

Why the Animal Enterprise Terrorism Act Became Law

by Jerry Friedman

The modern animal rights movement calls for a revolution in the way that humans regard other animals. The revolution's scope is tremendous. The ultimate goal is to recognize nonhuman animals as legal persons with rights of life and liberty, and with absolute immunity from human interests. The revolutionary idea of nonhuman rights is having a considerable effect, as evidenced by the growth of the animal rights movement and the reaction of the industries vested in nonhuman slaughter, vivisection, and other forms of exploitation (hereafter referred to as "the industries"). The conflict between nonhuman rights and nonhuman exploitation has set the stage for the Animal Enterprise Terrorism Act (AETA)[1].

AETA amends and amplifies the 1992 Animal Enterprise Protection Act (AEPA). The FBI and the industries have claimed that a stronger law was needed to combat crime against animal enterprises. Contrary to this claim, the principal changes effected by AETA apply against free speakers and civil disobedients, not criminals. For example, whereas AEPA had the mens rea of a "purpose of causing physical disruption," AETA has the overbroad mens rea of a "purpose of damaging or interfering." (AETA defines damage to include a loss of profits and doesn't define interference. In contrast, the 1994 Freedom of Access to Clinic Entrances Act (FACE)[2] defines interference as "to restrict a person's freedom of movement.")

Under a plausible AETA violation, a person could send a letter with the intent to reduce an animal enterprise's profits and, if any profits are lost, be convicted of terrorism, fined, and jailed[3]. Further, nonviolent physical obstruction, a traditional method of civil disobedience, carries a maximum penalty of \$10,000 and six months in jail for the first offense, and \$25,000 and eighteen months in jail for subsequent offenses, plus restitution[4] instead of otherwise-applicable state misdemeanor penalties. (AETA expressly does not preempt state law, so civil disobedients can be prosecuted twice.) This penalty also applies to individuals who commit minor crimes to expose the industries' misdeeds, such as nonhuman or consumer advocates who cut fences, break locks, or commit fraud to obtain undercover footage. AETA sweeps all offenses against the industries into the same terrorist category as bombing federal buildings. Vandalizing a circus billboard makes the vandal a terrorist, but vandalizing a circus protest sign remains a petty crime.

Comparisons of AEPA, AETA, and FACE reveal that AETA was passed to curtail speech, not crimes, against animal enterprises. Florida civil rights attorney Barry Silver said that under an AETA-like law, "Martin Luther King . . . and his followers would have been in jail for the rest of their lives because they brought down a lot of powerful interests and caused economic damage." [5]

John Lewis, Deputy Assistant Director of the FBI, claimed that the Animal Liberation Front, Earth Liberation Front and related groups, "have committed more than 1,100 criminal acts in the United States since 1976, resulting in damages conservatively estimated at approximately \$110 million." [6] AETA proponents point to its severe criminal penalties as the reason why it's needed to help stop crimes against the industries while ignoring its predictable effect on free speech. Frankie Trull, president of the National Association for Biomedical Research (NABR), stated, "Those who erroneously claim the AETA infringes upon inalienable First Amendment protections would be wise to study the differences between legal protests and campaigns that threaten people, their families and places of business." [7] Similarly, the Center for Consumer Freedom (CCF), an organization formed by the food industry "to counter . . . health care enforcers, militant activists, meddling bureaucrats, and violent radicals" [8] wrote, "This new law will make things tougher on animal rights activists who use threats and violence to intimidate medical researchers, farmers, ranchers, and other Americans who decline to embrace the philosophy of 'total animal liberation.'" [9] This was the same justification to make the earlier AEPA into law, but in its fourteen years AEPA had only been used against nonviolent activists: two activists who released 7,000 mink from captivity and six members of Stop Huntingdon Animal Cruelty (SHAC) USA. If the purpose of AEPA was to deter and punish violent crime, why has the AEPA only been used on nonviolent crimes twice in fourteen years? Why are the principal changes effected by AETA so broad as to chill free speech, and why does AETA have specific penalties against nonviolent civil disobedience?

The answers can be found in the SHAC campaign. SHAC UK formed in 1999 after undercover video exposed Huntingdon Life Sciences (HLS; now called Life Science Research, Inc.) vivisectioners punching beagles and dissecting live monkeys. Under siege by SHAC UK, HLS moved its headquarters to the U.S. Then SHAC USA was formed. On several occasions SHAC's international campaign brought HLS near bankruptcy. Every time, HLS found a new investor that would then become the subject of SHAC protests until the investor pulled out. Finally, the

British government loaned HLS money, which is the first time the British government saved a business from bankruptcy caused by public protest.

Instead of overtly helping HLS with a loan, it's reasonable to conclude that the U.S. government helped HLS covertly by indicting six SHAC USA members and SHAC USA, Inc. (the SHAC-7). They were charged under AEPA for conspiring to incite others to break the law through SHAC's web site that reported and advocated legal and illegal activities against HLS. Indictee Josh Harper said, "We're six activists ... who are indicted under federal terrorism laws. ... We didn't break anything; we didn't burn anything; we didn't beat anyone; we didn't even so much as trespass. Our crime is doing exactly what I'm doing now: speaking." [10] The SHAC-7 were convicted on March 2, 2006 and sentenced to one to seven years in federal prison. CCF's Director of Research David Martosko then stated, "This is just the starting gun." [11]

Despite AEPA's perfect conviction rate, senators Diane Feinstein (D-Calif.) and James Inhofe (R-Okla.) cosponsored AETA. Justifying the bill, Feinstein stated, "Prohibiting the animal rights extremists' violent tactics will ensure that important animal enterprises, like biomedical industries, stay in California, for example, rather than go to India or China." [12] A senator's concern over businesses leaving her state evidences the economic motivation behind AETA.

Another liberal icon, the ACLU, expressed opposition to AETA in March 2006, stating, "The AETA criminalizes First Amendment activities such as demonstrations, leafleting, undercover investigations, and boycotts. The bill is overly broad, vague, and unnecessary because federal criminal laws already provide a wide range of punishments for unlawful activities targeting animal enterprises." However, the ACLU withdrew its opposition in Oct. 2006. [14] U.S. Rep. F. James Sensenbrenner (R-Wisc.) testified before the House, "[O]n October 30 the American Civil Liberties Union sent a letter [to me] not opposing this legislation. They did ask for minor changes, but they did not express one concern about constitutionally protected first amendment rights being infringed upon or jeopardized in any way by this bill." [15] On the same day that the ACLU sent its letter to Sensenbrenner, the National Lawyers Guild (NLG) issued a press release "strongly opposing" AETA. [16][17]

AETA passed unanimously in the Senate. AETA was not offered in the House on its 435-member general vote, but instead on an informal voice vote where it passed 5 to 1. Rep. Dennis Kucinich (D-Ohio) was the only legislator to speak against it in session and, after it passed, remarked in a public statement, "My concern about this bill is that it does nothing to address the real issue of animal protection but instead targets those advocating animal rights. This legislation will have a real and chilling effect on people's Constitutionally protected First Amendment rights." [18] George Bush signed AETA into law on Nov. 25, 2006.

AETA is unlikely to deter crimes against the industries better than AEPA, because AEPA already provided tough penalties that had no noticeable effect on crimes. Rather, the likely result of AETA is a quieting of nonhuman advocacy because of its broad terms and tough penalties.

An element of AETA is traveling in interstate or foreign commerce, or using the mail. This can shut down interstate campaigns and boycotts through the chilling effect or through prosecution. According to Lee Hall, legal director of Friends of Animals, AETA also can affect intrastate campaigns: "The government would argue that in the aggregate, the acts have a substantial effect [on interstate commerce, and could be regulated], citing *Wickard v. Filburn* [20]." AETA is also designed to apply against conspiracies. Hall notes, "[I]t is this focus on conspiracy, shifting away from the Supreme Court's principle of personal culpability, that is the most serious problem of all when we get to the how-this-will-affect-everybody issue. It's Congress getting away with taking more and more of criminal law, making it over into a general tool of social control."

The Equal Justice Alliance and some members of the NLG are committed to repealing AETA. After student protests, U.S. Rep. George McGovern (D-Mass.) has pledged to overturn it. McGovern said that AETA "uses the rhetoric of terrorism to send a chill through the activist community." [21]

To cut down crimes against the industries, Congress should make meaningful laws to protect nonhumans rather than persecute their advocates just as Kucinich had remarked. Joan Dunayer, author of *Animal Equality and Speciesism*, comments, "Congress should stop funding and subsidizing vivisection, 'animal agriculture,' and other abuse of nonhuman animals." If Congress stopped supporting industries based on nonhuman exploitation, those industries could rely no longer on government protection in the face of public disapproval. Consequently the businesses would change and crimes against them would fade.

Congress should increase the public accountability of the industries rather than passing laws to shield them from public scrutiny, for the purpose of making their practices transparent. Arguably, all businesses should operate with great transparency because cloaked businesses turn into sweatshops, add nicotine to cigarettes, and otherwise betray the public trust in the name of profits. Yet Congress and state legislatures continue to pass laws protecting the industries' from public exposure, such as a California law targeting trespassing undercover investigators [22].

Shumaker Furs of Portland, Oregon may fail after a year of intensive protests and no special government protection. This is precisely what our First Amendment was designed to guarantee, letting public opinion affect the survival of businesses rather than favoritism by the government. AETA is opposite of our First Amendment guarantees because its intent and likely effect in chilling free speech. It looks to the content of speech, targeting those who criticize the industries vested in exploiting nonhumans, and it punishes the free speakers measured by how effective their speech is.

Whereas FACE targeted peaceful civil disobedience narrowly to permit human access to abortion clinics, AETA targets peaceful civil disobedience broadly to protect corporate profits. Chris DeRose, president of Last Chance for Animals, stated, "This is not only dangerous for the animal rights/protection people and organizations, but it can easily transfer over to other social struggles." This trend in legislative strategy is dangerous to our democracy and every social movement.

1. 18 USC 43
2. 18 USC 248
3. 18 USC 43(b)(2)
4. 18 USC 43(b)(1)
5. <http://www.greenisthenewred.com/blog/2006/06/19/shac7-film>
6. Testimony of John E. Lewis before the Senate Judiciary Committee, May 18, 2004.
7. Trull, Frankie. "Wisconsin State Journal." Dec 6, 2006.
<http://www.madison.com/wsj/home/spectrum/index.php?ntid=110176&ntpid=1> (accessed Dec 15, 2006).
8. <http://www.consumerfreedom.com/about.cfm>, (accessed Dec 15, 2006).
9. Headline Nov. 14, 2006. http://www.consumerfreedom.com/news_detail.cfm/headline/3179, (accessed Dec. 22, 2006).
10. Quoted from a Jan. 20, 2006 SHAC USA benefit in Seattle, Washington.
11. <http://www.greenisthenewred.com/blog/2006/08/15/ar2006-plenary> (accessed Dec 15, 2006).
12. <http://epw.senate.gov/pressitem.cfm?party=rep&id=264506>
13. <http://www.aclu.org/freespeech/gen/25620leg20060306.html> (accessed Dec 15, 2006).
14. http://www.aclu.org/images/general/asset_upload_file809_27356.pdf
15. http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2006_record&page=H8594&position=all (accessed Dec 15, 2006).
16. http://www.nlg.org/news/statements/AETA_Act.htm (accessed Dec 15, 2006).
17. This isn't the first time that the ACLU and NLG have disagreed. During the Red Scare the ACLU banned communist members whereas the NLG was indifferent to members' political affiliations. Because of its similarities to the Red Scare, reporter Will Potter has called the current suppression of animal and environmental activism "the Green Scare." See Will Potter's blog at <http://www.greenisthenewred.com>.
18. <http://www.greenisthenewred.com/blog/2006/12/01/kucinich-aeta-statement/>
19. 18 USC 43(e)(1)
20. 317 U.S. 111 (1942)
21. <http://www.greenisthenewred.com/blog/2006/12/01/aeta-protest-mass>
22. See "New California law targets animal rights activists" reporting on this trend.
<http://webstar.agrinews.com/agrinews/282053799212009.bsp> (accessed Dec 22, 2006).