

I FOUGHT THE LAW:
A REVIEW OF *TERRORISTS OR FREEDOM FIGHTERS?:
REFLECTIONS ON THE LIBERATION OF ANIMALS*,
EDITED BY STEVEN BEST & ANTHONY J. NOCELLA II

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Compassion and emotion are our most
important safety values.

If we lose them,

Then we lose the vitality of life itself.

Emotional? Hooligans? Cranks?

—Conflict, *This is the A.L.F.*²

I. INTRODUCTION

On April 23, 2004, police officers raided an animal rights conference at Syracuse University and arrested Sarahjane Blum in front of a crowd of animal rights activists and scholars. Blum was charged with felony burglary, and faced up to seven years in prison. Her crime: trespassing at the Hudson Valley Foie Gras factory farm; the purloined items: several miserable ducks. The arrest came immediately after Blum's screening of *Delicacy of Despair*, an investigative documentary that details her open rescue ("burglary") of ducks from Hudson Valley.³

Just over a month later, on May 26, 2004, fifteen FBI agents kicked down the door of a small house in the sleepy California town of Pinole, and, with guns drawn and Federal Air Marshals circling in helicopters, arrested Kevin Jonas, Lauren Gazzola, and Jacob Conroy, three activists associated with the campaign against the animal testing company Huntingdon Life

¹ © Matthew Liebman 2004. J.D. Candidate, 2006, Stanford Law School. The author wishes to thank Salena for being there; Ashleigh, Oliver, Emma, Spider, and Anais for constant companionship; Ruthie and Richard for inspiration; and Jeremy for understanding. This review is dedicated to the brave activists, legal and otherwise, who commit their lives to defending animals, as well as to the memory of Chaplin (1994-1999), who introduced me to this struggle.

² CONFLICT, *This is the A.L.F.*, on THIS IS THE ANIMAL LIBERATION FRONT (Mortarhate Records 1998).

³ On November 30, 2004, the felony burglary charges against Blum and Ryan Shapiro, the campaigns coordinator for GourmetCruelty.com, were dropped. Nevertheless, the pair plead to a lesser count of misdemeanor trespass, and the possibility remains of more repression as open rescues gain in popularity. See *Felony Charges Dropped Against Animal Rescuers After Foie Gras Court Battle*, GOURMET CRUELTY, <http://www.gourmetcruelty.com/news20041202.php>.

Sciences (HLS).⁴ The three were among seven Stop Huntingdon Animal Cruelty (SHAC) activists arrested not for any overt criminal act, but for the publication of a website that reports on the campaign to shut down HLS. The activists were indicted and charged with animal enterprise terrorism and four counts of conspiracy to commit interstate stalking. At the time of this writing they await a trial date, where they could face years in prison, and a fine of up to \$250,000.

In *Terrorists or Freedom Fighters?*⁵ Steven Best refers to this upsurge in the legal crackdown on animal rights direct action as “the escalating battle between activists and the corporate-state complex.”⁶ His new anthology, co-edited with Anthony Nocella, is a long overdue foray into the ethical and tactical issues surrounding the “direct action” wing of the animal liberation movement, including the Animal Liberation Front (ALF), SHAC activists, and the open rescues of groups like Compassion Over Killing and Mercy for Animals.⁷

If this clash expands, as it almost certainly will, the role of lawyers, lobbyists, and animal rights professionals will grow in importance. The field of animal law should be ready to grapple with the thorny legal, ethical, and strategic questions that Best and Nocella’s anthology raises. This collection of essays from over 25 activists and academics represents the first major inquiry into the theoretical questions surrounding direct action.

Attorneys, judges, legal academics, law students, and other legal professionals are, for obvious reasons, considered a world away from this aspect of animal liberation. Nevertheless, if the philosophical and tactical arguments in favor of the ALF and other groups are sound, we owe it to the animals and to our profession to ensure that legal barriers to effective and moral animal rights activism are vigorously contested. If, on the other hand, we conclude that these actions are not in the best interests of the animals or our movement, we at least owe it to our animal rights colleagues to honestly evaluate and consider their arguments, and to avoid the simplistic stereotypes that splinter the animal rights movement.

This review seeks to introduce the major issues raised by the authors of the essays in *Terrorists or Freedom Fighters?* and to commend Best and Nocella for their valuable contribution to the body of animal rights theory and practice.

⁴ *Take That Al Qaeda: The U.S. Government is Cracking Down on Animal Rights Protestors!*, SHAC USA, at <http://www.shacamerica.net/indictments/index.htm> (last visited December 31, 2004).

⁵ *TERRORISTS OR FREEDOM FIGHTERS?: REFLECTIONS ON THE LIBERATION OF ANIMALS* (Steven Best and Anthony J. Nocella II eds., 2004) [hereinafter Best and Nocella].

⁶ Steven Best, *It’s War! The Escalating Battle Between Activists and the Corporate-State Complex*, in Best and Nocella, *supra* note 4, at 300 [hereinafter Best, *It’s War*]. Interestingly, Best himself became a target of this “escalating battle” when he and two other radical animal rights activists were banned from entering the U.K. for a conference in the summer of 2004. Best was ultimately allowed entrance, but Jerry Vlasak and Pamelyn Ferdin were not. Steven Best, *Banned in the U.K.! The Home Office says ‘Stay Home!’ to U.S. Animal Rights Activists*, UTMINERS, at <http://utminers.utep.edu/best/papers/vegenvani/Banned.htm> (last visited Dec. 31, 2004).

⁷ “Direct action” is used to refer to activist tactics that forgo or circumvent the legal, legislative, and policy arenas. While some have persuasively argued that day-to-day actions like being vegan or caring for stray animals are “direct” action, the term colloquially refers to liberations of animals (usually clandestinely, but increasingly openly) and acts of vandalism and property destruction.

II. THE HISTORY OF DIRECT ACTION

And they all came to one conclusion.
They argued there was no way they'd ever be free
If it was up to humans.
Therefore the only course left was revolution
Which was understandable...
—Dead Prez, *Animal in Man*⁸

The first essay in *Terrorists or Freedom Fighters?*, Noel Molland's *Thirty Years of Direct Action*, traces the modern history of direct action tactics to 1964, when John Prestige founded the Hunt Saboteurs Association, a group of British animal rights activists who disrupted hunts by (legally) making loud noises and placing themselves between hunters and their prey.⁹ Ronnie Lee and Cliff Goodman, hunt saboteurs unsatisfied with the limited success of these tactics, formed the Band of Mercy in 1972. The Band began conducting illegal actions such as disabling hunting vehicles, and would leave behind kind, explanatory notes and animal rights literature for the hunters.¹⁰ But their tone soon changed. In 1973, the Band set two separate fires to a vivisection lab under construction, causing £46,000 in damage. Despite this new militancy, their press release identified the Band of Mercy as a "nonviolent guerrilla organization."¹¹ Lee and Goodman followed up with another arson in 1974, which prevented a seal cull. Continuing its clandestine strategies, the Band added the practice of laboratory raids and liberations, and in the summer of 1974, they broke into eight labs and rescued dozens of animals.¹² But in August of 1974, Lee and Goodman were arrested and convicted for another raid, and each served a year in prison. After their release, Goodman abandoned direct action, but Lee, a former law student, started the soon-to-be-notorious Animal Liberation Front.¹³

From the beginning, the ALF has considered itself a nonviolent organization, as Kim Stallwood notes in his informative contribution to the volume.¹⁴ Its founding principles included a commitment to "take all necessary precautions against harming any animal, human and nonhuman."¹⁵ Stallwood notes that early ALF actions garnered positive media coverage, and activists were portrayed as brave altruists and noble liberators. This positive coverage encouraged other cells to form, which performed their own liberations at labs and factory farms.¹⁶

⁸ DEAD PREZ, *Animal in Man*, on LETS GET FREE (Relativity Records 2000).

⁹ Noel Molland, *Thirty Years of Direct Action*, in Best and Nocella, *supra* note 4, at 67-68 [hereinafter Molland].

¹⁰ *Id.* at 69.

¹¹ *Id.* at 69-70.

¹² *Id.* at 71.

¹³ *Id.* at 73-74.

¹⁴ Kim Stallwood, *A Personal Overview of Direct Action in the United Kingdom and the United States*, in Best and Nocella, *supra* note 4, at 83 [hereinafter Stallwood]. The question of whether it has *remained* a non-violent group is strongly contested by Stallwood. *Id.* at 83-87.

¹⁵ *Animal Liberation Front Guidelines*, reprinted in Best and Nocella, *supra* note 4, at 8.

¹⁶ Stallwood, *supra* note 13, at 83.

Before long the ethos and strategies of these small British affinity groups crossed the Atlantic¹⁷ and ALF cells began to pop up in the U.S., beginning in 1979 with a raid at the New York University Medical Center where a cat, two dogs, and two guinea pigs were liberated. In 1984, the ALF left its biggest mark on the animal exploitation industries and the American public when it raided the University of Pennsylvania Head Injury Lab. The ALF stole over 60 hours of video footage shot by vivisectionists showing ghastly experiments on baboons, as well as unprofessional and unscientific behavior. People for the Ethical Treatment of Animals edited this footage into a short film and used it to campaign against the Penn lab in particular and against vivisection in general. Despite extensive police repression, PETA stuck by the ALF and defended the action as necessary for animal liberation.¹⁸ The massive amount of media coverage solidified the image of the black balaclava-clad, clandestine, underground animal rights activist. Gary Francione, the noted animal rights lawyer, referred to the University of Pennsylvania ALF action as “probably the most important event in the history of the American animal rights movement.”¹⁹

In 1985, the ALF won another media victory when it broke into labs at the University of California at Riverside. Footage taken at the raid shows a three-week old monkey, named Britches, whose eyes were sewn shut, and who was isolated from his mother and any other contact.²⁰ The continued partnership with PETA made sure that the rest of the American public saw these videos, and understood the rationale behind ALF actions.

These early raids often lead to significant material changes beyond the liberation of the animals rescued from the labs. The exposés, and subsequent public outcry, were directly responsible for the cessation of funding to the University of Pennsylvania Head Injury Lab, and to the cancellation of eight animal research programs at the University of California at Riverside.²¹

This success had a downside, however. As the biomedical establishment began to understand the stakes at issue, security was significantly heightened, making the liberations of the early and mid-80s an increasingly difficult option. With the decrease in actual liberations came the shift towards sabotage, vandalism, and arson. The rationale behind this new strategy was that the industries would never respond to public outcry or ethical arguments, but only to *economic* pressure. Through economic sabotage, the ALF took it upon itself to make animal research as costly as possible. Stallwood argues that this shift drastically changed the sympathetic aura that surrounded the ALF in its early days, shifting its image from Robin Hoods to simple vandals.²² In any event, the ALF soon became well known as the militant, “extremist” faction of the animal rights movement.

¹⁷ In fact, the first U.S. animal liberation probably happened in the Pacific, in Hawaii, where the “Undersea Railroad” released two porpoises from a research lab in 1977. *Id.* at 86.

¹⁸ See, e.g., Vance Lehmkuhl, *Video Killed the Baboon Lab*, PHILADELPHIA CITY PAPER (Sept. 7, 2000), at <http://citypaper.net/articles/090700/cs.cover.side1.shtml>.

¹⁹ *Id.*

²⁰ Steven Best and Anthony J. Nocella II, *Introduction: Behind the Mask: Uncovering the Animal Liberation Front*, in Best and Nocella, *supra* note 4, at 22 [hereinafter *Introduction*].

²¹ *Id.* at 22-23.

²² Stallwood, *supra* note 13, at 85, 87.

III. THE MODERN PRACTICE OF DIRECT ACTION

[M]eat is still murder.
Dairy is still rape.
And I'm still as stupid as anyone,
But I know my mistakes.
—Propagandhi, *Nailing Descartes To The Wall/
(Liquid) Meat Is Still Murder*²³

The original activities of the ALF are still ongoing, strong as ever. Several hundred ALF actions have been reported for each of the past two years in publications like *Bite Back*²⁴ and *No Compromise*,²⁵ with property destruction more common than actual liberations. In addition to these typical ALF actions, two recent developments in the modern practice of direct action deserve special mention: the SHAC campaign and the phenomenon of open rescues.

As mentioned in the introduction, the campaign against Huntingdon Life Sciences (HLS) has been a lightning rod in the debate about direct action, “domestic terrorism,” and vivisection. Arising in the U.K. in the mid-90s and more formally in 1999, the Stop Huntingdon Animal Cruelty (SHAC) campaign has taken ALF-style direct action to a new degree of sophistication. Kevin Jonas, the SHAC USA Campaign Coordinator, lays out the theory and practice of SHAC in *Bricks and Bullhorns*, his essay in *Terrorists or Freedom Fighters?*²⁶ Jonas argues that as successful as ALF actions were in liberating individual animals, their decentralized efforts were scattershot and unfocused.²⁷ As a result, animal exploiters could write off an ALF attack as a one-time inconvenience whose recurrence could be prevented by a bit more security. SHAC grew out of the idea that a continuous, targeted, and militant focus on a single entity, concentrating the full force of direct action, would be far more effective. Setting its sights on HLS, a notorious²⁸ contract animal research organization in the U.K. and U.S., SHAC combined the underground, illegal tactics of the ALF with the aboveground, legal tactics of demonstrations and letter-writing. Rather than hundreds of businesses each suffering a few thousand dollars in property damage, it became HLS suffering tens of thousands of dollars in direct property damage, and millions more in lost contracts and business opportunities. Since the start of the SHAC campaign HLS’s value has collapsed, falling by 90%.²⁹ But this has not let other

²³ PROPAGANDHI, *Nailing Descartes to the Wall/(Liquid) Meat is Still Murder*, on *LESS TALK, MORE ROCK* (Fat Wreck Chords 1996).

²⁴ *Diary of Actions*, *BITE BACK MAGAZINE*, <http://www.directaction.info/news.htm> (last visited Dec. 31, 2004).

²⁵ *NO COMPROMISE MAGAZINE*, <http://www.nocompromise.org>.

²⁶ Kevin Jonas, *Bricks and Bullhorns*, in Best and Nocella, *supra* note 4, at 263 [hereinafter Jonas].

²⁷ *Id.* at 264.

²⁸ Undercover footage taken at HLS shows, among other atrocities, “scientists” punching beagle puppies in the face and dissecting live monkeys. *Cruelty*, SHAC, <http://www.shac.net/MISC/cruelty/cruelty.html> (last visited Dec. 31, 2004). HLS kills, on average, 500 animals every day. *Frequently Asked Questions About Huntingdon Life Sciences*, *INSIDE HLS*, <http://www.insidehls.com/faq.htm> (last visited Dec. 31, 2004).

²⁹ Jonas, *supra* note 25, at 266.

companies off the hook; it is widely accepted, especially within the animal research community, that as goes HLS, so goes vivisection. This is, as Jonas calls it, a “winner-take-all-scenario.”³⁰

Not only has SHAC brought this targeted strategy to direct action, but it has also introduced a savvy knowledge of modern business organization. Understanding that businesses are sustained in large part by a slew of secondary and tertiary businesses like market makers and insurance companies, SHAC has not confined its actions to HLS alone. Companies that contract with HLS to have them test their products are targets, as are HLS’s insurers, investors, and even its cafeteria suppliers.³¹ Jonas says, “SHAC has made it clear that anyone who touches HLS is fair game.”³² All this attention has made HLS something of a “pariah,” to borrow the word used by HLS’s chairman Andrew Baker, and many companies feel that doing business with HLS is quite simply not worth it.³³ Without these supports, HLS has found it impossible to turn a profit, and, according to Jonas, “teeters on the brink of collapse.”³⁴

While SHAC has ratcheted up the militancy and ferocity of direct action, “open rescues” have come to occupy the other end of the direct action spectrum, with a focus on strict non-violence. Karen Davis, the founder and president of United Poultry Concerns, details this new and evolving phenomenon in *Open Rescues: Putting a Face on the Rescuers and on the Rescued*, one of the most compelling and interesting essays in *Terrorists or Freedom Fighters?*³⁵ Open rescuers, like Sarahjane Blum whose open rescue was mentioned in the introduction to this review, break into factory farms where they document abusive conditions and remove as many animals as feasible, placing them in safe and loving homes and sanctuaries. These open rescues differ from traditional ALF actions in three important ways. First, the focus is exclusively on liberations with no property destruction. In fact, some open rescuers have gone so far as to replace the locks they had to break to gain entrance to the factory farm.³⁶ Second, unlike the balaclavas worn by ALF members, open rescuers willingly show their faces, almost always on videotapes shot inside the factory farms. These activists feel that they have nothing to hide, and bravely assert that they are ready and willing to cope with the legal consequences of their actions.³⁷ Third, open rescues function far more self-consciously in the realm of media and public opinion than ALF actions. Open rescuers take extensive documentary footage during the rescues and pass the footage, complete with their unmasked faces, on to the media, and often to the police.³⁸ Davis argues that these videos are usually seen by the public in a much more positive light than ALF videos, since the narrative depictions of open rescue stories are more

³⁰ *Id.* at 267.

³¹ *Id.* at 266.

³² *Id.* at 267.

³³ SHAC’s webpage lists 88 companies that have dropped HLS, and features quotes from financial periodicals and HLS executives conceding the enormous impact of the SHAC campaign. See *A List of All Companies who Have Dumped HLS*, SHAC, <http://www.shac.net/FINANCIAL/dumpedhls.html>.

³⁴ Jonas, *supra* note 25, at 266.

³⁵ Karen Davis, *Open Rescues: Putting a Face on the Rescuers and on the Rescued*, in Best and Nocella, *supra* note 4, at 202 [hereinafter Davis].

³⁶ Stallwood, *supra* note 13, at 89.

³⁷ Davis, *supra* note 34, at 206. I do not intend to imply, as some open rescue advocates seem to do, that clandestine rescues are somehow shameful or cowardly, nor do I understand Davis to make such a characterization. Each form of activism contains its own version of bravery and honesty.

³⁸ *Id.* at 208.

dramatic, more animal-centered, and more personal and empathetic, with the activist's human identity readily visible.³⁹

Open rescuing was introduced to American activists at Davis's UPC conference on direct action in 1999 by Australian activist Patty Mark of the Animal Action Rescue Team.⁴⁰ Conference attendees quickly put the theory into practice, and several groups have conducted open rescues, including Compassionate Action for Animals, Mercy for Animals, and Compassion Over Killing (COK).⁴¹ Davis's essay details the latter group's comprehensive and multi-faceted open rescue strategy. Out of a single open rescue at a major Maryland egg producer, COK created a documentary video (*Hope for the Hopeless*), released an extensive press packet that garnered mostly positive coverage in numerous major national newspapers, held a press conference to expose the factory's atrocities, used the footage in its ongoing vegan outreach programs, and gave eight hens desperately needed veterinary care and new homes.⁴²

Until recently, open rescuers were not prosecuted, since pressing charges would draw media attention to the reasons behind the "burglary," giving animal rights activists a platform to bury the factory farms in bad publicity.⁴³ However, following the prosecution of Blum, all this could change, especially as campaigns like COK's demonstrate the efficacy of open rescues and investigations.

IV. ETHICAL ISSUES IN DIRECT ACTION

Guilty! Free animals from hell;
 Guilty! Your reward is a cell;
 ...To resist is our duty
 when injustice is law.
 —Oi Polloi, *Guilty*⁴⁴

Many, if not most, legally focused animal rights advocates are uncomfortable with direct action.⁴⁵ Best distills their objections to two main arguments: the principled critique and the

³⁹ *Id.* at 206-07, 209-210.

⁴⁰ *Id.* at 205-06.

⁴¹ *Id.* at 207. Each of these groups has a website with more information on their rescues and investigations: COMPASSIONATE ACTION FOR ANIMALS, <http://www.ca4a.org/>; MERCY FOR ANIMALS, <http://www.mercyforanimals.org/>; COMPASSION OVER KILLING, <http://www.cok.net/> (last visited Dec. 31, 2004).

⁴² Davis, *supra* note 34, at 208-09.

⁴³ *Introduction*, *supra* note 19, at 40.

⁴⁴ OI POLLOI, *Guilty*, *on GUILTY* (Ruptured Ambitions 1993).

⁴⁵ The following sections on ethical and tactical considerations will focus more on ALF and SHAC styles of direct action than on open rescues because these are the more complex ones. The proposed justifications in *Terrorists or Freedom Fighters?* for the ALF would apply in even stronger terms to open rescues, since the latter is a milder, less controversial subset of the former. I presume, though cannot empirically prove, that nearly every animal rights advocate supports open rescues that do not involve any property destruction. Even the authors in Best's anthology who come out against ALF direct action readily concede that open rescues pass muster under their conception of legitimate activism. See, e.g., Stallwood, *supra* note 13, at 88; Freeman Wicklund, *Direct Action: Progress, Peril, or Both?*, in Best and Nocella, *supra* note 4, at 248 [hereinafter Wicklund].

pragmatic critique of direct action.⁴⁶ The book's analysis of the principled critique will be explained in this section, and its analysis of the pragmatic critique will be explained in the next section.

The primary thrust of the ethical justification for direct action consists of an initial definition of violence such that property destruction and vandalism are excluded. Best reasons that violence can only be perpetrated against a sentient being, one who can suffer and feel pain, and therefore speaking of violence against property is nonsensical.⁴⁷ Others point out that in over 30 years of ALF actions, not a single person has been killed or injured, while thousands of animals have been rescued and millions of dollars of damage have been inflicted on animal exploitation industries.⁴⁸ Under this definition of violence, property destruction and vandalism are nonviolent activism, and can be justified, despite their illegality.⁴⁹

These authors analogize illegal nonviolent direct action to past social movements who have broken the law in pursuit of higher ideals. Best compares the civil rights movement's combination of illegal direct action and aboveground advocacy to that of the animal rights movement.⁵⁰ In fact, Best claims, "Few things are more American and patriotic" as direct action, since it has been a central part of every major social movement from the American Revolution and the Boston Tea Party, to the Underground Railroad, to the Women's Suffrage movement.⁵¹

Following these analogies, Maxwell Schnurer's provocative essay *At the Gates of Hell: The ALF and the Legacy of Holocaust Resistance* draws similarities between Jewish freedom

⁴⁶ *Introduction*, *supra* note 19, at 27, 37.

⁴⁷ *Id.* at 30-31.

⁴⁸ See, e.g., Rod Coronado, *Direct Actions Speak Louder than Words*, in Best and Nocella, *supra* note 4, at 178-79 [hereinafter Coronado].

⁴⁹ Other authors in the volume are less concerned with attaining a nonviolent label, and seem willing to justify violent activism beyond property destruction. Robin Webb, for example, says, "The arguments presented in favor of inflicting serious injury, even death, upon animal abusers were quite straightforward. . . . [S]hort-term violence may be justifiable in pursuit of a longer-term peace." Robin Webb, *Animal Liberation—By "Whatever Means Necessary,"* in Best and Nocella, *supra* note 4, at 79-80. Ward Churchill, in his foreword to the book, writes, "[T]he drawing of such a figurative line in the tactical sand [between 'legitimate' property damage and 'illegitimate' physical violence] is as arbitrary as that drawn by those who would restrict the range of responses to symbolic gestures." Ward Churchill, *Foreword: Illuminating the Philosophy and Methods of Animal Liberation*, in Best and Nocella, *supra* note 4, at 4. These violence advocates are the minority, however, and most of the volume's authors (at least ostensibly) limit their rationales to direct action that forsakes violence against people. This rationale will, of course, only maintain credibility for as long as direct activists reject physical violence. If Best's contribution to the volume is accurate, the non-violent justifications for the ALF could be replaced by the militant, openly violent philosophies of groups like the Animal Rights Militia, the Justice Department, and the Revolutionary Cells. See Best, *It's War*, *supra* note 5, at 300-01. Interestingly, Rod Coronado, likely the most well-known and effective ALF member, condemns such a move toward violence: "Far from compromising the principles of non-violence, the ALF's actions have and always will be those of a highly moral and disciplined group of compassionate individuals whose efforts would be hypocritical if they ever sanctioned physical violence as our opposition does." Coronado, *supra* note 46, at 183. In other places, however, Coronado rejects nonviolence as ineffective and inappropriate to certain contexts. See, e.g., Rod Coronado, *The High Price of Pacifism*, NO COMPROMISE, Fall 2000, available at <http://www.nocompromise.org/issues/16pacifism.html> (last visited January 2, 2005).

⁵⁰ *Introduction*, *supra* note 19, at 46 (quoting Martin Luther King: "I am only effective as long as there is a shadow on white America of the black man standing behind me with a Molotov cocktail.").

⁵¹ *Id.* at 16.

fighters and the ALF.⁵² Schnurer argues that groups like the ALF and the ZOB (a Jewish Holocaust resistance organization in Nazi Germany) who were willing to intervene, militantly and unapologetically, to fight systems of oppression, served a vital role in “exposing the methods of destruction.”⁵³ Schnurer argues that the ALF serves this essential function by restoring what Ellen Langer calls “mindfulness” and what Carol Adams calls “the absent referent.”⁵⁴ It was these very same operative forms of mindlessness and *objectification* that allowed the average German to be complicit with the Holocaust in much the same way that the average meat-eater or fur-wearer is complicit with the standardized torture of animals. The ALF intervenes in the mindless cultural narrative that portrays animals as willing participants in their own oppression. By tearing away the façade of the animal exploitation industries, Schnurer argues, the ALF reasserts the lived experience of animals.⁵⁵

Schnurer points out that genocidal projects like the Holocaust and zoocidal projects like modern industrial meat production require enormous amounts of bureaucracy: “The responsibility for suffering becomes obscured by the complex process of implementing mass slaughter.”⁵⁶ These bureaucracies function by inducing complicity in the general public, obfuscating the reality of suffering, and blocking compassionate responses. Herein lies the power of direct action, according to Schnurer: “It is at this point that the ALF and the Holocaust resistance movements clash with this system. Their actions expose the mechanisms of oppression and not only make public the hidden secrets, but also strike at the points of weakness. It is this exposure of the clear system of power that enables change to occur.”⁵⁷ Schnurer sees in the ALF’s liberations and property destruction both a pragmatic role and a communicative/symbolic role; by directly interfering with the actions of vivisectionists, furriers, and meat producers, the ALF pragmatically contributes to the destruction of those industries; and by demonstrating the rage, compassion, and urgency of animal activists, the ALF symbolically participates in the cultural dialogue on the value and meaning of animals.⁵⁸

While Schnurer analogizes the ALF to the militant Holocaust resisters, Patrice Jones provides a feminist analysis of and justification for direct action.⁵⁹ Jones’ is one of the book’s most enthralling and multi-perspectival essays. Analyzing such seemingly disparate issues as milk, rape, cockfighting, and domestic violence, Jones points out the continuities in androcentrism and speciesism, and suggests that their destruction will likely involve similar strategies.⁶⁰ She examines the ALF through the lenses of several varieties of feminism, including ecofeminism, anarchy-feminism, and radical feminism noting that the ALF shares with these feminisms a commitment to “embeddedness, embodiment, and embrace,” to anti-hierarchical and cellular social structures, and to a do-it-yourself attitude which recognizes that

⁵² Maxwell Schnurer, *At the Gates of Hell: The ALF and the Legacy of Holocaust Resistance*, in Best and Nocella, *supra* note 4, at 106 [hereinafter Schnurer].

⁵³ *Id.* at 117, 111, 122.

⁵⁴ *Id.* at 108-09.

⁵⁵ *Id.* at 109.

⁵⁶ *Id.* at 117.

⁵⁷ *Id.*

⁵⁸ *Id.* at 113-14.

⁵⁹ Patrice Jones, *Mothers with Monkeywrenches: Feminist Imperatives and the ALF*, in Best and Nocella, *supra* note 4, at 137 [hereinafter Jones].

⁶⁰ *Id.* at 140-41.

the personal is political.⁶¹ Similarly, Jones sees feminist ethics as consistent with ALF actions, so long as those actions are motivated by an ethos of care, consistent with a principled resistance to violence against sentient beings.⁶² Jones expresses her concern that “disaffected and potentially violent young men [might] use the ALF as an excuse to vent their anger in inappropriate ways,” and suggests that activists should “put a feminine face on the ALF.”⁶³ In doing so, the ethical justifications of the ALF would be recalled as a compassionate program of animal liberation, and not simply an aggressive “heroic ethic” that is more preoccupied with masculinist rescue narratives than with effective and moral animal rights activism.⁶⁴

One of the best assets of *Terrorists or Freedom Fighters?* is its diversity of opinion on direct action; it is not simply a mouthpiece for praise of the ALF. Unlike Best, Schnurer, and Jones, several authors criticize the ALF’s modern tactics as both immoral and counter-productive. The pieces written by Kim Stallwood, Tom Regan, and Freeman Wicklund, all brilliant and dedicated animal rights advocates, decry modern ALF tactics as violent and unnecessary.⁶⁵

These authors object to the ALF definition of violence by pointing out that property destruction not only exhibits a violent comportment, but also does indeed cause harm to sentient beings by instilling fear and terror in them. Regan, for instance, points out that firebombing a synagogue is undoubtedly a violent act, even if such an action only technically hurts property.⁶⁶ Similarly, Stallwood criticizes graffiti, vandalism, and indiscriminate property destruction as forms of violence.⁶⁷ While Regan, Stallwood, and Wicklund seem to be against direct action in its most common form, they do not absolutely reject direct action *in toto*. Both Regan and Stallwood set out criteria by which to determine the legitimacy of any given direct action.

Regan is not categorically opposed to violence in every situation. Rather, he seeks to establish certain pre-conditions that should be met before activists resort to violence, including property destruction. Regan concedes that violence may be necessary and justified in certain situations, but differs with some activists regarding in what circumstances such violence is legitimate.⁶⁸ Regan proposes three conditions: (1) the violence used must defend the innocent; (2) nonviolent alternatives must be exhausted; and (3) the violence must be proportional and minimal; it must not be more than is needed to achieve the desired objective of defending the innocent.⁶⁹ According to Regan, most direct action fails to meet these requirements.

⁶¹ *Id.* at 142-45.

⁶² *Id.* at 147-48.

⁶³ *Id.* at 149.

⁶⁴ *Id.* at 151.

⁶⁵ Stallwood, *supra* note 13; Tom Regan, *How to Justify Violence*, in Best and Nocella, *supra* note 4, at 231 [hereinafter Regan]; Wicklund, *supra* note 43.

⁶⁶ Regan, *supra* note 64, at 232-33.

⁶⁷ Stallwood, *supra* note 13, at 89.

⁶⁸ Regan, *supra* note 64, at 231.

⁶⁹ *Id.* at 231-32. It is interesting to note how similar Regan’s test is to the legal tests of strict scrutiny applied in Equal Protection and First Amendment cases. One could say that the ALF (though obviously not a “government”) has a *compelling interest* in defending innocent animals, and that violent direct action is justified when it is *narrowly tailored* to achieving that objective; i.e. it must *substantially advance* the interest in defending the innocent; it must not be *overinclusive* by doing violence to people or property that do not implicate the interest; and it must be the *least “restrictive” alternative*, or in other words, non-violent alternatives must have been exhausted. However, the direct action probably need not worry about being *underinclusive*, as there is no expectation that a small cellular

Specifically, violence is not used only when necessary to rescue innocent lives since. According to Regan's estimate, 98 percent of ALF violence is property destruction unrelated to actual liberations.⁷⁰ Also, Regan expresses serious doubts that these activists have exhausted nonviolent alternatives.⁷¹

Unlike Regan, Stallwood seems to have an absolute principled objection to violence in all cases.⁷² He outlines four core values required for legitimate animal liberation: compassion, truth, *ahimsa* (nonviolence), and "interbeing" (an understanding of interconnectedness).⁷³ According to Stallwood, the majority of ALF and ALF-style direct action fails to meet these criteria, especially the compassion and *ahimsa* prongs.⁷⁴ Stallwood sees ALF actions as motivated by rage and anger rather than compassion, and thinks the militancy of bomb threats, graffiti, home demonstrations, and indiscriminate property destruction violate the core value of *ahimsa*.⁷⁵ As such, these forms of direct action cannot be reconciled with the four core values and are therefore unjustifiable.

Like Stallwood, Wicklund draws heavily on the nonviolent traditions of Gandhi and King, and criticizes ALF actions as overly aggressive since they fail to "refrain from violence of fist, tongue, or heart."⁷⁶ Under Wicklund's view, violence is not simply the act of doing harm to the physical senses of another, but is the comportment of the individual herself towards those others.⁷⁷ While Best's view focuses on the object of violence (property), Wicklund's focuses on the subject of violence (the direct activist herself). In addition to this principled critique of the ALF, Wicklund also criticizes the ALF from a pragmatic angle, as will be discussed in the next section.

Nevertheless, Regan, Stallwood, and Wicklund all hedge their criticisms of modern direct action. Stallwood, for instance, sees open rescues as ideal forms of direct action since they are motivated by *compassion*, shed light on the *truth* of farmed animal conditions, are strictly *non-violent* and involve no property destruction, and are cognizant of *interbeing* and the larger role of peaceful direct action in shifting societal attitudes about animal liberation.⁷⁸ It is also worth

organization could target the entirety of animal exploitation. For the basic outline of strict scrutiny in the First Amendment context, see, e.g., EUGENE VOLOKH, *THE FIRST AMENDMENT* 273 (2001).

⁷⁰ Regan, *supra* note 64, at 234.

⁷¹ *Id.*

⁷² Stallwood, *supra* note 13, at 88.

⁷³ *Id.*

⁷⁴ *Id.* at 89.

⁷⁵ *Id.* Although Anthony Nocella, the anthology's co-editor, evidently does not oppose ALF actions as Stallwood does, he uses similar discourse rooted in the nonviolent tradition. Nocella says:

The essence of performing an act in the name of the ALF is that love must be present in one's heart. . . . [I]t is better to emulate individuals like Jesus, Gandhi, and Cesar Chavez . . . and redirect anger and hatred into a state of love. . . . [I]t is only when all people understand that love will create love, and hate will only create hate, that all will be liberated. . . . [L]ove will light the path to liberation.

Anthony J. Nocella II, *Understanding the ALF: From Critical Analysis to Critical Pedagogy*, in Best and Nocella, *supra* note 4, at 199, 200.

⁷⁶ Wicklund, *supra* note 44, at 242 (quoting King).

⁷⁷ *Id.* at 245.

⁷⁸ Stallwood, *supra* note 13, at 88-89.

noting that Stallwood does not condemn “carefully selected property damage that renders inoperable equipment that is directly used to cause suffering and pain to animals.”⁷⁹

Regan is quick to point out that he does not doubt the “sincerity,” “commitment,” and “courage” of direct activists, and he also reminds us that, though he still disagrees with their actions, “the violence done to things by some [animal rights advocates] . . . is nothing compared to the violence done to feeling creatures by the major animal user industries. A raindrop compared to an ocean.”⁸⁰

Despite Wicklund’s condemnation of non-Gandhian direct action, he ends his essay with a plea for solidarity and dialogue within the animal rights movement.⁸¹ He argues that Gandhian animal rights advocates can take a lesson from militant direct activists by comprehending the ALF’s sense of urgency and using it in their own forms of nonviolent protest.⁸² In exchange, militant direct activists need to borrow the compassionate motivation and media-savvy strengths of some Gandhian activists.⁸³ And according to Wicklund, even absent this cooperation, activists should tolerate diversity within the animal rights movement, lest these internecine disagreements over tactics delay the achievement of animal liberation.⁸⁴

V. TACTICAL ISSUES IN DIRECT ACTION

I don’t give a damn
‘Bout my bad reputation.
—Joan Jett, *Bad Reputation*⁸⁵

The principle objection to the tactical wisdom of direct action argues that, despite whatever ethical defenses justify direct action, such strategies give the animal rights movement a bad image, and hinder the pursuit of animal liberation. Best calls this the pragmatic critique, since it sets aside the ethical questions in favor of a strategic analysis of direct action.⁸⁶

Stallwood and Wicklund, who critique the ALF on ethical grounds, also question the effectiveness of some forms of direct action. Stallwood points out a significant drop in public support for the ALF once it shifted away from liberations and investigations toward property destruction and other threats.⁸⁷ These tactics have allowed the media to frame the issue as a “caring scientific researcher dedicated to saving humanity versus a misanthropic animal activist who cares more about a rat than a baby.”⁸⁸

Wicklund similarly focuses on public perception of direct activists and, citing Courtney Dillard, a professor of rhetoric who has extensively researched the discourse of animal rights

⁷⁹ *Id.* at 89.

⁸⁰ Regan, *supra* note 64, at 235.

⁸¹ Wicklund, *supra* note 44, at 248.

⁸² *Id.*

⁸³ *Id.* at 249.

⁸⁴ *Id.* at 250.

⁸⁵ JOAN JETT, *Bad Reputation*, on *BAD REPUTATION* (Boardwalk Records 1981).

⁸⁶ *Introduction*, *supra* note 19, at 37.

⁸⁷ Stallwood, *supra* note 13, at 83.

⁸⁸ *Id.* at 89.

activists, asserts that the underlying animal rights message is lost as the public's focus is drawn to the simple acts of vandalism, destruction, and extremist rhetoric.⁸⁹ Wicklund also uses the Hegins pigeon hunt protests as illustrative of the pragmatic advantage that Gandhian protests have over militant activism. He notes that when the 1992 hunt was confrontationally protested, the media coverage and the public response focused on the activists rather than the birds, and caused the town of Hegins to dig in its heels and resist pressure to stop the hunt. However, the following year, when protesters adopted a low-key, veterinary rescue approach to the hunt, media coverage focused primarily on the birds (and to the extent the protesters were covered, they were portrayed as compassionate animal lovers seeking to render aid to injured birds). Wicklund argues that this new approach significantly contributed to the shift in public opinion against the hunt, which ended in 1999 following a legal challenge by the Fund for Animals.⁹⁰

In *Defending Agitation and the ALF*, Bruce Friedrich agrees with Wicklund that Gandhian activism works in some contexts, but finds the absolute faith in the universal effectiveness of strategic nonviolence to be "naïve and misguided."⁹¹ He distinguishes the social contexts of Gandhi and King from the current fight for animal liberation by pointing out that those leaders had a higher degree of popular support, with strong numbers of individuals who had a personal stake in fighting against oppression.⁹² Gandhi and King also theorized that a humanistic connection would break the chain of oppression by forcing the oppressors to see themselves in the eyes of the oppressed, and yet no such connection has materialized for animals despite the extreme suffering these animals have endured.⁹³ As such, Friedrich sees the analogies to King and Gandhi as inadequate and imprecise in the animal rights context, and refuses to see strategic nonviolence as the only pragmatic solution.

Friedrich also proposes two pragmatic justifications for the ALF. First, he refutes the assertion that the ALF alienates the public by arguing that such activists in fact "speak to people," since their sense of urgency and heroism is readily understood even by those who do not support animal rights; the ALF resonates with everyday people by drawing on the historical legacy of other liberation tactics such as the Underground Railroad and anti-Nazi activities.⁹⁴ Second, the ALF also serves a moderating role. To the extent that radical direct action pushes the envelope of animal rights further and further, more moderate groups (like People for the Ethical Treatment of Animals, where Friedrich serves as Director of Vegan Outreach) begin to look less extreme. Friedrich argues, "[T]hose who work on the radical fringe push that fringe outward and make others, formerly radical from society's vantage, seem far more mainstream."⁹⁵

"Society's vantage" is undoubtedly filtered through the media, and Karen Dawn's essay *From the Front Lines to the Front Page* provides a much needed analysis of how direct action is covered in the media, adding an indispensable nuance to arguments on both sides regarding the role of direct action in the cultural debate on animal liberation.⁹⁶ Dawn, who has spent years

⁸⁹ Wicklund, *supra* note 44, at 240-41.

⁹⁰ *Id.* at 243-245.

⁹¹ Bruce G. Friedrich, *Defending Agitation and the ALF*, in Best and Nocella, *supra* note 4, at 253, 256.

⁹² *Id.* at 255.

⁹³ *Id.*

⁹⁴ *Id.* at 257.

⁹⁵ *Id.*

⁹⁶ Karen Dawn, *From the Front Line to the Front Page—An Analysis of ALF Media Coverage*, in Best and Nocella, *supra* note 4, at 213.

monitoring and reporting on media coverage of animal rights issues for her DawnWatch website and email alerts, analyzes the role of media in altering public opinion of animal rights and animal rights activists. She argues that too often direct activists disdain media coverage and dismiss it as irrelevant, thereby missing out on an enormous opportunity to bring animal abuse into the spotlight.⁹⁷ She sees the true power of direct action not in terms of the number of animals who are actually liberated from labs or fur farms, since it pales in comparison to the total number of animals killed every second of every day. Rather, Dawn argues, direct action's real power stems from its ability to critically intervene in the daily cultural ignorance of animal suffering by injecting itself into the omnipresent mediascape of modern American social life.⁹⁸

Citing three ALF and SHAC actions (vandalism at a foie gras restaurant, a release at a fur farm, and the bombings at HLS client Chiron), Dawn complicates the simplistic version of the pragmatic critique of direct action by showing how ostensibly bad press may still advance the goal of animal liberation.⁹⁹ For instance, Dawn cites a front-page story in the *San Francisco Chronicle* reporting on the vandalism and personal threats against a foie gras restaurateur. Although the article by no means portrayed the activists in a positive light, it did dedicate significant space to the animal rights concerns that motivated the ALF action. It detailed the cruel production methods by which ducks' livers are fattened to produce foie gras. The direct action not only spurred this significant front-page story but also subsequent letters to the editor decrying the cruelty of foie gras, international media coverage, a subsequent television news story on animal suffering in foie gras production, major national coverage of open rescues at foie gras farms, an anti-foie gras op-ed in the *New York Times*, and ultimately, in Dawn's view, the passage of a law banning the production and sale of foie gras in California.¹⁰⁰ Of course, the ALF by itself cannot claim complete responsibility for these animal rights victories, but if Dawn's analysis is correct, it is fair to say that the ALF vandalism in Sonoma and the subsequent ("bad") press put the issue on the national radar.

Dawn is even able to cast a partially positive spin on one of the most controversial events in the modern history of direct action: the use of explosives in the fall of 2003, at the headquarters of Chiron Corporation, a biotechnology company that uses Huntingdon Life Sciences to test its products on animals. The event was extensively covered in over 100 national newspapers, bringing the debate about vivisection back into public discourse.¹⁰¹

The central thrust of Dawn's article is twofold: on the one hand, opponents of direct action cannot simply categorically dismiss direct action as harmful to the movement without a more detailed and empirical exploration of the effect of such media. On the other hand, proponents of direct action can no longer ignore the role of image and media in shaping public perceptions of the animal rights movement, since it is that very public who must be convinced not to participate in animal cruelty.¹⁰²

⁹⁷ *Id.* at 215.

⁹⁸ *Id.* at 215-16, 227-28.

⁹⁹ *Id.* at 217.

¹⁰⁰ *Id.* at 217-220.

¹⁰¹ *Id.* at 223.

¹⁰² *Id.* at 227-28. Apparently taking Dawn's advice, on December 3, 2004, several aboveground activists opened the Animal Liberation Press Office to articulate and communicate the philosophies and explanations underlying animal rights direct action. Steven Best serves as one of its press officers. See ANIMAL LIBERATION PRESS OFFICE, <http://www.animalliberationpressoffice.org/> (last visited Dec. 31, 2004).

VI. LAWYERS AND DIRECT ACTION

[T]here is nothing unlawful in wearing black hats,
although such apparel may cause apprehension in others.

—*NAACP v. Claiborne Hardware*¹⁰³

The legal animal rights community has not generally paid much attention to direct action, preferring to focus on equally important projects like litigation, legislation, and enforcement of existing laws aimed at eliminating the suffering of animals. There is certainly no fault in such a focus, as these projects are far more suited to a lawyer's training than clandestine lab raids and window smashing. Nevertheless, lawyers who support direct action, as well as those who do not, should be cognizant of the ethical, strategic, and legal issues surrounding the ALF and other animal liberation groups.

Lawyers that do support direct action, including clandestine liberations and open rescues, could use their legal skills to assist activists who have run-ins with the law. These direct activists are outlaws, but everything they do is intricately entangled in the web of law. Every illegal action carries within it the potential for an equal and opposite legal reaction, be it criminal prosecution by the state or civil suits by the animal exploiters. These activists are increasingly likely to need good lawyers who understand militant animal rights struggle, especially if the current trends continue and the state and federal governments escalate their repression of animal rights activists. In their analysis of the Patriot Act, Jason and Jennifer Black warn of the "dire consequences" animal liberationists face in the wake of the post 9/11 expansion of the "domestic terrorist" label.¹⁰⁴ They argue that the linkage of compassionate, pro-animal acts with the heinous events of those like Osama bin Laden "represents the true capricious, unscrupulous, and evil nature of the USA Patriot Act."¹⁰⁵ Similarly, Best details the prevalence of bills and laws at the state and federal levels, such as Texas HB 433, that target activists, noting that the purpose of such laws is "to cripple the animal rights and environmental movements by kneecapping their right to dissent."¹⁰⁶ Some of these bills would define as "domestic terrorism" such nonviolent acts as taking video footage at a factory farm.¹⁰⁷

If the predictions of Black and Black, and Best indeed pan out, the ALF and other activists will need more than overworked public defenders that are unfamiliar with animal rights. If the future of direct action brings such an unprecedented crackdown by the state, urged by the moneyed lobbies of the animal exploitation industries, the animal rights movement could be crippled unless lawyers are there to block the most egregious of these prosecutions. In fact, such scenarios may not be too far away: Best's essay reads like a dystopian novel (he cites George

¹⁰³ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 925 (1982). For images of "black hats" (balaclavas) causing apprehension in others, see *Images*, INDEPENDENT MEDIA, <http://sandiego.indymedia.org/images/2003/05/206163.jpg>, and *5 Beagles*, ARK ANGEL WEB <http://www.arkangelweb.org/barry/alf/5beagles.jpg> (last visited Dec. 31, 2004).

¹⁰⁴ Jason Black and Jennifer Black, *The Rhetorical "Terrorist": Implications of the USA Patriot Act on Animal Liberation*, in Best and Nocella, *supra* note 4, at 289.

¹⁰⁵ *Id.* at 296.

¹⁰⁶ Best, *It's War*, *supra* note 5, at 314.

¹⁰⁷ *Id.* at 315-16.

Orwell and Philip K. Dick¹⁰⁸), and yet it is well-documented with examples of state and corporate repression of animal rights activism already occurring across the country. The prosecutions of the seven SHAC activists for operating a website is only the latest evidence of this. Thankfully, Best himself, despite his frequent anarchist rhetoric, recognizes the role of law in the fight. He says, “If it is not already obvious, the struggle for animal rights is intimately connected to the struggle for human rights—for free speech, freedom of association, freedom from search and seizure, a fair trial, and so on. . . . [N]ow in order to fight for animal rights we have to fight for democracy.”¹⁰⁹ Progressive lawyers in groups like the National Lawyers Guild and the American Civil Liberties Union have spent the last several decades fighting for these very same causes; there is no reason progressive animal rights lawyers cannot also use their legal training to secure these constitutional rights to dissent for militant animal rights activists.

Despite the unfortunate “sell-out” accusations that occasionally are hurled by direct activists against mainstream legally oriented “reformists,” many of the authors in this volume recognize the need to work with professionals to secure animal liberation. Patrice Jones argues that a feminist valuing of cooperation and coordination requires a diversity of approaches, saying:

Mainstream animal advocates need not jump to distance themselves from the ALF and certainly should not find reasons to criticize the ALF in public. Similarly, ALF activists ought not harshly condemn liberationists who include within their work efforts to improve the lives of animals until such time as freedom is achieved.¹¹⁰

Not only might pro-direct action lawyers contribute their legal skills, but it is also conceivable that more than a few lawyers are themselves ALF activists. The cellular structure of the ALF makes membership informal and act-determined. In a “letter from the underground,” an anonymous ALF activist advises people to “[c]ome up with your own plan.”¹¹¹ Any vegetarian or vegan lawyer who has ever swiped a dog from an abusive neighbor, trashed a stack of free circus passes, slipped anti-fur cards into fur coats, or slapped an animal rights sticker on a KFC window could be considered a direct activist. Recall that Ronnie Lee, the founder of the ALF, was reportedly a law student himself.¹¹² And it is probably only a matter of time before a lawyer, a humane officer, or even a judge participates in an open rescue, willing to make a tremendous statement by openly accepting whatever consequences follow from her direct action.

Lawyers that do not support direct action understandably attempt to distance themselves from activists whom they perceive as jeopardizing their credibility. These lawyers should continue their work in attempting to make the legal system responsive to the needs of animals,

¹⁰⁸ *Id.* at 308.

¹⁰⁹ *Id.* at 335.

¹¹⁰ Jones, *supra* note 58, at 151. *See also*, Introduction, *supra* note 19, at 44

(There will never be a homogenous unity or consensus over complex philosophical and tactical issues within the animal advocacy movement, nor will people intent on pursuing one strategy yield to the arguments of others. And so the best one can expect is mutual respect ranging from ... legislative measures ... to ... smashing vivisection labs.)

Of course, this mutual respect cuts both ways: while ALF advocates should avoid deriding legal advocates as “sell-outs,” we legal advocates must also avoid deriding ALF advocates as “terrorists,” “thugs,” or “violent zealots.” Introduction, *supra* note 19, at 43-46.

¹¹¹ Anonymous, *Letters from the Underground, Parts I and II*, in Best and Nocella, *supra* note 4, at 355.

¹¹² Molland, *supra* note 8, at 68.

since it is often the failure of the rule of law that inspires direct activists to turn to criminal strategies.¹¹³ As Nicolas Atwood notes, “Crimes of enormous proportion against animals are commonly ignored by the legal system. . . . [A]nd it is here that the existence of the ALF can be explained.”¹¹⁴ If anti-direct action animal rights lawyers are successful in creating and enforcing animal protective laws, the ALF will become less “necessary.” As John F. Kennedy said, “Those who make peaceful revolution impossible will make violent revolution inevitable.”¹¹⁵ Conversely, those who make peaceful revolution effective will make violent revolution unnecessary. It is therefore the task of lawyers who oppose direct action to make such a peaceful, legal revolution not only possible, but also swift and effective.

These lawyers may even find the state repressing the more traditional forms of protest with which they are more comfortable. Black and Black point out that under one construction of the Patriot Act, PETA could be charged with being an accomplice to animal rights domestic terrorism since it has provided material financial support to the legal defense of arrested ALF activists, or with conspiring to commit such terrorism since it frequently supports undercover investigations at animal enterprises.¹¹⁶ Best also points out that industry front groups like the Center for Consumer Freedom are using the current climate of fear to throw “terrorist” accusations at mainstream groups like the Physicians Committee for Responsible Medicine.¹¹⁷

Even anti-ALF lawyers should be concerned enough to take interest in the issue as the current climate threatens to engulf even legal forms of animal rights activism. Thanks to Best and Nocella, the legal community now has a single resource that lays out the basic arguments for and against direct action, as well as many of the subsidiary concerns.

¹¹³ See, e.g., *Introduction*, *supra* note 19, at 17-18.

¹¹⁴ Nicolas Atwood, *Revolutionary Process and the ALF*, in Best and Nocella, *supra* note 4, at 272.

¹¹⁵ Quoted in Ingrid Newkirk, *Afterword: The ALF: Who, Why, and What?*, in Best and Nocella, *supra* note 4, at 341.

¹¹⁶ Black and Black, *supra* note 103, at 293-94. In November of 2004, the author of this review was told by a police officer at a peaceful anti-fur demonstration outside of a Macy's department store that PETA (whose logo was on signs and literature) was “a terrorist organization” and that the protesters “had better watch out.” Additionally, two separate events co-sponsored by the Stanford Law School Student Animal Legal Defense Fund were staked out by local police officers. The first event, in May of 2004, was a panel discussion on animal research that featured, among others, an animal rights lawyer who has done some defense work for SHAC, though her presence on the panel was not related to direct action. The second event, in November of 2004, was a panel discussion on using the law for animal rights, featuring lawyers and academics who were entirely uninvolved in direct action. In a separate event in December of 2004 at the University of Iowa Law School, Leana Stormont, President of the law school's Student Animal Legal Defense Fund, was publicly chastised by the University President, Vice President of Research, and Provost for an op-ed she wrote criticizing animal research following an ALF liberation of 400 mice and rats at the University. The administration took out a full page ad in the Daily Iowan paper condemning her and emailed their sentiments to over 50,000 people affiliated with the university, despite the fact that her article did not even attempt to defend the action, only to add a voice against vivisection to the campus outrage against the action. E-mail from Leana Stormont, President Iowa Law School Student Animal Legal Defense Fund to ALDF Law Students List (Dec. 30, 2004, 09:28:08 PST) (on file with the author).

¹¹⁷ Best, *It's War*, *supra* note 5, at 320-21.

VII. CONCLUSION

Breakin' rocks in the hot sun,
I fought the law, and the law won.
—The Crickets, *I Fought the Law*¹¹⁸

What would it truly mean for the law to “win” in the context of direct action for animal liberation? There are two possibilities. On the one hand, “the law” (conceptualized as the repressive arm of the state) will win if the efforts of the police and FBI succeed in destroying the lives and reputations of those associated with militant animal rights struggle. The law wins if activists end up “breakin’ rocks in the hot sun,” or otherwise confined or demoralized.

On the other hand, “the law” (conceptualized as the rule of law with a yearning for species equality) might win by *changing*, such that radical direct action is rendered unnecessary. “The law” might win, *because* activists fought it. The underlying assumption of the song *I Fought the Law* is that if the law wins, then fighting it has failed. However, the law can be simultaneously fought *and* used, cautiously and strategically, to improve the situation of animals and to secure animal liberation. The law wins if it is steered toward more ethical and compassionate ends. Often (though not always) that steering is done by activists willing to risk their freedom to defend, by any means necessary, the lives of innocent animals. Many of these activists will readily concede that if the law worked, the animal exploitation industries would be out of business, and the ALF wouldn’t need to vandalize sabotage, or rescue. But Best and Nocella’s volume points out that the ALF will exist for as long as animal abuse exists. As legal animal rights advocates, our task is to make the ALF obsolete, not by decrying them as terrorists or hoodlums, but by securing our shared goal of animal liberation. Only then will we have fought (with) the law, and won.

¹¹⁸ THE CRICKETS, *I Fought the Law*, on IN STYLE WITH THE CRICKETS (Coral Records 1960). The most well known version is THE BOBBY FULLER FOUR, *I Fought the Law*, on I FOUGHT THE LAW (Mustang Records 1966). Punk versions of the song were done by THE CLASH, *I Fought the Law*, on THE CLASH [U.S.] (Epic Records 1979), and DEAD KENNEDYS, *I Fought the Law (and I Won)*, on GIVE ME CONVENIENCE OR GIVE ME DEATH (Alternative Tentacles 1987).

		Summary of Facts	Summary of Holding
<i>Anderson v. Evans</i>	371 F.3d 475 (9 th Cir. 2004).	Animal advocacy groups challenged federal government's approval of quota for whale hunting by Makah Indian Tribe.	The court found that the government violated NEPA by failing to prepare environmental impact statement prior to approving whaling quota and the Marine Mammal Protection Act applied to tribe's proposed whale hunting.
<i>Animal Rights Found. Of Fla. V. Siegel</i>	867 So.2d 451 (Fla. Dist. Ct. App. 2004).	Developer of timeshare development brought action against nonprofit animal rights foundation for tortuous interference with business relationships, invasion of privacy, slander, and libel, and sought injunctive relief, relating to picketing and leafleting opposing animal shows to attract potential timeshare buyers.	Content-neutral provisions of temporary injunction did not satisfy First Amendment requirement of burdening no more speech than necessary to serve significant governmental interest, and Content-based restrictions did not satisfy First Amendment requirement of serving a compelling state interest.
<i>Australians for Animals v. Evans</i>	301 F.Supp.2d 1114 (N.D. Calif. 2004).	Environmental groups brought suit, challenging decision of National Marine Fisheries Service to issue permit, allowing scientist to conduct oceanographic research involving the use of underwater whale-finding sonar on gray whales off the California coast.	NMFS's environmental assessment of project adequately discussed, under NEPA, auditory effects of sonar on gray whales and other marine mammals, potential harm that sonar caused on gray whale migration, and the gray whale population NMFS did not act arbitrarily and capriciously, under NEPA, by not extensively considering possible harm to harbor porpoises in EA mitigation measures considered in EA were adequate NMFS was not required to predict or even precisely identify every possible unknown environmental impact of project in EA NMFS's conclusion that project

			<p>did not warrant preparation of environmental impact statement was not arbitrary and capricious</p> <p>issuance of permit did not violate MMPA.</p>
<i>Cetacean Cmty. V. Bush</i>	386 F.3d 1169 (9 th Cir. 2004).	Suit was brought against government in name of cetacean community of whales, dolphins, and porpoises alleging that proposed deployment of Navy of low frequency active sonar in time of heightened threat violated various environmental statutes.	<p>Animals lacked standing to sue under ESA, and</p> <p>Animals lacked standing to sue under APA, for alleged violations of MMPA and NEPA.</p>
<i>Cold Mountain v. Garber</i>	375 F.3d 884 (9 th Cir. 2004).	Environmental groups brought action against Montana Department of Livestock, USFS, NPS, and various federal officers alleging violation of NEPA, Migratory Bird Treaty Act, APA, and National Forest Management Act.	<p>Environmental groups did not show that prohibited take of bald eagles had occurred,</p> <p>Reinitiation claim was not reviewable by Court of Appeals,</p> <p>USFS took “hard look” required by NEPA before issuing finding of no significant impact and special use permit,</p> <p>Supplemental analysis of special use permit was not required.</p>
<i>Edmondson v. Pearce</i>	91 P.3d 605 (Okla. 2004).	Attorney General sought declaratory relief upholding the constitutionality of statute outlawing cockfighting, after companies and individuals involved in cockfighting obtained a temporary injunction against enforcement.	<p>Supreme Court was entitled to invoke original jurisdiction,</p> <p>Statute did not amount to an uncompensated regulatory takings,</p> <p>Statute did not violate the state or federal constitutional Contract Clause,</p> <p>Statute did not violate state constitutional provision regarding right to life, liberty, and the pursuit of happiness,</p> <p>Statute did not infringe upon right</p>

			to travel between states, and Statute was not unconstitutionally overbroad.
<i>Kennedy v. Byas</i>	867 So.2d 1195 (Fla. Dist. Ct. App. 2004).	Dog owner filed petition for writ of certiorari, seeking review of the transfer of his action for veterinary malpractice from circuit court to county court for failure to satisfy the jurisdictional limits.	Impact rule precluded dog owner from recovering damages for emotional distress.
<i>Kohola v. Nat'l Marine Fisheries Serv.</i>	314 F.Supp.2d 1029 (D. Haw. 2004).	Environmental groups brought action alleging that decision of NMFS to classify Hawaii longline fishery as "category III" fishery violated MMPA.	NMFS had discretion to consider reliability of only available scientific data in classifying fishery.
<i>Like v. Glaze</i>	126 S.W.3d 783 (Mo. Ct. App. 2004).	Pedestrian attacked by dog brought personal injury action against possessor of dog, who was caring for dog at owner's request.	Possessor of dog was not liable for injuries to plaintiff caused by dog.
<i>People v. Arroyo</i>	777 N.Y.S.2d 836 (N.Y. Crim. Ct. 2004).	Defendant, charged under anticruelty statute for failure to provide medical treatment for his dog.	Statutory provision prohibiting depriving animal of "necessary sustenance" was vague as applied to defendant, and Statutory provision prohibiting "unjustifiably" causing pain to animal was vague as applied to defendant.
<i>People v. Fennell</i>	677 N.W.2d 66 (Mich. Ct. App. 2004).	Defendant was convicted in the Circuit Court of nineteen counts of willfully and maliciously torturing or killing animals.	Trial court's refusal to instruct the jury that prosecution was required to show that defendant specifically intended to kill or torture the horses, was proper, As an issue of first impression, portion of animal torture statute relating to killing or torturing an animal is a general intent crime, Trial court's instructions

			<p>sufficiently conveyed required element of malice, and</p> <p>Evidence was sufficient to support conviction.</p>
<i>People v. Garcia</i>	777 N.Y.S.2d 846 (N.Y. Sup. Ct. 2004).	Defendant was convicted, in a bench trial, of numerous assault-related offenses, as well as aggravated cruelty to animals.	Statute was not unconstitutionally vague as applied to defendant accused of killing a boy's pet goldfish by deliberately crushing it under his heel.
<i>Petco Animal Supplies, Inc. v. Schuster</i>	144 S.W.3d 554 (Tex. App. 2004).	Dog-owner brought action against pet store to recover damages allegedly incurred when dog was killed in traffic after escaping from pet groomer.	<p>Dog-owner was not entitled to damages for mental anguish, absent pet store's ill-will, animus or desire to harm her personally,</p> <p>Dog-owner was not entitled to recover counseling expenses,</p> <p>Dog-owner was not entitled to intrinsic value damages,</p> <p>Dog-owner was not entitled to damages for lost wages, and</p> <p>Dog-owner was not entitled to exemplary damages.</p>
<i>Rocky Mountain Animal Def. v. Colo. Div. of Wildlife</i>	100 P.3d 508 (Colo. Ct. App. 2004) (cert. denied Nov. 15, 2004).	Wildlife welfare group sought declaratory judgment, injunction, and mandamus relief relating to constitutional amendment prohibiting inhumane and indiscriminate methods of killing wildlife, insofar as rodent exception, as applied to poisoning prairie dogs, allegedly resulted in incidental poisoning of other wildlife.	<p>Voters did not intend that amendment prohibit poisoning of nontargeted wildlife which was incidental to permissible rodent poisoning,</p> <p>Group was not entitled to mandamus or injunctive relief,</p> <p>Failure to reopen case to admit contested exhibits was not abuse of discretion, and</p> <p>Group was not entitled to costs.</p>
<i>Smaxwell v. Bayard</i>	682 N.W.2d 923 (Wisc.	Child and her parents brought common-law negligence claims against defendant, who owned parcel on which apartment unit	On public policy grounds, common-law liability of landowners and landlords for negligence associated with injuries

	2004).	rented by parents and child was located and who also owned adjacent parcel, alleging child was seriously injured, while on parcel containing apartments, from attack by dogs owned by another tenant and housed, with defendant's permission, on adjacent parcel.	caused by dogs is limited to situations where the landowner or landlord is also the owner or keeper of the dog causing injury, abrogating <i>Patterman v. Patterman</i> , 173 Wis.2d 143, 496 N.W.2d 613.
<i>State v. Anthony</i>	861 A.2d 773 (N.H. 2004).	Following a jury trial, defendant was convicted in the Superior Court of accomplice to negligent cruelty to animals.	Statute governing accomplice liability requires proof that accomplice intended to promote or facilitate another's unlawful or dangerous conduct and that accomplice acted with culpable mental state specified in underlying statute with respect to result, and Crime of accomplice to negligent cruelty to animals exists in New Hampshire.
<i>State v. Coble</i>	593 S.E.2d 109 (N.C. Ct. App. 2004).	Defendant was convicted in the Superior Court of cruelty to animals.	Evidence supported defendant's conviction, Defendant waived for appeal claim that trial court unlawfully precluded defendant from challenging credibility of former deputy with the animal control department, and Jury instructions on admissions was warranted.
<i>State v. Kingsbury</i>	129 S.W.3d 202 (Tex. App. 2004).	State brought criminal action against defendants, alleging animal torture.	As a matter of first impression, the felony offense of "torture" did not include failing to provide necessary food, care, or shelter, and Interpreting felony offense of "torture" to include failing to provide necessary food, care, or shelter defeated statute's categorization of "torture" as a

			more serious crime.
<i>State v. Zawistowski</i>	119 Wash. App. 730, 82 P.3d 698 (Wash. Ct. App. 2004).	Jury returned guilty verdict against two defendants on two charges of second degree animal cruelty with regard to allegedly underweight and malnourished horses. The Superior Court reversed the convictions, finding the evidence insufficient to support jury's verdicts, and the State appealed.	Evidence was sufficient to show that underweight and malnourished horses suffered pain from defendant's failure to provide necessary food.
<i>UFO Chuting of Hawaii, Inc. v. Young</i>	327 F.Supp.2d 1220 (D. Haw. 2004)	Parasail operators brought actions challenging validity of state law banning parasailing in navigable waters.	Statute was preempted by MMPA and ESA did not repeal MMPA's preemption provision.