Testimony
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Concerning
Stop Huntingdon Animal Cruelty (SHAC)
and Other Animal Rights Extremists

before the
Committee on the Environment and Public Works
United States Senate

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Mr. Chairman, members of the Committee, thank you for providing me the opportunity to appear here today and testify before you concerning the Department of Justice's efforts to investigate and prosecute entities and individuals who commit criminal acts in the name of animal rights. In that regard, I will seek to address some of the strengths and limitations of the laws that presently provide the means by which we investigate and prosecute animal rights extremist matters. These investigations are an important part of the mission of the Department of Justice to protect the American people and our institutions from acts and threats of violence.

As you know, counterterrorism is the number one priority of the Department of Justice. As such, we remain dedicated to the task of protecting the American people from violence and the threat of violence posed by terrorism while at the same time protecting the First Amendment rights and other civil liberties guaranteed to all Americans in the Constitution. In protecting America and Americans from the threat of terrorism, though, we recognize that the threat to the American people comes not only from extremists overseas, but also from extremists located within our borders.

In order to ensure that the Department has all the necessary investigatory tools, legal authorities and appropriate penalties, the Department supports amending Title 18, United States Code, Section 43 to include economic disruption to animal enterprises and threats of death and serious bodily injury to associated persons. The proposed modifications provide a clear and constitutional framework for timely, effectively and justly addressing prohibited criminal conduct that will ensure that victims' rights are respected and preserved.

<u>Justice Department Efforts to Combat Domestic Extremists</u>

Mindful of incidents such as the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, the United States government is resolved to address the use of violence by Americans, against other Americans, for the purpose of coercing the government or intimidating

civilians in furtherance of political or social goals. The Department of Justice has had numerous recent successes in combating those Americans who commit acts of domestic terrorism. Working in a task force approach with our state and local partners, we have sought to timely share information across the nation to prevent incidents from occurring. These Joint Task Forces have sought to use all available investigatory tools, including undercover operations and informants, as well as all available criminal statutes, such as interstate stalking and explosives statutes, to disrupt violent groups and marshal compelling evidence to bring them to justice.

For example, in the past year the Department has prosecuted white supremacists who have used or threatened to use violence against other Americans. In November, 2004, in the District of Nevada, former Aryan Nations official Steve Holten pleaded guilty to sending threatening messages to employees of several local newspapers, as well as state government employees. On February 25, 2005, in the Western District of Pennsylvania, Ku Klux Klan leader David Wayne Hull was sentenced to 12 years in prison for unlawfully teaching a government informant how to construct an improvised explosive device. Matthew Hale – formerly the leader of the World Church of the Creator – was sentenced on April 6, 2005, to serve 40 years in prison for, among other things, soliciting the murder of a federal district court judge in the Northern District of Illinois. On August 30, 2005, neo-Nazi skinhead Sean Gillespie – who videotaped himself fire-bombing a synagogue – was sentenced to 39 years in prison in the Western District of Oklahoma.

The Department has also prosecuted other extremists who used or threatened to use explosives to commit acts of violence. On July 18, 2005, Eric Rudolph was sentenced to life in prison for the bombing of an abortion clinic in Birmingham, Alabama, as well as a night club and Centennial Park in Atlanta, Georgia. On September 12, 2005, Gale William Nettles was convicted of conspiring to blow up the Dirksen Federal Building in Chicago, Illinois. On September 22, 2005, former Jewish Defense League leader, Earl Krugel, was sentenced to 20 years in prison for carrying an explosive device as part of a conspiracy to injure or impede a United States Congressman and damage a mosque.

Similarly, the Department has also made progress in prosecuting animal rights and environmental extremists who have violated federal law. On November 19, 2004, in the Central District of California, William Cottrell was convicted for the arson of a car dealership in West Covina, California, as well as numerous sport utility vehicles. In the Western District of Wisconsin, Peter Young pleaded guilty on September 2, 2005, to violations of the Animal Enterprise Protection Act arising from his activities in 1997 in Wisconsin and other states. Earlier this month, on October 14, 2005, environmental extremist Ryan Lewis, and two associates, pleaded guilty in the Eastern District of California to arson and attempted arson of several partially completed homes under construction.

The Threat Posed By SHAC and Other Animal Rights Extremists

As this Committee well knows, animal rights extremists have not hesitated to use violence to further their social and political goals. In those cases where individuals have used improvised incendiary or explosive devices, federal prosecutors are well-equipped to prosecute

and punish such individuals using the tools provided in Title 18, United States Code, section 844.

Domestic violence by animal rights extremists is not limited, however, to the use of arson and the use of explosives. As Mr. Lewis has described in his testimony, Stop Huntingdon Animal Cruelty (or SHAC) and other animal rights extremist organizations and entities are engaging in a campaign of criminal conduct which is calculated to aggressively intimidate and harass those whom it identifies as targets. In pursuit of its goal of closing the animal testing operations of Huntington Life Science (HLS), SHAC's campaign has included a wide variety of "direct action" techniques specifically designed to coerce the subjects of those efforts while avoiding an effective law enforcement response. Harassment of other businesses, and the employees of those businesses, vandalism of property belonging to individuals whose only offense is working for a company that does business with HLS, or, even worse, publication of private information about such individuals, their spouses and even their young children, are only some of the techniques used by SHAC and like-minded persons to coerce and intimidate companies and individuals. With every perceived success, SHAC emboldens other extremist organizations to act similarly. The personal and economic consequences of this campaign have been, and will continue to be, significant.

Tools for the Prosecution of SHAC and Similar Groups and Individuals

In the past, this kind of criminal conduct was prosecuted as a violation of the Hobbs Act, codified in section 1951 of Title 18 of the United States Code. In *Scheidler v. National Organization for Women*,[1] however, the United States Supreme Court held that, in order to commit the extortion that is the gravamen of a Hobbs Act violation, a defendant must actually "obtain" property – that is, he or she must take a tangible thing of value from his or her victim. The Supreme Court specifically rejected the notion that a Hobbs Act violation was committed by a person or entity who, like SHAC, acts to deprive the victim of the free exercise of his or her property rights. Thus, while conduct similar to SHAC's campaign was previously investigated and prosecuted as Hobbs Act violations, after the *Scheidler* decision in 2003, that option was no longer available to federal prosecutors.

On the other hand, the Animal Enterprise Protection Act, codified at section 43 of Title 18, is still an important tool for prosecutors seeking to combat animal rights extremists. This statute was passed in 1992 primarily to address the problem of those who physically intruded upon the property of entities who tested or otherwise used animals in order to damage the property belonging to the animal enterprise. Originally established as a misdemeanor, the statute's penalties have been enhanced by amendments in 1996 and 2002.

The Department has used Section 43 to charge SHAC and seven individual defendants in

[1]537 U.S. 393, 123 S. Ct. 1057, 154 L.Ed.2d 991 (2003).

federal district court in New Jersey. The indictment alleges that the defendants conspired to engage in "direct action" activities, which was described by SHAC to involve activities that "operate outside the confines of the legal system." The indictment further alleges that the SHAC Website posted what it termed the "top 20 terror tactics" that could be taken against companies or individuals.

The six-count superseding indictment alleges violations of interstate stalking, in violation of Title 18, United States Code, Section 2261A, and conspiracy to utilize a telecommunications device to abuse, threaten and harass persons, in violation of Title 47, United States Code, Section 223(a)(1)(c). The charges are pending and a trial is scheduled for February, 2006.

While section 43 is an important tool for prosecutors, SHAC and other animal rights extremists have recognized limits and ambiguities in the statute and have tailored their campaign to exploit them. While the Department is confident that some of SHAC's conduct violates this statute in its current form, amendment of the statute to make clear and unequivocal the application of the statute to recent trends in animal rights extremism will enhance the effectiveness of the Department's response to this domestic threat.

Proposed Amendment of Title 18, United States Code, Section 43

Accordingly, the Department supports Senator Inhofe's effort to amend the Animal Enterprise Protection Act in order to address several gaps in the law that keep prosecutors from using it in the most effective manner possible.

First, the statute's definition of the type of "animal enterprise" that it protects is not broad enough to include some of the entities that are now targeted by SHAC and other animal rights extremists. These include pet stores and even animal shelters. The threat posed to individuals associated with such organizations is no less significant than the threat that gave rise to the original statute. Senator Inhofe's proposal would expand the definition of "animal enterprise" so that these types of victims are also clearly included within the scope of the statute.

Second, the statute's use of the phrase "physical disruption" to describe the conduct it proscribes unnecessarily suggests that it covers a narrow scope of conduct tantamount to trespass. In that regard, the statute permits the argument that it does not cover actions by SHAC or other animal rights extremists taken not against an animal enterprise, but against those entities that choose to do business with an animal enterprise. While careful parsing of the language of the statute makes clear that this is not the case, lack of clarity threatens effective use of the statute. Senator Inhofe's proposal avoids this ambiguity by focusing instead on "economic disruption" (that is, business losses) and "economic damage" (that is, physical property damage) resulting from the threats or property damage that it would proscribe. In doing so, it would more effectively protect animal enterprises from the criminal conduct in which animal rights extremists like SHAC currently engage.

Third, Senator Inhofe's proposal would include this type of criminal conduct as a predicate for seeking electronic surveillance authority. Participants in the animal rights

extremist movement exercise excellent tradecraft, and are very security conscious. Animal rights extremists have made extensive use of the internet for communications and have relied upon electronic mail and other communications media to interact. These communications are occurring on a national level, and electronic surveillance provides law enforcement authorities a timely and effective means for capturing and sharing information. Law enforcement personnel should not be restricted from proactively seeking approval from a federal district court judge to capture probative evidence that would assist their criminal investigations.

Fourth, in its current form, the statute fails to address clearly the consequences of a campaign of vandalism and harassment directed against individuals – as opposed to the animal enterprise itself. Senator Inhofe's proposal would remedy this ambiguity by clearly stating that committing the proscribed conduct against an individual, including an employee of an animal enterprise (or of an entity with a relationship with an animal enterprise), is equally illegal.

Finally, Senator Inhofe's proposal provides a range of penalties including imprisonment, fines and restitution that are tailored to reflect the nature and severity of the criminal conduct. This broad range of penalties will enable the government to effectively and appropriately charge the accused with a crime commensurate with the accused's criminal conduct and to seek punishment reflecting that degree of culpability.

Viewed in its entirety, the changes in Senator Inhofe's proposal would empower prosecutors with a more effective tool to meet the challenges now posed by animal rights extremists. I strongly encourage the Committee to endorse this proposal.

Protecting The Victims

It is important to underscore that this Congress and the Justice Department have taken significant steps to assist and protect victims of crime. The Justice For All Act, passed with overwhelming bipartisan support one year ago (Title 18, United States Code, Section 3771), and the Attorney General Guidelines on Victim and Witness Assistance, as revised in May, 2005, recognize the rights of crime victims and the importance of reasonable protections for victims from defendants, or those persons acting in concert with or at the behest of suspected offenders. Senator Inhofe's proposed legislation seeks to build upon this foundation. The criminal conduct of animal rights extremists is directed against individuals and companies in order to intentionally place these victims in reasonable fear of death or serious bodily injury. These victims suffer – often mentally, physically, and monetarily – when extremists threaten them, damage their property and affect their livelihood. This is not First Amendment protected speech, but rather criminal conduct that is within the traditional realm of statutes prohibiting threats, violence or injury to innocent victims.

Respecting the First Amendment

In seeking to meet the challenge of these changing forms of criminal conduct by animal rights extremists, the Department is acutely aware of the importance of protecting the First

Amendment rights of those who protest any cause they believe right, including the testing and other use of animals. Let me be clear: The Department does not seek to prosecute those who enter the arena of debate seeking to persuade their government or private businesses and individuals of the merit of their viewpoints, and this proposal would not – indeed, could not – criminalize such protected activity. We seek to prosecute criminal conduct, including conduct that places a person in reasonable fear of death or serious bodily injury.

The First Amendment is not a license for the use or threatened use of violence, or for the commission of other crimes. Even if these crimes are politically motivated – even if they are committed as a form of protest – Congress is empowered to prohibit the conduct it deems offensive without running afoul of the First Amendment. Those who cross the line from free speech to criminal conduct should be prosecuted and, if convicted, they should be punished appropriately. As it has done in other contexts, Congress must give prosecutors the tools to do so fairly and effectively.

Conclusion

Prior Congressional action has provided law enforcement and prosecutors with a solid framework within which to pursue the goal of prevention and disruption of violent extremism within our borders. We in the Justice Department have more work to do to eliminate this dangerous threat, and we urge you in Congress to continue to build upon and enhance the legal tools needed to accomplish our mutual goals.

Mr. Chairman, thank you for your leadership on this issue and again for inviting us here and providing us the opportunity to discuss how the statutes are being used consistent with our Constitutional values -- to fight violent extremism within our criminal justice system. We would also like to thank this Committee for its continued leadership and support. Together, we will continue our efforts to secure justice and defeat those who would harm this country.