau of Investigation). The accumulated economic damage attributed to animal and environmental advocacy is estimated at more than \$100 million. Jim Hughes, *Eco-Terrorists Top FBI’s List: Attacks Intensify Since Fires 5 Years Ago at Vail*, DENV. POST, Oct. 19, 2003, at B1. But economic damages are not always accurately documented. Often, corporations will not publicize reports of damage or losses; “Earth First! has estimated that ecotage has cost the timber industry as much as \$25 million dollars in a single year.” Michael J. Murphy & John I.B. McCulloch, *Gulf War Reveals Environmental Terrorist Threat*, NAT’L UNDERWRITER PROP. & CASUALTY/RISK & BENEFITS MGMT. EDITION, Apr. 29, 1991, at 9, 52.

87. *Eco-Terrorism Specifically Examining Stop Huntingdon Animal Cruelty (“SHAC”): Hearing Before the S. Comm. on Environment and Public Works*, 109th Cong. 26 (2005) (statement of Jerry Vlasak, M.D.).

vegan principles categorically rule out.⁸⁸ The remark skates on thin legal ice as well, for freedom of speech is not unlimited.⁸⁹

The Supreme Court has observed that groups often engage in both lawful and unlawful activities, and that both the Due Process Clause and the First Amendment forbid punishing individuals who support only a group's lawful ends.⁹⁰ And when protesters themselves mix legal and illegal activities in their releases, apparently endorsing them all, they can fairly claim free-speech rights; the Court has held for decades that mere advocacy of illegal activity—even advocacy of violence—is entitled to the protection of the First Amendment.⁹¹ Yet keeping in mind court-developed limits on freedom of speech, it is reasonable to ask, in light of a protective view of the (usually quite young) people who are traced, tried, and locked up in these cases, whether designing press releases with a provocative mix of approval for both legal and illegal activity buttresses law enforcement's position that some people cloak dangerous aggression with free-speech claims.⁹²

Machiavellian activism invites nemesis, and this observation is worth stating and considering before activists are sent to prison. This is particularly so where activists' strategies arguably thwart the aspirations, and contradict the core tenets, of the idea for which they are thought to act. Moreover, activists should never be reassured that what they do for a cause automatically warrants constitutional protection. A federal appeals court in 2005 ruled that the First Amendment did not protect SHAC's trespass and harassment that took place at the home of Claire Macdonald, an employee

88. See *supra* notes 67–69 and accompanying text (discussing the inconsistency between vegan principles and violence).

89. See, e.g., *Virginia v. Black*, 538 U.S. 343, 358–59 (2003) (stating that “[t]he protections afforded by the First Amendment . . . are not absolute” and providing examples); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382–83 (1992) (noting that “our society, like other free but civilized societies, has permitted restrictions on the content of speech in a few limited areas” and providing examples).

90. *Scales v. United States*, 367 U.S. 203, 224–25, 229–30 (1961).

91. As the Court noted in the landmark case of *Brandenburg v. Ohio*:

[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (per curiam).

92. Announcing the SHAC indictment, U.S. Attorney Christopher J. Christie declared: “We will not stand by and let any group or individuals violate federal law through violence and intimidation, no matter what cause they profess to advocate for in the process.” Press Release, U.S. Dep’t of Justice, Militant Animal Rights Group, Seven Members Indicted for National Campaign to Terrorize Company and Its Employees (May 26, 2004), available at http://www.usdoj.gov/usao/nj/press/files/shac0526_r.htm. Similarly, Federal Judge Ann Aiken, who presided over the “Operation Backfire” case, stated: “The message to the community is we will not tolerate acts of violence to affect public debate” Bill Bishop, *Arson Attacks Ruled Terrorism*, REGISTER-GUARD (Eugene, Or.), May 24, 2007, at A1.

of plaintiff Huntingdon Life Sciences—for the same reasons that the First Amendment did not protect “The Nuremberg Files,” a website that posted photographs of doctors who performed abortions and crossed off the names of three of them as they were killed.⁹³

Examining the facts in the SHAC trespass case, Judge McConnell looked at a 2002 case from the Ninth Circuit, *Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Activists*.⁹⁴ There, health care providers brought suit under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, claiming anti-abortion activists targeted them with threats in the form of “Deadly Dozen ‘GUILTY’” posters identifying doctors’ names, address, and photos, and accusing them of “crimes against humanity.”⁹⁵ *Planned Parenthood* held that the activist group knew the posters “would likely be interpreted as a serious threat of death or bodily harm by a doctor in the reproductive health services community who was identified on one, given the previous pattern of ‘WANTED’ posters identifying a specific physician followed by that physician’s murder.”⁹⁶ The same was found regarding postings about these physicians on the “Nuremberg Files” website, where “lines were drawn through the names of doctors who provided abortion services and who had been killed or wounded.”⁹⁷

The anti-abortion activist group claimed protection for the posters under *Brandenburg*; the *Planned Parenthood* court answered that if the group had only endorsed or encouraged the violent actions of others, its speech would be protected. “However,” the court said, “while advocating violence is protected, threatening a person with violence is not.”⁹⁸

“Context is everything in threat jurisprudence,” Judge McConnell’s opinion stated, elucidating the court’s view of the place where political speech meets threats of force.⁹⁹ Even assuming Claire Macdonald’s complaint arose from the campaigners’ protected speech,¹⁰⁰ Judge

93. *Huntingdon Life Sci., Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, 29 Cal. Rptr. 3d 521, 539 (2005) (citing *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1062 (9th Cir. 2002)).

94. *Id.*

95. *Id.* (quoting *Planned Parenthood*, 290 F.3d at 1062).

96. *Id.* (quoting *Planned Parenthood*, 290 F.3d at 1063).

97. *Id.* (quoting *Planned Parenthood*, 290 F.3d at 1063).

98. *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1072 (9th Cir. 2002).

99. *Huntingdon*, 29 Cal. Rptr. 3d at 539 (2005) (quoting *United States v. Bell*, 303 F.3d 1187, 1192 (9th Cir. 2002)) (internal quotation marks omitted).

100. Judge McConnell said, “Commenting on a matter of public concern is a classic form of speech that lies at the heart of the First Amendment.” *Huntingdon*, 29 Cal. Rptr. 3d at 535–36 (quoting *Annette F. v. Sharon S.*, 15 Cal. Rptr. 3d 100, 110 (2004)) (internal quotation marks omitted). “Animal testing is an area of widespread public concern and controversy,” McConnell continued, “and the

McConnell decided, “[c]onsidering the factual context and all the circumstances,” certain entries that SHAC published on its website, which included Macdonald’s address and reports of balaclava-clad activists going to a person’s home in the middle of the night to carry out loud demonstrations, “constituted a ‘credible threat of violence.’”¹⁰¹

Using similar legal logic, Assistant U.S. Attorney Charles B. McKenna said that the SHAC defendants tried in New Jersey listed targets online “knowing that other people would go out and commit horrendous acts. They knew it because it happened time and time and time again.”¹⁰² In opening statements to the jury, McKenna called the defendants “the commanders” who “got their foot soldiers to go out and do their dirty work.”¹⁰³

V. DISTINCT RESPONSIBILITIES

An intimidator or an arsonist might or might not claim to have an idea, but it is unremarkable that arson and intimidation are unpopular. Few people would deem either activity conducive to reverence for life, world peace, or serious concern for the Earth. Are the methods unpopular? Yes. But do they reflect ideas?

Ecological awareness is not on trial over arson charges. Nor was the concept of animal rights on trial in the SHAC prosecution. No, the SHAC campaign, high-profile as it was, sought to intimidate anyone with ties, direct or attenuated, to Huntingdon Life Sciences. The SHAC website listed personal details of people associated with companies doing business with HLS, from banks to delivery services—all in the interest of intimidating people, so as to commercially isolate the company.¹⁰⁴ Posted actions included subscribing the targeted people to pornographic magazines,

viewpoint of animal rights activists contributes to the public debate.” *Id.* at 536.

101. *Id.* at 530. The court noted that “[t]he First Amendment to the United States Constitution and the California Constitution [CAL. CONST. art. I, § 2(a)] prohibit the enactment of laws abridging the freedom of speech.” *Id.* at 537. Yet speech constituting “harassment” as defined in California’s statutes “is not constitutionally protected,” and its victims “may obtain injunctive relief.” *Id.* at 538. California law includes, within the definition of “harassment,” a “credible threat of violence”—that is, “a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.” *Id.* (quoting CAL. CIV. PROC. CODE § 527.6 (b)(2) (West 2005)) (internal quotation marks omitted). The court further stated, “To qualify as a true threat, a communication need not specify who would carry out the threat.” *Id.* at 543 (citing *Planned Parenthood*, 290 F.3d at 1077–78).

102. Wayne Parry, *Free Speech vs. Terrorism at Issue in Animal Advocates’ Trial*, ASSOCIATED PRESS, Feb. 7, 2006, available at <http://www.kgw.com/sharedcontent/APStories/stories/D8FKI0V0A.html>.

103. *Id.*

104. See HALL, *supra* note 4, at 121 (describing the economic damage suffered by Huntingdon Life Sciences).

vandalizing their cars, or accusing them of child molesting.¹⁰⁵ SHAC was unpopular, no wonder. But the SHAC activists were not engaged in education about animal-rights values.

We must be cautious about framing respect for conscious life and the planet as “unpopular” or allowing such framing to occur without comment, especially as our framing of the issue will have a normative component. Moreover, it would be irresponsible to suggest that any threats or actions delivered with the mantra “for the animals” or “for the planet” are encompassed by First Amendment protections. Inappropriately selective laws and prosecutorial excesses should, of course, be diligently critiqued, and diligently challenged. And civil disobedience in the name of justice, fairness, and respect for the environment is not to be condemned by serious advocates. This is not to say destructive tactics—threatening people’s children or using explosives—must also be viewed by advocates as unpopular ideas under siege.

Animal-rights lawyering is sometimes seen as the practice of defending coercive activists. But even though the presence of civil-rights lawyers who take activists’ cases is immensely valuable, defending civil liberties and developing animal-rights law are distinct areas with different responsibilities.

I suggest that lawyers who are also animal-rights theorists have a special responsibility: to offer potential activists a sober view of the legal realities and an inspiring view of the ethical realities of advocacy. Regarding the legal realities, if statements or proposed actions sound as though government agents could be developing them (and here it is notable that FBI provocateurs and informants are often involved in investigations of militant activism),¹⁰⁶ the suggested action is probably a bad idea.

On to the inspiring view: activism is not simply a calendar of actions. It is the cultivation of ethical progress. The theory for which animal advocates claim to act, seen in its best light, is part of the tradition of conscientious objection; it broadens this idea to encompass humanity’s wars against other living communities as well as our own. The point is to persuade a critical mass of people to this perspective. Persuasion is the key, for no one can be threatened or coerced into being a conscientious objector. Militancy, quite simply, is unlikely to subvert the dominant paradigm—because it *is* the

105. *Id.*

106. See Tullis, *supra* note 61 (describing the use of informants in the FBI investigation of Earth Liberation Front). See also KCRA.com, Eco-Terrorist Gets 19 Years in Prison, May 8, 2008, <http://www.kcra.com/news/16206213/detail.html> (discussing a suspected Earth Liberation Front member whose acts and ultimate sentence of nearly twenty years in federal prison, family members say, was the result of government entrapment through a twenty-one-year-old informant called “Anna”).

dominant paradigm. Thus, a key point involves separating what is threatening from what is radical. Radical, root-level change means bringing society beyond might-makes-right, beyond getting things done through coercion.

When explaining that all living individuals, including humans, are encompassed in the commitment to respect found in animal rights, people are sometimes met with the objection that subjugation between human groups can justify forcible resistance. That is what proponents of peace are so often asked: “But what would you do in the situation of [fill in a grotesque example from history]?” I have no intention of claiming that an oppressed group should have responded differently when terrible miseries were imposed on them. But cultivating an animal-rights movement is not about choosing between reactions to repression. It asks a question about social change at a deeper level: How should we think and act daily so as to adjust human consciousness so profoundly that our culture can learn to avert the atrocities in the first place?

Moreover, as other animals, once captive, generally cannot protect or struggle for their collective interests, animal advocates have a particular need to respect all possible allies—that is to say, all humans. It is critical here to strive to present ideas so reasonable minds can understand and accept them. People might say nonviolence is a luxury, and, acknowledging my own privilege, I have given that objection serious consideration—and have arrived at the view that waving off what people think is self-indulgent. Advocacy that is serious about organizing for root-level change involves reaching out to open-minded people in the media and in every community.

An animal-rights movement requires a unique type of advocacy. It is about changing our own cognitive map rather than extending civil rights to others—for the basic right nonhuman animals need from us is simply that we let them be. Yet a leader for civil rights brought a message about methods that is particularly valuable here. In the speech at Mountain Temple in Memphis on April 3, 1968, “I’ve Been to the Mountaintop,” Martin Luther King Jr. said: “We don’t have to argue with anybody. We don’t have to curse and go around acting bad with our words. We don’t need any bricks and bottles. We don’t need any Molotov cocktails.”¹⁰⁷ Dr. King then encouraged activists to go to the stores and to the massive industries, ask for fairness and justice, and, if not heeded, withdraw economic support.¹⁰⁸

107. Dr. Martin Luther King Jr., “I’ve Been to the Mountaintop” (Apr. 3, 1968), available at <http://www.americanrhetoric.com/speeches/mlkivebeentothemountaintop.htm>.

108. The relevance of Dr. King’s speech to the vegan movement is detailed in HALL, *supra* note 4, at 92.

How would incendiary devices or demonstrations at the homes of employees and their families withdraw economic support from a laboratory firm? As noted above, an educational movement creating a critical mass of people willing to boycott animal products permanently and to see scientific proofs without vivisection is the one way animal research can actually be stopped.

VI. A GIFT TO THE STATE

The expression of genuine discontent with a harmful or unjust status quo has often prompted humanity's social and moral evolution. Animal rights should be considered a most popular idea, given the long history of dangerous experiments being performed on vulnerable subjects; animal-rights advocacy strives to challenge such exploitation at its roots.¹⁰⁹ At its peril, society ignores or disables "public citizens" who exert informational pressure to challenge corporate research and development. The value of the right both to communicate and to receive this challenging speech is vital to our traditional freedom of speech as well as our health, our ecology, and our moral progress.

Even more urgent from a global perspective, we are living through the sixth great extinction.¹¹⁰ This extinction is happening at a far higher rate than the previous five periods of natural (geological) extinctions.¹¹¹ Global warming and the ocean's dead zones are causes for alarm and immediate action.¹¹²

Both environmental and animal-rights advocacy have a key role in addressing these urgent matters. Gidon Eshel and Pamela Martin, geophysicists at the University of Chicago, estimate that the typical U.S. resident is responsible for the emission of 1.5 tons more carbon dioxide equivalents each year than is the typical vegan.¹¹³ The core commitment of the serious animal-rights advocate, then, is also one of the most important commitments a society can make.

Also critical is the political role of collective action. The right of

109. For expanded discussion of this point, see Lee Hall & Anthony Jon Waters, *From Property to Person: The Case of Evelyn Hart*, 11 SETON HALL CONST. L.J. 1, 38–42 (2000).

110. Alex Kirby, BBC News, Biodiversity: The Sixth Great Wave, Oct. 1, 2004, <http://news.bbc.co.uk/2/hi/science/nature/3667300.stm>.

111. *Id.*

112. See James Owen, *Ocean Dead Zones Growing; May Be Linked to Warming*, NAT'L GEOGRAPHIC NEWS, May 1, 2008, available at <http://news.nationalgeographic.com/news/2008/05/080501-dead-zones.html> (describing expansion of "undersea deserts" potentially caused by global warming).

113. Univ. of Chi., *supra* note 84.

association has been seen as vital ever since the U.S. Supreme Court first protected the NAACP from harassment by southern states by barring compelled disclosure of its membership lists.¹¹⁴ In the 1960s, after Congress outlawed membership in the Communist Party, the Supreme Court cautioned that a “blanket prohibition of association with a group having both legal and illegal aims” would pose “a real danger that legitimate political expression or association would be impaired.”¹¹⁵ Notably, even accepting that the government has a compelling interest in countering violent revolution, the Court refused to condone guilt by association.¹¹⁶ Thus emerged the principle of individual culpability: the government may not punish an individual for associating with a group that engages in legal activities unless it proves the individual’s specific intent to further an illegal action of that group.¹¹⁷

The U.S. government has recently engaged in a pattern of undermining some of the most important protections developed through its constitutional history.¹¹⁸ Some argue that the government and the industries it protects must be opposed, in turn, by forcible resistance. “If you support or raise funds for any company associated with HLS we will track you down, come for you and destroy your property by fire,” said the Animal Liberation Front’s website, with regard to the firebombing of a car owned by an executive whose firm did business with another firm that once did business with Huntingdon.¹¹⁹ The campaign against Huntingdon forced the firm out of the British market and caused its headquarters to move to the United States in 2002 “after a vigorous campaign by animal rights extremists during which bombs were planted in the cars of people loosely associated with the firm.”¹²⁰ But if the militants’ actions appear to work on some level, it is neither the level of changing minds nor laws. Indeed, on both counts, their actions have triggered a fierce backlash. Coercive, us-

114. NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 462–63 (1958).

115. Scales v. United States, 367 U.S. 203, 229 (1961).

116. Elfbrandt v. Russell, 384 U.S. 11, 19 (1966).

117. Scales, 367 U.S. at 221–22. The Court construed the Smith Act (which barred membership in organizations advocating violent overthrow of government) to require a showing of “specific intent.” *Id.* This interpretation was accepted in *Elfbrandt*, 384 U.S. at 19, and *Keyishian v. Board of Regents of the University of New York*, 385 U.S. 589, 606–07 (1967). The fact that the government has been insensitive to its own Supreme Court’s precedent makes a troubling statement about the current political atmosphere. The USA-PATRIOT Act of 2001 paved the way for law enforcement to pin terrorist associations on persons engaged in innocent political activity. David Cole, *National Security State*, NATION, Nov. 29, 2001, available at <http://www.thenation.com/doc/20011217/cole> (contending that the Act “resurrects the philosophy of McCarthyism”).

118. Cole, *supra* note 117.

119. CBC News, *Biotech Firm’s Broker Resigns After Animal Rights Attack*, June 23, 2005, <http://www.cbc.ca/money/story/2005/06/23/canaccord-050623.html>.

120. Tomlinson, *supra* note 8, at 19.

against-them tactics can disconcert people in any country, including in progressive communities.

As I write, in late 2008, a pair of SHAC trials proceed in England. Eight people have been charged—two with blackmail and the others with conspiracy to blackmail—for publishing the names and addresses of employees of companies doing business with Huntingdon Life Sciences.¹²¹ The actions continued until firms capitulated and cut all links with Huntingdon.¹²² The court heard that campaigners, under the badge of the ALF or the Animal Rights Militia, targeted numerous parties in this way from November 2001 to May 2007.¹²³ The prosecution alleges that protesters targeted Stephen Lightfoot for nearly four years by sending Lightfoot sanitary towels said to be infected with the AIDS virus, planting hoax bombs, painting the executive's car with the slogan ALF, and spreading false accusations of child molestation.¹²⁴

Robin Webb, press officer for Britain's ALF, once told Scotland's *Sunday Herald* that experimenters' children are "a justifiable target for protest," even while acknowledging that such a view parallels the experimenters' own beliefs in using animals. Webb stated:

Some say it is morally unacceptable but it is equally unacceptable to use animals in experiments. The children of those scientists are enjoying a lifestyle built on the blood and abuse of innocent animals. Why should they be allowed to close the door on that and sit down and watch TV and enjoy themselves when animals are suffering and dying because of the actions of the family breadwinner?¹²⁵

This statement incorrectly assumes the options are either to frighten the children or not frighten them, and that frightening them is the better alternative.

In a familiar characterization, the ALF "has been named the 'most serious domestic terrorist threat within the United Kingdom' by the former director of the University of St. Andrews' Centre for the Study of Terrorism

121. Sandra Laville, *Animal Activists in International Plot, Jury Told*, GUARDIAN (London), Oct. 7, 2008, at 8.

122. *Id.*

123. *Id.*

124. *Id.*

125. Jenifer Johnston, *Of Mice and Men; Paranoia About Animal Testing Has Frightened Off Investors, Left Researchers Terrified to Reveal Their Job and is Damaging the Multi-Billion Pound UK Pharmaceutical Industry*, SUNDAY HERALD (Glasgow), Sept. 19, 2004, at 3 (quoting Robin Webb, ALF Press Representative).

and Political Violence.”¹²⁶ Throughout a series of militant campaigns in Britain, the moral questions surrounding vivisection have, unsurprisingly and most unfortunately, been lost. Even support for the campaigners’ freedom of speech has been lost. One of Britain’s most respected progressives, George Monbiot, explains the way public refusal to speak out against eco-terror laws reflects the isolation of animal activists from the broader progressive community:

The demonstrators who have halted the construction of the new animal testing labs in Oxford command little public sympathy. Their arguments are often woolly and poorly presented. Among them is a small number of dangerous and deeply unpleasant characters who appear to respect the rights of every mammal except *Homo sapiens*. This unpopularity is a gift to the state. For fear of being seen to sympathise with dangerous nutters, hardly anyone dares to speak out against the repressive laws with which the government intends to restrain them.¹²⁷

And so we see legal provisions and prosecutions unveiled on both sides of the Atlantic, tailored to afford strong protections to pharmaceutical interests and other institutions that use animals. These laws have enabled multiple high-profile arrests in Britain, involving the FBI in an international enforcement effort.¹²⁸

Will Potter calls prosecutions against militant animal and ecological activists the “Green Scare.”¹²⁹ Potter insists activists must “stand with the

126. Naomi O’Leary, *Anti-vivisection Protesters Solicit Evidence*, TRINITY NEWS (Dublin Univ.) (n.d.), available at <http://www.trinitynews.ie/index.php/news/college/248-anti-vivisection-protesters-solicit-evidence/>.

127. George Monbiot, Op-Ed, *A Threat to Democracy*, GUARDIAN (London), Aug. 3, 2004, available at <http://www.guardian.co.uk/world/2004/aug/03/terrorism.britainand911>. For more on the Oxford demonstrations, see Sandra Laville, *Animal Rights Activist Is Accused of Oxford University Bombings*, GUARDIAN (London), Oct. 29 2008, at 16 (referring to a “terrorist campaign to stop the building of a £20m research laboratory”). Despite four years of high-profile protests, the lab at Oxford University ultimately opened in November 2008. Ian Sample, *Oxford University Opens Controversial Animal Research Laboratory*, GUARDIAN (London), Nov. 11, 2008, available at <http://www.guardian.co.uk/science/2008/nov/11/animal-research-oxford-university>.

128. See Anushka Asthana, Jamie Doward & Diana Taylor, *Death Threat for Teenage Animal Test Supporter*, OBSERVER (London), Feb. 26, 2006, at 5 (stating that “three people will appear at Chiswick police station following an investigation involving seven police forces”).

129. Potter is not the only writer to apply the term. Kera Abraham wrote:

The SHAC case is part of a larger federal campaign against domestic environmental and animal rights movements, dubbed the Green Scare. One arm of that effort is Operation Backfire, an FBI sting that resulted in the indictments of 14 Earth Liberation Front (ELF) activists allegedly linked with a string of eco-

defendants” because in the “post-9/11 climate, evidence matters less than rhetoric and fear” and anti-communism “operated under similar terms” and “we could be the next Communists. I mean, terrorists.”¹³⁰

The farther a prosecution starts from immediate and personal culpability,¹³¹ the harder it strains the limits set by the Supreme Court’s test in *Brandenburg v. Ohio*, which “require[s] the government to show that an individual’s speech was intended and likely to produce imminent illegal conduct.”¹³² It is a “threshold that,” Professor David Cole maintains, “for all practical purposes requires proof of an actual conspiracy to engage in criminal conduct.”¹³³

And yet, as far as the SHAC cases press *Brandenburg*, the SHAC activists’ situations cannot be compared with most people harmed by the Cold War scares, which targeted people not through the criminal process, but by loyalty review procedures and congressional-committee hearings.¹³⁴ These procedures denied their targets essential criminal protections such as the presumption of innocence and the right to confront the prosecution’s evidence.¹³⁵

sabotage crimes across the West. That case, which made international headlines, is currently being heard by federal judges in Eugene.

Kera Abraham, *SHAC Smackdown: Feds Slap Animal Rights Activists with the T-word*, EUGENE WKLY., Sept. 14, 2006, available at <http://www.eugeneweekly.com/2006/09/14/news1.html>.

130. Will Potter, *Green is the New Red: How the Government Landed a Terrorism Conviction for Nonviolent Animal Activists*, EARTH FIRST!, May–June 2006, at 19.

131. See Kocieniewski, *supra* note 7 at B3:

Although federal prosecutors presented no evidence that the defendants directly participated in the vandalism and violence, they showed jurors that members of the group made speeches and Web postings from 2000 to 2004 that celebrated the violence and repeatedly used the word “we” to claim credit for it.

132. Cole, *supra* note 44, at 7 (citing *Brandenburg v. Ohio*, 395 U.S. 444 (1969)).

133. *Id.* The Court has also condemned guilt by association. In *Scales v. United States*, which effectively ended prosecutions for Communist Party membership under the Smith Act, a Cold War law that punished advocacy of the overthrow of the United States government by force or violence, the Court stated:

In our jurisprudence guilt is personal, and when the imposition of punishment on a status or on conduct can only be justified by reference to the relationship of that status or conduct to other concededly criminal activity . . . that relationship must be sufficiently substantial to satisfy the concept of personal guilt in order to withstand attack under the Due Process Clause of the Fifth Amendment.

Scales v. United States, 367 U.S. 203, 224–25 (1961).

134. See generally ELLEN SCHRECKER, *MANY ARE THE CRIMES: MCCARTHYISM IN AMERICA* (1998) (discussing the effect of McCarthyism on individuals and the long-term consequences of McCarthyism).

135. In November 1950, the Attorney General had placed nearly two hundred groups on a list of communist and other subversive organizations, and connected people could lose their jobs or be called before the House Un-American Activities Committee (HUAC). Cole, *supra* note 44, at 6. “[A]s many as one in five working people in the United States were subjected to the loyalty review process in one way or another—by having to take an oath, fill[] out loyalty disclosure forms, or be[] subjected to full-scale

Nor can the SHAC activists' situations be compared with those of some 2000 Muslims, Arabs, and Arab-Americans who were detained—sometimes for years on mere suspicions—and tried in secret as part of the Bush Administration's reaction to the notorious Tuesday in September, 2001.¹³⁶ The government resorted to administrative process to “detain foreign nationals and U.S. citizens alike in military custody indefinitely,” virtually incommunicado, as “enemy combatants”—“without a hearing, without access to a lawyer, and without judicial review, simply on the President's say-so.”¹³⁷ As I write, the U.S. government is still using that authority at a military base on Guantánamo Bay, Cuba, where some foreign nationals have been held seven years with no charges,¹³⁸ locked in cells for all but thirty minutes a week, unless taken out for interrogations.¹³⁹

It is an exaggeration to suggest that animal activists who do not “stand with” SHAC are tantamount to people who would permit the secret loyalty reviews, the hundreds of arrests, the deportations, the firings of 3000 maritime workers, and the widespread repression of civil servants, civil-rights activists, actors, teachers, gays, and union organizers that occurred in the McCarthy period.¹⁴⁰ People are not being rounded up and deported or fired en masse for possibly sympathizing with environmentalism. Green is not the new Red.

loyalty review hearings.” *Id.* at 21. “HUAC subpoenaed thousands of witnesses to testify about their alleged communist sympathies and to name names.” *Id.* However, witnesses were not provided with the rights they would be entitled to even in a civil trial, although their livelihoods were at stake. *Id.* “Witnesses were frequently confronted with accusations from unidentified informants and denied any opportunity to confront their accusers or to present their own witnesses.” *Id.*

“In 1952, Congress authorized and funded detention centers for suspected subversives in Arizona, California, Florida, Oklahoma, and Pennsylvania.” *Id.* at 19. Thus, “for more than a generation after World War II the federal government planned to detain ‘dangerous’ citizens and foreigners wholly outside the criminal process,” and the FBI accordingly engaged in widespread political spying until the 1970s—“not for any criminal law purpose, but simply so that it could maintain lists of suspicious persons to be detained in a future emergency.” *Id.* “In the 1960s, the FBI’s list included civil rights and anti-war movement activists, including Dr. Martin Luther King, Jr.” *Id.* (citing ROBERT GOLDSTEIN, *POLITICAL REPRESSION IN MODERN AMERICA FROM 1870 TO 1976*, at 419 (2001)).

136. See generally Lee Hall, *Nomads Under the Tent of Blue: Migrants Fuel the U.S. Prison Industry*, 6 RUTGERS RACE & L. REV. 265 (2004) (discussing mass detentions of noncitizens in the United States and providing an overview of the political response to the September 11, 2001 attacks).

137. Cole, *supra* note 44, at 23.

138. William Glaberson, *Post-Guantánamo: A New Detention Law?*, N.Y. TIMES, Nov. 15, 2008, at A13, available at 2008 WLNR 21813454.

139. Cole, *supra* note 44, at 22–23 n. 92. But see Exec. Order No. 13,492, 74 Fed. Reg. 4897 (Jan. 27, 2009) (ordering Guantánamo detention facilities closed within a year).

140. For information on the first Red Scare and its resurgence in McCarthyism, see generally ROBERT K. MURRAY, *RED SCARE: A STUDY IN NATIONAL HYSTERIA, 1919–1920 (1955)* (discussing the “Red Scare” that took place in the United States following World War I); SCHRECKER, *supra* note 134 (discussing the effect of McCarthyism on many different groups of individuals).

CONCLUSION

In recent years, the U.S. government has engaged in a pattern of undermining vital principles, such as the right of association. This can prompt a view that forcible resistance must, in turn, oppose the government. The idea, in other words, is that in order to beat them, one has got to be a bit like them. In stark contrast, the ideal of animal rights relies on the confidence that we can all empower ourselves to change the mental map with which we have grown up—the one that says control and coercion are inevitable and necessary mechanisms in guiding human thought and action.

Us-against-them tactics can make people uncomfortable and confused about whether to defend those who use them. People with ecological awareness, a genuine interest in a movement for animal rights, or, most holistically, both, might sense that intimidation is not the way of animal-rights advocacy at all, for it actually subverts the principles of animal rights.

And they would be right. It is critical that advocates respond to industrial use of animals and the destruction of nature by adhering to the principles that distinguish us from those who manipulate the animals and the environment. Otherwise, we forfeit much of the movement's legitimacy and reinforce the might-makes-right view of the world—the root cause of all that we seek to transcend.