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by

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TRAUMA, LAW, AND ADVOCACY FOR ANIMALS

TAIMIE L. BRYANT*

Advocates for animals are, like other social justice activists, frequently exposed to images and experiences of violence in the course of trying to change oppressive social attitudes and practices. High doses of exposure to violence can predispose activists to development of post-traumatic stress symptoms, regardless of how strong the activists were prior to exposure. Witnessing, reporting, and attempting to address violence in a socially dismissive context can also result in development of post-traumatic stress symptoms. Indeed, recent medical and social scientific research suggests that society's failure to acknowledge violence is as important as high-dose exposure in setting the stage for the development of post-traumatic stress symptoms. Post-traumatic stress symptoms include preoccupation with intrusive images of the violence the activist seeks to address, increased irritability and anxiety, reduced intellectual flexibility, inability to trust others or work collaboratively, and hypersensitivity to criticism. While activists may think that reducing post-traumatic stress symptoms is selfish and unethical as long as animals suffer to the extent they do, reducing such stress and its potential are actually important for working effectively as an advocate, for building and maintaining a community of advocates, and for reducing socially dismissive attitudes. This Article describes the extent to which law forms the dismissive context in which animals' advocates' claim large scale violence against animals owned and exploited by institutions that provide animal-based consumer goods. After noting particular ways that law and legal advocacy aggravate activists' probability of developing post-traumatic stress symptoms, the Article explores currently undervalued

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legal reform initiatives that could counter-balance traumatizing forms of advocacy and build the social context for addressing violence against animals.

INTRODUCTION

Virgil Butler was an unlikely hero for the animal rights movement. For nine years he killed chickens for Tyson.¹ He and his co-workers killed eighty thousand birds *per shift*, a rate so fast that he could barely think about what he was doing. He took each living, squawking bird, hung the bird upside down by his or her feet, and slit his or her throat. Gravity and the bird's pumping heart would cause the bleed-out that results in the bloodless, packaged chicken flesh that consumers purchase without thinking about its origins as a living, feeling animal.² According to the USDA, more than nine billion birds are killed each year in intensive production and dismemberment facilities.³ Each of those billions of individual animals suffered cruelties of intensive confinement and miserable deaths—just so that he or she could be but one or two meals, digested in a human stomach in a matter of hours.

Making sense of his lengthy run of killing so many birds brought Butler to his computer and brought hundreds of thousands of readers to his accounts.⁴ Some claim it brought Tyson to the promise of more humane

¹ For the source of my account of Virgil Butler and his activism, see Stephanie Simon, *A Killing Floor Chronicle: A Down-and-Out Former Poultry Worker's Online Memoirs of His Gruesome Job Have Electrified Animal-Rights Activists Worldwide*, L.A. TIMES, Dec. 8, 2003, at A1. However, for Virgil Butler's own account, see The Cyberactivist, <http://www.cyberactivist.blogspot.com> (last updated Apr. 8, 2006) or United Poultry Concerns, Clarification on Stunner Usage, http://www.upc-online.org/slaughter/91104_stunner.htm (last updated Sept. 11, 2004) (discussing Butler's blog).

² Some birds are not so lucky as to bleed to death before they are scalded and stripped of their feathers. If a chicken twists away from the stun bath and the knife-wielding throat-cutter, the chicken may continue on the automated dismemberment line while still fully conscious. The USDA includes in its poultry slaughter records the number of so-called "red skins." Jeff Welty reports that in a recent year "at least three million birds were dropped alive and conscious into scalding water." Jeff Welty, *Humane Slaughter Laws in Theory and Practice*, 70 LAW & CONTEMP. PROBS. (forthcoming 2006) (manuscript at 5, on file with the author).

³ See NAT'L AGRIC. STATISTICS SERV., USDA, POULTRY SLAUGHTER: 2005 ANNUAL SUMMARY 2 (2006), <http://usda.mannlib.cornell.edu/reports/nassr/poultry/ppy-bban/pslaan06.pdf> (providing statistics on U.S. poultry slaughter under federal supervision).

⁴ Simon, *supra* note 1, at A1. Butler's accounts were translated into several foreign languages and posted on various websites in addition to his own. Animal advocacy organizations were flooded with e-mails in response to the postings. *Id.*

slaughter.⁵ Butler was haunted by what he had done to the birds. “There is blood everywhere It’s just you and the dying chickens You are ashamed to tell others what you do at night while they are asleep in their beds.”⁶ Butler became a hero of the animal rights movement by breaking through the silence associated with industry (ab)uses of animals, by refuting industry claims that factory-farmed chickens are treated humanely, and by providing information that enabled readers to assess just how much they wanted to continue eating chicken. He is a hero also for his struggle to comprehend why humans do these things to animals, his struggle to understand his shame, and his struggle to communicate these thoughts to others. As he sat alone at his computer, Butler wrote past the potentially silencing horror of the birds’ suffering (“sometimes, you catch one looking at you, eye to eye, and you know it’s terrified”⁷), and he wrote past the dismissive reactions of others (“All my life, people told me, ‘They’re just damn chickens.’”⁸). His story is one of personal trauma and recovery from that trauma. His story is also an example of the potential for being heard. If Tyson’s practices improve, Butler will have made a difference in the deaths of some chickens killed for human consumption and in the lives of some people who engage in such slaughter or learn of the conditions of slaughter.⁹

Virgil Butler did even more than this, however. He participated in shaping the identity of animals’ advocates both to themselves and to those who do not share their views. By writing about his experience of violence, he contributed to an important discourse about what it means to witness and to address violence against animals. A literature of the lived experience of advocates/activists, as has developed in the civil rights, feminist, and gay/lesbian movements,¹⁰ would be helpful to advocates and to historians

⁵ Tyson disagrees that Butler’s accounts had anything to do with it, (ironically) citing the story of the rooster who thinks that his crowing brings up the sun. *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Butler’s type of investigation and exposé could have a huge effect on the processing of animals because, according to the inside cover of the 2005-2006 Tyson Investor Fact Book, Tyson “is the world’s largest processor and marketer of chicken, beef and pork, [and] the second-largest food company in the Fortune 500.” TYSON FOODS, INC., INVESTOR FACT BOOK inside cover (2006), available at http://media.corporate-ir.net/media_files/irol/65/65476/reports/04_05_factbook.pdf. Tyson states that each week it processes 42.5 million chickens, nearly 171,000 heads of beef, and nearly 348,000 pigs. *Id.* at 2.

¹⁰ See generally MINNIE BRUCE PRATT, REBELLION: ESSAYS 1980-1991 (1991); Karen Davis, *Thinking Like a Chicken: Farm Animals and the Feminine Connection*, in ANIMALS AND WOMEN 192-212 (Carol J. Adams & Josephine Donovan eds., 1995); BARBARA DEMING, WE ARE ALL PART OF ONE ANOTHER: A BARBARA DEMING READER 110 (Jane Meyerding ed., 1984); Rita C. Manning, *Caring for Animals* (1992), in BEYOND ANIMAL

who, ultimately, will trace the difficult path animal activists have taken.¹¹ It is a means of building community, building support for the issues at the heart of the movement, and dealing with the massive weight of advocates' accumulated exposure to the suffering of animals.¹²

Measured by the enormous magnitude of what he experienced and translated for others—nine years on the “killing floor,” eighty thousand deaths per shift, “blood everywhere”—Virgil Butler’s situation may seem singular, a type of experience that cannot be represented as in any way typical of the conditions facing other animals’ advocates. However, the essential elements of his experience—the feeling of compassion for other living, sentient creatures, the revulsion at the extreme suffering inflicted on them, the decision to take action to change the situation, and the countless repetitions of, “[t]hey’re just damn chickens,”—reflect the reality of animals’ advocates across every area of concern. Their advocacy may concern animals subjected to individual acts of cruelty, homeless animals killed in animal “shelters,” animals exploited in laboratory testing, or animals intensively confined and dismembered in factory farming. Advocates for animals participate in diverse types of advocacy. They may be volunteers in mainstream humane societies, radical activists who expose and confront exploiters of animals, or members of the legal community, for example.

RIGHTS: A FEMINIST CARING ETHIC FOR THE TREATMENT OF ANIMALS 103-25 (Josephine Donovan & Carol J. Adams eds., 1996); THIS BRIDGE CALLED MY BACK: WRITINGS OF RADICAL WOMEN OF COLOR (Cherrie Moraga & Gloria Anzaldua eds., 2d ed. 1983); LILLIAN SMITH, THE WINNER NAMES THE AGE (Michelle Cliff ed., 1978).

¹¹ There are already some histories of the movement. See generally HAROLD D. GUITHER, ANIMAL RIGHTS: HISTORY AND SCOPE OF A RADICAL SOCIAL MOVEMENT (1998); HELENA SILVERSTEIN, UNLEASHING RIGHTS: LAW, MEANING, AND THE ANIMAL RIGHTS MOVEMENT (1996). However, these books are written on the basis of views and events seen from outside the movement itself. A history based on the reports of people who talk about what it was/is like to be an activist at a particular time in the development of the movement would be very different and necessary in understanding the choice of strategies to overcome obstacles to acceptance of the foundation principle that animal suffering is severe and unconscionable in our society. That is why the development of a literature of the lived experience of activists is so important.

¹² Writing about one’s experience may help individuals process their experiences. For example, according to Lisa S. Beall,

[m]uch of what is written on [posttraumatic stress disorder] relating to war is in the form of self-narrations and testimonies. Most experts agree that the telling of their stories and expression of emotions relating to the trauma experience assists many veterans in recovering from [posttraumatic stress disorder] and proceeding to live healthy and productive lives.

Lisa S. Beall, *Post-Traumatic Stress Disorder: A Bibliographic Essay*, 34 CHOICE, 917, 917-30 (1997), <http://www.lib.auburn.edu/socsci/docs/ptsd.html> (last visited Apr. 9, 2006).

Despite differences in subject matter and type of advocacy, all of these advocates deal with knowledge of massive suffering, just as Virgil Butler did. Like Butler, all of these advocates are committed to reducing animals' suffering. Like Butler's claims, these advocates' claims are generally dismissed by most of society. Indeed, the very legitimacy of defending animals (as compared to defending vulnerable humans) is often challenged. This Article describes and applies some of the recent scholarship in social science, medicine, and psychology that suggests that this is the ideal circumstance for developing or aggravating traumatic stress: witnessing, reporting, and attempting to address violence in a socially dismissive context. Such stress can, in turn, seriously impact the efficacy of advocacy on behalf of victims.

Social justice advocates are often unaware of the potentially negative effects of bearing witness to extreme violence in a dismissive social context. Some of those effects I discuss later in this Article include preoccupation with intrusive images of the violence they seek to address, increased irritability and anxiety, reduced intellectual flexibility, decreased ability to work collaboratively with others, and hypersensitivity to perceived criticism.¹³ Even if advocates are aware of traumatizing effects of advocacy, they may do little or nothing to ameliorate such effects because they do not know how to address the problem or because it seems selfish to

¹³ The medical and psychological literature is replete with descriptions of typical manifestations of post-traumatic stress. See, e.g., Philip A. Saigh & J. Douglas Bremner, *The History of Posttraumatic Stress Disorder*, in POSTTRAUMATIC STRESS DISORDER: A COMPREHENSIVE TEXT 1-17 (Philip A. Saigh and J. Douglas Bremner, eds., 1999) (introducing the history of recognition of post-traumatic stress conditions, including the Diagnostic and Statistical Manual-IV Criteria for post-traumatic stress disorder); ROBERT A. SCHWARZ, TOOLS FOR TRANSFORMING TRAUMA 15-16 (2002) (describing his categories of "maladaptive resolutions" of traumatic events, meaning the influence of trauma on a person's life); PETER A. LEVINE WITH ANN FREDERICK, WAKING THE TIGER: HEALING TRAUMA 146-150 (1997) (describing symptoms of traumatic stress); REBECCA COFFEY, UNSPEAKABLE TRUTHS AND HAPPY ENDINGS: NEW TRAUMA THERAPY 77 (1998); JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY 33-129 (1992) (describing in detail various manifestations of post-traumatic stress). See, in particular, p. 111 where Herman states:

Ordinary interpersonal conflicts may provoke intense anxiety, depression, or rage.

In the mind of the survivor, even minor slights evoke past experiences of callous neglect, and minor hurts evoke past experiences of deliberate cruelty.

Herman is writing at that point specifically about post-traumatic stress responses in the context of previously experienced child abuse, but it is generally recognized that post-traumatic stress symptomology includes extremely problematic interpersonal expectations, interpretations of conduct, and behavior. Drs. Judith Herman, J. Christopher Perry, and Bessel van der Kolk, leaders in the field of trauma studies, found in one study that eighty-one percent of those with borderline personality disorder, which is characterized by many of the same symptoms as post-traumatic stress, were victims of trauma. Perhaps it is not completely coincidental that so many traits are shared. COFFEY, *supra*, at 77.

take care of oneself when other beings are suffering more intensely. Failure to foresee or to mitigate the effects of traumatic exposure to unaddressed violence can have serious consequences not just for advocates themselves, but also for their advocacy and for the animals for whom they advocate.

This Article considers the subject of legal advocacy for animals from the perspective of medical, psychological, and sociological research on the social construction of trauma. I examine aspects of law that create the illusion of protection for animals but which actually empower institutional owners of animals to engage in abusive, painful practices. I also consider legal advocacy strategies from the perspective of whether they aggravate or ameliorate the conditions under which traumatic stress and its harmful after-effects are most likely to develop. Finally, I suggest some currently undervalued legal reform initiatives that could build the social context for addressing violence against animals.

Most of the examples in this Article concern legal advocacy for animals exploited by commercial entities. An increasing number of legal advocates are dedicating a substantial part of their professional and personal lives to addressing the widely spread, widely accepted abuse of animals by institutions that provide food, clothing, and entertainment in American society.¹⁴ Even if it is acknowledged that advocates who directly witness violence against animals can be traumatized by the violence and by socially dismissive attitudes about that violence, it is not as readily acknowledged that legal advocates who are not themselves involved in direct witnessing of violence against animals are also vulnerable to trauma and its residual effects. Legal advocates may witness harm to animals only second-hand, such as by viewing film footage, photographs, artistic renditions, and reading or listening to detailed first-hand accounts. However, the expectation that these advocates are not candidates for severe post-traumatic

¹⁴ Legal advocates who take on cases of malicious, individual cruelty are also exposed to the violence and appalling cruelty directed at animals, but they have more support in this society because that type of cruelty is perceived as "wanton" and "gratuitous." Institutionalized cruelty to animals is less visible and masked with claims that harm to animals that takes place in such facilities is "necessary" or not wanton or egregious. Most consumers of animal products do not know about common industry practices and might well be loathe to admit their participation in those cruel production practices by way of their consumption preferences, if they found out. Acknowledging the intense suffering of animals in agribusiness, for example, would, by rights, lead to a re-examination of one's lifestyle and change in habits of consumption of animal-based products. Those changes are difficult to make, and it is easier to remain ignorant about the extent of harms to animals that occur in agribusiness. Accordingly, activists dedicated to stopping this form of exploitation and cruelty may well encounter less understanding of the need for their advocacy.

effects is based on an outdated notion of psychological trauma and an outdated notion of advocacy. As this Article will describe, research in psychology, social science, and medicine reveals that trauma is much more widespread and arises in far more contexts than was previously recognized.

Even if they are not engaged in activities that involve the direct experience of violence against animals, legal advocates are at risk for traumatic stress because they are exposed to situations in which there is serious disjuncture between the reality of what happens to animals and what this society and its legal system are willing to acknowledge. Any legal advocate who has tried to stop even a small part of institutional abuse of animals has come squarely face-to-face with an unsupportive legal system and an unsupportive society. Our society purports to disdain violence and abuse of animals, and most people may believe (or choose to think) that there are laws adequate to address cruelty to animals. However, most people seem to know little of the violent and cruel practices that produce the animal-based products they consume or that law actually facilitates the use and further development of such violent and cruel practices.¹⁵ Among those who learn of these practices, most may well believe that such practices are actually illegal and that protecting animals is simply a matter of properly invoking existing anti-cruelty statutes. Yet, it is not at all easy to use anti-cruelty statutes to reach institutional (ab)uses of animals. For example, some states explicitly exempt common intensive farmed animal production practices from anti-cruelty statutes, thereby leaving the exploiting industry to define what constitutes "animal cruelty."¹⁶

It is surprising to many, including some members of the legal community itself, that state anti-cruelty statutes and federal laws actually offer little protection of animals exploited by institutions such as research laboratories and factory farms. As described later in more detail, anti-cruelty statutes are used primarily to address individual acts of wanton cruelty against animals such as an individual's brutal beating of a dog. As for institutional inflictions of animal suffering, legal definitions of animals, property, and privacy of property management provide the basis of legal entitlement to abuse animals and to keep secret the extent and means through which such abuse lawfully occurs. The law does not yet contain many means by which institutionalized abuse of animals can be disclosed or

¹⁵ The role of law in facilitating institutional exploitation of animals is reviewed later in this Article. *Infra* Part I.

¹⁶ For a summary of state anti-cruelty statutes and the prevalence of exemptions for farming practices, as well as other exemptions, see PAMELA D. FRASCH ET AL., ANIMAL LAW 601-12 (1st ed. 2000).

addressed. Accordingly, legal advocates frequently find themselves confronting the limits of legal recourse to help animals, navigating extremely narrow windows of opportunity currently available in the law, and coming to terms with the fact that their own profession—law—has facilitated extensive, extreme abuse of animals.

Thus, even though legal advocates for animals may seem to be removed from the fray of actually witnessing institutional cruelty to animals, they must cope with an intense awareness of animals' suffering, while working within a legal system that actually supports industrial privilege to cause animals' suffering. Certainly the law lacks adequate means of addressing cruelty to animals. Legal advocates are not spared the painful effects of advocacy any more than are advocates in other social justice movements who are tormented by the gravity of harm they can only minimally address in a society that refuses to accept that systemic, systematic violence is occurring minute by minute on a large scale. The sources of traumatic exposure are many, and the consequences of long term exposure can be severe.

Part I of this Article examines the role of law in creating the means by which institutionalized (ab)use of animals occurs. Institutions are empowered to cause (and do, in fact, cause) extreme suffering in the animals they legally own, despite the public's normative support for kindness to animals. The public's expectation that animals should be treated kindly is expressed in anti-cruelty statutes enacted in every state in the United States. Nevertheless, for a variety of reasons, that expectation is not realized.

Part II imports insights from research outside of law that directly bear on the confluence of law, the reality of institutionalized animal abuse, the potential for traumatic stress, and the consequences for legal advocacy of failures to address post-traumatic exposure effects. While advocates may think that reducing the effects of trauma is unjustifiably self-centered as long as animals suffer as severely as they do, addressing traumatizing effects of advocacy is a kindness and a benefit to animals, because it can enhance advocates' ability to pursue justice for animals more persuasively and with less risk of advocacy burn-out. Choosing a mix of legal advocacy projects based on their greater or lesser potential for dismissive, traumatizing experiences and effects will advance legal advocates' interest in helping animals by way of their professional expertise in law. Instead of building traumatic stress effects through legal activism and then reducing those effects by some modality outside of law, such as participation in non-legal advocacy or other activities, advocates can use some forms of legal

advocacy to reduce the traumatic effects that other forms of direct advocacy have caused. In this Article, I argue that some forms of legal advocacy can function to reduce traumatic effects by building community support for the cause, which, in turn, redounds to the benefit of animals by reducing the incredulity and demeaning disregard with which direct challenges to industrial (ab)uses of animals are often met.

In Part III, I explore the value of some specific types of legal advocacy that legal advocates may dismiss as too indirect or ineffectual to be of help to animals. I acknowledge that some types of advocacy will not be immediately effective or directly helpful to individual animals but that they may be valuable, nonetheless, because they build a community of understanding and support for the underlying issue. While it may be a truism to state that community and solidarity are important features of any social justice movement, social scientific and medical research suggests concrete ways in which building social consensus about the reality of violence directed against animals can reduce the incidence of trauma among advocates and ameliorate its effects. I suggest legal reform efforts in three areas: (1) pursuit of laws whose primary purpose is to build public awareness of what happens to animals in this society; (2) reform of legal processes to which people who educate the public about animal cruelty are subject; and (3) liberalization of rules that govern the avenues by which legal advocates' voices can be heard in court, irrespective of representing a client on the matter.

I. THE ROLE OF LAW IN HARMING ANIMALS

In their thought-provoking compilation on the cultural basis of trauma, Alexander, Eyerman, Giesen, Smelser, and Sztompka start by noting that traumas are constructed by relevant social others, that "[e]vents are not inherently traumatic. Trauma is a socially mediated attribution."¹⁷ Alexander et. al., are concerned primarily with the extent to which groups' and individuals' experience of violence is not validated by the broader society in which they live. In the case of advocacy for animals there is just such a gap between the reality of violence against animals and what most of society will acknowledge about that violence. There is also a gap between what has been codified, ostensibly for the protection of animals, and the reality of how little legal protection is actually available by way of those laws. Every state has anti-cruelty statutes, and most people seem to think

¹⁷ Jeffrey C. Alexander, *Toward a Theory of Cultural Trauma*, in CULTURAL TRAUMA AND COLLECTIVE IDENTITY 1, 8 (Jeffrey C. Alexander et al. 2004).

that animals should be treated kindly.¹⁸ Even so, anti-cruelty statutes do not usually reach institution-based animal exploitation.¹⁹ In fact, the law actually empowers institutional exploiters of animals to abuse animals. The law's failure to correspond to normative beliefs about animals means that legal advocates for animals will have serious difficulty pursuing their goals and explaining the limitations of law to non-law-trained advocates. Also, it is no small matter for an advocate to realize that his or her own chosen profession, law, operates at such odds with deeply held values.

The law should not be the *source* of violence and harm; the law should *address* violence and harm. Yet, the law harms animals in several ways: through legal definitions of "cruelty," through the legal status of animals as the property of humans, through narrow legal definitions of "animals," through severely limited avenues of monitoring and enforcing animal welfare laws, and through limitations on legislative reform.

A. Legal definitions of "cruelty"

All states have anti-cruelty statutes that prohibit cruel treatment of animals.²⁰ Nevertheless, current legal definitions of "cruelty" allow institutional exploiters of animals to claim that their practices are not "cruel" no matter how excruciatingly painful they may be for the animals.²¹

¹⁸ For a survey of state anti-cruelty statutes see FRASCH ET AL. *supra* note 16. For links to all states' anti-cruelty statutes, see Animal Rights & Pet Law, Megalaw.com, <http://www.megalaw.com/top/animal.php> (last visited Apr. 9, 2006).

¹⁹ See GARY L. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS: YOUR CHILD OR THE DOG? 56-58 (2000) (describing specific exemptions typically applied to anti-cruelty statutes).

²⁰ See *supra* note 16 for citation.

²¹ Individual abusers of animals, including those who work for animal-exploiting industries, can be convicted of cruelty to animals for violence against animals, which, if part of an industry's customary practice, may not result in any legal ramifications at all, depending on the specific state's statutes. For example, in *People v. Sanchez*, 114 Cal. Rptr. 2d 437, 437 (Cal. Ct. App. 2001), the defendant was convicted for grossly neglecting his dog's infected bite wound, but similar failure to treat infections is common among factory farm enterprises. Similarly, while an individual can be convicted for neglecting her dogs such that they develop problems from the filth in which they live, animal-exploiting industries regularly force animals to live in equal, if not worse, conditions. See, e.g., *People v. Reed*, 176 Cal. Rptr. 98 (Cal. App. Dep't Super. Ct. 1981) (describing the conviction of a woman for maintaining an illegal kennel in which hundreds of animals lived in filthy conditions). For a description of factory-farmed animals' living conditions see MATTHEW SCULLY, DOMINION: THE POWER OF MAN, THE SUFFERING OF ANIMALS, AND THE CALL TO MERCY 247-86 (2002).

Institutional exploiters of animals have tremendous power to define what is cruel as to the treatment of animals in their institutions because "[i]n the case of farmed animals, federal law is essentially irrelevant. The Animal Welfare Act, which is the primary piece of federal legislation relating to animal protection and which sets certain basic standards for their care, simply exempts farmed animals, thereby making something of a mockery of its title." David

State anti-cruelty statutes are used for three purposes: (1) to stop individuals from engaging in irrationally violent acts against animals (e.g., setting fire to a neighbor's dog);²² (2) to stop institutional abuses of animals that flow from failures to follow industry standards (e.g., failure to feed livestock);²³ and (3) to stop practices that the state has decided cause more problems than they are worth (e.g., animal fighting).²⁴ Not included are

J. Wolfson & Mariann Sullivan, *Foxes in the Henhouse: Animals, Agribusiness and the Law: A Modern American Fable*, in *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* 205, 207 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004). Further,

[c]ontrary to regulatory schemes generally set up by legislatures to govern industry conduct, criminal anticruelty statutes which govern the farming industry's treatment of animals do not provide for the promulgation of specific regulations to govern animal welfare, and the farming industry is not subject to any sort of regulatory enforcement of farmed-animal welfare standards, does not undergo any inspections to determine whether farmed animals are being afforded appropriate treatment, and is not answerable to any governmental administrative agency (federal or state) on the subject of farmed-animal welfare.

Id. at 209. The same could be said of the situation of animals exploited in scientific and medical laboratories.

Additionally, Francione states:

When we inquire whether our treatment of animals used for food runs afoul of anticruelty laws, we do not ask whether the treatment is "cruel" as we would ordinarily use that term. Instead, we ask whether the treatment facilitates the use of the animal for the intended purpose and increases its marketability. If it does so, then the treatment is, by definition, not "cruel" under the anticruelty laws.

FRANCIONE, *supra* note 19, at 59.

²² See, e.g., *People v. Dunn*, 114 Cal. Rptr. 164, 165 (Cal. Ct. App. 1974) (convicting a defendant who killed several of the neighbor's animals when the animals trespassed on his property). See also *Celinski v. State*, 911 S.W.2d 177, 181-82 (Tex. Ct. App. 1995) (convicting a man for torturing cats by poisoning them and burning them in a microwave oven); *People v. McKnight*, 302 N.W.2d 241, 243-44 (Mich. Ct. App. 1980) (affirming the conviction of a defendant for kicking a dog to death); *People v. Preston*, 300 N.W. 853, 857 (Mich. 1941) (affirming the conviction of a man who willfully and maliciously killed three cows).

²³ See, e.g., *Sanchez*, 114 Cal. Rptr. 2d at 447-48 (Cal. Ct. App. 2001) (convicting a property owner of animal cruelty for leaving a flock of geese, numerous rabbits, ducks and other farm animals unattended, causing many to starve to death); *State v. Zawistowski*, 82 P.3d 698, 701 (Wash. Ct. App. 2004) (finding sufficient evidence that underweight and malnourished horses suffered due to defendants' failure to provide necessary food); *Westfall v. State*, 10 S.W.3d 85, 86 (Tex. Ct. App. 1999) (affirming conviction for intentionally or knowingly torturing cattle by failing to provide nourishing food and care and thereby causing them to die).

²⁴ Cockfighting and dogfighting are two examples. Both involve gambling and the possibility of public disruption without any offsetting public benefit. Those reasons, rather than animal cruelty, have driven prohibition of both. Cockfighting is illegal in forty-eight states and the District of Columbia; forty-one states and the District of Columbia prohibit being a spectator at cockfights. HUMANE SOC'Y OF THE U.S., *COCKFIGHTING: STATE LAWS* (2005), http://www.hsus.org/web-files/PDF/Cockfighting_StateLaws_citations_June05.pdf. Ten states go so far as to prohibit the possession of cockfighting implements. *Id.* Dogfighting

those practices that animal-exploiting enterprises follow as a matter of industry custom. If an animal enterprise claims that its standard practices are “necessary” for the purpose of turning animals into things for us to consume, then their “necessity” obliterates legal claims that those practices are “cruel.”²⁵ Industry claims that it is only engaged in producing valuable products for human consumption and that there is no specific intent to hurt animals.²⁶ As long as intentionality and necessity are bound up together in law, as animal-exploiting enterprises would have them bound,

is illegal in all fifty states and the District of Columbia, and the interstate transportation of dogs for fighting purposes is prohibited by the federal Animal Welfare Act. Forty-eight states and the District of Columbia have made dogfighting a felony offense, forty-seven states and the District of Columbia prohibit the possession of dogs for fighting, and forty-eight states and the District of Columbia prohibit being a spectator at a dogfight. HUMANE SOC’Y OF THE U.S., DOGFIGHTING: STATE LAWS (2004), http://files.hsus.org/web-files/PDF/dogfighting_statelaws.pdf.

²⁵ See GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 142-44 (1995) (discussing inadequacies in current animal cruelty laws because of exemptions for industries due to conceptions of “necessity”). The group Farm Sanctuary has also commented on this topic:

While consumer and industry attitudes are beginning to change in the U.S., legal protection remains grossly inadequate, and animal suffering abounds. Farm animals are specifically excluded from the federal Animal Welfare Act and from most state anti-cruelty laws. Consequently, agribusiness can treat living animals as commodities, subjecting them to grossly inhumane conditions with impunity.

FARM SANCTUARY, LIFE BEHIND BARS . . . AN INTRODUCTION TO FACTORY FARMING 3 (2002), http://www.farmsanctuary.org/publications/LBB_new_booklet2.pdf.

Specifically, twenty-nine states have enacted laws that create a legal realm whereby certain acts, no matter how cruel, are outside the reach of anti-cruelty statutes as long as the acts are deemed “accepted,” “common,” “customary,” or “normal” farming practices. See Wolfson & Sullivan, *supra* note 21, at 212 & 228 n.20 (listing individual states). These statutes have given the farming community the power to define cruelty to animals in its care. Moreover, specific animals—poultry—have been excluded altogether from the federal Humane Methods of Slaughter Act, which purports to prohibit cruel slaughtering practices, and from state anti-cruelty slaughter provisions as well. This enables industry to engage in cruel practices while, nevertheless, claiming to be in compliance with laws enacted to prohibit cruelty. *Id.* at 215.

²⁶ For example, when factory farmers debeak chickens or cut off the tails of pigs, they claim that it is for the animals’ own protection from each other, since living in intensive confinement can cause chickens to peck at each other or pigs to chew on each others’ tails. See PETER SINGER, ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS 101-04, 121 (2d ed. 1990) (documenting the conditions of farm animals and the motivations of farmers). In addition to undercover footage that reveals the continuation of these practices there is also a nationally circulated documentary film, PEACEABLE KINGDOM (Tribe of Heart 2004), which was filmed at Farm Sanctuary in Watkins Glen, New York, various Northeastern slaughterhouses and stockyards, and an Ohio egg farm. The documentary shows sick animals, piles of dead animals, and the plight of downed cattle and swine, as well as interviews with ex-farmers and ex-ranchers, all of which reveal the continuity of these practices and explanations for these practices.

institutionalized animal suffering will not be addressed by the law.

Consider the situation of only one group of factory-farmed animals: female chickens raised and kept only for the eggs they produce.²⁷ Commercial egg producers grind up living but unwanted male chicks, burn or cut hens' beaks, house those hens in wire cages that deform their feet, crowd the hens in cages that don't permit them to spread their wings or turn around with ease, deny the hens access to dirt to scratch in or nests to lay eggs in, and then starve these birds in order to get one more burst of egg-laying capacity out of the birds.²⁸ Yet under legal standards that allow them, as industry participants, to decide what is in the best interest of their industry, these egg producers have done nothing "cruel." And it doesn't stop there; no state or federal law provides that these animals at the end of their egg-productive years—these so-called "spent hens"—be given a humane death.²⁹ They may be gassed, burned, buried alive, or killed by any

²⁷ For an account of the treatment of laying hens see KAREN DAVIS, PRISONED CHICKENS, POISONED EGGS: AN INSIDE LOOK AT THE MODERN POULTRY INDUSTRY, 52-53 (1996).

It is difficult to convey to anyone who has not witnessed it directly the treatment of the laying hen in the 20th century. . . . [R]ows upon rows of birds, with their mutilated beaks, in the small cages, are "like a glimpse into an Inferno as terrible in its own way as any of the circles of Dante's hell."

Id. (quoting PAGE SMITH & CHARLES DANIEL, THE CHICKEN BOOK 287 (2000)). The same book quotes a student describing her tour of an egg farm: "The chickens were without any neck feathers and their necks were covered with blisters. Their wings were bare with an occasional half feather extended from them. The second cage I looked at contained a dead purple, featherless carcass on the bottom of the cage." *Id.* at 53.

²⁸ In 1975, Peter Singer recounted industry practices, as reported in industries' own journals, in his famous book *Animal Liberation*. His 1990 revision of *Animal Liberation*, SINGER, *supra* note 26, at 95-159, reports those same practices. "Sadly, as far as the animals are concerned, there has been very little improvement since the first edition of this book was published fifteen years ago." *Id.* at 141. Industry has not been required to change those practices, except with respect to specific contracts with retailers such as the contractual arrangement between McDonald's and its suppliers. McDonald's description of its requirements of egg suppliers is available at McDonald's, Responsible Purchasing, <http://www.rmhc.org/usa/good/products.html> (last visited Apr. 9, 2006).

²⁹ "Spent hens," which are put to death, have no protection as to their slaughter method. The federal Humane Methods of Slaughter Act, 7 U.S.C. §§ 1901-1907 (2000 & Supp. III 2003), only includes cattle, horses, mules, sheep, swine and other livestock. The Downed Animal Protection Act, which includes chickens, was stripped as an amendment from the agriculture appropriations bill (Farm Security and Rural Investment Act of 2002, H.R. 2646, 107th Cong. (2001)) and defeated as such in 2003. See 148 CONG. REC. S3979, 4032 (daily ed. May 8, 2002) (statement of Sen. Leahy); Frederic J. Frommer, *Dairy Groups Spent Liberally on Lobbying*, BISMARCK TRIB. (N.D.), June 9, 2002, at 3C (discussing stripping of downed animal amendment from farm bill). It is now a stand-alone bill and is making its way again through Congress. H.R. 2519, 108th Cong. (2003) (introduced June 19, 2003) and S. 1298, 108th Cong. (2003). In California, for example, CAL. CODE REGS. tit. 3, § 1245.1

expedient cost-saving method, with complete legal silence as to the animals' suffering. Treating animals such as egg-laying chickens as if they are fungible, disposable, unfeeling egg-producing machines, results in enormously painful conditions of life and death for these birds. Yet, the law does not identify as "cruel" the practices that directly cause their suffering. If the suffering of these hens is deemed "necessary" for the eggs they supply to humans, then that suffering simply doesn't count in legal terms, nor does the suffering of the humans who care about that suffering.

While a primary job of legal advocates for animals should be to change the legal definition of "cruelty" so that it matches the reality of animal suffering,³⁰ doing so means taking on politically and economically powerful industries. It also means subjecting oneself to many experiences that will exacerbate trauma resulting from the experience of violence itself, as I will describe later with respect to the specific example of legislation to ban foie gras production and sales.

B. Animals as the lawful property of humans

Institutions that exploit animals are lawfully allowed to manipulate, to modify, and to destroy their animals as they choose because they own these animals just as they own the other means by which they produce economic goods.³¹ Occasionally a legal distinction is made that companion animals are more than mere property,³² but commercial animals remain fully in the

(2006), specifically states "[a]ll slaughter of poultry, with the exception of 'spent hens' and 'small game birds' shall be performed in accordance with approved methods of humane poultry slaughter" (emphasis added). In 2005, California Assembly member Lori Saldana introduced the Farmed Animal Reform Act (AB 1587), which would "provide, notwithstanding any provision of law, that it is unlawful to kill or to attempt to kill any cow or bull, calf, horse, mule, sheep, swine, goat, fallow deer, or poultry by burning, burying, grinding, drowning, rapid freezing, or suffocation." The bill died in Committee in January of 2006. AB 1587 Assembly Bill, http://www.leginfo.ca.gov/pub/bill/asm/ab_1551-1600/ab_1587_bill_20060131_history.html (last visited Apr. 9, 2006).

³⁰ This might well mean outlawing all animal exploitation. Darian M. Ibrahim argues that anti-cruelty statutes will remain ineffective as long as they fail to cover institutional exploitation of animals. Darian M. Ibrahim, *The Anticruelty Statute: A Study in Animal Welfare*, 1 J. Animal L. & Ethics 175 (2006).

³¹ See FRANCIONE, *supra* note 25, at 15-116 (discussing the relation between animals as property and their economic manipulation by humans). See also SCULLY, *supra* note 21, at 127 ("They [the factory farmers] view the sow as a machine. It's not a machine. It's an animal, and it needs care." (quoting Iowa hog farmer Larry Ginter) (alteration in original)). Virgil Butler, a former employee of Tyson Foods, was fired after he publicly exposed the cruel practices of Tyson Foods in its slaughterhouses. Tyson Foods called Mr. Butler "a disgruntled worker who invented tales of slaughterhouse horror." Simon, *supra* note 1, at A1.

³² See, e.g., David Favre, *Equitable Self-Ownership for Animals*, 50 DUKE L.J. 473

realm of an owner's rights to use them in accordance with industry standards for the production of animal-based consumption goods. Because these industries are under no obligation to reveal their methods of production, the public has little way of knowing that they are consuming products that involve tremendous animal suffering. Even worse, the public has little chance of discovering the truth. The law confers broad rights on private property owners and private businesses to exclude uninvited people who want to find out how animals are treated.³³ And, needless to say, invitations are rarely extended. Consumers have shown, through their willingness to pay more for ostensibly less cruelly produced animal-based products, that information about how animals are treated is relevant.³⁴ Yet,

(2000) (discussing a proposed alternative to the classification of animals as pure property); Thomas G. Kelch, *Toward A Non-Property Status for Animals*, 6 N.Y.U. ENVTL. L.J. 531 (1998) (advocating a new status for animals as deserving of rights); William C. Root, Note, "Man's Best Friend:" Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages Recoverable for Their Wrongful Death or Injury, 47 VILL. L. REV. 423 (2002) (reviewing the legal classification of pets); William Glaberson, *Legal Pioneers Seek to Raise Lowly Status of Animals*, N.Y. TIMES, Aug. 18, 1999, at A1 (discussing the creation of a new field of animal law aimed at fighting the principle that animals are mere property).

³³

In the early 20th century, when Upton Sinclair wrote *The Jungle*, packinghouses were very proud of their slaughtering techniques and would offer guided tours for the public to show off the new technology. By the end of the 20th century, that is no longer the case. The public is not welcome. Slaughterhouses, especially the larger ones, are guarded like military compounds, and it is almost impossible to gain access. . . . There were times when I made an official appointment months in advance, only to arrive and be denied admission. The use of a camera was usually forbidden, and video cameras were out of the question.

SUE COE, DEAD MEAT v (1995). There is evidence that insiders are silenced as well. Gail Eisnitz, an investigative reporter who wrote an exposé of slaughterhouse practices, wrote that Timothy Walker, a former USDA employee, was fired by the USDA for reporting to Eisnitz information about the USDA and the U.S. meat production industry. GAIL A. EISNITZ, SLAUGHTERHOUSE: THE SHOCKING STORY OF GREED, NEGLECT, AND INHUMANE TREATMENT INSIDE THE U.S. MEAT INDUSTRY 47 (1997). See also Simon, *supra* note 1, at A1 (describing how former Tyson Foods employee Virgil Butler was fired for exposing the truth about the company's inhumane slaughter practices).

³⁴ Americans seem to have some inkling of the need to protect factory-farmed animals. According to a 2003 Gallup Poll, "[a] clear majority [of Americans] . . . favors strict laws concerning the treatment of farm animals." David W. Moore, Public Lukewarm on Animal Rights, Gallup Poll News Service, May 21, 2003, LEXIS, All News File. In his article "Will Meat Go the Way of Fox Hunting?", William F. Buckley recounts a conversation with a British friend who predicts that when what happens in slaughterhouses is noticed, "there will be a serious movement against the eating of meat." William F. Buckley, Jr., *Will Meat Go the Way of Fox Hunting?*, HOUSTON CHRON., Mar. 5, 1998, quoted in SCULLY, *supra* note 21, at 290.

At the very least, providers of animal-based products may be leading the way to

current protections of legal owners of commercially exploited animals cause consumers to rely solely on those owners' representations about animal treatment or, in rare cases, on illegally obtained information from "undercover" animal protection organizations. One has to break the law just to find out what is going on.

A case in point is the effort of Compassion Over Killing (COK) to stop United Egg Producers from certifying eggs as "Animal Care Certified" when, in fact, laying hens producing "certified" eggs may be treated no more humanely than are laying hens producing uncertified eggs.³⁵ The United Egg Producers website suggested that certification involved site inspections to insure that laying hens were treated humanely,³⁶ while COK's research strongly suggested that no such site inspections were taking place.³⁷ How is the consumer to know how animals are treated and what

consumer sensitivity on this issue. In addition to the example of McDonald's contractual arrangements with egg suppliers regarding more humane treatments standards (see *supra* note 28), an example of this is Whole Foods Markets. Its CEO, John Mackey, became a vegan after researching factory farming conditions in the United States. Mr. Mackey also began changing Whole Foods Markets in the direction of using somewhat more humanely produced meat and poultry.

Mackey's new determination to raise Whole Foods' standards for animal care . . . may rock the cattle, pork, and poultry industries. After six months of meetings, Whole Foods settled on rules for ducks, and this summer will begin setting standards for pig raising. And Mackey believes Americans will soon shun factory farms that raise and slaughter 9 billion animals a year as if they were protein products, not creatures.

Charles Fishman, *The Anarchist's Cookbook*, FAST COMPANY, July 2004, at 70, <http://www.fastcompany.com/magazine/84/wholefoods.html>. "Right now," he says, "Americans have to pretend factory farms don't exist. They turn their eyes away, because there's no alternative, there's no choice." Once there is a choice, he says, we will allow ourselves to be outraged." *Id.* Whole Foods offers organic meat and poultry at higher prices than supermarkets and sells very large amounts of these foods. *Id.* Furthermore, there are organic meat and poultry products available by mail order. For example, Organic Valley Farms in Oregon markets its turkeys and chickens as "free-range" and as having full access to the outdoors. They also claim that their pigs are unconfined and bedded on thick straw. Organic Valley, *Pioneers in Organic Meat!*, <http://www.organicvalley.coop> (follow "Products and Recipes"; "Meats" hyperlinks) (last visited Apr. 9, 2006). Diamond Organics similarly touts humanely produced beef. Diamond Organics, http://www.diamondorganics.com/ShowView/prod_detail_list/56 (last visited Apr. 9, 2006).

³⁵ See Compassion Over Killing, "Animal Care Certified" Eggs, <http://www.cok.net/camp/acc> (last visited Apr. 9, 2006) (describing how "hens who were laying 'Animal Care Certified' eggs were still subject to abuses"); see also Compassion over Killing, Eggscam.com, <http://www.eggscam.com> (last visited Mar. 27, 2006) (reporting on the "Animal Care Certified" controversy).

³⁶ See United Egg Producers, United Egg Producers Certified, <http://www.animalcarecertified.com> (last visited Apr. 9, 2006) ("[W]e care about the welfare of our hens. This care provides our customers with the safest . . . eggs in the world.").

³⁷ See Compassion Over Killing, COK Exposes Maryland Egg Industry,

certification does or does not mean when egg producers control information about certification and are allowed to prevent outsiders from inspecting their hens? COK engaged in extensive undercover investigation just to document conditions. According to a report by the animal advocacy group United Poultry Concerns:

COK's two year campaign to expose the truth behind the "Animal Care Certified" logo has included undercover investigations inside certified farms, media exposes [sic], consumer polls and outreach, petitions [filed with the Better Business Bureau and the Federal Trade Commission], as well as the filing of a lawsuit in the District of Columbia Superior Court against two retailers and an egg producer for their continued use of the misleading logo.³⁸

These were extensive, expensive pursuits because egg producers can legally deny access to their private property and then claim whatever they wish about the conditions in which their laying hens are kept.

C. Legal definitions of "animals"

The law also operates deceptively when statutes purport to protect "animals" but exclude the vast majority of animals in the definition of "animals." For example, birds, mice, and rats, which make up ninety-five percent of the animals used in laboratory research, are excluded from the federal Animal Welfare Act (the AWA), which establishes humane caging standards in research labs.³⁹ Moreover, the actual protections accorded to the animals are as limited as the definition of "animals" covered by the Act.⁴⁰ The AWA does not affect research design in any way, and even its

<http://www.cok.net/camp/inv/mdefi/index.php> (last visited Apr. 9, 2006) ("[T]he Better Business Bureau deemed the ACC logo misleading because it conveys to consumers a false message of humane animal care").

³⁸ Press Release, United Poultry Concerns, Federal Trade Commission Announces End to Misleading Egg Logo (Oct. 3, 2005), http://www.upc-online.org/battery_hens/10305egglogo.html; See also Alexei Barrionuevo, *Egg Producers Relent on Industry Seal*, N.Y. TIMES, Oct. 4, 2005, at C18 ("[T]he old [Animal Care Certified] label 'implied that the animals were treated humanely, when they are not'" (quoting Erica Meier, Executive Director of Compassion Over Killing)).

³⁹ See 9 C.F.R. § 1.1 (2004) (Excluding birds, rats, and mice from the definition of "animals" for purposes of the Animal Welfare Act). For other legal definitions of "animal" see JORDAN CURNUTT, ANIMALS AND THE LAW: A SOURCEBOOK 57, 69, 73-74, 163, 169, 207, 443, 448, 455 (2001).

⁴⁰ See 7 U.S.C. § 2132(g) (2000) (defining "animal" to include only specified species under certain conditions, excluding farm animals). The Animal Welfare Act requires minimal animal care in housing and transportation, if the research does not require inhumane treatment for the purpose of the scientist's particular research project. In other words, if a researcher states that inhumane treatment is a necessary part of the research design, it is permitted under the Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (2000); see also CURNUTT, *supra* note 39, at

husbandry requirements can be overridden if a scientist states that doing so is necessary for a research project.⁴¹

By contrast, when it comes to the interests of those who would exploit animals, the definition of "animal" is very broad. Under the federal Animal Enterprise Protection Act (the AEPA), any enterprise that uses any kind of animal whatsoever is given federal as well as state protection from personal injury and property damage caused by animals' advocates' disruption or attempted disruption of the enterprise.⁴² Investigations are handled by the FBI, which may supplement state law enforcement efforts triggered by analogous state laws. Moreover, the protection the AEPA affords animal (ab)users by way of penalties against trespassing animals' advocates is very broad.⁴³ In other words, the law goes to great lengths through overlapping state and federal law to penalize those who disrupt animal enterprises, but the law does next to nothing to prevent the egregious suffering of the animals behind those locked doors, despite the fact that the public supports kind treatment of animals.

While imbalance may be a natural part of the evolution of law, such extreme imbalance should not be. If anything, the situation is growing more imbalanced. In October of 2005, Senator Inhofe introduced legislation to amend the AEPA to include more types of offenses, more types of animal

441-449 (criticizing the Animal Welfare Act of 1970 for its failure to adequately protect animals from abuse).

⁴¹ See 7 U.S.C. § 2143(a)(3)(E) (2000) (providing that exceptions may be made when "specified by research protocol" and explained in a report).

⁴² See 18 U.S.C. § 43(a)-(b) (2000) (making it a crime to intentionally cause "physical disruption to the functioning of an animal enterprise"). Under sub-section (d), an animal enterprise is defined as "a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or any fair or similar event intended to advance agricultural arts and sciences." 18 U.S.C. § 43(d) (2000); see also CURNUTT, *supra* note 39, at 510-16 (describing and analyzing the Animal Enterprise Protection Act of 1992 and its parallels in state laws).

⁴³ An individual convicted under this act of causing no more than ten thousand dollars in economic damage must pay a fine and/or serve up to six months in prison, in addition to possible economic restitution to the animal enterprise she disrupted. 18 U.S.C. § 43(b)(1) (Supp. III 2003). For economic damage exceeding ten thousand dollars, the prison sentence may be up to three years. 18 U.S.C. § 43(b)(2) (Supp. III 2003). If an individual is seriously injured as a result of disruption of the animal enterprise, the offender may face up to twenty years in prison, 18 U.S.C. § 43(b)(3) (Supp. III 2003), while one who causes a human death while violating the act may be "imprisoned for life or for any term of years." 18 U.S.C. § 43(b)(4) (Supp. III 2003). Amendments proposed on October 27, 2005, would provide for greater penalties, including the possibility of the death penalty in the event that an offender under the Act causes the death of someone as a result of committing an offense under the Act; the Act also provides that the law does not preempt state law, as for example, in the case of a state that does not allow execution as a penalty. S. 1926, 109th Cong. § 2 (2005).

enterprises, and more penalties.⁴⁴ There is more activity at the state level as well. For example, Missouri's legislature is considering Senate Bill No. 615, which would make even the dissemination of pictures of animals in covered "facilities" illegal under "The Animal Agricultural Research and Production Facilities Protection Act."⁴⁵

D. Legal authority to monitor and to enforce animal welfare

Animals' advocates have few opportunities to participate in the formation of policy or implementation of regulations that concern animals held in animal-exploiting enterprises. For example, the AWA's minimal husbandry requirements are enforceable only by the USDA's Animal and Plant Health Inspection Service (APHIS), which has few inspectors and takes little action to address violations.⁴⁶ The AWA requires animal laboratories to have Institutional Animal Care and Use Committees,⁴⁷ but animal advocacy groups or individual animals' advocates are not required or, in most cases, allowed to serve.⁴⁸ Similarly, the Humane Slaughter Act, which applies only to some animals and not to others, gives inspection and enforcement rights only to the USDA.⁴⁹ Yet, USDA veterinarians,

⁴⁴ Senate Bill 1926 provides for extension of the AEPA to include acts of intimidation and harassment, increased imprisonment terms in the event of property damage in excess of one hundred thousand dollars, the possibility of the death penalty if the offense causes the death of another person, and extension of the definition of "animal enterprises" to include animal shelters, pet stores, breeders, and furriers. S. 1926, 109th Cong. § 2 (2005).

⁴⁵ S. 615, 93d Gen. Assem., 2d Reg. Sess. (Mo. 2005).

⁴⁶ The Animal and Plant Health Inspection Service (APHIS) is responsible for protecting and promoting U.S. agricultural health, administering the Animal Welfare Act, and carrying out wildlife damage management activities. See United States Department of Agriculture, Animal and Plant Health Inspection Service, <http://www.aphis.usda.gov> (last modified Apr. 14, 2006) (explaining what APHIS does and providing information to the public about APHIS operations).

⁴⁷ 7 U.S.C. § 2143(b) (2000).

⁴⁸ Cf. 7 U.S.C. § 2143(b)(1)(B)(i-iii) (2000) (requiring at least one member of each committee to be independent from the research institution). Animals' advocates are not disallowed per se. Rather, it is the research institution that usually will not allow animal activists on their Animal Use and Care Committees. Advocates have tried different strategies to gain access to these settings in which policy is set and research protocols are reviewed. See F. BARBARA ORLANDS ET AL., *THE HUMAN USE OF ANIMALS: CASE STUDIES IN ETHICAL CHOICE* 103-17 (1998) (discussing the rights of animals' advocates to sit on university oversight committees).

⁴⁹ The responsible agency is the Food Safety and Inspection Service (FSIS) of the USDA. There are now specialists stationed in each of FSIS' fifteen district offices serving as primary contacts. These experts are veterinarians. See Statement by Dr. Garry L. McKee, Administrator, Food Safety and Inspection Service, Feb. 2, 2004, at <http://www.fsis.usda.gov/oa/news/2004/mckee020204.htm> (last visited Apr. 9, 2006) (describing

inspectors, and supervisors may be reluctant to point out problems with industry compliance if the only outcome of their doing so is to compromise their chances of lucrative industry positions when they leave the USDA.⁵⁰ While much has been written about the negative impact on animals of these entities' exclusive rights to monitor and to enforce what few laws we have,⁵¹ there is little recognition of the impact on advocates of their own

the District Veterinary Medical Specialist (DVMS) position). There are also seventy-six hundred food safety inspectors nationwide. USDA, *Food Safety*, in AGRICULTURE FACTBOOK 2001-2002, <http://www.usda.gov/factbook/chapter9.htm> (last visited Apr. 9, 2006) ("More than 7,600 FSIS inspectors carry out the inspection laws in over 6,500 privately owned meat, poultry, egg product, and other slaughtering or processing plants in the United States and U.S. Territories.").

⁵⁰ See EISNITZ, *supra* note 33, at 209-10 ("Some of the vets . . . go easy on the plants because they know that after they leave the USDA they can get a high-paying job as an industry consultant"). Dr. Friedlander, a USDA veterinarian interviewed by Eisnitz, was able to name fourteen former USDA executives who moved into industry positions after leaving the USDA. *Id.* at 210-211.

⁵¹ Having documented the problem, there are several ways that large groups are getting around it. The first way is to do undercover investigations followed by legislative proposals to constrain industry exploiters of animals. An example is that of Viva!, Farm Sanctuary, and the Association of Veterinarians for Animal Rights' use of investigations of foie gras production methods in order to support a legislative ban on forcible feeding of ducks and geese. See *infra* Part I.E.

Another approach is to use undercover investigations in order to file petitions seeking compliance with existing law. The Humane Farming Association (HFA), the largest group of its kind with over 175,000 members, is an example. The head of their investigation division is Gail Eisnitz, a well-known investigative reporter. By reaching out to some workers in factory farms and through the use of hidden cameras, the HFA has compiled a report in which it states:

According to the U.S. Department of Agriculture's (USDA) National Agriculture Statistics Service, each year about 10 percent, or 900 million, of the animals raised for food never reach the slaughterhouse. They die on the farm due to stress, injury, and disease.

...

There are virtually no federal laws that protect farm animals from even the most harsh and brutal treatment as long as it takes place in the name of production and profit.

HFA, Factory Farming, [HTTP://www.hfa.org/factory/index.html](http://www.hfa.org/factory/index.html) (last updated Apr. 15, 2006). Still, HFA has been successful in filing petitions against hog producers in Nebraska and South Dakota and a slaughterhouse operation in Washington State. They have asked for enforcement of both state and federal laws, i.e., the Humane Methods of Slaughter Act. See HFA, Campaigns, <http://www.hfa.org/campaigns/index.html> (last updated Apr. 15, 2006) (providing links to information about HFA activities and successful campaigns).

The organization Compassion Over Killing (COK) has conducted investigations for the purpose of educating the public about abuses of "humane labeling." In addition to public education campaigns, COK is legally challenging the United Egg Producers' certification of egg producers as "animal care certified" when their animal care standards are below what a consumer would expect for an "animal care" designation. COK filed a petition with the Better Business Bureau asserting that the "animal care certified" label is deceptive. Compassion

legal invisibility and inability to help animals.

E. Limitations on legislative activism

If substantive law is limited in its animal-protective reach, what of the process of law? Since law is perceived to be an evolving institution, capable of changing in accord with social values, then legislative reform should provide a constructive means of addressing deficiencies in current animal protection laws.

Yet, here too, legal advocates for animals are confronted with severe difficulties that have nothing to do with the justness of their claims. Rather the severe difficulties they encounter are more directly related to the tremendous financial and political resources animal-exploiting industries can deploy to protect their current abuses of animals. Not the least of that financial power is the ability to withdraw advertising or refuse to advertise in media outlets that run unfavorable accounts of industry practices. Disagreements among legal advocates for animals and concerns about doing the right thing for animals (who cannot tell their advocates directly and clearly what advocacy route they prefer) compound the difficulty for advocates.

This complex of factors is illustrated by legal advocacy efforts to stop foie gras production, which involves forcibly feeding ducks and geese until their livers expand to several times their normal size.⁵² Ultimately, these forcibly fed birds cannot walk or fend off rats and are totally debilitated from liver disease. Some birds suffer burned or ripped esophagi, and some birds' livers explode before the animal is slaughtered.

In 2004, one of the most powerful members of the California State Senate, Senator John Burton, introduced a bill that would ban the production and sale of foie gras in California.⁵³ Advocates were optimistic that Senator Burton's stature and experience would be helpful in securing passage of the bill, but they knew that even if the bill were not enacted, it

Over Killing, "Animal Care Certified" Eggs, *supra* note 35.

⁵² The force-feeding of ducks in foie gras production is a fact reported consistently in news accounts of the foie gras legislation. See, e.g., Ann E. Marimow, *Foie Gras Ban Wins Support: "Less Than Serious" Legislation Accused of Taking Precedence Over Budget, Workers' Comp*, CONTRA COSTA TIMES (Walnut Creek, Cal.), Apr. 27, 2004, at A1. The California legislative effort was authored by Senator John Burton and is designated Senate Bill 1520. S. 1520, 2003-04 Sess. (Cal. 2004), <http://www.leginfo.ca.gov/bilinfo.html> (search for Bill Number 1520 in the 2003-04 session) (last visited Apr. 9, 2006). The New York legislative effort is authored by Assemblyman Jack McEneny and is designated Assembly Bill 1821, available at <http://assembly.state.ny.us/leg/?bn=A01821> (last visited Apr. 9, 2006).

⁵³ S. 1520, 2003-04 Sess. (Cal. 2004).

was an opportunity to educate the public. Indeed, legislation seems to be one of the only contexts in which news media will present information to the public about common industry practices that are harmful to animals.⁵⁴ If this legislative strategy were successful, animals' advocates would have educated the public and stopped the practice with one concentrated six-month period of legislative advocacy.⁵⁵

At first glance this strategy appears to be relatively low risk; even if the legislation fails, mass media coverage will have educated the public about what humans do to ducks and geese for the sake of producing a flesh food product that is totally unnecessary nutritionally, if not actually harmful to human health due to its high fat content. However, this strategy invites much more intense opposition from defenders of foie gras production, who have more incentive to defend against a proposed legislative ban than a mass public information campaign about the cruelty of foie gras production waged separately from proposed legislation. In fact, greater incentives on *both* sides of the legislative proposal result in advocacy methods that carry considerable potential for public confusion about the reality of cruelty and about the credibility of animals' advocates. Greater public confusion over these matters threatens to further distance advocates from the public as to the legitimacy of the cause of animal law reform.

How is public confusion generated? Some of it undoubtedly stems from the public's inability and unwillingness to find out how flesh foods are produced. Because the public is (willfully) ignorant about how animals are turned into flesh foods and does not want to believe that it eats cruelly produced foods, members of the public are open to any apparently respectable entity's assurances that flesh food is not cruelly produced. For instance, much confusion about whether and how birds suffer during foie gras production results from videotapes produced either to vindicate or to prohibit the production of foie gras. Some videotapes show apparently healthy ducks and geese voluntarily approaching feeders who force-feed

⁵⁴ Karen Dawn, head of DawnWatch, which encourages media attention on animal advocacy issues, has written extensively about media coverage of the foie gras controversy and suggests that the media's willingness to cover the issue is tied not just to legislation but to greater receptivity to using video material filmed during "open rescues" (i.e., the faces/identities of the animal liberators are not disguised). Karen Dawn, *From the Front Line to the Front Page—An Analysis of ALF Media Coverage*, in *TERRORISTS OR FREEDOM FIGHTERS? REFLECTIONS ON THE LIBERATION OF ANIMALS*, 213, 217-20 (Steven Best & Anthony J. Nocella II eds., 2004) [hereinafter *TERRORISTS OR FREEDOM FIGHTERS*].

⁵⁵ Teri Barnato, National Director of the Association of Veterinarians for Animals Rights (AVAR), provided most of the information in this Article about the strategy behind the California legislation to ban foie gras and its production. AVAR was a sponsor of Senate Bill 1520, cited *supra* note 52.

them.⁵⁶ Foie gras producers use these videotapes and veterinarians' testimonies in order to argue that birds do not experience pain from force-feeding.⁵⁷ Producers and their veterinarians argue that ducks and geese have esophagi that permit forcible feeding without injury, that ducks and geese in nature will overeat in order to survive seasonal migration over areas where food sources are uncertain,⁵⁸ and that these commercial-purpose ducks and geese are allowed to roam freely most of their lives.⁵⁹

But there is also graphic footage of birds with blood on their feathers, birds with cornmeal-mash regurgitate on their beaks and bodies, and birds attempting to crawl away on their wings because they can no longer walk or fly.⁶⁰ Opponents of foie gras production use those videotapes and veterinarians' testimonies in order to argue that forcible feeding is cruel. These veterinarians explain that migratory birds would never seek out the kind and amount of food that would cause their livers to swell to ten times their normal size. Certainly migratory birds would not "naturally" induce liver dysfunction such that the liver explodes, as is the case with many

⁵⁶ Videotapes filmed with the permission of the owner of Sonoma Foie Gras are the most ambiguous as to cruelty. Reporter Daniel Noyes filmed videotape footage in February 2004 for ABC Channel 7 in San Francisco (KGO), which was also shown on ABC affiliate television stations, such as KCRA, in California. Mr. Noyes updated his story on February 12, 2004 (copy on file with author). There are at least two other videotapes showing more graphic images of the suffering of ducks and geese subjected to forcible feeding by the two producers of foie gras in the United States. One video was taken by Gourmet Cruelty and shows the condition of the ducks and geese at Hudson Valley Foie Gras Co. in New York. *Delicacy of Despair*, Gourmet Cruelty, available for purchase at <http://www.gourmetcruelty.com/market.php> (last visited Apr. 9, 2006). Another was filmed by The Animal Protection and Rescue League (APRL) in California at Sonoma Foie Gras in Sonoma, California in late 2002. Stop Force Feeding—Ban Foie Gras, <http://stopforcefeeding.com> (click Resources, Photos and Videos) (last visited Apr. 9, 2006).

⁵⁷ See Press Release, Association of Veterinarians for Animal Rights, Foie Gras Producers Lying to Gain Sympathy (Dec. 16, 2003) (on file with author), available at <http://lists.envirolink.org/pipermail/ar-news/Week-of-Mon-20031215/013245.html> (arguing that claims by producers that ducks do not suffer are lies).

⁵⁸ See Kim Severson, *Plagued by Activists, Foie Gras Chef Changes Tune*, S.F. CHRON., Sept. 27, 2003, at A14 (describing how ducks and geese naturally gorge themselves in order to sustain migration); *Recipe for Foie Gras Non Grata on Plate of California Senator*, STAR-LEDGER (Newark, N.J.), Feb. 12, 2004, at 10 (quoting chef Alice Waters for the proposition that ducks gorge themselves before migration); Gui Alinat, *Foie Gras Ban Is the Wrong Food Fight*, ST. PETERSBURG TIMES (Fla.), Dec. 15, 2004, at 2E, (claiming that ducks in nature gorge themselves) available at http://www.sptimes.com/2004/12/15/Taste/Foie_gras_ban_is_the_.shtml.

⁵⁹ See Bryan Pease, *A Demand for Haute Cuisine Is No Excuse to Condone Animal Cruelty*, S.F. CHRON., Oct. 19, 2003, at D5 (writing that Sonoma Foie Gras claims its ducks are "free range," not force-fed).

⁶⁰ Severson, *supra* note 58, at A14.

forcibly fed ducks and geese who die from ruptured livers before they are slated for slaughter.⁶¹ Indeed, if this were a natural process, why would a metal pipe have to be forced down the birds' throats?

And, what about the videotapes the public sees? The public can go on-line to see graphic and disturbing video footage of birds in terrible states caused by forcible feeding regimens. But some, if not most, of the videotape shown during news media coverage of the California bill to ban foie gras was ambiguous about the birds' reaction to force-feeding.⁶² This is not surprising as to videotapes filmed with permission of the state's sole foie gras producer, Sonoma Foie Gras. Legislators were given more information than news media provide to the public, but even they were still confused about whether it is cruel to forcibly feed birds for the purpose and effect of seriously enlarging the birds' livers. In fact, the first public hearing contained enough contradictory testimony to cause one legislator to comment that the truth is hard to discern.⁶³

All of these veterinarians and videotapes are speaking to realities of the birds' experience. Foie gras producers use a "batch" type of production method. As a result, birds in each batch will be at approximately the same stage in the process of turning them into flesh food products.⁶⁴ While very young, the birds may, as one producer stated, roam the walnut groves freely, but, once they reach an age at which force-feeding is to begin, they are

⁶¹ See Press Release, United Poultry Concerns, Attention New York Residents! Force Feeding of Ducks and Geese—Contact NY Attorney General (Oct. 11, 2001) (on file with author), available at http://upc-online.org/011011force_feeding_ny.html (describing the cruelty produced by force-feeding).

⁶² See *supra* note 56 and accompanying text for descriptions of the videos. The APRL video shows ducks and geese cowering in a far corner to avoid forcible feeding, while the tape filmed with the owner's permission shows the ducks and geese before the effects of forcible feeding are evident. Before the start of the force-feeding procedure the birds are kept on short rations so they will not resist forcible feeding initially. Resistance to forcible feeding grows as its impacts on the liver become progressively severe. *Id.*

⁶³ "If we listen to these conversations, somebody is not telling the truth." Jordan Rau, *Activists Win One in Battle Over Pate Foie Gras*, L.A. TIMES, Apr. 27, 2004, at B1 (quoting California State Senator Edward Vincent).

⁶⁴ Holly Cheever, DVM, provided me with information about the "batch" or "all in—all out" method of producing foie gras. She notes that the same method is used for flesh food production practices involving pigs. See E-mail from Holly Cheever, DVM, to Taimie Bryant, Professor of Law, UCLA Law School (July 26, 2004, 1:28 p.m. PST) (on file with author) (explaining that producers maintain multiple batches of animals—birds or pigs according to their stage in the process—in order to have a "new batch to 'harvest' every few days"). As a result, producers generally have at least one batch of birds on hand who are still relatively healthy, even though other batches have become diseased and deteriorated. See *id.* (noting that "if the [industry] controls the setting/timing of the tapes, it can look fine").

increasingly confined.⁶⁵ Once they are crowded into pens or other holding areas, it is difficult to detect avoidance behavior. Since the birds are denied food before forcible feeding begins, many initially will approach the forcible feeders because those feeders are their only source of food. However, as the weeks-long process of forcible feeding continues, the increasingly debilitating effects of liver disease, the throat-tearing by the metal feeding pipe, and the throat burns from overly hot mash result in visibly distressed birds who avoid feeding.⁶⁶

Producers maintain multiple batches at a time, each at a different stage of development and force-feeding. Obviously, depending on *which batch* one videotapes, one can produce very different images of the lives and deaths of birds exploited to produce foie gras. Since producers control access to their private property, it is not surprising that video footage obtained with their consent (e.g., news media footage) will be helpful to their cause. Video footage obtained without their consent (i.e., illegally) will be helpful to their opponents' cause, unless attention is focused on the illegality through which the footage was taken.

Once it is realized that birds exploited for foie gras production do not necessarily suffer horribly for their entire lives (as do laying hens, for example), the debate could focus on the extent of suffering they do experience—its severity, its length, and its purpose. However, the debate does not usually become more nuanced or thoughtful. Since time for public comment is short and there is much at stake in the legislative arena, both sides will ratchet up their advocacy.

Foie gras producers generally do not concede that any part of the process causes horrible suffering, and animals' advocates generally do not concede that the animals are free from suffering at any point in their exploitation. Further, animals' advocates decry the cruelty of the producers,

⁶⁵ See Benjamin Dyer, *Protesters Guilty of Tunnel Vision*, PORTLAND TRIBUNE, Jan. 18, 2005 (making the claim that, "ducks are allowed to roam free in walnut groves for nearly their entire lives"); SCIENTIFIC COMMITTEE ON ANIMAL HEALTH AND ANIMAL WELFARE, EUROPEAN HEALTH & CONSUMER PROTECTION DIRECTORATE GENERAL, WELFARE ASPECTS OF THE PRODUCTION OF FOIE GRAS IN DUCKS AND GEESE: REPORT OF THE SCIENTIFIC COMMITTEE ON ANIMAL HEALTH AND ANIMAL WELFARE 20 (1998), http://europa.eu.int/comm/food/fs/sc/scab/out17_en.pdf (describing the confinement of birds during the force-feeding period on farms in the European Community, the scientific committee noted that "the ducks or geese are either kept in groups in a small pen or cage or in a wire or plastic cage holding only one bird. Most ducks are now kept in cages of a size which does not allow the bird to turn around or stretch its wings.").

⁶⁶ See The Humane Society of the United States, Foie Gras, http://www.hsus.org/farm_animals/factory_farms/foie_gras.html (noting the trauma caused by the force-feeding process) (last visited Apr. 9, 2006).

not just the cruelty of the practice, and producers (and their sympathizers) refer to animals' advocates as extremist, misanthropic liars who inappropriately anthropomorphize animal behavior.⁶⁷ Opponents claim that the proposed legislation is simultaneously both "silly" and dangerous: silly because these animals are raised and destined to be food in any case,⁶⁸ yet dangerous because it would heartlessly close down a legitimate immigrant business as a result of a misanthropic, hysterical, and unfounded interest in helping animals.⁶⁹

The debate is easily extended so that animals' advocates will be seen as radical vegan insurgents. Guillermo Gonzales, the owner of Sonoma Foie Gras, describes himself as a

victim of "human-rights abuse" at the hands of the animal rights activists. Before moving to the United States in 1986, Gonzales said, he made sure that foie gras production was legal under federal and state law. "Now, 17 years later, our family business is a success story achieved through hard and honest work Yet, we are stormed by this barrage of abuse with total disregard to our human rights. We are unwilling participants in a national agenda for a new vegan society."⁷⁰

Both of Gonzales's claims, that he is a victim and that the victimizers are using him and his business to legislate veganism, have been picked up by commentators and legislators alike. A milder version of this argument is presented by Scott Herhold for the San Jose Mercury News.

I'm not convinced that the making of foie gras differs much from other food production—the fattening of turkeys, say, or treatment given to cattle.

We engage in willful ignorance about these things for understandable reasons. If we want to eliminate every objectionable practice, we will all end up as vegans. And this year, anyway, the state has other problems that matter more.

⁶⁷ Unfortunately, this kind of stigmatization only worsens trauma because "it undermines crucial supports of self-esteem, personal identity, and coping efforts." Mardi J. Horowitz, *Introduction* to *ESSENTIAL PAPERS ON POSTTRAUMATIC STRESS DISORDER*, 1, 7 (Mardi J. Horowitz ed., 1999) [hereinafter *ESSENTIAL PAPERS*].

⁶⁸ See Marimow, *supra* note 52, at A1 ("We need to separate livestock from pets.' . . . Just as cattle are raised to be slaughtered, Frank said, '[t]hese are birds being raised to eat.'" (quoting Ken Frank, chef of Le Toque)).

⁶⁹ See Ray Haynes, *Silly Bills Clog Legislature* NORTH COUNTY TIMES (San Diego, Cal.), May 18, 2004, http://www.nctimes.com/articles/2004/05/18/opinion/commentary/5_17_0420_59_05.txt (identifying a proposed foie gras ban as a bill to cater to "animal rights extremists" and as a silly waste of the California Legislature's time).

⁷⁰ Rone Tempest, *Sonoma Is Front Line in War Over Foie Gras*, L.A. TIMES, Nov. 29, 2003, at B1.

Leave Guillermo Gonzalez alone. Let the diners decide.⁷¹

Perhaps, ultimately, diners *will* decide the question and decide not to consume foie gras once they have been educated during the course of legislative activism. Herhold's comment is unintentionally helpful to animals' advocates in affirming that "objectionable practices" do exist and in signaling that someone concerned about foie gras production should be concerned about the other flesh foods he or she eats. Even more apparently dismissive statements have been made, which may be helpful to the cause of educating the public and reducing trauma among animals' advocates.

David Shaw, writing for the *L.A. Times* Food section, acknowledges cruelty in flesh food production but states that he does not think it matters, since these suffering animals, unlike cats and dogs, are born, raised, and slaughtered specifically for the purpose of flesh food production.⁷² Since many of his readers already pay more money for apparently cage-free eggs, dolphin-safe tuna, and humanely raised cow flesh, those readers now might well be convinced that foie gras is a cruelly produced product they will avoid. Even without challenging it, by simply acknowledging the reality of cruelty, writers like David Shaw may assist in breaking down society's barriers to considering institutionalized cruelty.

Nevertheless, it is hard for animals' advocates to read articles such as Herhold's and Shaw's and see them as possibly helpful in any way. To embattled advocates feeling the full weight of entrusted responsibility for their animal "constituents," those articles carry the message that animals and their suffering do not matter, and there is always a fear that such a message will persuade people to opt for cruelty. In fact, it is debatable whether readers will agree with that literal message,⁷³ but embattled advocates will be extremely sensitive to any perceived threat to their constituency or to their strategy. Some activists will expend much energy and emotion thinking about and responding to threats that cannot be accurately or calmly evaluated in terms of their actual threat potential. It is easy to feel imperiled when one believes that one's failures will carry huge

⁷¹ Scott Herhold, *Diners Should Settle Dispute Over Foie Gras*, SAN JOSE MERCURY NEWS, June 3, 2004, at 1B.

⁷² David Shaw, *They're Quacking Up the Wrong Tree*, L.A. TIMES, May 5, 2004, at F11.

⁷³ According to a Zogby poll of one thousand interviewees chosen at random nationwide from Jan. 15 through Jan. 18, 2004, seventy-seven percent of those surveyed responded that forcible feeding of ducks/geese for the purpose of foie gras production should be banned. No Foie Gras.org, Results from Zogby America Poll, <http://www.nofogiegras.org/FGzogby.htm> (last visited Apr. 9, 2006). "[P]eople don't need to be vegan to recognize that foie gras is over-the-top cruelty." Nora Kramer, *Foie Gras Phooey*, SAN FRANCISCO EXAMINER, Mar. 25, 2004, Letters to the Editor.

consequences for those one represents.

Besides the discourse between opposing sides of the legislation, there is usually discourse and disagreement among animals' advocates themselves.⁷⁴ Because advocacy for animals is complicated, many troubling questions are likely to arise in situations such as this. Should one be forthright that one really *does* want to see an end to the exploitation of animals for flesh food production? To do so would fully represent one's constituency—animals abused for flesh food production. On the other hand, such an approach might jeopardize the legislation's possibility of success. Should one go so far as to mollify the opposition by stating that one can still produce foie gras by mixing duck flesh with duck fat? Does this improperly allow consumers increased comfort in their consumption of other flesh food products, since truly egregious methods of production seem to be being banned?

In placating the opposition in this way, is one selling out part or all of one's constituency? Would the duck want advocacy that allows her flesh to be consumed as a mixture of flesh/fat in exchange for an end to forcible feeding? Would cows, chickens, and pigs want their advocates to state for the record that banning this flesh food product/practice should make consumers more comfortable about flesh foods in general? Would they be hurt by their advocates' apparent sellout, or would they understand that these are just words—necessary for incremental change?

⁷⁴ For example, on July 27, 2004, Friends of Animals issued an action alert warning that the proposed ban on foie gras currently in the California Legislature would help only the foie gras producer and not the ducks and geese subjected to force-feeding. Friends of Animals claims that providing the producer with immunity from civil and criminal liability for cruelty based on force-feeding gives the producer the freedom from activist oversight in order to build his argument that foie gras production isn't cruel. Friends of Animals claims that the producer will be back at the Legislature in plenty of time before the grace period is up to "prove" that foie gras production isn't cruel and, thereby, avert the ban before it goes into effect. Posting of Daniel Hammer, hammer@friendsofanimals.org, to AR-News@googlegroups.com (July 27, 2004) (copy on file with author).

A member of the Animal Protection and Rescue League (APRL) posted a response in which he claims that the Friends of Animals alert is full of lies based on an uncharitable and unrealistic reading of the bill's language. Posting of Bryan Pease, news@aprl.org, to AR-News@googlegroups.com (July 30, 2004) (copy on file with author). Another APRL director posted a similar response that refutes the claims of Friends of Animals, which, the author of the response claims, are based on an unrealistic expectation that the civil lawsuit that will not go forward as a result of legislative compromises. Posting of Kath Rogers, news@april.org to AR-News@googlegroups.com (July 29, 2004) (copy on file with the author).

This response from APRL was followed by a posting by the Humane Farming Association, which reiterated the objections made by Friends of Animals and urged letters in opposition to the foie gras legislation. Posting of Humane Farming Association, TheHFA@aol.com to AR-News@googlegroups.com (Aug. 9, 2004) (copy on file with author).

Similarly, is it disloyal to one's constituency—the birds—to recognize the harsh existence of underpaid, overworked employees in flesh food production facilities, if such recognition leads to a delay in the implementation of a ban? Is it disloyal to recognize that animals *and* humans are abused by owners/managers of flesh food production facilities? Yet, if we do not validate others' truths, how can we fairly chide those who won't validate ours? Is it disloyal to break with the group if the legislation is compromised to the point that an advocate feels she would be harming those for whom she feels entrusted responsibility? Should loyalty to the human advocacy group and the desirability of one united position outweigh the tug of loyalty one feels to the animals? Do advocates in general cause more problems for themselves when they create conflicts of interest and loyalty contests, or is this just a natural part of group activism?

Although Senator Burton's bill was signed into law by Governor Schwarzenegger,⁷⁵ controversy and strife continued. This was largely because of compromises undertaken to remove Sonoma Foie Gras's opposition to the bill. It was agreed, and became law, that the proposed ban on producing and selling foie gras would not take effect for seven and one-half years, during which time the producer could produce scientific evidence either that forcible feeding is not inhumane or that another (humane) means of foie gras production would be used.⁷⁶ If either could be

⁷⁵ Senator Burton's bill (S.B. 1520) was enacted as Chapter 904, Statutes of 2004, on September 29th, 2004. A history of the bill can be found at California Legislative Information, http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1501-1550/sb_1520_20040929_history.html (last visited Apr. 9, 2006).

⁷⁶ CAL. HEALTH & SAFETY CODE § 25984(c) (West Supp. 2006). The language actually reads, "It is the express intention of the Legislature, by delaying the operative date . . . to allow a seven-and-one-half year period for persons or entities . . . to modify their business practices." *Id.* However, the producer who eventually agreed to the legislation and the Governor understood that the ban could be lifted without modification of business practices if the producers can show that current methods are not inhumane. See Carolyn Jung, *Study Could Disrupt Planned Foie Gras Ban*, MERCURY NEWS (San Jose, Cal.), Oct. 27, 2004 at 1F (discussing limitations of the legislation). "The University of California-Davis has been working behind the scenes with the governor's office to put a plan into place that would allow the university's animal science department and the veterinary medicine school to conduct research to determine whether foie gras production is humane." *Id.* See also Open letter from Gary L. Francione, Professor of Law, Rutgers Univ. School of Law (Oct. 7, 2004), included in Posting of Joe Miele to AR-News@Googlegroups.com (Oct. 7, 2004) (copy on file with author) (criticizing the foie gras legislation for, among other things, the likelihood that research will be conducted on geese and ducks); Ali Bay, *Activists Unhappy with Foie Gras Law*, CAPITAL PRESS (Salem, Or.), Oct. 13, 2004, <http://www.capitalpress.info/main.asp?Search=1&ArticleID=12837&SectionID=67&SubSectionID=792&S=1> (discussing activist and industry reactions to the passage of California Senate Bill 1520); Dave Richardson, *Foie Gras Feels the Heat*, TIMES HERALD-RECORD (Middletown, N.Y.), Oct. 13, 2004, <http://www.recordonline.com/archive/2004/10/13/foiegra0.htm> (examining the support

shown, then the ban could be repealed or amended before it took effect. The legislation also provides complete protection from litigation on the question of whether forcibly feeding birds for foie gras production is a violation of California's anti-cruelty laws.⁷⁷ Since Gonzales and Sonoma Foie Gras were already respondents in a lawsuit that challenged their production method as violating California's anti-cruelty laws,⁷⁸ relief from that lawsuit and any other such lawsuit for the next seven and one-half years was a significant benefit to Gonzales and to Sonoma Foie Gras.

Various fissures in the animal advocacy community broke open over those compromises. From some advocates' perspective the package deal was a victory for the foie gras producer and a loss for the birds. Other advocates defended the deal, claiming that something is better than nothing and a chance for the birds is better than no chance at all, which would have been the outcome if the bill had been defeated. Animals' advocates were not just fighting foie gras producers' images of forcible feeding as humane; they were fighting amongst themselves as to what it should mean to represent animals.

Because industry's entitlement to abuse animals is on the line, legislative reform is a high-intensity, high-stakes form of legal advocacy for animals. Whether presented separately from legislation (e.g., mass education campaigns) or in the context of legislation (e.g., to ban foie gras), the underlying truth of the harm to birds from forcibly feeding them to the point their livers explode is a truth that will make its way only very slowly into most people's consciousness. Presented in the context of proposed legislation, however, industry rejects the underlying claim of animal suffering much more strenuously and with much more manipulation of facts that are subject to interpretation. Because there is a significant economic outcome at stake, i.e., closing down particular individuals' businesses that make foie gras, defenses against the truth of what happens to ducks and

for and opposition to a proposed foie gras ban in New York that would impact the Hudson Valley foie gras industry); Mike Dunne, *Foie-gras Ban Isn't All Bad, Supplier Says*, SACRAMENTO BEE, Oct. 6, 2004, <http://www.sacbee.com/content/lifestyle/taste/story/10993952p-11911187c.html> (discussing effects of California foie gras ban and suggesting that it was an appropriate compromise). These articles and others, including the postings in *supra* note 74, are archived by AR-News, <http://groups.google.com/group/AR-News> (search "foie gras") (last visited Apr. 9, 2006).

⁷⁷ CAL. HEALTH & SAFETY CODE § 25984(b) (West Supp. 2006). This applies only to producers in business at the time the legislation was enacted. *Id.*

⁷⁸ See Chuck Squatriglia, *Foie Gras Farmer Sued by Animal Rights Groups*, S.F. CHRON., Oct. 23, 2003, at A21 (exploring details of a lawsuit filed by two animal rights groups against a foie gras farmer, accusing the farmer of violating California state laws against cruelty toward animals).

geese may well be heightened and exaggerated.⁷⁹

Unaware that the foie gras defenders' message is colored by agendas quite separate from validating or rejecting the truth of cruelty claims, consumers might adopt uncritically the view that the animals' advocates are crazy, misanthropic, and that they naïvely anthropomorphize animals.⁸⁰ However, if the objective facts of how foie gras is produced could be learned before there was anything more at stake than just those facts, then the producers/defenders of foie gras would have little incentive or basis for countering the claim of animal suffering. If, after the facts of foie gras production are well-known, legislation can be brought to ban it, at least the claim that animals' advocates lie about the suffering involved in the process would be a smaller part of the discourse.

It is an unfortunate fact of animal advocacy, however, that legislation is one of the only ways that public education is viable, because of mass media inattention to the issue generally and because the public does not seek out inconvenient knowledge. That is why foie gras producers might not bother to aggressively challenge assertions that foie gras production is cruel, if framed in a non-legislative, non-litigious context. So, while the potential strain from an education campaign is low, the potential gain from an education campaign is also low. Since that is true, at least at present, advocacy based on legislation appears to be the more productive course.

Legislative reform is undoubtedly necessary, but it is also undoubtedly extremely stressful. The truth of harm to animals is obscured, animals' advocates are painted as naïve or crazy, and advocates endure tremendous strains associated with choosing a responsible path of advocacy. Ever present are the images of birds in torment. Violence unaddressed, violence denied for what it is—these are the seeds of traumatic learning about the extent of violence at the core of American society as represented by Americans' daily diet.

II. TRAUMA: WHAT IT IS AND ITS EFFECT ON ADVOCACY

Social scientific and medical research on trauma has grown remarkably,

⁷⁹ See, e.g., Jordan Rau, *supra* note 63, at B1 (describing extremely contrasting views of the effects on birds of forcible feeding).

⁸⁰ See, e.g., Gabrielle Banks, *Duck Farm Is on Capitol Agenda*, L.A. TIMES, July 7, 2004, at B1 (referring to Guillermo Gonzales' comment on the proposed ban on foie gras and its production: "Urbanization has left most people out of touch with farming practices, and Disney films have only exacerbated the problem. . . . [Gonzales says,] 'People have been raised in this country to think all ducks are Donald, all mice are Mickey, all deer are Bambi'").

particularly in the past fifteen years.⁸¹ The definitions of “trauma,” “traumatic event,” and “post-traumatic stress” have all undergone significant revision. In 1980, the American Psychiatric Association (APA) defined a traumatic event as one “outside the range of usual human experience.”⁸² However, by 1994 the prevalence of traumatic events in our lives was so well-documented that the APA could no longer claim that traumatic events are “outside the range of usual human experience.” It revised its definition of a traumatic event to one involving “actual or threatened death or serious injury, or a threat to the physical integrity of self or others.”⁸³ Depending on one’s willingness to acknowledge traumatic stress and how one defines “threat to physical integrity” and “to self or others,” traumatic experiences may be characterized as relatively frequent in our society.⁸⁴ Research psychiatrist Judith Herman has written that

Traumatic events are extraordinary, *not because they occur rarely*, but rather because they overwhelm the ordinary human adaptations to life. Unlike commonplace misfortunes, traumatic events generally involve threats to life or bodily integrity, or a close personal encounter with violence and death. They confront human beings with the extremities of helplessness and terror, and evoke the responses of catastrophe.⁸⁵

⁸¹ For instance, the International Society for Traumatic Stress Studies (ISTSS), began publishing a peer-reviewed journal dedicated exclusively to traumatic stress studies in 1988, the *Journal of Traumatic Stress*. See publications listed on the ISTSS Website, <http://www.istss.org/index.htm> (last visited Apr. 9, 2006). See also TRAUMA AND HEALTH: PHYSICAL HEALTH CONSEQUENCES OF EXPOSURE TO EXTREME STRESS (Paula P. Schnurr & Bonnie L. Green eds., 2004) [hereinafter TRAUMA AND HEALTH] (reviewing studies of individual and public health risks associated with post-traumatic stress). See Carolyn M. Aldwin & Lorien A. Yancura, *Coping and Health: A Comparison of the Stress and Trauma Literatures*, in TRAUMA AND HEALTH, *supra*, at 99, for an outline and review of different theoretical and methodological approaches to stress and coping to be found in the thousands of articles on this subject. See generally CULTURAL TRAUMA AND COLLECTIVE IDENTITY, *supra* note 17.

⁸² AM. PSYCHIATRIC ASSOC., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 247 (3rd ed. 1987).

⁸³ ALLEN FRANCES ET AL., THE ESSENTIAL COMPANION TO THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV GUIDEBOOK 424 (1995).

⁸⁴ See, e.g., Ronald C. Kessler et al., *Posttraumatic Stress Disorder in the National Comorbidity Survey*, 52 ARCHIVES GEN. PSYCHIATRY 1048, 1052 (1995) (finding in 1995 that approximately sixty percent of men and fifty percent of women had been exposed to at least one traumatic event during the course of their lives); LEVINE WITH FREDERICK, *supra* note 13, at 19 (“Trauma is a pervasive fact of modern life. Most of us have been traumatized, not just soldiers or victims of abuse or attack.”); SCHWARZ, *supra* note 13, at 3-4 (suggesting that distinguishing between major traumas and minor traumas is of little value because even minor traumas, if “left unprocessed in the unconscious . . . create areas of vulnerability that become part of a negative spiral when a [major] trauma occurs.”).

⁸⁵ HERMAN, *supra* note 13, at 33 (emphasis added).

Direct violent victimization is not the only source of traumatic stress. Witnessing violence has been documented as traumatic and, if unaddressed, can cause subsequent post-traumatic stress symptomology.⁸⁶ The same appears to be true of the vicarious experiencing of violence, as when someone we care about suffers from a violent event,⁸⁷ or a psychiatrist works with a victim of abuse,⁸⁸ or when we view broadcast images of the terrorist attacks on the World Trade Center.⁸⁹ Witnessing cruelty to individual animals has been recognized as traumatic,⁹⁰ and, for some, so is

⁸⁶ See, e.g., ALLEN R. KATES, *COPSHOCK: SURVIVING POSTTRAUMATIC STRESS DISORDER (PTSD)* (1999) (reporting on the post-traumatic stress of law enforcement officers whose careers cause them to deal with horrific events and crimes); Dart Center for Journalism and Trauma, Mission Statement, <http://www.dartcenter.org/about/mission.html> (last visited Apr. 9, 2006) (providing support to journalists who cover traumatic events).

⁸⁷ See COFFEY, *supra* note 13, at 173 (1998) (“[R]esearchers . . . found that 78% of rape victims surveyed had recurrent thoughts about rape and were hypervigilant. That is not a terribly surprising statistic. It is perhaps a little surprising, however, that 33% of the victims’ partners had recurrent thoughts about rape and that the majority (56%) became hypervigilant.”); *id.* (“Another example: A doctoral candidate interviewing partners of rape victims found that all of the partners felt powerless and vulnerable after their partners’ attack. Many were plagued by their failure to protect the victim from harm. All reported difficulty with intrusive thoughts.”).

⁸⁸ See generally I. Lisa McCann & Laurie Anne Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, in *ESSENTIAL PAPERS*, *supra* note 67, at 498.

Therapists may experience painful images and emotions associated with their clients’ traumatic memories and may, over time, incorporate these memories into their own memory systems. As a result, therapists may find themselves experiencing PTSD symptoms, including intrusive thoughts or images and painful emotional reactions. . . . If these feelings are not openly acknowledged and resolved, there is the risk that the helper may begin to feel numb or emotionally distant, thus unable to maintain a warm, empathetic, and responsive stance with clients.

Id. at 512. McCann and Pearlman suggest that, since therapists working with trauma victims are likely to be “infected” with the same symptoms as their clients, therapists should talk with each other about the problems they face as therapists, thereby avoiding their own burn-out, emotional numbing, and other problems associated with post-traumatic stress disorder. *Id.* at 512-14. See also MaryDale Salston & Charles R. Figley, *Secondary Traumatic Effects of Working With Survivors of Criminal Victimization*, 16 J. TRAUMATIC STRESS 167, 167-74 (2003) (identifying the victims of secondary traumatic stress and outlining treatment and mitigating factors of the condition); Karen Ortlepp & Merle Friedman, *Prevalence and Correlates of Secondary Traumatic Stress in Workplace Lay Trauma Counselors*, 15 J. TRAUMATIC STRESS 213, 213-22 (2002) (examining incidences of secondary post traumatic stress among counselors).

⁸⁹ See Jennifer Ahern et al., *Television Images and Probable Posttraumatic Stress Disorder After September 11: The Role of Background Characteristics, Event Exposures, and Perievent Panic*, 192 J. NERVOUS & MENTAL DISEASE 217, 217-26 (2004) (examining the connection between viewing television images of the September 11, 2001, terrorist events and symptoms of post-traumatic stress disorder).

⁹⁰ For example, in describing the terrible killing of fifteen cats in a Fairfield, Iowa

witnessing, through videotapes and other documentation, the suffering of animals that is caused by animal-exploiting enterprises.⁹¹

Of those who experience traumatic events, some will experience long-lasting, severe effects that materialize in the body, the psychology, and the behavior of the individual.⁹² The literature suggests that an individual's

animal shelter by beatings with a baseball bat, researcher Karla Miller, said that "acts of animal cruelty are considered traumatic by many." Stating specifically, "when it's this malicious in nature, it shakes people's ideas of how they see the world. It makes them feel they don't want to be a part of a race that could do this." She continued, "animals are just as important as people. We can't minimize the importance of the death of these animals to them." Jean Greco, *Cat Killing Case Still "Wide Open"*, OTTUMWA COURIER (Iowa), Mar. 12, 1997, <http://www.noahsark.org/oc0312.htm>. There have been some court cases where damages were given for emotional distress and trauma suffered by animal owners. See, e.g., *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981) (upholding family's receipt of damages from the quarantine station after the family dog died in the care of quarantine station personnel); *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. Ct. App. 2001) (upholding award of damages to owner of two horses who was given compensatory and punitive damages when the boarders of the horses sold the horses to a slaughterhouse without permission and the owner suffered not only emotional but severe physical and mental problems).

⁹¹ It appears that, for some people, the suffering of animals in institutions is different enough from the suffering of animals tortured by cruel individuals that we need not be concerned about the former. "[I]f one person is unkind to an animal, it is considered to be cruelty, but where a lot of people are unkind to a lot of animals, especially in the name of commerce, the cruelty is condoned and, once large sums of money are at stake, will be defended to the last by otherwise intelligent people." RUTH HARRISON, *ANIMAL MACHINES: THE NEW FACTORY FARMING INDUSTRY* 144-45 (1964). I address that perspective later in this Article.

⁹² See generally Naomi Breslau et al., *Traumatic Events and Posttraumatic Stress Disorder in an Urban Population of Young Adults*, 48 ARCHIVES GEN. PSYCHIATRY 216 (1991); Kessler et al., *supra* note 84; Heidi S. Resnick et al., *Prevalence of Civilian Trauma and Posttraumatic Stress Disorder in a Representative National Sample of Women*, 61 J. CONSULTING & CLINICAL PSYCHOL. 984 (1993). It is not known how many people experience post-traumatic stress disorder. Mardi J. Horowitz states that "[a] third of [people exposed to traumatic events] may be vulnerable to develop PTSD." Mardi J. Horowitz, *Introduction to ESSENTIAL PAPERS*, *supra* note 67, at 1, 15.

Trauma does not always result in residual post-traumatic stress, and post-traumatic stress does not always harden into post-traumatic stress disorder. Many people can "clear" a traumatic experience without too much difficulty because they already have efficient coping strategies in place. Even so, while the trauma is "clearing," one can experience post-traumatic stress that temporarily works a hardship on oneself and others. Depending on how that period is managed, an individual is more or less likely to develop full-blown post-traumatic stress disorder. See generally SCHWARZ, *supra* note 13, at 1. It is important to remember that post-traumatic stress and post-traumatic stress disorder do not incapacitate people all the time. A well-functioning person can, nevertheless, have post-traumatic stress reactions in particularized areas of his or her life. See BABETTE ROTHSCHILD, *THE BODY REMEMBERS CASEBOOK: UNIFYING METHODS AND MODELS IN THE TREATMENT OF TRAUMA AND PTSD* 5 (2003) ("Many people function quite well with PTS, or what some call 'subclinical PTSD.' However, it is worth paying attention to PTS, as it appears it can accumulate and grow from

likelihood of experiencing post-traumatic stress is dose-dependent; even physically and psychologically strong individuals are susceptible to continued post-traumatic stress symptoms if their exposure to traumatic events is extensive.⁹³ Moreover, post-traumatic stress symptoms can develop years after the violence occurred.⁹⁴ Accordingly, activists at the

exposure to multiple events and can reach a degree where symptoms would then qualify as a disorder.”)

⁹³ See generally HERMAN, *supra* note 13, at 57-61.

The most powerful determinant of psychological harm is the character of the traumatic event itself. Individual personality characteristics count for little in the face of overwhelming events. There is a simple, direct relationship between the severity of the trauma and its psychological impact, whether that impact is measured in terms of the number of people affected or the intensity and duration of harm. Studies of war and natural disasters have documented a “dose-response curve,” whereby the greater the exposure to traumatic events, the greater the percentage of the population with symptoms of post-traumatic stress disorder.

Id. at 57 (citations omitted).

Aphrodite Matsakis notes that “ample research shows that, given sufficient stress, other factors such as an individual’s previous mental stability and psychological state, are irrelevant in predicting the development of PTSD.” APHRODITE MATSAKIS, *POST-TRAUMATIC STRESS DISORDER: A COMPLETE TREATMENT GUIDE* 17 (1994). Similarly, Babette Rothschild reviews the relationship between traumatic exposure and the development of post-traumatic stress symptomology. She notes that post-traumatic stress can accumulate and grow from exposure to multiple stressful events. ROTHSCILD, *supra* note 92 at 5. See also Mardi J. Horowitz’s account of how Nazi concentration camp survivors with post-traumatic stress disorder were assumed to be weak to begin with because of troubled childhoods. Research on such survivors finally revealed that even very healthy individuals from functional, loving families could, if exposed repeatedly to traumatic events, develop post-traumatic stress disorder. See Mardi J. Horowitz, *Part I: Introduction*, in *ESSENTIAL PAPERS*, *supra* note 67, at 19, 19-20 (describing research by Leo Eitinger on concentration camp survivors). This was a key shift noted also by Schwarz. See SCHWARZ, *supra* note 13, at 8-9 (“Historically, traumatic reactions were seen as a reflection of the personality flaws of the individual. Since the inclusion of PTSD as a formal diagnosis, this has shifted. Traumatic reactions are now seen as a function of the overwhelming nature of the traumatic event itself.”). From this point, Schwarz takes the path of many current researchers in examining the meanings attributed to those events: “Two people will not experience the same traumatic incident in the same way.” *Id.* at 9.

⁹⁴ See Bessel A. van der Kolk & Mark S. Greenberg, *The Psychobiology of the Trauma Response: Hyperarousal, Constriction, and Addiction to Traumatic Reexposure*, in *PSYCHOLOGICAL TRAUMA* 63, 68-69 (Bessel A. van der Kolk ed., 1987) (discussing how the process of “kindling” over time can cause a delay before symptoms are exhibited). See also LEVINE WITH FREDERICK, *supra* note 13, at 45 (“Symptoms can remain dormant, accumulating over years or even decades. Then, during a stressful period, or as the result of another incident, they can show up without warning.”); Yuval Neria & Zahava Solomon, *Prevention of Posttraumatic Reactions: Debriefing and Frontline Treatment in POSTTRAUMATIC STRESS DISORDER: A COMPREHENSIVE TEXT*, *supra* note 13, at 309, 311 (“PTSD can develop whether or not the individual showed immediate signs of pathology. Indeed, many persons exposed to traumatic stress develop posttraumatic symptomatology without having had prior acute reactions. . . . [even though] research suggests that the

forefront of *all* social justice movements that seek to address violence, not just animal protection advocates,⁹⁵ are highly likely to experience some form of post-traumatic stress because their direct or indirect exposure to traumatizing events is (intentionally) frequent and often intense.⁹⁶ Advocates often require themselves to stare violence fully in the face, since those directly victimized cannot escape, as can we, by closing their eyes.

Unfortunately, social justice activists do not seem particularly knowledgeable about the information that has come out of trauma research. Because there is not a one-to-one correspondence between traumatic exposure and long-lasting effects, there is a tendency to believe that experiencing after-effects of traumatic exposure is “simply” evidence of personal frailty. It is easy to discount the importance of information about trauma also because post-traumatic stress symptoms seem to affect only an individual’s privately experienced mental and physical health. Addressing it seems unethically self-centered, while the direct victims of violence continue to suffer unremittingly. However, the scientific literature suggests that residual effects of traumatic stress readily spill over into advocacy. Post-traumatic stress symptoms can seriously and adversely affect one’s efficacy as an advocate. Therefore, it is important for advocates to consider what traumatic exposure is, how to minimize the potential for development of lasting symptoms, and how to recover from trauma so that one’s advocacy is not compromised.

existence of an acute reaction is a good predictor of long-term disorders.”).

⁹⁵ Movements that address prison rape, elder abuse, police brutality are but a few of the other potentially traumatizing contexts in which exposure to violence against another can trigger the onset of trauma in advocates. These are all examples of “human-caused” violence to others, which the literature suggests is more potentially seriously traumatizing than natural-caused violence, such as tornados, earthquakes, and floods. See, e.g., Mardi J. Horowitz, *Introduction to ESSENTIAL PAPERS*, *supra* note 67, at 1, 6-8 (discussing the social causes of trauma); SCHWARZ, *supra* note 13, at 3 (supporting the idea that natural-caused violence, such as tornados, earthquakes, and floods are less traumatizing, on the whole, than is “human-caused” violence).

⁹⁶ Is intentional exposure to the suffering of animals an act of great stupidity or great love? Many experience it by accident and are unable to block it out or rationalize it. Many continue to witness it in the course of activism on behalf of those animals. As Aphrodite Matsakis has written, manifestations of post-traumatic stress are not signs of mental illness. Rather, “[s]urvivor guilt [the particular manifestation that is the topic of her book] stems from one of the noblest emotions known to human beings: the love of one person for another. That other person could be a relative or beloved other, or it could be a complete stranger.” APHRODITE MATSAKIS, *SURVIVOR GUILT: A SELF-HELP GUIDE* 41 (1999). Matsakis does not mention the love people have for animals, which causes those people to suffer when confronted by the suffering of animals. Therein lies the problem—we recognize all of the concepts of care and survivor guilt and entrusted responsibility as to people who care about people but not as to people who care about animals.

An important insight from medical and social science research is that trauma has a strong socio-cultural component. In 1987, research psychiatrist Bessel A. van der Kolk wrote, "[t]he trauma response has generally been studied as an intra-psychic, or at least individual, experience. However, it is unrealistic to separate the individual's psychological state from the multiple social forces by which it has been shaped, and in which it continues to be embedded."⁹⁷ More recently, sociologist Jeffrey Alexander wrote that "[e]vents are not inherently traumatic. Trauma is a socially mediated attribution."⁹⁸ And, emphasizing the importance of a political movement that provides context for understanding traumatized individuals' claims, feminist research psychiatrist Judith Herman wrote:

The systematic study of psychological trauma therefore depends on the support of a political movement. . . . Advances in the field occur only when they are supported by a political movement powerful enough to legitimate an alliance between investigators and patients and to counteract the ordinary social processes of silencing and denial. In the absence of strong political movements for human rights, the active process of bearing witness inevitably gives way to the active process of forgetting.⁹⁹

The approach of van der Kolk, Alexander, Herman, and others¹⁰⁰ who

⁹⁷ Bessel A. van der Kolk, *The Role of the Group in the Origin and Resolution of the Trauma Response*, in PSYCHOLOGICAL TRAUMA, *supra* note 94, at 153, 153. Yehuda and McFarlane report research that suggests big differences between Vietnam veterans and Desert Storm veterans when it comes to the probability of developing post-traumatic stress disorder. While Vietnam vets may have a thirty percent prevalence of lifetime PTSD, the prevalence of PTSD in Desert Storm veterans, who received far more social support, has been found to be much less. See Rachel Yehuda & Alexander C. McFarlane, *Conflict between Current Knowledge about Posttraumatic Stress Disorder and Its Original Conceptual Basis*, in ESSENTIAL PAPERS, *supra* note 67, at 41, 46 (describing studies on the prevalence of PTSD following a traumatic event).

⁹⁸ Alexander, *supra* note 17, at 8.

⁹⁹ HERMAN, *supra* note 13, at 9.

¹⁰⁰ Schwarz notes that

The single biggest factor in how a person adjusts to a traumatic event is the recovery environment. The recovery environment includes the amount of social support a person has, the reactions of the family, the reactions and intactness of the community, societal attitudes, and the responses of helping professionals (doctors, Red Cross, police, courts, etc.).

SCHWARZ, *supra* note 13, at 6. In their 2004 publication, Dougall and Baum summarize research revealing that

[s]ocial support also has independent effects on well-being and can be a potent buffer of stress. More social support has been consistently linked with less self-reported distress, lower heart rate and blood pressure, lower catecholamine levels, use of more adaptive coping strategies, and better immune functioning. Social support is also positively associated with better health, recovery from illness, and survival.

examine the social context of trauma is particularly useful to this project on animal advocacy, because that approach invites examination of the relationship between individual experience and socio-cultural elements of that experience. While it is true that individual advocates bear responsibility for understanding the potential adverse effects of unrelieved stress on their advocacy (and personal health), it is important also to examine the relationship between "traumatized" advocacy and both (a) generally, society's responses to advocates' claims, and (b) specifically, the role of law as an important contextual element in the construction of trauma.

According to the definitions and perspectives that have emerged from trauma research, legal advocacy for animals involves significant exposure to traumatic stressors. As the foie gras legislation example reveals, such stressors include knowledge of intense violence directed at animals, awareness of the role of law in facilitating institutional cruelty toward animals, society's incredulity and assumption that "the problem" lies in the activists themselves,¹⁰¹ a dearth of legal avenues for addressing cruelty, representation of animals without knowing what advocacy strategy would be preferred by animals themselves, and in-fighting among advocates who believe in different, perhaps equally conscientious, avenues of representation. Advocates for animals would do well, therefore, to consider the effects of trauma on themselves personally and on their advocacy. In Part III, I recommend legal advocacy work that may help reduce the

Angela Liegey Dougall & Andrew Baum, *Psychoneuroimmunology and Trauma*, in TRAUMA AND HEALTH, *supra* note 81, at 129, 138 (citations omitted). However, they cite to research that cautions that sometimes seeking support may mean that social support is absent or perceived to be absent, which is associated with negative outcomes. *Id.* In other words, social support, as understood by the individual situated to receive it or not, is a key element in that person's experience of post-traumatic stress.

¹⁰¹ I do not claim that this is unique to those in the animal protection movement. Lack of public acceptance of the truth of the underlying claims of a movement is a primary source of anger, pain, and trauma among social justice advocates, generally. For example, Archie Epps, when introducing Malcolm X before a lecture at Harvard, noted the same thing about radical African-Americans:

The Negro radical movement is never credited with meaning what it says. Its pronouncements are interpreted rather than heard. None of its arguments is accorded the courtesy one gives reality. They are tolerated as the angry response of Negroes to white rejection. It is perhaps more nearly correct that what is often thought absurd about Negro radicalism turns out to be logical conclusions to a line of reasoning and experience which are unknown and beyond the imagination of most observers who are not themselves Negro. Negro radicalism is, rather, the spontaneous and articulated answer of some Negroes to real problems little appreciated by timid and peaceful souls.

Archie Epps, *The Leverett House Forum of March 18, 1964*, in MALCOLM X: SPEECHES AT HARVARD 131, 131 (Archie Epps ed., Paragon House 1991) (1968).

potential for trauma associated with advocacy on behalf of animals.

What is the import of trauma studies for advocates, advocacy, and advocacy outcomes in the context of "traumatized" advocacy? Repeated traumatic exposure can seriously affect advocacy because of unaddressed physiological and psychological alterations. These alterations cause the advocate to behave in counter-productive ways and cause an unreceptive audience to justify their unreceptiveness by reference to the advocates' strategies and speech.

Some of the aftermath of trauma is, by now, widely understood and can be predicted with relative accuracy. Even what manifests predominantly as psychological trauma begins as primarily a physiological phenomenon.¹⁰² The body is flooded with chemicals associated with recognizing and responding to danger. Other physiological changes, such as fluctuations in heart rate and breathing patterns, accompany the individual's recognition of impending harm/danger to herself or another, the traumatic episode itself, and recovery from it.¹⁰³ Moreover, trauma quite literally alters parts of an individual's physiology such that new triggers—real, exaggerated, or imagined—result in involuntary physiological responses, such as increased heart rate and adrenaline flow, associated with the stages of the original trauma.¹⁰⁴ Depending on such factors as the frequency and number of

¹⁰² Van der Kolk & Greenberg, *supra* note 94, at 64-65 (discussing the physical reaction of the body to traumatic events). For descriptions of the biochemical effects of stress and post-traumatic stress see MATSAKIS, *supra* note 96, at 74-78; HERBERT WEINER, *PERTURBING THE ORGANISM: THE BIOLOGY OF STRESSFUL EXPERIENCE* 196-97 (1992), John H. Krystal et al., *Neurobiological Aspects of PTSD: Review of Clinical and Preclinical Studies*, in *ESSENTIAL PAPERS*, *supra* note 67, at 274, and Yehuda & McFarlane, *supra* note 97, at 50-52.

¹⁰³ The literature on trauma contains many descriptions of the physiological effects of traumatic exposure. For books specific to the physiology of trauma see generally LEVINE WITH FREDERICK, *supra* note 13; BABETTE ROTHSCHILD, *THE BODY REMEMBERS: THE PSYCHOPHYSIOLOGY OF TRAUMA AND TRAUMA TREATMENT* (2000); *NEUROBIOLOGICAL AND CLINICAL CONSEQUENCES OF STRESS: FROM NORMAL ADAPTATION TO POST-TRAUMATIC STRESS DISORDER* (Matthew J. Friedman et al. eds., 1995).

¹⁰⁴ See WEINER, *supra* note 102, at 33-34, 38-43 (defining stressful experiences and the nature and variability of individuals' physical and behavioral reactions to stressful experiences). One important marker of trauma is a person's "acoustic startle response," which is pronounced in individuals with unhealed trauma. It is significant that hypersensitivity to sound is a generalized effect of post-traumatic stress disorder.

Abnormal psychophysiological responses in PTSD have been observed at two different levels: (1) in response to specific reminders of the trauma and (2) in response to intense but neutral stimuli, such as unexpected noises. The first paradigm implies heightened physiological arousal to sounds, images, and thoughts related to specific traumatic incidents. . . .

Kolb was the first to propose that excessive stimulation of the central nervous system CNS at the time of the trauma may result in permanent neuronal changes that

traumatic episodes, the age of the individual when trauma occurs, and what it represents to the individual, someone who has experienced trauma is more or less likely to continue to react physiologically to triggers associated with the original trauma unless she or he takes steps to heal the traumatic injury.¹⁰⁵

This is especially important because, over time, these altered physiological states can lead to long-lasting changes in physiological structures, which can, in turn, crystallize into rigid feedback loops between personal beliefs, behavioral traits, and patterns of interaction.¹⁰⁶ Predictable physiological changes associated with trauma are accompanied by predictable behavioral and psychological manifestations of post-traumatic stress: intrusive thoughts about the violence; hypersensitivity to triggers of thoughts and memories of the violence; volatile personal relationships; persistent and involuntary emotional numbing or unregulated emotional extremes of outbursts and low affect; severe mistrust of others; and a strong perceived need to protect oneself from those who would harm or take advantage of the person.¹⁰⁷ It is very hard for traumatized advocates to

have a negative effect on learning habituation, and stimulus discrimination. *These neuronal changes would not depend on actual exposure to reminders of the trauma for expression.* The abnormal startle response characteristic of PTSD exemplifies such neuronal changes.

Bessel A. van der Kolk, *The Body Keeps the Score: Memory and the Evolving Psychobiology of Posttraumatic Stress*, in *ESSENTIAL PAPERS*, *supra* note 67, at 301, 303-04 (emphasis added) (citations omitted).

¹⁰⁵ These are generally recognized factors. SCHWARZ, *supra* note 13, at 5, explains the phenomenon of reexperiencing trauma as a means of trying to process the experience, thereby assimilating it and becoming less vulnerable to intrusive symptoms such as flashbacks. *See also* Yehuda & McFarlane, *supra* note 97, at 47 (discussing possible vulnerability factors which should be further explored with appropriate research).

¹⁰⁶ For example, if the trauma occurs when the individual is a child, while the brain is still forming, a seemingly purely psychological trauma, such as a non-injury car accident or living in a war zone, can leave actual physiological traces on the part of the brain that is most rapidly developing at the time of the trauma. Those traces can cause alterations to the autonomic nervous system or cognitive functions, depending on the stage of the brain's development. This happens even if the child doesn't have the linguistic ability with which to frame and to understand the experience. Although many like to believe that children are more resilient than adults in the face of trauma, research indicates that the opposite is true because the brain is still developing. Imagine the debilitating and long-lasting effects of war trauma on veterans, the most highly studied group of trauma victims, and then consider the traumatic after-effects of children who live in war zones. As debilitating as it is for adults, such trauma is shattering for many children and psychologically crippling for most. *See* Bruce D. Perry et al., *Childhood Trauma, the Neurobiology of Adaptation, and "Use-Dependent" Development of the Brain: How "States" Become "Traits"*, 16 *INFANT MENTAL HEALTH J.*, 271, 272 (1995), available at <http://www.trauma-pages.com/perry96.htm> (comparing the significance of childhood trauma to that of adult trauma).

¹⁰⁷ These are generally recognized characteristics of post-traumatic stress syndrome.

distinguish friend from foe, to fully listen to the suggestions or questions of others, and to readily consider alternative approaches to advocacy.

There are also problems of presentation of information. Because of physiological changes that take place when a person observes or experiences violence, information is encoded and stored differently than when a person processes information in a non-violent context. For example, often one experiences extremes of hypermnesia¹⁰⁸ as to some things reminiscent of the trauma and amnesia as to other things connected to the trauma.¹⁰⁹ A trauma victim's memory is often garbled because a brain in the throes of reaction to traumatic events cannot process information normally. Unfortunately, this seriously affects the credibility of those who report traumatic events.¹¹⁰ Even if the memory is intact and reliable, the language that an as-yet unhealed trauma victim uses to speak about "unspeakable" violence is difficult for others to follow.¹¹¹ It is particularly

See *supra* note 13 and accompanying text. As Herbert Weiner explains:

The central feature of the posttraumatic state is a flashback to the traumatic experience that occurs during waking and/or sleeping hours. Any current experience even faintly reminiscent of the original may invoke its memory and the attendant fear, horror, or terror. The victims of the syndrome are constantly on alert and on guard. They sleep poorly. They are distracted. They show memory disturbances to the point of developing amnesic and dissociative states. They complain of being estranged from other people. The world and its inhabitant appear hostile, uninteresting, remote, or changed to them. They avoid being reminded of war, natural disasters, rape, and accidents. Their capacities for intimacy, tenderness, and passion are lost. Irritation and anger are poorly controlled.

WEINER, *supra* note 102, at 61 (citations omitted).

¹⁰⁸ See Van der Kolk, *supra* note 104, at 311 ("PTSD, by definition, is accompanied by memory disturbances that consist of both hyperamnesias and amnesias"). For a general definition of hypermnesia, see Henry L. Roediger, III & Erik T. Bergman, *The Controversy Over Recovered Memories*, 4 PSYCHOL. PUB. POL'Y & L. 1091 (1998). The "phenomenon of improved recall over repeated tests in the absence of further study of the material has been labeled hypermnesia." *Id.* at 1097.

¹⁰⁹ See Bessel A. van der Kolk & William Kadish, *Amnesia, Dissociation, and the Return of the Repressed*, in PSYCHOLOGICAL TRAUMA, *supra* note 94, at 173, 185-87 (discussing disassociation as a response to traumatic events).

¹¹⁰ The problems of traumatic effects on memory, recalling traumatic experiences or events, and the presentation of those memories are discussed in a number of publications. See, e.g., CHRIS R. BREWIN, POSTTRAUMATIC STRESS DISORDER: MALADY OR MYTH? (2003); COFFEY, *supra* note 13, at ix; Ralph Slovenko, *Introduction to POSTTRAUMATIC STRESS DISORDER IN LITIGATION: GUIDELINES FOR FORENSIC ASSESSMENT* xix-xxviii (Robert I. Simon ed., 2003) (discussing both the significance and the difficulty of defining and proving post-traumatic stress disorder in a legal setting).

¹¹¹ See RUTH WAJNRYB, THE SILENCE: HOW TRAGEDY SHAPES TALK 35-36, 51, 84 (2001) (discussing inability to speak about traumatic incidents). See also Mardi J. Horowitz, *Introduction to ESSENTIAL PAPERS*, *supra* note 67, at 1, 12 ("Some of [the events] . . . seem very unsafe to consider. . . . When attempting to bring up a threatening topic with others, he or

important for social justice activists to clear out those after-effects of trauma that affect communication of what they have seen. Their memories and their speech need to be clear because their audience is incredulous from the beginning. In the absence of social support for the reality they report, social justice activists cannot expect to be heard with charitable ears. It is they who must do all the work of communicating an “incredible” reality denied by the listener.

Not surprisingly at this stage of society’s resistance, anger on the part of social justice activists is a hallmark emotion.¹¹² Outwardly expressed anger is dangerous because it can drive away an otherwise sympathetic listener who may not have the patience to listen past the anger. However, anger impassions the advocate and may help the advocate remain actively involved in the cause. Many advocates are reluctant to give up their anger because it can provide a source of energy that other traumatic stress reactions, such as emotional numbing or depression, do not. Unfortunately, anger that has become warped by trauma can be quite destructive. In a moving, thoughtful essay on the place of anger in social justice movements, Barbara Deming writes of the need to transmute rage toward and hatred of those who oppress into the kind of anger that energizes the determination to bring about change.¹¹³ More recently, Karla McLaren writes of our failure to convert destructive anger into productive anger:

I’ve seen countless unhealed trauma survivors who barrel into rescuing relationships and end up retraumatizing everyone they touch; women’s groups that create hierarchies far worse than the patriarchy could ever create on its

she may do so with lower emotional control or describe the event in a halting, obscure, or tense way.”).

¹¹² There are different theories as to why anger is such a predominant component of post-traumatic stress. One theory is that it is simply a normal psychological response that is amplified. U.S. DEPT. OF VETERANS AFFAIRS, ANGER AND TRAUMA: A NATIONAL CENTER FOR PTSD FACT SHEET, http://www.ncptsd.org/facts/specific/fs_anger.html (last updated Feb. 8, 2005). Another is that, depending on the age of the trauma victim, the individual may not develop the ability, literally, to regulate emotions of all kinds. *Id.* Still another reported by the National Center for PTSD and elsewhere is that:

[H]igh levels of anger are related to a natural survival instinct. When initially confronted with extreme threat, anger is a normal response to terror, events that seem unfair, and feeling out of control or victimized. [Anger] can help a person survive by mobilizing all of his or her attention, thought, brain energy, and action toward survival. Recent research has shown that these responses to extreme threat can become “stuck” in persons with PTSD. This may lead to a survival mode response where the individual is more likely to react to situations with “full activation,” as if the circumstances were life threatening.

Id.

¹¹³ DEMING, *supra* note 10, at 207.

own; environmentalist groups that pollute the public discourse so completely that no healing communication can take root; welfare programs so inhospitable and impoverishing that their subjects are actually better off on the streets; and victim's rights or therapy groups that unconsciously revictimize their members. . . . Our misguided denial of hatred—our refusal to meet it head-on and channel its energy honorably—throws our society into turmoil that is as unnecessary as it is unfortunate.¹¹⁴

Even so, McLaren cautions against rejecting or devaluing anger because, while “explosive behavior doesn’t work at all, and habitually angry people are hard to be around . . . in their essence, they are our deepest humanitarians and our greatest strivers for peace.”¹¹⁵ Paying attention to anger so that it is energizing rather than enervating is extremely important.¹¹⁶

One way of turning anger into productive energy is basing one’s advocacy on a platform of knowledge about one’s own situation and about the listener’s situation. Why is the reality of which the advocate speaks so painful for the advocate? Why is the listener so unable to hear? Those who speak of animal suffering and those who (refuse to) hear are quite differently situated.

Advocates for animals believe that to read about or to see, through arduously obtained undercover video, how animals respond to production methods that turn their flesh into meat—to see them writhe and to hear them scream—is to *know* violence and intense suffering. In an interview with Satya Magazine, Paul Shapiro, who was Campaigns Director of COK at the time of the interview, describes feelings many animals’ advocates have when such video footage is shown:

It was a really unprecedented feeling, to walk into a shed which is pitch black and the first thing you notice is the stench. The stench just assaults your nostrils. You can imagine each shed having 92,000 birds, all of them defecating—the stench is so bad that gas masks hang on the wall for workers to use. Unfortunately, the animals don’t receive any such reprieve.

But as soon as you turn on your headlight, the enormity of the facility really hits you, just to know that there is tremendous suffering all around you and there is virtually nothing that you can do to relieve that suffering. When we started looking more closely into the cages and seeing that there were many

¹¹⁴ KARLA McLAREN, EMOTIONAL GENIUS 229-30 (2001).

¹¹⁵ *Id.* at 208.

¹¹⁶ Judith Barad makes this point specifically with respect to anger experienced by animal activists, especially those who participate in “direct action” to liberate animals or document their plight. See Judith Barad, *Aquinas’s Account of Anger Applied to the ALF*, in *TERRORISTS OR FREEDOM FIGHTERS*, *supra* note 54, at 159, 159-61.

dead hens, hens with cysts and tumors and broken bones and entangled in the wires of their cages . . . it was what I would describe as hell on Earth. I can't think of anything crueler than to put an animal into a battery cage like that for one to two years. It is horrible to try to empathize with those birds.

I feel that because of my privilege of being born a human, I have the power to go in and document what's going on and try to expose it; to show the public where the notion of animals as mere resources has led us—to something where we consider the interest of animals of such minimal importance that we can keep them tightly confined, frustrating all of their natural instincts just so we can have cheap eggs. It was really a sickening experience and I would say that the predominating feeling that I had during the time was of shame, of shame for being human, ashamed of our species for having the arrogance to treat other living, feeling beings like that.¹¹⁷

To know that this type of animal suffering is caused not by a pathological individual, but by institutions that are widely supported in our society, is painful. How does a person process information about animal suffering in intensive production facilities if society does not recognize it as cruel? Individuals react differently to the messages they are told (and tell themselves) about what they observe and experience.¹¹⁸ Somehow animals' advocates have connected to animals as "relevant others." This is one source of the great divide between animals' advocates and those who do not understand the suffering of animals to be relevant to themselves or their own lives.

A conceptual tool to make sense of this involves considering the way people value or devalue the interests and harms done to other humans. Similarity is seen as a legitimate basis for concern; dissimilarity is taken to be a legitimate basis for disregard.¹¹⁹ For example, a white person who sees

¹¹⁷ Satya Magazine, *Taking Compassion to New Levels: The Satya Interview with Paul Shapiro*, <http://www.satyamag.com/sept01/shapiro.html> (last visited Apr. 9, 2006) (omission in original).

¹¹⁸ See WEINER, *supra* note 102, at 40 ("One of the main theses of this book is that marked individual differences are seen in response to stressful experiences"). See generally MARILYN BOWMAN, *INDIVIDUAL DIFFERENCES IN POSTTRAUMATIC RESPONSE: PROBLEMS WITH THE ADVERSITY-DISTRESS CONNECTION* (1997).

¹¹⁹ This is true even in a society that prides itself on being "multi-cultural" and "pluralistic." See, e.g., KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* 22-25 (1989) (summarizing psychological and sociological research that attempts to explain the creation of self-identity by way of distinguishing the self from another). "But if my group identity tells me where I belong—and *that* I belong—it also tells me that you, who do not wear the same identifying labels, do not belong." *Id.* at 22. Citing Charles Lawrence, Karst goes further in claiming that "the rejection of the Other is not the product of reason; once internalized, typically it lies below the level of consciousness." *Id.* at 25.

a black person as inevitably and significantly different from herself will not spend very much time trying to understand the black person's experience, unless the black person makes it important for her to do so or unless an epiphany closes the gap of irrelevance. In her 1860s *Diary from Dixie*, Mary Boykin Chesnut writes of making the connection between an enslaved woman and herself when she observed an auction.

I have seen a Negro woman sold upon the block at auction. I was walking. The woman on the block overtopped the crowd. I felt faint, seasick. The creature looked so much like my good little Nancy. She was a bright mulatto, with a pleasant face. She was magnificently gotten up in silks and satins. . . . sometimes ogling the bidders, sometimes looking quite coy and modest; but her mouth never relaxed from its expanded grin of excitement. I dare say the poor thing knew who would buy her. My very soul sickened. It was too dreadful. I tried to reason. You know how women sell themselves and are sold in marriage, from queens downward, eh? You know what the Bible says about slavery, and marriage. Poor women, poor slaves.¹²⁰

The connection was intellectual ("poor women, poor slaves"), physical ("I felt faint, seasick"), and metaphysical ("My very soul sickened. . . I tried to reason."). On many levels, Mary Chesnut had understood similarities between herself and another, another whom others would have seen as completely dissimilar.¹²¹

¹²⁰ MARY BOYKIN CHESNUT, A DIARY FROM DIXIE 10-11 (Ben Ames Williams ed., Houghton Mifflin 1949) (1905).

¹²¹ Elizabeth Spelman, in the course of considering how the suffering of others is understood and used by those who observe it, uses as an example of "constructing suffering" the case of white advocates who claimed that blacks are different enough that whites need not worry about the impact of slavery on them:

[The pain of slaves was dismissed by figures such as] Dr. Samuel A. Cartwright, a physician on Louisiana plantations in the 1840s who proclaimed that Blacks just don't have the sensitivity to pain and suffering that whites have; by the novelist Mrs. Henry Schoolcraft, who encouraged whites to believe that it wasn't possible to work a slave too hard; by the Georgian Thomas R.R. Cobb, who meant to spare whites any misgivings they might have about breaking up slave families by insisting that slaves weren't capable of the kind of familial affection that could make such separation painful.

ELIZABETH V. SPELMAN, FRUITS OF SORROW: FRAMING OUR ATTENTION TO SUFFERING 47 (1997). Even apparently sympathetic observers may lack understanding. As Adrienne Rich has pointed out, reading Mary Chesnut's entire published diary, one can see clearly that the enslaved woman still retains an "other" quality, preventing full identification or understanding by even a sympathetic or empathetic outsider such as Mary Chesnut. Flashes of insight, even if numerous, are flashes into identity, not full understanding of an other's identity. See Adrienne Rich, *Disloyal to Civilization: Feminism, Racism, Gynophobia* (1978), in *ON LIES, SECRETS, AND SILENCE: SELECTED PROSE 1966-1978* 276, 293-94 (1979) (excerpting portions of Mary Chesnut's diaries). Spelman goes further, in detailing the campaign waged by nineteenth-century white suffragists and their comparison of the plight of women to that of

To many people, animals seem most dissimilar on the very dimension that many believe is the most important incident of identity and worth: thinking and understanding experiences the way humans do. Indeed, the assertion that animals do not anticipate the future or have expectations about their own and their offsprings' lives has led even one of their most ardent advocates to ascribe lesser worth to their lives than is ascribed to human lives.¹²² Much research is dedicated to proving that animals are, in fact, cognitively similar to humans, but certainly not all animals will turn out to be cognitively similar enough to satisfy those who consider it a precondition for membership in the moral community.

On the other hand, more animals may be similar to us in a way that we seem to discount for purposes of inclusion in the moral community: their capacity to suffer.¹²³ All animals with a central nervous system are surely

slaves. She argues that white women, even as they used analogy to enslaved women to discuss similarities between the two, were actually proving that they (the white women) were different and not enslaved. SPELMAN, *supra*, at 113-133.

¹²² Tom Regan imagines a lifeboat in which there are four humans and one dog of equal weight. Since the lifeboat can hold only four of these individuals, someone will have to be thrown overboard. Regan opts for the dog on the theory that the losses to the dog are less than the losses suffered by the humans. In fact, he goes so far as to say that the losses a million dogs would experience are less than the losses experienced by one human. The dogs do not understand their lives (think about their lives) the way humans do and, so, even though they deserve moral consideration, any rights they have would not necessarily outweigh those of humans. Regan calls for a principle of equitable assessment of losses in order to make decisions about competition. TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* 324-25 (2d ed. 2004).

¹²³ In this regard, I subscribe to the view of Jeremy Bentham, as cited by Tom Regan, that "The question is not, Can they reason? nor Can they *talk*? but, *Can they suffer*?" *Id.* at 95. But I disagree with Regan that Bentham's primary value is in distinguishing mere pain from the higher order of suffering, which deserves to be addressed. *See id.* at 95 ("But to cause them pain is not the same as, and does not entail, making them suffer."). Regan, for example, agrees that it is wrong to cause suffering to animals but he ties the degree of care we extend to animals to their cognitive abilities. *Id.* at 95-96. The views that animals should be protected because of sentience rather than cognitive ability or that sentience and cognition are completely intertwined are increasingly salient in the animal advocacy literature. Joan Dunayer, an animal activist, author, and researcher has written, "[c]ombining [Tom] Regan's ideas with [Peter] Singer's, I concluded: Sentience entitles nonhuman animals to legal rights, which must protect them, as individuals, from speciesism." JOAN DUNAYER, *ANIMAL EQUALITY: LANGUAGE AND LIBERATION* xvii (2001). Steven Wise proposes a similar view.

In his new book, *Drawing the Line: Science and the Case for Animal Rights*, lawyer Steven Wise argues that an animal is entitled to basic rights if it can desire, can act with the aim of getting what it desires, and has some sense of self, however dim. In my view, all sentient beings probably satisfy these criteria. It's reasonable and right to treat any creature with a nervous system as sentient.

Dan Murphy, *A Whacked-Out World Where Animals Have Legal Standing*, MEAT MARKETING & TECH., Sept. 20, 2002, http://www.maninnature.com/management/A_Rights/Rights1n.html (last visited Mar. 27, 2006) (quoting Joan Dunayer's speech at a

capable of suffering pain. The ability to experience pain would have conferred an evolutionary advantage in causing an animal to avoid certain dangerous situations.¹²⁴ But, even though we share with animals the capacity to suffer, animals cannot easily put their suffering before the eyes of those initially unwilling to see. Nor can they put their suffering into a language that commands to be heard, whether the listener is willing or not.

The reason many of us cannot see or hear the pain and suffering is that increasingly, society has physically separated animals from humans; with animals hidden from view, animals' suffering, too, is hidden from view. Their separation from us, our lack of knowledge about them, and our exploitation of them have resulted in our perceiving them as so different from us that we need not feel bad about the pain we inflict. Sociologist David Nibert explains it this way:

For most of human history, other animals and humans were largely cohabiters—a reality conditioned by the foraging way of life. Changing climatic conditions facilitated the emergence of hunting. This change in the method of material accumulation was necessarily accompanied by ideas that assuaged human guilt, ideas that were embedded in social and religious practices and beliefs. The ascent of agricultural society gradually transformed human oppression of other animals into a mundane practice.

Interhuman relationships also changed profoundly during these periods, and not for the better. The mistreatment of humans and other animals was not stimulated by prejudice; rather, prejudice *resulted from* the socially constructed ideological systems that legitimated oppression.¹²⁵

Indifference to mass animal suffering may reflect an even deeper tendency to discount the significance of experience through the senses. There is something about the “bloodlessness” with which most of us live our lives that keeps us distant from our bodies and from connecting to others on the basis of corporeal experiences in the world. Disconnection from our physical bodies and devaluation of sensory information, as opposed to cognitively processed information, may help to explain why society devalues animals. Likewise, this can also explain relative

conference in Vienna, Austria).

¹²⁴ Whether animals can experience pain would not have been a question were it not for the mechanistic views of philosopher René Descartes that led the way to wholesale abuses of animals in the name of science. Descartes contended that animals responded to stimuli the way a clock chimes—purely automatically and without sensation or the desire to communicate. See REGAN, *supra* note 122, at 3-33 (detailing Regan's analysis of the views and impact of Descartes).

¹²⁵ DAVID NIBERT, *ANIMAL RIGHTS/HUMAN RIGHTS: ENTANGLEMENTS OF OPPRESSION AND LIBERATION* 30-31 (2002) (emphasis added).

insusceptibility to interpreting animal suffering as true suffering and as traumatizing to witness. In his book-length inquiry into humans' increasingly distant relationship with their bodies and with others associated with the body, historian Morris Berman writes:

To be close to the animal kingdom is to not see the body . . . as an Other, and so not to suffer the basic fault [gap between self/other/existence]; whereas for many centuries now . . . "we" (i.e., our minds) have regarded our bodies as somehow untame, unruly—animalistic. They give birth, they die, they generate stomach aches or menstrual cramps, they contract diseases, they tingle with excitement, they get tired, and all without "our" voluntary control. Like animals, they don't "listen to reason." And so in animal species we see reflections of our own physicality.¹²⁶

From Berman's perspective, we have gone awry to our own detriment, not just to that of animals, when we distance ourselves from or actually even hate the "inconveniences" of the body. In that sense, the *inability* to connect with animal suffering—and not its opposite, the ability to make an empathic connection—may well be a sign of pathology.

Whether or not they become advocates for animals, some people do have epiphanies that cause them to connect emotionally to the flesh-and-blood suffering of animals. Somehow, the suffering of animals, their physical experience in the world, resonates with those who understand that physical existence has meaning of its own; our bodies do more than carry around our brains. In fact, it may be "natural" for humans to feel connected, in particular, to other mammals and to some birds, rather than to feel distanced from them as "others."¹²⁷ Quite the opposite of suffering from a pathological concern for animals, perhaps these people have finally "come to their senses."

Reconnection to our senses reconnects us to animals based on the recognition that we are biological beings grounded in a sensory relationship to the world that sometimes results in suffering. Moreover, according to many specialists in trauma therapy, reconnection to our senses (i.e., the physiological basis for the experience of trauma) also contains the seeds of effective healing from the traumatic aftermath of suffering.¹²⁸

¹²⁶ MORRIS BERMAN, *COMING TO OUR SENSES: BODY AND SPIRIT IN THE HIDDEN HISTORY OF THE WEST* 64 (1989).

¹²⁷ See THOMAS LEWIS ET AL., *A GENERAL THEORY OF LOVE* 63-65 (2000) (detailing the medical claim that a biological phenomenon, "limbic resonance" between humans, other mammals and some birds, results in non-verbal cuing back and forth that enables animals to communicate emotional states effectively to one another across species boundaries).

¹²⁸ See generally LEVINE WITH FREDERICK, *supra* note 13; ROTHSCILD, *supra* note 92. Morris Berman, while not a trauma therapist, concludes his history of the disconnect between

There are other explanations besides perception of dissimilarity and disconnection from our bodies to account for the lack of receptivity to the fact of animal suffering. Is it possible, as psychiatrist K.R. Eissler suggested, that some of us are openly contemptuous of others' suffering, of the perceived weakness that led to suffering?¹²⁹ While that might be the most frightening explanation,¹³⁰ perhaps the most mundane explanation is inertia, mere clinging to convenience. It seems that many people who do learn of societal violence also learn how to accommodate or reject that knowledge in order to avoid change. Altering one's daily practices is so daunting a prospect that it is actually easier to reject that knowledge altogether.

It is, no doubt, difficult for some well-intentioned people to pay attention to the social justice claims of the animal advocacy movement, because it is difficult to pay attention to the social justice claims of *every* advocacy movement. Each of those claims, if accepted as revealing truth, would require modifications of daily practices and ways of looking at the

our senses and our thoughts with the idea that activities that bring us back into an awareness of our bodily presence in the world will bring us well-being, health, and freedom from many of the psychological problems that seem to plague modern society. BERMAN, *supra* note 126, at 342-43. For example, he writes of a friend who claimed that "it became less and less important for me to win an argument" as a result of his study of Feldenkrais (a well-established form of bodywork/healing manipulation). *Id.* at 343.

While it is beyond the scope of this Article to examine healing modalities that focus on the individual's physiological/psychological metabolism of traumatic stress, it is important for advocates to realize that there have been significant advances in understanding the healing process, many of which rely on non-pharmaceutical physiological methods. For summaries of different physically situated healing techniques, see generally MAGGIE PHILLIPS, *FINDING THE ENERGY TO HEAL: HOW EMDR, HYPNOSIS, TFT, IMAGERY, AND BODY-FOCUSED THERAPY CAN HELP RESOLVE HEALTH PROBLEMS* xiii (2000); ROTHCHILD, *supra* note 103, at xi-xii.

¹²⁹ In his discussion of psychiatrists' reactions to the special circumstances of survivors of the Holocaust, Krystal quotes Eissler for the proposition that there is primal contempt for those who have suffered humiliating defeat:

I am compelled to draw the conclusion that among the many causes for hostility towards the victims of persecution, regression to the pagan feeling of contempt for those who are suffering physically must be included. It may well be the most insidious and most potent cause of all. Why some act out that contempt while others are capable of repressing it I do not know. But my belief is that with few exceptions feelings of contempt for suffering are something of a universal reaction still very much alive in almost all of us.

Henry Krystal, *Psychoanalytic Views on Human Emotional Damages*, in *POST-TRAUMATIC STRESS DISORDER: PSYCHOLOGICAL AND BIOLOGICAL SEQUELAE* 22 (Bessel A. van der Kolk ed., 1984) (quoting Eissler).

¹³⁰ This is particularly frightening because it suggests that, even *with* awareness of animal suffering, some significant number of people will be contemptuous rather than compassionate.

world. It is very hard to accept the transformative effect of education, to change one's own practices, or to challenge industries' practices. Research psychiatrist Judith Herman has written that our society's failure to recognize the extent of violence in our society is a significant part of individuals' difficulty in coming to terms with the particular manifestations of violence they personally experience.¹³¹ Yet she also recognizes how difficult it is to accept the truth of the extent to which violence and social acceptance of violence operate in our society. The difficulty of examining the phenomenon of trauma itself is even greater because

[t]o study psychological trauma is to come face to face both with human vulnerability in the natural world and with the capacity for evil in human nature. To study psychological trauma means bearing witness to horrible events. When the events are natural disasters or "acts of God," those who bear witness sympathize readily with the victim. But when the traumatic events are of human design, those who bear witness are caught in the conflict between victim and perpetrator. It is morally impossible to remain neutral in this conflict. The bystander is forced to take sides.

It is very tempting to take the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear, and speak no evil. The victim, on the contrary, asks the bystander to share the burden of pain.¹³²

As the foie gras legislative advocacy effort reveals, industries put considerable resources into reassuring consumers about their uses of animals. Consumers can go about their daily lives without guilt, but only if they discredit or discount the claims of the animals' advocates. Some respond with respectful disagreement or outright attacks on the credibility of the speaker. But, perhaps even more often, they respond with condescending kindness and concern for one's mental health.

Nobel Prize-winning novelist J.M. Coetzee illustrates this by way of Elizabeth Costello, a distinguished novelist who uses the occasion of accepting an award to address the problem of bystander complacency toward institutionalized cruelty to animals.¹³³ After her speech, perhaps aware that she has made little impact on her audience,¹³⁴ she says the

¹³¹ HERMAN, *supra* note 13, at 61 (noting that "people in the survivor's social world have the power to influence the eventual outcome of the trauma").

¹³² HERMAN, *supra* note 13, at 7.

¹³³ J.M. COETZEE, ELIZABETH COSTELLO 60 (2003).

¹³⁴ Elizabeth Costello does not recount examples of the torment of animals, but instead, assumes that her audience knows of that torment. Perhaps therein lies the failure of her speech. On the other hand, Elizabeth is exquisitely sensitive to the traumatizing effects of recounting details of violent treatment of others. In another lecture, Elizabeth struggles with

following to her son:

I no longer know where I am. I seem to move around perfectly easily among people, to have perfectly normal relations with them. Is it possible, I ask myself, that all of them are participants in a crime of stupefying proportions? Am I fantasizing it all? I must be mad! Yet every day I see the evidences. The very people I suspect produce the evidence, exhibit it, offer it to me. Corpses. Fragments of corpses that they have bought for money.

It is as if I were to visit friends, and to make some polite remark about the lamp in their living room, and they were to say, "Yes, it's nice, isn't it? Polish-Jewish skin it's made of, we find that's best, the skins of young Polish-Jewish virgins." Then I go to the bathroom and the soap wrapper says, "Treblinka—100% human stearate." Am I dreaming, I say to myself? What kind of house is this?

Yet I'm not dreaming. I look into your eyes, into [your wife's] eyes, into the children's, and I see only kindness, human kindness. Calm down, I tell myself, you are making a mountain out of a molehill. This is life. Everyone else comes to terms with it, why can't you? *Why can't you?*¹³⁵

Her son's response is important.

She turns on him a tearful face. What does she want, he thinks? Does she want me to answer her question for her?

They are not yet on the expressway. He pulls the car over, switches off the engine, takes his mother in his arms. He inhales the smell of cold cream, of old flesh. "There, there," he whispers in her ear. "There, there. It will soon be over."¹³⁶

Most certainly Elizabeth's son means that Elizabeth's torment will soon

the problem of fully communicating the evil without also communicating its infectious qualities. She rails against the author of a book that includes vivid accounts of heinous acts because, she believes, it cannot but harm the reader to read such accounts. Yet, how will people change their minds without receiving such potentially traumatizing information? *See id.* at 156-82 (speaking at a conference in Amsterdam about the "age-old problem of evil" and taking this opportunity to discuss the enslavement of entire animal populations).

¹³⁵ *Id.* at 114-15. Similarly, Primo Levi, a writer who survived the Holocaust, told of a recurrent nightmare in which he would survive only to have those to whom he returned disbelieve his accounts. WAJNRYB, *supra* note 111, at 83. According to Simon Wiesenthal, again quoted by Ruth Wajnryb, the Nazi concentration camp guards forecast the same disbelief:

However this war may end, we have won the war against you; none of you will be left to bear witness, but even if someone were to survive, the world would not believe him. . . . [P]eople will say that the events you describe are too monstrous to be believed . . . and will believe us, who will deny everything . . .

Id.

¹³⁶ COETZEE, *supra* note 133, at 115.

be over, not that the animals' torment will soon be over. Those of us currently active in the movement will be long gone if and when kind, respectful treatment of animals is realized. In the meantime, the type of condescension exhibited by Elizabeth's son has many negative effects on advocates. Is it any wonder that some would-be truth-tellers, like the Greek heroine Cassandra, become obsessed with the truth they cannot tell, that others cannot seem to hear?¹³⁷

Is it any wonder that such dismissive, condescending responses from apparently caring people make it difficult for those so-treated to respond to others' truth-telling about their own traumatic lessons? When activists, *in any social justice movement*, must be wholly dedicated to speaking truths that others will not or cannot hear, it is a gargantuan task for them to take on all of the forms of oppression intertwined with the truths they speak. Is it really any wonder that advocates seeking to end exploitation of animals for flesh food production are unable fully to consider the plight of minority workers from whom jobs would be taken as a result of their activism? Is it really any wonder that advocates seeking to end exploitation of workers are unable fully to consider the suffering of animals in those same enterprises?

Each social justice movement participant is fighting just to be heard about the particular manifestation of violence he or she sees most clearly. The combined message of social justice movements is that there is a lot of violence operative in many contexts and settings in our society. Not only is it difficult to acknowledge that as an aspect of our society, it is also difficult to summon the energy to deal with all the intertwined manifestations of violence. Addressing animal cruelty may involve some changes; addressing worker health and safety issues may involve other changes. Addressing both involves even more difficult work: reconceptualizing or dismantling the entire enterprise that oppresses both animals and people.

It would be much easier not to be an advocate for animals in a society so committed to animal exploitation. The uncomprehending condescension of others, others' contempt for weakness and suffering, a life of apparent powerlessness—these are all frightening prospects. Many who witness unspeakable or heretofore unspoken truths fall silent or deaden their own

¹³⁷ According to Greek mythology, Apollo endowed a mortal woman, Cassandra, with the ability to foretell the future. Although Cassandra accepted Apollo's gift as a gift from her teacher, she rejected Apollo's request that she become his lover. Apollo then changed the gift into a curse: that of telling the truth which no one would believe. According to the myth, Cassandra did foretell many disasters, which came to pass because no one believed her. She was doomed to watch unfold the very miseries she told others would occur. *See generally* Mythography—The Greek Heroine Cassandra in Myth and Art, <http://www.loggia.com/myth/cassandra.html> (last visited Apr. 9, 2006) (describing the myth of Cassandra).

emotions rather than continue to experience emotions that have no basis in the accepted truths of their society.

Nevertheless, not all shrink from feeling or from speaking the truth as they know it. They speak, but many speak in the special language of trauma that is not validated.¹³⁸ Suffering from at least four sources of trauma—knowing about animals' suffering, society's rejection of the claim that the animals are suffering, society's rejection of advocates and their concerns as pathological or misguided, and the lack of a cohesive, stable collective identity as animals' advocates—individual advocates' voices are likely to become louder and more insistent. Their tactics are likely to become more rigidly focused.

Inflexibility appears to be particularly likely if advocates are driven by a sense of "survivor guilt" and "entrusted responsibility" to make animal suffering stop.¹³⁹ A sense of entrusted responsibility for animals heightens one's susceptibility to trauma because of the potential for self-blame if one's advocacy does not improve the situation of animals. Active involvement of clients in the course of advocacy lends some protection from feeling totally responsible for failures. When, as in this context, clients cannot choose their advocates or be involved in advocacy strategizing, there is heightened concern about the basis for one's choices during representation. This is true of many types of social justice advocacy, but animal advocacy is particularly difficult because, even if we can intuit basic outcome preferences, there can be no discourse with or surveying of animals with respect to their advocacy preferences. No animal has chosen a

¹³⁸ See Van der Kolk, *supra* note 104, at 312 ("When people are traumatized, they are said to experience 'speechless terror': the emotional impact of the event may interfere with the capacity to capture the experience in words or symbols").

¹³⁹ See MARDI JON HOROWITZ, *STRESS RESPONSE SYNDROMES* 7 (2d ed. 1986) (describing "[i]ntrusive repetition and denials" as two extreme responses to stressful life events); S. Joseph et al., *Guilt and Distress 30 Months After the Capsizing of the Herald of Free Enterprise*, *PERSONALITY AND INDIVIDUAL DIFFERENCES* 14, 27-273 (1993); MATSAKIS, *supra* note 96; T. Williams, *Diagnosis and Treatment of Survivor Guilt*, in *POST-TRAUMATIC STRESS DISORDERS: A HANDBOOK FOR CLINICIANS* (T. Williams ed., Cincinnati 1987). Matsakis reports research showing that "[t]he tendency to experience survivor guilt as means of avoiding feelings of helplessness has been found among combat veterans, Holocaust survivors, and traumatized children." MATSAKIS, *supra*, at 46 (citations omitted). Bessel van der Kolk et al. wrote that "if a person with [post-traumatic stress disorder] can reexperience the fact that one's fate is at least partially contingent upon one's actions there will be an attenuation of post-traumatic symptoms." Bessel van der Kolk et al., *Post-Traumatic Stress Disorder as a Biologically Based Disorder: Implications of the Animal Model of Inescapable Shock*, in *POST-TRAUMATIC STRESS DISORDER: PSYCHOLOGICAL AND BIOLOGICAL SEQUELAE*, *supra* note 129, at 124, 130. Conversely, the person caught in the throes of trauma may enter a state of total helplessness in which the person is numbed to all but a feeling of "tragic sadness." Krystal, *supra* note 129, at 15.

particular advocate or method of advocacy, yet animals will bear all the costs of advocacy failures.

Advocates already face questions about their entitlement to speak about the experience of those so seemingly unlike them. How do they know what the birds want or feel? There is the constant challenge that an advocate's concern is mere projection of her own unaddressed suffering, that she is anthropomorphizing, and that she is loosely interpreting rather than truly representing the birds. When the additional challenge of choosing the correct advocacy strategy is added, given that there are no clear guideposts, the stage is set for an overwhelming preoccupation with one's entrusted responsibilities for the animals whose representation one has shouldered without having been appointed to do so.

Legal advocates for animals may experience greater problems with entrusted responsibility than non-legal advocates for animals because of three aspects of legal representation. First, legal advocates are "speaking for animals" in legally binding ways, without having actually been entrusted with the responsibility as that term is generally understood by lawyers. Animal clients do not choose, direct, or have the ability to fire their legal counsel. Second, legal advocates are trying to help their clients through law when, in fact, law is one of the primary vehicles through which animals are so violently exploited.¹⁴⁰ Non-legal advocates might think that the law is more felicitous than it is, but legal advocates soon recognize that they can accomplish only a small amount. It is difficult to explain legal failures to non-legal advocates, and legal advocates' inability to accomplish more for animals is distressing to them and to others who thought that the law would provide more relief. Finally, since legal advocacy for animals is not a matter of invoking any of a number of existing laws that protect animals, there is considerable, painstaking analysis of strategy and choice as to the few existing laws there are. Attorneys cannot turn to their animal clients, as they might turn to a human client, and ask the client which course of action he or she might choose.

¹⁴⁰ I do not claim that this is the only case in which law is more injurious than helpful. Other contemporary examples are the laws proposed to prohibit gay marriage. As Ken Karst points out, some members of every social movement have specifically identified the law as a potent source of harm and needed reform. See KARST, *supra* note 119, at 4 ("When the instrument for excluding a group is the law, the hurt is magnified, for the law is seen to embody the community's values."). Karst also notes that "[t]he dismal side of the need to belong . . . is the distancing and objectification of people who are defined as outsiders." *Id.* at 27. I make only the claim that in this movement, too, law is still at the stage of harming more than it helps animals, despite, as I describe later, the existence of conflicting messages in the law about the People's preference for humane treatment of animals.

In sum, every legal advocacy decision is fraught with anxiety about “doing right” by the animals and “doing enough” for the animals to whom one feels the entrusted responsibility to make the best choices, especially when legal effects can be so long-lasting. Criticism is difficult to hear because one cannot bear the thought of being wrong.¹⁴¹ In fact, if a strategy does turn out badly, the advocate(s) who advanced it will suffer far more than if the stakes—legally stopping and preventing horrific suffering—were not so high. Bad case law or legislation can last for a very long time.

III. LEGAL ADVOCACY FOR ANIMALS IN THE CONTEXT OF LAW’S FAILURES

Given the role that law plays in increasing institutional capacity to abuse animals and in decreasing society’s ability to identify and address animal abuse, it is perhaps a form of “embroidering while the house is burning” to propose that law can serve to prevent or heal trauma even before those failures of law are addressed. However, I contend that some advocacy projects can affect the socially constructed components of trauma associated with high-stakes advocacy strategies precisely because they are not high-stakes enough to provoke full-scale counter-challenges by industry. I do not propose that advocates always choose advocacy that is unlikely to

¹⁴¹ In fact, in the foie gras legislative effort there was substantial criticism about the length of the grace period (seven and one-half years), the opportunity for the producer to come up with alternatives that would keep him in business (as he has stated he will), and the legislative compromise that pulled the rug out from under advocates who were pursuing civil litigation against the foie gras producer on the grounds of anti-cruelty statute violation. The most vociferous objections have come from Friends of Animals and the Humane Farming Association. See *supra* note 74 for their positions in the debate. Friends of Animals was in support of the legislation until it was amended to give the producer immunity from civil or criminal liability for cruelty during the grace period. I write in more detail about these differences of opinion later in this Article, at text accompanying *infra* notes 171-77. At this point, however, I am tying those criticisms to the idea of entrusted responsibility. Suppose that Friends of Animals is correct: the foie gras producer finds a way to lace the birds’ food with pleasant tasting drugs that increase their appetite to the point of “voluntary” gorging? The legislation bans “forced feeding.” Is this forced feeding? If it isn’t, then the producer could remain in the foie gras production business seven and one-half years later. Another advocate might have drafted the language to exclude any means of intentionally creating “fatty liver disease.” Or another advocate might have succeeded with the litigation route to begin with—without waiting for birds to suffer for seven and one-half years. The point is not that the legislative proposal being considered at the time was flawed. The points are that there is truly difficult decision making involved in strategizing for animals, that pursuing legislative reform or this type of legislative reform was not *necessarily* the only way or the best way to secure safety for the birds, that the advocates who chose the particular legislative reform that they chose will feel terrible if the result of their chosen advocacy fails, and that they are set up for that terrible pain by the sense of entrusted responsibility that flows from the traumatic realization of the extent of suffering they are trying to stop.

provoke challenge or that such advocacy supplant direct challenges to industries' expansive entitlement to cause suffering to animals.

My claim is that, to the extent that trauma is enervating and rigidifying, both legal advocates' well-being and their advocacy efforts in encounters with industry could be improved by reforms that reduce the socially constructed trauma and its source—the dismissive incredulity of the broader society. I argue that legal advocates should consider some projects whose primary purpose is to build community and public awareness, although they might not find such projects initially appealing or worthwhile. An important part of healing trauma is public recognition that there is a valid reason for advocacy. In the case of advocacy for animals, this means educating the public about the fact of animal suffering, the responsibility of institutional exploiters of animals, and the feasibility of stopping industry's privilege.

In considering trauma-neutralizing legal advocacy, I have considered three features important. First, I have looked for ways in which law can help advocates expand their consciousness, and their "community" or "collective identity," by working to realize interests held in common with activists in other social justice movements. Second, I have looked for advocacy strategies that increase public awareness of the issues of animal suffering without necessarily involving a direct attack on animal-exploiting enterprises. Third, I have valued indirect means of attacking the entitlement of animal-exploiting industries to define "cruelty" as they choose and to prevent a full understanding of what is done to animals in their presumed care. Animal-exploiting industries are so extremely powerful politically and economically that to attack them directly is not usually successful. Like Medusa, who could paralyze anyone who looked at her directly, animal-exploiting industries fully engaged and threatened by activists' challenges will bring considerable resources to bear in protecting themselves. Thus, like Perseus, activists might do well to use indirect methods whenever possible.¹⁴²

¹⁴² This idea is derived from a basic premise of Dr. Peter Levine's theory that healing trauma occurs by focusing on physical effects that are generated by similar but not exactly the same experiences that were initially traumatically scarring.

In the myth of Medusa, anyone who looked directly into her eyes would quickly turn to stone. Such is the case with trauma. If we attempt to confront trauma head on, it will continue to do what it has already done—immobilize us in fear. Before Perseus set out to conquer Medusa, he was warned by Athena not to look directly at the Gorgon. Heeding the goddess's wisdom, he used his shield to reflect Medusa's image; by doing so, he was able to cut off her head. Likewise, the solution to vanquishing trauma comes not through confronting it directly, but by working with its reflection . . .

The following general areas of legal reform offer some possibilities that meet those three criteria: (1) pursuit of laws whose primary purpose is to build public awareness of what happens to animals in this society; (2) reform of legal processes to which people who educate the public about animal cruelty are subject; and (3) liberalization of rules that govern legal advocates' opportunities to be heard in court, irrespective of representing a client on the matter. Each of these is controversial for a variety of reasons, but in deciding on projects, advocates should consider the potential each carries for raising public awareness and healing trauma associated with learning as-yet socially unaccepted truths about institutional cruelty to animals.

A. Building community and increasing public awareness

These strategies increase public awareness of the need for animal protection. They include symbolic measures, heightened legal requirements that animal-exploiting enterprises disclose how they handle and use animals, and legal reform for humans who directly work for animal-exploitative businesses. None of these seeks the immediate cessation of exploitation of animals, and so animals will suffer during the time that these measures are sought. That is a major reason, though not the only reason, that these avenues are not the first choice of legal advocates for animals.

1. Symbolic measures

Most legal advocates would reject purely symbolic measures to increase public awareness of the torment animals experience in our society. Trained to believe that law has value only to the extent it can create enforceable obligations, impatient for change, incredulous that there really could be such widespread ignorance about what happens to animals, and burdened with the entrusted responsibility to do right by their clients as soon as possible, legal advocates would prefer more powerful vehicles for helping animals. Such advocates may not appreciate the potential benefits of joining others who work on such symbolic gestures because they do not recognize the extent to which socially constructed trauma impedes their own advocacy and the extent to which public truth-telling/public consciousness-raising plays a part in healing that trauma. However, just as the Vietnam Veterans Memorial has helped to heal individual veterans and their families, as well

as the nation,¹⁴³ participating in vigils for homeless animals killed in our shelters or writing letters to editors of potentially receptive newspapers can build community among advocates and provide individual solace, while also increasing public awareness of animal issues.

The legal equivalent of these symbolic gestures includes the following examples: public policy statutes that do not create obligations, but that express the public's preference for adopting out shelter animals instead of killing them;¹⁴⁴ declarations that animals are sentient beings;¹⁴⁵ proclamations that animals are not our property;¹⁴⁶ redesignation of companion animal "owners" as companion animal "guardians"¹⁴⁷ in

¹⁴³ See HERMAN, *supra* note 13, at 71 (describing the community rejection and later healing associated with the Vietnam conflict and the Vietnam War Memorial).

¹⁴⁴ See, for example, CAL. FOOD & AGRIC. CODE § 17005 (West 2001), which states (a) "[i]t is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home" and (b) "[i]t is the policy of the state that no treatable animal should be euthanized." (Since these policy statutes do not contain duties, they are not directly enforceable. However, policy statutes do guide interpretations of statutes containing duties, where there is ambiguity about interpretation of those duties.)

¹⁴⁵ A listing of Official Proclamations that animals are sentient beings can be found at a website managed by Farm Sanctuary, SentientBeings.org, <http://www.sentientbeings.org/proclamations.htm> (last visited Apr. 9, 2006).

¹⁴⁶ That is the goal of an In Defense of Animals campaign, described at The Guardian Campaign, <http://www.idausa.org/campaigns/oldguardian/guardian.html> (last visited Apr. 9, 2006). Legal scholarship is picking up on the problem of legal designations of property, which results in market value damages when an animal is found to be mere property. That measure of damages is insufficient either to heal the injury to the "owner" or to deter injurious conduct. See, e.g., Root, *supra* note 32, at 424-5 ("At the forefront of this [valuation of loss] debate is whether pet owners should be able to recover damages for genuine mental suffering."). See also Debra Squires-Lee, Note, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059 (1995) (dealing specifically with the problem of valuation); Rebecca J. Huss, *Valuing Man's and Woman's Best Friend: The Moral and Legal Status of Companion Animals*, 86 MARQ. L. REV. 47 (2002) (placing the issue of market value calculations in the context of general moral and legal valuation of companion animals). See generally Animal Legal & Historical Center, Companion Animal Damages, <http://www.animallaw.info/topics/spuspetdamages.htm> (last updated Apr. 15, 2006) (providing links to research and other information).

¹⁴⁷ For the past five years a San Francisco animal organization, In Defense of Animals (IDA) has led a campaign to change the term "animal owner" to "animal guardian." In five years, twelve cities (Albany, CA, Amherst, MA, Berkeley, CA, Boulder, CO, Menomonee Falls, WI, San Francisco, CA, Sebastopol, CA, Sherwood, AK, Womaque, NY, West Hollywood, CA, Windsor, Ontario, Canada and Woodstock, NY), one county (Marin County), and one state (Rhode Island), have accepted this change. See The Guardian Campaign, <http://www.guardiancampaign.com/guardiancity.htm> (last visited Apr. 9, 2006) (listing successful initiatives). Every state in the United States still has the concept of animal owner in its statutes and therefore the change to "animal guardian" has no legal effect. Animals are still personal property. The consequences of that legal status are most fully explained by Gary L. Francione in such books as *Animals, Property and the Law*, FRANCIONE, *supra* note 25, and *Introduction to Animal Rights: Your Child or the Dog?*, FRANCIONE, *supra* note 19.

municipal codes; and state or federal resolutions that create Spay Days.¹⁴⁸ Certainly, valid arguments can be made against pursuing such goals. For example, if legislators have limited agenda space for issues of any one type and if animals' advocates have limited resources of time and energy, it seems irrational to advocate for symbolic measures instead of concrete, substantive law changes for animals. On an emotional level, too, these efforts are not satisfying because they do not respond to the urgency to help animals directly and immediately.

On the other hand, one can argue such symbolic measures are necessary to lay the groundwork for enactment of substantive law changes that benefit animals. Perhaps one could justify such activism as cost-effective in that, while such measures may accomplish less for animals, they also require less advocacy effort or cost than does substantive legislation. Perhaps, too, such measures also enhance the probability that any substantive laws that *are* enacted will be enforced. While each of these suppositions can be countered and none has been proved, the literature on women's rights and veterans' rights suggests that symbolic measures are important elements of a social movement, helping to affirm the underlying truth of the advocates' claims and heal at least that part of trauma that comes from public disbelief in the activists' cause (i.e., the social-constitutive parts of trauma). Advocates might think that they should be tough enough to withstand trauma without prioritizing trauma-healing projects, but the trauma literature indicates that multiple exposures to trauma can be so debilitating that these projects are worth consideration.

2. Disclosure laws

At present, animal-exploiting enterprises have few affirmative obligations to disclose their treatment of animals, and what obligations they do have are sorely inadequate if, in fact, the goal of those obligations is to enforce the few humane care standards that exist. For example, the Food Safety and Inspection Division (the compliance division of the USDA) employs inspectors and veterinarians at every federally inspected slaughterhouse,¹⁴⁹ but those who compile the reports may well be more

¹⁴⁸ The concept of a national Spay Day is a program of the national Doris Day Animal League. For over five years they have sponsored a program called Spay Day USA every February, and in their handout with instructions they include a sample proclamation that humane groups can use to get city, county, and state jurisdictions to adopt and promote the program (handout on file with author).

¹⁴⁹ See FOOD SAFETY & INSPECTION SERV., USDA, KEY FACTS: HUMANE SLAUGHTER, http://www.fsis.usda.gov/Fact_Sheets/Key_facts_humane_slaughter/index.asp

concerned about the smooth operation of slaughterhouses and laboratories than they are with animal welfare issues.¹⁵⁰ Similarly, the AWA requires the use of veterinarians to ensure humane treatment¹⁵¹ and USDA inspections by the APHIS, "as [the Secretary of the USDA] deems necessary."¹⁵² However, whether minimal standards of humane care are met is based on the opinion of the APHIS inspector or the veterinarian whose job is secure only to the extent that she maintains a good working relationship with USDA AWA licensees. Licensees are allowed to operate even with documented violations of the AWA and its associated federal regulations.¹⁵³

As private commercial entities, animal-exploiting enterprises have no obligations to open their doors to anyone other than federal, state, and local authorities that have inspection rights under the few existing regulatory laws. In the relatively rare instances in which reports on compliance with animal protection laws are required, advocates must rely on the Freedom of Information Act¹⁵⁴ to find out what is going on. However, using the Freedom of Information Act entails a very tedious process of requesting reports, encountering refusals to provide reports, and challenging redacted versions of the reports.¹⁵⁵ Where no laws exist, as in the case of the laying

(last updated June 22, 2001) ("FSIS employs a veterinarian and slaughter line inspectors at every federally inspected slaughter establishment").

¹⁵⁰ See EISNITZ, *supra* note 33, at 24 ("The USDA, closely allied to the meat industry and opposed to the Humane Methods of Slaughter Act, was nevertheless made responsible for its enforcement.")

¹⁵¹ See 7 U.S.C. § 2143(a)(2)(A) (2000) (requiring "adequate veterinary care").

¹⁵² 7 U.S.C. § 2146(a) (2000).

¹⁵³ Licensees are given liberal opportunities to correct violations, and inspections are few and far between. It is presumed that an institution will correct violations rather than risk loss of its license. An example of this is a wildlife sanctuary located near Los Angeles. In 2000, the sanctuary was shut down by the USDA, the California Department of Fish and Game, and even Los Angeles County District Attorney's office. They were charged with 299 violations and had their exhibitor's license pulled until some very serious violations were corrected. By all accounts they should have been permanently shut down, but were not. They were allowed to fundraise during this time and dragged their feet to correct the violations. As of the writing of this Article they have been allowed to open their facility and invite the public in again, even though not all violations have been corrected. Furthermore, the USDA has filed a second case against them and this one is more serious than the last. A history of the USDA's dealings with the organization is recounted in the Second Amended Complaint filed by the USDA, against Martine Colette, Wildlife Waystation, and Robert H. Lorsch, before the Secretary of Agriculture, Mar. 12, 2004 (AWA Docket No. 03-0034) (copy on file with the author).

¹⁵⁴ Electronic Freedom of Information Act (FOIA) Amendments of 1996, 5 U.S.C. § 552, as amended by Public Law No. 104-231, 110 Stat. 3048 (making "certain agency information available for public inspection and copying").

¹⁵⁵ Mindy Kursban, Chief Legal Counsel for the Physician's Committee on Responsible

hens described above, there are no requirements for any type of report that can be obtained by the Freedom of Information Act.

This agonizing lack of access to information can push advocates to extremes. In desperation, some animals' advocates break into animal-exploiting enterprises with the goal of revealing the truth of how animals are treated in a society that, for the most part, sees only the "reality" that is presented by giant factory farming businesses through mass media that are controlled by corporate advertising revenue. It is no wonder that they can produce only primitive videotape footage that is challenged on many grounds.¹⁵⁶

Legal advocates should consider pursuing avenues to make animal-exploiting enterprises more legally accountable and forthcoming with information about what they do to animals, even though much of the effort involved merely lays the groundwork for banning horrific practices. This method may seem too slow, too indirect, too unlikely to succeed, and, in any case, incomplete in its advocacy for animals. Yet, in working for laws that require heightened levels of disclosure by animal-exploiting enterprises, legal activists are working to establish a base of public information about what is actually happening to animals. Their goal is to counter claims that animals' advocates are lying or seeking "luxury accommodations" for animals whose basic needs are amply met by animal-exploiting enterprises. In validating the truth of what other advocates have arduously documented, often through illegal means and at risk to themselves, this strategy can reduce societal disbelief.

Medicine, uses the Freedom of Information Act to obtain publicly available documents. However, as she recounted in a presentation at UCLA Law School on Mar. 19, 2004, she spends a considerable amount of time pursuing requests which the appropriate government agency denies or fulfills with such extensive redaction that the underlying report is virtually incomprehensible.

I do not claim that this is unique to animal advocacy issues. In fact, it appears to be generally the case that use of the FOIA is made difficult by governmental reluctance to share documents that are supposed to be publicly available. See, for example, the Society for Professional Journalists website regarding use of the FOIA at <http://www.spj.org/foia.asp> (last visited Apr. 9, 2006).

¹⁵⁶ Industry representatives regularly claim that footage is outdated, selective, or doctored. Since much videotape footage is illegally obtained, it is difficult for the film producer to defend against those claims. According to Erica Meier, Executive Director of Compassion Over Killing, Compassion Over Killing includes videotape footage of a handheld Global Positioning System's report of latitude and longitude and that day's newspaper to verify the date of each open rescue and at what location the rescue occurred. According to Meier, that additional footage has gone a long way toward discrediting the claim of the footage being faked or outdated. E-mail from Erica Meier, to Taimie Bryant, Professor of Law, UCLA School of Law (Mar. 7, 2006) (on file with author).

3. Collaborative advocacy

Many of the same institutions that oppress animals also destroy the environment and oppress people of color and women,¹⁵⁷ yet animals' advocates do not engage in cross-over advocacy any more than do most environmentalists, people of color, or feminists. Jeffrey Alexander states not only the possibility but the cost of failing to do so:

[M]embers of collectivities define their solidarity relationships in ways that, in principle, allow them to share the sufferings of others. Is the suffering of others also our own? In thinking that it might in fact be, societies expand the circle of the we. By the same token, social groups can, and often do, refuse to recognize the existence of others' trauma, and because of their failure they cannot achieve a moral stance. By denying the reality of others' suffering, people not only diffuse their own responsibility for the suffering but often project the responsibility for their own suffering on these others. In other words, by refusing to participate in what I will describe as the process of trauma creation, social groups restrict solidarity, leaving others to suffer alone.¹⁵⁸

Perhaps it is understandable that one has only so much advocacy energy to expend and that one must choose one's issue. But questions about credibility, or even morality, can ensue when some animals' advocates go so far as to dismiss the legitimate claims of environmentalists or people of color in instances in which validating those claims could harm their cause as they understand it. For example, the only foie gras producer in California is owned by a Salvadoran immigrant who contends that he will be put out of

¹⁵⁷ See generally NIBERT, *supra* note 125.

The oppression of humans and other animals developed in tandem, each fueling the other. From human male domination over females, to hunger generated by the elite's feeding and consumption of "domestic" animals, to warfare necessitated by the need for new grazing areas (with the added "bonus" of claiming women and other animals as the spoils), to the use of other animals as instruments of warfare, to the sacrificing of devalued humans and other animals in the Colosseum to entertain and placate the impoverished masses, to the debasement and extermination of the Irish by the British (in large part for the appropriation of land to raise sheep and cows), to the exploitation and extermination of indigenous Americans (in part for the skins and hair of other animals and for acquisition of grazing land), to the violence and discrimination against humans of Mexican descent (for land acquisition for increased populations of cows raised for slaughter)—the oppression of devalued groups of humans has been intimately and thoroughly tied to the oppression of other animals. Indeed, for the past ten thousand years those who were vulnerable to some form of materially motivated exploitation have become the stepping stones for what is euphemistically referred to as "the development of civilized society."

Id. at 50-51.

¹⁵⁸ Alexander, *supra* note 17, at 1.

business and that his workers will be unemployed if foie gras production is banned in California. Animals' advocates decried a newspaper's story about the owner and his workers as focusing on the wrong issue: a human's loss of a hard-won opportunity. It is one thing to say it is not truthful that this owner and his workers will be jobless. It is another to say the issue the owner and his workers raise is the "wrong" issue.

Whether or not it is true in this case of one foie gras producer and his employees, it is generally true that animal flesh-food production facilities are a primary source of employment for people who have very few alternative means of earning a living.¹⁵⁹ Their working conditions are abysmal, and their injury rate is high.¹⁶⁰ If animals' advocates participated in reforming the work environment in which workers are exploited, they would be reforming the root cause of misery for both animals and workers. Such reforms should cause producers to internalize costs of misery to both animals and workers, and those costs would appropriately increase the cost of flesh-foods to consumers. Speaking out against abuse of workers enables advocates also to speak out against harms to animals because abuse of each is rooted in similar attitudes and oppressive business practices. At the very least, animals' advocates should not deny to those worker groups what they themselves are denied: recognized legitimacy of their claims.¹⁶¹

Advocates could also productively work on environmental issues, as factory farmers are serious polluters of water, air, and land resources.¹⁶² Humans' tremendous consumption of water, even without polluting it, can

¹⁵⁹ NIBERT, *supra* note 125, at 102, 101-194 (describing "the ways in which the exploitation and hazardous conditions experienced by workers are tightly linked with myriad other harmful and deadly practices of contemporary agribusiness"); ERIC SCHLOSSER, *FAST FOOD NATION: THE ALL-AMERICAN MEAL*, 149-190 (2002).

¹⁶⁰ SCHLOSSER, *supra* note 159, at 172. "The injury rate in a slaughterhouse is about three times higher than the rate in a typical American factory." *Id.* "One of the leading determinants of the injury rate at a slaughterhouse today is the speed of the disassembly line." *Id.* at 173. "Some of the most dangerous jobs in meatpacking today are performed by the late-night cleaning crews. A large proportion of these workers are illegal immigrants." *Id.* at 176.

¹⁶¹ Perhaps this is the problem identified by Mary Midgley, when she writes about animals' advocates' tendencies to reduce complicated matters such as "competition" and "speciesism" to forms that deny the true complexity and difficulty of recognizing animal interests or animal rights. See MARY MIDGLEY, *ANIMALS AND WHY THEY MATTER* 25-32 (1983) (discussing complexity in conflict and morality). Or perhaps it is a pernicious effect of entrusted responsibility. See text accompanying *supra* notes 139-41 for an analysis of the effect of entrusted responsibility on animals' advocates.

¹⁶² See TERENCE J. CENTNER, *EMPTY PASTURES: CONFINED ANIMALS AND THE TRANSFORMATION OF THE RURAL LANDSCAPE* (2004) (discussing the concentration of animals and water pollution); NIBERT, *supra* note 125, at 104, 101-113 ("[A] monumental cost of the practices prompted by the Green Revolution and the path of agribusiness, [is] the pollution and depletion of rapidly dwindling supplies of fresh water").

be a rallying point for activists concerned about human health, conservation of the earth's resources, and reliance on exploitative animal-based industries.¹⁶³ These issues may seem too tangential for animals' advocates. However, they provide a strategic advantage and the ability to work within a broader community that deals with a common source of harm to animals and people.¹⁶⁴

Collaborative advocacy is not just a strategy. Improving conditions for animals in the context of improvements for humans redefines the advocacy community as larger and more cohesive than it was when splintered into those who protect animals and those who protect people. Collaborative advocacy, based on an understanding that violent oppression lies at the center and bubbles out to oppress many different groups, means that the community of advocates addressing the same cause is large. Collaborative advocacy teaches humility about just how responsible or blameless one is in traumatizing others as to their truths, and it gives those others an opportunity to see how complex the problem of animal suffering is.

B. Reform of legal processes to which people who educate the public about animal cruelty are subject

There are at least two contexts in which legal reform is relevant. First, legal activists could profitably work on legal procedures that allow more animal-friendly people and perspectives to enter legal decision-making settings. In the next section, I address this in the context of liberalizing rules about who is allowed to provide facts and alternative legal interpretations to courts handling disputes about animal issues.

Second, activists could advance their cause by representing clients who are relatively (or even extremely) undesirable as clients because they intentionally break laws. Some of these clients engage quite explicitly in strategic calculation through their own study of existing laws and penalties

¹⁶³ See, e.g., Fred Pearce, *The Parched Planet*, NEWSIDENTIST, Feb. 25, 2006, at 32, 32-36 (providing the example of India's consumption of water in the context of their "hydrological revolution").

¹⁶⁴ The primary problem arises in the perception by environmentalists that animals' advocates care "too much" about individual animals at the expense of seeing the bigger picture of ecosystem protection and the perception by animals' advocates of environmentalists that they are too willing to sacrifice individual animals for the "good" of the ecosystem, without looking for solutions that would protect individuals and the ecosystem. See, e.g., Mark Sagoff, *Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce*, in ENVIRONMENTAL PHILOSOPHY: FROM ANIMAL RIGHTS TO RADICAL ECOLOGY 84, 84-94 (Michael E. Zimmerman ed., 1993) (noting conflict between animal rights philosophies and environmentalist philosophies).

associated with breaking those laws.¹⁶⁵ For example, Rodney Coronado, a self-identified animal liberator, has spoken publicly of making a conscious cost-benefit analysis of various types of law-breaking.¹⁶⁶ While his son is young, he does not want to engage in law-breaking that carries the penalty of lengthy incarceration, so he researches the law in order to choose animal liberation strategies that carry lesser penalties. Having learned that he would face up to six months in jail for sabotaging a canned lion hunt, Coronado decided that it was a price he could pay. This calculation enabled him to advocate for animals using what he believes to be the most effective method possible (direct action), bearing in mind his commitment to his son.¹⁶⁷

Similarly, Paul Shapiro, formerly of Compassion Over Killing ("COK") has spoken of taking full legal responsibility for "open" rescue in which COK investigates conditions and rescues animals.¹⁶⁸ In an interview with Satya Magazine he said the following:

When animal activists rescue animals from places of exploitation, they normally go to great lengths to conceal their identities: they wear ski masks, they don't videotape themselves or if they do, they make sure that there are no defining characteristics about them that are shown. The idea behind an open rescue is the exact opposite. The idea is to conduct an investigation and exhaust your legal means of redress and then rescue the animals completely openly, meaning no masks. You videotape yourselves doing it, you take full responsibility for the fact that you did it and you openly publicize the fact that you did it. . .

. . .

We found that these rescues generate extremely positive media coverage because we're not painted as so-called terrorists with ski masks or somebody who's ashamed to admit what they've done. We're painted as individuals of

¹⁶⁵ It is a violation of professional ethics for attorneys to counsel clients to break the law. If a client is known to break the law as a means of meeting his or her objectives, the attorney must take particular care in educating such a client without suggesting or encouraging law-breaking. For example, the California Rules of Professional Conduct provide that

[a] member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. [However, a] member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

CAL. R. OF PROF'L CONDUCT R. 3-210 (2005).

¹⁶⁶ Rodney Coronado, *Hunt Sabotages*, LIBERATION WEEKEND, May 15, 2004.

¹⁶⁷ *Id.*

¹⁶⁸ Satya Magazine, *supra* note 117. Karen Davis also writes of the value of "open rescue" in allowing rescued and rescuer to be seen for who they are. Karen Davis, *Open Rescues: Putting a Face on the Rescuers and on the Rescued*, in TERRORISTS OR FREEDOM FIGHTERS, *supra* note 54, at 202, 202-12.

conscience who saw cruelty, tried to have it fixed by the authorities and then had to act because there was nothing else to do. And because we're openly admitting that we did this, the public reaction is much more sympathetic. Another advantage of open rescues is that because there is no property destruction, the issue isn't muddled by the press. The issue stays on the fact that there is animal cruelty going on and that the animals are suffering. The issue isn't, "Should they have broken property? Are they terrorists? Can we condone these types of tactics? Should we treat them like ordinary criminals, or like political prisoners?"—nothing like that at all. There's little focus on the activists, which is really what we need to be doing—not trying to get media attention for ourselves but for the plight of animals, and exposing the realities that animals are treated as mere commodities in this country.¹⁶⁹

In the current context of lack of information about what happens to animals owned by industries that supply consumption goods, just educating the public about what happens to animals often involves illegal acts, such as breaking into buildings for the purpose of videotaping the animals' conditions or "liberating" animals. Not only are there are no legal requirements on animal-exploiting industries to reveal their practices to the public, those industries actively promote views of their activities as humane without providing proof of those claims.¹⁷⁰ Since these radical activists share a commitment to relieving the suffering of animals, representing them in legal proceedings may be an important means of building community, educating the public, and supporting "our own." In fact, many animal activists explicitly refer to the more aggressive sectors of the movement in order to claim that their own views are moderate, while privately applauding the actions of more radical activists. Surely, there is a place for radical activism if the media will not educate the public about animal suffering without such events and legal means of acquiring information are unavailable. Moreover, those acts address many activists' frustration and despair about the lack of legal avenues for helping animals and about the public's unwillingness to examine and to address institutionalized cruelty to

¹⁶⁹ Satya Magazine, *supra* note 117.

¹⁷⁰ One example of this is Foster Farms' apparent intent to allay consumers' concerns about its treatment of chickens by maintaining on its website that it treats chickens humanely. See Foster Farms, How We Raise Foster Farms Poultry, <http://www.fosterfarms.com/about/raise.asp> (last visited Apr. 9, 2006) ("[I]n the interest of optimal health and development, we keep the birds comfortable, clean and well treated"). On the other hand, East Bay Animal Activists contends that the birds are not treated well at all. They make that claim on the basis of videotape footage they claim to have filmed on Foster Farms' property. See East Bay Animal Activists, Animal Cruelty Investigations, http://www.eastbayanimaladvocates.org/wst_page4.html (providing links to exposé). The point is, if no one can film what goes on in Foster Farms or other facilities, how will anyone ever be able to evaluate claims that the birds are "well-treated?"

animals.

Importantly, underground activists provide the evidence of animal torture that enables more moderate activists to carry the relay baton of social change to the next stage. The foie gras legislative effort, for example, was enhanced by the videotapes obtained without permission of the owner of the property. With good reason, the author of the bill wanted to avoid association with illegal conduct.¹⁷¹ However, while steering clear of the taint of illegality, the activists pursuing a legislative ban ("legislative activists") caused some unexpected complications for the activists who filmed the forcible feeding of ducks and geese ("videotaping activists").

In response to the lawsuit against those apparently associated with the alleged break-in and vandalism, the videotaping activists counter-sued for cruelty to animals.¹⁷² Both claims were pending while the legislation was moving through the California Legislature, but the legislative activists, who used the illegally obtained videotapes, agreed to amend the legislation to grant immunity to the producer from the civil lawsuit as to animal cruelty.¹⁷³ The legislation was also amended to include a seven-and-one-half year grace period before the law would take effect.¹⁷⁴ From the legislative activists' point of view both the immunity and the grace period were necessary in order to secure the owner/producer's neutrality. His continued opposition, taken up by the Latino caucus, could have derailed the legislation.

The position of the videotaping activists, however, is more complicated. Perhaps it was uncomfortable to have their lawsuit against the foie gras producer vitiated, especially since the new law arguably gives broad

¹⁷¹ Jennifer Coleman, *Lawmakers OK Ban on Force-Feeding Birds to Make Foie Gras*, SAN LUIS OBISPO TRIB., Apr. 26, 2004, (quoting Senator Burton as stating that supporting his bill should not be seen "in any way as validating or acquiescing to this illegal activity.").

Despite attempts to distance himself, Senator Burton was, nevertheless, accused of "doing the bidding of these people who have done criminally conspiratorial stuff" in a quote that was picked up by the press. John M. Hubbell, *Foie Gras Flap Spreads—Bill Would Ban Duck Dish/But Haute Cuisine Restaurateurs Say Proposal Goes Too Far*, S.F. CHRON., Feb. 10, 2004, at A1 (quoting Robert Julian, a lawyer representing Sonoma Foie Gras).

¹⁷² See Donna Mo, *Unhappy Cows and Unfair Competition: Using Unfair Competition Laws to Fight Farm Animal Abuse*, 52 UCLA L. REV. 1313, 1323 (2005) (describing the lawsuit of Animal Protection and Rescue League and In Defense of Animals against Sonoma Foie Gras, as well as other such lawsuits brought to test the utility of California's unfair business practices law in the context of animal advocacy).

¹⁷³ S. 1520, as amended on June 21, 2004, 2003-04 Sess. (Cal. 2004), http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_15011550/sb_1520_bill_20040621_amended_asm.html (last visited Apr. 9, 2006).

¹⁷⁴ *Id.*

protection to the foie gras producer¹⁷⁵ who has stated publicly that he intends to find a way to remain in the foie gras industry in California.¹⁷⁶ Moreover, the legislation as enacted does not provide the videotaping activists with parallel protection from the civil lawsuit brought by the producer. Nevertheless, out of respect for a law like “no other in the world” (i.e., actually bans a food product on grounds of cruel production methods), activists Kath Rogers and Bryan Pease of the Animal Protection and Rescue League (a plaintiff in the suit against Sonoma Foie Gras) unequivocally stated that the legislation deserved uncontested support. They rejected criticism specifically from an animal advocacy group that has not worked on the legislation.¹⁷⁷

This example illustrates the tensions that arise when animals’ advocates divide themselves on any number of bases: those who pursue illegal means and those who do not, those who have worked on the bill and those who have not.¹⁷⁸ In actuality it really is a serious problem that there are so few means of legally acquiring an accurate picture of what goes on in animal-exploiting enterprises because there is less impetus for change without such documentation. Is heightened respect owed to those who risk so much for documentation necessary to bring suffering to light? Isn’t there a debt of representation owed to those who take great risks to make such information available or who give immediate meaning to the notion of “freeing” animals?¹⁷⁹ Would the activist community develop more justly, more smoothly, if radical activists could count on “one of their own” to represent them? Would it break down the distinction between “radical” and “moderate” activists such that the moderates would be able and willing to

¹⁷⁵ Friends of Animals issued an “action alert,” which urges opposition to SB 1520 for several reasons, including the scope of civil and criminal liability protection afforded to foie gras producers during the seven and one-half years before foie gras production becomes illegal. See *supra* note 74 for a more extensive discussion.

¹⁷⁶ See Paul Payne, *Sonoma Foie Gras Producer Hopes to Show Process Humane*, PRESS DEMOCRAT (Santa Rosa, Cal.), July 12, 2004, at B1 (reporting that Sonoma Foie Gras intends to conduct research to prove the ducks don’t suffer).

¹⁷⁷ See postings of Kath Rogers and Bryan Pease, cited in *supra* note 74.

¹⁷⁸ In this sense, the internal divisions between “moderates” and “radicals” mimics the external divisions between mainstream society and animals’ advocates—uncomprehending, unsupportive relationships between such differently situated people can cause friction. The same is true of the internal divisions between those who claim to advocate for animal “rights” and those who claim to advocate for animal “welfare,” with the former frequently denigrating those whose “only” interest is in making people feel more comfortable about consuming products made from animals.

¹⁷⁹ The videotaping activists in the foie gras legislative effort do have legal representation by animal activist lawyers. See Squatriglia, *supra* note 78 (quoting attorney David Blatte, “we view this as a form of civil disobedience.”).

anticipate and to accommodate some of the radical activists' points of view?

Attorney activists for animals have many disincentives to provide legal representation to law-breaking animal activists. One powerful and understandable disincentive is an attorney activist's commitment to reform based exclusively on legal means. Among those who would agree that civil disobedience may be appropriate under some circumstances, the issue of active breaking of laws, rather than mere resistance, arises. Finally, among those who agree that some forms of active law-breaking is warranted as a form of civil disobedience, there are still differences as to what constitutes "acceptable" law-breaking for the purpose of reform. To some, non-violence is a core personal value that precludes even minimal amounts of damage to inanimate property.

There are other, more pragmatic, concerns. One is that animal activist attorneys would usually be representing law-breaking clients on a pro bono basis. Those attorneys must still rely on the continued goodwill of paying clients who might not want to subsidize "law-breaking" clients. Similarly, nonprofit animal advocacy organizations may not want to use their legal resources to support such activists for fear of turning away some donors who would disapprove.

Some attorney activists fear that their own credibility may be diminished when they claim to take moderate advocacy positions if they also represent radical activists. Also, representing law-breaking activists takes a lot of time and is only an indirect aid to animals. It might even be of no help to animals at all, since these are not usually successful cases of representation by any measure of "success." Media coverage is rarely expansive enough to embrace the law-breaker's reasons, and both state laws and the federal Animal Enterprise Protection Act of 1992 ("AEPA") carry harsh penalties for illegal activities designed to inform the public about what is going on in animal-exploiting enterprises.¹⁸⁰ This is true even if there is no personal injury or vandalism, because the AEPA covers "disruption" of an animal enterprise.¹⁸¹ As yet, there is no doctrine of

¹⁸⁰ See 18 U.S.C. § 43(b) (Supp. III 2003) (providing for penalties, including restitution, fines, and up to life in prison, depending on the harm found to have resulted from an offense under the Act). Amendments proposed on October 27, 2005, would provide for the possibility of the death penalty in the event that an offender under the Act causes the death of someone as a result of committing an offense under the Act; the Act also provides that the law does not preempt state law, as for example, in the case of a state that does not allow execution as a penalty. Animal Enterprise Terrorism Act, S. 1926, 109th Cong. § 2 (as referred to the Committee on the Judiciary, Oct. 27, 2005).

¹⁸¹ 18 U.S.C. § 43(a) (2000 & Supp. III 2003) (defining an offense as one in which a person "caus[es] physical disruption to the functioning of an animal enterprise").

“necessity” which would enable the frame to expand sufficiently to take into account why break-ins occur.¹⁸²

Despite these very real and understandable disincentives, legal advocates for animals should not discount the positives of representing those who speak for animals from outside the bounds of current legal rules. Representing these people expresses sympathy and solidarity with the underlying goal, which are important elements of healing traumatic stress and preventing the burn-out that can result from the accumulation of traumatic stress. The legal advocate is speaking on behalf of someone who has come face-to-face with the nightmarish conditions in which animals live and die. Yet, the legal advocate has been spared the direct encounter herself. Importantly, breaking down sharp borders between “radicals” and “moderates” can expand the definition of the community of animal activists in ways that enhance the creative potential of all its constituent parts.

C. Laws about who is entitled to speak for animals

Much legal work currently seeks to develop legal standing for animals or their advocates.¹⁸³ That work is first-order work because it involves giving animals the dignity of a direct presence in court. There is also work that would broaden standing under federal statutes so that animal advocacy groups can seek enforcement of the laws directly, rather than by pursuing enforcement through governmental entities.¹⁸⁴ For example, only the

¹⁸² United Poultry Concerns posted, in their Summer 2004 edition of *Poultry Press*, a report of an Austrian trespasser/animal liberator who was acquitted at the appellate level because his illegal act was premised on society's broad support of animal protection and because his intentions were good. United Poultry Concerns, *Historic Verdict: NOT GUILTY for Animal Liberation*, http://www.upc-online.org/battery_hens/71404Balluch.htm (last updated July 14, 2004).

¹⁸³ See THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 4 (Paola Cavalieri & Peter Singer eds., 1993) (establishing legal standing for Great Apes as the major goal of *The Great Ape Project*); FRANCIONE, *supra* note 25, at 65-91 (arguing that current animal welfare legal standards are barriers to the establishment of animal rights); Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333 (2000) (recommending an amendment to animal welfare statutes to allow private human or animal claimants a cause of action against statute violators); STEVEN M. WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* (2000) (suggesting that chimpanzees and other primates be given legal personhood to ensure freedom from harm).

¹⁸⁴ It has taken a long time to get standing for individuals and groups to represent animals. Starting in 1972 with *Sierra Club v. Morton*, 405 U.S. 727 (1972), where standing was not granted, there was, at least, a dissent by Douglas that standing should be granted. In 1992, in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), Justices Blackmun and O'Connor similarly voiced dissent from the majority's decision that standing was not available. Finally in 1998, in *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C.

USDA has enforcement powers under the AWA.¹⁸⁵ However, since the USDA has little incentive to monitor animal-exploiting enterprises that are covered by the AWA, animal advocacy groups would like the ability to sue those enterprises directly on the basis of USDA inspection reports of AWA violations.¹⁸⁶

Another route that should be considered is liberalization of the rules for submitting amicus curiae briefs to courts that hear disputes that require application of laws relevant to an activist attorney's cause. In an adversarial system such as ours in which one must have a direct stake in the outcome of litigation, it is important to find plaintiffs who are willing to undertake the inconveniences and strains of litigation. Yet for a variety of reasons it is difficult to find plaintiffs/petitioners with good cases who are willing to pursue litigation. When such a plaintiff surfaces, activist lawyers other than the plaintiff's chosen legal representative have strong incentives to interfere in the management of the litigation. In the case of advocacy for animals, a sense of entrusted responsibility to animals and fear of a harmful precedent established by an "incompetent" attorney can lead to conflicts between activist attorneys. If there were more opportunities for participation in a court's consideration of plausible interpretations of the laws at issue, some of those pressures to commandeer other attorneys' litigation would be reduced.

Activist lawyers may under-utilize the possibility of submitting amicus briefs because this form of participation in litigation does not give control over any aspect of the litigation to the advocate. Amicus briefs do not need to be accepted by any court, and since they are not usually submitted at the trial court level, advocates may not investigate whether there is a rule prohibiting them. Moreover, even if a court does accept such a brief, it need not take seriously the interpretations of law the brief contains. However, it

Cir. 1998), the DC Circuit Court of Appeals, in a 7-4 *en banc* decision, said that groups and individuals did have standing to sue government agencies to enforce laws and statutes (in this case, the Animal Welfare Act) concerning animals. In the same year a California Appellate Court came to the same decision in *Farm Sanctuary v. Department of Food and Agriculture*, 74 Cal. Rptr. 2d 75 (Cal. Ct. App. 1998), where plaintiffs challenged a regulation allowing a ritual slaughter exception to a statute requiring that animals be treated humanely. The Court held the group had standing to sue and the regulation was valid. In 2003, another suit for standing was successful: *Am. Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros. and Barnum & Bailey Circus*, 317 F.3d 334 (D.C. Cir. 2003).

¹⁸⁵ Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (2000).

¹⁸⁶ See *Report of the Committee on Legal Issues Pertaining to Animals of the Association of the Bar of the City of New York Regarding Its Recommendation to Amend the Animal Welfare Act*, 9 ANIMAL L. 345 (2003) (regarding failure to enforce the Animal Welfare Act and lack of standing for citizens to file suit on behalf of animals).

only stands to reason that not all advocacy positions will be submitted in the briefs of the parties to the dispute itself.

For example, suppose a resident is suing his city council to stop the city's trapping and killing of peacocks and peahens in apparent violation of the city's wild bird protection ordinance. In order to conduct trapping without modification of the ordinance or public scrutiny associated with it, the city has characterized the birds as "domestic birds." The resident wants to stop the trapping for the purpose of killing the birds, claiming that doing so is a violation of anti-cruelty statutes. The resident does not want to contest the trapping itself, which is prohibited by the wild bird protection ordinance, but he prefers that the trapping be used for relocation purposes. His argument is that trapping for eradication is an unnecessary harm to the birds and, therefore, violates the anti-cruelty statutes. But, he may argue, trapping for relocation is not cruel.

A different legal strategy would be to challenge violation of the wild bird protection ordinance in order to stop the trapping altogether. The legal argument that trapping of any kind is illegal may be absent from the legal proceeding because neither of the parties to the action wants to challenge the trapping itself.¹⁸⁷ At least in California, if an attorney not representing either party receives the permission of both parties or leave of the court to submit a brief, then that point of view will be introduced in the proceedings.¹⁸⁸ But receiving permission to submit a view that differs

¹⁸⁷ This example is hypothetical, but it is not unrealistic. In order to reduce the peafowl population on Palos Verdes Peninsula, which is just south of Los Angeles, municipal governments on the Peninsula have hired a poultry expert whose opinion is that the wild peafowl living on the Peninsula are not "wild" and, therefore, would not be protected under wild bird protection ordinances. There is no support for such an assertion other than that the birds are not native to the Peninsula and that a resident of the Peninsula once kept some peafowl in pens. Since the peafowl on the Peninsula have never been domesticated, the peafowl are wild and, inconveniently for the Peninsula municipal governments, they are currently protected by municipal wild bird protection ordinances. See FRANCINE A. BRADLEY, PEAFOWL POPULATION ASSESSMENT: REPORT FOR THE CITY OF RANCHO PALOS VERDES, <http://www.palosverdes.com/rpv/citymanager/content/PeafowlPopulationAssessment.cfm> (last visited Apr. 9, 2006) (providing details on the extent of peafowl at Rancho Palos Verdes). This issue was litigated as to peafowl in Palos Verdes Estates, which is another municipality on the Palos Verdes Peninsula. See *Butler v. City of Palos Verdes Estates*, 37 Cal. Rptr. 3d 199 (Cal. Ct. App. 2005) (holding that the birds at issue in the specific dispute are wild and not domesticated).

¹⁸⁸ California's Rules of Court, provides as follows:

Rule 13. Briefs by parties and amici curiae

(c) Amicus curiae briefs

(1) Any person or entity may serve and file an application for permission of the presiding justice to file an amicus curiae brief.

(2) The application must state the applicant's interest and explain how the proposed

significantly from either party is unlikely. With perceived limited access, activist attorneys may end up instead challenging non-activist attorneys' management of the case, which potentially sets up conflict among attorneys, confuses clients, and discredits the legal profession.

Rules that allow briefs to be submitted and that require judicial consideration of the issues they raise resolve the problems I have identified. They also promote the healing of trauma by providing an avenue for the expression of diverse views without the racing to get to a well-situated plaintiff first and arguing about whose strategy is better at advancing the cause of animal protection or liberation. The briefs would likely raise questions on all sides of an issue such that the fullest extent of possibilities and rationales could be evaluated.

Of course, there are problems with this, not the least of which are the administrative pressures and costs of processing multiple amicus briefs. It would be no small feat to provide a structure within which people can participate even if they have no apparent legal interest (as defined by the courts and statutory laws) in the outcome of a particular dispute. However, when one factors in the effects of preserving in the record the voices of all who have *real* interests in a matter, the gains could be equally significant.

CONCLUSION

Recent research has resulted in more sophisticated understandings of the type, frequency, and effects of traumatic experiences. As before, there is general recognition that the experience of violence against oneself or others lies at the core of traumatic experience. Relatively new to the discourse is awareness of how many people are exposed to such violence, how harmful and persistent the effects of exposure can be, and the significance to the individual of social validation or rejection of claims that

amicus curiae brief will assist the court in deciding the matter.

(3) The proposed brief must be served and must accompany the application, and may be combined with it.

(4) The covers of the application and proposed brief must identify the party the applicant supports, if any.

(5) If the court grants the application, any party may file an answer within the time the court specifies. It must be served on all parties and the amicus curiae.

(6) The Attorney General may file an amicus curiae brief without the presiding justice's permission, unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within 14 days after the last respondent's brief is filed, and must provide the information required by (2) and comply with (4). Any party may serve and file an answer within 14 days after the brief is filed.

CAL. CT. R. 13(c).

violence is occurring.

Social justice activists who address violence or callous disregard for the well-being of others are at particular risk of traumatic stress because it is in the nature of such activism to be exposed regularly to circumstances that we now know are traumatizing. Regular witnessing of violence directed against others, unsuccessful attempts to report or to address that violence, and having to contend with others' denial of the very reality of claims of violence can be devastating. Advocates for animals are vulnerable to traumatic stress because of their ever-present awareness of the extent of violence against animals, which is as undeserved as is violence against humans. Inability to stop the suffering of animals results in the same feelings of anger, pain, and powerlessness that other social justice advocates experience when they are unable to stop profound suffering they witness.

Researchers have determined that, while there is no precise correspondence between exposure to violence and post-traumatic stress symptoms, repeated exposure to trauma (such as the unrelieved suffering of animals in a society that refuses to acknowledge that suffering) increases the probability that the individual will have lasting effects associated with traumatic stress. An individual's hardiness, passion, dedication, and determination are not always sufficient to ward off the debilitating effects of operating consistently in a social context of dismissive disregard, because trauma is a physiological phenomenon just as much as it is a psychological phenomenon. Since traumatic after-effects can emerge long after traumatizing events and experiences have occurred, it is particularly important that activists pay attention to the possibility of such after-effects.

An unfortunate and often unforeseen effect of reporting and attempting to address violence in a dismissive social context is that one's efficacy as an advocate can be seriously compromised. Researcher Robert Schwarz defines the overall harm of trauma as its ability to disconnect a person from his or her resourceful states of being.¹⁸⁹ For social justice activists, diminished resourceful states of being lead to diminished capacities to fully represent those whom they seek to protect. This can cause activists to lose intellectual and collaborative flexibility sufficient to grapple with complex and serious issues of animal advocacy.

At the same time, traumatic stress and post-traumatic stress may well be under-recognized and under-addressed by individuals who experience it. There are many reasons for this, including reluctance to use time and energy for one's own healing while the suffering of animals goes unrelieved. That

¹⁸⁹ See SCHWARZ, *supra* note 13, at 21.

belief can be costly to advocates because of the potential for traumatic stress-related impacts on advocacy, communication, and physical health. Prolonged traumatic stress has such predictable, adverse effects on advocacy that ignoring knowledge about traumatic stress and post-traumatic stress symptoms can easily result in disservice to animal clients. Animals do not choose their representatives, making it all the more important for those who take on their representation to do so with as much ability as possible to think, feel, and communicate with clarity and calmness.

This Article has dealt with law as a significant element of what researchers call the “social construction of trauma.” By that term, sociologists and medical researchers have attempted to capture their finding that socio-cultural interpretation of traumatic events either further embeds a traumatic experience or helps to reduce its impact. Law is an exacerbating factor in traumatic discoveries of cruel treatment of animals by exploitative industries. That is because law not only does little to help animals, it also is the very means by which institutional exploiters of animals are empowered.

Institutional exploiters of animals have been able to construct legal definitions such that few animals are covered by the few animal protection laws that exist, and they have legally shaped definitions of “cruelty” purposefully to exclude their practices. Their private property interests in animals they own and in the facilities in which they exploit animals allow them to prevent the public from learning about their exploitative activities. The extensive legal power held by institutional exploiters of animals has made it very difficult for those who care about animals to gain any kind of legal foothold. They also exercise significant financial control. For example, their advertising dollars go to media outlets that will reject or fail to pursue reports of industries’ exploitation of animals. The media do cover some litigation or legislative attempts to protect animals, but the media rarely provide information to the public about typical practices that are extremely painful to animals. For that reason, advocates may educate the public about institutional abuse of animals by way of litigation or legislative reform. Yet, when that litigation or legislative reform is proposed, the public may have insufficient background knowledge of industry practices with which to evaluate the information presented in the specific context of the litigation or legislation reform proposal.

Particularly when legal entitlements to exploit animals are at stake, institutional exploiters of animals will have every incentive to control the discourse in the legislature or the courts as well as in the media. To engage those institutions directly in litigation or through proposed legislation is to take on a foe with tremendous resources and commitment to their

entitlement to use animals as they choose. Their incentives to obfuscate the discourse and their ready access to media can actually increase public confusion about the underlying issue of animal suffering and can exacerbate the problems of traumatic stress. Unfortunately, advocates will have to engage in some direct legal attacks on those institutions, since there are few effective alternative means to educate the public without such legal attacks. Moreover, litigation and legislative reform are central tasks of animal protection.

To reduce the potential for traumatizing after-effects that result from direct confrontation of industry entitlements to abuse animals, advocates might well consider some less direct means of legal advocacy. Perhaps that advocacy can also reduce those parts of post-traumatic stress that arise from public disbelief that animals are harmed in horrible ways by the institutions that feed, clothe, and medicate us. Activities that build public awareness of animal suffering, increase participation in a broader advocate community than that which is currently defined exclusively with reference to animal suffering, and promote legal requirements that animal-(ab)using industries provide verifiable information about how they treat the animals they hold captive are all important strategies to consider even though they do not provide immediate and demonstrable benefits for animals.

In this article I have proposed the following as trauma-moderating legal strategies: (1) advocacy to require disclosure by animal-exploiting enterprises and to embed symbolic statements in the law regarding the desirability of protecting animals; (2) reform of the legal processes to which people who educate the public about animal cruelty are subject; and (3) activism to liberalize rules that govern the avenues by which legal advocates' voices can be heard in court, irrespective of representing a client on the matter. While these obviously do not cover the entire scope of legal advocacy for animals, these avenues should be part of the mix of strategies legal advocates employ to help animals, to help themselves, and to help build a strong collective identity with other advocates. They are also a means by which a social movement can develop to support the claims of advocates confronting formidable institutional exploitation of animals and lack of public knowledge about that exploitation.