

THE GREEN SCARE

Will Potter*

INTRODUCTION

Everyone is “going green.” Green light bulbs. Green cars. Green cleaning products. Green counter tops, green engagement rings, green eggs. A 2007 poll of moderate to conservative voters found that 7 out of 10 people considered global warming a serious problem and 73% wanted immediate action. In a Harris poll, about 60% of all adults described themselves as sympathetic to environmental concerns. There is no doubt that, especially since Al Gore’s *An Inconvenient Truth*, going green has gone mainstream in the United States. And at the same time, there has been growing public concern for animal-welfare issues, leading to significant legislative and legal victories. In California, for instance, voters are considering a plan that, just a few years ago, many animal activists would have seen as inconceivable. It would reform the most egregious abuses of farmed animals, eliminating the confinement of pregnant pigs or calves raised for veal in a way that prohibits them from extending their limbs, and eliminating battery cages that keep egg-laying hens jammed in cages smaller than a sheet of paper.

The “going green” phenomenon has been a hot topic in the media. But the mainstreaming of environmentalism has been paralleled by another, virtually unnoticed trend: a methodical, expanding government crackdown against animal-rights and environmental activists. Corporations and politicians have successfully campaigned to label activists as “eco-terrorists,” and make people afraid to use their First Amendment rights. At the same time as the general public and the press have labeled global warming and environmental issues as their top concerns, the U.S. government has labeled animal-rights and environmental activists the “number one domestic terrorism threat.”

The animal-rights and environmental movements, like all other social movements throughout history, have both legal and illegal elements. There are people who leaflet, write letters, and lobby, groups like the Humane Society of the United States and Sierra Club. Somewhere in the middle, in terms of the spectrum of tactics employed by these movements, are people who protest and engage in nonviolent civil disobedience, groups like People

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for the Ethical Treatment of Animals and Greenpeace. Then there are people, like the Animal Liberation Front and Earth Liberation Front, who go out at night with black masks and break windows, burn SUVs, and release animals from fur farms. Some recent communiqués by these underground, anonymous activists have used increasingly aggressive and threatening rhetoric, claiming that physical violence against human beings might occur if the targets do not cease harming animals and the environment. To date, though, no Animal Liberation Front or Earth Liberation Front action in the United States has harmed a single human being. The groups have, however, committed more than 1100 criminal acts causing more than \$100 million in damage, according to the FBI.¹

Animal-rights and environmental activists have not flown planes into buildings or taken hostages. Some right-wing groups, however, have gone much further, bombing the Oklahoma City federal building, murdering doctors, and mailing letters laced with anthrax. In 2003, for example, a Texas man admitted to possessing a weapon of mass destruction.² He had ties to white supremacist groups. None of these right-wing groups, though, are listed on a roster of national security threats maintained by the Department of Homeland Security.

I. DEFINING THE GREEN SCARE

This disproportionate, heavy-handed government crackdown on the animal-rights and environmental movements, and the reckless use of the word “terrorism,” is the result of a carefully coordinated political campaign by corporations and the politicians who represent them. Through my reporting, I have documented an increasingly disturbing trend of “terrorist” rhetoric, sweeping legislation, grand-jury witch hunts, blacklists, and FBI harassment reminiscent of tactics used against Americans during the communist Red Scare of the 1940s and 1950s. Ostensibly, these heavy-handed tactics are employed to go after illegal, underground groups like the Animal Liberation Front and Earth Liberation Front. These saboteurs are clearly breaking the law, and the government says they must be stopped. In practice, however, corporations and the government are campaigning not only to label these saboteurs as “terrorists,” but also to label anyone who supports them, or believes in their cause, as “terrorists” as well. Much like

1. Fed. Bureau of Investigation, *Eco-Terror Indictments*, Jan. 20, 2006, <http://www.fbi.gov/page2/jan06/elf012006.htm>.

2. Justin Rood, *Animal Rights Groups and Ecology Militants Make DHS Terror List, Right-Wing Vigilantes Omitted*, CONG. Q., Mar. 25, 2005, http://www.cq.com/public/20050325_homeland.html.

the Red Scare and communist witch hunts, this “Green Scare” is using one word—this time, it’s “terrorist”—to push a political agenda, instill fear, and chill dissent.

Before explaining how, and why, animal-rights and environmental activists became the top terrorism threat, it is important to briefly examine the types of tactics that have been employed against these movements. Like the Red Scare, this Green Scare is operating on three basic levels: legal, legislative, and what I call extra-legal, or scare-mongering.

A. Legal

The Bush administration, prodded by corporations and industry groups, has used the legal system to push conventional boundaries of what constitutes “terrorism” and to hit nonviolent activists with disproportionate sentences.

1. Operation Backfire

Perhaps the most well known of these cases is the government’s so-called “Operation Backfire,” an historic round up of eleven activists in 2005 for a string of Animal Liberation Front and Earth Liberation Front actions in the mid-to-late 1990s.³ The sixty-five-page indictment includes seventeen crimes that caused millions of dollars in economic damage to the targets, including the \$12 million arson of the Vail Ski Resort in protest of a planned expansion that would threaten one of the remaining habitats of the endangered lynx. These crimes did not harm anyone, but the defendants were labeled “terrorists” from day one.

As soon as they were arrested, the government held a press conference where Attorney General Alberto Gonzalez proclaimed a victory in the War on Terrorism. “Today’s indictment proves that we will not tolerate any group that terrorizes the American people, no matter its intentions or objectives,” he said.⁴ It came as no surprise to many activists that, in this political climate, they would be smeared as “eco-terrorists” in the press. However, the government took things one step further, and took that smear campaign into court arguing that the environmental saboteurs should face unprecedented “terrorism enhancement” penalties.

The “terrorism enhancement” is not just semantics. When applied, this legal provision can add up to twenty years to prison sentences and, in some

3. Press Release, Dep’t of Justice, Eleven Defendants Indicted on Domestic Terrorism Charges (Jan. 20, 2006), http://www.usdoj.gov/opa/pr/2006/January/06_crm_030.html.

4. *Id.*

cases, quadruple prison time.⁵ It places defendants in the most dangerous prisons in the country, in cells next to more traditional “terrorists.” And it allows harsh restrictions on contact with family and friends. Perhaps most importantly, though, it injects one word, terrorism, into court proceedings that, with every mention, can hit Americans harder and deeper than perhaps any other. The word has come to symbolize planes flying into buildings, family and friends murdered, and lives that will never be the same. The “terrorism enhancement” in Operation Backfire was the government’s attempt to truly test how much political mileage the administration can get out of that pain.

“Terrorism is terrorism—no matter what the motive,” said FBI director Robert Mueller at a press conference announcing the indictments.⁶ “The FBI is committed to protecting Americans from all crime and all terrorism”⁷ The government has not been committed to labeling all crimes “terrorism,” though. It did not seek “terrorism enhancement” in the Alabama church arson cases. It did not seek “terrorism enhancement” in the case of a firefighter who set twenty-eight fires because she wanted overtime pay. And it has not sought “terrorism enhancement” for the murder of abortion doctors.

The government singled out these property crimes for “terrorism enhancement” because of the politics of the crime. The defendants did not seek to benefit from the crimes, and took precautions not to harm anyone. That is a concern not shared by suicide bombers and anthrax mailers. “A terrorist acts from hate and aims to create fear,”⁸ says the attorney for Kevin Tubbs, one of the defendants, in Tubbs’ sentencing memo. “A terrorist’s goal is to cause death, because is the ultimate tool. Death is the ultimate source of fear.”⁹ The government admits as much. In a 148-page document, prosecutors spell out how some of the defendants set fire to the Vail Ski Resort and caused \$24.5 million in damage. During that action, William “Bill” Rodgers had “opened a door and observed two hunters sleeping. He closed the door and did not set that building on fire.”¹⁰

5. Ari Shapiro, *Eleven Activists Charged with Domestic Terrorism*, NAT’L PUB. RADIO, Jan. 20, 2006 (audio recording available at <http://www.npr.org/templates/story/story.php?storyId=5165548>).

6. CNN.com, Transcripts, Pleas for Jim Carroll’s Release; Bin Laden Threat; 11 Indicted in Ecoterrorism Plots, Jan. 20, 2006, <http://transcripts.cnn.com/TRANSCRIPTS/0601/20/ywt.01.html>.

7. *Id.*

8. Defendant Kevin Tubbs’ Memorandum on the Application of U.S.S.G. § 3A1.4 at 3, *United States v. Tubbs*, No. CR 06-60070-AA (D. Or. May 4, 2007).

9. *Id.*

10. Government’s Sentencing Memorandum at 24, *United States v. Thurston*, No. 06-60069-AA (D. Or. May 4, 2007).

Daniel McGowan's attorneys said in a "terrorism enhancement" memo that the many precautions taken to "honor human life" separate these activists from what most reasonable people consider "terrorists":

[It is] perhaps the most compelling reason why none of them should be branded a terrorist, why none of them should bear conditions of confinement that are not only degrading and punitive, but that are affirmatively damaging to their mental health, and why none of them should be permanently catalogued in our nation's history books alongside the names of Mohammed Atta, Theodore Kaczynski, Timothy McVeigh, or Eric Rudolph.¹¹

At the court hearing for this terrorism enhancement, the government not only compared these animal-rights and environmental activists to people like Timothy McVeigh, they also compared these activists to the Ku Klux Klan. "This is a classic case of terrorism, despite their protests of lofty humane goals," Assistant U.S. Attorney Stephen Peifer said in court.¹² "It was pure luck no one was killed or injured by their actions."¹³ In response to the defendants' arguments that the lack of physical violence is a key factor that distinguishes the Earth Liberation Front from groups like Al Qaeda, Peifer said: "If that is the standard, then the Ku Klux Klan did not commit terrorism" when they burned empty black churches during the civil rights upheaval in the South in the 1960s.¹⁴ It should be noted, of course, that the KKK certainly had no "nonviolent" commitment to property destruction and economic sabotage. Klansmen lynched, beat, and raped. The Klan was built upon violence, and existed through violence.

To qualify for the "terrorism enhancement," the government must show that an action "involved or was intended to promote a federal crime of terrorism."¹⁵ A "federal crime of terrorism" has a specific definition. It has to be one of a laundry list of specific offenses, including presidential assassination, use of weapons of mass destruction, and arson of property used in interstate commerce.¹⁶ It also has to be "calculated to influence or

11. Memorandum in Opposition to Application of the Terrorism Enhancement at 24, *United States v. McGowan*, No. CR 06-60124-AA (D. Or. May 4, 2007).

12. Russell Goldman, ABC News, *Environmentalists Classified as Terrorists, Get Stiff Sentences*, May 25, 2007, <http://abcnews.go.com/US/Technology/story?id=3204939>.

13. *Id.*

14. *Id.*

15. Shane Harris, *The Terrorism Enhancement*, NAT'L J., July 14, 2007, available at <http://www.shaneharris.net/2007/07/terrorism-enhancement-obscurer-law.html>.

16. 18 U.S.C. § 2332b (2006), amended by Act of Sept. 28, 2008, Pub. L. No. 110-326, 122 Stat. 3560. Regarding acts of terrorism transcending national boundaries, see *id.* § 2332b(g)5.

affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.”¹⁷

That last part is particularly relevant. The actions of these activists targeted corporations and aimed to stop environmental destruction, not influence the government. Anti-corporate rhetoric permeates the communiqués written about the crimes, like the one for arson at Superior Lumber that labels the company a “typical earth raper contributing to the ecological destruction of the Northwest” and calls for tactics against “capitalism and industry.”¹⁸ Another, for arson at Jefferson Poplar tree farm, shows that these crimes were not meant to influence government, because the defendants had lost all faith that government could be influenced. Instead, they targeted corporate profits.

The court ruled, however, that many of the crimes in “Operation Backfire” qualified for the terrorism enhancement. Judge Ann Aiken prefaced her decision by attempting to excise the terrorism enhancement debate from any political context: “for purposes of these proceedings, the debate is about the defendants’ criminal conduct—not their political beliefs.”¹⁹

But at a time when the government labels the animal-rights and environmental movements the “number one domestic terrorist threat,” and the government holds press conferences labeling activists as “eco-terrorists,” it is impossible to divorce legal issues from the cultural and political climate in which they exist.

2. THE SHAC 7

The government’s legal attacks on activists as “terrorists” has not been limited to underground activists engaging in economic sabotage. In a landmark First Amendment case that is pending appeal, a federal court convicted a group of animal advocates of “animal enterprise terrorism” for running a controversial website.²⁰

The activists work with Stop Huntingdon Animal Cruelty (SHAC), an international organization dedicated to closing a laboratory called Huntingdon Life Sciences (HLS). HLS has labs in New Jersey and England, and multiple undercover investigations have shown workers punching beagle puppies in the face, dissecting live monkeys, and falsifying scientific data.²¹

17. *Id.* § 2332b.

18. Government’s Sentencing Memorandum, *supra* note 10, at 37.

19. United States v. Thurston, No. 06-60069-AA, 2007 WL 1500176, at *1 (D. Or. May 21, 2007).

20. Press Release, Fed. Bureau of Investigation, Militant Animal Rights Group, Six Members Convicted in Campaign to Terrorize Company, Employees and Others (Mar. 2, 2006), http://www.usdoj.gov/usao/nj/press/files/shac0302_r.htm.

21. Michelle Rokke, *The Diary of Michelle Rokke* (Sept. 18, 1996 to May 10, 1997),

As part of the international grassroots campaign to close the lab, activists did not urge boycotts or symbolic protests. And they did not focus on swaying public opinion against the laboratory. Instead, they targeted what, at the end of the day, all corporations value most: money. They directed their campaign at the financial institutions that kept the lab running, including the banks that hold the loans, the shipping companies that deliver animals, and the stockbrokers that trade HLS shares. The SHAC website schooled activists in business savvy: primers on investors, market makers, and obscure financial terms like pink sheets. Activists then used that information in their campaign, targeting anyone doing business with HLS.

The clearinghouse of the campaign was the organization's website. Whenever any action related to the campaign took place, legal or illegal, it was all posted on the SHAC USA website. Phone blockades, protests, home vigils, email blockades, civil disobedience, and economic sabotage (including breaking windows, gluing locks, and rescuing animals) all were posted, often with supportive commentary. Illegal actions posted on the website included subscribing a CEO to pornographic magazines, setting off stink bombs in offices, and paint-stripping cars.

Stratfor, a "global intelligence" company praised by Fortune Magazine for its research, explained the campaign well. There are three legs to the SHAC campaign: illegal activists (the smallest group), legal activists (with signs and bullhorns), and passive sympathizers (opposed to animal cruelty, but not sure how to help). "Since there is no formal membership," Stratfor says, "the numbers are in no way fixed—anyone can wake up tomorrow, read about SHAC on the Internet, and engage in an activity that night that propels them directly into the first tier."²²

In short, SHAC brought the company to its knees through a Wall Street-level knowledge of how corporations operate, and an unwavering commitment to supporting—in words and rhetoric, not in action—a variety of tactics. The lab now teeters on the brink of economic collapse, after more than 160 companies, including Marsh Inc., UPS, and Fedex, have pulled out.²³ The New York Stock Exchange dropped HLS in 2000, and the London Stock Exchange followed in 2001.

The indictment against the defendants takes a dim view of SHAC's accomplishments. It sternly describes, for example, "The attack on S. Inc.," which SHAC is happy to identify as Stephens Inc., an investment bank in

http://www.shac.net/HLS/exposed/michelle_mokke_diary.pdf.

22. Fred Burton, *Shac Convictions: The Martyrdom Effect*, STRATFOR GLOBAL INTELLIGENCE, Mar. 16, 2006, available at http://www.stratfor.com/shac_convictions_martyrdom_effect.

23. Will Potter, *The Beagle Brigade: A Law that Tells Animal Rights Activists to Heel*, LEGAL AFFAIRS, Sept.–Oct. 2004, at 11, 11–12.

Little Rock, Arkansas, that loaned the lab \$35 million. The charge is that SHAC “caused the website www.stephenskills.com to be launched in order to apply pressure on S. Inc. to cease doing business with HLS.”²⁴ That pressure included posting an anonymous report announcing “that the home of WS, the head of S. Inc., was vandalized,” which, the government argues, encouraged more such vandalism.²⁵

The U.S. Attorney’s office says that SHAC is waging a campaign of intimidation. “The government is arguing that even if the individual acts are protected speech, the acts combined amount to a pattern of harassment and terrorism,” said Daniel Perez, who is helping one of the defendants with her case.²⁶

In other words, the government hasn’t been able to catch the people actually committing the crimes, so they’re going after the visible, above-ground activists that ideologically support them. In this case, the government took the “you’re either with us or against us” rhetoric of the War on Terrorism, the same mentality as the Red Scare, and applied it to animal-rights activists. If activists don’t prove they are “with us” by condemning sabotage, then they are clearly “against us” and one with the “terrorists.”

The courts, though, have consistently said that the First Amendment protects even the most unconventional and inflammatory speech. For instance, the SHAC website included a lot of posturing, but it didn’t go as far as civil rights activist Charles Evers when he urged a Mississippi crowd to boycott white businesses with the words: “If we catch any of you going in any of them racist stores, we’re gonna break your damn neck.” The Supreme Court found that speech constitutionally protected.

Speech has limits, of course. In 2002, a federal appeals court ruled that the First Amendment did not protect a website called the Nuremberg Files, which posted pictures of doctors who performed abortions with their names underneath the photos, and crossed off the names of three of them as they were killed.²⁷ That’s a far cry from SHAC posting a communiqué from “Pirates for Animal Liberation,” claiming responsibility for a sunken yacht that belonged to a Bank of New York executive.

The SHAC case is pending appeal, and this battle is far from over. Industry groups viewed the conviction of these activists as a major victory

24. Superseding Indictment at 13, *United States v. Stop Huntingdon Animal Cruelty USA, Inc.*, No. 04-373 (MLC) (D.N.J.) (n.d.), available at <http://www.usdoj.gov/usao/nj/press/files/pdf/files/shacind2.pdf>.

25. *Id.*

26. Interview with Daniel Perez (on file with author).

27. Frederick Clarkson, *Salon.com*, A Radical Antiabortionist Backs Down, June 21, 2002, <http://dir.salon.com/story/news/feature/2002/06/21/abortion/>.

against the animal-rights movement, and the government labeled it a victory in the War on Terrorism. They are already wanting more. As David Martosko of the Center for Consumer Freedom, an industry lobby group, said after the conviction: “This is just the starting gun.”

B. Legislative

Even with these sweeping, and successful, legal attacks on activists, corporations and the politicians who represent them want even more power. They have been pushing new legislation to single out animal-rights and environmental activists for increased prison sentences and expand the definition of “terrorism.”

1. Animal Enterprise Terrorism Act

After a cold and wet morning, politicians and celebrities slogged through the muck of the National Mall on November 13, 2006, to pay tribute to Martin Luther King, Jr. and break ground on the new national memorial in his honor. Democrats and Republicans, Clinton and Bush, Oprah Winfrey and Jesse Jackson were all on hand in muddied wingtips and pumps, clamoring to show their support for the civil-rights leader and his once-controversial tactics.

Representative John Lewis of Georgia told PBS’s *NewsHour*, “King inspired me and thousands of other Americans to get in the way. He inspired us to get in trouble. But it was good trouble; it was necessary trouble. And that’s why we honor Martin Luther King, Jr. today.”²⁸

But hours later, those who had spent the morning waxing eloquent about dissent and making trouble were nowhere to be found as about half a dozen lawmakers allowed the Animal Enterprise Terrorism Act (AETA) to pass the House of Representatives on a voice vote. Only six members of Congress were in the room. They used an obscure procedure called “suspension of the rules,” meant for noncontroversial legislation. For instance, the same day that this procedure was used to pass the Animal Enterprise Terrorism Act, it was also used to honor the St. Louis Cardinals for winning the World Series.²⁹ The AETA was signed into law by President Bush that month.

28. PBS Online NewsHour, Thousands Attend Groundbreaking for MLK Memorial, Nov. 13, 2006, http://www.pbs.org/newshour/bb/social_issues/july-dec06/mlk_11-13.html.

29. H.R. Res. 1078, 109th Cong. (2006); *see also* 152 CONG. REC. H8651–52 (daily ed. Nov. 15, 2006) (statement of Sen. Foxx).

The AETA is essentially an expansion of the existing Animal Enterprise Protection Act (AEPA) of 1992, making an already-vague and overly broad law even more vague and more broad. The punishable offenses included in the AEPA are limited to: causing “physical disruption to the functioning of an animal enterprise” and “economic damage exceeding \$10,000”; causing serious bodily injury or death in the course of these acts; or conspiring to do so.³⁰ The AETA expands these punishable offenses to include: any damage or loss of property associated with animal enterprise, with no minimum dollar amount; placing a “person in reasonable fear of death . . . or serious bodily injury”; or conspiring to do so.³¹ It also prescribes harsher, escalating penalties.

The AETA is ostensibly meant to target underground, illegal actions committed in the name of animal rights by groups like the Animal Liberation Front. But underground activists won’t lose much sleep over this bill. Their actions are already illegal (and they know it) and the government has already labeled them the “number one domestic terrorist threat.” And yet these activists continue to demonstrate that heavy-handed police tactics will not deter them. Legal, above-ground activists are the ones who should be most concerned about this vague and overly broad legislation, under which they could be considered “terrorists.” The AETA sends a chilling message to activists of all social movements that political opportunists can use the rhetoric and resources of the War on Terrorism against them.

Corporations like Pfizer, Wyeth, and GlaxoSmithKline joined the United Egg Producers, National Cattlemen’s Beef Association, and other New McCarthyists to rush through the AETA legislation on the very first day back from congressional recess.³² It seems that the shift to Democratic control of Congress gave this legislation—similar versions of which have languished in Congress since the mid-1990s—a new urgency. The law was rushed through the House as part of the suspension calendar, a political move used to usher through so-called noncontroversial legislation with little debate.

Virginia Representative Bobby Scott—often called the “go-to guy” in the House on civil liberties and civil rights issues—came out swinging in support of the “eco-terrorism” bill. Scott, a Democrat, said that existing laws have been “reasonably effective,” but “gaps and loopholes” prevent law enforcement from going after animal-rights “extremists.”³³

30. For full text of the 1992 law and a history of its passage, see Will Potter, *Animal Enterprise Protection Act* (July 29, 2006), <http://www.greenisthenewred.com/blog/aepa/>.

31. *Animal Enterprise Terrorism Act*, Pub. L. No. 109-374, 120 Stat. 2652 (2006).

32. 152 CONG. REC. H8590–95 (daily ed. Nov. 13, 2006); *see also* S. 3880, 109th Cong. (2006) (enacted as *Animal Enterprise Terrorism Act*, Pub. L. No. 109-374, 120 Stat. 2652 (2006)).

33. 152 CONG. REC. H8591 (statement of Rep. Scott).

Scott failed to note, even in passing, that the existing AEPA was used to successfully prosecute seven Stop Huntingdon Animal Cruelty activists on “animal enterprise terrorism” charges for running a website. Ignoring this crucial bit of information, Scott said that activists are taking advantage of the fact that the AEPA does not cover “affiliates and associates” of animal enterprises.

Disturbingly, Scott said in passing that civil disobedience could be covered in the bill—which some other supporters of the bill have denied—but he tried to ease public fears by saying that the civil disobedience would have to cause disruption and loss of profits to qualify, and that “it must be proven that such losses were specifically intended.”³⁴ The same congressman who frequently praises the achievements of the civil-rights movement stood on the House floor and advocated the inclusion of that movement’s tactics in a “terrorism” bill.

Apparently, the actions of animal rights activists are not “good trouble.” They are not “necessary trouble.” In a different time, though, civil-rights activists were not “good trouble,” either. It is not a stretch to imagine similar legislation being used to target civil-rights activists, if only Strom Thurmond had thought of it first. Supporters would probably have said it was all in the name of cracking down on “extremists” like Malcolm X. Meanwhile, anyone paying attention would see clear as day that the legislation was meant to have a chilling effect on all dissent.

Representative Thomas Petri, a Republican from Wisconsin usually in disagreement with Scott, said much of the same. He had the nerve to stand on the House floor and say, with a straight face, that current federal law, including the AEPA, has been “inadequate” in going after animal-rights activists.³⁵ Petri knows full well that all the crimes listed in this bill are already crimes, that the original bill has been used successfully, and that the animal-rights and environmental movements have never claimed a single human life.

Only Representative Dennis Kucinich of Ohio spoke up against this dangerous legislation. “[T]his bill was written to have a chilling effect,” he said, “on a specific type of protest.”³⁶ Kucinich got in a little back-and-forth with Wisconsin Representative James Sensenbrenner about the bill. Sensenbrenner repeatedly cited a provision of the bill that “exempts” First Amendment activity.³⁷ (Thank you to Sensenbrenner and our patriotic representatives for reminding us that there is still a First Amendment.)

34. *Id.* at H8592.

35. *Id.* (statement of Rep. Petri).

36. *Id.* at H8594 (statement of Rep. Kucinich).

37. *Id.* at H8593–94.

However, saying “this law is constitutional” doesn’t make it so. If anything, it’s an admission that the bill has serious flaws.

At one point, Sensenbrenner read off a list of quotes from animal-rights activists that he said exemplified the targets of the legislation. Kucinich promptly noted that “those statements, in and of themselves, are constitutionally protected speech. Yet under this bill, they suddenly find themselves shifting into an area of doubt, which goes back to my initial claim that this bill was written to have a chilling effect upon a specific type of protest.”³⁸

But perhaps the most disturbing segment of this whole scare-mongering debacle was how Sensenbrenner ended the floor debate: “This is a good bill. I think that all of the fears that the gentleman from Ohio has placed on the record are [considered] ill-founded by practically everybody who has looked through this bill, including the American Civil Liberties Union.”³⁹

The American Civil Liberties Union (ACLU), in fact, had sent a letter to members of Congress on March 6, 2006, urging opposition to the legislation, and the Humane Society of the United States (HSUS) sent a nearly identical letter. The biggest concerns raised in these letters were never addressed by Congress. Yet while the HSUS and other mainstream animal-welfare groups like the American Society for the Prevention of Cruelty to Animals were outspoken against the AETA, the ACLU informed lawmakers on October 30, 2006 that “the ACLU does not oppose this bill.”⁴⁰

Why? Perhaps because there are so many other civil-liberties issues competing for critical attention. Perhaps because corporate scare-mongering and green baiting has turned animal-rights activists into political lepers. Or perhaps history repeats itself. The ACLU has a long, venerable history of defending the civil liberties of even the most unsavory characters, including the KKK. Yet during the Red Scare of the 1940s and 1950s, the ACLU formally barred communists from leadership or staff positions. Meanwhile, the National Lawyers Guild took a beating for refusing to name names and purge members who also belonged to communist organizations, but it stood its ground.

This time around, the National Lawyers Guild was out front opposing the AETA and the Green Scare. And this time around, the silence of the ACLU spoke volumes, essentially giving the Green Scare the green light.

38. *Id.* at H8594.

39. *Id.* (statement of Rep. Sensenbrenner).

40. Letter from Caroline Frederickson, Director, Wash. Legal Office, ACLU & Marvin J. Johnson, Legislative Counsel, ACLU, to F. James Sensenbrenner Jr., Chairman, House Judiciary Comm. & John Conyers Jr., Ranking Member, House Judiciary Comm. (Oct. 30, 2006), available at http://www.aclu.org/images/general/asset_upload_file809_27356.pdf.

C. Extra-Legal

Outside of any supervision by the courts or lawmakers, corporations have campaigned to demonize activists as “terrorists” through media campaigns. These tactics are solely meant to demonize activists in the eyes of the public (and thereby making it easier to pass new legislation or push for sweeping legal action) and are perhaps the most dangerous wing of this Green Scare.

These corporations and industry groups have used their deep pocketbooks and public-relations savvy to place a terrorist in every shadow. They have taken out full-page anonymous ads in both the *New York Times* and the *Washington Post*—among the most expensive media markets in the country—labeling animal-rights activists as “terrorists” for being a little too successful and knocking Huntingdon Life Sciences from the New York Stock Exchange.

The National Association for Biomedical Research bought a full-page ad in *Roll Call*, the newspaper of Capitol Hill, featuring a vandalized office and, in red spray paint, “Your home is next.” The unspoken message was that lawmakers had better act now and endorse the Animal Enterprise Terrorism Act, which ultimately passed. The group also sells a poster version of one of their “domestic terrorist” ads, with masked activists brandishing axes, as a fundraiser on its website.

Not even children’s movies are safe from the relentless scare-mongering and guilt by association. Industry groups labeled *Hoot*, a children’s movie, “soft-core eco-terrorism” because the teenage protagonists try to save an endangered owl from developers.⁴¹ The teenage activists in the movie took part in pranks like putting alligators in portable toilets. Green Scare pioneer Ron Arnold, who claims to have invented the term “eco-terrorism,” admitted he had not yet seen the film but told a reporter, “*Hoot*’s so-called harmless ‘mischief’ is training a generation to look cute while burning homes and cars and stores.”⁴²

And apparently even acclaimed children’s author E.B. White was an “eco-terrorist”: according to the Center for Consumer Freedom, the movie remake of *Charlotte’s Web* promotes animal-rights extremism.⁴³

Smear campaigns like this would be laughable, but they have worked their way into the top levels of government. The corporate and government

41. Marc Morano, CNSNews.com, New Movie Called “Soft-Core Eco-terrorism for Kids,” May 1, 2006, available at <http://soompi.com/forums/lofiversion/index.php/t53921.html>.

42. *Id.*

43. Ctr. for Consumer Freedom, *Charlotte’s (Tangled) Web*, Dec. 7, 2006, http://www.consumerfreedom.com/news_detail.cfm/headline/3194.

scare-mongering has been used to create a political climate that justifies surveillance and harassment of political advocates. For instance, the FBI has tried to recruit informants to infiltrate vegan potlucks in Minneapolis, Joint Terrorism Task Forces are spying on HoneyBaked Ham protestors, and corporations have been exposed tracking who activists are dating.

II. WHY IS THIS HAPPENING?

The government and corporations have not tried to hide the fact that this Green Scare is meant to protect corporate profits. For instance, the Department of Homeland Security, in a bulletin to law-enforcement agencies, warned: “Attacks against corporations by animal rights extremists and eco-terrorists are costly to the targeted company and, over time, can undermine confidence in the economy.”⁴⁴ It goes on to warn about “eco-terrorism” like “flyer distribution” and “tying up company phone lines.”⁴⁵ In addition to extremist tactics like “organizing protests” and “inundating computers with e-mails,” DHS notes in passing illegal actions like verbal harassment and vandalism.⁴⁶ But nowhere in the bulletin is the word “violence” used. Not once.

In a leaked PowerPoint presentation given by the State Department to corporations, the government warns: “Although incidents related to terrorism are most likely to make the front-page news, animal rights extremism is what’s most likely to affect your day-to-day business operations.”⁴⁷ The presentation also outlines methods that corporations should use to deter animal-rights protests.

It is clear that the threat that these movements pose to corporate profits—particularly the direct threat of underground groups using illegal tactics—is part of the explanation of why corporations are elevating these activists to the “number one domestic terrorism threat.” But this Green Scare is also about something much deeper than that. Activists like the Animal Liberation Front and Earth Liberation Front threaten corporate profits by doing things like burning bulldozers or sabotaging animal-research equipment. But they’re not the only ones.

44. Memorandum from the Office of Intelligence and Analysis, Dept. of Homeland Sec., to Federal Departments and Agencies, State Homeland Security Advisors, Security Managers, et al. (Apr. 13, 2006), available at <http://www.greenisthenewred.com/blog/dhs-flyer-distribution/14/>.

45. *Id.*

46. *Id.*

47. Overseas Sec. Advisory Council, Animal Rights Extremists: Targets, Tactics, Business Response & Countermeasures (PowerPoint presentation n.d.), available at <http://www.greenisthenewred.com/blog/state-department-powerpoint-corporations/560/>.

The entire animal-rights and environmental movements, perhaps more than any other social movements, threaten these industries. They do it every day. Every time activists encourage people to go vegan, every time they encourage people to stop driving, every time they encourage people to consume fewer resources and live simply. Those boycotts are permanent, and these industries know it.

The mainstreaming of these movements, and the shifts in public opinion that they bring, have potentially grave implications for the corporations and industries that benefit from the abuse of animals and the destruction of the environment. These coordinated attacks on the animal-rights and environmental movements are not simply meant to deter illegal activity, they are meant to destroy movements that pose an ideological threat to an entire way of life—a way of life based on the exploitation of animals and the environment.

Like the Red Scare, and the hysteria against “godless communists” threatening the American capitalist way of life, this Green Scare is a culture war, a war of values.

Feedstuffs, an “agribusiness” publication, perhaps said it best. In an editorial about the animal-welfare ballot initiative in California, the publication said the measure represented the threat of a “vegetarian nation.”⁴⁸ They said that if this measure passes, others will follow, and it could signal a cultural shift against factory farming on a national, and even global, scale. Fight them with everything you have, it warned: The “dam must not be breached.”⁴⁹

CONCLUSION: HOW MUST ACTIVISTS RESPOND?

The point of all this, according to the government, is to crack down on underground activists. But underground activists already know that what they are doing is illegal, and it has not stopped them. In fact, it may have added fuel to the fire. For instance, the same day the SHAC 7 were convicted of “animal enterprise terrorism” for running a website that posted news of both legal and illegal actions, underground activists rescued animals from a vivisection lab and named them Jake, Lauren, Kevin, Andy, Josh, and Darius, after the defendants.

This is from the communiqué:

48. *California Dam Must Not Be Breached*, *Feedstuffs* (Muller Publishing Co., Minnetonka, Minn.), June 9, 2008, available at <http://www.feedstuffs.com/> (search for the phrase “California dam must not be breached,” then follow the hyperlink to the first search result).

49. *Id.*

And while the SHAC-7 will soon go to jail for simply speaking out on behalf of animals, those of us who have done all the nasty stuff talked about in the courts and in the media will still be free. So to those who still work with HLS and to all who abuse animals: we're coming for you, motherfuckers.⁵⁰

After luxury homes outside of Seattle burned to the ground, and the government rushed to label it “eco-terrorism,” Bob Holland, a retired arson investigator, said in an interview with FOX News that the radical environmental movement is far from over. “Every time a fire breaks out and somebody takes a spray can and writes ‘ELF’ or ‘ALF’ on there, then everybody gets all excited that ‘Oh this movement has started back up,’” Holland said.⁵¹ “The movement,” he said, “never really left.”

So if outlandish prison sentences and “eco-terrorism” rhetoric are not deterring crimes or solving crimes, what is the point?

Fear. It's all about fear. The point is to protect corporate profits by instilling fear in the mainstream animal-rights and environmental movements—and every other social movement paying attention—and make people think twice about using their First Amendment rights. It's not the illegal activists that are the targets; it's the legal, above-ground activists.

Industry groups say “this is just the starting gun” for the Green Scare. But this could be the starting gun for activists as well. I have talked with hundreds of activists around the country over the years. There is a lot of fear. But there is also a lot of rage. And that's a very good thing. Today's repression may mimic many of the tactics of the Red Scare, but today's response cannot. It is not enough to cowardly distance ourselves from anyone branded a “terrorist,” as people did during the Red Scare. Naming names and making loyalty oaths did not protect activists then, and it will not protect activists now.

The only way activists, and the First Amendment, are going to get through this is by coming out and confronting it head-on. That means reaching out to everyday people and telling them that labeling activists as terrorists wastes valuable antiterrorism resources and is an insult to everyone who died on September 11. That means reaching out to other activists and saying loud and clear that if these attacks are not confronted, corporations and the government will simply move on to other social movements. Together, we can stop the cycle of history repeating itself.

50. BiteBack Magazine, News from the Frontlines, Anonymous Communiqué, http://www.directaction.info/news_sep20_06.htm (last visited May 7, 2009).

51. FoxNews.com, FBI: Eco-Terrorism Remains No. 1 Domestic Terror Threat, Mar. 31, 2008, <http://www.foxnews.com/story/0,2933,343768,00.html>.

When I read the leaked PowerPoint presentation by the State Department, one part stood out the most. One slide says, “Never confront the protesters These individuals are clever. Most of them know what their rights are”⁵² It made me think: the government and corporations see activists as a threat for knowing their rights, because people who know their rights are less likely to be intimidated into submission. But what would make animal-rights and environmental activists even more of a threat? What other warnings should corporations be receiving about protestors?

I would like to think that something positive can come out of the Green Scare. I hope that one day soon, the government is warning corporations something like this:

“Never confront the protestors, because they have educated themselves and others about laws like the Animal Enterprise Terrorism Act. They know how to resist grand juries. And they have friends, family, and a movement ready to raise hell if they are arrested.

“Never confront the protestors, because they know that all social movements we now respect were once demonized and attacked, vilified and imprisoned. And they are learning from history, and the courage of activist throughout history.

“Never confront the protestors, because they won’t condemn other activists to show, in the words of George W. Bush, they’re ‘with us’ and not ‘against us.’ They won’t name names. They won’t pledge loyalty oaths. They won’t snitch.

“And, most importantly, they aren’t afraid and will never, ever stop.”

52. Overseas Sec. Advisory Council, *supra* note 47.