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UNITED STATES v. STEVENS: THE SUPREME COURT'S DECISION INVALIDATING THE CRUSH VIDEO STATUTE

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

MAY 26, 2010

Serial No. 111–129

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UNITED STATES v. STEVENS: THE SUPREME COURT'S DECISION INVALIDATING THE CRUSH VIDEO STATUTE

WEDNESDAY, MAY 26, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Jackson Lee, Cohen, Quigley, Deutch, Gohmert, Poe and Lungren.

Staff Present: (Majority) Bobby Vassar, Subcommittee Chief Counsel; Jesselyn McCurdy, Counsel; Joe Graupensperger, Counsel; Aaron Hiller, Counsel; (Minority) Caroline Lynch, Counsel; and Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. The Subcommittee will now come to order. I am pleased to welcome you today to this hearing before the Subcommittee on Crime, Terrorism, and Homeland Security about the Supreme Court's recent decision in *United States v. Stevens.*

In the late 1990's, Congress was made aware of a growing market for videotapes and still photographs depicting typically small animals being slowly crushed to death. These depictions are commonly referred to as crush videos. Much of the material features women inflicting torture with their bare feet or while wearing high-heel shoes. The depictions often appeal to people with a very specific sexual fetish who find them sexually arousing.

Even in States where harming the animal in such ways itself violated State laws prohibiting cruelty to animals, prosecutors still had difficulty obtaining convictions for animal cruelty. For instance, the faces of individuals inflicting the torture often were not shown in the videos, and the locations, times and dates of the acts could not be ascertained from the depictions themselves. Defendants were therefore able to successfully assert as a defense that the State could not prove its jurisdiction over the place where the acts occurred or that the actions took place within the statute of limitations.

Because it is hard to find the perpetrators of the underlying acts of cruelty to animals, it is also difficult to obtain convictions. Congress adopted and the President signed a new law prohibiting the

creation, sale and possession of the depictions of such acts. The new law was codified in section 48 of title 18 in the U.S. Code.

In 2005, Robert Stevens was convicted of three counts of violating this law because he sold videos of pitbulls engaging in dogfights and attacking other animals. On appeal, the Third Circuit Court of Appeals declared the law facially unconstitutional and vacated the conviction. The Supreme Court granted cert and heard oral arguments in 2009 and rendered its decision on April 20, 2010. The Court upheld the decision, invalidated the statute and stated that it was overbroad and violated the Constitution's First Amendment.

The Subcommittee is holding a hearing today to hear from those who have analyzed the Court's decisions and to discuss with them the implications of the decision for any future action by Congress in this area. Today we will have two panels of witnesses who will address the issue. One will be the gentleman from California, Representative Elton Gallegly, and the gentleman from Michigan, Gary Peters, both of whom have introduced legislation on this issue.

But before we proceed with their testimony, it is my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thanks, Chairman Scott.

I wish to welcome our witnesses here today and extend a special thanks to our fellow judicial colleague Mr. Gallegly and Mr. Peters. Today we will examine the Supreme Court's recent decision in *U.S. v. Stevens,* which invalidated the Federal animal cruelty statute codified in 18 U.S.C., section 48, originally enacted in 1999. This statute prohibited the creation, sale or possession of a depiction of animal cruelty for commercial gain. Congress' focus in approving this law was the increasing prevalence of so-called animal crush videos depicting small animals being slowly crushed to death by women using their bare feet or while wearing high heels. According to the testimony before this Committee in 1999, as the Chairman indicated, apparently the depictions appealed to persons with a very specific sexual fetish. Those videos often don't reveal the identity of those involved, making it difficult to prosecute them for the underlying animal cruelty.

Twenty-six States that joined together in an amicus brief touted the success of the statute in drying up the interstate market for crush videos. But in Stevens, however, the defendant was prosecuted under section 48 for producing and distributing videos that depict dogfighting. Stevens was convicted on three counts and sentenced to 37 months in prison followed by 3 years of supervised release.

He challenged his conviction, arguing that section 48 is facially unconstitutional. The Third Circuit Court of Appeals agreed, and the Supreme Court affirmed, but undertook a different analysis than the appeals court. The Supreme Court declined to recognize animal cruelty as a new category of unprotected speech, rejecting the government's proposal that a categorical exclusion should be determined by balancing the value of the speech against its societal cost.

The Court noted that the First Amendment's guarantee of free speech does not extend only to categories of speech that survive an

ad hoc balancing of relative social costs and benefits. Siting its exclusion of child pornography in *New York v. Ferber,* the Court said that the analysis must go beyond a simple balancing test.

The Court then turned its overbreadth analysis to ascertain whether a substantial number of section 48's applications are unconstitutional judged in relation to the statute's plainly legitimate sweep. The Court concluded that an animal cruelty statute such as that was a criminal prohibition of alarming breadth. The Supreme Court did use the word "breadth." The Court cited a number of issues that contributed to the statute's reach, namely the absence of any requirement that the prohibited conduct be cruel or illegal. The Court also noted the inadequacy of the exception clause, which fails to capture a wide array of protected speech that does not fall within one of the enumerated categories.

Ultimately, the Court declined to interpret the statute in such a way as to afford it constitutional validity, noting to do so would constitute a serious invasion of the legislative domain and sharply diminish Congress' incentive to draft a narrowly tailored law in the first place.

With this analysis in mind, I welcome input from our witnesses and look forward to the testimony they have today.

I yield back.

Mr. SCOTT. Thank you.

We have been joined by the gentleman from Texas Mr. Poe.

Do you have a very brief statement?

Mr. POE. Mr. Chairman, I will submit a statement for the record.*

Mr. SCOTT. Thank you very much.

Our first panel will be our colleagues, the gentleman from Michigan, Mr. Peters, and the gentleman from California, Mr. Gallegly, each of whom has introduced a bill on the topic we are discussing today. The first witness will be Mr. Peters, who represents the Ninth District of Michigan. He is in his first term in Congress and is a member of the Financial Services Committee and Science and Technology Committee.

Mr. Gallegly represents the 24th District of California. He is in his 12th term, and is a Member of the Judiciary Committee, the Committee on Foreign Affairs, the Natural Resources Committee and the Permanent Select Committee on Intelligence.

Mr. Peters.

TESTIMONY OF THE HONORABLE GARY C. PETERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. PETERS. Well, good morning, Chairman Scott and Members of the Subcommittee. Thank you for inviting me today to testify on the Supreme Court's decision last month in the *United States v. Stevens* and its implications for new legislation banning depictions of animal cruelty.

Animal torture videos are heinous, barbaric and completely unacceptable, and we must stop them once and for all. It is hard to believe that this sort of thing even exists and that a new law is need-

*Note: Mr. Poe decided not to submit a statement for the record.

ed to prevent it. Animal torture is outrageously disturbing, and common decency and morality dictates that those engaged in it should not be profiting from it. They should be in prison. This is why I have introduced H.R. 5337, the "Animal Torture Prevention Act of 2010."

Before I get into the specifics of this legislation, I would like to commend the leadership of my colleagues Representative Moran and Gallegly on animal protection issues generally and specifically on anti-crush video legislation. As co-chairs of the Congressional Animal Protection Caucus, of which I am a member, Representatives Moran and Gallegly are committed to advancing commonsense animal protection legislation, and they both have been true champions.

As you know, the Supreme Court's decision invalidated the Federal law enacted in 1999 and codified 18 U.S.C., section 48. This law criminalized the creation, sale and possession of depictions of animal cruelty, and addressed what was then a growing market for so-called crush videos. These videos are depictions of small animals, such as cats and dogs, being tortured and crushed to death.

While such cruelty on animals was and remains illegal under most State laws, prosecutors had difficulty obtaining convictions. Generally these videos omitted faces of participants, and other possible corroborating information, such as locations, times and dates of the acts, could not be ascertained from the depictions themselves. Defendants were often able to successfully assert a defense that the State could not prove jurisdiction over the place where the act occurred or that the action took place within the relevant statute of limitations.

These difficulties were addressed by section 48, which prohibited the creation, sale and possession of depictions of such acts. Estimates suggest that approximately 2,000 crush videos were in circulation, some selling for as much as $400 at the time that section 48 was codified in 1999. This law was considered to be generally effective at chilling the market for crush videos.

Last month the Supreme Court found the statute was overbroad, failed strict scrutiny, and was therefore invalid under the First Amendment. As a member of the Congressional Animal Protection Caucus, a pet owner and a strong supporter of animal rights legislation, I believe Congress must respond purposefully and deliberatively to the Stevens decision.

With the *United States v. Stevens,* the Supreme Court left Congress very little room to regulate. We must enact a new narrowly tailored legislation that carefully parses and responds to Chief Justice Roberts' opinion and can survive another round of judicial review.

Last week I introduced H.R. 5337, and this narrowly tailored bill is aimed at acts of extreme animal cruelty and will ban the creation, sale and distribution of such depictions in interstate commerce. This bill targets a very narrow set of behaviors, specifically the depiction of extreme animal cruelty that appeals to a particular sexual fetish, by requiring that the depiction of extreme animal cruelty appeal to a prurient interest. This focuses the legislation and prevents the prohibition of hunting videos, a concern the Court expressed in the Stevens opinion.

Citing *New York v. Ferber,* the Court told us that a depiction of the legal behavior is still subject to First Amendment protection unless the crime is intrinsically related to the creation of the video. The original law the Court struck down failed to make this distinction and show that Congress must now go after the makers of crush videos to prevent these horrible acts.

H.R. 5337 requires any prohibited depiction of extreme animal cruelty to depict actual torture, maiming, mutilation and subjugation of animals to other acts of extreme cruelty to be committed for the primary purpose of creating a depiction of animal cruelty. This will target and chill the market for these appalling videos and mitigate concern that a new law could be overturned in regards to surveillance cameras, advocacy videos by animal rights groups, and other such depictions unintended to perpetrate the market for these materials.

Additionally, new legislation must carefully, but clearly expand the scope of the exceptions clause. The Supreme Court noted that the most protected speech has very little religious, scientific or political value, and a savings clause using an obscenity standard will not save an unconstitutional statute.

New legislation should specifically eliminate the existing requirement that the depiction have serious religious, political, scientific, educational, journalistic, historical or artistic value. The Animal Torture Prevention Act has a savings clause that requires de minimis value, not serious value, to be accepted. This important distinction allows depictions with a minimal amount of societal value to avoid penalty under the law which would help survive strict scrutiny.

Finally, while drafting legislation that follows the Stevens opinion must be an exercise in restraint to avoid overbreadth concerns, we must not miss the opportunity to crack down on depictions of extreme animal cruelty when we can do so within the bounds of the First Amendment. The original law did not address the distribution of these depictions, just the creation, sale or possession thereof. So the proliferation of broadband and file sharing over the Internet increases the ability to transmit and distribute these horrific depictions for profit or otherwise in an anonymous manner. H.R. 5337 will prohibit the distribution of these depictions.

I believe that H.R. 5337 responds to the concerns expressed by the Court in the *United States v. Stevens* and provides a constitutional framework to prohibit the torture of helpless animals. I hope to have the opportunity to work with the Judiciary Committee, the Subcommittee on Crime, Terrorism, and Homeland Security, and Representatives Moran, Gallegly and Blumenauer to advance and enact legislation prohibiting crush videos and other depictions of extreme animal cruelty. I look forward to the Subcommittee panel of constitutional experts and appreciate their testimony on this very important issue.

Thank you, Mr. Chairman, for this opportunity to testify before your Committee on this very important matter.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Peters follows:]

PREPARED STATEMENT OF THE HONORABLE GARY C. PETERS,
A U.S. SENATOR FROM THE STATE OF MICHIGAN

STATEMENT OF CONGRESSMAN GARY C. PETERS

Before the Subcommittee on Crime, Terrorism & Homeland Security of the House Committee on the Judiciary

United States House of Representatives

Hearing On:

"United States v. Stevens: The Supreme Court's Decision Invalidating the Crush Videos Statute"

PRESENTED ON MAY 26, 2010

Good morning, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me to testify today on the Supreme Court's decision last month in *United States* v. *Stevens* and its implications for new legislation banning depictions of animal cruelty going forward.

Animal torture videos are heinous, barbaric and completely unacceptable and we must stop them once and for all. It's hard to believe that this sort of thing even exists, and that a new law is needed to prevent it. Animal torture is outrageously disturbing and common decency and morality dictates that those engaged in it should not be profiting from it, they should be in prison.

This is why I have introduced H.R. 5337, the Animal Torture Prevention Act of 2010. Before I get into the specifics of this legislation, I would like to commend the leadership of my colleagues, Representatives Moran and Gallegly, on animal protection issues generally and specifically on anti-crush video legislation. As Co-Chairs of the Congressional Animal Protection Caucus, of which I am a member, Representatives Moran and Gallegly are committed to advancing commonsense animal protection legislation.

As you know, the Supreme Court's decision invalidated the federal law enacted in 1999 and codified as 18 U.S.C. § 48. This law criminalized the creation, sale, and possession of depictions of animal cruelty. The law addressed what was then a growing market for so-called "crush videos," depictions of small animals being slowly crushed to death. Many of these horrific videos feature women inflicting torture upon cats, dogs, and other animals with their bare feet or while wearing high heeled shoes.

While such cruelty to animals was, and remains, illegal under most state law, prosecutors had difficulty obtaining convictions. Generally, these videos omitted the faces of the participants, and other possible corroborating information such as the locations, times, and dates of the acts could not be ascertained from the depictions themselves. Defendants were often able to successfully assert as a defense that the state could not prove its jurisdiction over the place where the act occurred or that the actions took place within the relevant statute of limitations. These difficulties were addressed by § 48, which prohibited the creation, sale, and possession of the depictions of such acts. Estimates suggest that approximately 2,000 crush videos were in circulation, some selling for as much as $400, at the time § 48 was codified in 1999. This law was considered to be generally effective at chilling the market for crush videos.

Last month, the Supreme Court found that the statute was overbroad, failed strict scrutiny, and was therefore invalid under the First Amendment. Over a decade after § 48's enactment, with far more internet users than there were during the 1990s, I fear that these unconscionable videos could become even more widespread than before if new legislation is not passed to stop the creation and distribution of depictions of these heinous acts.

As a member of the Congressional Animal Protection Caucus, a pet owner, and a strong supporter of animal rights legislation, I believe Congress must respond purposefully and deliberately to the *Stevens* decision. With *United States v. Stevens*, the Supreme Court left Congress very little room to regulate. We must enact new, narrowly tailored, legislation that carefully parses and responds to Chief Justice Roberts' opinion. Any newly enacted law must be drafted to survive another round of judicial review.

Last week, I introduced H.R. 5337, the Animal Torture Prevention Act of 2010. This bill will ban the creation, sale, or distribution of depictions of extreme animal cruelty in interstate commerce. The Animal Torture Prevention Act is aimed at vicious and illegal acts of cruelty, and narrowly tailored to survive strict scrutiny by the Supreme Court.

This legislation targets a very narrow and specific set of behaviors we are trying to regulate, specifically the depiction of extreme animal cruelty that appeals to a particular sexual fetish. The Animal Torture Prevention Act addresses this by requiring that a "depiction of extreme animal cruelty" appeal "to the prurient interest." This clause focuses the legislation and effectively prevents this bill from prohibiting hunting videos, a concern the Court expressed in the *Stevens* opinion.

Citing *New York v. Ferber*, the Court told us that a depiction of illegal behavior is still subject to First Amendment protection, unless the crime is "intrinsically related" to the creation of the video. This is a critical distinction that § 48 did not make. The original law the Supreme Court struck down failed to show that Congress must go after the makers of crush videos to prevent these horrible acts of animal cruelty.

H.R. 5337 requires any prohibited "depiction of extreme animal cruelty" to depict actual torture, maiming, mutilation or subjection of animals to other acts of extreme cruelty to be committed <u>for the primary purpose of creating a depiction of animal cruelty.</u> This will target and chill the market for these appalling videos and should significantly mitigate concerns that a new law could be overbroad in regards to surveillance cameras, advocacy videos by animal rights groups, and other depictions that were never intended to perpetuate the market for these kinds of materials.

The Court also expressed concerns that § 48 did not appear to require that the intentional killing or wounding of an animal in the depiction actually be cruel. Rather, it applied broadly to all depictions of the intentional killing, maiming, or wounding of an animal regardless of whether the killing was, in fact, "cruel." While § 48 required that the conduct had to be illegal, the Court noted that the statute made no distinctions based on the reasons an intentional killing might be illegal, noting that the humane slaughter of a stolen cow could be covered.

H.R. 5337 explicitly outlaws "depiction[s] of extreme animal cruelty," and requires that such depicted conduct "must violate a criminal prohibition of intentional cruelty to animals." This should substantially mitigate the concerns that hunting videos or other depictions of the treatment of animals that is criminal in some jurisdictions, but not *cruel*, might be included within the sweep of the statute.

Additionally, new legislation must carefully but clearly expand the scope of the exceptions clause. The Supreme Court noted that most protected speech has very little religious, scientific, or political value, and a savings clause using an obscenity standard will not save an unconstitutional statute. New legislation should specifically eliminate the existing requirement that the depiction have "*serious* religious, political, scientific, educational, journalistic, historical, or artistic value." The Animal Torture Prevention Act of 2010 has a savings clause with a significant change; depictions with a "*de minimis* religious, political, scientific, educational, journalistic, historical, or artistic value" are excepted. This important distinction allows depictions with a minimal amount of societal value to avoid penalty under the law, which will help it survive strict scrutiny.

Finally, while drafting new legislation that follows the *Stevens* opinion must be an exercise in restraint to avoid overbreadth concerns, we must not miss the opportunity to crack down on depictions of extreme animal cruelty when we can do so within the bounds of the First Amendment. The original law did not address the distribution of these depictions, just the creation, sale, or possession thereof. As I mentioned earlier, the proliferation of broadband and file sharing over the internet markedly increases the ability to transmit and distribute these horrific depictions, for profit or otherwise, in an anonymous manner. H.R. 5337 will prohibit the distribution of these depictions.

I believe that H.R. 5337 substantially responds to the concerns expressed by the Court in *United States v. Stevens*, and provides a constitutional framework to effectively crack down on the torture of innocent, helpless animals. I hope to have the opportunity to work with the Judiciary Committee, the Subcommittee on Crime, Terrorism & Homeland Security, and Representatives Moran, Gallegly, and Blumenauer to advance and enact legislation prohibiting "crush videos" and other depictions of extreme animal cruelty.

I look forward to the Subcommittee's panel of constitutional experts, and I appreciate their testimony on this important issue.

Thank you, Mr. Chairman, for the opportunity to testify today on these important matters.

[The bill H.R. 5337, follows:]

I

111TH CONGRESS
2D SESSION

H. R. 5337

To amend section 48 (relating to depiction of extreme animal cruelty) of title 18, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2010

Mr. PETERS introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend section 48 (relating to depiction of extreme animal cruelty) of title 18, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Animal Torture Prevention Act of 2010".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Federal Government and the several States have a compelling interest in preventing acts of extreme animal cruelty.

(2) Each of the several States and the District of Columbia criminalize intentional acts of extreme animal cruelty.

(3) The clandestine nature of certain acts of extreme animal cruelty allows the perpetrators of such crimes to remain anonymous, thus frustrating the ability of Federal and State authorities to enforce the criminal statutes prohibiting such behavior.

(4) These criminal acts constitute an integral part of the production of and market for so-called crush videos and other depictions of extreme animal cruelty.

(5) The creation, advertisement, and sale of crush videos and other depictions of extreme animal cruelty provide an economic incentive for, and are intrinsically related to, the underlying acts of criminal conduct.

SEC. 3. DEPICTION OF EXTREME ANIMAL CRUELTY.

(a) IN GENERAL.—Section 48 of title 18, United States Code, is amended to read as follows:

"§ 48. Depiction of extreme animal cruelty

"(a) PROHIBITION.—Whoever, in or affecting interstate or foreign commerce, knowingly creates, sells, distributes, or offers to sell or distribute a depiction of ex-

1 treme animal cruelty shall be fined under this title or im-
2 prisoned not more than 5 years, or both.
3 "(b) DEFINITIONS.—In this section—
4 "(1) the term 'depiction of extreme animal cru-
5 elty' means any visual depiction, including any pho-
6 tograph, motion-picture film, video recording, or
7 electronic image, that—
8 "(A) depicts actual conduct in which one
9 or more animals is tortured, maimed, mutilated,
10 or subjected to other acts of extreme animal
11 cruelty, if such conduct is committed for the
12 primary purpose of creating the depiction;
13 "(B) depicts conduct that violates a crimi-
14 nal prohibition of intentional cruelty to animals
15 under Federal law or the law of the State in
16 which the depiction is created, sold, or distrib-
17 uted;
18 "(C) appeals to the prurient interest; and
19 "(D) taken as a whole, does not have more
20 than de minimis religious, political, scientific,
21 educational, journalistic, historical, or artistic
22 value;
23 "(2) the term 'State' means each of the several
24 States, the District of Columbia, the Commonwealth
25 of Puerto Rico, the Virgin Islands, Guam, American

1 Samoa, the Commonwealth of the Northern Mariana
2 Islands, and any other commonwealth, territory, or
3 possession of the United States; and
4 "(3) the term 'animal' means any live amphib-
5 ian, reptile, bird, or mammal, except human
6 beings.".
7 (b) CLERICAL AMENDMENT.—The item relating to
8 section 48 in the table of sections at the beginning of
9 chapter 3 of title 18, United States Code, is amended to
10 read as follows:

"48. Depiction of extreme animal cruelty.".

○

Mr. SCOTT. Mr. Gallegly.

TESTIMONY OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. GALLEGLY. Thank you very much, Mr. Chairman. In the interest of time this morning, I have an abbreviated testimony. But I would ask unanimous consent that the full statement that I have will be made a part of the record of the hearing.

Mr. SCOTT. Without objection.

Mr. GALLEGLY. Mr. Chairman, again, thank you for giving me the opportunity to testify in favor of H.R. 5092, which would prohibit animal crush videos. My bill currently has 306 bipartisan cosponsors, including more than 75 percent of the Members of this full Committee. H.R. 5092 is also supported by many animal welfare organizations, including the Humane Society, American Humane Association, the American Society to Prevent Cruelty to Animals and others.

As many of you know, I have a long record of fighting the issue of animal cruelty. I am the cosponsor of the Congressional Animal Protection Caucus, which is a bipartisan organization dedicated to raising the awareness about cruelty issues in Congress. I also have a long record of introducing and passing crime-fighting bills. H.R. 5092 both fights animal cruelty and crime.

In 1999, I was contacted by the district attorney in Ventura County, California, regarding the issue of crush videos. These disgusting videos feature small, defenseless animals taped to the floor which are then slowly crushed to death by scantily clad women usually wearing high heels as weapons.

Although crush videos were illegal under most State laws, the crime was very difficult to prosecute because video producers moved their goods through interstate commerce to avoid prosecution, some of the issues that my colleague Congressman Peters had said in his testimony. In response, I worked to address the serious law enforcement issue by drafting legislation to ban depiction of animal cruelty. At the time we believed the bill would withstand the constitutional test. This bill passed in the House of Representatives by a bipartisan vote of 372-42 in 1999 and by unanimous consent in the Senate, and was signed into law by then-President Bill Clinton.

As you know, the Supreme Court recently ruled this bill to be too broad. However, the Court specifically stated that it was not deciding whether a law specifically banning crush videos would be constitutional. To address the Supreme Court's constitutional concern, I introduced H.R. 5092, which is a narrowly focused bill to specifically prohibit crush videos rather than the broader prohibition of animal cruelty. The bill expressly exempts things like hunting videos.

As I previously stated, this is not just an animal cruelty bill; this is about crime. The FBI, U.S. Department of Education, and the U.S. Department of Justice consider animal cruelty to be one of the early warning signs of potential violence by youths. Jeffrey Dahmer, Albert "The Boston Strangler" DeSalvo, Ted Bundy, the

Unabomber Ted Kaczynski all tortured animals before they began their terrible murder sprees.

Immediately after my initial bill was signed into law in 1999, the crush industry disappeared. It reemerged in light of the Court ruling. Quick passage of this bill into law will once again stop the industry and these disgusting videos that depict the torture and killing of defenseless animals.

Thank you again for giving me the opportunity, and I hope that we will be able to bring this bill to the floor shortly and have its rapid passage. Thank you again, Mr. Chairman.

And thank you, Representative Peters, for your work.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Gallegly follows:]

PREPARED STATEMENT OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Statement of Congressman Elton Gallegly
Before the Subcommittee on Crime Terrorism, and Homeland Security
Hearing on U.S. v. Stevens: The Supreme Court's Decision Invalidating the Crush Video Statute
May 21, 2010

Mr. Chairman, thank you for giving me the opportunity to testify in favor of H.R. 5092, which would prohibit animal crush videos. My bill currently has 306 bipartisan cosponsors, including 75 percent of the members of the full committee. H.R. 5092 is also supported by many animal welfare organizations, including the Humane Society, American Humane Association, and the American Society to Prevent Cruelty to Animals.

As many of you know, I have a long record fighting animal cruelty. I am the co-chair of the Congressional Animal Protection Caucus, which is a bipartisan organization dedicated to raising awareness about animal welfare issues in Congress.

I also have a long record of introducing and passing crime-fighting bills. H.R. 5092 fights both animal cruelty and crime.

In 1999, I was contacted by the District Attorney of Ventura County, California, regarding crush videos. These disgusting videos feature small, defenseless animals taped to the floor, which are slowly crushed to death by scantily clad women, usually wearing high heels. Although crush videos were illegal under most state laws, the crime was difficult to prosecute because video producers moved their goods through interstate commerce to avoid prosecution.

In response, I worked with constitutional lawyers to craft legislation to address this serious law enforcement issue by drafting legislation to ban depictions of animal cruelty. At the time, we believed this bill would withstand a constitutional challenge. This bill passed the House of Representatives by a bipartisan vote of 372 to 42 and by unanimous consent in the Senate. It was

signed into law by then-President Bill Clinton. As you know, the Supreme Court recently ruled this bill was too broad.

However, the Court specifically stated that it was not deciding whether a law specifically banning crush videos would be constitutional.

To address the Supreme Court's constitutional concerns, I introduced H.R. 5092, which is a narrowly focused bill to prohibit crush videos which are specifically defined, rather than the broader prohibition of animal cruelty.

The bill expressly exempts hunting videos. The Supreme Court ruled that the law passed in 1999 was so broad, it could be interpreted to ban depictions of legal activity, such as hunting or bull fighting.

To address the Supreme Court's constitutional concerns, I introduced H.R. 5092, which is a narrowly focused bill to specifically prohibit crush videos, rather than the broader prohibition of animal cruelty. The bill expressly exempts hunting videos.

The definition of crush videos is limited to depictions of animals tortured, maimed or mutilated in violation of the law of the State in which the depiction is sold.

The bill specifically exempts hunting videos, and videos that have religious, political, scientific, educational, journalistic, historical, or artistic value.

As I previously stated, this is not just an animal cruelty bill. This is about crime. The FBI, U.S. Department of Education, and the U.S. Department of Justice consider animal cruelty to be one of the early warning signs of potential violence by youths. Jeffrey Dahmer, Albert "Boston Strangler" DeSalvo, Ted Bundy, and Ted "Unabomber" Kaczynski all tortured animals before they began to murder people.

Immediately after my initial bill was signed into law in 1999, the crush video industry disappeared. It has re-emerged in light of the court rulings. Quick passage of this bill into law will once again stop the industry.

Thank you again for inviting me to testify. I strongly urge the Committee to support H.R. 5092.

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[The bill, H.R. 5092, follows:]

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111TH CONGRESS
2D SESSION

H. R. 5092

To amend section 48 (relating to depiction of animal cruelty) of title 18, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 2010

Mr. GALLEGLY (for himself, Mr. MORAN of Virginia, Mr. WHITFIELD, Mr. FARR, Mr. CAMPBELL, Mr. BURTON of Indiana, Mr. GARY G. MILLER of California, Mr. LEWIS of California, Mr. MCKEON, Mr. LINDER, Mr. BLUMENAUER, Mr. FRANKS of Arizona, Mr. BROWN of South Carolina, Mr. UPTON, Mr. FORBES, Mr. MILLER of Florida, Mr. BARTLETT, Mr. WILSON of South Carolina, Ms. ROS-LEHTINEN, Mr. BRADY of Texas, Mr. WOLF, Mr. ROYCE, Ms. SUTTON, Mr. DELAHUNT, Mr. CASTLE, Ms. MOORE of Wisconsin, Mr. HARE, Mr. COHEN, Mr. GERLACH, Ms. LINDA T. SÁNCHEZ of California, Mr. OLVER, Mr. SCHIFF, Mr. HALL of New York, Mr. FILNER, Mr. WEINER, Ms. WATSON, Mr. DOYLE, Mr. SHERMAN, Mrs. DAVIS of California, Mrs. CAPITO, Mr. KILDEE, Mr. KING of New York, Mr. KUCINICH, Mr. LOBIONDO, Ms. LORETTA SANCHEZ of California, Ms. SCHAKOWSKY, Mr. ROTHMAN of New Jersey, Mrs. BONO MACK, Mr. COBLE, Mr. SCHOCK, Mrs. CAPPS, Mr. ISRAEL, Mr. LEWIS of Georgia, Mrs. EMERSON, Mr. HOLT, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend section 48 (relating to depiction of animal cruelty) of title 18, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SECTION 1. ANIMAL CRUSH VIDEOS.

(a) IN GENERAL.—Section 48 of title 18, United States Code, is amended to read as follows:

"§ 48. Animal crush videos

"(a) PROHIBITION.—Whoever knowingly sells or offers to sell an animal crush video in interstate or foreign commerce for commercial gain shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to prohibit the selling or offering to sell a video that depicts hunting.

"(c) DEFINITIONS.—In this section—

"(1) the term 'animal crush video' means any visual depiction, including any photograph, motion-picture film, video recording, or electronic image, which depicts animals being intentionally crushed, burned, drowned, or impaled, that—

"(A) depicts actual conduct in which a living animal is tortured, maimed, or mutilated that violates any criminal prohibition on intentional cruelty under Federal law or the law of the State in which the depiction is sold; and

"(B) taken as a whole, does not have religious, political, scientific, educational, journalistic, historical, or artistic value; and

1 "(2) the term 'State' means each of the several
2 States, the District of Columbia, the Commonwealth
3 of Puerto Rico, the Virgin Islands, Guam, American
4 Samoa, the Commonwealth of the Northern Mariana
5 Islands, and any other commonwealth, territory, or
6 possession of the United States.".
7 (b) CONFORMING AMENDMENT.—The item relating
8 to section 48 in the table of sections at the beginning of
9 chapter 3 of title 18, United States Code, is amended to
10 read as follows:

"48. Animal crush videos.".

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Mr. SCOTT. Any questions, Mr. Gohmert?

Mr. GOHMERT. Just a couple of brief ones.

Mr. Peters, of course we know that the original bill was struck down for its breadth, as the Supreme Court said, being overly broad. And so in looking at both 5337 as well as the 5092, I just had a couple of quick questions. I wondered if under section 48, the prohibition, "Whoever, in or affecting interstate or foreign commerce," by using "or affecting," if that might create another issue of overbreadth. I don't necessarily need an answer, but just to point that out, a concern because we certainly—anything we pass, we want it to be upheld. And I know that 5092 doesn't have "or affecting" because it seems like that is where a lot of cases these days are having issues raised. Well, what actually affects it? And I would hate for some brutal maniac to get off because they showed that, well, maybe it was just a local distribution and may not have affected. That was the one question that I had. I don't know if you wish to address that or not. Just a point.

Mr. PETERS. Well, I think those are good points. We have to look to make sure that it is very, very narrowly drafted. I think probably the item in 5337 I think is most significant, though, to make sure that it is narrowly crafted to the act of animal cruelty is that we have intent language in this bill that says that this depiction would not have been created had it not been the actual act of the crime. So had you not been filming this depiction, the crime would not have been committed.

So I think it is very important to have intent language which really narrows it down even as you are bringing up other clauses with interstate commerce which are important we have got to take a look at. But to me, we have got to be in a situation that hopefully the speech is treated similar to child pornography where it is intrinsic. The activity is intrinsic to the crime itself, or the depiction of it is intrinsic to the crime itself. So I think that is where we get the most significant tightening of the language.

Mr. GOHMERT. And, Mr. Gallegly, you know my high regard for you, and I appreciate your efforts for so many years when it comes to animal cruelty. I am wondering, in section 48 of 5092, it says, "Whoever knowingly sells or offers to sell," but doesn't mention distributes. And the question that comes to mind is whether someone might be able to affirmatively show they actually didn't receive anything or were not offered anything of value, they just enjoy distributing that, if that might be an area where it might require an additional word.

Mr. GALLEGLY. I am having a real acoustical problem in here. It is a lot different sitting up there. I have not been down here in a long time.

Mr. GOHMERT. We are just adding the word "distributes" in addition to "selling" or "offering to sell."

Mr. GALLEGLY. Well, one of the things that we have done in having been through this, as you have mentioned, for 12 years, we are being very, very sensitive to drafting this in a manner that the Court will not have a problem with.

Mr. GOHMERT. Well, and that was obvious that you were very careful about that.

Mr. GALLEGLY. And make no mistake about it. While I was disappointed with the Court's ruling, I have tremendous respect for the Court. I have tremendous respect for the process. It certainly was not my intent from the beginning to have a challenge that was going to prohibit the ability from affecting the end objective here. And I think everyone on the Court recognized that during the process about how they understood the objective and agreed with the objective and really kind of gave us the challenge to make sure that we effectively accomplish the objective without compromising the constitutionality of the First Amendment. And obviously as we go through the process, we are going to fine-tune whatever needs to be fine-tuned to make sure we don't find ourselves back in this situation 12 years from now when you are Chairman of the Judiciary Committee.

Mr. GOHMERT. Yeah, right. I wouldn't hold my breath for that.

And one other thing, I will just plant the seed. I am not sure, are animals defined somewhere? And this is with regard to both bills. I am just wondering if there is some reference to animals. What triggers this is I was working on something late the other night, and there was a replay of Men in Black with Will Smith and Tommy Lee Jones, and some guy was swatting flies, which would obviously be crushing or stepping on a cockroach. So I didn't know if they——

Mr. GALLEGLY. Well, I can't speak to Congressman Peters' bill, but everything we have done here ties directly to the specific animal cruelty laws that are in effect in the specific State, and that is the procuring cause, if you will.

Mr. GOHMERT. Well, I will just plant that seed. It is looking for loopholes that might be raised.

Mr. GALLEGLY. If it does not meet the test of the cruelty law in the specific State, then this law is not applicable.

Mr. GOHMERT. Right. But thank you all very much for your work.

Mr. GALLEGLY. Thank you very much.

Mr. SCOTT. The gentleman from Illinois, do you have any questions?

Mr. QUIGLEY. No, Mr. Chairman. I just want to thank you for having this. And to all those involved with this legislation, I appreciate their efforts. We all recognize the terrible qualities of any crime, but there is something particularly heinous with crimes against children and animals because we recognize the innocence involved. So thanks so much for your efforts, and I look forward to working with you.

Mr. SCOTT. Thank you.

The gentlelady from Texas, and we welcome you back.

Ms. JACKSON LEE. Thank you very much.

This is just a brief question to both of the proponents of legislation. Just share with me the crux of the enforcement of the legislation that you are proposing. Forgive me, but if you would articulate again, Mr. Peters, Mr. Gallegly, the gist of the legislation.

Mr. GALLEGLY. First of all, I want to thank the gentlelady for cosponsoring my bill.

Ms. JACKSON LEE. I am glad I am cosponsoring it as well.

Mr. GALLEGLY. Thank you very much.

Ms. JACKSON LEE. I think enforcement is a key element for——

Mr. GALLEGLY. What this does is it gives—the genesis of the bill to start with is the ability to enforce. When I had the former chairman of the State District Attorney's Association for the State of California come to me very frustrated back in the late 1990's where he had had this issue come before his jurisdiction, and it was literally impossible to enforce because they couldn't find the perpetrators of—and there were statute issues and so on that prohibited his ability to prosecute. And what this does is it provides a tool in order to prosecute by banning the sale of what is the actual crime. And it appears to be the only real solution that any of us have been able to come up with. And believe me, I welcome anybody else coming up with a better product. I will embrace it.

All I am interested in is finding a way to stop this heinous situation once and forever, because, as I mention, this goes well beyond just animal cruelty. It gets into the Ted Bundys and Jeffrey Dahmers and so on and so forth. And this does provide a conduit to prosecute.

Ms. JACKSON LEE. Mr. Peters, thank you.

Mr. PETERS. Well, I concur with my colleague's description there. And I think that is why, again, as I mentioned for the previous question, that it is important for us to actually the link the intent, the actual act of animal cruelty which is crushing this poor defenseless animal, that that would not have occurred had it not been for the production of the depiction of the image.

So you have to go after the image, the folks who are marketing this stuff, that are selling it, that are profiting from it or are distributing it. Unless you stop that market, you are not going to be able to stop the action of cruelty, which, as my colleague mentioned, is difficult to prove because you can't see the face of the perpetrator, you don't know the time it was done, whether it was the statute of limitations, you don't know the location of it. It can be very difficult so you really have to stop the market for it. But you have got to tie the actual depiction and the marketing of it to the crime itself, which is why in the bill that I have drafted I think we have got some strong language, tense language, in there that ties it specifically and intrinsically to the crime, which is what the Supreme Court asked us to do.

And if I may, Mr. Chairman, if I mentioned Mr. Gohmert, who asked a couple questions, if I may to my colleague. The distribution, which I think is a very important question, we have that in my bill. We do add distribution as well, particularly with the Internet. It is going to be folks who may be distributing it over the Internet, which is a significant problem, so I agree with you that that needs to be in it. We have put that in the legislation.

And we also have a definition in our bill on "animal" that we would certainly be open to your input. But the term "animal" means any live amphibian, reptile, bird or mammal except human beings. So we do have a definition in there, but we are certainly open to any other further clarifications that you may be willing to provide.

Ms. JACKSON LEE. May I follow my line of questioning? Mr. Gallegly, I will let you answer if I just follow with my line of reasoning. Can you speak specifically and pointedly as it relates to your legislation that I have cosponsored on the question of the

First Amendment and how you craft a response to that? But you go ahead. You were trying to give an answer. Mr. Gallegly, were you trying to add something?

Mr. GALLEGLY. I just wanted to follow up.

Ms. JACKSON LEE. And as you follow up, then you answer the First Amendment issues that were cited in the Stevens case.

Mr. GALLEGLY. We listened very attentively to the Court, followed this. But if you will just allow me to just back up for just a few seconds.

The bill that was passed overwhelmingly in 1999 to effectively address the issue of crush videos, it worked. The videos disappeared off the Internet, $400 a copy, $300 a copy. And heaven only knows how many human lives may have been saved as a result of this over the years.

The fact remains, the act that we took here as a Congress and signed by President Clinton did eliminate the sale of crush videos and the perpetration of these videos to start with; however, there was a technicality. I think it was a technicality, and as I said, I respected the Court.

We have very carefully gone back with some of the finest constitutional lawyers we could find to go through to make sure the Ts were crossed, the Is were dotted, and it would meet the test as the Court indicated in their ruling. And, of course, you know there is a lot of subjectivity to this process, and I respect everyone's knowledge on the issue. But I think we have done everything humanly possible to meet the test and the direction of the Court, and I am receptive to any way that we may improve this through the process before we get it to the floor, which I hope will be very soon.

Ms. JACKSON LEE. Thank you.

Mr. SCOTT. The gentleman from Florida, I think you are attending your first Subcommittee meeting. Welcome to the Subcommittee, Mr. Deutch. Do you have any questions?

Mr. DEUTCH. Thank you, Mr. Chairman. I appreciate the welcome. I am attending today in large part to thank my two colleagues for this important piece of legislation, and I look forward to the next panel to ask some questions. Thank you.

Mr. SCOTT. The gentleman from Tennessee, any questions?

Mr. COHEN. Thank you, Mr. Chairman.

I just appreciate your having this hearing and gentlemen for introducing the bills. Animal cruelty is a serious offense, and it is an indication of people's depraved behavior that also can see it being—that conduct going toward seniors and the very young and the handicapped, those who are, as in Hubert Humphrey's terms, the dawn of life, the twilight of life and shadows of life. And these people who take advantage of others or find some kind of satisfaction or some type of thrill from hurting small animals would hurt others, and it needs to be curtailed.

But the animals are wonderful. I think it is great that dogs and cats have brought Democrats and Republicans together, something so many didn't think could happen. So I thank the dogs, the cats, the Chairman and the two Congressmen who crafted these bills.

Mr. SCOTT. Thank you.

Let me ask, this is kind of a technical question, and that is both of you have talked about the illegal animal cruelty where the video

is produced. Isn't it true that the cruelty could be, in fact, legal where it is produced, but illegal where it is trying to be sold? And that would be a crime to sell the depiction of what was, in fact, legal, but illegal—a depiction of what would have been illegal had it occurred in the State? In other words, if California finds something illegal, but in Nevada it is not illegal, you produce it in Nevada, but if you try to sell it in California, it would be illegal because it violates—the depiction violates California law.

Mr. GALLEGLY. That is the test.

Mr. SCOTT. And if you tried to sell it in Nevada, it would be okay because it is not illegal in Nevada.

Mr. GALLEGLY. I am not familiar with Nevada law specifically. I know that the overwhelming majority of the States in this country do have very specific laws that relate to animal cruelty. And if Nevada didn't, and that was the case, then I would really hope that the Nevada Legislature would very aggressively tighten their laws as it relates to animal cruelty, and then we wouldn't have that problem. I have a problem with going in and micromanaging State laws.

Mr. SCOTT. Well, let us make it a little easier. If it was produced out of the country, it obviously did not violate where it was produced, when it was produced.

Mr. GALLEGLY. If it is produced out of the country, and it was sold in California, it would be against the law. If it is produced somewhere and sold—I don't think we can regulate the other countries with what we are doing, but we can regulate what products we are selling no matter where they are produced.

Mr. SCOTT. The point I am making is it could have been legal to produce it. The actions could have been legal during the production, but the crime would be committed because what is depicted is illegal in the State where it is attempted to be sold.

Mr. PETERS. Yes, Mr. Chairman. And I am speaking to the bill that I have put forward. It has to depict conduct that violates a criminal prohibition of intentional cruelty to animals under Federal law or the law of the State in which the depiction is created, sold or distributed. So if it is distributed in a State, it is illegal. And again, it is important, I think, to have that.

The intent language, though, is that the depiction itself is so intrinsic to the crime that it doesn't matter where it may have been produced because, as we know, it is difficult to know where these things are even produced by looking at them. It is difficult to ascertain the place that that crime occurred. But we know where the distribution is occurring, and if it is occurring in a State—under State law or Federal law as extreme cruelty, because it is so intrinsically linked to the crime itself, that distribution is, indeed, a violation.

Mr. GALLEGLY. If I might just add, Mr. Chairman, this was a genesis of the bill to start with. It was because of the difficulty of the District Attorneys Association in my State being able to prosecute these crimes, and our resolution did effectively end the business.

Mr. SCOTT. Thank you.

The gentleman from California Mr. Lungren, do you have any questions?

Mr. LUNGREN. No.

Mr. SCOTT. Thank you.

We thank our colleagues, and we will call on the next panel.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Mr. PETERS. Thank you, Mr. Chairman.

Mr. SCOTT. Our first witness on the second panel will be Stephen Vladeck, who is a professor of law at American University's Washington College of Law, where he is teaching, and his research includes constitutional law. The second witness will be Nathaniel Persily, who is the Charles Keller Beekman, professor of law and politics at Columbia Law School. He teaches courses on constitutional law, the First Amendment and election law. Our final witness will be J. Scott Ballenger, who is a partner with the Washington, D.C., law firm of Latham & Watkins. He has focused on appellate and Supreme Court litigation since joining the firm in 1999, and he was counsel of record for the amicus brief submitted by the Humane Society in the Stevens case before the Supreme Court.

I think most of you have testified before. You are familiar with the lighting device, which will start green, turn yellow when 1 minute is left. And in your 5 minutes, we ask you to summarize your testimony in 5 minutes or less. And we will start with Professor Vladeck.

TESTIMONY OF STEPHEN I. VLADECK, PROFESSOR, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, WASHINGTON, DC

Mr. VLADECK. Thank you, Mr. Chairman, Ranking Member Gohmert, for inviting me to testify today on the Supreme Court's decision last month in the *United States v. Stevens* and its implications with regard to Federal bans on depictions of animal cruelty going forward.

Putting aside the more general implications of the Stevens opinion with regard to the Supreme Court's First Amendment jurisprudence, I want to focus my testimony today on three specific lessons that I think the case has to offer with regard to legislative attempts to prohibit the distribution of so-called crush videos and other depictions of animal cruelty, including dogfighting.

First, the Court specifically declined the government's invitation to hold that depictions of animal cruelty are, like child pornography, categorically outside the scope of First Amendment protection. As Chief Justice Roberts explained, the Court's decision in *New York v. Ferber,* exempting child pornography from the First Amendment, quote, "grounded its analysis in a previously recognized, long-established category of unprotected speech, and our subsequent decisions have shared this understanding," unquote. In other words, there was no argument here that there is a similar tradition of exempting wholly from the First Amendment depictions of animal cruelty.

Now, whatever the merits of the Stevens majority's analysis of this point, I think it is perhaps the most important takeaway with regard to continuing congressional attempts to prohibit the sale or transfer of depictions of animal cruelty or even of a more narrowly defined category that included only crush videos. If such depictions are not categorically beyond the scope of the First Amendment, at-

tempts to proscribe their sale and transfer will constitute content-based restrictions on speech and will therefore trigger strict scrutiny, meaning that they must be narrowly tailored to achieve a compelling governmental interest. In plain English, any such law after Stevens will have to be precisely drafted and neither over- nor underinclusive.

This brings me, Mr. Chairman, to the second takeaway point from the Stevens opinion, the Court's unhesitating application of traditional First Amendment overbreadth doctrine. I don't mean to delve into the academic weeds, but suffice to say that the Roberts Court, especially in the first few years of the Chief Justice's tenure, has shown noticeable skepticism toward so-called facial challenges to statutes, where litigants argue that the constitutional defects are so substantial as to preclude any valid application of the law. In various cases the Court has avoided controversial rulings on topics ranging from Congress' power to enforce the 14th Amendment, the right to choose under Roe, and campaign finance reform by rejecting facial challenges in favor of narrower as-applied challenges, holding that in those specific cases, the plaintiffs simply hadn't met their burden for invalidating the entire legislative regime.

Numerous commentators, including my colleague Professor Persily, have stressed the unprecedented nature of these decisions and their sometimes dubious reliance on the distinction between facial and as-applied challenges, and I would be more than happy to elaborate on this trend and its potential implications in response to your questions.

I mention this here because of the sharp and marked contrasts presented by the majority's opinion in the Stevens case. There, and I daresay rather surprisingly, the Chief Justice himself embraced a more traditional understanding of First Amendment overbreadth doctrine. As he wrote in Stevens, quote, "A law may be invalidated as overbroad if a substantial number of its applications are unconstitutional judged in relation to the statute's plainly legitimate sweep," unquote. Thus, even if Congress could constitutionally prohibit the transfer or sale of crush videos, the language of the statute swept way too broadly and included too much protected sweep within its scope. Thus, Stevens is significant not just for how it applied traditional First Amendment overbreadth analysis, but also for the fact that it applied traditional First Amendment over breadth analysis in contrast to what had been a growing departure from doctrine.

Finally, the third key point to take away from the Stevens decision is why the Court concluded that section 48 was substantially overbroad and therefore in violation of the First Amendment. Specifically, the Court held that it did not require the act to be unlawful because it is cruel under section 48 as currently as written. It is enough that the act is a violation of any criminal law of the State, which, as the Court explained, would draw no distinction based on the reason for intentional killing and would include, for example, the humane slaughter of a cow.

Second, as the Members mentioned in the first panel, the statute, as written, includes no intent requirements, which means that animal rights groups or educational videos could easily fall within the scope.

And finally, the Court said the exceptions clause was too—was not broad enough. It only required that there be substantial educational, religious value, and so there is not enough room to carve out categories of protected speech.

Now I think we can get into in the Q&A where I think the Committee can go from here, but those, to me, are the three major takeaway points, and I would be happy to elaborate in response to your questions. Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Vladeck follows:]

PREPARED STATEMENT OF STEPHEN I. VLADECK

***UNITED STATES* V. *STEVENS*:**
THE SUPREME COURT'S DECISION INVALIDATING THE CRUSH VIDEO STATUTE
Hearing Before the House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Friday, May 21, 2010

Written Testimony of Stephen I. Vladeck

Professor of Law, American University Washington College of Law

Mr. Chairman, Ranking Member Gohmert, and distinguished members of the Subcommittee:

Thank you for inviting me to testify today on the Supreme Court's decision last month in *United States* v. *Stevens*,[1] and its implications with regard to federal bans on depictions of animal cruelty going forward. As you know, the Court in *Stevens* invalidated on its face 18 U.S.C. § 48, which in its present form makes it a federal crime to "create[], sell[], or possess[] a depiction of animal cruelty . . . for commercial gain" in interstate or foreign commerce.[2] Writing for an 8-1 majority, Chief Justice Roberts held that (1) depictions of animal cruelty are not categorically beyond the scope of the First Amendment; and (2) § 48 is unconstitutionally overbroad under traditional First Amendment analysis. Only Justice Alito dissented.

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1. 130 S. Ct. 1577 (2010).

2. The relevant language of § 48 provides as follows:

> Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5 years, or both.

18 U.S.C. § 48(a).

Putting aside the more general implications of the *Stevens* opinion for the Supreme Court's First Amendment jurisprudence (a point I'd be happy to address in response to your questions), I want to focus in my testimony today on three specific lessons that the case has to offer with regard to legislative attempts to prohibit the distribution of so-called "crush videos" and other depictions of animal cruelty, including dog-fighting. *First*, the Court specifically declined the Government's invitation to hold that depictions of animal cruelty are—like child pornography—categorically outside the scope of First Amendment protection. As Chief Justice Roberts explained, the Court's decision in *New York* v. *Ferber*[3] exempting child pornography from the First Amendment "grounded its analysis in a previously recognized, long-established category of unprotected speech, and our subsequent decisions have shared this understanding." These cases, Roberts noted,

> cannot be taken as establishing a freewheeling authority to declare new categories of speech outside the scope of the First Amendment. Maybe there are some categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law. But if so, there is no evidence that "depictions of animal cruelty" is among them.[4]

Whatever the merits of the *Stevens* majority's analysis of this point, it is perhaps the most important takeaway with regard to continuing congressional attempts to prohibit the sale or transfer of depictions of animal cruelty—or even of a more narrowly defined category that included only "crush videos" and certain forms of animal fighting. If such depictions are *not* categorically beyond the scope of the

3. 458 U.S. 747 (1982).

4. *Stevens*, 130 S. Ct. at 1586.

First Amendment, as *Stevens* holds, then attempts to proscribe their sale and transfer will constitute "content-based" restrictions on speech. Such restrictions, the Supreme Court has repeatedly held, are "presumptively invalid," and can only withstand constitutional scrutiny if they are narrowly tailored to achieve a compelling government interest.[5] In plain English, Mr. Chairman, any such law must be precisely drafted, and neither over- nor under-inclusive.

That brings me to the second takeaway point from the *Stevens* opinion: the Court's un-hesitating application of traditional First Amendment overbreadth doctrine. I don't mean to delve into the academic weeds, but suffice it to say that the Roberts Court, especially in the first few years of the Chief Justice's tenure, has shown noticeable skepticism toward so-called "facial" challenges to statutes—where litigants argue that the constitutional defects in particular legislation are so substantial as to preclude *any* valid application of the law. In cases like *United States* v. *Georgia*,[6] *Ayotte* v. *Planned Parenthood of Northern New England*,[7] and *Wisconsin Right-to-Life* v. *FCC*,[8] among any number of others, the Court has avoided controversial rulings on topics including Congress's power to enforce the Fourteenth Amendment, the right to choose under *Roe* v. *Wade*, and campaign finance reform by rejecting "facial" challenges in favor of narrower "as-applied"

5. *See, e.g.*, Ysursa v. Pocatello Ed. Ass'n, 129 S. Ct. 1093, 1098 (2009); United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 816–17 (2000).

6. 546 U.S. 151 (2006).

7. 546 U.S. 320 (2006).

8. 546 U.S. 410 (2006).

challenges, holding that, in those specific cases, the plaintiffs simply hadn't met their burden for invalidating the entire legislative regime.

Numerous academic commentators—including Professor Persily—have stressed the unprecedented nature of these decisions and their (sometimes) dubious reliance on the distinction between "facial" and "as-applied" challenges,[9] and I'd be more than happy to elaborate on this trend and its potential implications if it would be helpful to the subcommittee.

This discussion bears mentioning here because of the sharp and marked contrast presented by the *Stevens* decision. There (to some, rather surprisingly), the Chief Justice himself embraced a more traditional (which I might phrase as "pre-Roberts Court") understanding of First Amendment overbreadth doctrine. Under that approach, as Chief Justice Roberts wrote in *Stevens*, "a law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'"[10] Thus, even if Congress could constitutionally prohibit the transfer or sale of crush videos, the language of the statute swept way too broadly, and included too much protected speech within its scope.

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9. *See, e.g.*, Nathaniel Persily & Jennifer Rosenberg, *Defacing Democracy? The Changing Nature and Rising Importance of As-Applied Challenges in the Supreme Court's Recent Election Law Decisions*, 93 MINN. L. REV. 1644 (2009); *see also* David L. Franklin, *Looking Through Both Ends of the Telescope: Facial Challenges and the Roberts Court*, 36 HASTINGS CONST. L.Q. 689 (2009); Gillian E. Metzger, *Facial and As-Applied Challenges Under the Roberts Court*, 36 FORDHAM URB. L.J. 773 (2009).

10. *Stevens*, 130 S. Ct. at 1587 (quoting Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 n.6 (2008)).

Indeed, the majority's acceptance of this methodological approach spelled doom for § 48, because the Government made no effort (nor, to be fair, could it) to defend such a broadly worded ban as constitutional. Instead, the Government's entire defense of § 48 rested on interpreting the statute as being narrowly limited to specific types of "extreme" material, a result that was inconsistent with the plain text of § 48, or, in the alternative, on its selective enforcement of the statute, an argument belied by the facts of *Stevens* itself. Thus, *Stevens* is significant not just for *how* it applied traditional First Amendment overbreadth analysis, but also for the fact *that* it applied traditional First Amendment overbreadth analysis, in contrast to what had been a growing departure from doctrine.

Finally, the third key point to take away from the *Stevens* decision is *why* the Court concluded that § 48 was substantially overbroad, and therefore in violation of the First Amendment. First, although § 48 requires that the depicted act of animal cruelty be unlawful under state or federal law, it does not require that the act be unlawful *because it is cruel*. Thus, as Chief Justice Roberts observed, "[t]he text of [the statute] draws no distinction based on the reason the intentional killing of an animal is made illegal, and includes, for example, the humane slaughter of a stolen cow."[11]

Second, the statute includes no intent requirement. As was pointed out during the oral argument before the Supreme Court, the statute as written might actually prohibit informational videos or documentaries produced and distributed

11. *Id.* at 1588.

by groups advocating *against* such conduct.[12] Third, the Court concluded that the statute's "exceptions" clause, which exempts from prosecution "any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value," was far too narrow, since it (1) required that the value be "serious"; and (2) does not include within its enumerated categories any number of types of protected speech, including hunting videos that are not meant to educate. As the Court succinctly summarized, "There is simply no adequate reading of the exceptions clause that results in the statute's banning only the depictions the Government would like to ban."[13]

That leaves us with the question before this subcommittee today: How might Congress seek to amend § 48 to ameliorate the quite profound constitutional difficulties identified by the Court in *Stevens*? Although I cannot vouch for the constitutionality of the following suggestions, there are three specific revisions that I think would go a long way toward a statute that would not raise comparable overbreadth concerns.

First, any such legislation should include a requirement that the depicted animal cruelty have been carried out *for the purpose* of creating the depiction. This will substantially mitigate overbreadth concerns with regard to surveillance cameras, advocacy videos by animal rights groups, depictions that were never intended to perpetuate the market for these kinds of materials, and so on.

12. *See, e.g.*, Transcript of Oral Argument at 9–10, United States v. Stevens, 130 S. Ct. 1577 (2010) (No. 08-769), *available at* http://www.supremecourt.gov/oral_arguments/argument_transcripts/08-769.pdf.

13. *Stevens*, 130 S. Ct. at 1590.

Second, any such legislation should require that the underlying act of animal cruelty be a violation of a state or federal law that specifically prohibits animal cruelty *as such*. This, too, will substantially mitigate the concerns that hunting videos or other depictions of the treatment of animals that is criminal in some jurisdictions, but not *cruel*, might be included within the sweep of the statute.

Third, and finally, any such legislation should carefully but clearly expand the scope of the exceptions clause, and should specifically eliminate the existing requirement that the depiction have "*serious* religious, political, scientific, educational, journalistic, historical, or artistic value." It should be enough, I suspect, that the depiction has no more than minimal value in one of those fields.

Of course, I cannot speak to whether a statute with these added requirements is normatively desirable as a policy matter. It would certainly be substantially narrower than the original § 48 enacted by Congress in 1999, and would potentially not include certain depictions that the drafters of § 48 might initially have intended to cover. But that narrowing would also go a long way toward alleviating the overbreadth concerns identified by the Supreme Court in *Stevens*, and toward such a statute surviving constitutional challenge in the future.

Let me thank you again, Mr. Chairman, for the invitation to share these thoughts with you and your colleagues, and I very much look forward to your questions.

Mr. SCOTT. Professor Persily.

TESTIMONY OF NATHANIEL PERSILY, PROFESSOR, COLUMBIA UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. PERSILY. Thank you, Chairman Scott, and Ranking Member Gohmert and Members of the Committee, for having me back to testify on the *U.S. v. Stevens* case. I will just add to my written remarks a few points since many of you have already summarized the decision. But let me say this, and just emphasizing what my colleagues have said in their written testimony, that there is one special thing about this case; that it does settle one issue, which is that it does say that depictions of animal cruelty are not a categorically unprotected area of speech. More than that, though, what the Court suggests is that you have to—Congress or State legislatures or others that are legislating this area have to tie this regulation to one of the other unprotected categories of speech; for example, speech integral to criminal conduct, which is what the Court seems to suggest might be the area of regulation here, or perhaps obscenity, which is another area of unprotected speech. I will talk a little bit about those categories when I get to the dos and don'ts, I think, for future legislation.

But let me just emphasize a few other things that come out of the opinion, and specifically its description of overbreadth. As Professor Vladeck was saying, that the Court decided to strike this law down as overbroad as opposed to saying—applying the normal standard for facial invalidity that it was unconstitutional in almost all of its applications. And here are the reasons why it was overbroad: The Court said that it wasn't limited to cruel conduct. So any future legislation has to point out that it is generally limited to cruel conduct not just in its title, which is what the previous legislation did, but also specifically; and not just in the legislative history, which the Court discounts, but which Justice Alito emphasized in his dissent.

Secondly, the Court had problems with the description of illegal conduct in the statute itself. So this came up in the colloquy before with the Members' panel, which is at what point does conduct have to be illegal enough nationwide such that a person is on notice that the depictions that they are distributing, therefore, are going to be illegal? And so it is clear that the Court is signaling that the more nationally illegal a particular conduct is, the more likely the depictions of it, if they are going to be constitutionally regulated, will be sort of able to be regulated consistent with the First Amendment.

And so the difficulty, as was exhibited in the discussion that you have just had with the previous Members, is what do you do when the conduct might be legal where it was enacted, but then is sold or distributed in an area where it is illegal? And so the Court, over the previous statute, raised this example: What about hunting videos, which were legal when they were shot, but then—I shouldn't say shot—they were legal when they were constructed, but then are distributed in the District of Columbia where hunting is illegal?

Now, it is clear that the Court wanted to exempt hunting videos, agricultural videos and other types of protected expression, and it specifically describes those as protected expression. But that ques-

tion of how to regulate illegal conduct by regulating the distribution of it is one that is going to be, I think, a thorny one for prospective legislation.

Finally, as Professor Vladeck mentioned, the exceptions clause that was in the statute, which was modeled on the Supreme Court's decision in *Miller v. California* dealing with obscenity, was not sufficient to save an otherwise unconstitutional statute. So that it wasn't enough to say that something had to—could have serious literary, artistic, political, scientific, educational value because the Court said that nonserious speech is protected under the First Amendment, and so hunting videos, which might be primarily recreational in nature, are, nevertheless, protected speech.

So here are the dos and don'ts, I think, for future legislation. First, I think there is more don'ts in the decision than there are dos, but then that is typical of a Supreme Court opinion. But let me sort of map them out.

First, as I was saying before, I think it would be helpful to make clear that hunting and agricultural videos, which were the ones that the Supreme Court held up as clearly constitutionally protected, are not covered by the law.

Secondly, avoid language including "mere killing of animals" as opposed to the other types of verbs that are in the legislation, both as proposed and has existed before, because, again, the Court emphasized that that might capture other types of conduct that—depictions of which would be protected.

Third, as I said, beware of the exceptions clause, even though it might be useful to have in the law, because the Court seems to narrow the exceptions clause to the specific conduct of obscenity. I shouldn't say it definitely does that, but it is pointing in that direction.

And finally, tie it to conduct that might be nationwide.

I will say one last thing, which is the key question that seems to be arising out of this decision is to what extent can you regulate illegal conduct by trying to regulate depictions of it? And for that I am eager to hear your questions and to offer some opinions on that. And the real question is: To what extent does the analogy, for example, of child pornography extend beyond that specific factual context?

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Persily follows:]

PREPARED STATEMENT OF NATHANIEL PERSILY

Testimony of Professor Nathaniel Persily
Charles Keller Beekman Professor of Law and Political Science
Columbia Law School

Before the Subcommittee on Crime, Terrorism, and Homeland Security on "*United States v. Stevens*: The Supreme Court's Decision Invalidating the Crush Video Statute"

May 21, 2010

Thank you, Mr. Chairman and Members of the Committee, for inviting me today to testify on the Supreme Court's decision in *United States v. Stevens*. My name is Nate Persily. I am the Charles Keller Beekman Professor of Law and Political Science at Columbia Law School, where I teach courses on Constitutional Law, the First Amendment, and Election Law. My testimony today will focus on explaining the *Stevens* decision and its potential implications for any responsive legislation you might consider.

On April 20, 2010, the Court handed down its decision in *United States v. Stevens*, striking down 18 U.S.C. § 48, which criminalized the creation, sale, or possession of a depiction of animal cruelty if done for commercial gain. Despite the fact that the statute limited itself to a definition of animal cruelty that focused on illegal activity and added exceptions for depictions that have "serious religious, political, scientific, educational, journalistic, historical, or artistic value," 18 U.S.C. § 48(b), eight members of the Supreme Court (with only Justice Samuel Alito dissenting) found the statute overbroad and considered it a violation of the First Amendment.

I. Summary of *United States v. Stevens*

The Court's opinion, authored by Chief Justice John Roberts, reasoned as follows. First, it rejected the government's argument that depictions of animal cruelty comprise a category of unprotected speech because the societal costs of such speech generally exceed its benefits. Second, opting not to inquire into whether the law had many or even any constitutional applications, the Court concluded that it was, in any case, overbroad. It reached that conclusion by interpreting the law broadly as covering a variety of constitutionally protected forms of expression, such as hunting and agricultural videos. Third, the statute's limit to illegal conduct did more constitutional harm than good, the Court concluded, as it raised the specter of regulated speakers being forced to keep up with the maze of relevant regulations in all fifty states and territories, which prohibited some acts the depictions of which were clearly protected by the First Amendment. Fourth, the statute's exception for speech with "serious value," drawn from the Court's obscenity cases, was both vague and underinclusive of protected expression in this context. Indeed, the Court concluded that some of the non-serious speech regulated by the statute was specifically protected. Finally, while the Court rejected limiting interpretations of the statute that might avoid constitutional difficulty, it left open the question whether a more narrowly drawn statute that targeted crush videos, animal fighting, or other extreme forms of animal cruelty might survive First Amendment scrutiny.

A. Rejection of an Additional Category of Unprotected Speech

The *Stevens* majority had little difficulty in rejecting the government's argument that depictions of animal cruelty represent a category of unprotected speech. *United States v. Stevens*, 559 U.S. __ (2010), No. 08-769, slip op. at 5-10 (April 20, 2010). It

appeared reluctant to add to the traditional categorical exceptions to the general prohibition on content-based speech regulations, such as obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. Although it did not foreclose the possibility of adding new categories in some future case, it rejected the idea that the way to add such categories would be by evaluating the value of the regulated speech against its societal costs. Slip op. at 7. Such ad hoc balancing threatened core First Amendment interests, the Court concluded.

The majority rejected the government's attempt to analogize depictions of animal cruelty, as a category, to child pornography. Distinguishing its holding in *New York v. Ferber*, 458 U.S. 747 (1982), the *Stevens* Court considered child pornography to be a "special case," one in which the relevant market was "'intrinsically related' to the underlying abuse." Slip op. at 8 (citing 458 U.S. at 759). The excision of that category of speech was not the product of a "simple cost-benefit analysis." Slip op. at 8. Rather, child pornography was seen as integral to underlying criminal conduct, the sexual abuse of children, such that the speech at issue had a "'proximate link to the crime from which it came.'" Slip op. at 9 (quoting *Ashcroft v. Free Speech Coalition*, 535, U.S. 234, 249-50 (2002). Depictions of animal cruelty, broadly defined, did not exhibit the same character.

B. The Overbreadth of 18 U.S.C. § 48

Although Stevens raised a traditional facial challenge to the statute, the Court opted instead to analyze his claim as an assertion of facial invalidity due to statutory overbreadth. In other words, instead of focusing on whether the statute had any constitutional applications, the Court adjudicated his claim by asking whether "a substantial number of [the statute's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." Slip op. at 10 (quoting *Washington Sate Grange v. Washington State Republican Party*, 52 U.S. 442, 449, n.6 (2008) (internal quotation marks omitted)). Overbreadth analysis turns on the reading the Court gives to the statute in that the greater the number of unconstitutional applications captured by the statute as interpreted, the more likely that the statute as a whole is fatally overbroad. Under the Court's reading, many, if not most, of the circumstances in which the statute could be enforced would involve protected speech, and therefore the statute's overbreadth exceeded constitutional bounds. This overbreadth was not cured by the statute's limit to depictions of illegal conduct that did not have serious value.

1. Not Limited to Depictions of "Cruel" Conduct

One reason the statute was overbroad, according to the majority, was its failure to limit itself to depictions of conduct that were, in fact, "cruel." Slip op. at 11. Because the statute included within its regulatory ambit depictions in which animals were "wounded" or "killed," as well as those in which they were "maimed, mutilated or tortured," it could be read as applying to a universe of constitutionally protected expression, such as hunting or agricultural videos, that dwarfed the number of potentially constitutional applications.

Although the statute specifically mentioned "depiction[s] of animal cruelty" as the object to be regulated, its definition of that term did not limit itself to specific acts of cruelty *per se*. Therefore the *Stevens* majority considered the statutory language to be sufficiently capacious to encompass depictions of animal wounding and killing that were not cruel.

2. Insufficient and Overbroad Limitation to "Illegal" Conduct

The statute's language limiting the reach of the law to depictions of illegal conduct did not help matters. Many state and federal statutes regulate the killing, injuring, or treatment of animals. Conduct that is illegal under such provisions does not necessarily involve cruelty, and depictions of some illegal conduct would be constitutionally protected. The Court refers at various times to laws regarding the protection of endangered species, livestock regulations designed to protect health, and a variety of hunting and fishing regulations. Slip op. at 12-15.

In addition, as read by the Court, the underlying illegal conduct of relevance to the statute was not limited to locations where such conduct was illegal. Rather, the Court viewed the statute as including depictions of conduct that might have been legal at the time and in the location where such conduct was filmed, but was illegal at the time and place where the depictions of such conduct were sold or possessed. Slip op. at 13. Under this reading that the Court accorded the statute, for example, a hunting video legally created in one state could become illegal if sold or possessed for commercial gain in a jurisdiction, such as Washington, D.C., that forbids hunting.

3. Exceptions Clause Did Not Cure Overbreadth

While adopting a broad reading of the statute's definition of covered speech, the *Stevens* majority adopted a narrow reading of the statute's exceptions clause. That clause, which gestured toward the Supreme Court's test for obscenity in *Miller v. California*, 413 U.S. 15 (1973), contained an exception for "any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value." 18 U.S.C. § 48(b). The Court rejected the government's (and Justice Alito's) expansive interpretation of the exceptions clause, which would have limited the statute's reach to crush videos, depictions of animal fighting, and other depictions of extreme animal cruelty. Slip op. at 15-17.

As with its reluctance to expand the categories of unprotected speech beyond those traditionally recognized, the Court's opinion regarding the statute's obscenity-like exceptions clause has greater import beyond the specific facts of the *Stevens* case. The Court makes clear that much, if not most, speech lacks "serious" value, especially if the word "'serious' should be taken seriously." Slip op. at 16-17. The standard of "serious value" from the obscenity cases cannot be universalized as a "precondition to protecting *other* types of speech in the first place." Slip op. at 17 (emphasis in original). Moreover,

the Court recognized that a large share of protected speech lacks any value (let alone serious value) along the lines of the enumerated exceptions. Some constitutionally protected speech, such as hunting or bullfighting videos, is purely recreational in nature, the majority opinion maintained, and was therefore not covered by the exceptions for depictions that have "religious, political, scientific, educational, journalistic, historical, or artistic value." Slip op. at 16.

II. Implications for Future Legislation

Given the rebuke the Court delivered to the government in *Stevens*, one might view regulation in this area as constitutionally impossible. That may very well be the case, but the decision itself specifically leaves for another day the question whether a more narrowly tailored statute might pass First Amendment scrutiny. As the opinion states: "We therefore need not and do not decide whether a statute limited to crush videos or other depictions of extreme animal cruelty would be constitutional." Slip op. at 19. For those considering legislative responses to the *Stevens* decision, the Court's opinion contains more warning signs as to how not to proceed than illustrations of what a constitutional statute would look like.

For example, it is clear from the opinion that hunting and agricultural videos exist as protected expression. Any statute that attempts to regulate depictions of animal cruelty must be limited so as not to include such videos, even despite what the legislative history might reveal. *See* slip op. at 8 (Alito, J., dissenting) (presenting the legislative history that demonstrated the statute was not intended to cover hunting videos). The same might be said for depictions of bullfighting, which both the government and the Court majority appeared to recognize as historically significant enough to merit constitutional protection. Whether *Stevens* allows for narrowly tailored regulations of depictions of other types of illegal animal fighting, such as dog fighting, remains somewhat unclear.

For reasons expressed above, it appears that a broad exceptions clause akin to that used in the context of obscenity will not save an otherwise overbroad law. Some depictions of the wounding or killing of animals, for example, may not have any "serious value," according to the Court's decision, apart from their recreational or entertainment value. Nevertheless, such depictions are constitutionally protected. Indeed, it would appear from the decision that statutory language, such as "wounding" or "killing," as compared to "maiming," "mutilating" and "torturing," only invites charges that the statute is overbroad.

Finally, any statute that hinges on the depicted conduct being illegal ought to be mindful of the dangers of relying on the geographically and temporally variant legal regimes concerning the treatment of animals. The *Stevens* decision counsels against reliance on a patchwork quilt of federal, state, territorial and local regulations regarding animal cruelty. A producer, purchaser, or possessor of regulated depictions ought to be on notice that such material is illegal in the jurisdiction of production and possession. Indeed, although the decision does not specifically require that the depicted cruelty to animals be illegal nationwide, the more widespread the condemnation of the depicted

action in law the greater the chance that criminalization of such depictions will be constitutional.

This brings me to the little direction in the *Stevens* opinion as to how, if at all, such depictions could be regulated. The Court seems to highlight the general category of "speech integral to criminal conduct" as a potential avenue for regulation in this area. Slip op. at 6, 8-9. For this proposition, the Court cites and quotes from *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490 (1949), a decision upholding a state's enforcement of its ban on restraints of trade against a union picket and boycott, and *New York v. Ferber*, 458 U.S. 747 (1982), upholding a state ban on possession of child pornography.

Giboney itself is largely inapplicable to the factual context at issue in *Stevens*. However, oft-quoted sentences from the decision have grown to define the field of speech "used as an integral part of conduct in violation of a valid criminal statute." 336 U.S. at 498. The Court there elaborated that "it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed." 336 U.S. at 502. Those who would apply *Giboney* in the context of regulation of animal crush videos would argue (as did the government and amici in *Stevens*) that the videotaping of such acts is integral to the criminal acts themselves. In other words, the speech accompanying the conduct is part of the same criminal endeavor: namely, the torture of animals in order to create videos for commercial sale and distribution.[1]

While recognizing that *New York v. Ferber* presented a "special case," the *Stevens* majority read its constitutional rule as an outgrowth of *Giboney*'s categorical exemption for speech integral to criminal conduct. Slip op. at 8-9. As the *Stevens* Court interpreted *Ferber*, "[t]he market for child pornography was 'intrinsically related' to the underlying abuse, and was therefore 'an integral part of the production of such materials, an activity illegal throughout the Nation.'" Slip op. at 9 (quoting *Ferber*, 458 U.S. at 759, 761). To regulate the sexual exploitation and abuse of children inherent in child pornography required regulation of the production, distribution, sale, and possession of child pornography. In other words, the "speech" (*i.e.*, the production of the videos) was intertwined with the criminal conduct itself, and regulating it, as well as later distribution and possession, was necessary to target the underlying crime.[2]

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[1] For an excellent summary and critique of the precedent following *Giboney*, see Eugene Volokh, "Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, 'Situation Altering Utterances,' and the Uncharted Zones," 90 *Cornell Law Review* 1277, 1311-26 (2005).

[2] Professor Volokh points out that not all speech that provides a motive for illegal conduct can be outlawed. *See* Volokh, *supra* note 1, at 1324-25. He cites as an example, *Bartnicki v. Hopper*, 532 U.S. 514 (2001), which upheld the First Amendment rights of the media to broadcast certain cellular phone conversations illegally intercepted and leaked by a third party. *Bartnicki* also deserves attention because of its elaboration of the meaning of *Ferber*. *Bartnicki* maintained that "it would be quite remarkable to hold that speech by a law-abiding possessor of information can be suppressed in order to deter conduct by a non-law-abiding third party." 532 U.S. at 529-30. The Court there read *New York v. Ferber* as one of those "rare occasions in which a law suppressing one party's speech may be justified by an interest in deterring criminal conduct

Justice Alito's dissent in *Stevens* placed great emphasis on the parallel to *Ferber*. Slip op. at 13-16 (Alito, J. dissenting). As with child pornography, the filmed conduct in both crush videos and dog fighting videos was criminal, he argued, with those who record the conduct likely being criminally culpable as aiders and abettors. Slip Op. at 14, 17 (Alito, J. dissenting). Similarly, combating the underlying crimes required targeting the distribution of the videos. Slip Op. at 13, 17 (Alito, J. dissenting). Finally, the value of the speech was "modest or "*de minimis*" and outweighed by the "evil to be restricted." Slip Op. at 14, 18 (Alito, J. dissenting) (quoting *Ferber*, 458 U.S. at 762-63).

Whether legislation criminalizing a very narrow class of depictions of animal cruelty, such as crush videos or dog fighting videos, could find safe constitutional harbor in the *Giboney* and *Ferber* precedents is a question *Stevens* leaves open. In multiple ways, child pornography exists as a special exception to general First Amendment principles. Nevertheless, those wishing to criminalize depictions of extreme animal cruelty should pay close attention to the regulatory script set forth in those cases.

The scope of any responsive statute will depend, of course, on the nature and extent of the problem Congress identifies. On those questions concerning the empirics of depictions of animal cruelty, I am thankfully not an expert. With respect to the First Amendment constraints on any such legislation, however, the lesson from the Supreme Court's recent decision is that such legislation must be precisely targeted and adhere closely to the historic examples the courts have exempted from the normal constitutional restraints on content-based speech regulations.

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by another," and in which "the speech at issue is considered of minimal value." 532 U.S. at 530 & n.13 (citing New York v. Ferber, 458 U.S. 747, 762 (1982)). *See also* Eugene Volokh, "Crime Severity and Constitutional Line Drawing," 90 *Virginia Law Review* 1957, 1965-66 (2004) (describing *Ferber* as focused on the gravity of the crime of child sexual abuse, not merely the fact that the underlying conduct was criminal).

Mr. SCOTT. Mr. Ballenger.

TESTIMONY OF J. SCOTT BALLENGER, PARTNER, LATHAM & WATKINS, WASHINGTON, DC

Mr. BALLENGER. Good morning, Mr. Chairman, Ranking Member Gohmert, Members of the Subcommittee. I appreciate the invitation to talk to you today about the Court's decision in Stevens and where we go from here.

I think the most important thing to understand about the Court's decision in the Stevens case is really that it was based entirely on the First Amendment overbreadth doctrine.

The easiest and most conventional way to resolve the Stevens case in a lot of ways would have been simply to look at the videos that Mr. Stevens himself was prosecuted for distributing and decide whether those videos were entitled to First Amendment protection or not. The Court didn't do that. Instead, the Court chose to avoid talking about Mr. Stevens at all and focused its decision entirely on hypotheticals involving videos of hunting practices that were legal in one State and illegal in another State or the District of Columbia.

Justice Alito makes a strong argument, I think, that approaching the case that way was inconsistent with previously settled First Amendment doctrine when there could have been a valid as-applied challenge arguably to the law in Mr. Stevens' case. Instead, going at an overbreadth facial challenge was a little unconventional.

So why would the Court do it? Well, in my view, the most likely explanation is that some or all of the Justices in the Court's majority actually agreed with Justice Alito that Mr. Stevens' own conduct might not have been constitutionally protected, that there might not be First Amendment protection for dogfighting videos, and wanted to leave that issue open for another day.

I think the Court was sending this Congress a strong message that it would not necessarily be hostile to a law that actually was carefully limited to depictions of extreme animal cruelty, including animal fighting, so long as it could not be read to encompass ordinary hunting practices or agricultural practices.

I think if Congress wants to reaffirm the important public policies that led it to pass section 48 in the first place, it could take two basic approaches to the law. The easiest and the safest way of coming at this from a legal perspective would be to confine section 48 entirely to materials that meet the legal definition of obscenity. The Supreme Court has held clearly and repeatedly that obscene materials have no First Amendment protection, and if materials that are obscene can be banned, then, of course, materials that are obscene and involve the torture of animals can also be banned.

To be legally obscene under current doctrine, material must appeal to the prurient interest and satisfy several other requirements drawn from the Supreme Court's decision in *Miller v. California.* Appealing to the prurient interest generally means inciting lustful thoughts, although it can be a little bit broader than that. Of course, many depictions of extreme animal cruelty might not satisfy that requirement, but there is at least one important category of animal cruelty videos that are essentially pornographic in na-

ture, and that is the crush videos that motivated the passage of section 48 in the first place.

I know the Committee is familiar with that particular flavor of depravity because it has studied it before, and eliminating trafficking crush videos was a major purpose of the legislation. These videos are designed to appeal to people who have a very specific sexual fetish, and I feel fairly confident in saying that there is not a jury in this country that would have any trouble concluding that an animal crush video satisfies the various requirements of the Miller test for obscenity, such that it must be patently offensive under community standards and must have no serious redeeming political, artistic or social value.

Now, the real problem with drafting a law that would be limited only to obscene crush videos is that it might not give law enforcement the tools that they need to go after purveyors of animal fighting videos, like Mr. Stevens himself. Of course, this Congress could choose to leave that problem for another day. But if Congress were inclined at this point to draft a law that goes beyond this sort of easy constitutional core of obscene crush videos and reach animal fighting videos as well, I think that the Stevens decision suggests several lessons.

First, I think it would be very helpful for Congress to receive evidence and make findings about the role of video documentation in supporting and furthering the animal fighting industry.

Second, Congress should carefully limit the statute to make clear that the hunting and slaughterhouse videos that troubled the Court in Stevens are excluded. The Stevens decision makes clear that this Supreme Court is going to take an essentially zero tolerance approach to ambiguity in a statute of this nature and is not inclined to read statutes narrowly in order to save them from constitutional attack.

And third, the law should do what it can to address the Court's concerns about depictions of conduct that may be lawful in one State and unlawful in another. Limiting the law to depictions of conduct that violate animal cruelty laws would go a long way toward solving that problem, since, as the Supreme Court's majority recognized, every State has a prohibition against extreme animal cruelty, and unlike hunting laws, the content of those animal cruelty laws is reasonably consistent nationwide. Congress might also consider limiting prosecutions to conduct that is illegal everywhere in the United States or illegal under Federal law.

Thank you, Mr. Chairman. I look forward to your questions.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Ballenger follows:]

PREPARED STATEMENT OF J. SCOTT BALLENGER

STATEMENT OF J. SCOTT BALLENGER

Partner, Latham & Watkins LLP

Before the Subcommittee on Crime, Terrorism & Homeland Security of the House Committee on the Judiciary

United States House of Representatives

Hearing On:

"United States v. Stevens: The Supreme Court's Decision Invalidating the Crush Videos Statute"

PRESENTED ON MAY 21, 2010

STATEMENT OF J. SCOTT BALLENGER

Evaluating The Supreme Court's Decision in *United States v. Stevens*:
Ramifications for Revisions to 18 U.S.C. § 48

May 21, 2010

Good morning, Mr. Chairman and Members of the Subcommittee. It is an honor to appear today and assist in this important discussion of the Supreme Court's recent decision in *United States v. Stevens*, 130 S. Ct. 1577 (2010), and the continuing need for federal legislation to combat the evils of depictions of extreme animal cruelty.

By way of introduction, I am a partner in the Supreme Court and Appellate practice at the law firm of Latham & Watkins LLP. Prior to joining Latham & Watkins, I clerked for the Honorable J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit and, during the October 1997 Term, for the Honorable Antonin Scalia, Associate Justice of the United States Supreme Court. I then served as Senior Counsel to the Assistant Attorney General in the Antitrust Division of the Department of Justice. My practice now focuses on appeals in the Supreme Court of the United States and the federal circuit courts, including numerous cases posing difficult constitutional questions. I briefed and argued two cases in the Supreme Court this Term, and represented the Humane Society of the United States in filing an *amicus curiae* brief in support of the government's position in *Stevens*. I am, however, speaking today only for myself at the Committee's invitation, and not as a representative of the Humane Society.

I. THE DECISION IN *UNITED STATES V. STEVENS*

A. Procedural and Factual Summary

In *United States v. Stevens*, the Supreme Court held that 18 U.S.C. § 48 is overbroad and facially violates the free speech guarantee of the First Amendment. Section 48 criminalizes the "creation, sale, or possession" of depictions of animal cruelty "with the intention of placing that

depiction in interstate or foreign commerce for commercial gain." *Id.* § 48(a). The statute defines "animal cruelty" to include cruelty that "is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place." *Id.* § 48(c)(1). Congress passed the law in 1999 after learning of the proliferation of so-called "crush videos," which show small animals being slowly tortured and crushed to death by women "with their bare feet or while wearing high heeled shoes." H.R. Rep. No. 106-397, at 2 (1999). Congressional testimony revealed that crush videos were made to "appeal to persons with a very specific sexual fetish who find them sexually arousing or otherwise exciting." *Id.* at 2-3. Although the states' respective animal cruelty laws prohibited the actual acts shown in these videos, Congress deemed § 48 necessary because of the difficulty local law enforcement had in identifying and timely prosecuting the persons involved in the acts. *Id.* at 3.

Federal prosecutors indicted Mr. Stevens under § 48 for three videos depicting animal fighting—two showing pit bull dogfighting and a third depicting pit bulls hunting wild boar and attacking domestic farm pigs. *Stevens*, 130 S. Ct. at 1583. A jury convicted him on all counts, and he was sentenced "to three concurrent sentences of 37 months' imprisonment, followed by three years of supervised release." *Id.* The Third Circuit took the case *en banc* and reversed the conviction. *Id.* It held that dogfighting videos are fully protected speech and that the government lacks any "compelling interest" in protecting animals from cruelty. *Id.* at 1583-84.

Following the Third Circuit's ruling, the government petitioned for and obtained a writ of certiorari from the Supreme Court. The Supreme Court affirmed the decision in an 8-1 opinion written by Chief Justice Roberts, but not for the reasons relied on by the Third Circuit. Instead the Court held § 48 facially invalid under the "overbreadth" doctrine, under which a court may strike down a statute if it finds that the statute prohibits a substantial amount of protected speech.

Id. at 1587 (law is "overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008))). The Court rejected the government's arguments that § 48 should be construed as limited to depictions of conduct that would be unlawful under state and federal *animal cruelty* laws, and focused on various hypotheticals proposed by Stevens and his *amici* under which the statute might be understood to criminalize videos of hunting or slaughterhouse practices that are lawful in some states but not others. *Id.* at 1588-90. The Court also strongly rejected the government's argument that particular speech could be subject to lesser First Amendment protections under a balancing test derived from *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

Justice Alito alone dissented from the majority opinion, concluding that a facial attack was inappropriate under the circumstances and that the case should be remanded for consideration of whether the statute would be unconstitutional as applied to Mr. Stevens's materials. *Id.* at 1592-93 (Alito, J., dissenting). Justice Alito also disagreed with the majority's overbreadth analysis. *Id.* at 1594-1602. He concluded that "crush" videos and videos of animal fights are not constitutionally protected, by analogy to the Court's analysis of child pornography in *New York v. Ferber*, 458 U.S. 747 (1982), and would have interpreted § 48 in a manner that would not reach depictions of hunting or slaughterhouse practices.

B. Important Implications Of the *Stevens* Decision

The Court's decision in *Stevens* was certainly quite critical of the breadth and vagueness of § 48 as presently drafted, and made clear that the Court is not inclined to recognize new categories of low-value speech on an *ad hoc* case-by-case basis. But in several respects the Court's decision was strikingly, and deliberately, narrow. The overall message, I believe, is that the Court remains quite receptive to a more narrowly drawn statute but is not inclined to give

Congress the benefit of any interpretive doubt. I will briefly touch on three aspects of the decision that I think are particularly relevant to Congress's consideration of any new legislation.

1. First, the principal disagreement between the majority and Justice Alito concerns how statutes that might pose First Amendment overbreadth concerns should be interpreted. In most contexts, the rule is that statutes should be construed to avoid constitutional issues when at all possible. *See, e.g.*, *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1811 (2009). The government argued in *Stevens* that the troublesome hypotheticals forwarded by Stevens and his *amici* could be avoided by construing § 48's requirement that the depicted conduct be "illegal under Federal law or the law of the State in which the creation, sale, or possession takes place" to require that the depicted conduct must be illegal *under an animal cruelty law* as opposed to laws regulating hunting or slaughterhouse practices (which tend to differ more from State to State). Since the relevant language appears in the statute's definition of "depiction of animal cruelty," that would not have been a particularly unreasonable interpretive leap. And the statute's express exception for depictions with "serious religious, political, scientific, educational, journalistic, historical, or artistic value" might also have been interpreted to protect hunting or slaughterhouse videos from prosecution. Justice Alito found both of those arguments persuasive.

The *Stevens* majority, however, was not inclined to adopt limiting constructions that it could not find in the plain language. It read § 48 very broadly, and then used that breadth to hold the statute facially unconstitutional. That approach reflects a very robust version of the overbreadth doctrine, and indicates that the Court is more concerned about protecting potential defendants from the "chilling" effect of arguably vague statutes than with preserving the potentially constitutional core application of those statutes through a narrower reading.

2. Second, the fact that the Court applied the overbreadth doctrine at all in *Stevens* underscores its hostility to broadly drafted laws but also, I believe, contains a message about the Court's receptivity to a narrower law that would encompass depictions of animal cruelty and animal fighting.

The traditional role of the overbreadth doctrine in First Amendment law has been to permit a defendant whose own conduct is *unprotected* to argue that the statute should be held invalid in all its applications (i.e., "facially") because it might infringe on the constitutionally *protected* conduct of others. The overbreadth doctrine is therefore an exception both to the general principle that a statute is not facially invalid if it has any legitimate applications, *see United States v. Salerno*, 481 U.S. 739, 745 (1987), and to "traditional rules governing constitutional adjudication," which generally forbid litigants from challenging statutes that "may conceivably be applied unconstitutionally to others, in other situations not before the Court," *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973). It reflects a value judgment that the "chilling" effects of an overbroad law are so undesirable that the courts will incentivize litigants to challenge such laws even if the litigant's own speech is unprotected. *See United States v. Williams*, 553 U.S. 285, 292 (2008); *Broadrick*, 413 U.S. at 612. The Court has aptly characterized the overbreadth doctrine as "strong medicine" and has applied it only sparingly since its formalization in 1973. *Williams*, 553 U.S. at 293 (internal quotation marks omitted).

Prior to *Stevens*, there seemed to be good authority for the proposition that a defendant whose own conduct is constitutionally *protected* cannot raise an overbreadth claim—because, of course, a holding that the statute is unconstitutional "as applied" would be sufficient to protect his rights. *See, e.g.*, *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985) (where the party is engaging in protected speech, "[t]here is … no want of a proper party to challenge the

statute, [and] no concern that an attack on the statute will be unduly delayed or protected speech discouraged"); *Bd. of Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 485 (1989) (declaring a statute facially overbroad after finding a party's own speech protected "would convert use of the overbreadth doctrine from a necessary means of vindicating the plaintiff's own right not to be bound by a statute that is unconstitutional into a means of mounting gratuitous wholesale attacks upon state and federal laws"). Justice Alito would have held, on the basis of that precedent, that the Court should not reach any facial overbreadth issues prior to deciding whether Stevens's own dogfighting videos were constitutionally protected.

The majority of the Court sidestepped that issue by asserting that Stevens failed to preserve an as-applied challenge and that it granted certiorari to review the Third Circuit's *facial* holding. *See* 130 S. Ct. at 1587 n.3. Leaving aside whether the majority's position or Justice Alito's is more persuasive as to the procedural record of the case, I think it is fair to say that the majority was not compelled, even on its own terms, to approach the case this way. The Court is always entitled to expand the issues that it believes to be encompassed by its grant of certiorari. And if the majority had genuinely believed (with Justice Alito) that a litigant with a valid "as applied" challenge simply is not entitled to raise a facial overbreadth claim, then the fact that Stevens arguably waived his "as applied" challenge would be a curious basis for disregarding that limitation. The majority also would have been justified in dismissing the writ as improvidently granted, if it believed that a litigation waiver prevented it from approaching the case in the correct way.

At a bare minimum, the Court certainly would have been entitled to factor the law's potential application to animal fighting into its overbreadth analysis. Stevens and his *amici* seemed to concede, for the most part, that § 48 would be constitutional as applied to prurient

"crush" videos—and animal fighting videos are by far the most likely real-world setting where this statute is likely to be applied outside of the "crush video" context. Instead, the Court scrupulously avoided offering any opinion about whether animal fighting videos are constitutionally protected. As Justice Alito explained, "the Court has taken pains not to decide whether section 48 would be unconstitutional as applied to graphic dogfight videos, including those depicting fights occurring in countries where dogfighting is legal." *Id.* at 1597 n.5 (Alito, J., dissenting).

I come away from the *Stevens* opinion with the impression that the majority carefully avoided that question at least in part because they found it genuinely difficult. In the overall context of the arguments made by the parties and *amici*, it would have been easy for the Court to hold that § 48 can constitutionally be applied to "crush" videos that satisfy the traditional obscenity standard of *Miller v. California*, 413 U.S. 15 (1973), but that the statute is unconstitutional because it sweeps in plenty of speech that would not satisfy that standard—including the dogfighting videos for which Stevens himself was prosecuted. The Court did not do so, I believe, because there was no consensus among the Justices that Congress's hands should be bound that tightly.

3. Finally, the Court's overbreadth analysis also allowed it to sidestep the Third Circuit's unfortunate holding that the government had no "compelling interest" in preventing animal cruelty for purposes of strict scrutiny analysis. The Court also expressly distanced itself from that reasoning. *See* 130 S. Ct. at 1593 ("Today's decision does not endorse the Court of Appeals' reasoning … ."). It unanimously recognized the long history of animal cruelty laws dating back to before the founding of this country and assumed for purposes of decision that a law targeting depictions only of extreme animal cruelty may be constitutional. *Id.* at 1585

(majority opinion). Indeed, nothing in the majority opinion disagrees with Justice Alito's remarks that "[t]he animals used in crush videos are living creatures that experience excruciating pain," and that "the Court of Appeals erred in second-guessing the legislative judgment about the importance of preventing cruelty to animals." *Id.* at 1600 (Alito, J., dissenting).

In my opinion, the Court's unanimous unwillingness to embrace the Third Circuit's reasoning reflects a recognition that there is an important and legitimate role for legislation in this area. As the Humane Society's brief explains, there have been prohibitions against needless cruelty to animals in this country dating back to (at least) the Massachusetts Bay Colony. There are, I believe, actually very few public policy issues about which Americans are more consistently united than this one—even if we sometimes disagree about the details.

In short, the Court plainly did not like § 48 as drafted but it went out of its way not to close the door to more narrowly drafted substitute legislation.

II. POTENTIAL REVISIONS TO SECTION 48

The *Stevens* decision has left room for Congress to revise § 48 in several different ways. I will briefly discuss two potential approaches, involving different degrees of risk that the new law will be successfully challenged in the courts.

A. Option 1: Limit § 48 Solely to "Obscene" Crush Videos

The narrowest, and most surely constitutional, approach to revising § 48 would be to limit the statute to materials that satisfy the traditional *Miller* test for obscenity. That test asks "(a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lack serious literary, artistic, political, or scientific value." *Miller*, 413 U.S. at 24 (internal quotation marks and citations omitted). It

could be implemented into legislation either by spelling out those requirements or by using the word "obscene," which at this point has become a legal term of art. *See, e.g.*, *Hamling v. United States*, 418 U.S. 87, 105, 113 (1974); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 505 n.13 (1985).

In my view, a statute limited that way clearly would be constitutional and could be used to prosecute, at a minimum, the "crush" videos that provided the principal impetus for § 48's original enactment. Congress found in 1999 that crush videos "appeal to persons with a very specific sexual fetish who find them sexually arousing or otherwise exciting." H.R. Rep. No. 106-397, at 2-3. Testimony during the 1999 hearings on § 48 revealed that "[m]any videos are produced wherein defenseless animals are tortured and crushed to death for the sole purpose of sexually exciting men."[1] President Clinton directed his Department of Justice to interpret § 48 as covering only depictions "of wanton cruelty to animals designed to appeal to a prurient interest in sex." Statement of President William J. Clinton upon signing H.R. 1887, 34 Weekly Comp. Pres. Doc. 2557 (Dec. 9, 1999). Although these videos would not appeal to a normal person's prurient interests, the Supreme Court had made clear that fetish materials are not insulated from obscenity scrutiny simply by virtue of being deviant. Expert testimony may be used to establish prurience "where contested materials are directed at such a bizarre deviant group that the experience of the trier of fact would be plainly inadequate to judge whether the material appeals to the prurient interest." *Paris Adult Theatre v. Slaton*, 413 U.S. 49, 56 n.6 (1973).

It is also hard to imagine the average jury having any difficulty finding that a crush video is "patently offensive" and lacks any "serious literary, artistic, political, or scientific value." The

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[1] *Punishing Depictions of Animal Cruelty and Federal Prisoner Health Care Co-Payment Act of 1999: Hearing Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 106th Cong. 41, 53 (1999).

depictions of torture and cruelty in crush videos are some of the most vile, repugnant images imaginable. *See, e.g.*, 145 Cong. Rec. H10267 (daily ed. Oct. 19, 1999) (statement of Rep. McCollum) ("I do not believe in my entire time in Congress, I have ever seen anything ... as repulsive as [crush videos]. And I doubt anyone else who had to watch it would say anything [differently].").

The great majority of the *amici* in *Stevens* who wrote against § 48 conceded that a law prohibiting crush videos alone would pose no First Amendment problem. *See, e.g.*, Brief of Amici Curiae Association of American Publishers, Inc., et al. Supporting Respondent, at 17, *United States v. Stevens*, 130 S. Ct. 1577 (2010) (No. 08-769) ("Had Congress sought to proscribe only 'crush videos,' it could have done so, and this would be a much different case."); Brief Amici Curiae of The Reporters Committee for Freedom of the Press and Thirteen News Media Organizations in Support of Respondent, at 22, *United States v. Stevens*, 130 S. Ct. 1577 (2010) (No. 08-769) ("Congress could have regulated legally obscene crush videos in a manner that did not threaten news reporting and other high-value speech."); Brief of Amicus Curiae National Rifle Association of America, Inc. in Support of Respondent, at 34-35, *United States v. Stevens*, 130 S. Ct. 1577 (2010) (No. 08-769) ("Congress could have drafted a statute that more precisely aimed at its objectives. For example, Congress could have defined and criminalized 'crush videos.'"). I believe there is little doubt that Congress could draft a statute that would be constitutional under the *Miller* test and that would permit prosecution of the great majority, if not all, crush video purveyors.

B. Option 2: A Statute That Criminalizes Trafficking In Both Animal Fighting and Crush Videos, But Excludes The Hunting Videos And Similar Materials The Court Found Problematic In *Stevens*

Of course that narrowest approach would leave defendants like Stevens free to engage in the interstate trafficking, for profit, of videos of illegal animal fighting that do not appeal to

prurient interests and therefore do not clearly satisfy the *Miller* obscenity test. The Supreme Court's opinion in *Stevens* goes out of its way not to decide whether animal fighting videos are constitutionally protected, and there are good reasons to believe that they should not be—many of which are discussed in Justice Alito's dissenting opinion. A law that extended to non-prurient animal fighting videos would surely be challenged on First Amendment grounds, and for that reason it might be wise to avoid the issue for now or (at a minimum) divide the statute into severable sections. But in my view the Supreme Court's opinion clearly leaves room for a good faith belief that videos of illegal animal fighting are not constitutionally protected.

As the Humane Society's brief in *Stevens* explains, dogfighting and other animal fighting is a national plague and the market for these videos plays a crucial role in sustaining the underlying activity, which is illegal under federal law and the laws of every State. Congress originally enacted § 48 to eliminate the incentive driving the production of crush videos. *See* 145 Cong. Rec. 31,217 (1999) (statement of Sen. Kyl). And it worked. By 2007, Representative Gallegly, an original sponsor of Section 48, declared the crush video industry dead. Press Release, Elton W. Gallegly, *Beyond Cruelty*, U.S. Fed. News, Dec. 16, 2007. Similarly, dogfighting videos are often produced to facilitate dogfighting operations by documenting important fights, conferring a significant revenue stream, serving as "training" videos for other fight organizers, and providing marketing and advertising materials. Congress was aware of these facts in 1999 and sought to inhibit the promotion and documentation of dogfights, undermine the financial motive for them, and ultimately reduce occurrences of the underlying act. *See* 145 Cong. Rec. H10,267 (daily ed. Oct. 19, 1999) (statement of Rep. McCollum).

Those facts suggest, as Justice Alito's dissent argues, that animal fighting videos share many of the characteristics that led the Court to conclude in *Ferber* that child pornography is

completely unprotected by the First Amendment. They also suggest that a ban on such videos might survive strict scrutiny even if that test applies. And I personally believe that a strong case can be made that the legal concept of "obscenity" should be broadened to include materials that are not "prurient" as heretofore defined but that similarly appeal only to base instincts and do not contribute anything meaningful to the marketplace of ideas. The Supreme Court has already recognized that "prurience" for obscenity purposes can encompass a "morbid interest ... in excretion" as well as sex, *Roth v. United States*, 354 U.S. 476, 487 n.20 (1957) (quotation omitted), and that the usual meaning of "obscenity" in the English language is not limited to sex, *see Miller*, 413 U.S. at 19 n.2. Several lower court decisions have recognized that depictions of actual violence raise similar constitutional issues. The Seventh Circuit has suggested, for example, that "violent photographs of a person being drawn and quartered could be" "described as 'obscene,'" and could even be "included within the legal category of the obscene" under *Miller*, "even if they have nothing to do with sex." *Am. Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572, 575 (7th Cir.) (Posner, J.), *cert. denied*, 534 U.S. 994 (2001); *see also State v. Henry*, 732 P.2d 9 (Or. 1987).

Indeed, the focus of present obscenity law on *sexual* materials is a mid-20th century artifact that is inconsistent with both prior views (which were hospitable to a much wider scope of regulation) and contemporary attitudes—which tend to regard even sexually explicit materials as obscene only if they involve deviant violence. The Oregon Supreme Court in *Henry* explained that in a 1985 survey 73% of the population supported a ban on *violent* sexual material, whereas only 47% supported a ban on other sexual material. 732 P.2d at 16 n.7. Most recent federal obscenity prosecutions bear this out. *See United States v. McDowell*, 498 F.3d 308, 311 (5th Cir. 2007) (prosecution for videos showing sadistic and masochistic "sexual

torture"); *United States v. Davidson*, 283 F.3d 681 (5th Cir. 2002) (prosecution for, *inter alia*, snuff videos and depictions of rape and torture); *United States v. Thomas*, 74 F.3d 701 (6th Cir. 1996) (images depicting, *inter alia*, bestiality and sadomasochistic torture).

There is something quite incongruous about the fact that under present First Amendment doctrine "crush" videos are clearly unprotected because they appeal to a recognized sexual fetish, while animal fighting videos may be entitled to the same First Amendment protection as core political debate merely because they do not. Given the nature of sexual deviance, how exactly is a judge or jury supposed to ascertain that a video of a foot crushing a kitten appeals to the "prurient interest," but a video of two dogs (or two people) forced to tear each other to pieces does not? And why should it matter? In my view a First Amendment that allows society to regulate the distribution and sale of sadistic video depictions of actual gruesome death-matches between coerced living beings *only* if there happens to be a scantily clad woman involved makes little sense, and is completely unmoored from the real values (either traditional or contemporary) that ought to inform constitutional adjudication.

Of course this is uncharted ground, but as noted above the Supreme Court seems to have gone out of its way in *Stevens* to leave these issues open. If Congress *were* inclined at this point to draft a law that goes beyond simply banning obscene crush videos, I believe several steps would improve the chances of such a law surviving constitutional challenge.

First, Congress should receive evidence and make findings about the role of video documentation in the animal fighting industry, to support the empirical points that Justice Alito relied on his dissent.

Second, it should carefully limit the statute to make clear that the hunting and slaughterhouse hypotheticals that troubled the Court in *Stevens* are excluded. That means, at a

minimum, making clear that the conduct depicted must violate state or federal laws *prohibiting extreme and intentional animal cruelty*, as opposed to hunting laws and general regulatory provisions governing ordinary slaughterhouse practices. *See Stevens*, 130 S. Ct. at 1588-90. It would also be wise, in my view, to include an explicit exclusion for hunting videos.

Third, the law should do what it can to address the Court's concerns about depictions of conduct that may be lawful in one state but unlawful in another. Limiting the law to depictions of conduct that violate *animal cruelty* laws would go a long way toward solving that problem since, as the majority recognized, every state has a prohibition against extreme animal cruelty and the content of such laws is reasonably consistent. Congress might also consider limiting prosecutions under a new § 48 to depictions of conduct that is illegal everywhere in the United States, or which is illegal as a matter of *federal* law.

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The Supreme Court has left this Subcommittee a number of options to consider in revising Section 48. It is my belief that "crush" videos may be proscribed within the existing *Miller* standard for obscenity, and that (if properly drafted) a law limited to crush videos would need not pose serious constitutional issues. Any statute that goes further and attempts to address depictions of illegal animal fighting will likely trigger a First Amendment challenge. But if Congress is inclined to address that problem at this point I do not believe the *Stevens* opinion is necessarily an obstacle. The Court carefully left open whether a law against depictions of unlawful animal fighting would be constitutional.

Thank you, Mr. Chairman, for the opportunity to testify on these important matters. I look forward to answering the Committee's questions.

Mr. SCOTT. And I want to thank all of our witnesses.

We will have questions under the 5-minute rule. Mr. Vladeck, what is wrong with a statute that would just focus on obscenity? Because we have a well-established line of cases, prurient interest and everything, and I think the crush videos would appear to qualify under that.

Mr. VLADECK. Mr. Chairman, I actually don't think there would be anything wrong with that. I think it is a question of how you draft it. So I think, you know, to focus on the analogy or obscenity makes at least some sense, except that the Supreme Court in the Stevens decision seemed to suggest that you can't line them up perfectly; that in the context of obscenity, the whole point to the Miller test is that there has to be prurient interest. You have to prove that. That is a pretty high bar. So I think——

Mr. SCOTT. So the First Amendment is a tough bar to get over.

Mr. VLADECK. I couldn't agree with you more. I think analogizing to obscenity would make a lot of sense. The problem is that the statute in its current form doesn't, right, and that the statute actually sweeps far beyond what Miller might have contemplated. So actually, you ask what is wrong. I am not sure that there is that much that would be wrong.

Mr. SCOTT. One of the problems that has been suggested is that the prosecutor has a difficult time—if you are talking about something that is legal in the State—has a difficult time proving the elements of the crime to show that when it was done, it was illegal. I thought that came up when the virtual child pornography cases, where the allegation was that the prosecutors were having trouble. What did the Court say about that argument? If a prosecution has trouble, you can make it easier. What did the virtual child pornography cases say about that?

Mr. VLADECK. Well, so the Court has had a series of virtual child pornography cases, and I think they have sort of split the difference where in one sense they say it is important to limit it—actual child pornography is, per Ferber, wholly exempted from First Amendment coverage. There is a little more leeway there than there would be here where the Court has declined to recognize——

Mr. SCOTT. When they said, if you can't prove it is a real child, then you don't have a case, and then it is hard to prove. That is the prosecutor's problem, not the defendant's.

Mr. VLADECK. And per your question before, Mr. Chairman, I think that's the Court saying that the First Amendment imposes some burdens on the prosecutors of these cases. So if you cannot prove in the context of virtual child pornography that it was actual child pornography, you are not going to be able to make a case. That is my understanding of what those cases stand for.

Here, I think, the same question arises, and I think that is why Congress in 1999 tied it to whether the conduct was unlawful under the law in the State in which it was distributed, right, because you can't always even know where the video was produced. I think that is a problem, I think, that is——

Mr. SCOTT. Sometimes you don't know. Sometimes you can't know that it was clearly produced in a State where it was legal.

Mr. VLADECK. I think the problem is that if you draw the statute in a way where you have to prove an either/or, you know, that sort of changes the calculus. So could you actually have it say—if you can demonstrate that it was illegal in the State in which it was produced, it would count, or at the very least it was illegal in the State in which it was sold. I think that would be one way to do it, because you won't be able to have either rule as the categorical one to cover all cases.

Mr. SCOTT. Well, you can have a Federal law that says selling the video in one State would be illegal. Selling the same video in another State—one would be illegal and the other State would be legal.

Mr. VLADECK. That is true. There are plenty of other examples, Mr. Chairman, as you know, where Federal law turns on whether the conduct is actually against the law of that State, right? So the Federal Tort Claims Act is a prominent example where the question is simply whether under that State's law there is a cause of action.

I don't think that is a problem here. I mean, I don't think that is a problem in legislative drafting. I think that is a problem only, as you suggest, when it comes to what the burden is going to be on the prosecutor in the individual case to demonstrate, if this is the direction the Congress is going in, that the producer or the distributor of the video had the requisite intent, right, because that will depend on where that happened.

Mr. SCOTT. All States have animal cruelty laws. Those have been upheld, so we know the difference between a slaughterhouse and cruelty. We are talking about content to a certain extent, because if you have National Geographic showing animals in the wild killing each other, that would probably be illegal, it might be illegal in one State. Do we have a problem separating what is cruelty? If we went to illegal cruelty rather than just killing, would we be on much stronger ground using cruelty rather than killing, maiming?

Mr. VLADECK. Mr. Chairman, I think it would certainly alleviate many of the overbreadth concerns expressed by the Court in Stevens if the statute required that the act be unlawful not just per se, but as a specific violation based on cruelty to animals.

I don't think that would be a problem. I think that would be a substantial step toward removing the unconstitutional overbreadth of the statute. Just to be clear, I don't think courts would have that hard of a time deciding for themselves whether a particular State law was a law targeted at animal cruelty. This happens all the time in other contexts where Federal law uses a term of art, say, crime of violence, or aggravated felony, or crime of moral turpitude, and various State laws are applied and subjected to that definition. So I actually think that would be a very positive step and one that would make a lot of sense.

Mr. SCOTT. The gentleman from Texas.

Mr. GOHMERT. Thank you, Mr. Chairman.

I really appreciate each of your thoughtfulness in reviewing this. In view of the testimony that each of you have given today, I will tell you, I would welcome actual submissions of language that would stand the best chance of meeting the requirements of the Supreme Court, whether it is, as the Chairman suggests—you know, we know the word "obscene" has been accepted. There is plenty of case law regarding that. But then I know a lot of people don't want to realize just how cruel nature is among its members, but if you just set up a camera out in the wild, you could see some horribly cruel and, some of us would think, obscene activity in what animals do to animals. So it is kind of hard to regulate nature, even though Congress often tries, obviously unsuccessfully.

But any language that any of you might have—and I don't mean, well, try this, try that; I mean, actual proposal of, try this phrase instead, would be greatly appreciated on the panel because we do not want to be doing this or have someone else looking back over what we did, thinking, well, obviously if they had just used this language, 12 years later they wouldn't have had this problem. So anything along those lines would be appreciated.

Do you believe that "animal" should be defined in the statute itself? Or do we leave that, just whether it is illegal in the State from which it came? Anyone.

Mr. BALLENGER. I will speak to two of those points very briefly. I think that tying the statute to the animal cruelty laws of the individual States as opposed to merely the general regulatory laws of every State would go a long way toward solving two of the problems you have identified. I believe the animal cruelty laws of every State exempt wildlife, for instance, from their requirements, and they also define what scope of animal life is subject to them. So, for instance, insects generally are not covered. So if you tie it to the animal cruelty law, then you have a sort of ready-made and well-understood body of law that sort of addresses both of those problems.

Mr. GOHMERT. Anyone else?

Mr. PERSILY. Let me just say one thing, which is to some extent the language used depends on how broadly you describe the problem. And so, as Mr. Ballenger was saying, the question is does Congress want to apply this, for example, to dogfighting videos? Does it want to apply it to bullfighting videos, which is something that the Court mentions, right, which that would probably be, you know, trespassing onto more constitutionally protected territory. What is it in particular that is the problem? Because as Mr. Ballenger was pointing out, if you are limiting it to obscene animal cruelty, that is one category of speech. If you are extending it beyond that to other types of, say, animal fighting, that is going to encompass a lot more variability in State laws maybe. It will also bring in some other questions as to, you know, distinguishing among different animals as to what would be protected and not.

Mr. VLADECK. I agree entirely. I would just add one last point, which is I think it is important to realize that from the perspective of the Court's opinion, the overbreadth concerns that led it to invalidate the statute will have different solutions in different parts of the statute. So if you want to more narrowly define "animal," or if you want to require, as Chairman Scott suggested, that the State law be one that prohibits animal cruelty as such, those will both narrow the scope of the statute. But an intent requirement would also narrow the statute in ways that are different from it, perhaps more substantial than definitions of animal and definitions of animal cruelty laws. If we are requiring that the defendant have actually—or whoever produced the video——

Mr. GOHMERT. Well, don't you think it would be good to have both intent, some type of mens rea, in addition to the other type, meaning definition?

Mr. VLADECK. Well, I agree that it would certainly narrow the scope of the statute. I think that the question is where exactly is

the constitutional line between what Congress can prohibit and what it can't?

Mr. GOHMERT. And that is what we are asking for help with. That is why you are here.

Mr. VLADECK. And I think the best I can say, Congressman, is that the Court only gave us clues. And so I think, you know, it would certainly be safer to go through all of these, to include an intent requirement, to more narrowly define what "animal" is, to require the State law be specifically targeted to cruelty. All I am saying is that it is possible that it might go further than the law would actually have to go to satisfy the First Amendment concerns the Court raised.

Mr. GOHMERT. Well, it would seem to me the Court did a good job of giving us plenty of clues, as you say, and so we just need you all to have your Sherlock Holmes hats on and make the best deductions. Thank you.

Mr. SCOTT. Thank you.

The gentlelady from Texas.

Ms. JACKSON LEE. First I would like to say that it really pushes one's appreciation and understanding for American law and its commitment to the First Amendment when you can have the Supreme Court reject what I think most of us would find to be one of the most despicable acts. So I guess I can appreciate how pure we must be, how certain we must be that what we were engaging in as we try to correct the 1999 law—how we need to look very carefully so that this legislation can both solve the despicable acts which I think are below the definition of unacceptable, you can't even find words for it, but to also ensure that the First Amendment is, of course, upheld.

And so I question several elements of both bills on this question of whether the First Amendment is protected, if the crux of it is a sale. And also in Mr. Peters' bill in particular, highlighting depiction, whether or not the acts of dogfighting would be able to be covered under the Court's interpretation. So let me just go down each of the witnesses and do what I did with the Members. But if you can focus in on the First Amendment.

I don't know if we write a bill, then the Court may have another review. I heard one comment, I think, Mr. Ballenger, about associating with the language of State law, trying to, I guess, weave your way through that.

But let's start with Professor Vladeck. Comfort me on what precisely needs to be done as it relates to First Amendment questions that the Court had. And if the others could follow, I would appreciate it. Thank you. And I thank the Chairman and the Ranking Member for bringing us back to this point and having this hearing. Thank you.

Mr. VLADECK. I would just say, and I think this comes through a little bit in my testimony, I think the most important step going forward is the addition of some kind of mens rea, some kind of intent requirement. I think if you look at the oral argument in Stevens, if you look at the Court's opinion, the single biggest thing that the Justices seem concerned about was the fact that videos that accidentally encompass this kind of conduct, where the pro-

duction was never meant to stimulate the market for these videos, would fall from the scope of the statute.

I think that is a very big key here, and so, you know, if pressed to find one thing, Congresswoman, that is really the key, I think it is a far more specific intent requirement in the context of who could be liable for violating section 48.

With regard to does it encompass dogfighting, does it not, again, I think all we have are hits. I think the Justices certainly seem to suggest that dogfighting and other forms of animal fighting are closer to First Amendment protection when we are talking about depictions than crush videos, so I feel less confident sort of asserting where the line would be there. But I think the addition of an intent requirement would go a very long way toward both protecting the First Amendment and carving out that conduct that this body can constitutionally proscribe.

Mr. SCOTT. Will the gentlelady yield?

Ms. JACKSON LEE. I would be happy to yield to the Chairman.

Mr. SCOTT. What would be the intent? Intent to do what?

Mr. VLADECK. Well, at the very least, for example, I believe Congressman Peters' bill refers to that the video was made for the purpose of influencing the market, that the video was made—I am sorry, that the act of cruelty was undertaken for the purpose of creating a depiction and therefore stimulating the market. I think that would be a very important step.

Mr. SCOTT. Wait a minute. Just very briefly, what would that intent—the intent to do what?

Mr. VLADECK. My understanding of the Peters bill is that the intent would go with the act of the animal cruelty itself. Was the act of animal cruelty undertaken for the purpose of creating a depiction and for the purpose of furthering the market? And I think that that would go a long way, Mr. Chairman, toward excluding depictions of animal cruelty where the cruelty wasn't——

Mr. SCOTT. So the intent would be staging the cruelty with the intent of making the video?

Mr. VLADECK. Correct.

Mr. SCOTT. I am sorry. The gentlelady may continue.

Ms. JACKSON LEE. I appreciate the clarification of the Chairman because I think that is truly key.

I would yield to Professor Persily, I think. And as you do that, if you want to add to your comments, I will follow up. Why don't you just go ahead. Thank you.

Mr. PERSILY. Let me just say that, again, the question is how does one define the problem? And if you define the problem as the—you know, one type of video as opposed to another, then the legislative language that would be recommended in order to comply with the First Amendment will be different. Each of these bills that has been proposed has a different scope. And so one, the first one, is limited to the prurient interest. So that would be limited to the types of videos that were discussed earlier. The second one, which is not limited to videos that are prurient in nature and, therefore, might apply more broadly to animal fighting or other kinds of—for example, bullfighting and that, would be, you know, closer to breaking the constitutional line there.

I think we should be a little bit hesitant to predict how the Supreme Court is going to interpret these laws. As we have all discussed, one of the problems here is that there is going to be some constitutional speech which is likely going to be swept in by any of these proposals. The question is is it the type of speech which is so small in relation to the constitutionally unprotected speech which is swept in such that maybe an as-applied challenge to the law will succeed, but in general the law will be upheld?

Clearly if one is going to target the type of obscene speech that was discussed earlier, then there is a specific rule for obscenity. And so all one needs to do is add the rule for obscenity and specify that it applies to those entailing animals as well. If one wants to go farther and deal with, say, dogfighting videos, et cetera, then one needs to try and tailor the law in order to combat the particular market. Perhaps, as I said in my testimony, model it, as Justice Alito suggests, on the directions that the Court has given in the child pornography cases.

And one other recommendation, which is that—it should be obvious—but the more narrowly tailored the law, the more specific it is to a particular type of activity, the less effective it is going to be at regulating the types of things that we all find to be offensive. So that while on the one hand the Supreme Court is telling you be very specific, the more specific you are, the more difficult it is going to be to enforce this law in the usual context where we think it is applicable.

Ms. JACKSON LEE. Mr. Chairman, I ask unanimous consent, can Mr. Ballenger answer?

Mr. SCOTT. Yes. We are going to have a second round. Did you want to answer, sir?

Mr. BALLENGER. Maybe I can just add one thing, because there is one caution I would like to give maybe a point on which I disagree with my colleagues here.

Be careful with intent requirements. A requirement that a prosecutor has to prove that the purpose of a depiction was—well, the purpose of the underlying cruelty was to make the depiction, it is going to be very, very difficult to prove beyond a reasonable doubt. You are going to have a defendant who says—who refuses to testify and won't give any information about why that particular act of cruelty was done. You have a defendant who was totally uninvolved with the underlying act of cruelty. And so I don't think it is really necessary to go quite that far in order to draft a constitutional law here.

Mr. SCOTT. Thank you.

The gentleman from California.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Do I take it that all three of you believe that it is within our capacity to write a constitutionally valid law that would render criminal under our Federal statute crush videos that would be considered obscene in the analysis that we have had, but that we have some question about whether we can go beyond that, that is with respect to the direction we have been given by the Court?

Mr. PERSILY. Yes.

Mr. BALLENGER. Yes.

Mr. LUNGREN. Do all of you agree that it is important, as Mr. Ballenger said, that we have hearings which would allow us to have specific findings that would be included as part of the statute?

Mr. PERSILY. Yes.

Mr. VLADECK. Yes.

Mr. LUNGREN. There seems to be this general agreement that we can do it with a prurient interest element in there. And I am intrigued by all of you seeming to suggest that to the extent that we can establish that the conduct defined is unlawful in virtually every State or jurisdiction, yet what if jurisdictions subsequently change their minds in terms of their definition? Does that affect the underlying rationale for the constitutionality as suggested by the courts and as you have articulated here?

Mr. PERSILY. It could. It is important to identify two lines of cases that are relevant here. So on the one hand, you have obscenity, which doesn't depend on the illegality of the act in any particular State. On the other, the model that I think the proposed legislation is pointing to are the child pornography cases where it typically is clearly illegal.

Mr. LUNGREN. But the Court has basically said that is an exception that is unique and is not covered in this area. So we can't use that for justification.

Mr. PERSILY. One thing that is interesting, though, about the Stevens opinion it that it says that the child pornography cases are sort of a species of a larger category of cases, talking about speech integral to criminal conduct. Okay, so the question, it seems to me, and why the illegality of the action becomes relevant, is the extent to which you are trying to regulate an underlying illegal act by regulating depictions of it. Okay? It is clear that you can't regulate all illegal acts through depictions of it. And the question is, well, what kind can you? Child pornography is an example of it. And then the question is, what about these other depictions of animal cruelty?

Mr. LUNGREN. So the actual act of the animal cruelty which is illegal in and of itself is necessary for the production of the video that, therefore, you can find to be criminal in and of itself.

Mr. PERSILY. If that is the object of the legislation. Like I said, obscenity doesn't depend on that.

Mr. LUNGREN. Right. But I wanted to go beyond that to those other areas where you are not requiring the obscenity, where you are expanding it beyond the mere obscenity.

Mr. VLADECK. I think it would undermine, at least to some degree, the argument that—if the argument was constructed around the proposition that you had to ban the depictions in order to destroy the market, I think it would undermine that argument to a very substantial degree if all of a sudden in some jurisdictions the content itself actually was legal, because then the argument would be, well, then so would be—then there is no "there" there.

Mr. LUNGREN. It is interesting. I signed on as a cosponsor of Mr. Gallegly's legislation with the caveat that this is just to show that I would like us to try and find a solution to this. And it is easier to say that to a colleague than it is to try to explain to the public writing in to you that we would all be committed to this end. But I call it the inconvenient truth, which is the First Amendment, and I don't want to harm the First Amendment in the process. And how

we get from the legislation that is before us to what we need to do to answer these questions is a conundrum.

I might just observe, Mr. Chairman, it is interesting when we are spending very good time to try to get this right, and we may have on the floor of the House a bill this week dealing with the First Amendment called the DISCLOSE Act coming out of my other Committee with which we did not make findings with respect to the bill that is presented to us, but that only deals with political free speech, which, of course, Justice Kennedy said was the essence of protected free speech. But, you know, we don't have to worry about those things, I guess.

I thank you, Mr. Chairman.

Mr. SCOTT. The gentleman from Florida.

Mr. DEUTCH. Thank you, Mr. Chairman.

Professor Vladeck, you raised a point in your last response that—as something that I am concerned about where the approach seems to be that we are both focused on the possibility of enacting a statute which would focus on the underlying act and the illegality of the act, while at the same time trying to build in the additional protections of obscenity as an unprotected act. And what you just pointed out is that in that case, while obscenity, as several of you have mentioned, doesn't require the underlying act be illegal, do we put ourselves in the position of having then a statute which by its nature makes it difficult to uphold? On the one hand we have got underlying acts that are illegal that would be subject to prosecution. At the same time, because of the focus of obscenity, we have other acts that aren't illegal that would also be subject to prosecution.

Mr. VLADECK. I mean, I think that is a problem. I think to be fair, you know, I think it is just a question of how you construct the bill, right? So if you are trying to treat these kinds of depictions in the same way that we would treat child pornography, then I think you do have a problem if all of a sudden there is less of a direct connection between the market for the depiction and the underlying illegality. If instead it is more of an obscenity-based model, I think that just requires a judgment by Congress that it is the depiction itself that is causing some kind of illegal market, that is sort of promulgating the illegal activity. I think their intention, but I don't think they are exclusive of each other.

Mr. BALLENGER. Can I make a suggestion?

Mr. DEUTCH. Certainly.

Mr. BALLENGER. You can have severable sections. You could have an obscenity section of the bill that just uses the word "obscene" and really doesn't have to do anything else, and that would be clearly constitutional and would allow prosecutors to prosecute anything that meets the constitutional test. And then you could have a separate section that tackles the problem in a different way.

Mr. DEUTCH. And if we could just focus on obscenity jurisprudence for a moment, which we haven't really gotten into. If we wrote a statute in that way, and we had a section, or if the statute would focus entirely on obscenity, what is it—if you could walk through the Miller factors and how they might apply to animal cruelty, and how we might come to some consensus that there are, in fact, some forms of animal cruelty which are absolutely obscene.

Mr. BALLENGER. Well, the traditional Miller test is whether the average person applying contemporary community standards would find that the work taken as a whole appeals to the prurient interest; depicts and describes in a patently offensive way sexual conduct specifically defined by applicable State law; and lacks serious literary, artistic, political or scientific value. That is the long-winded way of saying it. The short way of saying it is just to use the word "obscene," which is what the Federal obscenity statutes do. You don't actually have to spell out the whole standard in the statute.

My view is that if you just use the word "obscene" or spell out the Miller standard, it would allow prosecutors to go after the crush videos that were at the core of what section 48 was originally about, because these are essentially pornographic materials. They are designed to appeal to people with a very specific sexual fetish, and they are clearly patently offensive, and they don't have any redeeming social value whatsoever.

So there is sort of a core here that under the traditional settled obscenity doctrine really I think isn't even debatable. Then there is a hard question about whether obscenity law might be extended to encompass materials that are patently offensive and have no value and appeal to base instincts, but aren't obviously sexual in nature.

Mr. DEUTCH. Right. And if you could speak to other examples where the Court has dealt with that issue specifically, where—there wasn't a—the prurient interest wasn't clearly a sexual interest. Nevertheless, there is still something obscene, as in this case, about certain types of animal cruelty.

Mr. BALLENGER. Well, not Supreme Court decisions. There have been some lower court decisions, including a seventh circuit opinion that Judge Posner wrote, that have suggested that depictions of actual extreme violence against people could be obscene, like a snuff video, for instance.

The only thing that I am aware of that the Supreme Court has said on this subject is that there are hints in footnotes in Miller and in a case called *Roth v. United States* that a morbid interest in excretion can be obscene, you know, sort of without regard to whether it is prurient in the ordinary sense. I am not sure if the Court really was confronted with the problem of why materials that appeal to a morbid interest in excretion are categorically unprotected by the First Amendment. But materials that appeal to a morbid and sadistic desire to torture animals somehow become, you know, the constitutional equivalent of the Lincoln-Douglass debates. I have a hard time believing that when push comes to shove, the Court would really believe that, and they avoided it here, I think, very deliberately.

Mr. DEUTCH. Thank you.

Thank you, Mr. Chair.

Mr. SCOTT. Thank you.

Let me ask a couple other questions. Is there any question that the ones we are aiming at are, in fact, obscene under present law? Do we need to pass any law to prohibit the ones that would fit the definition of obscenity?

Mr. BALLENGER. Not necessarily.

Mr. SCOTT. You just go into the present obscenity law and just get them? You can get them for the production, the distribution and sale?

Mr. BALLENGER. Presumably that is correct. But Congress frequently passes laws to express its particular contempt for conduct.

Mr. PERSILY. Can I add one thing on that? The obscenity prosecutions are extremely difficult. They are very rare, and a lot of it has to do with whether the work taken as a whole has any value, serious value.

Mr. SCOTT. If it is not obscene, what standing do we have to talk about the depiction?

Mr. PERSILY. Well, that is right. Then one has to go into this other category of cases dealing with the speech that is integral to criminal conduct. And we don't have a lot of cases on that, with the exception of, you know, child pornography cases as well as some other cases where it is mentioned, but which is really not applicable in this context.

Mr. SCOTT. Let us kind of discuss for a second the First Amendment implications of the depiction of criminal activity as opposed to criminal activity. You can show a video, a camera, a video of a robbery. The robbery is illegal. The depiction—I mean, you see them on television all the time.

Mr. PERSILY. That is right.

Mr. SCOTT. How do you get to the prohibiting the depiction? What are the First Amendment implications of trying to prohibit the depiction rather than the underlying act?

Mr. PERSILY. Well, that is why the child pornography cases are so unique.

Mr. SCOTT. In child pornography, first of all, you have the underlying crime. You have to commit a crime to produce it. And they keep talking about the ongoing harm to the child by the fact that the video is out there. You are inflicting ongoing harm. So there is harm in the production and ongoing harm in the sale. And that is why you can prohibit child pornography, and if you can't prove it is a real child, you lose your case.

Mr. PERSILY. No, that is right. One of the things that is important in this decision is that they describe the child pornography cases as a species of this category of unprotected speech dealing with speech integral to criminal conduct. The actual case they cite for that proposition is this case called Gibbony, which was really not even about this. It was about union protesters and whether their speech was—and boycotts violated State restraint of trade laws.

And so the question here though, again, is whether you have to regulate the speech in order to get to the underlying crime, all right? So that, as you were suggesting in your opening remarks, is this the type of industry that can only be regulated by regulating the speech, regulating the depiction of it? And for that we really only have one example, and that was child pornography. The Court specifically relied on the fact that you would dry up the market in child pornography by regulating the speech.

Mr. SCOTT. But also in that case, you had to commit a crime to produce the video.

Mr. PERSILY. That is right.

Mr. SCOTT. And you were continuingly inflicting harm as you sold it. How does that apply to depictions of other crimes? We are trying to do animal cruelty.

Mr. PERSILY. It doesn't. No. Those aspects of child pornography aren't applicable here.

Mr. SCOTT. And if the video is not inherently protected, I mean, if it is not—if it is not—if you are not talking about protected speech, where do we—what hook do we use to prohibit the depiction?

Mr. PERSILY. Well, that you were trying to get at the—you are saying if the underlying act was not criminal, or if it was?

Mr. SCOTT. You do not have to commit a crime to produce these videos if you produce it in a State where it may be legal, and there is no ongoing harm that you can talk about. And that was a hook on the child pornography.

Mr. PERSILY. That is right.

Mr. SCOTT. If the hook is that we dry up the industry by drying up the videos, and there is a strong—we would have to show that. Have we shown it?

Mr. PERSILY. That is right. I think that what you are hinting at here is that it is extremely difficult to use the child pornography example in the context of animal cruelty both because of the differences in the factual situations, but also that this exception to general content-based speech limitations that deals with speech integral to criminal conduct is a real slippery slope in that it is clearly the case that you can't ban the depictions of all criminal conduct. And the question is, well, what subset of criminal conduct could you do? And the child pornography cases are more than mere criminal conduct. There are all kinds of other interests that are being served by those bans. And then the question is, well, are the States' interests here similar enough to those to then fit into the exception?

But if you can't do it under that line of cases, then you have to go, I think, along the lines of banning it according to the obscenity cases.

Mr. BALLENGER. Can I offer a slight amendment? I think we are underselling the analogy to the child pornography cases a little bit here. Justice Alito makes a very powerful argument in his dissent in Stevens, which the majority of the Court doesn't really reach and disagree with in all its particulars, that there are very close analogies here; that the market, for instance, for dogfighting videos plays a very important role in the ongoing dissemination and propagation of the dogfighting industry. People sell these videos and disseminate these videos in order to prove that their dog has, you know, won a requisite number of fights to be considered a grand champion and be able to command, you know, $100,000 purses in subsequent bouts.

So you really can strike a blow at the underlying criminal activity by drying up the market for these depictions here in a way that was true in the child pornography cases, but isn't true, for instance, of convenience store videos of robberies, right? You could eliminate every convenience store video of a robbery in the world, and it probably wouldn't do anything to dry up the market for robbery. But that is not true here.

Mr. SCOTT. I think you pointed out that that was in a dissent for which the other eight did not agree.

Mr. BALLENGER. Well, they didn't reach those issues.

Mr. SCOTT. Okay. Professor Vladeck?

Mr. VLADECK. I will just add, I am largely in agreement with my colleague. All I would say is that I think—as you point out, Mr. Chairman, they didn't reach it, but I don't think this Court was particularly taken by the analogy, and your argument transcript, I think, reflects to some degree that they saw that there are fairly significant differences despite the analogies that Mr. Ballenger alluded to. There are entirely nonobjectionable uses of crush videos, I think, was what came out in the argument by animal rights groups who use them as advocacy pieces, by journalists who would use that as sort of parts of documentaries. So I think this is why the closer this is to obscenity doctrine, I think the safer the law will be, because the Court really just seemed very reluctant to add to the really sui generis child pornography category.

Mr. SCOTT. The gentleman from California.

Mr. LUNGREN. Let me try a slightly different direction. That is, the three of you have all agreed that the Court was—about the overbreadth of the statute before it, that it could apply to other things. Is there a way in which we could have a more specific, narrow definition of what is the animal cruelty that is to be objected to—that is to be the object of the statute? Or do we not deal with the overbreadth question by narrowing the scope of the definition of animal cruelty? And if, in fact, you can move in that direction, what suggestions would you have to a more narrowly designed definition of animal cruelty?

Mr. PERSILY. Well, you would have to, you know, take the Miller test and put it into the law, because that does narrow the potential applications. And so that is more narrow than the previous legislation and even describing it as regulating acts that are cruel. The Court said that the previous statute did not limit itself to extreme animal cruelty. At a minimum, that is the kind of thing that should be in the statute as well. And this was despite the fact that there was legislative history suggesting that that is what it was supposed to be targeting.

Again, also you have to make sure that while having the Miller exception there, that anything with more than de minimis—or you have to specify that something that has de minimis or a little more de minimis value, artistic, scientific, et cetera, value, is something that would be protected and would be exempted by the statute. So it is both in describing the speech that is regulated here and is also specifying what is exempted.

Mr. LUNGREN. I always wondered about that last part, about the more than de minimis artistic value and so forth, whether that just suggests that the person wants to create it, and they then construct a story around it.

Mr. PERSILY. And that is the problem. And that is what is going to happen.

Mr. LUNGREN. So you have longer videos with—no, no. I am serious about that.

Mr. PERSILY. That is why obscenity prosecutions are so rare these days, I mean, because the test as taken as a whole, right,

and the difficulty is you could always point to some artistic value at some point in the movie, and that is the exception that often saves the defendants.

Mr. LUNGREN. But I do know it when I see it. Can we write it that way?

Thank you, Mr. Chairman.

Mr. SCOTT. The gentleman from Tennessee.

Mr. COHEN. Thank you, Mr. Chairman.

I don't know if the gentleman from California has ever seen it. It is an admission against interest.

Mr. LUNGREN. No, no. I was lying on the description.

Mr. COHEN. Have you all had an opportunity to read the two laws that are before us? I have had some personal business I had to attend to. Have you all commented on—you have already done that. So for my edification, Mr. Ballenger, which of the two do you think is a better one to go forward?

Mr. BALLENGER. Well, I haven't studied the language of the current proposals carefully.

Mr. COHEN. Good admission. It is honest.

And have the other professors studied these carefully?

Mr. PERSILY. Each of them has problems, but each is also targeting a different problem. The scope of the speech that is regulated under each law is very different. If you want to make it more narrowly tailored, you are going to have to sort of combine the laws in some respects in order to get at some of these problems. And again, it depends on whether Congress is interested in regulating animal cruelty videos generally or a specific subcategory of them. And one bill goes after a specific subcategory, and another one goes more broadly.

Mr. VLADECK. I agree. I mean, the Peters bill, I think, has the slightly broader definition, but the more specific requirements. So including the previous discussion that Chairman Scott and I had about how—there is a requirement that the depiction be created with the purpose—the act of animal cruelty take place with the purpose of creating the depiction. The Gallegly bill, in contrast, doesn't have those specifics, but focuses on a narrower class of conduct.

I agree. I think there are positive additions to both pieces of legislation that could probably be put together for perhaps the most workable bill.

Mr. COHEN. That is why we have a brilliant Chairman, because he will do that before the markup, and I am sure he will consult with you all and put them together in some manner that is just fascinating and brilliant and something that all of the animal people will absolutely be appreciative of. I look forward to the Chairman's work.

Today we were talking about child pornography. I thought if you depicted something as being a child, even if the person or the depiction—the child was older than 16, or it was a depiction of a sketch and it really wasn't a child, I thought that still would fall under the child pornography laws. Am I wrong?

Mr. VLADECK. It would fall within the scope of the statute, but the Supreme Court, I believe, in *Ashcroft v. Free Speech Coalition* specifically held that that is unconstitutional to the extent that it

is not actually a child, because then the actual conduct is not child pornography even if the person thinks—even if the creator of the depiction thinks it is.

Mr. COHEN. But it continues the market, the idea of a market, which continues the desire for the person who has this need for this gratification to seek out this type of a medium, which puts the children in jeopardy. It is the same thing with the animals. Anything that contributes to creating and continuing the market I would think would come within the sphere of conduct that you could control, limit, prohibit so as to protect the species or the interests involved.

Mr. VLADECK. I mean, I think this is just where the Court has been clear that the First Amendment really doesn't—although if we all sat down and sort of thought about it carefully, we might think that this is the most logical way to do it. Sometimes the First Amendment requires approaches that are suboptimal.

Mr. COHEN. Thank you, Mr. Chairman. I look forward to your bringing all of this together in a very clear manner that will protect all.

Mr. SCOTT. We will see.

Other questions?

The gentleman from California.

Mr. LUNGREN. No, thank you.

Mr. SCOTT. I would like to thank our witnesses for your testimony today. Members may have additional questions, which we will forward to you and ask that you respond as promptly as you can so the answers can be made a part of the hearing record. The record will remain open for 1 week for the submission of additional materials.

Are there additional materials?

Without objection, the Subcommittee stands adjourned.

[Whereupon, at 11:45 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Statement by the Honorable John Conyers, Jr.

for the Hearing on
***United States v. Stevens* – The Supreme Court's Decision**
Invalidating the Crush Video Statute

Before the Subcommittee on Crime, Terrorism, and Homeland Security

Wednesday, May 26, 2010, at 10:00 a.m.
2141 Rayburn House Office Building

Good morning. Today's hearing will examine the recent decision of the Supreme Court that struck down the statute enacted in 1999 to prevent the sale of so-called animal "crush videos."

This matter raises important issues regarding effective deterrence of animal cruelty, in keeping with due respect for the First Amendment.

Before we proceed to our witnesses, I want to make three points about what we are trying to accomplish here today.

First, this Committee has the responsibility to examine the Court's decision in *United States v. Stevens*, and the reasons the Court articulated for invalidating this provision in the federal criminal code.

To begin with, we should take note that this was an 8-to-1 decision. I hope we can come to a consensus about what the decision means for us here, and its implications for any next steps we take. This hearing is a first, but important, step in this process.

Second, I want to make clear that I do believe Congress has a strong interest in deterring the types of animal cruelty that were the reason we adopted the original statute.

Animal crush videos present us with a situation that fortunately is uncommon: illegal acts of cruelty committed specifically so that they can be photographed or video recorded, and sold.

These acts would not take place but for the depictions, and the market for them.

I will want to hear from our witnesses about the Court's reasons for striking down the statute, and what room they believe the Court left for Congress to take a narrower or different approach in this area.

Third, I want to note the legislative proposals that have been introduced in reaction to the Court's decision. My colleagues, Gary Peters and Elton Gallegly, have authored bills in this area, and are here to discuss them today. I welcome them, and thank them for their leadership on this issue.

To provide a proper perspective for our consideration of any legislation on this topic, I think it is critical that we begin with a robust discussion and analysis of the constitutional issues involved.

I thank all of the witnesses for appearing here today, and I look forward to their testimony.

Animal Crush Videos Research & Investigation:

Descriptive Catalogue of DVD Folders Content

Bettina Camcigil

Research & Analysis

Humane Society of the United States

May 22, 2009

During the period from April 29, 2009 – May 22, 2009, extensive Internet research was conducted to ascertain the availability of small animal crush videos for sale on the Web. The research also served in general to gauge the pervasiveness of the online crush fetish community and the sale of videos of the more "mainstream" live crush victims, bugs, crustaceans and fish. In addition to Internet research, undercover communication was established via email with contacts found on some of the websites.

The folders in the attached DVDs are divided into 3 main ones:

(1) General crush-related websites

(2) Misc small animal crush and torture

(3) Misc fish, crustacean and bug crush

Within these folders are subfolders pertaining to each website/video storefront for which information was found. The documents are in a multitude of formats – webpages were saved as PDFs although in some cases photos of crushing from the websites were saved in JPEG format. Some of the websites and online stores selling crush videos had preview clips of the videos for sale. Debut Video Capture Software was used to record some of these preview clips as examples of the crushing content available, and these are saved in WMV format. A total of 7 videos of small animal crush were purchased from various vendors – 5 of these are in WMV format, one is

in AVI format, and one is in DIVX format. The websites/vendors from whom videos were purchased have *video(s) purchased* denoted after the folder name in the descriptive list below.

[Note: All the headings in **bold** below correspond to folder or subfolder titles on the DVD. Also, all information referred to in the following list, including Paypal transaction details, undercover email communications and domain registration details are saved within the folder it corresponds to.]

Due to the size of the content of the data (particularly the video files), there are a total of three DVDs accompanying this descriptive catalogue of folder content, and the content per DVD is as follows:

DVD #1:

General crush-related websites

Copy of this Descriptive Catalogue of DVD Folder Content

DVD #2:

Misc small animal crush and torture-Part 1 (includes the following subfolders: Crushheaven.com-small animal torture & crush; extreme.crushfetish.net & lethal.crushfetish.net-small animal crush; Squishy kitty and Squishy puppy; Chinese kitten crush; Zippo Cat)

DVD #3:

Misc small animal crush and torture-Part 2 (includes the following subfolders: Crushing Feet in Action - Frog Crush; creative-feet.com - Toad gecko turtle crush; genki-genki.com - Frog Crush; sexycrush.com - Mice and pinkies; Squishingnemo.com – Mice; Other)

Misc fish, crustacean and bug crush

(1) General crush-related websites

Top Crush Fetish Site Lists:

- http://myfeetlinks.com/crush/ A top list of crush fetish sites or lists with dedicated crush fetish categories
- http://123crush.com/ A guide to the Net's best crush and trample fetish sites

Online Stores Selling Crush Videos:

Although some of the larger, more prolific crush video producers have their own websites, the general trend is that crush fetishists make their own videos and then sell them through storefronts on the sites listed below. Even those that have their own crush websites, still seem to sell videos through these online video stores. Crush videos sold through these websites are the more "mainstream" bug, fish, or crustacean videos, and no small animal crush videos were uncovered for sale on any of these sites. Some of the sites, however, provided email addresses for the video producers/sellers, and undercover emails were sent to several of these.

- http://fetishworldclips.com One of the categories on the drop-down menu on the homepage is "crushing"
- http://nicheclips.com One of the categories on the drop-down menu is "crush fetish"
- http://prepaidclips.com One of the categories on the drop-down menu is "crush
- http://www.clips4xxx.com "Crushing" is one of the categories on this site
- http://www.xxxfetish-media.com One of the categories on the drop-down menu is "crush fetish"

(2) Misc small animal crush and torture

It is important to note here that all of the small animal crush videos uncovered for sale during this investigation were initiated through undercover email communication. Vendors of such material are generally wary of advertising these videos on websites. A couple sellers requested during undercover communication that the material not be shared with anyone.

Crushheaven.com-small animal torture & crush *videos purchased*

- http://www.crushheaven.com is registered through Godaddy.com, and the site's IP location is in Arizona. It is registered to a rain stuiet in beijin, China, though this is probably not the individual's real name or address. According to ranking data, the site had 281 U.S. visitors per month. (http://whois.domaintools.com/crushheaven.com)
- The website has the "standard" bug, fish and crustacean crush videos for sale on the "clipstore" section of its website. Some of these webpages are included as an example.

- Undercover email communication was initiated with the website (email sent to rainstuiet@hotmail.com) based on the following statement about custom videos: "you can choose model and victim for your custom video . please tell us the detail of whats you want .our custom video costs $200 for 30 min / $300 for 60 min with one model . please notice that we don make nude or dog crush video ." (sic)

- In response to my email enquiry, someone using the name rainstuiet gave me the password (333026) for the "Video store" section of their website where I was told I would find something interesting. This password protected part of the website had a total of 118 videos for sale of small animals, including rabbits, hamsters, mice and pinkies, tortoises, quail, chicken, ducks, frogs, snakes, and even cats, being tortured (including being burned, drowned and having nails hammered into them) and crushed. The videos range in price from $20 to $100. Each of these webpages with the descriptions of the videos for sale is saved as a PDF file, and some of the images from the site are saved as JPEGs.

- I was informed that I could pay for the videos via Paypal or Moneybookers (which apparently were not working for them at the time), or I could pay via Western Union or bank wire. I selected to pay via Western Union, and sent $235 for the following 4 videos:
    1. A-110 kim VS rabbits 14: kim crush 8 rabbits with 4 pair of sexy high heels
       Price: $40.00
       Run Time: 42 minutes
       File Size: 620 MB
       Format: .wmv
       Updated: 2009-02-1

    2. A-026 Adas sexy boots: Ada burning her victims ---rabbit , mice with lighter and cig at first , then crush them using three pair of boots .
       Price: $40.00
       Run Time: 35 minutes
       File Size: 508 MB
       Format: .wmv
       Updated: 2008-06-13

    3. A-028 tragic fate of the cat: A cat got long time tortured then crushed to death by red platform (can not see models face)
       Price: $80.00
       Run Time: 58 minutes
       File Size: 841 MB

Format: .wmv
Updated: 2008-06-13

4. A-091 tragic fate of the cats II Watch two cats got crushed to death after been long time tortured under sarahs cruel shoes .
Price: $75.00
Run Time: 56 minutes
File Size: 800 MB
Format: .wmv
Updated: 2009-02-05

- The personal information I was given by the contact at crushheaven.com for the purposes of sending payment to via Western Union was:
First name: Jinsong
Last name: Ren
City: ChengDu
Province: SiChuan
Country: china

- The same day of payment I started receiving downloads of the videos via YouSendIt. Since the videos were too large to forward in their entirety, they were broken into and sent in numerous WMV files. In total, the folder has 23 WMV files that correspond to the 4 videos I purchased. [Warning: The videos show rabbits and cats being brutally and slowly tortured, burned and crushed, and one can hear the animals continuously screaming and crying in pain.] The model speaks in English on occasion, for example telling the bunny he is so cute but he is going to die.

extreme.crushfetish.net & lethal.crushfetish.net-small animal crush ***video purchased***

- http://extreme.crushfetish.net/ and http://lethal.crushfetish.net/ are registered through Godaddy.com and the IP location is in Nevada. Crushfetish.net is registered to:
Lasnum, Sparekassegade 4, Aarhus C, Aarhus 8000, Denmark
According to ranking data, the site had 1,042 U.S. visitors per month.
(http://whois.domaintools.com/crushfetish.net)

- Links to the crushfetish.net sites are available at http://123crush.com/ and http://myfeetlinks.com/crush/ which provide lists of top crush fetish sites.

- Both the extreme.crushfetish.net and lethal.crushfetish.net websites have an "Enter" link, which, when clicked, take you to bxdx.com Adult Entertainment Network Online (http://lethal.crushfetish.net/enter.php) which requires either the input of a username and password or payment of a monthly fee to join for "unlimited access". A free username and password were found at http://www.bugmenot.com/view/bxdx.com (a website which provides free account passwords to bypass compulsory registration) as follows:
  Username: hankman
  Password: luckycat

- Both websites do not actually have any videos, only pictures of small animals such as mice, pinkies, rats, frogs and turtles being crushed. All of these photos are saved as PDFs in the folder. The sites also have photos of snail, bug and crustacean crushing.

- Undercover email contact was initiated with the site (email sent to lasnum@gmail.com) enquiring whether there were any videos for sale. The individual responded saying that they have some real extreme rabbit and mouse videos which they purchased themselves for $100 per movie. I was informed that this extreme content cannot be purchased directly from the web. "Will give to many problems" (sic). The person explained that they had made contacts from the web, and some time ago the clips were available online. It seems, therefore, that this person does not produce their own crush videos, but rather buys them off the Internet and then tries to profit by selling the images and videos of other people's material.

- This was particularly evident when the individual sent me images from the rabbit crush videos they were offering to sell. Five of the videos appeared to be from crushheaven.com (same method of numbering and titling the videos such as "Ada's sexy boots", same models, and same type of vidcap photos of rabbit crushing available on their website.) Seven of the rabbit crush videos I was offered for sale appear to have been produced by someone other than crushheaven.com, seem to involve larger rabbits being crushed, and have titles such as "For Her Pleasure", "Crossed Leg Caress", "Bunnycide", "Bootcrush Series", "Higher Power" and "Rabbit Boots". I ordered a 41 min long video called "The Ritual" for $50. All of the vidcap photos of these videos that I was forwarded are saved as JPEGs in the DVD in a folder within this site's folder entitled **Email communication with person behind the sites.**

- Payment was sent for the video via Paypal, and the Paypal transaction details reveal this individual to be someone by the name of Johnny Pedersen. This individual was somewhat paranoid, and told me to not share these videos with others and to not tell anyone where I got the videos. He also requested that after I download the video I let him know so that he

can remove it. "I dont want these files to be online at my server so the hosting company (or others) can see them."

- After payment was made, the individual forwarded me a link to download the video. The video (entitled "High Heel Hell Part III - The Ritual") is in AVI format and is saved in a folder within the **extreme.crushfetish.net & lethal.crushfetish.net-small animal crush** folder entitled **Email commuuication with person behind the sites.** [Warning: The footage features a kinkily clad model bringing 5 larger rabbits in consecutive order into a room on a leash. She then proceeds to crush them one after the other with high heels, pounding on their backs and heads until they are bleeding. At the end, the dead rabbit bodies are placed around the room while strange music plays and red lights flash, then the 5 dead rabbits are shown placed in the shape of a cross.]

  Throughout the video "lethalpressure.com" is displayed and at the end of the movie "© 2004 Lethal Pressure" is displayed. Lethalpressure.com no longer appears to be an active website. However, research on the Internet Archive's Waybackmachine (http://web.archive.org/web/*/http://www.lethalpressure.com) shows that the website, which was also called the "Russian Foot Fetish Project", had an Internet presence from the end of 2002 until the beginning of 2008. Not surprisingly, it seems that this was somewhat of a troubled Internet presence. Until about May 2003, the site actually made publicly available lists of their videos for sale which involved the crushing of mice, hamsters, frogs, and rabbits. In June 2003 they started restricting public access to the featured material, and visitors were informed that in order to gain access to the site, they must apply with their email address and await further instructions. In August 2003, the website posted the following statement: "We've got a massive attack from www.veganlink.it and a few other italian and international animal rights activists groups. That's why the only thing you can see at the moment is this page. SAY THANKS TO ARA! and remember that we, monsters, never give up :)" Finally, from the beginning of 2004 until the beginning of 2008, there was only an email address at the website, so they were likely selling small animal crush videos to people who emailed and specifically requested them.

sexycrush.com - Mice and pinkies ***video purchased***

- http://www.sexycrush.com/ is registered through Tucows Inc. and the IP location is in Budapest, Hungary. The site is registered to: pergel, Lajos str 113, budapest, obuda 1036, HU. According to ranking data, the site had 992 U.S. visitors per month (http://whois.domaintools.com/sexycrush.com).

- The website does not actually have any crushing of live creatures for sale. The "videos" link on the site just has food and object crushing, and the link to "video clips" takes you to this individual's video store at http://www.clips4sale.com/store.pl?1054 which also does not seem to sell any animal crushing videos.

- Undercover email contact was initiated (email sent to ladycrush@sexycrush.com), and someone calling themselves Lady Crush responded saying that they have 17 mouse/pinky crush movies for sale and provided me a list with prices. The crushing videos include mice being crushed in-shoe, with different kinds of shoes, and with nylons. One video apparently involved the crushing of 20 mice in pantyhose. I was also forwarded a link on their website to vidcaps of all 17 videos. All of these images are saved as JPEGs in the folder. Oddly though, the mice in all the vidcap images are blurred out and each image includes the following statement: "Victim blurred to comply with law".

- I purchased the following video: "Video017 - 30 min indoors 4 pinkies and 4 mice crushed in-shoe and on the floor in thin nylons and fishnets. Two different mules, POV shots from under glass (price: USD 40)". Payment was forwarded via Paypal to what Lady Crush informed me was the Paypal account of her pedicurist. Paypal transaction details reveal the payment was made to a Zsuzsanna Toth.

- Once payment was received, I was forwarded a link that had been set up for me to download the video. I was informed that I have 24 hours to download it before it is automatically deleted from the server.

- The video is in WMV format. In it initially mice and then pinkies (new born mice with their eyes still fused shut) are strapped to the inside of a stiletto shoe with a rubber band while the woman steps on them. The animals are moving and struggling to get away while they are being crushed in the shoe. Some of the mice are crushed on the floor while wearing nylons. Bizarrely, throughout the video the woman makes sexual noises while crushing the mice.

Crushing Feet in Action - Frog Crush *video purchased*

- This is not a website but rather the storefront name of someone who sells videos through the various online video stores selling crush videos. Videos of goldfish, crustaceans and

bugs being crushed by young women are available for sale by this storefront at the following sites:
http://nicheclips.com/shop.php?store_id=56
http://prepaidclips.com/store/3358
http://www.xxxfetish-media.com/shop51/shop.php?&dept=145

JPEG images and video captures of preview clips in WMV format of this vendor's fish and crustacean crushing videos are in the **Crushing Feet in Action** subfolder in the **Misc fish, crustaceau and bug crush** folder.

- Undercover email communication was initiated with the person producing these videos (email sent to michaelstrada@hotmail.com). I received the following response from an individual going by the name of Michael Strada: "Unfortunately I don't do mouse crush or anything as hard as I wouldn't want to risk trouble for money (and I could never be persuaded to change my mind). The problem is that mice are mammals and so this has lead to problems especially for the people making and selling this material. The hardest thing that I do is African dwarf frogs. I have a lot of it done but mostly barefoot with a little shoe….Please keep in mind I am not the least bit troubled by your request and appreciate your boyfriend's preferences."

- I requested to purchase a frog crush video, and was given the options of choosing which girl I would like, what kind of crush I want to see (under glass, floor view, dance crush) and what part of the foot (ball of the foot, toe, or heel). I chose under glass footage and mentioned the names of a couple of his models. He replied that he had a 34.5 minute clip with one of the girls (she crushes with all parts of her feet but mostly her toes), and that I could have it for $50. He said that the video was made 2 years ago and it was the first time she did frogs. His comment: "I think it is a pretty good clip with a sexy girl." He also suggested that I download Yahoo Instant Messenger and add him as a contact so that he could give me the clip directly.

- He requested payment via Paypal. When I suggested that I could pay via Western Union and that I would need his first and last name and city and country to make a Western Union money transfer, he replied as follows: "I have too many enemies and I have had too many people try to get personal information from me over the years and so I am unwilling to give away personal information such as my real name in an e-mail to anybody requesting it…. I do not wish to to uncooperative or unreasonable but I have justifiable reasons for not wishing to disclose this information." I therefore cooperated and made payment via Paypal.

- As he said he would, he sent me the link to download via Yahoo Messenger. The video is saved in the folder and is in DIVX format. (It may require the free download of a divx player available at www.divx.com). In the video, he is filming under a glass table as a young woman crushes numerous small frogs barefoot. Even after being crushed repeatedly, some of them are still alive and moving. The girl also rips some of the frogs apart with her toes. At one point in the video, the man filming speaks and has a very distinctive Canadian accent.

- During a Live Yahoo Messenger chat with this individual (which I recorded via Video Capture software and saved in the folder as a WMV file), he tells me that this was the girl's first time crushing frogs and that "she becomes even more cruel when she crushes frogs on subsequent sessions". He also admits that I will occasionally hear his voice on the video because they are unedited. He says that he doesn't have time to edit these clips because they do not go out to many customers, and that I am the first person to have this clip in its entirety. He asks me therefore not to share it. Interestingly, he also informed me that he had spent $25,000 making these clips and has had maybe $1,000 returned in sales.

- Despite this individual's worries about concealing his real identity, perhaps he is unaware that the Paypal transaction details have what presumably is the receiver's real name. My payment for the frog crush video was made to an individual by the name of Roberto Tonani. A bit of Internet research revealed that this person is likely a teacher at Neil McNeil High School in Toronto, Canada, part of the Toronto Catholic District School Board. A blurb from a 2005 edition of the school's newsletter (at http://www.tcdsb.org/neilmcneil/pdf/alumnifall2005.pdf) announces the "Return of Mr. Tonani": "Robert Tonani (Class of '84) has been a key player on the Neil teaching staff for the past 10 years. Rob was diagnosed with leukemia and over the last two years underwent chemotherapy, and had a successful bone marrow transplant. We are pleased to report that Rob has returned to teaching at Neil." A search in the Toronto Catholic District School Board's Staff Directory at http://www.tcdsb.org/PublicStaffDirectory reveals that Roberto Tonani is still listed as a teacher at Neil McNeil School.

Squishingnemo.com – Mice

- http://www.squishingnemo.com is registered through Tucow Inc. and the site's IP location is in California. The domain registration is only given in the whois record as Lunarpages Web Hosting in CA. (http://whois.domaintools.com/squishingnemo.com) In order to ascertain the country in which the website is actually registered, a call was made

to Lunarpages Web Hosting. Someone in Tech Support informed me that the website was owned by someone in South Africa.

- The website has crush videos for sale of mostly goldfish, some crayfish, bugs, and snails which can be purchased through the site by emailing your request or by purchasing directly through their storefront at two of the online video stores who sell crush videos:
  https://www.xxxfetish-media.com/shop130
  http://www.nicheclips.com/shop.php?store_id=121
  PDFs of these webpages are in the **squishingnemo.com** subfolder in the **Misc fish, crustacean and bug crush** folder.

- The website has a "Custom Video" page which says that they can also do custom videos - contact them and they will do their best to meet your needs. (http://www.squishingnemo.com/CustomVideos.htm).

- Undercover email communication was initiated with the site (email sent to squishingnemo@squishingnemo.com). The following reply was received: "We plan to make some mice clips very soon. I'm just building up an email list, so I'll put you on the mailing list and will email you as soon as we've filmed them."

creative-feet.com - Toad gecko turtle crush

- http://www.creative-feet.com/ is registered through Network Solutions, LLC and the site's IP location is in New Jersey. The site is registered to Creative Site, 507A rue Vermont, Longueull, QC J4J2K4, CA. According to ranking data, the site had 180 U.S. visitors per month (http://whois.domaintools.com/creative-feet.com).

- The site sells crush videos through the "Video Store" on its website at http://www.creative-feet.com/videos_store.html, and payment is to be made via international money postal order to an address in Quebec, Canada. There are videos for sale of the crushing of bugs, snails, crustaceans and fish (including piranhas). In addition, there are also videos for sale of the torturing and crushing of other animals like toads (one video for sale involves the crushing of 24 toads with sandals and barefoot and another involves torturing toads with fire, wax, and cigarette), turtles, and geckos.

- The website has some free trailers of some of their crushing videos available at http://www.creative-feet.com/free_clip.htm. Video Capture software was used to record preview clips of crabs, lobsters, a scorpion, fish, tarantula, frog and geckos being crushed. These are all saved in the folder in WMV format. One preview clip (also saved

in the folder) involves a baby duck being rather forcefully stroked by a foot – it is not clear whether the duck was a crushing victim or not.

- Undercover email contact was initiated (email sent to creativefeet@yahoo.ca), but no response was received.

Chinese kitten crush

- Photos of another Chinese kitten crusher were posted on the Chinese language news site http://bbs.news.163.com/bbs/photo/86705095.html. All of the images are saved as JPEGs in the folder. [Warning: The photos show a kitten being crushed by high heeled boots, including the eyeball coming out of the kitten's head. The crusher also cuts the kitten open with scissors and there is a photo of the guts hanging out.]

- Outrage about the photos are expressed at http://www.chinasmack.com/pictures/kitten-killers-return/

Squishy kitty and Squishy puppy

- These are two separate videos showing an Asian lady crushing a puppy in one video and a kitten in another. Both are saved in the folder in WMV format. [Warning: Both the puppy and kitten are crushed until blood is pouring out of their head. The eyeball comes out of the kitten's head and she tries to crush that. She inserts her heel through the puppy's eye socket.]

- Both of these videos were available at some point in the past through www.snuffx.com, a site which describes itself as containing graphic depictions of violence and explicit sex. Athough it appears that they are no longer on that website, they can both still be downloaded for free through rapidshare files on 4chan's Rapidshare board at http://rs.4chan.org/?s=squish.

- According to Snopes, the *Shanghai Daily* reported that the videos caused outrage in China and that volunteers tracked down the video producer. Reportedly, once the names of the actress and producer surfaced, Luobei government officials, aided by the police, contacted their employers and suggested that they be sent home from their jobs to write self-criticisms (http://www.snopes.com/photos/gruesome/crushvideo.asp).

genki-genki.com - Frog Crush

- The Japanese website http://genki-genki.com produces and sells videos mainly involving the insertion of live marine animals (such as frogs, octopi, eels, sea slugs and fish) into genitalia and other orifices. One appears to involve the butt crush and ripping apart of a large live frog, and the preview clip of that video (at http://genki-genki.com/modules/tinyd36/index.php?id=13) was recorded via Video Capture software and is included in the folder in WMV format.

Zippo Cat

- This does not involve crushing, but is just included as an example of the demand for videos depicting animal cruelty. In a thread on snuffx.com's Forum entitled "Torturecat/Zippocat" (at http://forum.snuffx.com/showthread.php?t=1216&highlight=squish), an individual writes a post requesting these videos, apparently of a guy setting a cat on fire. Someone responds by posting a link to a "drowncat" video, and someone else posts a link to a "skinnedcat" video. Yet someone else posts the link to the Squishy Kitty video. Another person posts a link through rapidshare to zippocat. Finally, even on this twisted message board, someone posts the question: "Why do you need to see animals being tortured." The message thread is saved in the folder as a PDF.

- Though a Zippocat video could not be found, images from it which show a kitten set on fire are at http://www.zoneshot.com/server/dg/zippo%20cat.jpg and http://zippocat.ytmnd.com.

Other

- An advertisement for http://www.bestcrush.com (at http://crush-links.erogenous.biz/index.php?a=stats&u=bestcrush) says: "Hi there! My name is Brandy and this is my crush-fetish site! I do thousants of worms,bugs, some tarantulas, scorpions and even mouse! Hear them crunch under my sexy high heels and watch them die under my cute feet!" (sic) However, the website bestcrush.com is no longer active, so no contact was initiated.

- An image of a newt being crushed was found through one of the online video stores selling crush videos (http://nicheclips.com).

(3) Misc fish, crustacean and bug crush

Though a few of the names listed below have their own crush-related websites, most of them are storefronts which sell crush videos through some of the several online video stores that cater to this fetish.

Crushing Feet in Action

- This is the storefront name of someone who sells videos through the various online video stores selling crush videos. Videos of goldfish, crustaceans and bugs being crushed by young women are available for sale at the following sites:
  http://nicheclips.com/shop.php?store_id=56
  http://prepaidclips.com/store/3358
  http://www.xxxfetish-media.com/shop51/shop.php?&dept=145

- JPEG images and video captures of preview clips in WMV format of this vendor's fish and crustacean crushing videos (including the burning of a live goldfish) are saved in the folder. For information about this individual's frog crush videos and real identity, please see above and subfolder entitled **Crushing Feet in Action – Frog Crush** in the main **Misc small animal crush and torture** folder.

squishingnemo.com

- http://www.squishingnemo.com is registered through Tucow Inc. and the site's IP location is in California. The domain registration is only given in the whois record as Lunarpages Web Hosting in CA. (http://whois.domaintools.com/squishingnemo.com) In order to ascertain the country in which the website is actually registered, a call was made to Lunarpages Web Hosting. Someone in Tech Support informed me that the website was owned by someone in South Africa.

- The website has crush videos for sale of mostly goldfish, some crayfish, bugs, and snails which can be purchased through the site by emailing your request or by purchasing directly through their storefront at two of the online video stores who sell crush videos:
  https://www.xxxfetish-media.com/shop130
  http://www.nicheclips.com/shop.php?store_id=121
  PDFs of these webpages are saved in the folder.

- For information about the website's intentions to start making mice crush videos, see above and the **Squishingnemo.com – Mice** subfolder in the main **Misc small animal crush and torture** folder.

Crushbabes.com & Chloecreations.com

- http://www.crushbabes.com is registered through Godaddy.com, Inc. and the site's IP location is in New Jersey. The site is registered to: M Chloe, PO Box 83927, San Diego, California 92138. According to ranking data, the site has 3,968 U.S. visitors per month (http://whois.domaintools.com/crushbabes.com).

- http://www.chloecreations.com is registered through Network Solutions, LLC and the site's IP location is in New Jersey. It is registered to: Chloe Creations, P.O. Box 83927, San Diego, CA 92138. According to ranking data, the site has 9,489 U.S. visitors per month (http://whois.domaintools.com/chloecreations.com).

- Available crush videos are listed at http://www.chloecreations.com/cart/crushvideos.htm, and include the crushing of bugs, snails, goldfish, and crustaceans. One can also become view their older sit crush and crush material in the archives of photos and video clips that are no longer on the site by joining and becoming a member (http://www.crushbabes.com/ca/ca.html). Crush Babe's videos are also for sale at their storefront on the online video stores that sell crush videos: http://fetishworldclips.com/chloecrush/index.php?start=0 and http://nicheclips.com/shop.php?store_id=64

- A chloecreations.com video of two large live crabs being crushed by someone wearing sandals was found available as a rapidshare file on Rapid Library (http://rapidlibrary.com), and is saved in the folder in WMV format.

- Undercover email communication was initiated with the site (email sent to customs@chloecreations.com), enquiring about crushing videos of small animals such as mice. The response that was received from a Mistress Chloe was: "No that is illegal."

crushcuties.com & crushtalk.com

- http://www.crushcuties.com is registered through Godaddy.com, Inc. and the site's IP location is in New York. The site is registered to Domains by Proxy, Inc. in Arizona.

According to ranking data, the site has 3,324 U.S. visitors per month (http://whois.domaintools.com/crushcuties.com).

- The contact and address listed on the website (at http://www.crushcuties.com/store01.html) are: Bill Tracy, P.O. Box 1065, Montague, NJ 07827

- Videos of bugs, goldfish and crustaceans being crushed are available not directly through the website, but through the site's clip stores at the following links:
  http://fetishworldclips.com/crushcuties/index.php?start=0
  http://nicheclips.com/shop.php?store_id=46
  http://prepaidclips.com/store/5862
  http://xxxfetish-media.com/shop12/shop.php?&dept=81

  One can also request clips on DVD (http://www.crushcuties.com/store01.html).

- Vidcap images from the videos for sale by Crush Cuties of goldfish and crustaceans being crushed are saved in the folder as JPEGs. A preview clip of some of their videos was recorded via Video Capture software and is saved in WMV format in the folder.

- Undercover email communication was initiated with crushcuties.com (email sent to sales@crushcuties.com) enquiring about small animal crush videos, and someone by the name of Bill responded as follows: "Sorry no, I don't make illegal videos. Never have and never will. I don't really associate with anyone that makes them either."

- Crush Cuties is also the site administrator of http://www.crushtalk.com, a message board for crush fetishists. Crushtalk.com is registered through Godaddy.com, Inc. and the site's IP location is in New York. The site is registered to: William Tracy, P.O. Box 1065, Montague, New Jersey 07827. According to ranking data, the site has 796 U.S. visitors per month (http://whois.domaintools.com/crushtalk.com). The message board rules include the following prohibition: "Discussion of illegal crush videos, or anything illegal - period. If you're into that crap - please go somewhere else and stay away from this board." (http://www.crushtalk.com/viewtopic.php?f=25&t=64)

Latin Crush Goddesses

- This is a storefront selling crush videos that describes themselves as: "Sexy young latina girls crushing insects, cockroaches, goldfishes, earthworms, snails, and other tiny pests

under their SEXY feet, sandals, boots or even barefoot." The videos are for sale at the following sites:
http://nicheclips.com/shop.php?store_id=71
http://prepaidclips.com/store/10655

- Undercover email communication was initiated enquiring about small animal crush videos, and Latin Crush Goddesses responded that they don't produce "hard crush".

crush-fetish.net

- http://crush-fetish.net is registered through Enom, Inc. and the site's IP location is in the United Kingdom. The registrant is only listed in whois records as Whois Privacy Protection Service, Inc. According to ranking data, the site had 2,192 U.S. visitors per month (http://whois.domaintools.com/crush-fetish.net).
- Videos of bugs, snails, goldfish and crustaceans being crushed are available for sale directly through the Clip Store of the website at http://crush-fetish.net/store/index.php, as well as through their storefront at http://www.xxxfetish-media.com/shop68.

crush.to

- The website http://www.crush.to claims to produce "retrostyle psychedelic crush movies" (http://www.upgrade.to/crush/newmenu.htm). Crush videos of bugs, snails and crustaceans are not available for sale directly on the website, but can be purchased at the following sites:

  http://www.xxxfetish-media.com/shop184/

  http://nicheclips.com/shop.php?store_id=109

  http://prepaidclips.com/store/15620

  http://www.prepaidclips.com/store/1382

Asian Crusher

- The storefront name of someone selling videos through the online video stores that sell crush videos. Videos of the crushing of fish, eels, crustaceans, snails, and bugs by Asian girls are available for sale at the following sites:
  http://nicheclips.com/shop.php?store_id=76
  http://prepaidclips.com/store/10440

- It is likely that crushheaven.com is behind the "Asian Crusher" storefront. The names of the models are the same, and where faces can be seen, some of the girls are the same ones who conducted the small animal crushing discussed above and for which photos and videos are saved in the **Crushheaven.com-small animal torture & crush** subfolder of the **Misc small animal crush and torture** main folder.

blackat crush fetish clips

- BlacKat has a website at http://216.246.15.24/blackat/index.htm which has sample pictures of their videos. They intend to start making custom videos very soon, though they state that they "will make movies with Objects, Food, Fruits, Crickets and Mealworms NO ANIMALS" (http://216.246.15.24/blackat/custom.htm)

- Their bug crush videos are for sale at:
  http://www.xxxfetish-media.com/shop164
  http://nicheclips.com/shop.php?store_id=114

Brenda's World

- Storefront with bug, fish and crustacean crush videos for sale at
  http://www.xxxfetish-media.com/shop137/

- A preview clip of the videos was recorded via Video capture software and is saved in the folder as a WMV file.

Bug Crush by Katelyn Brooks

- Storefront with bug, fish, crustacean and snail crush videos for sale at:
  http://fetishworldclips.com/goddesskatelyn/index.php?start=0

http://prepaidclips.com/store/22696
http://prepaidclips.com/store/8427
http://www.xxxfetish-media.com/shop187/shop.php?&dept=308

- This individual also has a website at http://www.giantesskatelyn.com/ and has her crush videos for sale there as well at http://www.giantesskatelyn.com/store/index.php?_a=viewCat&catId=13

Chicago Crush Girls

- Storefront selling bug, snail and fish crush videos at: http://www.xxxfetish-media.com/shop114

Classic Stilleto Crush

- Storefront selling bug, goldfish and crustacean crush videos at: http://www.xxxfetish-media.com/shop212

- A preview clip of the videos was recorded via Video capture software and is saved in the folder as a WMV file.

Crush Angels

- http://crushangels.com/ and http://crushangels.net/ are the websites, but the videos of bugs being crushed are sold through their storefront at https://www.xxxfetish-media.com/shop42/.

Crush Cowboy

- Storefront selling bug, snail, crab and fish crush videos at http://www.xxxfetish-media.com/shop204/

Crush Goddess Kelly

- Storefront selling fish and crustacean crush videos at http://nicheclips.com/shop.php?store_id=89

Crush Goddesses

- Storefront selling bug and snail crush videos at http://prepaidclips.com/store/2080 and http://www.xxxfetish-media.com/shop13/

Crush Palace Dreamgirls

- Storefront selling bug, fish and crustacean crush videos at http://nicheclips.com/shop.php?store_id=119

- A preview clip of the videos was recorded via Video capture software and is saved in the folder as a WMV file. JPEG images of fish and crustacean crush are also saved in the folder.

Crush Pro

- Storefront selling bug, fish and crustacean crush videos at http://nicheclips.com/shop.php?store_id=102 and http://prepaidclips.com/store/29127

Crush Studs

- Storefront selling bug, fish and crustacean crush videos at http://www.xxxfetish-media.com/shop87

- A preview clip of the videos was recorded via Video capture software and is saved in the folder as a WMV file.

Crush Them Slowly

- Storefront selling bug, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=77
  http://prepaidclips.com/store/11306
  http://www.xxxfetish-media.com/shop46

- JPEG images of crustacean crush are saved in the folder.

Crush with High Heels

- Storefront selling bug, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=40

Crushed 2 Mush

- Storefront selling snail crush videos at:
  http://nicheclips.com/shop.php?store_id=116
  http://prepaidclips.com/store/21914

Crushed Under Jock Feet

- Storefront selling fish and crustacean crush videos at:
  http://www.xxxfetish-media.com/shop191

Crushedit

- Storefront selling bug, snail and fish crush videos at:
  http://nicheclips.com/shop.php?store_id=124

- GIF images of goldfish crush are saved in the folder.

Crush-Fetish PPV

- There is a website, http://www.crush-fetish.com, but the videos of snail, fish and crustacean crush are sold through the storefront at:
  http://nicheclips.com/shop.php?store_id=12

- JPEG images of crustacean and fish crush are saved in the folder.

Crush-Fun Holiday

- Storefront selling snail and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=42
  http://www.xxxfetish-media.com/shop150/

Crushgirl Arika

- Storefront selling bug, snail and crustacean crush videos at:
  http://www.xxxfetish-media.com/shop143/

Ebony Crush Beauties

- Storefront selling bug, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=67
  http://prepaidclips.com/store/10451

- JPEG images of crustacean crush are saved in the folder.

GTS Feet & Crush-Japan

- Sells videos of bug and crustacean crushing through their website
  http://www.feet-crush.com.

- Undercover email communication was initiated with the site enquiring about small animal crush videos, and the following response was received: "I'm sorry. I am unable to realize your request. In the case of Japan, it will be arrested."

- JPEG images of crustacean and bug crush are saved in the folder.

Guys Crushing

- Storefront selling bug, snail, fish and crustacean crush videos at:
  http://www.xxxfetish-media.com/shop155

Hot & Sexy Crusher

- Storefront selling bug and fish crush videos at:
  http://www.xxxfetish-media.com/shop202/

I-Love-Crush

- Storefront selling bug, snail and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=122
  http://www.xxxfetish-media.com/shop213/

Josephina's Crush Forum

- Storefront selling bug, snail, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=50

- JPEG images of crustacean and fish crush are saved in the folder.

Kay & Company-DnKs World

- Storefront selling bug, snail, fish and crustacean crush videos at:
  http://prepaidclips.com/store/120
  http://prepaidclips.com/store/4309
  http://www.xxxfetish-media.com/shop91

kristaworld.com

- The website http://www.kristaworld.com/ merely provides a means to link to the site's storefront selling bug, fish and crustacean butt crush and crush videos at:
  http://www.xxxfetish-media.com/shop28

Miss K's Crush

- Storefront selling bug and snail crush videos at:
  http://prepaidclips.com/store/2608
  http://www.xxxfetish-media.com/shop11/

Mistress Aryel

- Storefront selling snail, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=4

- JPEG images of crustacean and fish crush are saved in the folder.

Latin Angels

- Storefront selling bug and crustacean crush videos at:
  http://prepaidclips.com/store/14413
  http://www.xxxfetish-media.com/shop53

Ms Christina's High Heel Crush

- Storefront selling bug, snail, fish and crustacean crush videos at:
  http://fetishworldclips.com/mschristina/index.php?start=0
  http://nicheclips.com/shop.php?store_id=118

Sexy Hot Milf Crush

- Storefront selling bug, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=55
  http://prepaidclips.com/store/18656

Southern Crush

- Storefront selling bug, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=112

Southern barefoot & finger crush

- Storefront selling bug and fish and crush videos at:
  http://prepaidclips.com/store/1990

Squish Vixens

- Storefront selling bug crush videos at:
  http://nicheclips.com/shop.php?store_id=117

Squished_Under _Shoes

- Storefront selling bug, snail and fish crush videos at:
  http://nicheclips.com/shop.php?store_id=28
  http://prepaidclips.com/store/1241

Starrs World of Crush

- Storefront selling crustacean crush videos at:
  http://www.xxxfetish-media.com/shop43/

Summertime Crush shop

- Storefront selling bug and snail crush videos at:
  http://www.xxxfetish-media.com/shop166

Tales from her Soles

- Storefront selling bug and crustacean crush videos at:
  http://prepaidclips.com/store/14347
  http://www.xxxfetish-media.com/shop52

Texas Crush

- Storefront selling bug, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=101
  http://www.xxxfetish-media.com/shop169/

Thirsty for Feet

- Storefront selling bug, fish and crustacean crush videos at:
  http://nicheclips.com/shop.php?store_id=20
  http://www.xxxfetish-media.com/shop82

Undershoes & hightheelscrush.com

- The website http://www.hightheelscrush.com has a link called "insects crush" which takes you directly to their videos of bug, snail, fish and crustacean crushing for sale at their "Undershoes Store" at http://nicheclips.com/shop.php?store_id=60. They also have some crush videos for sale at http://prepaidclips.com/store/3575.

Urban Stomping-Ground

- Storefront selling bug and crustacean crush videos at:
  http://www.xxxfetish-media.com/shop174

Crush by Stilettos

- Storefront selling bug, snails and crustacean crush videos at:
  http://prepaidclips.com/store/22216

Crush Fantasies

- Storefront selling bug crush videos at:
  http://fetishworldclips.com/crushfan/index.php?start=0
  http://prepaidclips.com/store/18239

Crush Crawler

- Storefront selling bug and snail crush videos at:
  http://prepaidclips.com/store/13831

Crush Flash 2

- Storefront selling bug, fish and crustacean crush videos at:
  http://prepaidclips.com/store/3299

Crushing Ellen Store

- Storefront selling fish crush videos at:
  http://prepaidclips.com/store/15008

Crushpage Clipstore

- Storefront selling bugs and fish crush videos at:
  http://prepaidclips.com/store/2758

Kasualkrush

- Storefront selling bugs crush videos at:
  http://prepaidclips.com/store/16704

Goddess Megan's Bug Crush

- Storefront selling bug, fish and crustacean crush videos at:
  http://prepaidclips.com/store/6484

First Best Crush Store

- Storefront selling snail and crustacean crush videos at:
  http://prepaidclips.com/store/2348
  http://fetishworldclips.com/ivanka/index.php?start=0

Crush Central

- Storefront selling and fish crush videos at:
  http://prepaidclips.com/store/16440

Underfeet crush store & underfeet.net

- The website, http://www.underfeet.net, has images of bug, snail and fish crushing, but clicking on the images takes one to a members-only, username and password required dialog box. Videos are for sale through the "Underfeet crush store" at http://prepaidclips.com/store/9332 and http://nicheclips.com/shop.php?store_id=106.

Emma's Kingdom Bug Crush

- Storefront selling bug, snail and crustacean crush videos at: http://prepaidclips.com/store/2057

Crush Playmates

- Storefront selling bug, fish and crustacean crush videos at: http://prepaidclips.com/store/13668

Sophia & Lou Crush Store

- Storefront selling snail crush videos at: http://prepaidclips.com/store/9704

Under her cruel shoes & boots

- Storefront selling bug and snail crush videos at: http://prepaidclips.com/store/4149

Nude Crush Girl

- Storefront selling fish crush videos at: http://prepaidclips.com/store/3039

Miss Crush and misscrush.com

- The website, http://www.misscrush.com, has bug crush videos available though one has to join and become and member to view. The videos are also available for sale at http://prepaidclips.com/store/8364.

Sneakercrushing

- Storefront selling bug and fish crush videos at:
  http://prepaidclips.com/store/2050
  http://www.xxxfetish-media.com/shop183

I-Crushgirl

- Storefront selling bug, snail and fish crush videos at:
  http://fetishworldclips.com/I-Crushgirls/index.php?start=0

Sabrina's High Heel Stiletto Crush

- Storefront selling bug crush videos at:
  http://prepaidclips.com/store/1977

Ada Prett HighHeel Crush

- Storefront selling fish, crustacean and newt crush videos at:
  http://nicheclips.com/shop.php?store_id=104

- This storefront might also be related to the Chinese website www.crushheaven.com as the model seems to be the same one used on that site for the more "extreme" small animal crush videos.

Crazy Angel

- The website, http://www.crazy-angel.de, has fish crustacean, bug, and snail crushing videos available, although one has to email for a password to see what is available (Username: crazy and Password: welcome). They say on the site that they make custom DVDs, and while they say they are open to all crazy ideas and desires, they do not produce any movies with "vertebrates" (http://www.crazy-angel.de/en/CustomDVDs.htm).

Crush Me, Kill Me

To understand Florida's most bizarre unsolved murder, it helps to wear stiletto heels.

By Julia Reischel
published: April 20, 2006

Seven years ago, Louis James Vestal and Robert Lineberry interrupted their friend Bryan Loudermilk performing one of the most extraordinary sex acts to occur on Florida soil. Lineberry, a drifter, had been living in a metal shed on Loudermilk's property in the town of Okeechobee. Loudermilk, his wife, and three children lived in a doublewide trailer on the north side of town, and as Vestal and Lineberry drove by on a Monday afternoon in June at about 4 o'clock, they saw that someone's feet were protruding from underneath an idling red 1994 Honda Passport.

Colby Katz

Bryan Loudermilk underfoot

Loudermilk's homemade prosthetic leg

It was Loudermilk, lying on the ground with his own car's left rear tire parked on his stomach.

They pulled up and asked Loudermilk what he was doing, and Loudermilk told them he couldn't feel his legs. Vestal asked if he wanted the car moved. "Yes," Loudermilk said.

Vestal climbed into the Passport and slowly backed up, easing the SUV's weight off Loudermilk's body. It became apparent that Lou—dermilk had been lying in a shallow ditch that must have been dug before the car was parked on him. Also, the car's tire had been sitting on a board and pillow, sandwiched between the tire and Loudermilk's skin.

Loudermilk appeared to have been a willing partner, at least initially, in being crushed by the car.

It's not certain how long Loudermilk had been pinned under the Passport, but as soon as the weight lifted, lactic acid and other toxins flooded from his bloodless legs through the rest of his circulatory system, poisoning his body and initiating shock. Loudermilk blanched, and frothy spit appeared on his lips.

"I hurt all over," he said.

Vestal went to the trailer, looking for Loudermilk's wife, Stephanie. After searching the house and banging on the bedroom door, he returned to find Lineberry holding Loudermilk's hand. "Nobody would answer," Vestal told them. "What's up? Do you want me to call an ambulance?"

"What the hell is going on?" Lineberry said to Loudermilk. "Where is your wife and your kids?"

"They don't care," Lineberry remembers Loudermilk telling him.

One of Loudermilk's favorite photographs of his wife.

This video of Stephanie Loudermilk stomping rabbits landed her in court.

Being run over by a truck is a walk in the park for *Smashman*.

Jeff Vilencia

Jeff Vilencia's crush film *Smash* has been screened in film festivals around the world.

The two men left Loudermilk lying near the Passport, went into the house, and found Stephanie and her 2-year-old son, Spawn, inside. At their urging, Stephanie, a tall, 29-year-old Seminole woman with a wide face and long black hair, calmly called 911, bending down to refill Spawn's bottle as she did so.

Loudermilk was still alive when rescue workers arrived, and he repeated that he couldn't feel his legs. By the time he reached the hospital, however, he was incoherent and died within hours.

In the ensuing days, police pieced together a startling story that briefly became national news. Loudermilk was a foot fetishist in the extreme — like other "trample" fans, he was aroused by being stepped on by women, particularly his 200-pound wife. But he was also into "crush," which made him a member of a fringe sexual group that finds erotic the sight of women's feet smashing small creatures like insects, fish, and mice. When Loudermilk lay down under his SUV that June afternoon, police believe, he was trying to find the ultimate fusion of his two desires.

The summer Loudermilk died, crush videos of women stomping on animals were gaining notoriety and had sparked a nationwide law enforcement crackdown. Between 1998 and 2000, statutes were enacted to target the practice, Internet purveyors of videos depicting cruelty to animals were hunted down, and the online crush scene went underground.

Seven years later, a look at the impulses that led Bryan Loudermilk to his death reveals the strange logic of crush and trample fetishes and their ties to South Florida. Interviews with the people who knew Loudermilk — including his mother, who hasn't spoken of the incident to the media before — paint a detailed portrait of his complex desires, elements of which are shared by a surprisingly large number of ordinary people. But one question remains unanswered: Police still have no idea who helped Loudermilk with his obsession by parking his Honda Passport on his belly and then leaving him to die.

Bryan Loudermilk was a short, stocky man with dirty-blond hair who spoke in a Southern drawl and played the guitar. Growing up an only child in Okeechobee, he was shy. "Kind of bashful," his mother, Sandra Bailey, remembers. When Loudermilk met Stephanie Tongkeamha in high school, he quickly fell for the tall, quiet Seminole girl from the Brighton reservation. The two dropped out of school, Stephanie finishing ninth grade, Loudermilk the tenth, when Stephanie, who often went by Mamie, her middle name, got pregnant with the first of their three children. Eventually, the family settled in the Okeechobee trailer in 1998, near Loudermilk's family.

It was no secret that Loudermilk had a consuming foot fetish. He even told his mother about it. "He told me that he had a fetish for, like, feet,"

Loudermilk's sketched fantasies

Subject(s):
crush, fetish, Bryan Loudermilk

she says. "I figured, well, that's his thing."

In personal ads soliciting potential "foot goddesses," Loudermilk was more explicit:

"26 year old male with appetite for female feet. I love feet! Being walked on, suck toes, licking feet or crush, I love all aspects of feet" is how Loudermilk described himself in one ad in a foot fetish magazine.

In letters to fellow fetishists, he included his own drawings of giant women crushing men. Each letter was signed with "A tiny foot slave" above Loudermilk's name.

"Ever since I can remember I have always had a foot/crush fetish," Loudermilk wrote to Jeff Vilencia, a California crush fetishist who ran a video production company in the 1990s.

"Bryan had this fantasy of a woman wearing Roman-style sandals," Vilencia remembers. The footwear apparently symbolized that the woman was a goddess, a recurrent theme in Loudermilk's fantasies.

"Have you ever wished you were invisible so that you could lay down in a woman's path?" Loudermilk wrote to Vilencia. "Wished that you could be the slave of a giant goddess from outer space?"

"In his mind," Vilencia says, "it was a loving gesture to be squashed by this woman."

A drawing Loudermilk sent Vilencia depicts giant, strong women clad in goddess garb. One drawing, *Rage of a Goddess*, starred an angry giantess in sandals stepping on the population of a small village. Another shows a seated woman crushing two small figures under her sandals.

"You would talk to the guy, and he'll tell you he thought he was the only one on the planet who felt this way," Vilencia says. "A lot of people maybe tried to suppress it. Bryan didn't."

Photographs Loudermilk sent Vilencia show him masked and lying on the floor with a blissful expression on his face as feet press into his neck.

Loudermilk's fantasies about being trampled by giant, powerful women are shared by a wide variety of men in South Florida. I discovered this through a little legwork: I placed an ad in the personals sections of several websites offering my trampling services and size 9 feet to any man willing to be written about for an article.

Seventeen local men answered over the next two weeks. Some wanted me to step on them while barefoot. Others hoped I'd crush their cocks with black stiletto heels. Some were married. Most were professionals. They ranged in age from 25 to 56. A few sent (faceless) photos. Most were regular-sounding guys who were delighted to hear that a woman wanted to know more about stepping on them.

"There is an old movie, *Butterfield 8*," wrote one man. "Liz Taylor is a high-priced call girl. Wears black stilettos. Richard Burton desires her for himself. He grabs her arm in a nightclub, squeezing it painfully, she digs her stiletto heel into his foot, both watch the pain in each other's eyes. I saw it when I was about ten, got a woodie, never forgot."

"For me, its most vivid form takes place via roleplay," another wrote. "It's all about the process by which I first become entranced by seeing the feet... later to be held prisoner beneath them."

The first response to my ad came from a man whose girlfriend regularly tramples him. The couple invited me to meet them.

Jess, a 24-year-old dominatrix, recently moved to Pompano Beach from New York City. While I watched, she placed her slender, tattooed right foot on Frank, a tall and gaunt 34-year-old man lying on his back on a mat rolled out on the tile floor of their apartment. Her foot kneaded him roughly near his shoulder and moved with practiced ease up to Frank's face, smacking him lightly.

"You have to tease them a little," she said. "Work up to the trample. You don't just hop on and go. For us, it's foreplay."

Frank has been having women trample him for ten years. On his back and legs, as well as on his face and penis.

Jess, who's worked at dungeons in downtown Fort Lauderdale as well as New York and St. Louis, said that while she's never been asked to crush animals or insects for a man's pleasure, trampling is a common request.

"Some of them want heels; some want barefoot. They want you to trample their entire bodies, stand on their feet, everything. It's a huge thing. I'll put my feet on their face and crush their face. It gets them off. These men want me to stomp on their chest. They're screaming for you to do it harder and harder, to kick them in the face. It's scary and disgusting and erotic all at the same time."

Finding a woman like Jess, who knows how to trample and wants to do it, is a rarity. But only Frank reaps the benefits of Jess' talents for free; other men must pay her steep hourly rate of $375 to $500. Suddenly it made sense why so many men responded to my ad.

Wondering if I had what it takes to be a crush dominatrix, I asked if I could take a walk on Frank myself.

With Jess' guidance, I stepped on Frank's back and realized that the sensation of standing on a man was surprisingly familiar. I said as much, and Frank chuckled through his gritted teeth as I shifted my weight ineptly. This was harder than I thought — Frank was clearly embarrassed at letting me perform what amounted to a sex act with him in front of his girlfriend, and I was having a hard time staying balanced.

"Sure, your male friends would ask for you to stand on them to 'get the knots out,' right?" he asked as I wobbled.

"Yeah," I said, remembering the guys at camp or in high school who made that request.

"They were lying," he said, his voice clotted from the pressure.

He may have been right. On one of the main Internet forums where fans of trample and crush

congregate, many trample fans recount tales of covert experiences, where they managed to maneuver a woman, or several women, into stomping on them in public. Some place their feet "accidentally" in the paths of women with high heels. Others convince store saleswomen to stand on their aching backs.

Frank had exactly what these men all want: a real, live girlfriend to step on him. But while that's enough for Frank, it wasn't nearly enough, apparently, for Bryan Loudermilk.

In a letter, Loudermilk described how as early as high school, his fascination with being trampled by sandaled goddesses led to an obsession with crushing small animals.

"I used to catch lizards and frogs and put a little super glue on their bellies and stick them to the floor next to my teacher's desk so that I would be able to see her step on the victim," he wrote. He would subject these "victims" only to teachers who were wearing sandals.

For Loudermilk, the desire to watch women crush animals might have been a way to experience, by proxy, his version of the ultimate sexual act: being squished to death by the feet of a woman. "The extreme fantasy for these men is to be trampled or crushed to death under the foot of a powerful woman," Susan Creede, a Ventura County crush investigator, explained to Congress in 1999 during a hearing to ban crush videos. "Because they would only be able to experience this one time, these men have found a way to transfer their fantasy."

Vilencia, the Californian who formerly produced videos and today is a sort of unofficial spokesman for the fetish, speculates that while watching small creatures being crushed in childhood, boys internalize the animal's pain and their own anxiety and associate it with their sexuality.

"For some reason, these little boys who saw that when they were children, the anxiety stayed with them," he says. (Loudermilk's mother says he told her he thought the source of his obsession might have been a "chemical imbalance.")

Some trample fetishists distance themselves from the crush scene — not everyone who wants to be stepped on wants to see kittens squished by stilettos. But for Loudermilk, trample and crush were inextricably linked, both extreme extensions of an obsession with feet.

Immediately following her husband's death, Stephanie Loudermilk told police without hesitation that Loudermilk sold videotapes and photographs of feet and stomping through the mail. Many of the images featured a woman with an ankle tattoo that matched the one on Stephanie herself. Stephanie also did some crushing, she admitted.

One photograph Loudermilk sent to Vilencia was of Stephanie's feet in Roman-style sandals poised millimeters above a baby chick. The caption read: "Steph cruel. See the little chicken? SQUASH."

An ad Loudermilk placed in *"In Step" Magazine* starred Stephanie. "I'm a 27 year old female, and a Native American with tan feet," it read. "I love to trample on men and I love to feel small insects crushing under my sandal foot." It was signed, "Foot Goddess, Stephanie."

In the back of Bryan Loudermilk's SUV, investigators found two odd-looking objects: a wooden two-by-four with a metal plate in the shape of a foot wearing a sandal attached to one end, and a padded strap studded with spikes. On the two-by-four, in Loudermilk's bold script, was a label: "My Wooden Stephanie."

Stephanie told police that Loudermilk would often masturbate in a bathroom while using the artificial foot and the spike straps to simulate the feeling of her standing on him.

"He would put the strap around his waist with the spikes protruding toward his abdomen," she said in her statement to the Okeechobee Sheriff's Department. "He would take the wooden foot and lean it against something and press the spikes into his abdomen." The spikes, which presumably simulated the feeling of heels digging into his flesh, sometimes gave Loudermilk scars.

Loudermilk started his own small-scale fetish production company, which he called "B&S Foot Action" in a nod to their first names. "We offer videos, photos, & arts of female feet in action. Crushing, trampling, sandals, heels, modeling, & more. We also do some custom work," read one ad for the company.

Loudermilk also published at least one issue of what he called *Foot Fetish Forum*. Photocopied and filled with drawings of feet trampling and crushing, he sold it for $3 to fetishists across the country.

Loudermilk enlisted other women in his projects, paying them to participate in a crush or a trample. "He employed a lot of people in these videos. At least ten people," says Sgt. William Garrison of the Okeechobee Sheriff's Department, who was the lead detective on the Loudermilk case. "He paid $50 an hour for girls to walk on him."

Sandy Powell, Loudermilk's 26-year-old cousin, told police that she had stood on Loudermilk, allowed him to sell photos of her feet, and had crushed goldfish on video. She had also walked in on Stephanie, nude except for high heels, walking across Loudermilk's stomach.

Another friend, Heather Nicole Davis, admitted to police that she starred in a video with Stephanie titled *Nikki and Steph Rabbits*. In the video, two sets of female feet walk back and forth over rabbits that are strapped to a grassy lawn, crushing them to death. In other videos found in Loudermilk's house, mice and chickens are stomped, and witnesses told police that Loudermilk had orchestrated the crushing of ducks, fish, and rats.

But nobody who talked to investigators, including Stephanie, seemed to think Loudermilk was a monster.

"Most people thought he was a pretty good guy," Garrison says.

By the time Loudermilk was fouud under his car, the nation's crackdown on crush was reaching its zenith. Citing arrests in New York and California and buoyed by support from celebrities that included Mickey Rooney and *M*A*S*H*'s Loretta Swit, California Congressman Elton Gallegly urged passage of a bill that would make selling videos depicting animal torture a federal crime. President Bill Clinton signed the bill into law on December 9, 1999.

Vilencia then had to abandon his company, Squish Productions, which specialized in insect crush videos. And he's still bitter, saying that it's hypocritical for people who eat meat, for example, to oppose crush videos.

It's a common theme with crush supporters, says Katharine Gates, author of fetish encyclopedia *Deviant Desires*. Crush fetishists argue that it makes no sense for cockroaches or goldfish to deserve protection from "'death by foot' as opposed to 'death by toilet flush' or excruciating poison traps," she says.

Even critics of the crush fetish acknowledge that opposition to crush videos is rooted more in attitudes toward sex than concerns about animal welfare. "There's a lot of hypocrisy, unfortunately," says John Schiff, a California programmer who runs a website that publishes the names and addresses of crush fetish "offenders," including Stephanie Loudermilk. "I think the sexual aspect of it is really what bothers people. They have no problem with people eating live animals on *Fear Factor*."

But for Schiff, it's the suffering of living things that motivates him to advocate against the fetish. "The fact that it's needless cruelty. There's really no way to condone it."

Today, crush videos depicting the squishing of live animals are still available from websites based in Amsterdam and China, but whenever they receive too much attention, they disappear.

This March, photographs of a Chinese woman crushing a small kitten under her stilettos surfaced on a Chinese website and were reprinted in newspapers across the country, sparking widespread outrage and a manhunt for the so-called "Glamorous Kitten Killer of Hangzhou." In response, China-based crush sites disappeared.

Though crush video activity is almost nonexistent in the United States, Schiff's website tracks one purveyor in Palm Beach County.

Sosio Cristofaro, a smooth-talking rock bassist, owns two houses in Palm Beach and is cagey about whether his crush website, www.mistressaryel.com, is still in operation. He acknowledges that he began the site with business partner Mike Branch in the mid-1990s from a Palm Beach-based production company they called Stomp Productions.

"When we started doing a website back in the day, we ventured off into different little aspects," Cristofaro says. "Burping fetish videos, foot fetish videos. The foot fetish videos are all related, so when we started doing some trampling videos, that led into stepping on grapes, on some crickets, based on what a few people requested."

He says it was a sideline, something extra for his models to do. "We would have a girl do a blowjob video and say, 'Hey, would you step on crickets too?'"

One video currently offered by Mistress Aryel on a site called Niche Clips, also run by Cristofaro, is called *Spill Your Guts*. It features the feet of "Mistress Rachel" crushing a crawdad. The clip is accompanied by a description designed to entice crush fans to buy it for $12 to $13: "Now that's the way I like to see them, flat and splattered on the bottom of my shoe."

But Cristofaro says that crush videos are "not something I'm into any more" and that Stomp Productions dissolved years ago when Branch moved some of its operations to the Philippines. He says he is appalled to hear that Loudermilk got his kicks from being crushed by a car.

"That's disgusting," he says. "You're shitting me. That's a different world; that's something I don't even know about. What the hell does a car have to do with this?"

"It's sort of a warmth. Your skin, and the muscles, just gradually feel more and more worn, tender. Sensitized. You get numbness like you sit on an arm or leg or foot wrong and it goes to sleep... a tingling feeling."

"Smashman," a middle-aged man from California who has been pursuing the sensation of intense weight on his body for more than 30 years and who asked that his real name not be revealed, says he can imagine what Bryan Loudermilk's last moments might have felt like.

Smashman is living proof that "car crush" can be done safely — he himself has been driven over by vehicles ranging from small cars to monster trucks, and in Florida, where his world travels in search of new pressures frequently bring him. His first experiment took place on Daytona Beach, when some men offered to drive over him as he lay buried in the sand. Today, he regularly visits a mud pit in Orlando where he invites local truckers to drive over his body.

To prepare, Smashman digs a shallow pit in the ground, just like the one Loudermilk was found in. This is so the tire won't break his ribs. "I cannot lay down on a flat surface like a parking lot or a street and have someone drive over me," he says. "It pinches the ribs very uncomfortably."

A video shot at the Orlando mud pit recently shows Smashman lying in his ditch, looking at the large wheels of a monster truck.

"Ready?" he says, his reedy voice calm.

The truck moves, rolling over his chest, and Smashman lets out a squeak and a blast of air, sounding more like a cartoon character than a man. And just like a cartoon, he bounces back instantly. "That was good!" he says as the wheel rolls off. It's as if he's just taken a vigorous shower.

Although Smashman has had people sit on him for up to an hour and a half, he's never been under a vehicle for more than a few seconds. According to investigators, Loudermilk was under his SUV far longer. "Obviously, if you are under a significant amount of weight for a period of time," he says, "your endurance gradually wears away."

Loudermilk's mother, Sandra Bailey, was first told that Loudermilk was crushed when his jack failed while he was repairing his SUV. She knows today that his death was related to his sexual desires, but she doesn't know much more about why her son died than she did then.

"I think they should have investigated," she says. "They should find out exactly who put the thing on there and make sure that there wasn't no foul play. Somebody didn't go back and take the car off."

"I expected the investigation to go further than it did," Sgt. Garrison says. In 20 years with the Okeechobee Sheriff's Department, he says, he never encountered anything like Loudermilk's death.

The investigation never officially closed, Garrison says, because it was almost impossible that Loudermilk got under his car without help. "It would have been a difficult situation to do by himself," he says. "But the group is a tight-knit group. It's hard to get information from them."

Police spoke to women between the ages of 18 and 27 who regularly performed fetish acts for Loudermilk (some his relatives and neighbors), but none of them ever hinted who they thought drove the car over him.

State Attorney Bernard Romero, who prosecuted an animal cruelty case against Stephanie Loudermilk based on the videotapes with her tell-tale tattoo, believes that Bryan Loudermilk had a friend position the car, then left as Loudermilk masturbated. Romero says that Stephanie

Loudermilk was cleared early on from any suspicion.

"It was pretty clear she was not to be a suspect of murder," Romero says. "We had enough evidence to believe that she was not behind the wheel."

But Garrison says that's not quite true. "Everyone's a suspect. We just never had any evidence to put her behind the wheel. You don't go to court on suspicions."

Stephanie was charged with two felony counts of animal abuse. Romero told reporters at the time that he was incensed by the videotapes and planned to seek the "maximum penalty" for her.

But after conversations with witnesses and Stephanie's Fort Lauderdale attorney, Guy Seligman, he modified his view and asked the judge to reduce her charges to misdemeanor counts. Instead of jail time, she received two years of probation and 300 hours of community service, as well as orders to seek psychiatric counseling. Seligman refused to comment for this article and said that Stephanie, who now lives on the Brighton Reservation, was also unwilling to talk.

Central to Stephanie's defense was the suggestion that she was the innocent victim of Bryan Loudermilk's perverted desires. A Seminole woman with a rural reservation upbringing whom acquaintances described as docile, she seemed to be a compliant part of Loudermilk's fantasies, dressing up in a genie costume and donning sandals for photos and videotapes. What clinched her innocence for Romero was that witnesses close to the couple suggested that, in addition, Stephanie was abused.

"I was the one that was able to glean from the witnesses that she was allegedly beaten," Romero says. "He had beaten her, forced her to engage. She was not a willing participant. He had beaten her, thrown her against the wall."

In their initial statements to police, however, none of those witnesses suggested that Stephanie was a victim. Police heard of no abuse by Bryan Loudermilk toward any of the women who participated in his fetish. He was a drug user, police were told, but no one described him as a man who hit his wife. Sgt. Garrison, who interviewed Stephanie after the SUV incident, didn't notice any signs of abuse.

"I didn't see no physical marks on her at the time," he says. "She was free to come and go. If it was that bad, she could have left."

And Loudermilk's mother says she had heard the opposite, that Loudermilk had been pushed around by his six-foot-tall wife.

What certainly seems true is that the Loudermilk marriage was disintegrating in 1999. Several of Loudermilk's friends told police that he had begun using cocaine several months before his death. The Loudermilk house was full of strangers partying at all hours of the night, and several sources say that Bryan and Stephanie were fighting about drug use and Stephanie's affair with a friend, known only to investigators as Robert, who was living with them. One friend reported that Robert threatened to kill Loudermilk after being run off his property the weekend before Loudermilk's death. According to Loudermilk's mother, the couple was considering divorce.

A friend, Sarah Ruth McCleod, who was with the Loudermilks the night before Bryan died, reported that the couple seemed happy, "drinking and partying." The next morning, as Sarah left the house, Bryan told her that he was going fishing. Stephanie claimed that she didn't see

Loudermilk at all that Monday, remaining in the house with her kids.

According to several witnesses, Stephanie gave her friend Kimberly "Krystie" Medders several photographs the day Loudermilk died. When investigators questioned Medders about the photographs, she initially denied that she had them, then answered that the photos had been destroyed.

"They were probably just some more photographs of her walking on some animals," Garrison says when asked about them.

But that same day, Stephanie handed over boxes of photos and videotapes that showed the Loudermilks' crush activities and implicated her in acts of animal cruelty. For some reason, she held back just a few of them.

After Loudermilk's death, Stephanie cut off contact with his family and obtained a restraining order against Loudermilk's mother after Bailey made attempts to contact her grandchildren.

Bailey hasn't seen her grandchildren since Loudermilk died and is tight-lipped when she talks about Stephanie today. "I don't want her in trouble," she says. "I wouldn't have tried to get her in trouble about nothing like that because she has my grandkids."

In 1999, Bryan Loudermilk was nominated for immortality by the Darwin Awards, the tongue-in-cheek, web-based honors bestowed to those who "improve the human genome by removing themselves from it." The nomination of Loudermilk specifically blamed his wife for driving the car and suggested that Loudermilk got exactly what he deserved. "A man who would lie in a special pit while a woman he groomed for 'crush' videos drove over him, shouldn't be surprised when he winds up holding a Darwin Award."

Romero, who prosecuted Stephanie before ultimately allowing her to plea-bargain for a reduced animal cruelty sentence, was annoyed at the website's assumption of her guilt. "I saw the Darwin Award," he says. "They got it all wrong. She was never charged with murder."

Abuse of Children and Abuse of Animals

Using the Links to Inform Child Assessment and Protection

Barbara W. Boat

> I saw a child brought in, carried in a horse blanket, at the sight of which men wept aloud, and I heard the story of Mary Ellen told again, that stirred the soul of a city and roused the conscience of a world that had forgotten; and, as I looked, I knew I was where the first chapter of the children's rights was being written
>
> —Jacob Riis, Police Reporter, New York City, 1874

THE LINKS between violence to children and violence to animals have received implicit acknowledgment throughout the history of movements to address both forms of abuse, but the practical utilization of these links has been largely ignored in the field of child abuse and neglect (Boat 1995).

Awareness of the links often appears to simmer just below the surface for many professionals. Child protection workers, law enforcement officers, teachers, social workers, physicians, nurses, child advocates, judges, youth workers, and therapists often exclaim, "I never thought of that before!" when they first "hear" about and "see" the links. Then, inevitably, they will offer spontaneous relevant anecdotes from their own experiences that illustrate the connection. A psychiatrist said, "That reminds me of my patient who is a Vietnam vet. He said that he went through hell in the war and can deal with that. But what he cannot deal with is his father killing his dog when he was a kid." A teacher wondered, "You know, as a child I was so terrified of my father. He never laid a hand on me—didn't even yell at me. But he was thoughtless and mean to our pets. I must have known that if he could do that to the animals, he could do that to me." A child advocate recalled, "Last year I was working with a 12-year-old boy who told me his divorced mother abandoned his dog on a country road, saying that she had to do that because the boy's father would not give her enough money to keep the dog." A judge described a teen in her court-

room testifying that her father threatened to kill her dog if she would not have sex with him.

As we increase our awareness and acknowledge the potential links among animal abuse prevention and child abuse prevention, animal protection and child protection, and early interventions, we can forge exciting new connections that will enhance the safety of both children and animals. In this chapter I discuss the several roles that awareness of violence to animals can play in the field of child protection and assessment.

CRUELTY TO ANIMALS AND RISK ASSESSMENT

Risk for the Child to Be Abused or Neglected

The evidence continues to mount that where animals are abused people are abused and vice versa (Arkow 1995). Higher rates of animal abuse by parental figures have been found in substantiated cases of child physical abuse than in the general population (DeVinney, Dickert, and Lockwood 1983). Abused animals were found in 88 percent of the homes of 57 families with pets where child physical abuse had been substantiated. Two-thirds of the pets were abused by fathers; a disconcerting one-third of pet abuse was perpetrated by the children. Furthermore, persons, including children, living in homes where pets were abused were 10 times more likely to have been bitten or attacked by the abused pet.

Our awareness of the child abuse-animal abuse connection is being heightened in regard to domestic violence settings. Witnessing domestic violence is considered a priori psychological maltreatment of the child and the statistics for risk of abuse are sobering. In a national survey of over 6,000 U.S. families, researchers found that 50 percent of men who frequently assaulted their wives also frequently abused their children (Straus and Gelles 1990). Many men who resort to violence to control women can enhance their control by harming or killing family animals or by threatening to do so. Persons who counsel battered women report that dogs and cats have been stabbed, shot, hanged, and otherwise mutilated by abusive spouses. Sometimes the animals simply disappear or die mysteriously. Recent surveys of violence to animals witnessed by women seeking refuge in shelters for battered women define the extent of the problem (Ascione 1998). In a study of 38 battered women who were consecutive intakes in a shelter, 71 percent who owned pets reported that their violent partners had threatened or actually harmed their pets. Equally disturbing is that 32 percent of the women reported that their children were perpetrating abusive acts against the pets as well. For some women, concern over their pets' welfare delayed them from seeking shelter sooner for themselves and their children, prolonging exposure to the risk environment.

Questions about animal-focused violence or threats of violence can be included in standard assessments made during child protection investigations and by intake

workers at safehouses for battered women. Questions may include several suggested by Ascione (1998):

- "Do you have any pets?" or "Have you had any pets in the past year?"
- "Has your partner (or anyone else) threatened to harm your pet or actually harmed your pet?"
- "Has your child harmed your pet?"
- "Do you worry about your pets' safety?"
- "Did concern about your pets' safety keep you from seeking shelter sooner?"

Such questions can alert us to the extent that violence to animals may be perpetrated or witnessed in the child's environment. Killing, maiming, or torturing animals may correlate with potential for dangerous acts. The inclusion of animal abuse as one of the lethality markers is being evaluated in several settings. For example, Randall Lockwood of the Humane Society of the U.S. cites the experience of Nashville, Tennessee, a city that had among the highest domestic violence homicides in the nation when a policy was instituted on domestic violence calls to obtain information on three possible lethality indicators: brandishing a weapon or threatening with a weapon, threatened suicide by batterer, and abuse of pets in the family. Batterers meeting any of these lethality criteria were remanded to special programs. Domestic violence fatalities decreased from 30 to 6 within one year of instituting this new policy, while at the same time numbers of cases increased from 12,000 to 20,000, Lockwood says (1997).

Asking a child about pets when the child is seen in medical, school, or investigatory settings can provide a window into a child's home life and illuminate risks that might otherwise go undetected. For example, when we are concerned that children may live in an abusive or traumatizing environment, we can ask specific questions of children and caregivers about the existence and treatment of pets. Some potentially useful questions include:

- Do you have pets or other animals at your house?
- What kind? What are their names?
- Who takes care of _____?
- Does anyone hurt _____? Or, does _____ ever get hurt? How? By whom?
- How is _____ disciplined (trained, taught to be good, etc.)?
- Have you ever lost a pet or animal you really cared about? What happened?
- Do you ever worry about something bad happening to your pet or animal?

Questions such as these can be a stepping-stone to talking about more personal issues. Frequently, children will disclose what happens to their pets before talking about themselves. For example, a 10-year-old boy of upper-middle class parents whom the boy described as "arguing a lot" (police had recently responded to a domestic violence call involving attempted choking) frequently witnessed his father "being mean" to one of their cats, throwing it down the stairs and kicking it when it

came near. This was his mother's cat. He then went on to reveal fears he had for his and his mother's safety when his father was in "one of his bad moods."

We also can ask older children or caregivers questions like, "How many pets have you had?" and "What happened to them?" In some family settings where domestic violence occurs, pets seldom reach the age of two years. Reports by children of frequent pet turnovers or loss of pets may "red flag" a chaotic household where the safety of the children is also compromised.

Reports to children's social services agencies of suspected abuse or neglect of children that include maltreatment of animals should be viewed as a serious cause for concern. In a recent fatality case review, a protective services worker followed up on a call from a neighbor who witnessed a three-year-old boy being severely beaten by his father. The neighbor also reported that the father had killed a cat in the presence of his family by slamming the cat against a wall. The protective services worker investigated the family and wrote in her report that the father denied mistreating his son but he did admit to killing the cat because it "peed on the rug." The worker dismissed the act of killing the cat by noting that the incident had happened over a month ago. No further interventions were offered to the child and family. Two months later the boy died of a cerebral hemorrhage inflicted by his father.

Finally, awareness of treatment of pets has been suggested as important for investigators of "failure to thrive" children, but with an unusual twist. This term is applied to children whose growth is significantly less than the developmental norms established for a child's age and sex. According to the National Center for the Prosecution of Child Abuse (1995), criminal culpability depends on the investigators' showing that a child's failure to thrive was due to intentional, knowing, reckless, or criminally negligent acts or omissions of caregivers. In documenting intentional neglect, investigators are advised to note if there are pets and if so to document the presence of pet food. In some cases there will be food for parents, older children, and family dogs, but none for the victim. Of course, it may be that a pet is malnourished as well.

Risk for the Child to Be Cruel or Abusive to Others

Data on adults document a relationship between patterns of chronic interpersonal aggression and childhood histories of animal cruelty (Kellert & Felthous 1985; Arkow 1996). Physical cruelty to animals was first listed as a symptom indicative of Conduct Disorder in 1987 in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III-R). In the DSM-IV (1994), cruelty to animals has an even more prominent position. A diagnosis of Conduct Disorder is highly concerning, as it is considered to be a more intractable problem, affecting between 2 percent and 8 percent of children. It is multigenerational and results in destructive acts that harm society. Therefore, early detection affords greater opportunities for intervention. It is significant that hurting animals is considered one of the earliest reported symptoms, appearing at a mean age of about six years (Frick et al. 1993).

The etiology and expression of cruel behaviors in children is not well understood (Ascione, Thompson, & Black 1995). Indeed, "cruelty" is a difficult concept to define, whether the cruelty involves behaviors toward children or animals. One reason for our difficulty is that perceptions of humane treatment to both children and animals have varied—and continue to vary—historically and culturally. One hundred years ago in the United States, very young children worked in sweatshops and horses were driven until they collapsed. Neither were protected by law. Even today, when we have many more protections in place for children and animals, we still struggle with what constitutes "cruel" physical punishment. Today, as in the past, the monetary value of an animal determines the extent to which cruelty is perceived and punished. In the hierarchy of importance, cruelty to horses is subject to the largest fine, followed by cruelty to dogs, and finally to cats. In a case of two boys setting fire to a cat, the public defender sought to have the charges dismissed, citing a ruling that animal cruelty laws applied only to "socially useful" animals and that this did not meet this criterion.

People also have personal hierarchies of value of different kinds of animals. Ascione (1994) reports a case where two teenaged boys in Utah caught a six-month-old kitten in a leg-hold trap, shot arrows into the kitten and then stomped it to death, laughing and joking while they videotaped the entire event. The tape was later confiscated. During the court hearing, the juvenile judge was asked if he would recommend further evaluation or counseling for the boys. He responded, "No. Not just for killing a cat." The mother of one of the boys was confused about the uproar her son's behavior created. She protested that he was not a cruel child because he had never mistreated his dog.

The reasons behind children's cruel behavior to animals are complex and multidetermined (Ascione 1994). For example, in young children lack of modeling and monitoring appropriate behaviors with animals can lead to cruel interactions including hitting with objects, poking, choking, stepping on, kicking, and restraining (e.g., tying up or putting in a box). Peer reinforcement for "showing off" or "daring" may result in collective cruel acts to an animal that would not occur if the child were alone. Tying a cat to a railroad track can win peer approval, enhance personal aggressiveness and be an exciting and elating feat to a group of children. Children may identify with the aggressor in settings where animals have been hurt or killed to frighten or coerce the child, or they may imitate punitive actions of adults. The child's cruelty can reflect a desire to control and inflict pain, have the quality of repetitious post-traumatic play reenactment or be a displacement of hostility onto animals. Ascione describes an unusual motive for a child's cruel behavior toward a cat where the child, as a means of self-mutilation, provoked the cat to severely scratch her arms. Killing animals also may signal great distress on the part of the child and a possible wish to die, according to Gil (1994). She cites cases where children hurt or killed animals and also evidenced suicidal behaviors.

Definitions of cruel behaviors are undergoing refinement. Rowan (1993) has suggested the model shown in table 1.

Table 1. A Proposed Model for New Cruelty-to-Animals Terminology

Description	Perpetrator's Motivation	Animal Suffers?	Society's Attitude
Cruelty	Satisfaction from suffering	Always	Condemns
Abuse	Satisfaction from dominance	Usually	Condemns
Neglect	No satisfaction derived	Usually	Condemns
Use	Justified by personal or societal gains	Sometimes. Attempts made to minimize	Approves if justified or suffering minimized

It is very important that we assess the possible motivations of children when animal cruelty is perpetrated in order to offer the most effective interventions. It is not uncommon for our professional judgment to be clouded when confronted with children who are cruel to animals. Recently, a colleague described two youths who doused a kitten with lighter fluid and set it on fire. The kitten ran under a car and the car blew up. This professional said he had worked with children who had perpetrated extreme violence, even murdered other children, but this was, without exception, the "worst" case of cruelty he had ever seen. He felt angry and defeated by the boys' behavior and apparent lack of remorse. When he evaluated one of the boys, however, he discovered a profoundly chaotic childhood. The mother said the boy was sometimes whipped too hard by his father; the father had also severely physically abused the mother and was charged with domestic violence seven times during the 12-year marriage, charges that were always dropped. When asked about family pets, the boy reported there had been 15 dogs, as well as many rabbits, hamsters, birds, and turtles. He did not know what had happened to the pets. They just "ran away, I guess." They never had a cat because his father hated cats. However, the boy did identify two dogs that were special to him and a source of comfort when he was feeling stressed.

THE BOAT INVENTORY ON ANIMAL-RELATED EXPERIENCES

Although anecdotes abound, to date we have not systematically gathered information about a wide range of experiences with animals. The Boat Inventory on Animal-Related Experiences (BIARE) was developed to elicit information about a wide range of events to determine if animal-related trauma, cruelty, or support are part of the child's, adolescent's, or adult's history (see my appendix after this essay). Areas explored include

- pet ownership history;
- experiencing animals as a source of support;

- loss of animals;
- cruelty to animals;
- killing of animals;
- animals used to coerce or control a person;
- sexual interactions with animals; and
- animal-related fears.

In addition, optional background information forms are included as well as questions for sexual abuse victims and offenders. The inventory is meant to be used as a screening and information-gathering instrument. It has not been standardized or normed. Users may opt to ask any of the questions that appear relevant to a particular case. I strongly recommend reading the questions aloud to the respondent.

The inventory has been piloted in a study exploring traumatic experiences and post-traumatic stress disorder (PTSD) symptoms in female and male veterans (Baker et al. 1998) as well as a preliminary study on screening for trauma indicators in 35 psychiatrically hospitalized adolescents (Boat, Baker, & McConville 1996). In the latter study, the responses of a 14-year-old boy provided information that the hospital staff believe was shared because of structured questioning. One area discussed during the interview with this teen was the loss of his favorite dog whom he believed was "made really mean" by a neighbor who would hit the dog with garden tools whenever the dog went into his yard. In response to inventory questions, the boy described an undiminished sense of loss since the age of eight and undiminished anger at the person responsible for the loss. "I *still* hate him!" he said vehemently.

When the same teenager was questioned about ever having hurt or tortured an animal, he replied, with a slight smile, that he had put his sister's cat in the microwave. The cat died two days later and he had a friend drive over the cat's body with his truck so the death would appear accidental. Why did he choose the cat? "I hate cats, the way they act—all cocky. Like they rule the world. They just piss me off." He also had hanged the family's cocker spaniel over the upstairs railing by its leash and collar because it "peed on my bed." Later, again in response to specific questions on the inventory, the boy acknowledged that he had witnessed a friend "butt-fucking his dog." All of this was new and highly concerning information to the hospital staff.

ENHANCING DETECTION OF CHILD ABUSE AND NEGLECT

The potential for broadening coverage for children by linking child and animal maltreatment is one of the most exciting outcomes of our heightened awareness (American Humane Association 1993). "Cross-coverage" and "cross-training" programs promote interactions among law enforcement, protective services, and animal welfare agencies to detect and prevent violence in mutual environments where children and animals co-exist. In such programs, if an animal control officer determines that

an animal is suffering, the officer also checks on how the children are doing. Child protective services workers reciprocate by noting the condition of animals when they investigate a case. Even where the connection is not formalized, professionals are cooperating. In one state, a sheriff's deputy responding to a domestic violence call noticed that three pit bulls were chained in the front yard. He became suspicious and returned with an animal control officer and a search warrant. Behind the house the officers found the bodies of 3 dogs, 30 live pit bulls in cages, 10 of them puppies, and a pit bull fighting ring. They also confiscated videotapes of the dog fights. Social Services later investigated the welfare of the children living in this setting.

Expansion of mandated reporting of child abuse and neglect to include veterinarians and animal control officers is another potential form of cross-coverage. Many veterinarians and animal control officers go into people's homes to care for animals and thus have access to observing the adults and children. Veterinarians are aware of the types of injuries that can result from animal abuse (American Humane Association 1998). They also report observing bruises on some women who bring their pets for treatment.

The importance of mandated reporting in the protection and early intervention for children cannot be underestimated. For example, animal control officers entered a home where numerous turtles were kept in cages and pens. Four children lived among the cages and a toddler was observed poking her fingers into the turtle feces and then putting her fingers in her mouth. The risk for the child contracting salmonellosis was substantial and these children benefitted from an animal control officer who recognized that they, as well as the turtles, needed help. Because animal control officers are trained investigators who thoroughly document their observations, their reports can be very useful to child protection agencies.

Animal control officers also can be instrumental in helping parents recognize the seriousness of a child's cruel acts, as demonstrated when a 10-year-old boy tied a dog's legs and mouth and strung the dog over a barn rafter where its body was discovered two weeks later. The boy's parents dismissed the behavior until an animal control officer urged them to be very concerned and to seek help.

ANIMAL WELFARE AND CHILD WELFARE ADVOCACY

Another compelling link between animal abuse and child abuse is our lower tolerance for cruelty and damage to animals than for cruelty and damage to children. Incidents of concerned public response to reports of severe cruelty to animals or to heroic efforts displayed by animals are frequently described in the news. For example, when news media reported that a mother cat in New York had entered a burning building five times to retrieve her kittens, offers to adopt the kittens poured in from all over the country.

We seem more able to identify with the vulnerability of animals than the vulnerability of humans. In California, a mountain lion attacked and killed a female

[illegible] The lion left one cub; the woman left two young children. By September [illegible],000 had been donated to support the orphaned cub now residing in a local [illegible] $50,000 had been donated to the grieving family.

[illegible] professionals, knowingly and unknowingly, utilize this link. A pediatrician, subpoenaed to court to testify in a case of physical abuse, was describing the severity of the injuries that had been inflicted upon the young child by his stepfather. She described the extreme choking, bruising, and battering that had occurred, but the judge remained unmoved. Frustrated and wanting to convey the desperateness of the child's plight, she asked the judge to imagine someone choking and battering a very young puppy in a similar manner. She later was told that the animal image immediately evoked an empathic response that led to more severe restrictions on the offender. In another example, a prosecutor described a case where a woman had tried to protect a dog from being shot and was, herself, shot, but not killed. The prosecutor said she had no difficulty winning the case because the woman's actions were targeted at saving an animal. If there had been no animal involved, questions of the woman's motives and her role in provoking the shooting would have been raised.

ASSESSING LOSS AND TRAUMA

In the mental health arena, we often ask children about loss of significant persons in their environment, including parents, siblings, and grandparents, as well as teachers and friends. But we frequently overlook the loss of pets or possible traumatic experiences related to animals in the lives of children, adults, and the elderly. Questions need to tap not only the loss, but how the loss occurred and the severity of the loss experience both at the time it occurred and currently. My colleagues and I have developed a survey (Boat, Baker, & Abrahamson 1996) consisting of 14 questions about potentially traumatic experiences, including loss of a favorite animal and being frightened by an animal. Because trauma is in the eye of the beholder, we are interested in not only whether an event occurred, but the age(s) and a rating of the "badness" of the event both when the event happened and currently. The pet- and animal-related questions are as follows:

Have you or your family ever had a pet? Y N

If yes, have you lost a pet that you really cared about (e.g., died, was killed or taken away)? Y N

If *yes*, how old were you? (*circle all that apply*):

1. Under age 6 2. 6–12 years 3. Teenager 4. Adult

How bad was it (or the *worst* event) for you?

1. Not bad 2. Somewhat bad 3. Very bad

How much does it (or the *worst* event) bother you now?

1. Not at all 2. Somewhat 3. A lot

Was someone ever violent or abusive toward the pet? Y N

If yes, how old were you? (*circle all that apply*):
1. Under age 6 2. 6–12 years 3. Teenager 4. Adult
How bad was it (for the *worst* event) for you?
1. Not bad 2. Somewhat bad 3. Very bad
How much does it (or the *worst* event) bother you now?
1. Not at all 2. Somewhat 3. A lot
Have you ever been badly frightened or attacked by an animal? Y N
If yes, how old were you? (*circle all that apply*):
1. Under age 6 2. 6–12 years 3. Teenager 4. Adult
How bad was it (or the *worst* event) for you?
1. Not bad 2. Somewhat bad 3. Very bad
How much does it (for the *worst* event) bother you now?
1. Not at all 2. Somewhat 3. A lot

We have surveyed several different populations about animal loss experiences. The samples included incarcerated sex offenders, juvenile sex offenders, male and female veterans, and adolescents on a psychiatry inpatient unit, for a total of 311 respondents. We noted the following trends:

1. Ownership of a pet as a child ranged from 82 to 100 percent.
2. Loss of a pet they really cared about was a common experience, ranging from 68 to 83 percent in the various samples.
3. The loss of a pet was rated as "very difficult" (on a three-point scale) by 60 to 71 percent of respondents.
4. Turning to a pet as a source of comfort in a stressful time ranged in frequency from 34 to 100 percent of respondents in the samples, with the lowest number endorsed by male veterans and the highest by male juvenile sex offenders.

Among 35 adolescents hospitalized in an inpatient psychiatry adolescent unit, losing a favorite pet was endorsed by more than two-thirds of our sample, was rated among the top six trauma events in frequency, and was perceived to be as "bad" as being verbally or emotionally abused by a parent or as having a parent who was physically violent. Reasons given for pet loss often were not benign, for example, "Someone stomped on my cat's head," or, "My grandmother gave my dog away when I was at school."

Loss of significant animal companions as a common and frequently difficult event for children is a reaction noted by other researchers (Brown, Richards, & Wilson 1996), supporting the consideration that we assess for animal-related experiences and incorporate this knowledge when planning interventions.

SUMMARY

Enhancing our awareness and knowledge about the relationships between violence to animals and violence to children provides a unique opportunity to enhance our

services to both. Certainly, cross-coverage by child and animal welfare professionals has the potential to detect neglectful and abusive settings. Mandated reporting of animal abuse and child abuse by veterinarians and animal control officers is consistent with a focus on prevention and early intervention. Systematic questioning and observations of children and caregivers can become part of the professional's repertoire in assessing the existence and impact of experiences such as loss of a favorite pet, witnessed or perpetrated animal cruelty, as well as the supportive roles that animals play in the lives of children, adolescents, adults, and the elderly. Finally, by being aware of the links, we will continue to collect data to inform creative interventions and programs to reduce violence in the lives of both children and animals.

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APPENDIX: BOAT INVENTORY ON ANIMAL-RELATED EXPERIENCES

"These questions are about some of your experiences with animals and include things you may have heard about, seen, or done yourself. Although some of the questions are of a personal nature, please answer them if you can."

Ownership

1. Have you or your family ever had any pets? Y N

   If yes, what kind(s)? (read types below and circle all that apply)

	How many?		How many?
a. dog(s)	____		
b. cat(s)	____	f. turtles, snakes, lizards, insects, etc.	____
c. bird(s)	____	g. rabbits, hamsters, mice, guinea pigs, gerbils	____
d. fish	____	h. wild animals (describe) ____	
e. horse(s)	____		

   How old were you when you or your family owned any animals or pets? (circle all that apply)
   a. under 6 b. 6–12 years c. teenager d. adult

2. Do you have a pet or pets now? Y N

   If yes, what kind(s)? (read types and circle all that apply)

	How many?		How many?
a. dog(s)	____		
b. cat(s)	____	f. turtles, snakes, lizards, insects, etc.	____
c. bird(s)	____	g. rabbits, hamsters, mice, guinea pigs, gerbils	____
d. fish	____	h. wild animals (describe) ____	
e. horse(s)	____		

3. Or your animals, do you—or *did* you—have a favorite? Y N

   Which one? ____

   Why? ____

Support

"Sometimes pets or other animals are special sources of support in times of stress."

4. Has there ever been difficult or stressful times when a pet or animal was a source of comfort for you—even if you did not own the animal? Y N

   How old were you? (circle all that apply)
   a. under 6 b. 6–12 years c. teenager d. adult

   What kind of pet or animal gave you support? ____

   How did the pet or animal give you support? ____

5. Are there times when it has been easier to talk to animals than to people? Y N

   If yes, how often does/did this happen? (please circle)
   a. just a little b. somewhat c. a lot

6. Did you ever have a favorite stuffed toy animal? Y N

   Do you still have it? Y N

Loss

"Sometimes people lose animals that are special."

7. Have you ever lost an animal you really cared about? (For example, the animal was given away, ran away, died or was somehow killed?) Y N

   If yes, what kind of animal? ____

If your pet died, was the death:
a. natural (old age, illness, euthanized) b. accidental (hit by car)
c. deliberate (strangled, drowned) d. cruel or violent (pet was tortured)

What happened? _____

Was the death or loss used to punish you or make you do something? Y N

How difficult was the loss for you?
a. not at all difficult b. somewhat difficult c. very difficult

How much does it bother you now?
a. not at all b. somewhat c. a lot

How did people react / what did they tell you after you lost your pet?
a. supportive b. said it was your fault c. punished you
d. other _____

How old were you?
a. under age 6 b. 6–12 years c. teenager d. adult

Was any person responsible for you losing the animal? Y N

If yes, how do you feel now about what that person did? (please circle)
a. upset at first, but no longer b. still somewhat upset c. still *very* angry

8. Have you ever worried about bad things happening to an animal you really cared about? Y N

What were your worries? _____

Cruelty or Killing

"Sometimes people do mean things to animals, deliberately hurting, torturing or killing them in a cruel way."

9. Have you *heard* about people deliberately hurting, torturing or killing an animal? Y N

What did you hear? _____

10. Did you ever *see* anyone deliberately hurt, torture or kill a pet or animal in a cruel way? Y N

If yes, who? (please circle)
a. friend or acquaintance c. stranger
b. family member or relative d. other (who?) _____

What kind of animal(s)? (read types below and circle all that apply)

	How many?		How many?
a. dog(s)	_____	f. turtles, snakes, lizards, insects, etc.	_____
b. cat(s)	_____	g. rabbits, hamsters, mice, guinea pigs, gerbils	_____
c. bird(s)	_____	h. wild animals (describe) _____	
d. fish	_____		
e. horse(s)	_____		

How did they hurt, torture or kill the animal(s)? (circle all that apply)
a. drowned g. burned
b. hit, beat, kicked h. starved or neglected
c. stoned i. trapped
d. shot (BB gun, bow & arrow) j. had sex with it
e. strangled k. other (describe) _____
f. stabbed

What happened afterwards? _____

How old were you when you saw this happen? (circle all that apply)
a. under 6 b. 6–12 years c. teenager d. adult

11. Have *you* ever deliberately hurt, tortured or killed a pet or animal in a cruel way? Y N

If yes, what kind? (circle all that apply)

	How many?		How many?
a. dog(s)	_____	f. turtles, snakes, lizards, insects, etc.	_____
b. cat(s)	_____	g. rabbits, hamsters, mice, guinea pigs, gerbils	_____
c. bird(s)	_____	h. wild animals (describe) _____	
d. fish	_____		
e. horse(s)	_____		

What did you do to hurt, torture or kill the pet or animal? (circle all that apply)
a. drowned g. burned
b. hit, beat, kicked h. starved or neglected
c. stoned i. trapped
d. shot (BB gun, bow & arrow) j. had sex with it
e. strangled k. other (describe) _____
f. stabbed

What happened afterwards? _____

How old were you? (circle all that apply)
a. under 6 b. 6–12 years c. teenager d. adult

Were you alone when you did this? Y N

12. Have you ever *seen* anyone give animals any drugs (alcohol, pot, etc.)? Y N
Describe: _____

Have *you* ever given animals any drugs (alcohol, pot, etc.)? Y N
Describe: _____

Have you ever *seen* animals being made to fight (pit bulls, cocks, etc.)? Y N
Describe: _____

Have *you* ever made animals fight? Y N
Describe: _____

Coercion or Control

"Sometimes people make children or adults do mean things to animals, trying to control people with threats or actually hurting an animal, (e.g. if you tell, I'll kill your dog)."

13. Have you ever *seen* or *heard* about someone doing this? Y N
What have you seen or heard? _____

14. Has anyone ever threatened you this way? Y N
If yes, what happened? _____

Who did this? (circle)
a. friend or acquaintance c. stranger
b. family member or relative d. other (who?) _____

How old were you? (circle all that apply)
a. under 6 b. 6–12 years c. teenager d. adult

Sexual Interactions

"Sometimes animals are used by people in sexual ways."

15. Have you ever *heard* about people being sexual with animals? Y N
What did you hear? _____

16. Have you ever *seen* others do sex acts or sexual touching with animals? Y N
If yes, what kind(s) of animals? _____
Please describe what you saw: _____
Where did you see this? _____
Who did this? (circle)
a. friend or acquaintance c. stranger
b. family member or relative d. other (who?) _____
How old were you? (circle all that apply)
a. under 6 b. 6–12 years c. teenager d. adult

17. Have *you* ever done sex acts or sexual touching with animals? Y N
If yes, what kind of animals? _____
Please describe what you did or were made to do: _____
Who made you do this? (if applicable)
a. friend or acquaintance c. stranger
b. family member or relative d. other (who?) _____
How old were you? (circle all that apply)
a. under 6 b. 6–12 years c. teenager d. adult

Fears

"Some people are afraid of some animals."

18. Have you ever been really frightened by an animal (eg. chased or bitten)? Y N
If yes, what kind of animal? _____

What did the animal do? _____

_____

How old were you?
a. under 6 b. 6–12 years c. teenager d. adult

Were you hurt? Y N
If yes, how were you hurt or injured? _____

_____

Are you still afraid of the kind of animal that frightened you? Y N

"Roadkill"

"Seeing roadkill (dead animals by the side of the road) bothers some people."

19. Does seeing "roadkill" bother you? Y N

If yes, how much? (please circle)
a. just a little b. somewhat c. a lot

What about the "roadkill" bothers you? _____

_____

Movies, TV

"Seeing animals portrayed as hurt or mistreated bothers some people."

20. Does seeing movies or TV shows where animals are hurt or mistreated bother you? Y N

If yes, how much? (please circle)
a. just a little b. somewhat c. a lot

Sampling of Editorials and Opinions in Response to Supreme Court Ruling on Crush Videos Law

http://blog.nj.com/njv_editorial_page/2010/04/new_law_needed_after_supreme_c.html
Newark Star-Ledger 4/27/10

New law needed after Supreme Court overturns animal cruelty video ban

It's shocking enough to learn there are perverts who get a sexual thrill seeing small animals stomped to death. To hear that the U.S. Supreme Court tossed out a law against videos of this depravity is deeply disturbing.

Fifty House members from both parties have responded by introducing legislation to outlaw so-called "crush videos." The law should be passed quickly before more innocent animals are killed.

The high court voted 8-1 last week to strike down a 1999 federal law banning videos of animal cruelty. While the law effectively shut down the market for crush videos, the court found it also violated free speech rights. The decision threw out the criminal conviction of a Virginia man sentenced to three years for making videos of pit bull fights.

Justice John Roberts, writing for the majority, said the law was too broad — would someone use it to ban videos of hunting and fishing? — but suggested a narrowly targeted statute would have a better chance of being upheld.

Justice Samuel Alito was the lone dissenting vote. Alito correctly pointed out that practically all states with animal cruelty laws exempt legal hunting and fishing activities. There was nothing to fear from a law that sought to ban videos of illegal abuse.

The court declined to place videos of animal cruelty outside the protections of free speech, like child pornography. Roberts found the market for child porn "intrinsically" connected to the abuse itself, but did not see a comparable link between animal abuse videos and the criminal acts, as Alito did.

Wayne Pacelle, president of the Humane Society, said he would like to see any new law expanded to include videos of dog-fighting, a criminal felony in all 50 states. Unfortunately, a law narrow enough to survive a court challenge will likely miss other atrocities against animals that we have yet to hear about.

http://toledoblade.com/article/20100424/OPINION02/4240330/0/NEWS04
Toledo Blade 4/24/10

Crush video cruelty

Congress is acting quickly to plug a hole in protection of helpless creatures, after the U.S. Supreme Court last week struck down a decade-old law that had virtually ended the sale of

videos in which small animals were cruelly killed for the sexual gratification of viewers. Called "crush" videos, these horrific tapes include graphic and bloody scenes of kittens, rabbits, hamsters, and other small animals stomped to death by women in bare feet or wearing high-heeled shoes. The trade in these barbaric tapes - sold mostly to sexual fetishists - was largely eliminated by a ban Congress passed in 1999.

But the Supreme Court ruled 8-1 this week that the ban infringed on constitutionally guaranteed freedom of speech. The law, they said, could also be applied unfairly to hunting and other videos that serve useful purposes.

The court was right not to create an exception to the First Amendment. But it's appropriate that Congress is wasting no time crafting a narrower bill that would prevent crush videos while protecting the Constitution. Rep. Elton Gallegly, a California Republican, teamed up with Democratic Rep. Jim Moran of Virginia to introduce legislation that specifically targets crush videos.

Their bill would make illegal videos that show animals intentionally drowned, impaled, burned, or crushed. It specifically exempts hunting videos, as well as those with religious, educational, scientific, or other legitimate value. The bill imposes a fine and as much as five years in prison for anyone convicted of selling torture videos.

More than 50 Republican and Democratic members of Congress have signed onto the bill, including Ohio Reps. Dennis Kucinich of Cleveland and Betty Sutton of Barberton.

It is difficult to imagine opposition to this bill, which should be pushed through Congress as quickly as possible. Our only wish is that it could have been broadened to include dogfighting videos, which also have no redeeming value.

http://www.northjersey.com/news/opinions/92033409_Free_speech__dead_animals.html
New Jersey Record 4/25/10

Free speech, dead animals

The U.S. Supreme Court last week overturned a federal law banning the making and selling of videos depicting animal cruelty on First Amendment grounds. The only good thing about the decision is that it leaves room for Congress to refashion the law in a narrower form to skirt the free speech umbrella.

It may be a tricky undertaking, but lawmakers must begin to rewrite the legislation immediately. Already a market has sprung back up for videos appealing to a depraved audience who get sexual gratification from watching a woman stomp an animal to death. Before the law was enacted in 1999, there were 3,000 so-called "crush" videos available, according to the Humane Society of the United States. The market then dried up quickly, but since 2008, when a federal appellate court found the law unconstitutional, the videos are once again available.

Congress passed the cruelty law primarily to stop the making and selling of crush films, which feature the torture and killing of dogs, cats, monkeys, mice and hamsters, but the legislation has

also been used to stop the distribution and buying of other depictions of animal torture, such as dog fighting videos.

The Supreme Court heard the case of Robert Stevens, who was indicted under the 1999 law for selling dog-fighting videos. Dog fighting is illegal in all 50 states and under federal law, so creating and selling images of it was illegal under the depiction law.

The 8-1 Supreme Court majority struck down that law for several reasons, including the court's unwillingness to create another category of speech that isn't protected by the First Amendment. The lone dissenter was New Jersey's Samuel Alito, who wrote a compelling opinion in which he sided with the government that these videos should not be protected speech for the same reasons the Court decided child pornography should not be protected.

"[T]he harm caused by the underlying crimes vastly outweighs any minimal value that the depictions might conceivably be thought to possess," Alito wrote.

As an example, Alito included a crush video description included in a brief:

"[A] kitten shrieks in pain as a woman thrusts her high-heeled shoe into its body, slams her heel into the kitten's eye socket and mouth loudly fracturing its skull, and stomps repeatedly on the animal's head."

The women often taunt the animals and order them to beg for mercy.

Congress must act now to stop the market for animal fighting and crush videos.

http://www.sacbee.com/2010/04/27/2707647/are-crush-videos-protected-speech.html
Sacramento Bee 4/27/10

Are 'crush' videos protected speech?

More than 10 years ago, Rep. Elton Gallegly, R-Simi Valley, took on a cause. Underground businesses in Southern California were selling videos of animals being tortured and killed.

Specifically, in so-called "crush" videos, kittens, hamsters, birds, even monkeys were taped to the floor while women, in spiked heels or barefoot, stepped on the animal until it died. Viewers heard the animal's screams of pain and bones breaking.

So Gallegly championed a bill, the Punishing Depictions of Animal Cruelty Act of 1999, which Congress passed overwhelmingly and President Bill Clinton signed.

Now, however, the U.S. Supreme Court, on an 8-1 decision, has overturned that law, saying that it was overbroad.

The justices believed the 1999 law could ensnare hunting and fishing videos. They feared, too, that it might ban documentary films, such as "Dealing Dogs" (2006), which included undercover

footage showing mistreatment of dogs at a kennel. Or press coverage, such as an exposé on dogfighting.

As the Reporters Committee for Freedom of the Press wrote in a brief, "It is often important to see and understand what practices are being discussed." That is true. Such coverage contributes to the public debate.

Congress should be able to craft a law that addresses the very real problem of the sale of videos depicting illegal brutalization of animals, while protecting educational, journalistic and artistic values. Unfortunately, the court's decision last Tuesday had the practical effect of legalizing the sale of "crush" videos. So Congress needs to enact a fix quickly to narrow the law.

As the court learned, this is the kind of video that was being sold: "a kitten, secured to the ground, watches and shrieks in pain as a woman thrusts her high-heeled shoe into its body, slams her heel into the kitten's eye socket and mouth, loudly fracturing its skull, and stomps repeatedly on the animal's head. The kitten hemorrhages blood, screams blindly in pain, and is ultimately left dead in a moist pile of blood-soaked hair and bone." This is not speech covered by the First Amendment.

Gallegly has drafted a new bill, HR 5092, that would narrow the law to ban the sale of videos and other depictions of animals being "intentionally crushed, burned, drowned or impaled." It specifically exempts hunting videos. To allay fears about press or documentary coverage, it exempts works that "taken as a whole" have religious, political, scientific, educational, journalistic, historical or artistic value.

This should not be a hard call. Congress should pass this quickly so states can get back to the business of shutting down animal cruelty rings that profit from illegal animal torture.

http://articles.baltimoresun.com/2010-04-26/news/bs-ed-witcover-animal-cruelty-20100426_1_animal-cruelty-crush-videos-political-videos
Baltimore Sun 4/26/10

A beastly decision on animal cruelty

Congress should swiftly repair Supreme Court's decision in dogfighting-video case

By Jules Witcover

Sometimes, though rarely, a Supreme Court ruling is so startling and jarring that Congress is moved swiftly to counter it. That may, and certainly should, be the response to the court's decision declaring unconstitutional a 1999 federal law against creation and distribution of material depicting acts of animal cruelty.

By an unusual and rather remarkable 8-1 vote, with Justice Samuel A. Alito, a member of the conservative bloc, the only dissenter, the court held that the law was so broad that it violated the free speech protection under the First Amendment.

It was the second time in recent months that the court had cited free speech rights to reject federal law. Earlier it had thrown out the McCain-Feingold campaign finance limits on corporate and union contributions on the same general grounds, but in that case in a liberal-conservative split vote.

In this second case, the eight assenting justices brushed aside the blatantly cruel depictions of pit-bull fighting by a Virginia documentary-maker named Robert Stevens who sold such videos to undercover agents and was sentenced to three years in prison.

The law originally was aimed at makers and distributors of so-called "crush videos," showing women in stiletto-heeled shoes stomping on cats, mice and other small animals and rodents, maiming or killing them, or burning them with lit cigarettes.

Chief Justice John G. Roberts in his opinion took the Obama administration to task for placing "relative social cost and benefit" above the constitutional guarantee of free speech, calling that view itself "startling and dangerous." President Bill Clinton, in signing the law, had said it would be applied only against depictions of "wanton cruelty to animals designed to appeal to a prurient interest in sex."

But Justice Roberts wrote that "no one suggests that the videos in this case fit that description," and that depictions of animal cruelty "historically" had never been denied free-speech protection as, for example, child pornography was by the court in 1982. Justice Alito argued that the law in question should be applicable to bar "crush videos and dog fighting videos."

Justice Roberts, in oral argument, suggested hypothetically and ludicrously that such videos could be used as political statements. "How can you tell these weren't political videos trying to fight animal cruelty?" he asked. Alito countered with obvious sarcasm: "What about people who like to see human sacrifice?" He said the court's decision could well result in a flood of new crush videos with the practical effect of legalizing their sale.

A lawyer for Mr. Stevens argued that there were other ways under the Constitution to deal with unwanted animal cruelty. It is a view joined by the American Civil Liberties Union and a range of major American newspapers.

Acting on the decision, Republican Rep. Elton Gallegly of California announced at once that he was introducing legislation focused directly and narrowly against creation and depiction of crush videos, and other congressmen of both parties indicated they would join the effort.

Wayne Pacelle, president of the Humane Society of the United States, the nation's largest animal-protection organization, criticized the court's decision as getting itself tied up in hypothetical legal argument and ignoring the practical ramifications of the case.

He noted that after Clinton signed the bill in question, the crush-video phenomenon "disappeared." In 26 states, he said, attorneys general supported the campaign against animal-cruelty videos, as did the American Society to Prevent Cruelty to Animals.

It remains to be seen now how quickly Congress, which overwhelmingly passed the original law now struck down by the court, will craft and vote on new legislation that again confronts such vicious and inhumane brutality toward animals of all kinds.

The same legal protection afforded victims of child pornography is warranted for them, and willing legislators and their lawyers should waste no time finding the language that will satisfy the most steadfast defenders of free speech.

This is not like the case of flag burning, which, no matter how reprehensible, does not involve the inflicting of corporal punishment or the taking of lives. All members of Congress should see some of these videos, which are available now on Internet sites, to help them make up their minds.

http://www.mercedsunstar.com/2010/04/24/1397974/kathleen-parker-no-defense-for.html
Merced Sun-Star 4/24/10

No defense for animal cruelty

By Kathleen Parker

WASHINGTON -- Some things are too horrific to consider, and yet consider them we must.

"Crush videos," for instance.

Somehow I missed the 1999 law, recently nullified by the U.S. Supreme Court, that attempted to outlaw crush videos -- definition forthcoming pending recovery from horror-induced swoon. Thus, for the past 11 years, I have been blissfully ignorant of a level of depravity I haven't the imagination to invent.

No children beyond this point: Crush videos feature small animals (kittens, puppies and others) being slowly crushed or impaled by a woman wearing stiletto heels, ostensibly for the sexual pleasure of those so attracted.

And yes, the Supreme Court decided that such videos are protected by free speech. Or rather, that the law prohibiting such videos was too broad. As written, for example, the law could be construed to prohibit a deer-hunting video, which, though some might find cruel, relates to a legal activity.

Though many experts and scholars defend the 8-1 ruling as legally correct, the high court's opinion is surely of a kind that prompted Mr. Bumble in " Oliver Twist " to assert: "The law is a (sic) ass -- a (sic) idiot."

Obviously, no one ever intended that the free speech provision of the Constitution protect the rights of deviants to torture animals and then to market videos for the sexual satisfaction of people who, by their tastes, are a probable threat to society.

The case in question stemmed from the 2005 conviction of Robert J. Stevens of Pittsville, Va.,

who was charged with marketing videos of dog fighting. Stevens, who identifies himself as a journalist and documentary filmmaker (who doesn't these days?), claimed that he was merely trying to provide a historical perspective of dog fighting.

Some of the images included pit bulls tearing at the jaw of a domestic pig.

Some things transcend "to each his own," and animal cruelty is one. Dog fighting, in fact, is illegal in all 50 states. But whether the filming of dog fighting is criminal isn't always clear.

Animal rights organizations provide videos of cruelty, after all, though the difference should be obvious. One is reporting on cruelty; the other is setting up an event for the sole purpose of profiting from cruelty.

Although the federal government never prosecuted anyone for making crush videos -- the market shriveled significantly after Congress passed the 1999 legislation -- prosecutors used the law to convict Stevens, who was sentenced to 37 months in prison. Alas, an appellate court ruled that Stevens' conviction violated his free speech rights and the Supreme Court upheld the ruling.

The high court noted that dog fighting remains illegal, but that there was no compelling reason to create a special category of exemption from First Amendment protections, as is the case with child pornography. The court's reasoning was that child porn necessarily means the abuse of children in the production of such films.

This is logic that escapes the layman, burdened as he is with common sense. Aren't animals necessarily harmed in the creation of crush videos and in the course of filming dogfights?

The natural question follows: How can an act be illegal, but the filming and marketing of the illegal act be legal?

In law, it seems, the answer is never simple. These things are not open and shut, but are "a matter of grappling," as PETA President Ingrid Newkirk put it to me during an interview of shared despair.

At least one justice, Samuel Alito, applied the common sense standard in his dissent.

"The videos record the commission of violent criminal acts, and it appears that these crimes are committed for the sole purpose of creating the videos."

Voila.

In effect, the high court has revived the crush video industry, if only for a short time. A day after the ruling, Reps. Elton Gallegly , R-Ventura, and Jim Moran , D-Va., co-chairs of the Animal Protection Caucus, introduced a bipartisan bill (HR 5092) to narrowly focus the 1999 bill to deal with crush videos.

Even this new bill may be imperfect, however. Although it specifically exempts hunting videos, animal rights advocates worry that it leaves a loophole. Hypothetically, a crush video could be built around a legitimate hunting scene and thus be protected from prosecution.

Grappling, indeed.

The challenge to Congress is at once daunting and uncomplicated: There is no argument ever to justify torturing animals and no defense -- ever -- for selling videos created to profit from that torture.

Figure it out. Fix it.

http://articles.sfgate.com/2010-04-23/opinion/20861742_1_animal-mutilation-animal-cruelty-act-free-speech
San Francisco Chronicle 4/23/10

Supreme Court gets it wrong with animal cruelty ruling

By Chris Palmer and Peter Kimball

As film producers, we appreciate the power of film to bring otherwise unseen images to the public, and we support - to an extent - filmmakers' artistic freedom. Nonetheless, this freedom comes with certain limitations. The U.S. Supreme Court struck down a federal law Tuesday that outlawed the distribution of videos depicting graphic animal cruelty. In doing so, the court has gone too far in protecting the free speech of those who would profit from films depicting wanton and malicious cruelty to animals solely for customers' entertainment. We believe that these types of videos deserve no legal protection whatsoever.

The case in question, United States vs. Stevens, centered on Robert Stevens, a purveyor of the video series "Dogs of Velvet and Steel." Stevens produced and sold videos of pit bulls engaging in dogfights and viciously attacking other animals. These videos include graphic depictions of torture and brutality, including a pit bull mutilating the lower jaw of a live pig. In January 2005, Stevens was convicted of violating the Animal Cruelty Act (1999), which criminalized the trafficking of depictions of animal cruelty, except those with "serious religious, political, scientific, educational, journalistic, historical, or artistic value." A federal appeals court overturned Stevens' conviction and ruled that the animal cruelty law violated his First Amendment right to free speech. On Tuesday, the Supreme Court upheld the lower court's ruling.

The fundamental question is this: Does the Animal Cruelty Act violate the First Amendment right of freedom of speech? Certainly, the right to free speech is one of the paramount freedoms in our society. Our country was founded on the principle that people should not be persecuted for voicing unpopular opinions. Naturally, in order to be effective, this freedom protects disturbing and offensive speech.

However, there are very specific types of speech that we, as a society, have deemed so despicable and so lacking in merit that they do not deserve protection, among them child pornography, obscenity, threats and incitement of violence. Animal cruelty should be one of these unprotected categories. As Wayne Pacelle, president of the Humane Society of the United States, wrote, "We wouldn't allow the sale of videos of actual child abuse or murder staged for

the express purpose of selling videos of such criminal acts." There is no reason to ignore depictions of animal cruelty while rightfully criminalizing parallel depictions of child abuse.

The Supreme Court should have recognized that videos of dogfighting and animal mutilation - created not to educate or inform but merely to titillate - have no constitutional protection. As Justice Samuel Alito, the sole dissenter, argued, "The First Amendment protects freedom of speech, but it most certainly does not protect violent criminal conduct, even if engaged in for expressive purposes."

Videos of defenseless animals cruelly victimized to excite the violent and sexual fantasies of certain customers have no place in our society, regardless of the free speech claims of their producers. Any reasonable citizen - even a filmmaker - can tell you that.

http://www.dailygamecock.com/viewpoints/in-our-opinion-restrictions-needed-for-internet-content-1.1377626
Daily Gamecock 4/22/10
(Uuiversity of South Carolina at Columbia)

In Our Opinion: Restrictions needed for Internet content

There are things exposed on the Internet that shouldn't be.

On Tuesday, the Supreme Court ruled it unconstitutional to ban people from selling or posting animal cruelty videos on the Internet. They claimed the law that was made in 1999 was too broad and did not correspond with the First Amendment.

In 1999, the law was made to mostly stop "'crush' videos" where women in high heels would crush animals with their heels. But any video with the depiction of torture or intentional killing of animals still qualified under this law as illegal.

Obviously the law from the late '90s is outdated and hopefully no one really "crushes" animals anymore; so, the Supreme Court is throwing it out.

But, that doesn't mean that animal cruelty on the Internet will now be accepted.

Even though the Supreme Court ruled that it should be protected under the First Amendment and this particular law only addresses portrayals of the acts, states play by their own rules and have had laws in place for animal cruelty that will not go away.

Yes we should play by our own rules and allow freedom of speech on the Internet, but what happens when the line gets crossed? Wayne Pacelle, the president and chief executive officer of the Humane Society of the United States, suggested there be a narrower law put in place that bans these acts of cruelty via video podcast; that way, people aren't using the First Amendment as their excuse.

Even on Facebook and YouTube, people are given the right to report someone for posts such as a photo, video or comment. There are things exposed on the Internet that shouldn't be because

they are inappropriate for some users.

So, yes it is great that we have the right to freedom of speech in this country. But, when it comes to inappropriate material, then that's when laws should be put in place to make some restrictions.

http://www.dailyherald.com/story/?id=375635
Chicago Daily Herald 4/24/10

The First Amendment and animals

By Susan Estrich | Columnist

Let me be clear at the outset: I love dogs. Not like them, love them. Of course, I love mine the best: Judy J. Estrich, Molly Emily Estrich and Irving A. Estrich. Judy is named after one of my dearest friends, Judy Jarvis, who died of cancer 10 years ago. Molly is named after her dog, who took care of her when she was sick and taught me not to be afraid of big dogs. Irving is named for my father. I would kill anybody who laid a hand on them.

That is why I so strongly support the efforts of Rep. Elton Gallegly, a California Republican, and Rep. James Moran, a Democrat from Virginia, to enact legislation aimed at prohibiting the sale and distribution of "crush" videos depicting senseless and vicious animal cruelty.

In 1999, according to the Humane Society of the United States, there were as many as 3,000 videos on the market depicting animals being crushed, burned or impaled for so-called "entertainment" value. After Gallegly's initial bill was enacted, the market disappeared. But last week, the U.S. Supreme Court held that law to be unconstitutional on First Amendment grounds, finding that it swept too broadly and could be construed to apply (even though no one ever has) even to hunting videos.

Videos of women in high heels crushing puppies to death are a far cry from hunting videos. I'm glad that the conservative court has embraced the First Amendment, which they don't always do. But nothing in the First Amendment allows for the celebration of criminal cruelty. Just as we protect children through carefully tailored bans on child pornography, so should we be entitled to protect animals from the effects of gratuitous and criminal violence.

In 2008, a federal court of appeals struck down the law that Gallegly championed. Subsequently, the Humane Society found that the blatantly offensive videos that had disappeared from the market in 1999 were all over the Internet.

I was teaching a First Amendment class at that time and remember assigning my students the task of finding the "outer limit" of protected speech. I don't shock easily, but I was shocked. What kind of a person would make such things or watch them?

I understand the dangers of content-based regulation. I understand that the answer to bad ideas is debate and not censorship. But I am hard-pressed to come up with any argument as to the value of protecting depictions of criminal cruelty and the brutal murder of animals. These are not

hunting videos we are talking about. They aren't images of slaughterhouses. Staging such events would be criminal (just ask Michael Vick), and recording them and selling them should be, too.

The new bill introduced by Gallegly and Moran this week would prohibit the interstate sale of images of animals being "intentionally crushed, burned, drowned or impaled" unless they have "religious, political, scientific, educational, journalistic, historic or artistic value." Punishment is up to five years in prison, a fine of up to $10,000, or both. The draft bill, in an effort to satisfy First Amendment critics (including those in robes), specifically provides that it does not apply to hunting videos.

Don't expect all the critics to be satisfied. Andrew Tauber, an attorney who filed a friend-of-the-court brief in the Supreme Court, is already being quoted criticizing the bill as "presumptively unconstitutional." A new round of court challenges should be expected. Sign me up.

There's a Harry Truman quote I've always loved: "If you want a friend in Washington, get a dog." Dogs are lucky to have good friends in Gallegly and Moran. They just need a few more on the court.

http://voices.kansascity.com/node/8693
Kansas City Star 4/21/10

Since when are animal abuse videos a right of free speech?

By Barb Shelly
Kansas City Star editorial page columnist

U.S. Supreme Court Chief Justice John Roberts says that child pornography is unprotected speech because its market is "intrinsically related to the underlying abuse."

No argument there.

But why then did Roberts and all but one of the other Supremes insist that videos of dogfights and other depictions of animal cruelty are protected speech? Is not their market "intrinsically related" to the abuse of dogs and other animals?

I realize animals aren't people, and I'm all for free speech, but to me it's a stretch to call the depiction and marketing of heinous cruelty to animals a right of free speech.

One good thing about the ruling -- I found something to like about Justice Samuel Alito. He was the lone dissenter, and it turns out he sometimes brings his springer spaniel to the court with him. That's cool.

http://thehill.com/opinion/columnists/cheri-jacobus/93889-for-animals-sake-or-yours
The Hill 4/23/10

For animals' sake, or yours

By Cheri Jacobus

On Tuesday, the United States Supreme Court struck down a 1999 law banning the sale of videos depicting animal cruelty. The decision is heartbreaking to animal lovers, but not "wrong," since the law was broad enough to be interpreted as banning hunting videos, and muddied the waters from its initial purpose.

The law was originally intended to ban so-called "crush" videos depicting sexual fetish-related extreme animal cruelty with women crushing small dogs and other animals to death under their high heels. A documentary filmmaker went to prison for showing the carnage of pit bull fights, thus igniting the firestorm over the interpretation of the law and infringement on free speech as guaranteed by the First Amendment.

The Supremes don't hate animals. The court's job is to strictly interpret the Constitution, and the justices complied. Their role is over—at least for now. In writing for the majority, Chief Justice John Roberts allowed that a more narrow law specifically prohibiting crush videos would likely be valid, essentially volleying the ball back to Congress for some tinkering.

Mere hours after the Supreme Court decision, Animal Protection Caucus co-chairmen Reps. Elton Gallegly (R-Calif.) and Jim Moran (D-Va.) stepped up to the plate with legislation addressing crush videos. While more than 50 of their House colleagues signed on to H.R. 5092, every member of Congress should add his or her name to the bill.

Lest I be judged as an animal-rights vegetarian/red paint-throwing nut job, let me clarify that I eat meat, wear leather (and sport an Imelda Marcos-size shoe collection to back up that claim) and have fed tons of meat to pets over the years. I have also engaged in animal rescue activities.
But one does not have to be Ellie May Clampett with critters to appreciate the intrinsic morality and social value of the legislation.

The issue should be critically important for non-animal lovers, as well. In his press statement, Mr. Gallegly reminds us that "Ted Bundy and Ted Kaczynski tortured or killed animals before killing people. The FBI, U.S. Department of Education and the U.S. Department of Justice consider animal cruelty to be one of the early warning signs of potential violence by youths."

The 1999 law resulted in near-total elimination of crush videos. Swift congressional action now can prevent a resurgence. A society that can stomach this sort of activity one day longer than it has to is a society one day closer to barbarianism.

Business Week's Aug. 6, 2007 cover story sourced Packaged Facts (a division of Market Research Group) with the revelation that Americans spent an astonishing $41 billion on their pets in 2005, and projected more than a 20 percent increase over the following two years.

Obviously, Fido and Fluffy can't vote. (The new voting machines would require complicated retrofitting to accommodate those furry little paws.) But their "significant humans" tend to turn out in droves when revved up about an issue close to their hearts.

For those in Congress inclined to drag their feet on this measure: If simply doing the right thing isn't incentive enough, then perhaps consider the politics.

If you think voters care deeply about the health and welfare of their human family members, you have no idea just how passionate voters can be about their pets.

http://opinion.latimes.com/opinionla/2010/04/the-supremes-film-review-81-animal-cruelty-films-are-free-speech-justice-alito-gives-them-a-thumbsdo.html
Los Angeles Times 4/20/10

The Supremes' film review: 8-1, animal cruelty films are free speech (Justice Alito gives them a thumbs-down)

By Patt Morrison

The fruit of a crime is a crime. The guy having a smoke in the getaway car is just as guilty of murder as the bank robber who pulled the trigger.

So why is the Supreme Court now giving a legal pass to the criminal torture and murder of animals – not in person but on video?

Only one justice, Samuel A. Alito Jr., whose springer spaniel Zeus sometimes shows up around the court, dissented in a ruling that threw out a federal ban on videos of graphic violence inflicted on animals.

Evidently it is protected free speech to make and sell videos of pit bulls tearing each other to pieces. The original 1999 law the court threw out was drafted to stop the flourishing trade in videos of women crushing small, helpless animals to death with their feet, which is evidently a turn-on to some people.

Every state has an anti-cruelty law, but the federal statute was drafted to address cruelty administered anonymously, where the perpetrators cannot be identified on video. The man who made the pit bull video was prosecuted under this federal law by the George W. Bush administration in 2004 and sentenced to three years in prison. I guess this ruling means he could be back in business.

In this increasingly online world, fewer people are taking part in an actual act, yet millions are becoming a virtual audience -- is there a difference, ethically, legally, even criminally?

Sharing illegally downloaded music, even if you didn't download it yourself, and watching illegally obtained DVDs, even if you didn't sit in the movie theater with a video camera – those are offenses. Yet watching a video that shows criminal animal cruelty is not?

How does this work, then: buying and watching child porn is a crime, just as making child porn is, because having sex with children is a crime, and sharing in the fruits of that crime, even virtually, is also a crime.

Why should it be any different with torturing animals? If it's a crime to do it, then it should be a crime to show it, to sell tickets or access to it, and to watch it -- even if the "watching" is by video or computer screen thousands of miles away. It implicitly and explicitly encourages the crime of animal cruelty as a profit-making venture.

If this is a mismatch between state and local laws, someone needs to knit up this dropped stitch. California Republican congressman Elton Gallegly says he'll move ahead on a very narrow law banning crush videos – but at best, that just puts us right back where we were in 1999. (Or in 1599, with Tudor audiences cheering animal torture for amusement.) And that's no place for a species that regards itself as superior to be.

http://thetimes-tribune.com/opinion/good-ruling-awful-conduct-1.740635
Scrauton Times-Tribune 4/23/10

Good ruling, awful conduct

The Supreme Court properly protected the First Amendment when it ruled Tuesday that a federal law precluding the sale of videos depicting cruelty toward animals was too broad.

But the ruling also was a call to Congress to craft a narrower law against the despicable underlying conduct that prompted the case.

Congress passed a law in 1999 against the interstate sale or transportation of videos depicting cruelty toward animals.

The law was prompted by so-called fetishist "crush" videos of women stomping small animals to death. A Virginia purveyor of such videos, and of dogfighting videos, was convicted in federal court of selling "crush videos."

According to the Humane Society of the United States, the market for crush videos disappeared after the conviction.

By an 8-1 vote, with Justice Samuel Alito dissenting, the majority overturned the conviction and held that the law was overly broad. Chief Justice John Roberts said that it could be used, for example, to prosecute someone who produces or sells a movie about hunting or trapping.

The law passed easily in Congress. And attorneys general of 26 states joined the Obama administration in attempting to uphold it.

Congress should revisit the issue and narrowly craft a law that specifically outlaws the horrendous cruelty without encroaching on legitimate First Amendment rights.

http://www.bostonherald.com/news/opinion/editorials/view/20100421free_if_odious_speech/
Boston Herald 4/21/10

Free, if odious, speech

When this often deeply divided Supreme Court rules 8-1 for anything, well, that's news.

When it does so on First Amendment grounds it's hard for those of us who live and die by the First Amendment, who consider it "first" for all the right reasons, to argue against the court's wisdom.

Still . . .

Yesterday's ruling by the high court may well have the effect of once again permitting those odious "snuff" films, depicting the crushing of tiny animals often by women in high heels for those who derive some warped sexual gratification from same. A 1999 federal law was designed to ban the sale of such films on the Internet.

The case at issue, however, involved the prosecution of a man charged with making videos of pit bull fighting. The fighting itself and animal cruelty in general are, of course, punishable under various state laws. But the court ruled that this particular law prohibiting the filming of such acts and distribution of those films was overly broad.

Noting that it could be used to prosecute, say, films about hunting, Chief Justice John Roberts was skeptical about the Obama administration's claim that it would use the law only to prosecute instances involving extreme cruelty to animals.

"The First Amendment protects against the government," Roberts said, writing for the majority. "We would not uphold an unconstitutional statute merely because the government promised to use it responsibly."

The statute can and should be rewritten to address only instances of extreme cruelty, which puts the matter back where it belongs - in Congress.

That this particular court remains a guardian of the First Amendment, even when the "speech" involved is not particularly popular, is in the end reassuring.

http://www.dailycamera.com/editorials/ci_14930380
Boulder Daily Camera 4/22/10

Free speech and animal cruelty
Ruling was the right one

By Erika Stutzman
for the Camera editorial board

Animal rights advocates are outraged, and frankly: Who can blame them?

On its face, this week's U.S. Supreme Court ruling in favor of a pit bull breeder who called his dogfighting video business "the American dream" seems like a giant leap backward in protecting animals from cruelty.

A 1999 law that was intended to ban "snuff" videos -- where women kill small animals for a viewer's amusement -- stung the pit bull breeder, who was selling the videos but did not stage or organize the fights.

The law was written to ban photographs and videos depicting "animal cruelty" in which a living animal is intentionally maimed, mutilated, tortured, wounded or killed.

Pit bull fighting is repulsive, indefensible behavior and illegal in the United States. And a law that specifically addresses videos of dogfights or women stomping on animals would be welcome.

Unfortunately, the 1999 law could conceivably be applied to images of hunting, since hunting is legal in some jurisdictions but not others. There are films and images about our food industry, overfeeding animals and the slaughtering of animals: Could they conceivably be accused of making commercial gain showing images of animals being maimed or killed?

The U.S. Humane Society urged Congress to "remedy this unacceptable situation" following the ruling. They said the law "so obviously was intended to stop criminals from using the First Amendment to defend their horrendous and illegal behavior."

And Congress should. By drafting a better, more narrow law that won't infringe on valid free speech.

http://www.vcstar.com/news/2010/apr/27/fast-forward-to-halt-crush-videos/
Ventura County Star 4/28/2010

Fast forward to halt 'crush' videos

Congress has responded quickly to the U.S. Supreme Court's recent ruling that threw out a federal law against videos showing acts of animal cruelty.

The co-chairmen of the congressional Animal Protection Caucus, Rep. Elton Gallegly, R-Simi Valley, and Rep. James P. Moran, D-Va., have lined up about five dozen of their colleagues from both parties to support a new law.

Their fresh proposal is aimed more narrowly than Gallegly's 1999 measure that halted the sale of videos showing graphic images of kittens or other small animals being stomped to death.

Last year, a federal appeals court struck down the law on free-speech grounds, and the Supreme Court agreed this month in a lopsided 8-1 decision, saying it feared the ban was too broad. The Star believes the appeals court and the Supreme Court are mistaken.

Laws don't allow the sale of videos of child abuse or certain other crimes staged for the express purpose of selling the footage. Videos showing the willful, deliberate killing of live animals for the viewers' sexual pleasure depict abhorrent, unlawful conduct that we believe is not protected by the First Amendment.

The new bill by Reps. Gallegly, Moran and more than 55 co-sponsors would ban the interstate sale of videos showing animals being "intentionally crushed, burned, drowned or impaled" unless there is "religious, political, scientific, educational, journalistic, historic or artistic value." The proponents say the measure doesn't apply to hunting videos.

We hope Congress acts quickly to approve the legislation and President Barack Obama signs it into law.

The 1999 law halted the sale of repugnant videos that had been flourishing, and following the recent court ruling there already are reports that the same kinds of sickening images are being offered on the Internet.

Those videos of illegal animal-abuse behavior for commercial purposes have no place in civilized society.

Public leaders should move with haste to put in place new rules that comply with the Supreme Court's finding that such restrictions, if written with a more narrow focus, might not conflict with Americans' free-speech rights.

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People and Animals, Kindness and Cruelty: Research Directions and Policy Implications

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This article addresses the challenges of defining and assessing animal abuse, the relation between animal abuse and childhood mental health, the extensive research on animal abuse and intimate partner violence, and the implication of these empirical findings for programs to enhance human and animal welfare. Highlighted are recent developments and advances in research and policy issues on animal abuse. The reader is directed to existing reviews of research and areas of focus on the expanding horizon of empirical analyses and programmatic innovations addressing animal abuse. Following a discussion of forensic and veterinary issues related to animal abuse, we discuss policy issues including how the status of animals as human companions at times may place animals at risk. We also review developments in the field of human–animal relations and apply the primary–secondary–tertiary prevention public health model to prevention and treatment of animal abuse. We close with a description of community networks addressing animal abuse, interagency collaborations, and new developments in animal-related law.

Despite early allusions to nonhuman animal (hereafter, "animal") abuse in scholarly journals in psychology (e.g., Saunders & Hall, 1900) and psychiatric texts (e.g., Pinel, 1809), the systematic, scientific study of humans' abuse of

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animals is a fairly recent phenomenon. Beginning with a seminal publication by Fernando Tapia in 1971, the literature on this topic has expanded dramatically and a number of academic reviews are now available. These include a compendium of previously published articles (Lockwood & Ascione, 1998), a monograph of original chapters exploring the dimensions of animal abuse from varied professional perspectives (Ascione & Arkow, 1999), and reviews of the literature examining animal abuse in the context of child maltreatment (Ascione, 2004, 2005b), other criminal acts (Gullone & Clarke, 2008; Merz-Perez & Heide, 2004), and intimate partner violence (Ascione, 2007; Carlisle-Frank & Flanagan, 2006). An international handbook on animal abuse has been published (Ascione, 2008) and provides conceptual analyses, research reviews, and new empirical research on animal abuse (including hoarding and bestiality) from a variety of professional perspectives (e.g., veterinary science, social work, psychology and psychiatry, and law enforcement). We refer the reader to these sources for information primarily pertaining to articles published during the last quarter of the 20th century. Due to space limitations, in this article, we focus on selected examples of what is emerging on the horizon of the 21st century with regard to understanding and addressing animal abuse.

We hope to build on the base of this accumulated knowledge and highlight recently published conceptual analyses and research studies that illustrate contemporary trends in our understanding of animal abuse. We will also suggest directions for further study and describe the ways that advances in our knowledge have influenced educational and therapeutic approaches, legislative change, and social policies designed to address animal abuse.

Research Issues

Definition and Assessment

Students of animal abuse often draw parallels to various forms of interpersonal violence perpetrated by humans. For our purposes, we define *animal abuse* as nonaccidental, socially unacceptable behavior that causes pain, suffering or distress to and/or the death of an animal. Acts of omission or commission encompassed by this definition could be applied to cases of child abuse and neglect, intimate partner violence, and maltreatment of elderly adults or adults with disabilities by substituting human victims for animal victims. In many ways, definitions of animal abuse are socially constructed (see, e.g., debates about the concept of "cruelty" in Nell, 2006) and may evolve as our understanding of the needs of animal's changes. Recently, McMillan (2005) focused attention on the emotional abuse of animals, a form of maltreatment that clearly falls within our definition but one that has yet to be systematically addressed in research. Empirical studies of animal abuse have often incorporated our definition or variants, but we do

acknowledge that the definition may be considered a narrow one since conceptions of animal abuse beyond socially unacceptable behavior also warrant investigation (Munro, 2005).

Advances in a field of inquiry usually require advances in assessment and measurement. For many years, those of us interested in animal abuse, especially in childhood and adolescence, had to rely on existing instruments that queried respondents about this behavior. For example, there is 1 item, among over 100 items, that addresses animal abuse in Achenbach's (1991) Child Behavior Checklist, a widely used diagnostic instrument. The checklist is typically completed by a parent or guardian, and the teacher-report and self-report forms of the checklist do not include an animal abuse question. Obviously, relying on a single item for assessing animal abuse invites psychometric problems. Fortunately, a number of assessments specifically designed to measure animal abuse are now available. These include a parent-report questionnaire developed by Guymer, Mellor, Luk, and Pearse (2001), the parent-report and child-self-report versions of the Cruelty to Animals Inventory (Dadds et al., 2004), the self-report form of the Childhood Trust Survey on Animal-Related Experiences (Boat, Loar, & Phillips, 2008), surveys of animal abuse developed for use with Italian school children (P.E.T. Scale—Baldry, 2003; a questionnaire that includes socially unacceptable and socially "acceptable" animal abuse—Pagani, Robustelli, & Ascione, 2007), and a survey designed for use in the context of domestic violence (Ascione et al., 2007). (Assessments of animal abuse in the context of elder abuse or abuse of disabled adults have not yet been developed—the first author and his collaborator, Terry Peak, are currently developing such assessment protocols.) Merz-Perez and Heide (2004) developed an assessment for retrospective reports of animal abuse (based on Ascione, Thompson, & Black, 1997) for use with incarcerated men. The psychometric properties of most of these assessments are included in the citations listed above.

As researchers continue to refine their methods of assessment, a number of challenges remain, especially when we attempt to determine the comparability of findings between studies.

- Are assessments based on parent/guardian reports or self-reports? The literature suggests that parents and guardians may not always be aware of their children's behavior, especially behavior away from the home environment (Dadds, Whiting, & Hawes, 2006). Multisource assessments would be ideal.
- What forms of animal abuse do the assessments address and how are these forms defined? As with child maltreatment, we need to ask questions about physical, sexual, and emotional abuse of animals as well as animal neglect. The severity and frequency of incidents should be determined in addition to their first and most recent occurrence.

- How is the reliability of retrospective reports affected by the age of the respondent and by the time that has elapsed since the animal abuse was perpetrated?
- Are the reliability and accuracy of reports more easily assessed by incorporating measures of social desirability?

It is clear that for some research questions, dichotomous measures of animal abuse may be sufficient (e.g., relating the presence or absence of convictions for felony-level animal abuse to convictions for other criminal offenses, correlating hoarding with the presence of psychiatric disorders). However, our understanding of the etiologies, developmental trajectories, and predictive value of animal abuse histories for later psychological functioning will require both categorical and more dimensional measures. For example, recent work by Tallichet, Hensley, and Singer (2005) focuses on careful categorization of the forms that animal abuse may take. Examining the species of animals abused is also being studied (Tallichet, Hensley, O'Bryan, & Hassel, 2005), an issue illustrating how defining animal abuse may be a more daunting task than defining maltreatment of humans.

One of the recent developments in assessing animal abuse involves the inclusion of questions about exposure to the maltreatment of animals. Such exposure may occur in the home, neighborhood, or other community settings but may also be present in various media (e.g., videos and Internet sites). Henry (2004a) examined the correlation of respondents' reported exposure to animal abuse ("whether they had ever witnessed an animal being tortured," p. 189) with self-reports by college students of their own perpetration of animal abuse. Self-reported animal abuse was three times higher for participants who had observed animal abuse. Thompson and Gullone (2006), studying adolescents, correlated such exposure ("Have you ever seen someone else hurt an animal on purpose?" p. 228) with self-reports of animal abuse and attitudes related to the humane treatment of animals. Self-reported perpetration of animal abuse was higher for adolescents exposed to animal abuse but exposure was not related to assessment of humane attitudes. Similar analyses appear in the studies by Baldry (2003) and Pagani et al. (2007). How such exposure may either desensitize the observer or heighten the observer's empathic responding is worthy of future study.

Examination of the correlations among various forms of violence in the family is one element of the LINK® (see www.americanhumane.org)—a concept suggesting that animal abuse is, at times, related to forms of maltreatment involving human victims. The potential relations among different forms of family violence (child abuse, intimate partner violence, animal abuse, and abuse of elder adults) should foster greater multidisciplinary research attention the results of which could inform programs and policies for reducing violence in the family. We know that rates of animal abuse are higher in groups of abused children than in nonabused children, in samples of clinically distressed children than in normative samples,

and in families experiencing intimate partner violence. These differences have been documented, but our understanding of the etiological factors related to these differences needs to be a higher research priority. One future direction for those examining the "link" is the study of the dynamics of the various ways that animal abuse may be implicated in interpersonal violence and the ways that understanding such dynamics could facilitate prevention and intervention (see later section on treatment issues).

Relations to Clinical Psychology and Psychiatry

The inclusion of animal abuse as one of the symptoms of conduct disorder (American Psychiatric Association, 2000) has facilitated increased attention to the maltreatment of animals. Subtypes of conduct disorder are now being examined, and one subtype that may be of special interest to those studying animal abuse relates to youths who are described as displaying callous and unemotional traits. These traits may be implicated in psychopathy (Vaughn & Howard, 2005) and are potentially related to deficits in empathy (Kotler & McMahon, 2005; Raine et al., 2006). In one study of a normative sample of school-aged children, Dadds et al. (2006) found that scores on a measure of callous-unemotional traits were positively correlated with scores on an animal abuse measure. A recent case report suggests that both actual and symbolic (e.g., dismembering a toy animal, hanging a sibling's toy teddy bear by a noose) animal abuse may have diagnostic value (Shapiro, Prince, Ireland, & Stein, 2006).

Given the continuing scholarly interest in conduct disorder, it would be fruitful for scientists interested in animal abuse to collaborate with conduct disorder researchers who often study large samples of children at different ages, either cross-sectionally or longitudinally. If youths display the symptom of animal abuse as determined by dichotomous scoring resulting from diagnostic tests, follow-up assessment using more detailed measures (e.g., the assessment developed by Dadds et al., 2004) could be included. As the legitimacy and significance of studying animal abuse increase, we would hope that animal abuse will be integrated into more general study of the development of aggression, violence, and other antisocial behaviors (e.g., Stoff & Susman, 2005).

Setting fires, bullying, and forced sex are three additional symptoms of antisocial behavior related to the diagnostic criteria for conduct disorder. Recent research suggests that animal abuse may cooccur with these other forms of destructiveness and aggression. Both Dadds and Fraser (2006) and Becker, Stuewig, Herrera, and McCloskey (2004) report correlations between arson and animal abuse in normative samples of children and in adolescents exposed to domestic violence, respectively. Given the comorbidity of fire setting and animal abuse, it may be of value to collaborate with researchers who study the etiology of fire setting and effective approaches to intervention (Kolko, 2002).

Similar collaboration with researchers interested in bullying may also be fruitful. Bullying includes repeated acts of aggression directed toward a less powerful victim (Smith, Pepler, & Rigby, 2004), a definition that could easily be applied to the field of animal abuse. Baldry (2005), studying 9- to 12-year-old Italian schoolchildren, reports that being a victim of bullying at school (as distinct from other forms of victimization at school or at home) was the strongest predictor of perpetrating animal abuse. Similar results with a sample of 12- to 16-year-old Australian youths have been reported by Robertson and Gullone (2008) and suggest that bullying victimization and bullying perpetration are related to self-reported animal abuse.

Bestiality as a form of animal abuse is also now receiving greater attention than before (Beetz & Podberscek, 2005). Elevated levels of sexual abuse of animals in youths residing in psychiatric hospitals and youths who were victims of sexual abuse have been reported by Ascione, Friedrich, Heath, and Hayashi (2003), and a recent case study illustrates the lethal form that animal sexual abuse may sometimes take (Hvozdík et al., 2006). A 46-year-old man admitted to sexually mutilating five 3-month-old calves, all of whom died from their injuries. After being apprehended, the man revealed that this was not his first episode of sexually assaulting animals. Bestiality has also been found to be related to crimes against humans when retrospective reports of incarcerated men have been examined (Hensley, Tallichet, & Singer, 2006). Definition and assessment may be especially challenging when dealing with this phenomenon (Ascione, 2005a; Munro, 2006). Finally, although space limitations preclude our addressing animal hoarding, this form of maltreatment typically results in the neglect and abuse of large numbers of animals. The reader is referred to Patronek's (2006, 2008) recent reviews of our understanding of this phenomenon and its relation to human mental health issues.

Animal Abuse and Intimate Partner Violence

As noted earlier, a number of literature reviews have documented the prevalence of animal abuse, typically perpetrated by batterers, in homes suffering from domestic violence (Ascione, 2007; Strand & Faver, 2005). These studies have focused on primarily Caucasian samples of women who were battered. A forthcoming report has extended this finding to a sample of Latina/Hispanic victims of domestic violence (Faver & Cavazos, 2007). Allen, Gallagher, and Jones (2006) report on this phenomenon with a sample of women from the Republic of Ireland. Recent research has also demonstrated that children exposed to domestic violence are more likely than nonexposed children to have abused animals (Ascione et al., 2007; Currie, 2006; Duncan, Thomas, & Miller, 2005).

Concern about pet welfare is sometimes an obstacle to victims of domestic violence seeking safety at domestic violence shelter. Collaboration between animal

welfare and domestic violence agencies has attempted to remove this obstacle by offering pet sheltering for domestic violence victims (e.g., Ascione, 2000; Carlisle-Frank & Flanagan, 2006), and there is an emerging trend to pass legislation including pets in orders of protection sought by domestic violence victims (Zorza, 2006). This remains one of the clearest examples of research on animal abuse being applied to changes in programmatic and social policy and will be discussed in a later section of this article. This legislative change and others related to animal abuse should be the subject of research within the legal profession (see, e.g., Frasch, 2008).

Forensic and Veterinary Issues

Forensic psychology and psychiatry are acknowledging the significance of assessing animal abuse in understanding psychopathy (Bower, 2006; Haden & Scarpa, 2005), a development that will also be of interest to the legal profession (e.g., Schaffner, 2006). One study recently reported the discovery and apprehension, via DNA analysis, of a perpetrator who killed a protected wild animal (Lorenzini, 2005). Munro and Thrusfield (2001) alerted us to the issue of nonaccidental injuries in animals in the U.K., and a recently published text on veterinary forensic medicine (Sinclair, Merck, & Lockwood, 2006) should facilitate the diagnosis of such injuries. (Munro and Thrusfield's work has recently been replicated in the Republic of Ireland by McGuinness, Allen, & Jones, 2005.)

The issue of mandated reporting, by veterinarians, of suspected animal abuse is a topic of significant debate within the veterinary profession (Babcock & Neihsl, 2006; Jack, 2005; Lofflin, 2006), a debate that is also emerging in the mental health community (Nelson, 2001). This debate includes concerns about confidentiality and the possibility that mandated reporting might reduce the likelihood of a pet owner seeking care for an injured animal (similar to concerns raised by pediatricians when mandated reporting of suspected child maltreatment was first proposed).

It is clear that basic and applied research on animal abuse is now informing changes in policies and programs, the subject to which we now turn our attention.

Policy Issues

Historically, the "link" is a by-product of the largely modern urban-based development that brought companion animals into the human family. This is more than a move from the barn or backyard to the parlor or TV room. Of those members of households in the United States that have companion animals (59%; Gehrke, 1997), 87% include their companion animal in the number of individuals in their home (Cohen, 2002). A considerable literature attests to the benefits of that inclusion for members of the family, human and animal (Garrity & Stallones,

1998). However, membership has its privileges and benefits, but also its burdens and dangers.

A general systems approach applied to the study of the family readily shows that, like other institutions, it functions through a complex set of structures and processes: various alliances, styles of communication, boundaries between subsystems and other systems, and role assignments (Minuchin, 1974). As a member of this complex system, the family dog or cat has allies as well as enemies, open as well as closed lines of communication, and boundaries that appropriately maintain integrity and recognition of needs and interests as well as those that blur individual identity and result in exploitation and suffering. Dysfunctional family systems often include animal abuse as well as spousal, child, and elder abuse.

The co-occurrence of human violence and animal abuse within this "all in the family" context has spawned a wide range of policies and applications. In this section, we critically review existing and proposed policy innovations. To organize this extensive and broad-ranging set of policies and practices, we use, with some license, the distinction among levels of prevention popularized in the mental health community movement in the 1960s (Caplan, 1961). Primary prevention refers to efforts to reach the general population, before the onset of problems, and features education. Secondary prevention depends on the ability to recognize precursors to violent and other antisocial behavior toward human or animals and consists of preventative and remedial programs. Tertiary prevention involves major efforts at intervention and treatment of those already demonstrating substantial socially unacceptable and, often, illegal behavior.

Primary Prevention: Education

Some component of humane education has been a part of the traditional curriculum of grade and middle schools since the late 19th century (Grier, 2006). It has varied from a modest single presentation by the local humane society (dismissively referred to as "a dog and pony show") to a semester-long course; it often includes teaching care and responsibility for animals housed in the classroom. The addition to this curriculum of instruction and discussion of the link is a policy innovation of recent times and is part of a broader effort to incorporate humane issues in the general curriculum in various subjects. Thompson (2001) includes the link in her curriculum which she titles "Compassion Education Program: Creating a Society of Character" and frames in terms of character development. Another innovative curriculum combines the link with issues of social justice and environmental quality (Weil, 1999). Part of this effort is to professionalize the occupation of humane educator through degree programs and certification.

Turning to college and graduate studies, the emergence of the multidisciplinary field of Human–Animal Studies (HAS; aka "Animal Studies" and

"Anthrozoology") provides an academically credible home for the studies of the link reviewed earlier. HAS is a metapolicy innovation as it is predicated on three propositions that foster recognition of the importance of the link: (1) we have socially constructed many types of animals—wild, feral, domesticated, companion, research model, commodities, cultural artifacts, and literary symbols; (2) the result is a myriad of relationships between human and animals varying along many dimensions—real/virtual, historical/contemporary, factual/fictional, and beneficial/detrimental; (3) the study of these manifold types of animals and contexts of human–animal interaction discovers and documents the pervasiveness and variety of interspecies relationships and their formative influence on our lives (Shapiro, 2007). Evidence of the growth and influence of the emerging field of HAS is found in direct products of scholarship (journals, book series, conferences, and doctoral dissertations) and the development of institutional infrastructures that support that scholarship (courses, minors, majors, programs, university chairs, fellowships, think tanks, and sections or divisions of professional discipline organizations, such as the American Sociological and the American Psychological Associations).

The general implications of the field are that we should take animals, the abuse of animals, and animal–human relationships seriously and develop policies and practices that maximize benefits and minimize costs to both parties. This often involves scholars uncovering the ways in which animals have been constructed or treated in their discipline to reveal the potential for more robust forms of human–animal relationships. In this way, HAS is comparable to fields that study other oppressed groups. For example, a feminist scholar deconstructs relationships involving women in history, fiction, and in current institutions to reveal the typically degraded role of women—how they have been objectified, reduced to sexual objects or help-mates, and denied full legal, economical, and political standing. Feminist studies and HAS play a role in the social justice movements dedicated to ending discrimination against the respective oppressed group.

Another important development in higher education that is a powerful instrument of policy innovation in the area of the link is the emergence over the past two decades of the field of Animal Law (AL). Again, evidence of its growth is found, *mutatis mutandis*, in devoted journals, conferences, courses, casebooks, and AL sections of state and national bar associations. The field of AL is in large part responsible for a number of judicial, legislative, and regulative developments that provide policy relevant to the link. These developments blur the lines between the three levels of prevention (primary, secondary, and tertiary) that we are using as a working organization of this article. In addition to their punitive and deterrent functions for at-risk and actual perpetrators, laws educate and shape the attitude of the general public regarding the importance of animal abuse and its relationship with other forms of violence.

Within the academic literature on the philosophy of law, scholars grapple with alternatives to the traditional legal classification of animals as property. The first and most radical is the argument that individuals of some animal species are "persons" as that concept is defined in law (Wise, 2000). Adoption of this standard would give "standing" to animals in court, entitling them to due process. A second and more conservative approach retains the frame of animals as property but provides within it the subclass of "sentient property" (Favre, 2004). Arguably, existing anticruelty statutes already imply a special status for animals as distinguished from, for example, artwork. That is, I am limited in my treatment of my dog in ways that I am not limited in my treatment of my Van Gogh painting. The recognition of animals as sentient property gives more explicit support to recent innovations such as (1) suing for wrongful injury and mental anguish in addition to the market value of an abused companion animal; and (2) including animals in domestic violence protective orders, so that an alleged perpetrator is restrained from approaching the animals as well as the humans in his or her family (Zorza, 2006). A third strategy applies more to the act of abuse than the legal status of the animal victim. This approach would reclassify animal abuse from a crime against property to a crime against society, like drug use, disorderly conduct, and, most relevant to the link, family offenses. Again, this classification would allow animal abuse to be taken more seriously in the context of criminal justice. These innovations support the recognition of the link in that they position human and animal abuse on the same or similar playing field.

Other legislative as well as social policy innovations that take animals and animal abuse more seriously include laws that restrict tethering of animals, instituting no-kill shelters, and protecting shelter workers from the burn-out and trauma of euthanizing animals. Part of the impetus for these policies is the HAS literature showing that humans who witness animal abuse are more likely both to become victims and perpetrators of abuse (Henry, 2004b).

Since 1990, the number of states in the United States that include felony provisions in their anticruelty statutes for at least the more egregious forms of animal abuse has increased from 7 to 42. One model state anticruelty statute includes (1) distinctions based on the degree of abuse (cruel abuse, aggravated abuse, and torture); (2) hoarding (an apparently increasingly common and recalcitrant form of abuse); and (3) prohibitions against the depiction of animal cruelty (Illinois Humane Care for Animals Act, 1999).

Within the criminal justice system, another innovation in progress is an effort to include animal abuse as a distinct category in national data collection systems, such as the National Incident-Based Reporting System (formerly the FBI's Uniform Crime Report). The inclusion of animal abuse would alert local police and prosecutors to the importance of animal abuse, based, in part, on its role as an indicator of other delinquent and violent behavior.

Secondary Prevention: At-Risk Populations

For the purposes of this discussion, at-risk populations include individuals deemed likely to commit animal abuse, as well as those who already have done so but have not completed the link by also committing forms of violence or antisocial behavior toward humans. We also consider as at-risk, individuals who have perpetrated only one instance of animal abuse, particularly younger children, as the more robust findings in the link literature use recurrency as a measure of animal abuse. Secondary prevention only works if we can identify individuals at risk. As discussed earlier, researchers have developed several instruments, in various stages of validation and reliability.

Identification of populations at risk at an early age allows an opportunity for the more effective institution of preventative and remedial programs. Although the graduation hypothesis, the idea that animal abuse is a precursor of human abuse, has not been substantiated in the link literature, such a progression is described in the more general literature on antisocial and violent juvenile behavior. Furthermore, the robust findings of cooccurrence, as discussed earlier, reinforce the need for early identification of and intervention for at-risk populations, whether the second component of the link has occurred prior to, contemporaneous with, or after the occurrence of animal abuse. Finally, we do know that in the population diagnosed with childhood conduct disorder, animal abuse is a symptom that appears early in the development of that disorder (Miller, 2001). It is important, then, that we identify children at risk because of general factors associated with later antisocial and violent behavior (poverty, marginally functional families) and children at an early stage as perpetrators of animal abuse (isolated incident, occurrence before they are capable developmentally of culpability, or a low level of severity of the abuse; Randour, Krinsk, & Wolf, 2002, p. 9).

Programs working with at-risk youth vary in duration and intensity. Through Forget-me-not Farm, a weekly after-school program, children from families and communities in which violence is prevalent learn the responsible care of animals (Rathman, 1999). PAL (People and Animals Learning; DeGrave, 1999) is a 3-week day camp for youth at risk that gives them experience in a wildlife rehabilitation center and an animal shelter. By feeding baby birds and training dogs to be obedient, they learn to be effective, nurturing, and responsible caregivers. Project Second Chance pairs teenage offenders with shelter dogs "to foster empathy, community responsibility, kindness, and an awareness of healthy social interactions" (Harbolt & Ward, 2001, p. 179). The 3-week program results in a higher adoption rate for the dogs, compared to dogs who do not have this training, and anecdotal evidence suggests that the program is a positive learning experience for the juveniles (Harbolt & Ward, 2001).

Many of these programs are the products of networks established among various human service, criminal justice, educational, and humane societies and

shelters. Forget-me-not Farm is a collaboration of the Humane Society of Sonoma County, the San Francisco Child Abuse Council, and the YWCA of Sonoma County (Rathman, 1999). The PAL program in Milwaukee is a result of the cooperative efforts of the District Attorney's office, the police department, the Commission on Domestic Violence and Sexual Assault, the Task Force on Family Violence, and other social service agencies (DeGrave, 1999). Many of these use animals as vehicles of learning and corrective socialization. However, to date, the evidence of the ameliorative effect of these animal-assisted activities and therapies is limited (Fine, 2000). Furthermore, concern has been raised about the welfare of the animals, as they are being exposed to children who are likely to or already have abused animals.

Operating largely at the level of secondary prevention, networking is itself a critical policy implication of the link. The co-occurrence of the various forms of domestic violence and the likely commonalities in the psychology of the perpetrators implies the importance of various community group stakeholders working together to identify potential perpetrators, and to develop preventative and ameliorative programs. These collaborations vary in the degree of formalization: from loose associations among individuals from various agencies to incorporated entities with their own staff (Arkow, 2003). Located in Portland, Maine, The Linkage Project is a nonprofit organization funded by foundations and corporations. Project collaborators include over a dozen agencies representing animal welfare, health and human services, education, corrections, domestic violence, public health, law enforcement, and medical interests. National animal advocacy organizations, such as the American Humane, the Humane Society of the United States, and the Animals and Society Institute provide workshops to help local communities build link-related networks.

These networks and the programs they develop include efforts to protect and rehabilitate victims, as well as to identify, and, where appropriate, prosecute and treat perpetrators. Cross-reporting and cross-training have been instituted in many communities to teach human service personnel how to recognize and report perpetrators and victims of animal abuse and, conversely, to teach humane service personnel to recognize child, spousal, and elder abuse. Florida and San Diego County, California, mandate child protective personnel to report suspected animal abuse to humane agencies, and four states require animal care and control personnel to report possible child abuse to the appropriate human services (Arkow, 2003). Particularly in the involvement of therapists and veterinarians, this important policy innovation raises issues of confidentiality and liability. Increasingly, jurisdictions are addressing this issue, more often through providing protection against liability for breaking the confidentiality of client–provider relationships than through mandating reporting.

"Safe-havens" are cooperative arrangements, typically between women's shelters and humane shelters or veterinary facilities, that provide secure housing

for companion animals frequently caught up in the dynamics of control, power, and intimidation that maintain spousal abuse (Carlisle-Frank & Flanagan, 2006). Women's shelter personnel increasingly are including in their intake protocols inquiry about the involvement of companion animals in spousal or child abuse. Also, personnel are including consideration of the safety of companion animals in safety plans developed as early-warning systems that allow the current and prospective human victim to leave the scene of her or his immanent abuse.

Summarizing, secondary prevention uses assessment instruments to identify people and animals at risk as either perpetrators or as victims. Community-based networks, some of which are formally constituted entities, develop a wide range of programs and policies aimed at providing interventions that prevent further animal abuse and reduce its likelihood of including human violence.

Tertiary Prevention: Intervention and Treatment

Twenty-seven states now include in their anticruelty statutes the provision for recommended or mandated counseling for convicted animal abusers. Significantly, these statutory provisions give status to mental health discourse by recognizing that animal abuse is understandable in terms of psychological concepts and findings. This reinforces the link and suggests the general strategy that policies and programs dealing with child and spousal abuse can be a model for those dealing with animal abuse. As spousal abuse gives rise to safety plans for escaping impending abuse, protective orders to prevent further abuse, and shelters to provide temporary refuge, so we now recognize the appropriateness and effectiveness of developing similar policies and programs to deal with animal abuse.

Mental health providers are beginning to realize the need to develop treatment models to work with convicted animal abusers, as well as with abusers referred by schools, physicians, and veterinarians. In fact, *The AniCare Model of Treatment for Animal Abuse* (Jory & Randour, 1999), the first published treatment approach, was occasioned by the passage of the first such state law (California, 1998).

Persons presenting with the problem of animal abuse vary considerably in the degree of psychopathology, so that no one treatment is appropriate for all. Forms of animal abuse also vary from neglect to family-based abuse, to sadistically motivated and ritualized torture. The degree of suffering of the victim(s) is not necessarily correlated with the severity of the behavior from a psychological perspective. For example, neglect can produce prolonged suffering and death but can be perpetrated by an individual whose action is a combination of adoption of attitudes and behaviors of a particular subculture, subcultural influences, personal irresponsibility, and limited financial resources.

Beginning with the least intensive, we describe three available treatment modalities. (It should be noted that none of these have published outcome data.) The Strategic Humane Interventions Program (SHIP; Loar & Colman, 2004) is

also suitable for individuals at risk. It involves working with families one or more of whose members is at risk for or has perpetrated a violent behavior toward a human or animal. Using a technique based on operant conditioning, called clicker training, individual members of the family are directed in how to teach dogs at a shelter and each other more socially acceptable and responsible behavior. In effect, family members learn cognitive, empathic, and behavioral skills that are transferable to various settings and relationships. As an example of a training to shape a behavior of a family member, a child is helped to define a behavior that members of the family and the facilitator agree is a problem. Under the direction of the facilitator, the child then "shapes" the target behavior toward a more acceptable behavior. For example, a father is reinforced for using positive approaches rather than intimidation in his parenting of a child.

In an intermediate range of intervention, AniCare and AniCare Child (Randour et al., 2002) are approaches for working with adults and juveniles, respectively, presenting with the problem of animal abuse. They are designed for out-patient populations not diagnosed with major psychotic disorders and capable of benefiting from cognitive-behavioral interventions. Adapted from the intimate justice theory (Jory, Anderson, & Greer, 1997), a model developed for clinical intervention with perpetrators of domestic violence, AniCare uses cognitive behavioral and gestalt techniques to deal with accountability, empathy, and problem-solving skills. AniCare Child uses cognitive behavioral, psychodynamic, and attachment theories to teach the child how to empathize with animals and develop more effective executive functions. It is adapted from components of the treatment of other related childhood presenting problems that have been found to be effective (Randour et al., 2002). A more direct formal evaluation of AniCare Child is in process. Finally, at the other extreme of intensity of intervention, Green Chimneys is a residential treatment program for disturbed youths, including but not limited to those who abuse animals (Ross, 1999). Children reside in the working farm for an extended period, during which they receive individual and group-based treatment, as well as animal-assisted therapy and activities.

Conclusions

The topic of animal abuse provides a surprisingly rich set of research opportunities. The demonstration of its association to other forms of abuse suggests an equally rich array of possible programs and policies. As we responded to the discovery of spousal and then child abuse, we turn to dealing with animal abuse—now with the clear view that these and other forms of violence are related to cause and resolution. We hope that this article has highlighted the vibrancy of scholarly research and the evolution of policy issues related to animal abuse. It is also our hope that a cadre of young professionals as well as seasoned scholars will be drawn to this subject and enhance its future development.

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Physical Cruelty Toward Animals in Massachusetts, 1975-1996

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This article describes the nature of animal abuse and the response of the criminal justice system to all cruelty cases prosecuted by the Massachusetts Society for Prevention of Cruelty to Animals between 1975 and 1996. Dogs were the most common target; when combined with cats, these domestic animals composed the vast majority of incidents. Almost all of these animals were owned, and females were the majority of complainants. Suspects were almost always young males, and most of the time they allegedly shot, beat, stabbed, or threw their victims. Reportedly, adults were more likely than minors to abuse dogs, shoot them, and commit such acts alone rather than in a group, while minors were more likely to abuse cats, beat them, and commit such acts with peers present. Less than half of the alleged abusers were found guilty in court, one-third were fined, less than one-quarter had to pay restitution, one-fifth were put on probation, one-tenth were sent to jail, and an even smaller percent were required to undergo counseling or perform community service.

Criminal justice professionals, including police, district attorneys, judges, and criminologists do not appear to regard animal abuse as a serious or common crime. Statistics on criminal behavior rarely if ever include animal cruelty as a type of offense. For example, the often-cited FBI annual crime report makes no mention of animal cruelty (Department of Justice, 1996). Criminologists have largely ignored animal cruelty as a topic worthy of investigation. This year is the first time that an article about cruelty will be published in a criminology journal (Beirnes, 1997). And the courts have had a lax response to cruelty cases, according to animal welfare spokespersons (Wilensky, 1995).

At least four factors account for this apparent indifference. First, society in general attributes less value to animals than people. Second, there are serious human issues to address in the criminal justice system – such as homicide – that eclipse other concerns, including but not limited to animal cruelty, and reduce perceptions concerning their prevalence and seriousness. Third, it is easy to get the impression that animal cruelty is rare because only a small fraction of animal cruelty cases reach the press; for instance, of the 268 cruelty cases examined in this article, only 12 were reported in the press, representing about 5% of the total number of incidents studied. Moreover, those that were reported tended to be cases of bizarre cult or satanic abuse (e.g. Reuters, 1996), egregious sadistic abuse witnessed by the animal victim's owner (e.g. Hutchinson, 1994), animal abusing groups or gangs (e.g. Cullen, 1992), or interpersonal human violence where reports of animal abuse were incidental to the main story (e.g. Hayward, 1996). Finally, incidents of animal cruelty are viewed as isolated crimes having no relationship to other human behaviors such as interpersonal violence. Apparently, there has been little dissemination of studies of prisoners (Kellert & Felthous, 1985) and abusive domestic partners (Ascione, 1996) that suggest a correlation between cruelty and violent behavior.

The collection and reporting of descriptive statistics on animal cruelty would certainly help to mobilize interest among criminal justice professionals in this anti-social behavior. However, published, comprehensive, and detailed statistics are unavailable on animal abuse, with the exception of Vermeulen and Odendaal's (1993) analysis of 1863 abuse and neglect complaints received during one year by four South African SPCAs. Although their study provides a valuable typology of animal abuse, it leaves many basic questions unanswered regarding the background of reported abusers, the nature of their abuse, and the response of the criminal justice system to their acts. Moreover, comparable American data are needed to assess the generalizability of their findings across the Atlantic.

Results

To investigate the nature and prevalence of physical cruelty toward animals in an American context, all complaints of abuse and neglect were reviewed from the records of the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) between 1975 and 1996. These complaints included reports of neglect as well as cases of potential regulatory abuse (e.g., pet store infractions), organized abuse (e.g., dog fighting), legally-sanctioned abuse (e.g., self defense), intentional mental cruelty towards animals by individuals (e.g., depriving affection and

stimulation, causing anguish), and intentional physical cruelty towards animals by individuals (e.g., burning, poisoning, shooting, mutilating, drowning, suffocating), the last category being the focus of this study.

Between 1975 and 1996, there were approximately 80,000 complaints of abuse and neglect investigated by the MSPCA. In recent years, there has been an increase in the number of such complaints. From 1980 to 1984, the MSPCA investigated 17,480 complaints of abuse and neglect. From 1985 to 1989, the number of these cases jumped to 20,698, or a 12.7% increase over the prior five-year period. And from 1990 to 1994, the number reached 27,587, or a 33.2% increase over the prior five-year period.

We anticipated a similar increase in the rate of physical cruelty toward animals by individuals, given the increased frequency in recent years of other kinds of violent crime (Gurr, 1989) such as domestic violence (Goetting, 1995). However, the number of physical cruelty cases prosecuted by the MSPCA has modestly declined in this period. From 1975 to 1985, there were 148 prosecuted cruelty cases, compared to 120 cases between 1986 and 1996, representing approximately 20% fewer cases.[2] These 268 prosecuted cases represent .3% of all cases of neglect and abuse that were investigated by the MSPCA during the time frame of this study.

It is important to recognize that more than 268 incidents of animal cruelty came to the attention of the MSPCA between 1975 and 1996. These 268 incidents only represent cases where prosecution was the chosen course of action. Cases were not prosecuted for one of two reasons. Either the identities of suspected abusers were unknown, making it impossible to prosecute, or there was insufficient evidence to go forward with prosecution.

Several factors may account for this decline in prosecuted cases. First, there may be fewer cases of physical cruelty to animals, although no evidence suggests this. Second, the nature of some types of animal cruelty may have changed, making it harder to investigate these cases. Third, the criminal justice system may be less sympathetic to animal crimes as it becomes increasingly bogged down with other crimes deemed more important to society. Finally, the MSPCA has changed its approach to animal cruelty cases, more often pursuing educational interventions than prosecution because the latter is costly, time consuming, and not necessarily effective.

Prosecuted Cruelty Incidents[3]

As seen in Table 1, the vast majority of victims were dogs and cats (84.7%) in prosecuted cases. Dogs (57.8%) were the most commonly abused animals, fol-

lowed by cats (26.9%), and other animals (e.g., birds, wildlife, horses, farm animals - 15.3%). The vast majority of animal victims were owned (89.1%) rather than stray or wild. Most complainants (i.e., reporters of crime) were owners (48.5%), followed by anonymous or unknown complainants (24.6%), strangers (23.9%), and intimates/housemates (3%). Of the complainants who were not anonymous, females filed complaints in 41.8% of the incidents, male/female couples 36.6% of the time, and males in 21.6% of the cases.

Table 1. Animal Victims

Animal	Number	Percent
dogs	155	57.8
cats	72	26.9
wildlife	14	5.2
farm	8	3.0
birds	6	2.2
horses	3	1.1
other	10	3.7
Total	268	100

The prosecuted abusers were typically young males. There were 259 males (96.6%) and 9 females (3.4%). Moreover, two of the females were accomplices who did not directly touch or harm animals. Although their ages ranged from 9 to 83, most of the suspected abusers were young (mean = 30). Approximately 27% of them were adolescents (i.e., under 18 years), and 56% were under the age of 30.

While dogs were more likely than cats to be harmed regardless of the prosecuted abuser's age, adults were significantly more likely to abuse dogs than cats when compared with adolescents (χ^2 14.88, $df = 2, p < .0006$). Approximately two-thirds (65%) of suspected adult abuse was directed at dogs, while slightly more than one-third (42%) of the adolescents' was. Alternatively, about half (51.2%) of all the adolescent cases involved cats, while this was true for adults in only 17.9% of the cases.

Several factors may account for why adolescent suspects were more likely than adults to abuse cats. General cultural ambivalence toward cats (Rhoades, 1981) may be perceived and exaggerated by adolescents. Also, compared to dogs, the size of cats may lead children to see them as easier or safer targets. And dogs are more likely than cats to be seen as "bad citizens" because of barking, defecating, or biting

(Perrin, 1988), so adults – whose prerogative it is to protect their families and property, as well as to maintain order in the neighborhood – may be more likely than adolescents to harm dogs.

In general, the results in Table 2 indicate that a few methods of abuse accounted for most of the cruelty cases. In more than half (58.6%) of the cases, animals were either shot or beaten; when combined with stabbing and throwing animals, these four methods accounted for three-quarters (75%) of the methods used by suspected abusers.

Table 2. Methods of Cruelty

Method	Number	Percent
beat	86	32.1
shoot	71	26.5
stab	29	10.8
throw	15	5.6
burn	10	3.7
ear/tail cut	9	3.4
strangle	9	3.4
drown	8	3.0
stone/crush	8	3.0
vehicular	8	3.0
dog attack	6	2.2
decapitate	5	1.9
bait	3	1.1
poison	2	0.7
castrate	2	0.7
hang	1	0.4
unknown	6	2.2
Total	268	100

Closer inspection of the two most common methods of abuse revealed some interesting differences. When only beating and shooting incidents were compared, adolescents (71.4%) were significantly more likely than adults (46.2%) to beat animals, and adults (53.8%) were significantly more likely than adolescents (28.6%) to shoot animals ($\chi^2 = 14.67$, $df = 2$, $p < .0006$).

There are two possible explanations for this difference. First, adults have greater access to firearms than do adolescents. Second, younger people are more

likely than older people to commit an expressive form of cruelty where the process of abuse is itself the sought after goal (Arluke, 1996). In such instances, mistreatment of animals is more important to abusers than achieving other goals such as retaliating against disliked owners. Compared to methods such as beating or strangling, remote methods of abuse such as shooting will be less appealing to the expressive abusers because they do not provide direct contact with victims.

The age of prosecuted abusers was also related to whether they acted alone or with others when committing abuse. When examined by age, younger suspects were significantly less likely than older ones to be alone when harming animals ($\chi^2 = 31.81$, $df = 2$, $p < .0001$). While 87% of the adult suspects acted alone when harming animals, only about half (52%) of the adolescents did so.

The finding that only 13% of the adult suspects abused as part of a group, while approximately half of the adolescents did so, is consistent with reports of adolescent interpersonal violence. Levin and McDermitt (1994) claim that juveniles are especially likely to commit hate crimes – attacks against individuals or their property because they are seen as different due to race, religion, gender, sexual orientation or disability. These crimes are usually committed by groups of three to four boys who sincerely regard their victims as members of different species (e.g., the labelling of blacks as "primates"). Although animal cruelty by groups of adolescents has not been thought of as a hate crime, it may be useful for researchers to consider it as such. The dynamics driving groups of adolescents to harm animals may parallel the social and psychological forces behind hate crimes.

Adjudication

Description of the nature and frequency of animal cruelty is necessary to understand this phenomenon and eventually reduce its occurrence. Although prevalence rates can be effected by such factors as changes in public awareness and reporting, the above data help to create a baseline by which physical cruelty can be compared with other populations or examined over time.

However, an equally important part of the cruelty picture is the response of the criminal justice system to animal abuse cases. Approximately half of the cases that were prosecuted lead to either guilty (44.4%) or not guilty (5.2%) decisions. The remaining complaints were dismissed (26.1%),[4] defaulted (4.4%),[5] denied (4.1%),[6] withdrawn (2.6%),[7] pursued by a police department (2.6%), continued (2.2%),[8] adjudicated as delinquent (2.2%),[9] or not sought (2.2%).[10] Disposition was unknown (2.9%) in a few cases.

Table 3. Sentences

Sentence	Number	Mean	Percent
fine	91	$132	33
restitution	56	$ 99	20
probation	59	5.5 mon	21
jail	28	4.5 mon	10
counseling	27	.....*	10
com. service	19	50 hours	7

* Court ordered counseling was always an indeterminate length.

As indicated in Table 3, most of the court cases did not result in punishment.[11] When they did, fines were the most common punishment; they were ordered in 91 cases (33%) with a mean of $132 per fine. Restitution was the next most common punishment, ordered in 56 of the cases (20%) with a mean of $99. Usually, this restitution was to reimburse owners for veterinary costs and did not serve financially to punish abusers or award punitive damages to owners. Probation was ordered in 59 cases (21%), with a mean of 5.5 months of probation. Jail time was rarely served (10%), and the amount of time served was brief (mean = 4.5 months). When jail time was served, the abuse always involved domestic animals that were killed. Counseling was also rarely ordered (10%), as was community service (7%), the latter consisting of volunteer work in an animal shelter.

The total number of sentences noted above (280) exceeds the total number of suspected abusers found guilty. Two reasons account for this disparity: in some cases, individuals received more than one form of punishment and in other cases, judges ordered punishments even though individuals were not found guilty – a courtroom practice used by judges who believe that defendants are guilty but, for various reasons, do not want this verdict to appear in their records.

Discussion

Overall, dogs were the most common target in prosecuted cases of physical cruelty; when combined with cats, these domestic animals composed the vast majority of incidents during the period studied. Almost all of these animals were owned, and females were the majority of complainants. Suspects were almost always young

males, and most of the time they allegedly shot, beat, stabbed, or threw their victims. Reportedly, adults were more likely than minors to abuse dogs, shoot them, and do it alone rather than in a group, while minors were more likely to abuse cats, beat them, and do so with peers present. Less than half of the alleged abusers were found guilty in court, one-third were fined, less than one-quarter had to pay restitution, one-fifth were put on probation, one-tenth were sent to jail, and an even smaller percent were required to undergo counseling or perform community service.

Future research on the prevalence of animal cruelty must address and rectify several data collection problems. For example, certain types of cruelty, such as bestiality, may be underrepresented in official reports because the stigmatizing nature of the crime may lead offenders to conceal their cruelty and/or identity from others. Other types of cruelty, such as harm to wildlife, may be underrepresented in official reports because there are rarely witnesses to the crime, given the remoteness of its location. A more general data collection problem stems from the reporting of these crimes. In some cases, individuals who harm animals also commit other crimes that overshadow the cruelty and are managed by local police departments. In such instances, acts of animal cruelty may not be noted in criminal records, and if they are recorded, cruelty incidents are difficult to retrieve because abusers are likely to be identified by other criminal charges, such as assault or public disorder.

Despite these formidable problems, the present research findings make an important contribution to the nascent body of knowledge described by Rowan (1992) as the "dark side" of human-animal relationships. We know much less about the dynamics of human-animal relationships that are destructive and undesirable to humans that those that are positive and beneficial to society. Certainly, knowledge about the former is essential if we hope to develop preventive measures that will reduce the suffering of both humans and animals.

Notes

[1] Correspondence should be sent to Arnold Arluke, Department of Sociology, Northeastern University, 360 Huntington Avenue, Boston, MA 02115. This research was supported by the President's Fund of the Massachusetts Society for the Prevention of Cruelty to Animals and a grant from the Geraldine R. Dodge Foundation. Thanks to Walter Kilroy, Chris Morrissey, Jeb Booth, and Jill Gillingham for their help with data collection and analysis.

[2] Other aspects of prosecuted cruelty cases also were compared between these two time periods. While the percent of abusers being punished remained constant over the entire

twenty years studied, some of the punishments increased in severity.

[3] Many years ago the MSPCA did prosecute cases. They now present cases to the assistant district attorney who is assigned to conduct the prosecution and MSPCA officers testify in court.

[4] Although these cases are thrown out of court, in some instances, judges may lecture defendants or issue informal warnings to them.

[5] In cases where defendants do not appear in court, a bench warrant may be issued for their arrest.

[6] If there is insufficient cause or evidence, a complaint will not be issued.

[7] Complaints may be withdrawn, for example, if suspects agree to pay restitution before or at the start of their hearings. Complaints are then considered resolved and there is no further hearing.

[8] When complaints are continued, the judge does not issue a decision and the case is left open for an extended period of time.

[9] Because suspects in these cases were officially considered to be delinquent, adult complaints were not sought. Often, these offenders were entered into juvenile diversion programs.

[10] Seeing little point in prosecution, the MSPCA did not go through with these complaints because suspects left the country or parents were getting counseling for their children.

[11] In Massachusetts, the maximum penalty for cruelty to animals is a fine of not more than $1000 and/or imprisonment for not more than one year (Massachusetts General Law, Chapter 272, Section 77).

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AMERICAN HUMANE

Protecting Children & Animals Since 1877

Testimony by
Tracy Coppola, J.D., M.S.E.L., Legislative Analyst
for the American Humane Association
Before the United States House of Representatives
Subcommittee on Crime, Terrorism, and Homeland Security
In support of HR 5092 and federally addressing depictions of malicious acts of animal cruelty

Wednesday, May 26, 2010

On behalf of the American Humane Association, the nation's oldest non-profit organization with over 130 years dedicated to protecting animals and children from abuse and neglect, I thank Hon. Chairman Bobby Scott for the opportunity to submit the following testimony in support of federally addressing the Supreme Court's decision invalidating the 1999 Depiction of Animal Cruelty Act (18 U.S.C. § 48) and swift passage of HR 5092, sponsored by Congressman Elton Gallegly.

The Link® between violence to people and violence to animals and the concept that children who harm animals can become desensitized to violence and go on to commit antisocial acts against people formed the very basis of American Humane's foundation more than 130 years ago. To this day, American Humane continues to directly address the Link® between animal abuse and other forms of societal violence.

The 1999 Depiction of Animal Cruelty Act's passage provided law enforcement the tools it needed to aggressively hinder the proliferation of the animal crush video market, which included depictions of other malicious acts of actual animal cruelty. American Humane believes that the Supreme Court's decision to invalidate 18 U.S.C. § 48 on grounds of substantial overbreadth and facial unconstitutionality under the First Amendment of the Constitution will encourage and revitalize the crush video industry. For this reason, American Humane urges Congress to act quickly to pass HR 5092, and to consider addressing more specific acts of animal cruelty, such as dogfighting, in future legislation this session.

Sponsored by Congressman Gallegly and supported thus far by over 300 House co-sponsors, HR 5092 addresses the Supreme Court's concerns as it would enact a *narrower* ban on the sale of videos depicting malicious acts of cruelty than addressed by 18 U.S.C. §48. In its decision, the Court argued that the statute's scope was overbroad because it did not solely address videos that were borne out of acts of actual and malicious animal cruelty.

Specifically, the Court distinguished its decision in *New York v. Ferber*, 438 U.S. 747 (1982)—in which the Court held that child pornography is not protected speech and is, instead, an activity exempt from First Amendment protections—from the *Stevens* case, stating that, under 18 U.S.C. §48, depictions of animal cruelty do not have a close enough nexus to the crime from which they came. The Court argued further that, while the words "maimed," "mutilated," and "tortured"

clearly convey cruelty, the plain meanings of "wounded" and "killed" are not limited to cruel acts.

To ensure its purpose is understood as unequivocally targeted toward acts of actual animal cruelty, HR 5092 carefully omits the words "wounded" or "killed" and clearly defines the term "animal crush video" as isolated to visual images that depict actual and intentional cruelty: "animals being intentionally crushed, burned, drowned, or impaled and actual conduct in which a living animal is tortured, maimed, or mutilated."

Congress has made great strides in addressing animal fighting. In passing the 2007 Animal Fighting Prohibition Enforcement Act, Congress established felony-level penalties for interstate and foreign transport of animals for fighting purposes. The 2008 Federal Farm Bill (PL/ 110-234) incorporated language from the Federal Dog Protection Act (sponsored by Congressman Gallegly) and went even further to crack down on dogfighting by penalizing sponsoring or training dogs for fighting purposes, using the U.S. Postal Service to mail fighting paraphernalia, and otherwise promoting dogfights. Today, American Humane urges Congress to address the burgeoning market for depictions of actual animal fighting, and is readily on hand to provide necessary resources and advocacy for this initiative.

At present, Congress must pass HR 5092. HR 5092 will provide law enforcement the tools it needs to aggressively crack down on animal crush videos, which involve some of the most heinous acts of cruelty against animals. The bill will also set a strong precedent for Congress to address depictions of other specific acts of malicious acts of animal cruelty.

Please co-sponsor the bill and encourage your colleagues in Judiciary to pass HR 5092 today.

Thank you.

Sincerely,

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Amici Curiae Briefs

Below are excerpts from the *amici curiae* briefs filed in the *Stevens* case where the submitters indicated that a narrow bill would be constitutional:

1) Association of American Publishers, et al.

   "Had Congress sought to proscribe only 'crush videos,' it could have done so, and this would be a much different case. But the objective of the law expanded from eradicating 'crush videos' to 'regulating the treatment of animals.' H.R. Rep. No. 106-397, at 3 (1999). The statute's language, correspondingly, 'drifted [far afield] from the original emphasis in the Congressional Record on the elimination of crush videos.' As a result, like the CPPA, the Act is not limited to depictions of harm inflicted for the purpose of creating the depiction, as is child pornography; instead, it targets the contents of an image rather than the circumstances of its production."

2) The Reporters Committee For Freedom of the Press and Thirteen News Media Organizations

   "Congress could have regulated legally obscene crush videos in a manner that did not threaten news reporting and other high-value speech. But it chose to draft the statute broadly, criminalizing mere possession of a wide variety of materials, exempting only 'serious' journalism, and failing to require that the value of challenged works be judged as a whole. In so doing, it drafted a statute that criminalizes a substantial amount of valuable speech, from investigative reporting to hunting and fishing coverage."

3) National Rifle Association of America, Inc.

   "Congress could have drafted a statute that more precisely aimed at its objectives. For example, Congress could have defined and criminalized 'crush videos.' Alternatively, to the extent that it was bent on defining 'animal cruelty' by reference to other laws, Congress could have referenced only animal cruelty laws."

4) Safari Club International and Congressional Sportsmen's Foundation

   Repeatedly lauds the goal of preventing crush videos and animal fighting videos and argues that "[t]his Court has not hesitated to send Congress back to the drawing board to craft a more narrow and constitutional statute, regardless of the importance of criminalizing the underlying conduct."

5) CATO Institute

   The Government's "argument on the low value element consists largely of lurid descriptions of the most vile kinds of animal cruelty--notably, 'crush videos,' which are not at issue here and which (because they are 'designed to appeal to persons with a very specific sexual fetish,') are obscene by any standard."

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

OJJDP
September 2001
JUVENILE JUSTICE BULLETIN

Animal Abuse and Youth Violence

Frank R. Ascione

The past two decades have witnessed a resurgence of interest in the relation between cruelty to animals, or animal abuse, and serious violent behavior, especially among youthful offenders. As an illustration, a recent study by Verlinden (2000) of 9 school shootings in the United States (from Moses Lake, WA, in 1996 to Conyers, GA, in 1999) reported that 5 (45 percent) of the 11 perpetrators had histories of alleged animal abuse. The most well-documented example was the case of Luke Woodham who, in the April before his October 1997 murder of his mother and two schoolmates, tortured and killed his own pet dog (Ascione, 1999).

This Bulletin reports on the psychiatric, psychological, and criminological research linking animal abuse to juvenile- and adult-perpetrated violence. It addresses the challenge of defining animal abuse and examines the difficulty of deriving accurate incidence and prevalence data for this behavior. It also explores the relationships between animal abuse and conduct disorder (CD), analyzes the motives of child and adolescent animal abusers, and considers the contexts that may lead to the emergence of animal abuse as a symptom of psychological disorder. (Although a few studies examine the neurobiological correlates of cruelty to animals—see Lockwood and Ascione, 1998—that topic is beyond the scope of this review.) The importance of including information about animal abuse in assessments of youth at risk of committing interpersonal violence is emphasized throughout, and a list of national organizations with programs related to the link between animal abuse and other violent behavior is also provided.

This Bulletin does not suggest that attending to animal abuse is a panacea for dealing with the challenges of identifying and addressing youth violence. Violent behavior is multidimensional and multidetermined, and its developmental course is still the subject of concerted research investigation (Moffitt, 1997). However, it is argued here that animal abuse has received insufficient attention—in fact, is sometimes explicitly excluded (e.g., Stone and Kelner, 2000)—as one of a number of "red flags," warning signs, or sentinel behaviors that could help identify youth at risk for perpetrating interpersonal violence (a relation first noted in the psychiatric literature by Pinel in 1809) and youth who have themselves been victimized.

Defining Animal Abuse

All 50 States have legislation relating to animal abuse. Most States categorize it as a misdemeanor offense, and 30 States also have instituted felony-level statutes for certain forms of cruelty to animals. However, legal definitions of animal abuse, and even the types of animals that are covered by these statutes, differ from State to State (Ascione and Lockwood, 2001; Frasch et al., 1999; Lacroix, 1998). The research literature also fails to yield a consistent definition of animal abuse or cruelty to

A Message From OJJDP

Although legal definitions of animal abuse vary, it is a crime in every State, and many States have enacted laws establishing certain forms of cruelty to animals as felony offenses. The forms of abuse to which animals may be subjected are similar to the forms of abuse children experience, including physical abuse, serious neglect, and even psychological abuse.

It has been said that violence begets violence, but what do we know about the nature of the relationship between the abuse of animals and aggressive behavior towards human beings?

This Bulletin describes psychiatric, psychological, and criminal research linking animal abuse to violence perpetrated by juveniles and adults.

Particular attention is focused on the prevalence of cruelty to animals by children and adolescents and to the role of animal abuse as a possible symptom of conduct disorder. In addition, the motivations and etiology underlying the maltreatment of animals are thoroughly reviewed.

The abuse of sentient creatures demands our attention. The Bulletin includes recommendations to curb such cruelty, while providing contact information for additional resources concerned with violence perpetrated against animals and people.

It is our hope that the information that this Bulletin offers will contribute to reducing both forms of violence.

animals; however, the following definition captures features common to most attempts to define this behavior: "socially unacceptable behavior that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal" (Ascione, 1993:228).

This definition excludes practices that may cause harm to animals yet are socially condoned (e.g., legal hunting, certain agricultural and veterinary practices). Because the status of a particular animal may vary from one culture to another, the definition takes into account the social contexts that help determine what is considered animal abuse. For the purposes of this review, the animals that are victims of abuse are most often vertebrates because this is the category of animals to which are attributed the greatest capacity for experiencing and displaying pain and distress.

The forms of abuse to which animals may be subjected are parallel to the forms of child maltreatment. Animals may be physically or sexually abused, may be seriously neglected, and, some might argue, may be psychologically abused.

Prevalence of Cruelty to Animals by Children and Adolescents

Because cruelty to animals is not monitored systematically in national crime reporting systems (Howard Snyder, personal communication, January 22, 2001), researchers must rely on data from studies in developmental psychology and psychopathology to estimate the prevalence of this problem behavior in samples of youth. A number of assessment instruments that address child behavior problems include a question about cruelty to animals. However, "cruelty" is not always explicitly defined for the respondent, so it is difficult to determine the exact behaviors that are being reported.

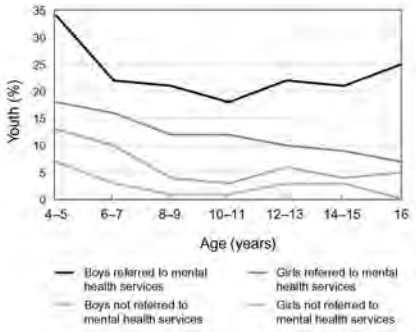
Using the Achenbach-Conners-Quay Behavior Checklist (ACQ), Achenbach and colleagues (1991) collected parent or guardian reports of problem behaviors for 2,600 boys and girls ages 4 to 16 who had been referred to mental health clinics and a control group of 2,600 boys and girls of the same age. The nonreferred children constituted a representative sample of the U.S. population, based on ethnicity, socioeconomic status, and place of residence (urban/suburban/rural and national region [e.g., Northeast; West]). These children had been screened for the absence of mental health referrals in the past year. The referred children were drawn from 18 mental health clinics across the United States. Most of the referred children were being evaluated for outpatient mental health services. Potential candidates for inclusion in the nonreferred and referred groups were excluded if they were mentally retarded, had a serious physical illness, or had a handicap.

One item on the ACQ asks the respondent whether their child or adolescent has been "cruel to animals" in the past 2 months. Respondents can answer using the following 4-point scale: 0 = never or not at all true (as far as you know), 1 = once in a while or just a little, 2 = quite often or quite a lot, or 3 = very often or very much. Figure 1 shows the percentage of caregivers, for each age group, gender, and referral status, that reported the presence of cruelty to animals (David Jacobowitz, Statistician Programmer, Achenbach System for Empirical Behavioral Assessment, College of Medicine, University of Vermont, personal communication, July 17, 1992). In their statistical analysis of individual ACQ items, Achenbach and colleagues noted that cruelty to animals was significantly ($p<0.01$) higher for referred youth, boys, and younger children.

The data in figure 1 illustrate the relatively low frequency of cruelty to animals in the nonreferred sample (0–13 percent) in comparison with the referred sample (7–34 percent). Eighteen to twenty-five percent of referred boys between the ages of 6 and 16 were reported to have been cruel to animals, and the data suggest this item's incidence has greater stability through childhood and adolescence for boys than for girls.

Data on the prevalence of cruelty to animals are also provided in the manuals for the Child Behavior Checklist (CBC), perhaps one of the most widely used checklists for child behavior problems, which is available in separate versions for 2- to 3-year-olds (Achenbach, 1992) and 4- to 18-year-olds (Achenbach, 1991). The cruelty

Figure 1: Percentage of Youth Reported by Caregivers To Have Been Cruel to Animals, by Offender's Age, Gender, and Referral Status



Note: Data show caregivers' responses to a question asking whether their child or adolescent had been cruel to animals in the past 2 months.

Source: Achenbach, T.M., Howell, C.T., Quay, H.C., and Conners, C.K. 1991. National survey of problems and competencies among four- to sixteen-year-olds. *Monographs of the Society for Research in Child Development* 56: Serial No. 255.

to animals item on the CBC (which uses a "past 2 months" timeframe for 2- to 3-year-olds and a "past 6 months" timeframe for 4- to 18-year-olds) is scored on a 3-point scale: 0 = not true (as far as you know), 1 = somewhat or sometimes true, or 2 = very true or often true. Referred and nonreferred boys and girls can be compared for each of three age groups. These data are presented in figure 2. In this figure, data on acts of vandalism committed by the two older age groups are included for comparison. Again, cruelty to animals is more often reported for younger children and boys, especially those referred for mental health services. Figure 2 also suggests that reported rates of cruelty to animals (for youth ages 4 and older) are higher than or similar to reported rates of vandalism, a problem behavior about which more systematic juvenile crime data are available.[5]

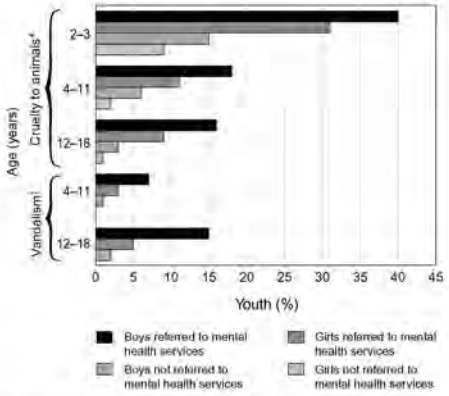
Limitations of Adult Reports on Children's Cruelty to Animals

Both the ACQ and CBC rely on caretakers' reports, and comparable information from youth's self-reports of cruelty to animals is not available. The reliance on caretakers' reports, however, could be problematic because animal abuse may be performed covertly (a characteristic shared with youth vandalism and firesetting) and caretakers may be unaware of the presence of this behavior in their children. Offord, Boyle, and Racine (1991) surveyed a nonclinical sample of 1,232 Canadian parents/guardians and their 12- to 16-year-old boys and girls. They asked respondents (both parents/guardians and adolescents) to report on a number of CD symptoms, based on a 3-point scale identical to the one used with the CBC. (See pages 4–5 for a more indepth discussion of the link between CD and animal abuse.) Figure 3 compares parent/guardian reports of cruelty to animals with youth self-reports. These data suggest that parents and guardians may seriously underestimate cruelty to animals, with boys self-reporting this behavior at 3.8 times the rate of parents/guardians and girls at 7.6 times the parent/guardian rate. Similar underestimates appear for two other CD symptoms, vandalism and firesetting, that may often be covert and, therefore, unknown to or undetected by parents or guardians (see figure 4).

A recent study of a nonclinical sample of youth (1,333 boys and 837 girls; mean age, 14.6 years) in Alexandria, Egypt (Youssef, Attia, and Kamel, 1999), also provides data on self-reported cruelty to animals. Dividing their sample into two groups—one reporting that they had engaged in violent behavior (acts of "physical force that tended to inflict harm or cause bodily injury") and the other reporting that they had not—Youssef, Attia, and Kamel (1999:284) asked youth whether they were often cruel to animals. Of the violent youth, 9.6 percent reported being cruel; of the nonviolent youth, 2.05 percent reported being cruel. The cruelty-to-animals variable significantly ($p<0.003$) determined membership in the violent or nonviolent group.

It should be noted that instruments used to assess teacher reports of children's problem behaviors rarely include an item on animal abuse (e.g., Reynolds and Kamphaus, 1992). Although teachers are unlikely to observe their pupils being cruel to animals, teachers may hear about such acts or read about them in students' written work. These indirect observations should be taken seriously and serve as a signal for further assessment (Dwyer, Osher, and Warger, 1998).

Figure 2: Comparison of Reports of Incidents of Cruelty to Animals and Incidents of Vandalism, by Offender's Age, Gender, and Referral Status



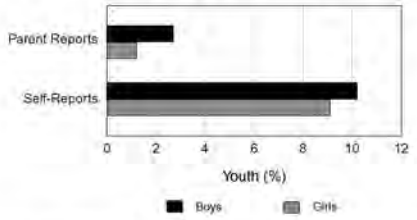
* In the past 2 months for children ages 2–3; in the past 6 months for children ages 4–18.
† The percentage for girls not referred to mental health services was zero for both age groups.

Sources: Achenbach, T.M. 1992. *Manual for the Child Behavior Checklist/2–3 and 1992 Profile.* Burlington, VT: University of Vermont, Department of Psychiatry. Achenbach, T.M. 1991. *Manual for the Child Behavior Checklist/4–18 and 1991 Profile.* Burlington, VT: University of Vermont, Department of Psychiatry.

Animal Abuse and Violent Offending

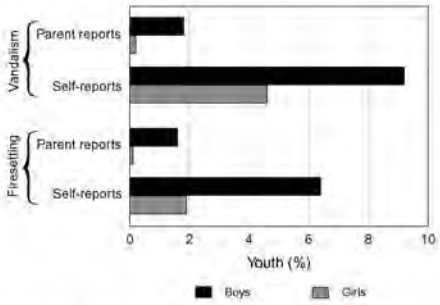
Animal abuse and interpersonal violence toward humans share common characteristics: both types of victims are living creatures, have a capacity for experiencing pain and distress, can display physical signs of their pain and distress (with which humans could empathize), and may die as a result of inflicted injuries. Given these commonalities, it is not surprising that early research in this area, much of it using retrospective assessment, examined

Figure 3: Comparison of Parental Reports and Self-Reports of Cruelty to Animals Among 12- to 16-Year-Olds, by Offender's Gender



Source: Offord, D.R., Boyle, M.H., and Racine, Y.A. 1991. The epidemiology of antisocial behavior in childhood and adolescence. In *The Development and Treatment of Childhood Aggression*, edited by D.J. Pepler and K.H. Rubin. Hillsdale, NJ: Lawrence Erlbaum Associates, pp. 31–54. This figure was derived from table 2.3, p. 39.

Figure 4: Comparison of Parental Reports and Self-Reports of Vandalism and Firesetting Among 12- to 16-Year-Olds, by Offender's Gender



Source: Offord, D.R., Boyle, M.H., and Racine, Y.A. 1991. The epidemiology of antisocial behavior in childhood and adolescence. In *The Development and Treatment of Childhood Aggression*, edited by D.J. Pepler and K.H. Rubin. Hillsdale, NJ: Lawrence Erlbaum Associates, pp. 31–54.

the relation between childhood histories of animal abuse and later violent offending.

Kellert and Felthous (1985) found that violent, incarcerated men reported higher rates of "substantial cruelty to animals" in childhood (25 percent) than a comparison group of nonincarcerated men (0 percent). A similar difference emerged in a study of assaultive and nonassaultive women offenders (Felthous and Yudowitz, 1977): 36 percent of the former group reported cruelty to animals compared with 0 percent of the latter.

Miller and Knutson (1997) examined self-reports of animal abuse by 299 inmates incarcerated for various felony offenses and 308 introductory psychology class undergraduates.[5] The percentages of inmates and undergraduates, respectively, reporting the following types of animal abuse were as follows: "Hurt an animal?" 16.4 percent and 9.7 percent, "Killed a stray?" 32.8 percent and 14.3 percent, and "Killed a pet?" 12 percent and 3.2 percent.

More recently, Schiff, Louw, and Ascione (1999) surveyed 117 men incarcerated in a South African prison about their childhood animal abuse. Of the 58 men who had committed crimes of aggression, 63.3 percent admitted to cruelty to animals; of the 59 nonaggressive inmates, the percentage was 10.5 percent.

In a study of 28 convicted, incarcerated sexual homicide perpetrators (all men), Ressler, Burgess, and Douglas (1988) assessed the men's self-reports of cruelty to animals in childhood and adolescence. Childhood animal abuse was reported by 36 percent of the perpetrators, and 46 percent admitted to abusing animals as adolescents. Thirty-six percent of these men said they had also abused animals in adulthood. In a study by Tingle et al. (1986) of 64 convicted male sex offenders, animal abuse in childhood or adolescence was reported by 48 percent of the rapists and 30 percent of the child molesters.

Taken together, these studies suggest that animal abuse may be characteristic of the developmental histories of between one in four and nearly two in three violent adult offenders.

Animal Abuse and Conduct Disorder

The fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (*DSM–IV*) defines CD as "a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated" and requires that at least 3 of 15 separate symptoms be present in the past year for a diagnosis of CD (American Psychiatric Association, 1994:90). Among the symptoms listed are those categorized under "deceitfulness or theft," "destruction of property" (which encompasses firesetting and vandalism), and "aggression to

people and animals" (which includes cruelty to people or to animals, stealing with confrontation of the victim, and forced sexual activity). There is a great deal of overlap between the symptoms of CD and behaviors used to characterize serious violent juvenile offenders (see Loeber, Farrington, and Waschbusch, 1998:14–15). Cruelty to animals has only recently been included in the symptom list for CD, appearing for the first time in the revised third edition of the *Manual* (*DSM–III–R*; American Psychiatric Association, 1987). Cruelty to animals, however, does not specifically appear in any of the categories (i.e., person, property, drug, and public order) under which juvenile offenders are classified in national crime reporting systems (see Snyder and Sickmund, 1999) despite law enforcement's acknowledgment of the link between animal abuse and human violence (Lockwood and Church, 1996; Ponder and Lockwood, 2000; Schleuter, 1999; Turner, 2000).

Animal abuse may vary in frequency, severity, and chronicity and range from the developmentally immature teasing of animals (e.g., a toddler pulling a kitten along by the tail) to serious animal torture (e.g., stealing neighborhood pets and setting them on fire). Unfortunately, most assessments of cruelty to animals lack a scaling of these important differences. One exception is the Interview for Antisocial Behavior (IAB) developed by Kazdin and Esveldt-Dawson (1986). Although it was created before the 1987 revision of the *DSM*, this instrument assesses 30 forms of antisocial behavior, several of which reflect the current CD symptom listings (established in 1994). The IAB has a number of positive features, including both parent- and self-report forms and ratings of problem severity and chronicity.[4]

As illustrated in a study of psychiatric outpatient referrals by Loeber et al. (1993), patterns of chronic behavior may be more significant than isolated incidents. Three yearly assessments that included a question about cruelty to animals were completed with 177 boys ages 7–12 years, some of whom (40.1 percent) were diagnosed with oppositional defiant disorder (ODD) and others (38.4 percent) with CD. Single-year assessment of cruelty to animals did not differentiate boys with ODD from those with CD, but a significant difference emerged when scores on this item were aggregated over a 3-year period: cruelty to animals was present for 13.3 percent of boys with ODD and 29.4 percent of boys with CD ($p<0.05$).

Because of the interest in early identification of children at risk for later violent offending, it should be noted that cruelty to animals may be one of the first CD symptoms to appear in young children. Parents' reports on the emergence of CD symptoms in their children mark 6.5 years as the median age for onset of "hurting animals"—earlier than bullying, cruelty to people, vandalism, or setting fires (Frick et al., 1993). That study reinforces the importance of considering animal abuse a significant early warning sign for identifying youth with potential for receiving a CD diagnosis.[5] The diagnostic value of this symptom is also supported in a report by Spitzer, Davies, and Barkley (1990), which was based on national field trials for developing *DSM–III–R*.

Recently, Luk et al. (1999:30) reported a reanalysis of case data for a sample of children (n=141) referred to mental health services for "symptoms suggestive of oppositional defiant/conduct disorder" and control data for a sample of community children (n=37). The clinic-referred children were subdivided into two groups based on CBC assessments: cruelty to animals present (n=40) and absent (n=101). Therefore, 28.4 percent of the clinic-referred children displayed animal abuse. The community children were selected only if cruelty to animals was absent in their CBC assessments. Luk et al. demonstrated that differentiating the clinic-referred subgroups on the basis of cruelty to animals was related to scores on a measure of childhood behavior problems that, unlike the CBC, does not assess cruelty to animals—the Eyberg Child Behavior Inventory (Eyberg and Ross, 1978). The authors found that clinic-referred children assessed as being cruel to animals had significantly ($p<0.001$) higher mean problem and problem-severity scores on the Eyberg Inventory than either clinic children who were not cruel to animals or community children.

Thus, there is substantial evidence for the value of assessing cruelty to animals as a specific symptom of CD and as a correlate of other forms of antisocial behavior in both childhood and adulthood. One additional study will be described to illustrate this conclusion.

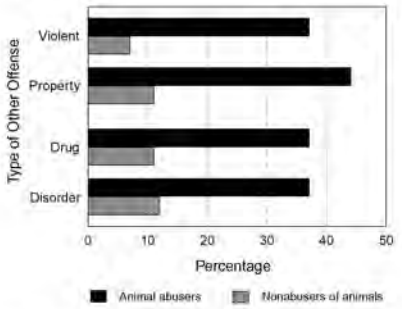
Arluke and colleagues (1999) reviewed the files of the Massachusetts Society for the Prevention of Cruelty to Animals and located the records of 153 individuals (146 males and 7 females, age range 11–76 years) who had been prosecuted for intentional physical cruelty to animals (not passive forms of cruelty such as neglect). A comparison group of 153 individuals (matched for age, gender, and socioeconomic status, but with no record of any cruelty-to-animal complaints) was selected from the same neighborhoods in which those who had been prosecuted resided. The State's criminal records were reviewed for each individual in both groups. Any adult arrests for violent, property, drug, or public order offenses were noted. As shown in figure 5, individuals prosecuted for animal abuse were more likely to have an adult arrest in each of the four crime categories than the comparison group members. The differences between percentages for abusers and nonabusers were highly significant ($p<0.0001$) for all four types of offenses. These results make it clear that animal abusers are not only dangerous to their animal victims but also may jeopardize human welfare.

Motivations That May Underlie Animal Abuse by Children and Adolescents

Whenever high-profile cases of animal abuse are reported in the media, a common public reaction is to ask: "Why would someone do that?" Burying puppies alive, shooting wild mustangs, setting a dog on fire, beating a petting zoo donkey—these and countless other examples offend the public by their seemingly senseless cruelty. In an effort to better understand this phenomenon, Kellert and Felthous (1985: 1122–1124) interviewed abusers and discovered a number of motivations that may characterize adult cruelty to animals, some of which may also be applicable to animal abuse perpetrated by juveniles:

- To control an animal (i.e., animal abuse as discipline or "training").
- To retaliate against an animal.
- To satisfy a prejudice against a species or breed (e.g., hatred of cats).
- To express aggression through an animal (i.e., training an animal to attack, using inflicted pain to create a "mean" dog).
- To enhance one's own aggressiveness (e.g., using an animal victim for target practice).
- To shock people for amusement.
- To retaliate against other people (by hurting their pets or abusing animals in their presence).

Figure 5: Percentage of Types of Other Offenses Committed by Individuals Prosecuted for Animal Abuse and a Control Group Who Did Not Abuse Animals



Note: Age range of sample: 11–76 years. All chi-square comparisons between abusers and nonabusers significant at $p<0.0001$.

Source: Arluke, A., Levin, J., Luke, C., and Ascione, F. 1999. The relationship of animal abuse to violence and other forms of antisocial behavior. *Journal of Interpersonal Violence* 14:963–975.

- To displace hostility from a person to an animal (i.e., attacking a vulnerable animal when assaulting the real human target is judged too risky).
- To experience nonspecific sadism (i.e., enjoying the suffering experienced by the animal victim, in and of itself).

Child and adolescent motivations for animal abuse have not been studied as extensively. However, case reports and a youth interview study (using the Cruelty to Animals Assessment Instrument) conducted by Ascione, Thompson, and Black (1997) suggest a number of developmentally related motivations:

- Curiosity or exploration (i.e., the animal is injured or killed in the process of being examined, usually by a young or developmentally delayed child).
- Peer pressure (e.g., peers may encourage animal abuse or require it as part of an initiation rite).
- Mood enhancement (e.g., animal abuse is used to relieve boredom or depression).
- Sexual gratification (i.e., bestiality).
- Forced abuse (i.e., the child is coerced into animal abuse by a more powerful individual).
- Attachment to an animal (e.g., the child kills an animal to prevent its torture by another individual).
- Animal phobias (that cause a preemptive attack on a feared animal).
- Identification with the child's abuser (e.g., a victimized child may try to regain a sense of power by victimizing a more vulnerable animal).
- Posttraumatic play (i.e., reenacting violent episodes with an animal victim).
- Imitation (i.e., copying a parent's or other adult's abusive "discipline" of animals).
- Self-injury (i.e., using an animal to inflict injuries on the child's own body).
- Rehearsal for interpersonal violence (i.e., "practicing" violence on stray animals or pets before engaging in violent acts against other people).
- Vehicle for emotional abuse (e.g., injuring a sibling's pet to frighten the sibling).

CD assessments are not usually designed to discover the underlying reasons for a child's or adolescent's cruelty to animals, but as with juvenile firesetting (discussed below), understanding motivations may be critical for designing effective intervention strategies. A recent review by Agnew (1998) provides a more extensive treatment of the social-psychological causes of animal abuse.

As noted by Ascione and Lockwood (2001), one model that could be used to develop an animal abuse assessment instrument is the approach that has been taken to assess juvenile firesetting. Firesetting shares many features with animal abuse: both are CD symptoms, may reflect developmental changes, may share etiological factors, may often be performed covertly; and may be early sentinels for later psychological problems.

Some children may manifest both problem behaviors. Wooden and Berkey (1984) noted the co-occurrence of cruelty to animals in a sample of 69 firesetters ages 4–17: cruelty to animals was reported for 46 percent of 4- to 8-year-olds, 9 percent of 9- to 12-year-olds, and 12 percent of 13- to 17-year-olds. The authors caution that the lower rates for older children and adolescents may be related to the covert nature of this behavior, as children experience greater independence and venture farther from home for more prolonged periods. Sakheim and Osborne (1994) reported similar results with samples of children who set fires (n=100) and those who did not (n=55). Fifty percent of the firesetters' parents reported that their children had been cruel "to children or animals," but only 9 percent of parents of the children who did not set fires reported the same ($p<0.01$).

Animal abuse in the context of firesetting may also have predictive value. Rice and Harris (1996) reported on a sample of 243 firesetters who had resided in a maximum-security psychiatric facility and were later released. In a followup of 208 of these men, Rice and Harris found that a childhood history of cruelty to animals (coded from patient records) predicted violent offense recidivism ($p<0.001$) and nonviolent offense recidivism ($p<0.05$) but not firesetting recidivism.[7]

The Salt Lake City Area Juvenile Firesetter/Arson Control and Prevention Program (1992), funded by the Office of Juvenile Justice and Delinquency Prevention, is based on a typology of juvenile firesetters that may be relevant for developing a

typology for children who abuse animals (Marcel Chappuis, personal communication, March 23, 1998). The typology of juvenile firesetters categorizes children into the following groups:

- **Normal curiosity firesetters.** The mean age of this group is 5 years (range, 3–7 years). Children in this group often share the characteristics of poor parental supervision, a lack of fire education, and no fear of fire.
- **"Plea-for-help" firesetters.** The mean age of this group is 9 years (range, 7–13 years). The group's firesetting is often symptomatic of more deep-seated psychological disturbance. The individuals usually have had adequate fire education.
- **Delinquent firesetters.** The mean age of this group is 14 years (range, 13 years to adulthood). Firesetting may be one of a host of adolescent-onset antisocial behaviors, including gang-related activities, exhibited by this group.

The Salt Lake City program has developed a series of assessment scales geared to each age group of firesetters that can be administered to the child and the child's parent/guardian. In addition to questions about fire education and the firesetting incident(s), this series has questions about general behavior problems (similar to items on the CBC), including one item about cruelty to animals. (There is also a direct question about whether the firesetting incident involved the burning of an animal.) Responses to these assessments are used to select an intervention strategy. Children who fall into the normal curiosity group are often enrolled in a fire education program, and attempts may be made to educate parents about fire safety and the need for supervising young children. Children who fall into the other two groups are referred to mental health services because fire departments are not prepared to deal with the psychological problems these young people may present.

It might be possible to develop a similar typology for children who abuse animals. Although there is not a great deal of empirical information on which to rely, the study by Ascione, Thompson, and Black (1997) suggests the varied motivations that may underlie child and adolescent animal abuse. Using the extensive experience of animal control and animal welfare professionals, one could develop a typology mirroring that for juvenile firesetters. A sketch of such a typology might approximate the following:

- **Exploratory/curious animal abuse.** Children in this category are likely to be of preschool or early elementary school age, poorly supervised, and lacking training on the physical care and humane treatment of a variety of animals, especially family pets and/or stray animals and neighborhood wildlife. Humane education interventions (teaching children to be kind, caring, and nurturing toward animals) by parents, childcare providers, and teachers are likely to be sufficient to encourage desistence of animal abuse in these children. Age alone should not be the determining factor in including children in this category. For example, CD symptoms may have an early developmental onset, and as noted earlier, cruelty to animals is one of the earliest CD symptoms to be noted by caretakers. Older children who are developmentally delayed may also fall into this group.
- **Pathological animal abuse.** Children in this category are more likely to be (though not necessarily) older than children in the exploratory/curious group. Rather than indicating a lack of education about the humane treatment of animals, animal abuse by these children may be symptomatic of psychological disturbances of varying severity. For example, a number of studies have tied childhood animal abuse to childhood histories of physical abuse, sexual abuse, and exposure to domestic violence (see pages 8–9 for discussions of these issues). In these cases, professional, clinical intervention is warranted.
- **Delinquent animal abuse.** Youth in this category are most likely to be adolescents whose animal abuse may be one of a number of antisocial activities. In some cases, the animal abuse may be a component of gang/cult-related activities (e.g., initiation rites) or less formal group violence and destructiveness. The use of alcohol and other substances may be associated with animal abuse for these youth, and they may require both judicial and clinical interventions.

The Etiology of Animal Abuse

Although "bad seed" interpretations of youth violence have waxed and waned throughout history (Garbarino, 1999; Kellerman, 1999), it is clear that attention to the family, social, and community contexts of children's lives is critical for understanding violent behavior. This holds true for the special case of animal abuse. As Widom (1989) has demonstrated, a history of child abuse and neglect places individuals at risk for later delinquency, adult criminal offending, and violent criminal activity. This section addresses factors in children's lives that have been associated with increased levels of animal abuse. The factors range from negative but relatively normative experiences (corporal punishment) to potentially more devastating circumstances (physical abuse, sexual abuse, and domestic violence).

Corporal Punishment

Evidence continues to mount on the ineffectiveness and deleterious nature of corporal punishment as a child-rearing technique (Straus, 1991). Two recent studies link this evidence to animal abuse. In a survey of 267 undergraduates, 68.4 percent

of whom were women, Flynn (1999a) asked participants about their history of abusing animals (e.g., hurting, torturing, or killing pets or stray animals; sex acts with animals). Students also responded to items assessing attitudes toward spanking and husband-on-wife abuse. In all, 34.5 percent of the men and 9.3 percent of the women reported at least one childhood incident of animal abuse. These respondents (both men and women) were significantly more likely to endorse the use of corporal punishment and to approve of a husband slapping his wife. Although these findings do not establish a direct link between abusing animals and spanking children or slapping wives, they do suggest an association between animal abuse and accepting attitudes toward these activities.

In a followup report with this same sample of undergraduates, Flynn (1999b) found that, for men, perpetrating animal abuse was positively correlated with the frequency of their father's use of corporal punishment (spanking, slapping, or hitting) in adolescence. Self-reports of animal abuse by men experiencing paternal corporal punishment in adolescence were 2.4 times higher than for men who were not physically disciplined (57.1 percent and 23.1 percent, respectively, $p<0.005$).

Physical Abuse

Research specifically designed to assess the relation between animal abuse and child maltreatment is meager yet compelling in its implications. For example, a 1983 study by DeVinney, Dickert, and Lockwood of 53 New Jersey families that met State criteria for substantiated child abuse and neglect and had pets in their homes revealed that in 60 percent of these families, pets were also abused or neglected. Animal abuse was significantly higher (88 percent) in families where child physical abuse was present than in families where other forms of child maltreatment (e.g., sexual abuse) occurred (34 percent). One or both parents and their children were responsible for abusing the families' pets.

Sexual Abuse

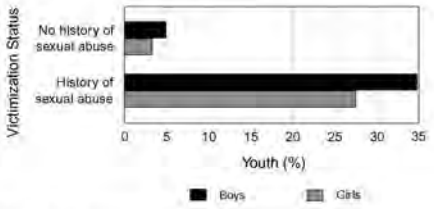
Friedrich et al. (1992) compared a nonabused sample of 880 children ages 2–12 with 276 children in the same age range who had been sexually abused in the past 12 months. Based on a reexamination of data from this study, Friedrich (personal communication, April 1992) provided information on cruelty to animals derived from the nonperpetrating caretakers' CBC reports on children. As shown in figure 6, children with a history of sexual abuse were significantly ($p<0.001$) more likely to have been cruel to animals than children in the nonabused group. A study of 499 seriously mentally ill 5- to 18-year-olds hospitalized at a tertiary care psychiatric facility (McClellan et al., 1995) also found cruelty to animals to be more prevalent among patients who had been sexually abused than among those who had not been sexually abused ($p=0.004$).

One form of cruelty to animals that has received scant attention in the literature is the sexual abuse of animals, or bestiality. Bestiality may range from touching or fondling the genitals of animals to sexual intercourse and violent sexual abuse. Some species of animals may be seriously injured or die as a result of the abuse inflicted (e.g., penetration that damages internal organs). Beirne (1997) provided an excellent theoretical overview of this issue, but empirical studies, especially with children, are rare (e.g., see case study by Wiegand, Schmidt, and Kleiber, 1999). Lane (1997) noted that juvenile sex offending may include bestiality, sometimes combined with other violent behavior toward animals. Adolescent sexual offenders may also use threats of harm to pets as a way of gaining compliance from their human victims (Kaufman, Hilliker, and Daleiden, 1996). In the study of sexual homicide perpetrators cited earlier (Ressler, Burgess, and Douglas, 1988), 40 percent of the men who said they had been sexually abused in childhood or adolescence reported having sexual contact with animals. Itzin (1998) reported anecdotal evidence of bestiality being forced on children who also were sexually abused and involved in the production of child pornography.

Although it is difficult to obtain information about sexual behavior in children and adolescents, especially sexual behavior with animals, Friedrich (1997) provided some information on this issue with data from his Child Sexual Behavior Inventory (CSBI). Caregivers of 1,114 children ages 2–12 who had not been abused and caregivers of 512 sexually abused children in the same age range reported on a variety of sexual or sexualized behaviors in the children, including whether the child "touches animals' sex parts." (Note: The reporting caregivers of the sexually abused children were not the perpetrators of the abuse.) The children were divided into three age groups: ages 2–5, 6–9, and 10–12. The queried behavior was relatively infrequent, but it was clear that in the two older groups, sexually abused children were more likely to display the behavior than nonabused children (see figure 7). Although the behavior appears to decline among sexually abused 10- to 12-year-olds, one might speculate that the decrease is accounted for, in part, by a greater secretiveness in older children in acting out sexually with animals. The decrease may also be related to older children's transferring their inappropriate sexual activity from animal to human victims.

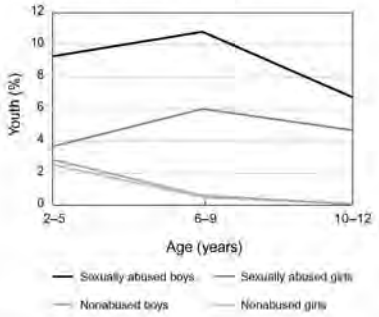
Further evidence for the relation between sexual abuse victimization and bestiality is

Figure 6: Percentage of Youth Ages 2–12 Reported by Caregivers To Have Been Cruel to Animals, by Offender's Gender and History of Sexual Abuse



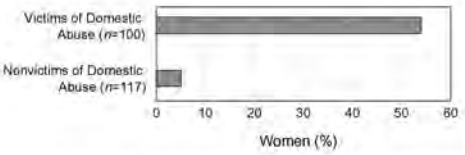
Source: Friedrich, W.N., personal communication, April 1992.

Figure 7: Percentage of Youth Ages 2–12 Reported by Caregivers To Have Sexually Abused Animals, by Offender's Age, Gender, and Victimization Status



Source: Friedrich, W.N. 1997. *Child Sexual Behavior Inventory: Professional Manual*. Odessa, FL: Psychological Assessment Resources.

Figure 8: Percentage of Women Who Reported That Their Domestic Partners Hurt or Killed Pets, by Reporter's History of Domestic Abuse



Source: Ascione, F.R. 2000b. What veterinarians need to know about the link between animal abuse and interpersonal violence. Proceedings of the 137th Annual Meeting of the American Veterinary Medical Association, Salt Lake City, UT, July 25, 2000 (CD–ROM records #316–317).

provided by Wherry and colleagues (1995). They administered the CSBI to caretakers of 24 boys ages 6–12 who were psychiatric inpatients. Eight of these boys had been sexually abused. "Touches animals' sex parts" was reported for 50 percent of abused boys but none of nonabused boys ($p<0.01$).

Domestic Violence

Animals may also be abused in the context of family violence between intimate adult partners. Ascione (1998) reported an interview study of 38 women who were battered and had sought shelter. Fifty-eight percent of the women had children and 74 percent had pets. When asked whether their adult partner had ever threatened or actually hurt or killed one or more of their pets, 71 percent of women with pets responded "yes." Thirty-two percent of women with children reported that their children had hurt or killed one or more family pets. In a replication study of 100 women who were battered and had entered a shelter and a comparison group of 117 nonbattered women, all of whom had pets, Ascione (2000b) found that 54 percent of the battered women compared with 5 percent of the nonbattered women reported that their partner had hurt or killed pets (see figure 8). Children's exposure to this animal abuse was reported by 62 percent of the battered women. Nearly one in four of the battered women reported that concern for their pets' welfare had prevented them from seeking shelter sooner.[9]

Flynn (2000) reported similar findings in a study of 43 women with pets who had entered a South Carolina domestic violence shelter. (Twenty-eight of the women were accompanied by children.) Of these 43 women, 46.5 percent reported threats to ($n=9$) or harm of ($n=11$) their pets. Although only 7 percent of children were reported to be cruel to animals, 33.3 percent of women whose pets were abused reported that their children had also been abused. Of the women whose pets were not abused, 15.8 percent reported child abuse. (The figure was 10.5 percent for women with no pets.)

These studies make it clear that in families challenged by child maltreatment and domestic violence, there is increased opportunity for children to be exposed to the abuse of animals. Even if adult family members do not abuse animals, some children may express the pain of their own victimization by abusing vulnerable family pets. Just as researchers are beginning to understand the overlap between child abuse and neglect and domestic violence between intimate adult partners (Ross, 1996), they must now consider the overlap of these forms of abuse with animal maltreatment (see figure 9).

Policy Implications and Recommendations

This section addresses issues relating to the reporting, assessment, and treatment of children involved in animal abuse. It presents recommendations associated with these issues and highlights the need for enhanced professional training.

Figure 9: Interconnectedness of Different Types of Abuse

Source: Ascione, F.R., and Arkow, P., eds. 1999. *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention*. West Lafayette, IN: Purdue University Press.

Reporting

Cruelty to animals is all too often a part of the landscape of violence in which youth participate and to which they are exposed. The number of animals that are victims of such abuse is, at present, difficult to estimate, as is the number of young people who perpetrate such abuse. In an ideal world, national data would be available on the yearly incidence of animal abuse, data that could be used to track trends and serve as a baseline against which the effectiveness of interventions could be assessed. The existing national data collection systems in the area of child abuse and neglect illustrate the value of such archival records (Sedlak and Broadhurst, 1996). However, it is not clear how animal abuse offenses could be incorporated into the existing categorization (person, property, drug, public order) of juvenile arrests.

Only two States (Minnesota and West Virginia) mandate that veterinarians report suspected cases of animal abuse (Frasch et al., 1999). Until a national system of monitoring and reporting animal abuse is instituted, the following approaches to recording cases of animal abuse are recommended:

- Local humane societies, societies for the prevention of cruelty to animals, and animal control agencies should routinely refer cases of serious, juvenile- and adult-perpetrated animal abuse to social welfare and law enforcement agencies and should maintain systematic records that could be available for archival review (Ascione and Barnard, 1998; Ascione, Kaufmann, and Brooks, 2000).
- Parents, childcare providers, teachers, others who play caregiving roles for children (e.g., clergy, coaches), and young people themselves should be informed that animal abuse may be a significant sign of a tendency to violence and psychological disturbance and should not be ignored. Efforts in this area are already emerging and include *Early Warning, Timely Response: A Guide to Safe Schools* (Dwyer, Osher, and Warger, 1998) from the U.S. Department of Education and the *Warning Signs* guide (1999) developed by MTV-Music Television™ and the American Psychological Association and disseminated as part of their Fight for Your Rights: Take a Stand Against Violence campaign. The American Humane Association's (1996) *Growing Up Humane in a Violent World: A Parent's Guide* provides developmentally sensitive information about children and animals and the significance of animal abuse. The *Guide* also includes educational strategies appropriate for preschoolers and some designed for elementary and secondary school students.
- Youth should be surveyed about their treatment of animals. Because animals may often be abused covertly, parents and other adults may not be the best sources of information about this behavior problem. To obtain a better estimate of the incidence of animal abuse, youth surveys of violent behavior should include self-report items such as "Have you hurt an animal on purpose?" or "Have you made an animal suffer for no reason?" Also, witnessing animal abuse is a form of exposure to violence that should be routinely assessed because it may have significant effects on young people (Boat, 1999). Often children are deeply attached to their pets and observing the violent abuse or death of a pet at the hands of others may be emotionally devastating.

Assessment and Treatment

As part of the search for effective youth violence prevention and intervention programs, animal welfare organizations have been developing educational and therapeutic efforts that incorporate "animal-assisted" or "animal-facilitated" components (Duel, 2000). The underlying theme of many of these programs is that teaching young people to train, care for, and interact in a nurturing manner with animals will reduce any propensity they may have for aggression and violence. These programs assume that children are more likely to commit animal abuse when their capacity for empathy has been undermined or compromised (for example, by years of neglect or maltreatment—see Bavolek, 2000). Developing a sense of empathy for animals is assumed to be a bridge to greater empathy for fellow human beings, making violence toward them less likely.

The development of animal abuse assessment and intervention programs is accompanied by a number of issues related to evaluation and accountability:

- Although formal protocols for the clinical assessment (Lewchanin and Zimmerman, 2000) and treatment (Jory and Randour, 1999; Zimmerman and Lewchanin, 2000) of animal abuse are beginning to emerge, they are still at a formative stage of development and their effectiveness is difficult to evaluate.
- Attempts have been made to create typologies for perpetrators of animal abuse, similar to typologies for firesetters. These typologies have intuitive appeal, but their utility has not been empirically assessed. Whether using the proposed categories of animal abusers can facilitate the selection of appropriate therapeutic interventions remains to be determined.
- Given the challenges of incorporating animals into the therapeutic process (Fine, 2000), evaluation of animal-facilitated therapy programs must move beyond anecdotal evidence. Katcher and Wilkins (2000) provided an evaluation model in a study of animal-facilitated therapy for children with attention disorders. The model should be expanded to programs for youth with CD.
- Evaluation of intervention effectiveness will continue to grow in importance because, in some jurisdictions (e.g., California, Colorado), courts may recommend or mandate assessment and treatment of individuals convicted of certain forms of animal abuse (Frasch et al., 1999). The effects of such programs on recidivism have not been examined.

Training

Educational programs at both the preprofessional and professional levels should give greater emphasis to training about animal abuse and its overlap with other forms of family and community violence. This effort has already emerged in veterinary education (Ascione and Barnard, 1998), the legal profession (Davidson, 1998), and law enforcement (Luckwood, 1989) and should be expanded to include mental health (psychology and psychiatry) and other human health professions (e.g., social work, child welfare, and pediatrics) and elementary and secondary education. The following are recommendations for improving and expanding professional training concerning animal abuse:

- Professional cross training should be expanded (Ascione, Kaufmann, and Brooks, 2000). For example, animal control officers should be trained to identify signs of child maltreatment and child protection workers should be trained to identify animal abuse. The underlying theme of such training should be that animal abuse is a significant form of violence that not only harms animals but may be a warning sign of a child who is psychologically disturbed or in danger of maltreatment.
- Training and continuing education for judges should include current information on the associations among animal abuse, domestic violence, and child maltreatment. Decisions about child custody and foster placements should be informed by research showing that adults who abuse animals are potentially dangerous to humans.
- Cross training could also enhance the success of foster placements for maltreated children who may be physically or sexually abusing animals. Foster care providers, especially those with family pets, should be alerted to the potential for animal abuse to occur.

Conclusion

Although vandalism may represent costly and psychologically significant destructiveness (Goldstein, 1996), smashed windshields and graffitied walls do not feel pain or cry out when they are damaged. Animals, however, do express their distress when they have been abused, and their distress calls out for attention. This Bulletin has provided an overview of the underreported and understudied phenomenon of animal abuse in childhood and adolescence. Addressing cruelty to animals as a significant form of aggressive and antisocial behavior may add one more piece to the puzzle of understanding and preventing youth violence.

Resources

The American Humane Association
63 Inverness Drive East
Englewood, CO 80112-5117
303-792-9900
303-792-5333 (fax)
www.americanhumane.org

The National Resource Center on the Link Between Violence to People and Animals
63 Inverness Drive East
Englewood, CO 80112-5117
877-LINK-222 (877-546-5222)
link@americanhumane.org

The American Humane Association (AHA), established in 1877, includes both child protection and animal protection divisions. AHA operates the National Resource Center on the Link Between Violence to People and Animals, provides training to professional groups across the country, and has brochures, fact sheets, and special issues of *Protecting Children* available that are devoted to this topic.

The Humane Society of the United States
First Strike™ Campaign
2100 L Street NW
Washington, DC 20037
202-452-1100
888-213-0956
www.hsus.org/firststrike/

The Humane Society of the United States (HSUS) launched the First Strike™ Campaign in 1997 to raise public and professional awareness about the connection between animal abuse and human violence. The campaign provides training for law enforcement officers, prosecutors, social service workers, veterinarians, mental health professionals, educators, and the general public on the importance of treating animal abuse as a serious crime and an indicator of other forms of violence. A complete list of resources available through the HSUS First Strike™ Campaign is available at the Web site and can also be obtained by calling the toll-free number (both listed above). Resources include a free campaign kit with brochures and fact sheets. A general brochure, a brochure on domestic violence, and a brochure for children are available in Spanish. Also available are the First Strike™ Campaign video and public service announcements,

articles addressing the connection between animal abuse and human violence, and *Violence Prevention and Intervention: A Directory of Animal-Related Programs* (Duel, 2000), an 82-page listing of prevention and intervention programs.

The Latham Foundation for the Promotion of Humane Education
1826 Clement Avenue
Alameda, CA 94501
510-521-0920
510-521-9861 (fax)
www.latham.org

Established in 1918, the Latham Foundation promotes respect for all life through education. The Foundation publishes a quarterly periodical, *The Latham Letter*, and maintains a number of print and video resources related to animal abuse, child maltreatment, and humane education, including:

- *Breaking the Cycles of Violence: A Video and Training Manual* (set). Authored by Phil Arkow, the video and 64-page manual are ideal for cross training professionals on animal and human abuse issues.
- *Teaching Compassion: A Guide for Humane Educators.* Written by Pamela Raphael with Libby Coleman, Ph.D., and Lynn Loar, Ph.D., this 130-page guide includes a teacher's narrative and lesson plans to encourage respect, responsibility, compassion, and empathy.
- *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention.* Produced with the assistance of the Latham Foundation, this book, edited by Frank R. Ascione, Ph.D., and Phil Arkow (1999), includes original chapters written by authorities from each of these three areas of professional focus.
- *Safe Havens for Pets: Guidelines for Programs Sheltering Pets for Women Who Are Battered.* Based on indepth interviews with 41 domestic violence and animal welfare agencies, this book describes the development and operation of programs that shelter pets for women and their children who are escaping violent homes. A free copy of this book is available for any law enforcement, domestic violence, animal welfare, child welfare, or related agency making a request (funded by the Geraldine R. Dodge Foundation).

Send a self-adhesive, self-addressed mailing label to:

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Endnotes

1. In 1997, there were 136,000 arrests of persons under age 18 for vandalism (Snyder and Sickmund, 1999); during the 1990-99 reporting period, juvenile arrests for vandalism decreased for boys but increased for girls (Snyder, 2000).

2. Of the 299 inmates, 16 percent were female and 11.9 percent were ages 15 to 19 (the remaining 88.1 percent were older than 19). Of the 308 undergraduates, 57.1 percent were female.

3. Kazdin and Esveldt-Dawson reported that responses to the cruelty to animals item were positively correlated (r=0.46, p<0.001) with the IAB total score. Cruelty to animals scores were significantly higher for CD-diagnosed than for non-CD-diagnosed boys and girls, ages 6-13, who were inpatients at a psychiatric facility ($F[1,256] = 8.44$, p<0.01).

4. Randolf (1999) suggested that cruelty to animals also may be one of the core symptoms of attachment disorders (see also Magid and McKelvey, 1987).

5. It is interesting to note that enuresis (bedwetting) was not significantly related to any of the three forms of recidivism. Bedwetting has been included in the so-called "triad" of symptoms (with cruelty to animals and firesetting) as a possible predictor of serious violence. Research has been inconclusive about the triad's predictive value (Barnett and Spitzer, 1994; Lockwood and Ascione, 1998:245-246).

6. Thus, some domestic violence victims and their children may remain with a batterer because they have no one to care for their pets if the victim and children enter a domestic violence shelter. In response, programs to shelter pets of domestic violence victims have been and continue to be established across the United States and Canada (Ascione, 2000a). The increasing availability of these pet-sheltering programs will benefit battered women and their children because helping mothers achieve safety may be one of the best ways to ensure the safety of their children (Jacobsen, 2000).

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Correlates of cruelty to animals in the United States: Results from the National Epidemiologic Survey on Alcohol and Related Conditions

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ABSTRACT

Objective: To examine the sociodemographic, behavioral, and psychiatric correlates of cruelty to animals in the US.
Materials and methods: Data were derived from a nationally representative sample of adults residing in the US. Structured psychiatric interviews ($N = 43{,}093$) were completed by trained lay interviewers between 2001 and 2002. Personality, substance use, mood, and anxiety disorders and cruelty to animals were assessed with the Alcohol Use Disorder and Associated Disabilities Interview Schedule (DSM-IV) version.
Results: The lifetime prevalence of animal cruelty in US adults was 1.8%. Men, African-Americans, Native-Americans/Asians, native-born Americans, persons with lower levels of income and education and adults living the western region of the US reported comparatively high levels of cruelty to animals, whereas Hispanics reported comparatively low levels of such behavior. Cruelty to animals was significantly associated with all assessed antisocial behaviors. Adjusted analyses revealed strong associations between lifetime alcohol use disorders, conduct disorder, antisocial, obsessive–compulsive, and histrionic personality disorders, pathological gambling, family history of antisocial behavior, and cruelty to animals.
Conclusions: Cruelty to animals is associated with elevated rates observed in young, poor, men with family histories of antisocial behavior and personal histories of conduct disorder in childhood, and antisocial, obsessive–compulsive and histrionic personality disorders, and pathological gambling in adulthood. Given these associations, and the widespread ownership of pets and animals, effective screening of children, adolescents and adults for animal cruelty and appropriate mental health interventions should be deployed.

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1. Introduction

Cruelty to animals, frequently referred to as animal cruelty, is defined as treatment of animals that causes gratuitous, unwarranted or unjustifiable suffering or harm (including death). Animal cruelty is gaining recognition as a serious social issue that may be reflective of more extensive psychopathology at the individual level (McPhedran, 2009). In recognition of the potential clinical relevance of animal cruelty, systematic research on animal cruelty in relation to psychopathology and antisocial behavior began to emerge in the 1980s (Douglas et al., 1986; Ressler et al., 1980). In 1987, the *Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised* (DSM-III-R) incorporated animal cruelty as a diagnostic criterion for conduct disorder (CD) and Antisocial Personality Disorder (ASPD) (American Psychiatric Association, 1987).

Research on the etiology of animal cruelty is sparse. Two general threads of research examine the issue. On one hand, animal cruelty is viewed as a consequence of an individual's exposure to criminogenic environments (Currie, 2006; Duncan et al., 2005; Petersen and Farrington, 2007; Duncan, 2002). For instance, having witnessed animal cruelty in childhood appears to be associated with later acts of animal abuse (Thompson and Gullone, 2006) and studies of correctional and community samples indicate that males who

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are physically punished in childhood are more likely to commit subsequent acts of animal cruelty (Miller, 2001; Flynn, 1999). Despite some inconsistency across studies (Felthous and Kellert, 1987), research on animal cruelty suggests this behavior is associated with violence toward humans (Arluke et al., 1999; Miller, 1997; Tallichet, 2006; Merez-Perez and Heide, 2001). Other research examines pathological offenders, focusing on the correlation between child and adolescent animal cruelty and subsequent homicide offending. Prevalence estimates of lifetime animal cruelty among sexual murderers are exceptionally high with 36% and 46%, respectively, engaged in animal cruelty during childhood and adolescence (Douglas et al., 1986). Among sexual murderers, animal cruelty in childhood commonly co-occurs with childhood sexual victimization (Ressler et al., 1980). Other studies have linked animal cruelty to additional extreme forms of criminal offending including arson, bestiality, and violent interpersonal assault (Hensley and Tallichet, 2006; Hensley, 2008, 2005; Becer et al., 2004).

Unfortunately, the etiological nature of these relationships is unresolved. One factor hypothesized to underlie animal cruelty and violence is a deficit in the ability to empathize (McPhedran, 2009; Petersen and Farrington, 2007; Felthous and Kellert, 1987). Demographically, males and persons with lower educational attainment are more likely than their counterparts to commit acts of animal cruelty (Hensley and Tallichet, 2006; Hensley, 2008, 2005). Other sociodemographic relationships to animal cruelty, such as racial, ethnic, regional, and income differences remain largely unexplored. A major limitation of studies to date has been their use of small and nonrepresentative samples leading to uncertainty regarding the generalizability of prior animal cruelty findings. Finally, the psychiatric epidemiology of animal cruelty has received little attention, particularly examinations of psychiatric disorders associated with animal cruelty. Although animal cruelty is included in the DSM-IV-TR diagnostic criteria sets for CD and ASPD, specific antisocial behaviors associated with animal cruelty have not been adequately delineated.

The purpose of this study was to examine associations between psychiatric disorders and among persons reporting that they had been intentionally cruel to animals compared to persons without a history of animal cruelty using a nationally representative sample of US adults. The primary study aims were to (1) examine the correlates of lifetime animal cruelty in relation to sociodemographic characteristics, antisocial behaviors, and lifetime mood, anxiety, and personality disorders, and (2) estimate the strength of associations between animal cruelty and these characteristics while controlling for sociodemographic factors and substance use/psychiatric disorders.

2. Materials and methods

2.1. Participants

Study findings are based on data from the 2001–2002 National Epidemiologic Survey on Alcohol and Related Conditions (NESARC). The NESARC survey is a nationally representative sample of 43,093 non-institutionalized US residents aged 18 years and older (Grant et al., 2003). The survey gathered information on alcohol use and comorbid conditions from individuals living in households and group settings such as shelters, college dormitories, and group homes in all 50 states and the District of Columbia. The NESARC utilized a multistage cluster sampling design, oversampling young adults, Hispanics, and African-Americans in the interest of obtaining reliable statistical estimation in these populations, and to ensure appropriate representation of racial/ethnic subgroups, with an overall response rate of 81%. Data were weighted at the individual and household levels to adjust for oversampling and non-response on demographic variables (i.e., age, race/ethnicity, sex, region, and place of residence). Data were also adjusted to be representative (based on region, age, race, and ethnicity) of the US adult population as assessed during the 2000 Census. Study participants provided written informed consent. The US Census Bureau and the US Office of Management and Budget approved the research and consent procedures.

2.2. Diagnostic assessment and sociodemographic measures

Data were collected through face-to-face interviews conducted by US Census workers trained by the National Institute on Alcohol and Alcoholism and US Census Bureau. Interviewers administered the Alcohol Use Disorder and Associated Disabilities Interview Schedule – DSM-IV version (AUDADIS-IV), shown to have good-to-excellent reliability in assessing alcohol and drug use and substance use disorders in the general population (Grant et al., 1995; Hasin et al., 1997).

Animal cruelty was assessed with an item embedded in the antisocial personality disorder interview module. All NESARC respondents were asked the following question: "In your entire life, did you ever hurt or be cruel to a animal or pet on purpose?" NESARC respondents who answered yes were defined as having a history of animal cruelty. The test-retest reliability for the NESARC antisocial personality disorder diagnosis is 0.69. (Grant et al., 2003), whereas the internal consistency reliability for the antisocial personality disorder criteria set is $\alpha = 0.86$ (Blanco et al., 2008).

Consistent with prior research (Grant et al., 2004a,b; Goldstein et al., 2006), personality disorder diagnoses reflected long-standing impairments, characteristic patterns of behavior, and exclusion of cases where substance use intoxication or withdrawal, other medication use, or physical illnesses could have affected behavior. In addition to antisocial personality disorder, other personality disorders assessed were avoidant, dependent, obsessive-compulsive, paranoid, schizoid, and histrionic personality disorders. Numerous control variables were used to reduce confounding in multivariate analyses including lifetime alcohol (alcohol abuse/dependence) and drug (abuse/dependence on heroin, hallucinogens, cocaine/crack, marijuana, stimulants, painkillers, tranquilizers, and sedatives) use disorders, nicotine dependence, and pathological gambling. Also included as control variables and assigned in accordance with DSM-IV specifications were lifetime mood (major depression, dysthymia, and bipolar disorder) and anxiety (social phobia, generalized anxiety disorder, panic disorder, and specific phobia) disorders. Family history of antisocial behavior based on any parental or sibling history was also assessed. Sociodemographic response categories for region of residence in US, urbanicity, race/ethnicity, sex, age, marital status, educational background, unemployment status, and individual and family income are listed in Table 1.

2.3. Statistical analyses

Weighted prevalence estimates and standard errors were computed using SUDAAN Version 9.0 (Research Triangle Institute, 2004). This system implements a Taylor series linearization to adjust standard errors of estimates for complex survey sampling design effects including clustered data. Multivariate logistic regression analyses were conducted with simultaneous entry of sociodemographic (i.e., region of residence in US, urbanicity, race/ethnicity, sex, age, marital status, educational background, unemployment status, and individual and family income) and diagnostic (i.e., lifetime alcohol abuse/dependence, drug abuse/dependence, nicotine dependence, pathological gambling, major depression, dysthymia, bipolar disorder, social phobia, generalized anxiety disorder, panic disorder, and specific phobia) and family history of antisocial behavior control variables. Adjusted odds

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Table 1
Sociodemographic characteristics of adults with and without a lifetime history of animal cruelty.

Characteristic	History of cruelty to animals (N = 726) % (95% CI[1])	No history of cruelty to animals (N = 41,203) % (95%CI)	OR[2] (95%CI)
Sex			
Men	83.78 (80.65–86.50)	47.14 (46.51–47.76)	**6.10 (4.90–7.59)**
Women	16.22 (13.50–19.35)	52.86 (52.24–53.49)	1.00
Race			
Hispanic	7.56 (5.56–10.20)	11.03 (9.34–14.36)	**0.63 (0.44–0.90)**
Indian/Alaskan/Asian/ Native American	7.85 (5.20–11.67)	6.40 (5.50–7.58)	1.37 (0.82–2.28)
African American	14.36 (11.23–18.18)	10.94 (9.73–12.28)	**1.36 (1.06–1.76)**
White	70.24 (65.42–74.65)	70.88 (67.68–74.08)	1.00
Nativity			
Born in the US	91.09 (87.60–93.66)	85.31 (82.04–88.08)	**1.96 (1.26–3.04)**
Born in a Foreign Country	8.91 (6.34–12.40)	14.69 (11.92–17.96)	1.00
Age (years)			
65+	40.75 (36.11–45.55)	31.44 (30.58–32.32)	**0.20 (0.14–0.29)**
50–64	32.75 (28.56–37.28)	31.05 (30.42–31.69)	**0.60 (0.52–0.91)**
35–49	21.29 (17.94–25.09)	21.04 (20.52–21.57)	0.77 (0.56–1.00)
18–34	5.21 (3.86–6.99)	16.47 (15.81–17.16)	1.00
Education			
Less than High School	15.26 (12.12–19.01)	15.53 (14.57–16.54)	1.10 (0.82–1.47)
High School Graduate	28.55 (24.47–33.01)	29.33 (28.22–30.44)	0.96 (0.77–1.19)
Some College or Higher	56.19 (51.62–60.66)	55.15 (53.86–56.41)	1.00
Income			
0–19,999	24.86 (20.76–29.46)	23.42 (22.46–24.39)	**1.72 (1.22–2.43)**
20,000–34,999	21.13 (17.96–24.66)	20.10 (19.43–20.78)	**1.41 (1.07–1.87)**
35,000–69,999	32.51 (28.65–36.62)	32.10 (31.53–32.66)	1.20 (0.93–1.53)
70,000+	21.51 (18.05–25.42)	24.30 (23.93–25.72)	1.00
Marital status			
Never Married	59.21 (54.97–63.33)	62.02 (61.09–62.94)	**0.75 (0.57–0.97)**
Widowed/separated/divorced	16.28 (13.43–19.61)	17.37 (16.90–17.85)	1.26 (0.98–1.61)
Married/Cohabitating	24.50 (20.85–28.51)	20.61 (19.69–21.56)	1.00
Urbanicity			
Urban	30.81 (25.83–36.28)	29.44 (25.29–33.96)	1.02 (0.82–1.28)
Rural	69.19 (63.72–74.17)	70.56 (66.04–74.71)	1.00
Region			
Northeast	13.54 (9.13–19.64)	15.84 (13.88–27.55)	**0.53 (0.37–0.76)**
Midwest	27.78 (21.10–35.02)	23.08 (17.35–30.03)	0.84 (0.63–1.12)
South	31.25 (25.19–38.03)	35.19 (28.98–41.94)	**0.62 (0.47–0.81)**
West	27.43 (20.85–35.01)	21.89 (15.65–29.73)	1.00

Note: OR values in bold are statistically significant (p-value < .05).
[1] CI: confidence interval.
[2] OR: odds ratio.

ratios (AORs) and 95% confidence intervals are presented to reflect association strength and significance. Adjusted odds ratios were considered significant if associated confidence intervals did not include the value 1.0 (Table 2).

3. Results

3.1. Sociodemographic characteristics

Table 1 provides comparisons of the NESARC sociodemographic sample characteristics of persons who reported a lifetime history of animal cruelty and those who self-reported no lifetime history of animal cruelty. The overall prevalence animal cruelty in US adults was 1.8%. Unadjusted analyses reveal that persons reporting a lifetime history of animal cruelty were more likely to be male (OR = 6.10, 95% CI = 4.90–7.59), born in the US (OR = 1.96, 95% CI = 1.26–3.04), African-American (OR = 1.36, 95% CI = 1.06–1.76), and less likely to be Latino/Hispanic (OR = 0.63, 95% CI = 0.44–0.90). Compared to married and widowed/separated individuals never married persons were less likely (OR = 0.75, 95% CI = 0.57–0.97) to report animal cruelty. Uniformly, younger persons and individuals with lower levels of annual household income were more likely to report animal cruelty. Compared to other regions of the country (Northeast, Midwest, South), persons from the West were more likely than other areas to report animal cruelty.

3.2. Animal cruelty and associated antisocial behaviors

The prevalence of all antisocial behaviors was higher among persons with a lifetime history of animal cruelty compared to persons without a lifetime history of animal cruelty. The most common behavior for persons with a history of animal cruelty was doing something that one could be arrested for irrespective of whether they were caught or not (61.70%, CI = 57.31–65.92%). The least prevalent behavior was forcing someone to have sex (1.20%, CI = 0.59–2.41%). The strongest associations between antisocial behaviors and animal cruelty were found for robbing or mugging another person (OR = 17.93, 95% CI = 11.49–27.97), fire setting (OR = 12.79, 95% CI = 8.85–18.49), and harassing and threatening someone (OR = 12.64, 95% CI = 9.90–16.14).

3.3. Multivariate logistic regression analysis assessing associations between animal cruelty and lifetime psychiatric comorbidity

Table 3 compares prevalence rates of lifetime psychiatric comorbidity for persons with and without a history of animal

Table 2
Antisocial behaviors of adults with and without a lifetime history of cruelty to animals.

Behavior	History of cruelty to animals (N = 728) % (95%CI[a])	No history of cruelty to animals (N = 41,203) % (95%CI)	OR[b] (95% CI)
Cut class and leave without permission	44.94 (40.43–49.57)	21.53 (20.80–22.23)	**2.98 (2.46–3.60)**
Stay out late at night	49.37 (44.83–53.91)	25.36 (24.46–26.26)	**2.87 (2.36–3.49)**
Bully/push people	31.93 (27.77–36.40)	5.78 (5.40–6.18)	**7.65 (6.18–9.47)**
Run away from home overnight	15.59 (12.35–19.49)	4.94 (4.63–5.28)	**3.55 (2.70–4.67)**
Be absent from work/school a lot	21.20 (17.58–25.34)	6.63 (6.25–7.04)	**3.79 (2.98–4.80)**
Quit a job without knowing where to find another	33.63 (29.15–38.42)	11.22 (10.63–11.83)	**4.01 (3.22–5.00)**
Quit a school program without knowing what to do next	11.72 (9.45–14.44)	3.68 (3.38–4.00)	**3.48 (2.69–4.50)**
Travel around more than 1 month without plans	12.48 (9.86–15.49)	3.28 (3.03–3.55)	**4.21 (3.23–5.47)**
Have no regular place to live at least 1 month	9.97 (7.46–13.20)	2.63 (2.37–2.93)	**4.09 (2.92–5.73)**
Live with others at least 1 month	28.45 (24.18–33.16)	10.85 (10.16–11.59)	**3.27 (2.60–4.10)**
Lie a lot	21.35 (18.12–24.99)	5.00 (4.70–5.31)	**5.16 (4.19–6.36)**
Use a false or made up name/alias	12.07 (9.26–15.59)	1.97 (1.80–2.15)	**6.84 (5.05–9.26)**
Scam/con someone for money	12.14 (9.70–15.09)	1.22 (1.10–1.51)	**10.32 (7.76–13.72)**
Do things that could have easily hurt you/others	49.25 (44.74–53.78)	12.48 (12.56–14.47)	**6.23 (5.19–7.48)**
Get three or more traffic tickets for reckless driving/causing accidents	27.01 (23.03–31.38)	8.35 (7.74–8.99)	**4.06 (3.28–5.04)**
Have a driver's license suspended/revoked	24.09 (20.23–28.42)	7.49 (6.98–8.02)	**3.92 (3.12–4.93)**
Start a fire on purpose	10.92 (7.86–14.81)	0.95 (0.85–1.09)	**12.79 (8.85–18.49)**
Fail to pay off your debts	16.35 (13.38–19.82)	3.96 (3.83–4.31)	**4.74 (3.68–6.11)**
Steal anything from others	48.08 (43.79–52.41)	8.28 (7.74–8.85)	**10.26 (8.48–12.42)**
Forge someone's signature	12.04 (9.51–15.12)	1.97 (1.79–2.18)	**6.80 (5.12–9.05)**
Shoplift	46.65 (42.04–51.32)	10.67 (9.99–11.40)	**7.32 (6.01–8.90)**
Rob or mug someone or snatch a purse	4.00 (2.73–5.84)	0.23 (0.18–0.29)	**17.93 (11.49–27.97)**
Make money illegally	19.62 (13.59–30.17)	2.52 (2.29–2.78)	**7.72 (5.96–9.99)**
Do something you could have been arrested for, regardless of whether you were caught or not	61.70 (57.31–65.92)	14.67 (13.81–15.59)	**9.37 (7.73–11.36)**
Force someone to have sex	1.20 (0.59–2.41)	0.12 (0.08–0.17)	**10.14 (4.32–22.75)**
Get into a lot of fights that you started	16.51 (13.52–20.02)	2.56 (2.35–2.80)	**7.51 (5.86–9.64)**
Get into a fight that came to swapping blows with someone like a husband, wife, boyfriend or girlfriend	17.29 (14.11–20.61)	6.45 (6.03–6.89)	**3.02 (2.36–3.85)**
Use a weapon in a fight	13.73 (10.93–17.09)	2.49 (2.28–2.70)	**6.24 (4.77–8.18)**
Hit someone so hard that you injure them	24.19 (20.39–28.45)	5.68 (5.30–6.09)	**5.30 (4.22–6.64)**
Harass/threaten/blackmail someone	15.86 (12.97–19.24)	1.47 (1.30–1.66)	**12.64 (9.90–16.14)**
Physically hurt others on purpose	28.00 (24.47–31.81)	4.64 (4.31–5.00)	**7.98 (6.54–9.75)**

Note: OR values in bold are statistically significant (p-value < .05).
[a] CI: confidence interval.
[b] OR: odds ratio.

cruelty. Odds ratios are adjusted for sociodemographic factors (i.e., race, sex, education, marital status, age, income, region, urbanicity) and previously described lifetime DSM-IV psychiatric diagnoses. The most common psychiatric disorders among persons with a history of animal cruelty were any lifetime alcohol use disorder (63.69%, CI = 58.71–68.38%), family history of antisocial behavior (53.87%, CI = 49.40–58.28), lifetime nicotine dependence (36.16%, CI = 31.39–41.21%), and antisocial personality disorder (35.84%, CI = 31.53–40.40%).

Largest adjusted odds ratios were found for conduct disorder (AOR = 9.53, 95% CI = 6.07–14.97) and antisocial personality disorder (AOR = 6.68, 95%CI = 5.05–8.85). Smaller yet significant associations were found for pathological gambling (AOR = 2.23, 95% CI = 1.04–4.78), a family history of antisocial behavior (AOR = 2.12, 95% CI = 1.73–2.58), obsessive–compulsive personality disorder (AOR = 1.65, 95% CI = 1.24–2.20), histrionic personality disorder (AOR = 1.62, 95% CI = 1.14–2.31), and lifetime alcohol use disorder (AOR = 1.56, 95% CI = 1.20–2.03).

4. Discussion

To our knowledge, this is the first national study examining the association between animal cruelty and psychiatric disorders. Findings indicated that the prevalence of animal cruelty varied by sociodemographic status, was associated with all antisocial behaviors, and following adjustments for numerous confounding variables was associated with several lifetime psychiatric diagnoses. Specifically, our investigation found that the prevalence of animal cruelty was higher among males, African-Americans and Native-Americans/Asians, native-born Americans, and individuals with lower levels of income and education. There was a regional effect in that, compared to the western region of the US, individuals in other regions were less likely to report a lifetime history of animal cruelty. We can only speculate that this might stem from human–animal relationships in ranch or similar settings involving livestock or larger predatory animals. Animal cruelty was also associated with a broad array of antisocial behaviors particularly behaviors that exercise a physical threat over other persons such as robbery, harassment, and forcing someone to have sex. Setting fires on purpose was also highly associated with animal cruelty suggesting that previous clinical research related to these two behaviors is supported (Douglas et al., 1986; Ressler et al., 1980; Becer et al., 2004).

In controlled analyses, animal cruelty was uniquely associated with numerous psychiatric disorders characterized by self-control deficits including lifetime alcohol use disorder, pathological gambling, conduct disorder and antisocial personality disorder, and several personality disorders such as obsessive–compulsive, paranoid, and histrionic. Animal cruelty was also associated with a family history of antisocial behavior. Although it was unsurprising that CD/ASPD and a family history of antisocial behavior were highly associated with animal cruelty, significantly findings for associations of obsessive–compulsive and histrionic personality disorders and animal cruelty suggests follow-up studies on these disorders are warranted. While emotional and cognitive dysregulation are

Table 3
Psychiatric comorbidities of individuals with and without a lifetime history of cruelty to animals.

Comorbid psychiatric disorder	History of cruelty to animals ($N = 728$) % (95% CI[a])	No history of cruelty to animals ($N = 41,203$) % (95% CI)	Sociodemographic characteristics and other psychiatric disorders AOR[b] (95% CI)
Mood disorders			
Major depressive disorder	32.77 (28.38–37.48)	16.58 (15.89–17.29)	1.27 (0.75–1.60)
Bipolar disorder	19.57 (15.80–23.98)	5.50 (5.18–5.84)	0.99 (0.70–1.39)
Dysthymia	11.71 (9.40–14.49)	4.23 (3.85–4.52)	1.17 (0.81–1.70)
Anxiety disorders			
Panic disorder	7.49 (5.46–10.21)	4.03 (3.77–4.32)	0.89 (0.59–1.34)
Social phobia	13.64 (11.07–17.16)	4.93 (4.55–5.35)	1.12 (0.82–1.55)
Specific phobia	16.81 (13.88–20.22)	9.40 (8.89–10.13)	1.03 (0.76–1.38)
Generalized anxiety disorder	10.75 (8.20–13.83)	4.12 (3.79–4.48)	1.14 (0.75–1.72)
Substance use disorders			
Alcohol use disorder	63.69 (56.71–68.38)	29.77 (28.26–31.30)	**1.56 (1.20–2.03)**
Nicotine dependence	36.16 (31.19–41.21)	17.56 (16.63–18.54)	0.93 (0.71–1.22)
Marijuana use disorder	27.90 (23.87–32.32)	8.15 (7.62–8.71)	1.05 (0.77–1.44)
Other illicit drug use disorder	19.92 (16.38–24.01)	5.02 (4.63–5.44)	1.05 (0.77–1.43)
Psychotic disorder	3.63 (2.19–5.95)	0.74 (0.64–0.86)	1.14 (0.59–2.22)
Conduct disorder	6.29 (5.06–11.98)	0.94 (0.83–1.08)	**9.53 (6.07–14.97)**
Personality disorders			
Avoidant	9.89 (7.26–13.33)	2.27 (2.06–2.51)	1.50 (0.97–2.30)
Dependent	2.66 (1.39–5.01)	0.46 (0.38–0.57)	0.76 (0.53–1.71)
Obsessive–compulsive	26.55 (22.53–31.01)	7.74 (7.30–8.21)	**1.65 (1.24–2.20)**
Paranoid	18.09 (14.76–21.93)	4.27 (3.98–4.58)	1.34 (0.93–1.94)
Schizoid	9.54 (7.17–12.59)	3.09 (2.85–3.35)	0.70 (0.44–1.12)
Antisocial	35.66 (31.53–40.40)	3.13 (2.88–3.40)	**6.68 (5.05–8.85)**
Histrionic	10.60 (8.12–13.04)	1.72 (1.56–1.90)	**1.62 (1.14–2.31)**
Pathological gambling	3.02 (1.56–5.75)	0.39 (0.32–0.47)	**2.23 (1.04–4.78)**
Family history of antisocial behavior	53.87 (49.40–58.28)	32.49 (31.45–33.56)	**2.12 (1.73–2.58)**

Note: AOR values in bold are statistically significant (p-value <.05).
[a] CI: confidence interval.
[b] AOR: odds ratio adjusted for sociodemographic variables, lifetime psychiatric disorders, and a family history of antisocial behavior.

common in these disorders, we speculate that the rigidity of persons with obsessive–compulsive personality could be reflected in aggressive behavior toward animals (e.g., when pets have excretory "accidents" in the home), and the dependent reliance on others (including perhaps pets) for nuturance and support of persons with histrionic personality disorder may predispose them to violent actions toward pets.

Given the significant associations found between animal cruelty and other antisocial behaviors and psychopathology, animal cruelty in childhood appears to be a marker for a host of maladaptive behaviors (McPhedran, 2009; Petersen and Farrington, 2007). Thus, youth should be screened for animal cruelty in clinical and other service settings. Although identification of animal cruelty in childhood provides a potential opportunity for prevention interventions, it is difficult to determine whether animal cruelty after age 15 is a consequence of a developing psychiatric disorder or substance intoxication – chronic or episodic. The current study was unable to determine these causal sequences. Nevertheless, findings from this study provide a unique psychiatric epidemiologic informed report of the problem previously unavailable.

Present study findings need to be interpreted within the context of several limitations. The major limitation is the data are cross-sectional. Therefore, associations between animal cruelty and psychiatric comorbidity do not resolve etiological issues previously identified. However, findings do suggest that the origins of animal cruelty and psychopathology, in particular impulse-control disorders, are intertwined. The prognostic relationship between animal cruelty and psychiatric disorders will require longitudinal study designs. The NESARC excludes persons under age of 18 and therefore relies on retrospective self-reported recall of animal cruelty spanning potentially long swaths of time. There may also be response bias in that persons are unwilling to admit being cruel to an animal and those that do represent the more callous-unemotional and antisocial. Given that NESARC is a nationally representative sample, it is uncertain how associations between animal cruelty and psychiatric comorbidity would be similar or different if selected samples, such as persons in jails or prisons or in clinical settings, were employed. Excluding these samples combined with the tendency to underreport animal cruelty likely means that the prevalence estimate reported (1.8%) is quite conservative. For example, analysis by the authors' of animal cruelty in the National Longitudinal Survey of American Life, a national survey of adolescents, and found the prevalence to be 3.0%. In addition, the data on animal cruelty did not include important information regarding frequency of abuse. The dichotomous measure of animal cruelty combines single (low threshold) and multiple episodes of abuse thereby blurring potentially important distinctions between the two. Also, there is a lack of data on situational factors involved in animal cruelty. Data on precipitating factors, such as concurrent alcohol usage and severity of cruelty would be illuminating. Also, victim information such as type of pet or animal is potentially important. Moreover, the relationship of the perpetrator to the animal is unknown. Future studies on animal cruelty would benefit from including these natural history features in such assessments.

Finally, the study was limited by its reliance on one item for a determination of lifetime animal cruelty and by the self-report nature of the assessment. Given that respondents may tend to under report a behavior such as animal cruelty and that rates of such behavior among institutionalized populations are likely higher than in the general population, we believe the true prevalence of animal cruelty may be higher than that that identified in this study. Conversely, it is possible that some respondents may have been hunters and responded affirmatively to the item on that basis alone. The failure to identify significant differences between urban and rural respondents in prevalence of animal cruelty argues against this interpretation, although higher rates of such cruelty in the Western region of the US may be consistent with this interpretation.

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Contributors

Michael Vaughn conceptualized the study, led the literature review and study design, and analytic strategy. Qiang Fu conducted the statistical analysis. Matt DeLisi, Kevin Beaver, Katie Terrell, Brian Perron, and Matthew Howard reviewed literature and contributed writing.

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Conflict of interest

The authors have no financial or personal conflicts of interest.

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Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals

William M. Fleming, Brian Jory, and David L. Burton

Abstract

This study compared the family characteristics, victimization histories, and number of perpetration offenses of juvenile offenders who admitted to having had sex with animals to juvenile offenders who did not. The study found that 96% of the juveniles who had engaged in sex with nonhuman animals also admitted to sex offenses against humans and reported more offenses against humans than other sex offenders their same age and race. Those juveniles who had engaged in sex with animals were similar to other sex offenders in that they also came from families with less affirming and more incendiary communication, lower attachment, less adaptability, and less positive environments. Those juveniles who had engaged in sex with animals reported victimization histories with more emotional abuse and neglect and a higher number of victimization events than other offenders. This would seem to indicate that sex with animals may be an important indicator of potential or co-occurring sex offenses against humans and may be a sign of severe family dysfunction and abuse that should be addressed in the arenas of psychological intervention, juvenile justice programs, and public policy.

Sexual relations between humans and nonhuman animals, sometimes referred to as bestiality, is perhaps the least understood of all human/animal interactions. Studies of bestiality are difficult to conduct since bestiality carries a social stigma and generally is kept secret by those who have engaged in it. More than 50 years ago, Kinsey, Pomeroy, and Martin (1948) estimated that between 10 and 20% of the general population of the United States has engaged in bestiality, with a slightly higher prevalence in rural settings and among poorly educated males. Although Kinsey's sampling techniques are considered unscientific by current standards, these high estimations suggested to some that bestiality should be viewed as a "normal" practice among some populations.
This raises questions about who engages in bestiality and whether it should be considered "normal." The Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (American Psychiatric Association, 1994) classifies bestiality among the paraphilic disorders - deviant, but essentially victimless, forms of sexual gratification. According to Cerrone (1991), this classification suggests that bestiality is not a psychiatric problem in and of itself. Alvarez and Freinhar, (1991) found that bestiality may be more prevalent among psychiatric patients with major mental disorders than in the general population.

An alternative viewpoint on bestiality has emerged from the criminal justice literature. Beirne (1997) has proposed the notion of "interspecies sexual assault," arguing that sexual relations with animals parallel sexual assault against women and children, because in both instances there are issues of coercion, pain, and lack of consent. Studies of adult sex offenders appear to support the co-occurrence of sexual offenses against humans and animals among some offenders, with increasing numbers of incidents and animal victims occurring as offenders age (Abel, Osborne, & Twig, 1993).

The purpose of this study was to shed light on the question of who engages in sex with animals and whether it should be considered normal. The study compares the family characteristics, victimization histories, and number of perpetration offenses of a group of juvenile offenders who admit to engaging in sex with animals with juvenile offenders who do not admit to bestiality. It was hypothesized that there would be no differences on these three variables between those juveniles who had engaged in sex with animals and those who had not. Although a study of juvenile offenders may not yield direct information about bestiality in the general population, we hoped that the study would yield useful information about the developmental issues for juvenile offenders. Previous studies of juvenile offenders have indicated that their victimization histories and family characteristics are valuable in understanding the etiology of their offending behaviors (Blaske, Borduin, Henggeler, & Mann, 1989), and case studies with juvenile offenders suggest that their offending behavior can often be understood in the context of poor family relationships and parental conflict (Duffield, Hassiotis, & Vizard, 1998; Cerrone, 1991). In addition, we hoped that the study might contribute knowledge about how to approach future studies of bestiality in the general population.

Method

Participants

Three hundred and eighty-one (381) institutionalized, adjudicated, male youth offenders completed an anonymous self-report questionnaire. Participants were residents of three institutions in a Midwestern state that serve delinquent, high-risk youth, and their families. These institutions are the state's largest training school, the state's largest residential treatment center, and the state's largest non-profit group home setting. There were no differences between the youth in these three centers on any variables discussed in this article. The average age of the participants was 16.9 years, (S.D. 1.47). Of the youth, 55 % were African American; 28%, white; 6%, Hispanic; and 11 % identified themselves as from other ethnic identities, including Native American and Asian.

Recruitment & Selection

Because of the sensitive nature of the survey, elaborate steps were followed in securing permission to conduct the study. The Institutional Review Board of the University of Michigan reviewed the project and gave it clearance. In each institution, administrators, clinical teams, and on-line staff were consulted for approval for each youth's participation. Across all three institutions, 14 youth were not approved because of clinical concerns (i.e. asking the youth questions about trauma might upset clinical work). Parental permission was sought for youths from the residential treatment center and the group home. Youths from the training school were wards of the state, and parental permission was not deemed warranted or feasible.

Upon clearance by the institution, the youths were approached following conventional research protocols regarding informed consent. Because the questions were about personal and potentially criminal behavior, youth were assured that their responses would be anonymous and confidential. The youths were assured that no individual responses would be shared with institutional personnel or with personnel from the criminal justice system. The youths were informed that aggregate data would be shared with institutions in order for the institution to assess whether their programs are addressing youth offender issues. There was no way to determine differences between those who participated in the study and those who were not allowed or did not wish to participate.

Administration of the Questionnaire

Trained research assistants and an on-site staff liaison facilitated group adminstration of the surveys by residence halls. All youth were administered identical survey instruments in a setting that allowed for individual privacy. Administration of the survey took approximately 2-3 hours, as youth were guided to stop after sections of the survey were completed. Frequent breaks and refreshments were provided at these breaks. A trained counselor was available for any youth desiring counseling during or after completion of the survey. Three youths used this service. As compensation, the researchers sponsored a pizza party for participating and non-participating youth two weeks after the survey.

Instruments

Sexual Abuse Exposure Questionnaire (SAEQ). A modified version of this 24-item instrument, originally designed by Ryan, Rodriguez, Rowan and Foy (1992), was used to assess the sexual victimization history of the juveniles. The instrument focuses on types of sexual abuse experienced, the juvenile's relationship to the perpetrator, and frequency of occurrence. Sexual victimization behaviors range from exposure to being penetrated. The SAEQ is superior to many instruments in that the juvenile is not asked whether he or she has been "sexually abused" but, rather, whether he or she has experienced a particular sex act. In this way, interpretation does not depend on the respondent's notion of sexual abuse but allows the researcher to consider sexual abuse that includes non-contact behaviors, contact behaviors, and penetration. If the juvenile answers yes to any item, he or she is asked to supply details about the incident (relationship to perpetrator, frequency, duration). Examples of items include: "Has anyone ever shown you their private parts or exposed themselves to you?" and "Has anyone ever conned, or forced you, to let them put their penis into your private parts?" If the respondent indicates no to the question, he or she proceeds to the next question.

Self Report Sexual Aggression Scale (SERSAS).2 For purposes of this study, the SAEQ was modified to inquire about acts of perpetration the juvenile has committed. The majority of the items in the SERSAS mirror those found in the SAEQ. Example items include: "Have you ever shown your private parts in front of a person or persons?" and, "Have you ever conned, or forced anyone to let you put your penis into their private parts?" The SERSAS includes a series of questions asking the youths if they had ever done anything sexual to an animal or animals, the nature of the activity, and their age at the time of the incident(s).

Childhood Trauma Questionnaire (CTQ). The CTQ is a 53 item scale that provides a brief screening for victimization experiences in the juvenile's history, including child neglect and physical, emotional, and sexual abuse (Bernstein, Ahluvalia, Pogge, & Handelsman, 1997). The CTQ also has a scale for "positive family environment." Juveniles responded with a Likert-type response (strongly agree to strongly disagree) to the stem sentence, "When I was growing up...," which was followed by specific items such as. "Someone in my family hit me or beat me"; "There was someone in my family whom I could talk to about my problems"; and "People in my family hit me so hard that it left me with bruises or marks."

Family Attachment and Changeability Index 8 (FACI-8). The FACI-8 (McCubbin, Thompson, & Elver, 1995a) is designed to measure family cohesion and adaptability in the juvenile's family-of-origin. The juveniles responded to 16 items (strongly agree to strongly disagree) including "Our family tries new ways of dealing with problems"; "Family members are afraid to say what is on their minds";

and "Family members pair up rather than do things as a total family."

Family Problem Solving and Communication Index (FPSCI). The FPSCI was used to assess the prevalence of incendiary and affirming styles of family communication (McCubbin, Thompson, & Elver, 1995b). Juveniles were asked to respond to the stem sentence, "When our family struggles with problems or conflicts which upset us, I would describe my family in the following way...." The stem is followed by 10 specific items such as, "We are respectful of each other's feelings"; "We yell and scream at each other"; and "We make matters more difficult by fighting and bringing up old matters."

Cronbach alphas for reliability and internal consistency were conducted on all scales, and were within acceptable ranges (.76 to .89).

Results

Prevalence of Sex with Animals

The SERSAS asks the questions, "Have you ever done anything sexual to an animal or animals (on your own without being conned or forced to do so)?" and "Have you ever conned, or forced anyone to let you put your penis into their private parts?" Of the 381 juvenile offenders who completed the survey, 6% admitted to having done something sexual with an animal (Animal Offenders, n=24). The average age of these juveniles at the time of their sex acts with an animal was 11.3 years old (S.D. 2.5). Forty-two % admitted to offending sexually against humans, but not to sex with animals (Sex offenders, n=161), and 51% admitted neither to bestiality nor to any sexual offenses against humans (Non Sex Offenders, n=196).

It is important to note that all 184 juvenile offenders (46% of the total sample) who answered "yes" to the second question essentially were admitting to some form of sexual assault on a person. These figures can be understood in the context of their adjudications, in that only 26% of the 381 total sample had been previously adjudicated for sex offenses. This means that 20% of the juveniles were admitting to offenses for which they had not been adjudicated. This is not unusual, because juvenile justice authorities estimate that the adjudication rate for sex offenses is only a small percentage of the offenses committed.

It is essential to recognize that 23 of the 24 juveniles who admitted to bestiality also admitted to having sexually offended against a human, although only 12 of the 24 had been adjudicated for sex offenses. Given that 23 of the 24 Animal Offenders admitted to sexual offenses against humans, the group of Animal Offenders is essentially a sub-group of Sex Offenders, although only slightly more than half had been adjudicated for sex offenses.

Description of Sex Acts with Animals

The nature of the sex acts with the animals was determined through a series of follow-up questions. No information was solicited from the juveniles that would explain what their relationships were with these animalsC companion animals, stray animals, animals on the farm, animals in the wildC or what the sex acts meant to them at the time they committed these acts. However, Table 1 indicates that 14 of the 24 juveniles indicated they had, "rubb[ed] my private parts against it," and 10 of the 24 admitted to "putting my penis into its private parts." Ostensibly, rubbing one's private parts against the animal or inserting one's penis would be acts of self-gratification, involving sexual intercourse with the animal or masturbation against it.

Two of the 24 juveniles indicated they had "inserted an object into the animal," and six had "inserted a finger into the animal." It is difficult to interpret what was accomplished by inserting fingers or objects into the animal, as these could be (a) acts of sexual curiosity (to see how the animal would react), (b) sexual gratification for the juvenile, (c) sexual sadism (by inflicting pain on the animal), or (d) some combination of these. Ostensibly, "putting one's mouth on the privates of the animal" would involve pleasuring the animal, and only 4 of the 24 juveniles admitted to this.

Table 1
Description of Sex Acts with Animals

	INCIDENCES
Mouth on Animal	4
Rubbed Privates	14
Inserted Penis	10
Inserted Finger	6
Inserted Object	2

Because the purpose of this study was to learn as much as possible about the Animal Offenders, the researchers found it informative to distinguish Animal Offenders from both the Non Sex Offenders and the human-only Sex Offenders. Therefore, the data from the three groups (Animal Offenders, human-only Sex Offenders, and Non Sex Offenders) is separated out for comparison. Statistical analysis revealed no differences between the three groups in terms of age or racial composition, but analyses comparing the family characteristics and victimization histories of these three groups did find differences.

Family Characteristics

Table 2 indicates that both Animal Offenders and Sex Offenders come from families in which there is less affirming communication than in the families of Non Sex Offenders, F (1, 343) = 6.21 p< .01. The FPSCI has a possible range of 1-15 for affirming communication, with 15 indicating the most affirming communication. Mean scores on affirming communication for the three groups were 6.55 for the Animal Offenders, 9.40 for the Sex Offenders, and 10.23 for the Non-Sex Offenders. Post Hoc Scheffé analyses indicate that these means also indicate statistical differences between Sex Offenders and Animal Offenders in affirming communication (p<.05).

Table 2
Family Characteristics

	Affirming Communication		Incendiary Communication		Attachment		Adaptability		Positive Environment	
	M	SD	M	SD	M	SD	M	SD	M	SD
Non-Sex Offender	10.23** ABC	4.12	6.37*** ABC	3.65	29.81*** ABC	6.60	22.05** ABC	6.62	39.74*** ABC	9.16
Sex Offender	9.40* BC	5.25	7.85	3.72	27.78	7.15	19.98	7.49	36.13** BC	10.57
Animal Offender	6.55* BC	4.31	8.68	3.84	25.05	5.92	18.45	8.01	28.41** BC	9.60

A=non-sex offender, B=sex offender, C=animal offender
* p<. 05, **p<.01, ***p<.001
Higher score represents higher levels of attachment, adaptability and positive environment.

Table 2 indicates that Animal Offenders and Sex Offenders come from families with more incendiary communication than the families of Non Sex Offenders (p<.001). The FPSCI has a range of 0-15 for incendiary communication, with 15 indicating the most incendiary communication. The means scores for the three groups were 6.37 for Non Sex Offenders, 7.85 for Sex Offenders, and 8.68 for Animal Offenders. Post Hoc Scheffé analyses indicate no statistical differences between the families of Animal Offenders and Sex Offenders on incendiary communication.

Table 2 indicates that Animal Offenders and Sex Offenders come from families in which attachment is lower than in families of Non Sex Offenders F (1, 365) = 6.72 p< .001. The FACI-8 has a possible range of 8-40 with 40 indicating the highest levels of family attachment. Mean scores for the three groups were 25.05 for Animal Offenders, 27.78 for Sex Offenders, and 29.81 for Non Sex Offenders. Post Hoc Scheffé analyses indicate no statistical difference between Sex Offenders and Animal Offenders on family attachment.

Table 2 indicates that Sex Offenders and Animal Offenders come from families that are less adaptable than families of Non Sex Offenders F (1, 367) = 5.07 p< .01. The FACI-8 has a possible range of 7-35 on family adaptability, with 35 indicating the most adaptability. The mean scores for the three groups were 18.45 for Animal Offenders, 19.88 for Sex Offenders, and 22.05 for Non Sex Offenders. Post Hoc Scheffé analyses found no statistical differences between the families of Sex Offenders and the Animal Offenders on adaptability.

Table 2 indicates differences between all three groups on the variable of positive family environments, as measured by the CTQ, F (1, 334) = 13.29 p< .001. The positive family environment scale on the CTQ has a possible range of 10-50, with 50 indicating the most positive family environment. Animal Offenders come from families with the least positive family environments (M=28.41), with Sex Offenders coming from substantially more positive family environments (M=36.13), and Non Sex Offenders indicating even more positive family environments (m=39.74).

Victimization Histories and Perpetration Offenses

Table 3 exhibits the victimization and perpetration histories of the three groups as measured on the CTQ. The data indicate that both Animal Offenders and Sex Offenders have experienced more emotional neglect $F(1, 378) = 14.06$ $p < .001$, more physical abuse $F(1, 378) = 12.88$ $p < .001$, more emotional abuse $F(1, 378) = 21.48$ $p < .001$, and more sexual abuse $F(1, 378) = 63.01$ $p < .001$ than Non Sex Offenders. Post Hoc Scheffé analyses indicate that Animal Offenders had not experienced more physical or sexual abuse than Sex Offenders. However, they had experienced more emotional abuse ($p < .05$) and more emotional neglect ($p. < .01$) than Sex Offenders.

[Note: Table 3 is not available online.]

The SAEQ and SERSAS permit examination of the number of victimization events for each juvenile along with the number of offending events they committed as a perpetrator. Table 3 indicates differences between all three groups, both in the number of victimization events reported $F(4, 217) = 28.52$ $p < .001$, and the number of offending events perpetrated against others $F(4, 425) = 244.45$ $p < .001$. Animal offenders reported more sexual victimization events ($M = 6.13$) than either Sex Offenders ($M = 4.23$) or Non Sex Offenders ($M = 1.57$). Animal Offenders also reported more offending events against humans ($M = 6.86$) than did Sex Offenders ($M = 5.10$)($p < .01$).

Discussion

This study compared the family characteristics, victimization histories, and number of perpetration offenses of three groups of juvenile offenders: (a) those who admitted to sex with animals (Animal Offenders), (b) those who admitted to sexual offenses against humans but not to bestiality (Sex Offenders), and (c) those who admitted to neither sex offenses against humans nor sex with animals (Non Sex Offenders). These three groups were identical in age and racial composition.

The data suggest that juvenile Animal Offenders should be considered a sub-group of Sex Offenders in that 23 of 24 juveniles (96%) who admitted to bestiality also admitted to sexual offenses against humans. These figures are based on the juveniles' self reports and almost double their actual adjudication rates for sex offenses. This is not unusual in that the number of adjudicated sex offenses in the general population falls far below the actual number committed. It appears that Animal Abusers may be further advanced than other juvenile sex offenders, in that they report substantially more perpetration offenses against humans than do other sex offenders (6.86 compared to 5.10, respectively).

Animal Offenders and Sex Offenders also shared a number of other commonalities. Both come from families with less affirming communication, more incendiary communication, lower attachment, less adaptability, and less positive environments than juvenile offenders who admit no sexual offenses. Also, the victimization histories of Animal Offenders and other Sex Offenders are similar. Animal Offenders and Sex Offenders had been victimized by more physical abuse, more emotional abuse, more sexual abuse, and more emotional neglect than Non Sex Offenders. They also had higher numbers of "victimization events" than Non Sex Offenders.

The study found that Animal Offenders actually report more problems than other Sex Offenders. Animal Offenders reported less affirming communication and less positive environments in their families than other Sex Offenders. Animal Offenders also reported more emotional abuse and neglect than other Sex Offenders, though not more physical and sexual abuse. The number of victimization events was substantially higher for Animal Offenders than for other Sex Offenders (6.13 compared to 4.23, respectively).

The purpose of this study was to shed light on the question of who engages in bestiality and whether this behavior should be considered "normal." It is difficult to assess "normality" in a study where all 381 participants were adjudicated juvenile offenders living in state facilities. However, within this population, the data indicate that the 6% of juvenile offenders who admitted to bestiality reported more problematic family characteristics and more traumatic victimization histories. They also reported having committed more sex offenses against humans than did other juvenile offenders. These findings suggest that sex with animals should not be considered normal or benign among the juvenile population.

The findings of this study would seem to support Beirne's (1997) contention that bestiality actually is a form of "interspecies sexual assault," at least among adjudicated juvenile offenders. It is difficult to say whether the juveniles who had committed sex acts with animals would consider their behavior as a sex offense, but this would be a productive study to conduct in the future. The current authors believe that most juveniles, like adults, consider bestiality as deviant behavior, but not necessarily as a form of sexual assault. Public education programs might be necessary to bring this awareness to the general public. An entire body of research in the last few years has shown that those who engage in cruelty against animals are more likely to engage in violence against humans (Ascione & Arkow, 1999; Raupp, Barlow, & Oliver, 1997). The findings of the current study suggest that this link might be extended to include sex with animals, at least among some populations. The current study is limited in making this as an absolute generalization, because bestiality among populations other than male juvenile offenders was not examined. Juvenile offenders are, by definition, adjudicated for aggressive and violent offenses. It is possible that among other populations (single women and their pets), sex acts with animals might be performed out of love, the need for consolation, or other motivations. In these and other populations, there might not be any link whatsoever to offenses against humans. It is difficult to understand how the humans in these situations might view their own behaviors in terms of "mutual consent," or how they consider the pain, if any, to the animal participant, but this would be a worthwhile topic for future study.

The findings of the current study have important implications for violence intervention and prevention programs that are based on the link between animal cruelty and human violence (Jory & Randour, 2000; Flynn, 2000). These programs are postulated on the idea that early detection of animal abuse opens the door to psychological and social intervention, particularly among juveniles and young adults. The current study suggests that juveniles who engage in bestiality come from families with more severe problems and more emotional abuse than the "average" sex offender. This raises the questions of what neediness animal offenders may be acting out. Perhaps they are trying to resolve attachment conflicts and anger problems by turning to animals for sexual gratification and release of tension. Further studies should explore the precise links between abusive and problematic family environments and sex acts with animals.

Few states have laws specifically prohibiting sexual contact with animals. However, the current study suggests that juvenile offenders who engage in bestiality are likely to be offending against humans as well. Those who promote legislation to curb social violence and protect the rights of animals might consider seeking extension of animal cruelty laws to include bestiality.

Although the average age of the juveniles in the current study at the time they first engaged in bestiality was only 11.3 years old, rubbing one's private parts against an animal, or inserting one's penis, fingers, or other objects into an animal's private parts goes beyond mere child-like curiosity. It is difficult to see how animals are capable of consenting to such sex acts, and it is likely that pain and injury accrue to many of the victims of these acts. Moreover, the finding that 23 of the 24 juveniles who engaged in bestiality in the current study reported also sexually assaulting humans is alarming and suggests that bestiality seldom occurs in isolation from other sex-offending among this population. Further studies are warranted to determine if bestiality in adolescence or pre-adolescence is a predictor of sex-offending in adulthood.

As indicated, further studies are warranted before broader generalizations can be made. However, this study offers analysis of a juvenile population that has not previously been made and provides a foundation for future empirical studies of bestiality in the general population.

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Notes

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RISK FACTORS FOR INTIMATE PARTNER VIOLENCE AND ASSOCIATED INJURY AMONG URBAN WOMEN

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ABSTRACT: The objective of this study was to identify risk factors for abuse and IPV related injury among an urban population. This study reports an additional analysis of a case-control study conducted from 1994 to 2000 in 11 USA metropolitan cities where of 4746 women, 3637 (76.6%) agreed to participate. Control group women (N = 845) were identified through random digit dialing. Significant risk factors for abuse included women's young age (adjusted odds ratio (AOR) 2.05 p = .011), being in fair or poor mental health (AOR 2.65 p < .001), and former partner (AOR 3.33 p < .001). Risk factors for partners perpetrating IPV included not being a high school graduate (AOR 2.06 p = .014), being in fair or poor mental health (AOR 6.61 p < .001), having a problem with drug (AOR 1.94 p = .020) or alcohol use (AOR 2.77 p = .001), or pet abuse (AOR 7.59 p = .011). College completion was observed to be protective (AOR 0.60, p < .001). Significant risk factors for injury included partner's fair or poor mental health (AOR 2.13, p = .008), suicidality (AOR 2.11, p = .020), controlling behavior (AOR 4.31, p < .001), prior domestic violence arrest (AOR 2.66, p = .004), and relationship with victim of more than 1 year (AOR 2.30, p = .026). Through integration of partner related risk factors into routine and/or targeted screening protocols, we may identify more abused women and those at greater risk of abuse and injury.

KEY WORDS: women; intimate; partner; violence.

INTRODUCTION

Intimate partner violence (IPV) is a major cause of morbidity and mortality for women in the United States (US). According to the National

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Violence Against Women Survey (NVAWS) approximately 25.5% of US women reported IPV (physical or sexual assault) or stalking at least once in their lifetime.[1] Past year IPV prevalence in population- based surveys has ranged from 1.5% to 13.6%.[1,2] According to estimates from the National Crime Victimization Survey (NCVS), 20% of the violent crime committed against women between 1993 and 2001was attributed to IPV and at least one-third of female homicide victims were killed by an intimate partner.[3] IPV is currently the most common cause of nonfatal injury in the US.[4] Between 1992 and 1996, 36% of emergency department visits made by women were related to IPV.[5] Our definition of intimate partner violence is taken from a consensus panel for the US. Centers for Disease Control and Prevention (CDC) as follows: physical and/or sexual assault or threats of assault against a married, cohabitating, or dating current or estranged intimate partner by the other partner, also including emotional abuse and controlling behaviors in a relationship where there has been physical and/ or sexual assualt.[6]

Identifying abused women is increasingly being acknowledged as a potential way to decrease the morbidity and mortality associated with IPV. Thus, identifying risk factors for IPV is an important public health endeavor. In population and clinic based samples, the following factors differentiated physically abused from non-abused women: educational achievement discordance,[7] specifically when the woman has a higher education than her partner, cohabitating,[2] unmarried,[2,7] African American,[2] young age,[7] low income without health insurance or Medicaid,[7] cigarette use,[7] history of physical abuse, self perceptions of poor physical and mental health[8] and children in the home.[8]

Thompson et al.[8] sought to identify factors associated with *injury* of a woman due to abuse by her partner by comparing risk factors for IPV in two national surveys, the Canadian Violence Against Women Survey (CVAWS) and the NVAWS. Results indicated that children witnessing partner violence, partner's alcohol use, history of prior victimization by the same partner and the woman reporting fear of injury or death were associated with physical injury. However, only two factors, partner's alcohol use and chronic victimization by the same partner, were independently associated with injury in both data sets.

As an increasing number of professional association guidelines and health care agencies and facilities implement targeted and universal IPV screening or routine inquiry,[9,10] it is helpful to be able to offer empirically validated profiles of women likely to suffer abuse, and the partners likely to perpetrate it. It is particularly important that such results emanate from population-based surveys as they are more likely to be generalizable to the

population of women in the US. Identifying risk factors for abuse and injury resulting from abuse is critical for designing interventions to prevent, screen, and treat IPV. Thus, the objective of this analysis is to identify risk factors for IPV and IPV related injury among an urban random sample of women who were the control group of a case control study of intimate partner homicide.

METHODS

Setting and Participants

The case control study of intimate partner homicide was conducted in 11 geographically dispersed US cities from 1994 to 2000.[11] Cases were women who had survived an attempted homicide (n = 183) or proxies of women who did not (typically mothers, sisters, or friends) (n = 220). A control group was also included to compare with the cases. Women in the control group were identified through random stratified digit dialing from the same metropolitan areas as the femicide cases. A total of 4746 women met the age (18–50) and relationship criteria (intimate partner within the past year) and were read the full consent statement as approved by the Johns Hopkins University Institutional Review Board (IRB) as well as a local IRB at each site. Of these, 3637 (76.6%) agreed to participate. A modified version of the Conflict Tactics Scale[12] was used to identify abused women. Women who reported physical and/or sexual assault or being threatened with a weapon during a current or past relationship within the past 2 years constituted the abused group (n = 427). An equal number of nonabused women comprised the control group (n = 418), randomly selected from women who reported no abuse during the past 2 years.

Assessments

All controls interviewed included questions on sociodemographic factors, relationship characteristics, weapon availability, drug use, psychological abuse, perceived mental health of self and partner, and prior arrest of partner, as well as responses to standardized instruments such as the Danger Assessment[13] and the HARASS.[14] Additionally, the same five questions used in the CVAWS[8] to evaluate emotional abuse were used in this study. A safety protocol was implemented, adopted from the telephone safety domestic violence protocol developed by Holly Johnson that includes providing domestic violence resources for all participants.[15] This analysis is

a comparison of the abused with the nonabused women in the control group.

Statistical Analysis

Data were analyzed with STATA, version 8.[16] Univariate and bivariate analyses were conducted to determine differences between abused and non-abused women including t-tests for continuous variables and Chi-square tests for categorical variables. Backward stepwise logistic regression analysis was then utilized for those variables noted to be statistically significant at the $p \leq 0.10$ level in the bivariate analyses for inclusion in the multivariate model. Missing data (~9%) was handled by substituting mean or median values as appropriate. This was not done for the injury analysis.

RESULTS

The prevalence of intimate partner violence in the sample was 9.8% (n = 356). Most of the women in the sample were over 25 years of age (as were their partners), unmarried, living without children in the home, a high school graduate, and employed full time. Approximately half (53%) of the sample was White, 19% African American, 19% Hispanic, and 8% of "other" ethnic background. The association of abuse status and woman-level, partner-level, and relationship-level characteristics hypothesized to be related to IPV from prior research were investigated through bivariate analysis. All of the woman-level characteristics, and all but one of the partner-level characteristics were significantly associated with abuse. The only partner-level characteristic not associated with abuse was history of ever being in the military. Similarly, the only relationship-level characteristic not associated with abuse was the presence of a biological child of the woman but not the partner's (stepchild) in the home. Table 1 illustrates the findings of the bivariate analyses.

In the multivariate analysis, two characteristics of the women were independently associated with abuse: younger age and fair or poor mental health. Women who were less than 26 years of age were about twice as likely to be abused. Women who reported fair or poor mental health were more than twice as likely to be abused compared with the non-abused group. In contrast, five partner characteristics were associated with abuse, including not being a high school graduate (adjusted odds ratio (AOR) 2.05), woman's perception that the partner's mental health was fair or poor (AOR 6.61), woman's perception of partner's problem drug (AOR 1.94) or

TABLE 1

Associations by Abuse Group

	N (%) Total	*Abuse (n = 427) n (%)*	*Non-abused (n = 418) n (%)*	*p value*
Woman's Characteristics n = 845				
Age				<.001
18–25 years	219 (25.92)	154 (36.07)	65 (15.55)	
26–50 years	626 (74.08)	273 (63.93)	353 (84.45)	
Employment				.017
Full time (reference)	494 (58.6)	233 (54.57)	261 (62.74)	
Part time	147 (17.44)	89 (2.84)	58 (13.94)	
No job	204 (24.14)	105 (24.59)	99 (23.68)	
Education				<.001
Not high school graduate	101 (12.01)	70 (16.51)	31 (7.43)	
High school graduate	740 (87.99)	354 (83.49)	386 (92.57)	
Race/Ethnicity				.002
Black	161 (19.24)	96 (22.80)	65 (15.63)	
White (reference)	447 (53.41)	200 (47.51)	247 (59.38)	
Hispanic	160 (19.12)	92 (21.85)	68 (16.35)	
Other	69 (8.24)	33 (7.84)	36 (8.65)	
Individual Income				<.001
≤ $20,000	416 (49.23)	254 (59.48)	162 (38.76)	
>$20,000	429 (50.77)	173 (40.52)	256 (61.24)	
Health				<.001
Excellent/Good	730 (86.39)	345 (80.80)	385 (92.11)	
Fair/Poor	115 (13.61)	82 (19.20)	33 (7.89)	
Mental Health				<.001
Excellent/Good	674 (79.76)	288 (67.45)	386 (92.34)	
Fair/Poor	171 (20.24)	139 (32.55)	32 (7.66)	
Problem Drinker	37 (4.38)	30 (7.03)	7 (1.67)	<.001
Drug Use	85 (10.08)	57 (13.38)	28 (6.71)	.001
Partner's Characteristics				
Age				<.001
18–25 years	180 (21.3)	135 (31.62)	45 (10.77)	
26–50 years	665 (78.7)	292 (68.38)	373 (89.23)	

TABLE 1 *(Continued)*

	N (%) Total	*Abuse (n = 427) n (%)*	*Non-abused (n = 418) n (%)*	*p value*
Employment				<.001
Full time (reference)	661 (79.16)	284 (67.78)	377 (90.63)	
Part time	79 (9.46)	52 (12.41)	27 (6.49)	
No job	105 (12.43)	91 (21.31)	14 (3.35)	
Education				<.001
Not high school graduate	146 (17.85)	108 (26.47)	38 (9.27)	
High school graduate	672 (82.15)	300 (73.53)	372 (90.73)	
College graduate	326 (38.58)	109 (33.54)	217 (66.56)	
Race/Ethnicity				<.001
Black	185 (32.08)	108 (25.47)	77 (18.6)	
White (reference)	440 (52.51)	192 (45.28)	248 (59.9)	
Hispanic	158 (18.85)	93 (21.93)	65 (15.7)	
Other	55 (6.56)	31 (7.31)	24 (5.8)	
Health				<.001
Excellent/Good	719 (85.09)	330 (77.28)	389 (93.06)	
Fair/Poor	126 (14.91)	97 (22.72)	29 (6.94)	
Mental Health				<.001
Excellent/Good	597 (70.65)	210 (49.18)	387 (92.58)	
Fair/Poor	248 (29.35)	217 (50.82)	31 (7.42)	
Problem Drinker	159 (18.84)	133 (31.15)	26 (6.24)	<.001
Drug Use	157 (18.6)	130 (30.44)	27 (6.46)	<.001
Partner ever in military	127 (15.17)	69 (16.35)	58 (13.98)	.338
Partner ever arrested for violence outside home	55 (6.7)	46 (11.27.)	9 (2.18)	<.001
Partner ever had nonviolent arrest	113 (13.76)	84 (20.59)	29 (7.02)	<.001
Gun in home	141 (16.69)	68 (15.93)	73 (17.46)	.549
Relationship Characteristics				
Relationship Status				<.001
Current Partner	578 (68.4)	220 (51.52)	358 (85.65)	
Former Partner	267 (31.6)	207 (48.48)	60 (14.35)	
Relationship Status: Type				<.001
Husband	340 (40.52)	107(25.30)	233 (56.01)	
Ex-Husband	34 (4.05)	32 (7.57)	2 (.48)	

TABLE 1 *(Continued)*

	N (%) Total	*Abuse (n = 427) n (%)*	*Non-abused (n = 418) n (%)*	*p value*
Boyfriend	217 (225.86)	98 (23.17)	119 (28.61)	
Ex-Boyfriend	132 (15.73)	104 (24.59)	28 (6.73)	
Common law husband	3 (0.36)	2 (0.47)	1 (0.24)	
Ex-Common law husband	5 (0.60)	4 (0.95)	1 (0.24)	
Same-sex partner	12 (1.43)	10 (2.36)	2 (0.48)	
Former Same-sex partner	0	0	0	
Estranged husband*	9 (1.07)	8 (1.89)	1 (0.24)	
Other	87 (10.37)	58 (13.71)	29 (6.97)	
Biological Children in Home	268 (31.79)	112 (26.23)	156 (37.50)	<0.001
Stepchildren in Home	138 (16.35)	78 (18.27)	60 (14.39)	0.128

*(still married, no legal action).

alcohol use (AOR 2.77), or threat or actual abuse of a pet (AOR 7.59). In contrast to the four risk factors, being a college graduate (AOR 0.60) was a protective factor. Only one relationship-level characteristic, the perpetrator being the woman's former partner (AOR 3.33), was associated with abuse. Table 2 illustrates the findings of the multivariate analyses.

Because it is likely that physically abused controls who were also injured may have been experiencing more severe abuse than other physically abused controls, an additional multivariate logistic analysis (not shown), identified factors independently associated with injury among both abused and non-abused controls. The four partner-level factors associated with injury were: suicidality (AOR 2.11, 95% CI 1.13–3.56, $p = .020$), controlling behavior (AOR 4.31, 95% CI 2.44–7.61, $p < .001$), fair or poor mental health (AOR 2.13 95% CI 1.22–3.72, $p = .008$), and prior domestic violence arrest (AOR 2.66, 95% CI 1.36–5.22, $p = .004$). The one relationship-level factor that was significant was duration of relationship greater than 1 year (AOR 2.30, 95% CI 1.10–4.81, $p = .026$). No woman-level factor was statistically significant in this analysis.

As expected, the overwhelming majority of the non-abused controls answered "no" to almost all of the questions appearing on the Danger Assessment, HARASS, and the emotional abuse questions from the CVAWS.

TABLE 2

Crude and Adjusted ORs for Predictors of Abuse

Characteristics	*Crude OR (95%CI)*	*Adjusted OR (95%CI)*	*p-value*
Woman's Characteristics (n = 845)			
Age			
18–25	3.06 (2.20, 4.26)	2.05 (1.18, 3.57)	.011
26–50	1.0 (Referent)	1.0 (Referent)	
Mental health			
Fair/poor	5.82 (3.85, 8.80)	2.65 (1.59, 4.49)	<.001
Good/excellent	1.0 (Referent)	1.0 (Referent)	
Partner's characteristics			
Education			
<High school	3.52 (2.36, 5.26)	2.06 (1.16, 3.66)	.014
≥High school	1.0 (Referent)	1.0 (Referent)	
College graduate	0.32 (0.24, 0.43)	0.60 (0.37, 0.95)	<.001
Not college graduate	1.0 (Referent)		
Mental health			
Fair/poor	12.90 (8.54, 19.48)	6.61 (4.00, 10.43)	<.001
Good/excellent	1.0 (Referent)	1.0 (Referent)	
Alcohol			
Problem drinker	6.80 (4.35, 10.63)	2.77 (1.60, 4.78)	.001
Not problem drinker	1.0 (Referent)	1.0 (Referent)	
Drug use			
Problem w/drugs	6.59 (4.24, 10.25)	1.94 (1.11, 3.39)	.020
No problem	1.0 (Referent)		
Pets			
Pet abuse	19.15 (4.58, 80.07)	7.59 (1.61, 35.96)	.011
Relationship characteristics			
Former partner	5.61 (4.02, 7.83)	3.33 (2.02, 5.49)	<.001
Current partner	1.0 (Referent)	1.0 (Referent)	

That is, 5.98% of the nonabused women answered "yes" to no more than 1 question on the Danger Assessment, for example, "Is he partner) violently and constantly jealous of you?" Almost no (.72%) nonabused women answered "yes" to no more than 1 question on the HARASS, for example,

"Did he ever follow you or spy on you?" Finally, 7.42% of the nonabused women answered "yes" to no more than 1 question for the emotional abuse CVAWS questions, for example, "He calls you names to put you down or make you feel bad." There were however, particular items from these scales that differentiated injured women from non-injured physically abused controls. Injured women were much more likely to report that their partner made unwanted calls (40% vs. 2%, $p < .0001$), restricted them from talking with others (63% vs. 3%, $p < .0001$), wanted to know everything (74% vs. 7%, $p < .0001$), and called the victim names (33% vs. 3%, $p < .0001$), as compared with non-injured physically abused women.

DISCUSSION

We found in this study that young women, reporting fair or poor mental health, or women separated from their partners, were more likely to be abused. Perpetrators of IPV were more likely to have not graduated from high school, have problems with drug or alcohol use, be in fair or poor mental health, and have a history of threatened or actual pet abuse. Women whose partners completed college were significantly less likely to be abused. These findings generally concur with those from the NVAWS[1] and the Behavioral Risk Factor Surveillance System (BRFSS),[7] and many other population-based and clinical studies.[2,17,18] In particular, there was overlap with our findings with respect to the following factors: relatively young age, separated or divorced marital status, substance use, and perceptions of poor mental health. As has been pointed out in other studies, since this is cross-sectional data, we do not know if the separation or divorce that is associated with IPV came before the violence or occurred after or both. Similarly, it could be that abused women were more likely to leave their partners, not that ex-partners were more likely to abuse women.

Although our findings of association of pet abuse with IPV has been observed in other investigations,[19–21] ours is the first controlled investigation that we have found. This risk factor is particularly important as Flynn[20] as well as Faver and Strand[21] observed that for some abused women, concern for their pet's welfare delayed their seeking shelter and safety from their abusers. This factor has also been incorporated in some clinical settings as exemplified by Siegel and colleagues who reported use of a brief screen for domestic violence in the pediatric setting that included a question inquiring about pet abuse.[22]

In addition, we found no independent associations between abuse status and presence of a stepchild in the home, as has been found by Daly,

Singh and Wilson.[23] It is important to note that the presence of stepchildren in the home was significantly associated with intimate partner femicide in the larger case-control study from which these data come[11] as was also found by Daly, Wiseman, and Wilson.[24] We also found no independent associations between abuse and race or ethnicity; consistent with findings from the NVAWS[1] and other population- based studies in the US[25–27] as well as the larger parent study when risk of intimate partner femicide was the outcome.[11]

We also found that women whose partners had a prior domestic violence arrest, was in a relationship with their partner for more than 1 year, and who perceived their partner to be controlling, in fair or poor mental health, or suicidal were more likely to be injured compared to physically abused women who were not injured. In our study partner's alcohol problem was not independently associated with injury status unlike the CVAWS[8] and NVAWS.[1] In these studies women were asked about their partner's use of alcohol at the time of abuse and while we also asked women about partner's alcohol use when they were injured in our study, we also asked about their perceptions of their partner's lifetime problematic alcohol use.

In this study, the self-rated mental health of both the woman and her partner were consistently related to abuse and injury status. It is unclear, however, whether mental health status is not a precursor of abuse and/or injury, or if it instead reflects an outcome of being abused and injured. Women's perceptions of poor mental health however, may be a useful marker for case finding. Although some women may not initially disclose their abuse status, they are frequently well-known to the health care system for a myriad of physical and mental health problems known to be associated with abuse.[28] Through careful listening health care providers may suspect abuse based on references she makes about her or her partner's mental health.[29]

The finding that the presence of a gun in the home increased the risk of injury by more than three times for women underscores the danger of guns in cases of domestic violence.[11] Stalking behaviors were also associated with injury demonstrating the importance of assessment for stalking in cases of domestic violence and to consider stalking as a form of IPV.[30–33]

This analysis importantly adds to the body of knowledge from population based studies of the prevalence and risk factors of IPV for women using a population based sampling approach. However, there are also important limitations. One limitation is that all partner-level characteristics were ascertained retrospectively and reported by the woman, not the male partner. However, other studies of abused women, such as both NVAWS[1] and CVAWS[8], have also relied on female partner self-reports on

their male partners' characteristics and behaviors. Further, it is not well known what impact partner non-participation has on prevalence of risk factors for abuse.[34] The findings are also limited to urban women which increased the ethnic diversity of the sample but neglected an important segment of the population, rural women, about which little is known in terms of IPV. Since the questionnaire was designed primarily around risk factors for homicide and near homicide of abused women, important risk factors for IPV were not measured such as history of childhood abuse.

Nonetheless, the findings reported here have implications for current abuse screening practice in health care and social service settings. Among the woman characteristics, perceived mental health had the strongest relationship to abuse along with a similar strength of association to that of being separated from their abusive partner. Routine assessment for IPV should not be limited to women asserting current involvement in a relationship, particularly if they report poor mental health. Our findings that it is characteristics of the partner more so than the victim that are most strongly and most often associated with abuse reinforces the importance of focusing not primarily on the woman or her relationship, but on her partner's characteristics as risk factors for abuse in terms of both identification and intervention. Focusing on the partner accomplishes two things: (1) it more accurately identifies women who are being abused, and (2) it communicates that it is her partner who for the most part is in control of and responsible for the abuse, not her. By integrating partner-level characteristics into routine and/or targeted assessment protocols, we may identify more abused women and women at greater risk of abuse and injury.

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Treating Serious Animal Abuse as a Serious Crime

Mitchell Fox

When a cat left footprints on Randy Roth's newly waxed car, he caught the cat and bound her with duct tape to the drive shaft of her owner's car. When the owner started his car, the cat was quickly dismembered, her screams muffled by the sounds of the engine. Roth later murdered his wife by drowning her in Lake Sammamish, near Bellevue, Washington.

Richard Davis, convicted of murdering 12-year-old Polly Klaas after kidnapping her from her home in Petaluma, California, reportedly set fire to cats and used dogs for target practice as a child. Jeffrey Dahmer had an early childhood fascination with dismembering animals before he tortured and cannibalized 18 people.

David Berkowitz shot his neighbor's dog. He confessed to six murders as the "Son of Sam." And Albert DeSalvo put dogs and cats in crates and then shot them with arrows. We know him better as the Boston Strangler.

A history of practicing on animals before moving on to human victims is not limited to the nation's most notorious criminals. In June 1992 Wayne Wootten, a 17-year-old resident of Tacoma, Washington, killed a cat by bashing her head against a newspaper vending machine. A year later he bombed the NAACP office in Tacoma.

Faced with scores of recent scientific papers that have examined the links between animal abuse and other violent antisocial behavior, and convinced that animal abuse is no trivial matter, a group of animal advocates in Washington State spent several years attempting to upgrade our antiquated cruelty-to-animals statutes, which had been on the books since 1901, an era when most animals were regarded as beasts of burden. We were not making much progress, given traditional legislative reluctance to enter this arena.

And then came the Pasado case.

PASADO

On the evening of April 15, 1992, three young men, aged 16, 18, and 20, broke into Kelsey Creek Park, a children's park operated by the City of Bellevue. According to a witness familiar with one of the young men, the three had, on several past occasions, gone into the unguarded park after hours to harass the animals. On this

particular night the 20-year-old (who is the son of a Bellevue police major) had in mind that he wanted to ride Pasado, a popular donkey who had entertained children at the park for 21 years. They had brought two ropes with them.

The three tried repeatedly to get on the donkey, but Pasado kept running away; Pasado was caught once, but broke free. Court records say Pasado ran to the shelter of his small shed, where the three tried to frighten him again by banging sticks on the ground. When the donkey would not go back out, the three then dragged him to a tree in the corral about 50 feet away.

He was tied to the tree with the rope tied in a hangman's noose, and all three proceeded to chase the terrified donkey in a circle around the trunk. The rope wound tighter and tighter around the tree and Pasado's neck. When he grew exhausted from the chase, he stopped running and began to pull desperately against the rope, cutting a half-inch gouge into his neck. Pasado began to choke and cough up blood.

The eldest of the three argued that he did not want to see the donkey suffer and was trying to put Pasado out of his misery. Regardless of the veracity of this argument, Pasado took a savage beating as the three took turns hitting him on the head with branches and a two-foot-long iron bar found among the rustic farm equipment. Police estimated the attack lasted 45 minutes.

The young men decided to go, leaving Pasado tied to the tree, still alive. At 8 A.M. the following morning, a maintenance worker found Pasado dead. The bones in his face were chipped, his nose was lacerated, and he had hemorrhaged through his nasal passages. He had several open wounds on his head and legs. At least one of the blows broke his skull. He had strangled to death during the night.

In the days after the killing, police said the viciousness of the attack had them especially concerned about Pasado's assailants. The act, they said, appeared to have been premeditated and was an example of sociopathic behavior. "Why would anybody kill a defenseless, innocent beast?" asked Bellevue police Lieutenant Bill Quinn. "This wasn't something the animal provoked. This was blatant torture. It was planned. They came in to kill the animal."

Six days later, after two rewards were offered and an enormous outpouring of public concern, police arrested the three after receiving a tip. King County Prosecutor Norm Maleng was faced with an immediate challenge: the most serious charge he could file against the suspects was a felony charge for burglary. The animal cruelty charge, which was also filed, was only a misdemeanor.

"This was a brutal and senseless crime," said Maleng at a press conference. "In my 14 years as prosecutor, few crimes have incensed the public more than the killing of Pasado."

DEFICIENCIES IN THE LAW

The Pasado case illustrated the shortcomings of our existing laws, under which the brutal beating of a donkey and leaving him to strangle in a noose was a misdemeanor,

equivalent with attempting to shoplift a pack of gum. As a misdemeanor, law enforcement agencies and the courts could not give the case the attention that it deserved, nor impose sentences many in the community felt fit the crime. "What we need in these cases is the ability to intervene early," said Maleng. "We're not talking about cruelty to animals, we're talking about violence perpetrated disproportionately by kids."

The idea that serious, intentional animal abuse should be treated as a serious crime seemed patently obvious. Felony classification would allow police and prosecutors to allocate more resources and attention, as well as give judges more flexibility in imposing stiffer penalties and requiring treatment for offenders. There was tremendous public support for this idea: Maleng received an unprecedented [illegible] letters and phone calls from people angered by Pasado's killing. He attributed the flood of outrage to the public's belief that the criminal justice system does not take crimes against animals seriously.

There was considerable reason for public skepticism. The anticruelty laws were vague, antiquated, and unenforceable: the prohibitions against "overdriving" and "overworking" plow animals no longer seemed relevant. In the century since the law was enacted, there has been a dramatic shift in society's views of animals, many of whom are considered beloved family members; indeed, many people rank their love for animals as higher than their affection for some human relatives. For a compassionate person, the thought of having a loved one bludgeoned, used for target practice, tortured, or sufferated is too horrific to imagine, whether the loved one has two or four legs. Animals give us their loyalty, their affection, and their trust. In return, we must give them protection.

Strengthening the animal cruelty laws was not necessary just to intervene on behalf of children in abusive situations and head off future antisocial behavior. It was also essential for the animals' sake.

A LIGHTNING ROD FOR COMMUNITY ACTION

The Pasado case stirred something deep in the conscience of individuals throughout western Washington. Ancient debates were revived in which people began to examine again the questionable protection under the law which dogs, cats, and other animals supposedly enjoy. An instant movement drew together sundry voices and powers hoping to find both common and comprehensive ground upon which to fight back against wanton, malicious behavior toward animals. Pasado gave the animal protection community, so to speak, a poster donkey. The common ground seemed to be to increase the penalty for serious, intentional animal abuse from a misdemeanor to a felony. It took more than two years for this legislation to be enacted.

In a letter to the state representatives and senators considering the felonization bill, Bruce Moran, Washington State Superior Court Juvenile Services Administrator in Okanogan, noted, "As a person who has spent over 20 years in working with

juvenile delinquents and dependents, I can attest to the fact that the current laws and punitive sanctions simply do not allow the important accountability, logical consequences, and treatment that are almost always necessary in cases where juveniles have mistreated, tortured or maliciously killed animals. This situation almost always leaves us with a seriously disturbed individual and little or no authority or discretion to deal with [him or her] effectively."

"It is more serious for a youth to steal candy from a store than it is to cruelly and maliciously torture an animal," said Moran. "The logic behind this discrepancy is almost incomprehensible and certainly gives youth (and, I believe, the majority of the general public) the wrong message in terms of how our state values animal life and its protection.

"All too often, our department has been involved in cases where youth have cruelly and maliciously mutilated, tortured or murdered animals (quite often someone's treasured pet) only to find themselves hamstrung in dealing with holding the youth accountable and providing an appropriate message to our community, by a law which makes it a minor offense, which severely restricts our ability to impose longer terms of probation to address offender treatment needs, and virtually negates our ability to incarcerate the offender, who in many cases desperately needs just such accountability. Virtually without exception we have found that those youths who are involved in this type of behavior are extremely disturbed and their behavior towards animals is often found to be related to other serious problems such as assaults against persons, fire setting, sexual offenses, and substance abuse."

Moran's sentiments were echoed by others in humane and human services. "We want people to understand that deliberate crimes against animals are a sign of future violence against people," said Bob Walters, education director for the Pierce County Humane Society in Tacoma. "Some may say that the public is not yet ready to make it a felony for cruelty to animals, but how many children have to be tortured and killed by past animal torturers? This is a cruelty issue."

Karil Klingbeil, associate professor of social work at the University of Washington and director of social work at Harborview Medical Center, a level-1 trauma hospital, testified before the Senate Law and Justice Committee about how 25 years ago she did clinical work-ups and assessments on children brought in by parents for behavioral disturbances. "Without question, every week I saw a child who bit, maimed, often killed a pet in the family or a neighbor's family. Oftentimes an adult would also abuse the animal," she said. What became clear to her were three themes:

1. that pets were being physically abused and killed by family members;
2. that children mimicked adult behaviors in abusing the pets; and
3. that these were families who solved their problems or handled their stress by acting it out against their pets, striking out in anger.

"Unfortunately, 25 years later this continues to be true except the practice of pet abuse has increased in both severity and numbers. Such heinous pet wounds as

breaking a leg, pulling off a tail, stabbing an eye, shaving off fur, and mutilating genitals, either purposefully or in seeking sexual gratification, are not unusual sequelae. Clearly pets share the timelight with children when it comes to the need for protection as vulnerable species," she testified.

"Pets are even more vulnerable for obvious reasons, but like abused children they often return to the side of the offender hoping for love, attention, and nurturing even in the face of adversity."

Klingbeil also cited some of the less obvious avenues of animal abuse:

* parents who psychologically torture children by threatening to abuse the animal;
* parents who threaten to, or actually do, sell or abandon the animal in another neighborhood, thereby destroying the only positive bond the child knows; and
* parents who use pets as pawns during separation and divorce.

"Whenever we find a pet who is injured and who has 'unexplained injuries,' we usually have a family that practices abusing its members in one form or another," Klingbeil said. "Pets may be the first to come to the attention of authorities or veterinarians."

UNEXPECTED BACKLASH

Unfortunately, public reaction to Pasado's killing was not uniform. There was criticism by some who felt our moral priorities were completely out of whack: though nobody thought slaughtering donkeys was a good thing, why was there no similar outrage about the beating murders of children or random killings of innocent humans? Some were opposed to what they called "felony creep"—the escalation of too many crimes into felony status, thereby clogging already overburdened courtrooms and prisons. Some accused animal advocates of caring more about animals than about people. Others balked at the idea of giving unbridled authority to humane society investigators. Some opposed the idea of "knee-jerk" legislation; others thought we wanted to outlaw all animal husbandry practices. Even the *Seattle Times* editorialized that public outrage should not drive the courtroom process and that salvaging three young lives ought to take precedence over vengeful punishments.

The judge in the Pasado case, King County Superior Court Judge Michael J. Fox (no relation to the author), imposed sentences on the three young men. The eldest received nine months in jail and 240 hours of community service. The second received 90 days in jail and 240 hours of community service. The juvenile received 30 days and community service. Fox's rulings came less than an hour after he had sentenced a 20-year-old man to 17 years in prison for the abduction and assault of a 16-year-old girl, who escaped with her life only by playing dead in the dumpster in which he threw her. Fox issued a stern tongue-lashing to the public, criticizing them for expressing outrage at the death of a donkey while remaining silent about a teenager stripped naked and left for dead in a dumpster with her throat slashed.

"People have a right to feel outraged by this [Pasado] crime," said Fox. "It was depraved, cruel, and senseless. But we must have a sense of proportion in the expression of our outrage. I would hope the public could demonstrate the same level of community indignation and sorrow for that 16-year-old girl as it has for Pasado."

THE NEED FOR TOUGHER LEGISLATION

Lest anyone think that Pasado's case was an isolated incident, some other graphic examples are instructive. Marc Mayo, deputy prosecuting attorney for the City of Seattle, writing in support of the felonization bill, said, "As a public defender, I had clients who were accused of assault, kidnapping, and sexual assault, many of whom had a history of abusing animals. They had done such things as tie the family dog to a tree and throw rocks, eggs, and other debris at the dog for target practice, and catching squirrels and wrapping them in duct tape. One man threw the family dog out of a third floor window to intimidate his wife. As a prosecutor our office has reviewed or filed cases of persons who poisoned the neighborhood cats, shot at cats, skinned raccoons alive, and used dogs to menace and intimidate girlfriends and children."

It is not that there is more animal abuse occurring today, but there is an increase in public awareness and concern for animals. Imposing felony penalties for severe animal abuse would give city and county prosecutors more resources and enthusiasm in approaching cases. Prosecutors and law enforcement agencies often report having less time and staff than is needed. So they have to ask, are we going to spend five or six hours to develop a case where the perpetrator may get 20 hours of community service, or one in which he may get five years in prison? The notion that perpetrators can also be sentenced to counseling or treatment is also compelling to prosecutors. They like the possibility that they can turn these kids around before they commit heinous and felonious assaults against people. Prosecutors see the felony law as an investment in the future.

As examples, since the felony law went into effect in Washington, there have been a number of high-profile cruelty-to-animals prosecutions with decisions now consistent with the gravity of the crime. The Progressive Animal Welfare Society (PAWS) monitors cases throughout the state, such as individuals who have shot dogs with pellet guns and clubbed geese with tire irons, who have stomped cats to death and skinned dogs alive. We have incidents in which people starve herds of horses and keep hundreds of dogs in unimaginable filth and squalor. Here are some cases that have had cruelty convictions handed down since the felony law was enacted:

Beise Blake, 41, King County, pled guilty to first-degree animal cruelty for killing a stray cat by hitting the animal across the back with a shovel to paralyze her, then chopping off her head with a hatchet. Then the dead cat's legs were all sawed off. Sentence: 12 months minus time served, cannot possess firearms, financial penalty waived.

Two 15-year-olds in Kelso who were "looking for something to shoot before school" cornered a neighbor's dog on the patio. The dog was shot with a bow and arrow and died instantly. They then took the dog's body to another location and run over it to make it look as if the animal had been killed by a car. One boy pled guilty to first-degree animal cruelty and second-degree burglary. Sentence: 20 days detention, 96 hours community service, one year probation, hunting privileges suspended for a year, $1,500 restitution to victim, and $100 to the state victim's fund. The second boy was convicted of second-degree burglary and sentenced to 10 days detention and 80 hours community service.

Jabari Sanders approached Jeffrey Mitchell and his dog, Sheena, near a Seattle high school and offered to sell him cocaine. When Mitchell declined the offer, Sanders became angry: Mitchell commanded Sheena to keep Sanders at bay. Sheena took hold of Sanders' leg then returned to Mitchell's side. Sanders left and returned with a gun and shot Sheena, who died an hour later. Sanders was found guilty of first-degree animal cruelty and sentenced to four years and five months plus fines.

John Paul Andree, 31, was accused of stabbing to death the kitten of his girlfriend with whom he had recently broken up. The cat had been stabbed at least eight times with a 9-inch knife, and there was evidence of numerous superficial wounds inflicted prior to the fatal chest and neck injuries. He was convicted of first-degree animal cruelty and sentenced to one year in jail and one year of community supervision.

Two juveniles threw several lit firecrackers into an Auburn street where Kelsie, an eight-year-old Chesapeake Bay retriever, tried to retrieve them. The dog died when she picked up an M-80, which exploded in her mouth. One boy was sentenced to 48 hours of community service (only 16 of which were for animal cruelty; the rest were for convictions for shoplifting and giving a false name to police), court supervision for nine months, counseling, and financial restitution to the owner. The second boy received 90 days in jail with 30 converted to community service and 60 converted to work release, $320 in fines, $320 in restitution, and $100 to the victim assistance fund.

Michael Scott Siddons, 18, of Kent, stabbed a friend's cat 22 times after becoming enraged at the cat's defecating in his house and biting him. He threw the cat's carcass into a schoolyard. He had an extensive conviction record as a juvenile, including robbery, theft, taking a motor vehicle without permission, and possession of a dangerous weapon. He was convicted of first-degree animal cruelty and sentenced to nine months in jail plus probation, costs, and assessments.

Clayton Butsch, 29, was charged with first-degree animal cruelty for burning an eight-month-old kitten in an oven in a dispute with the cat's owner, who had put Butsch's boots outdoors. The kitten survived, but was thrown out of the house by Butsch; the cat was euthanized the following day. The incident was reported to PAWS by Butsch's mother. He pled guilty and was sentenced to one year in prison for animal cruelty with an additional four years for intimidating a witness. He was

also charged with raping the female witness he intimidated, but under a plea bargain the rape charge was dropped.

REVISING THE LAW

The original 1901 Washington animal cruelty statute, as in many states, was clearly antiquated and unsuitable for animals in today's environment. To accomplish the passage of the bill required considerable give-and-take, critical compromises, and shuttle diplomacy that reached fruition in the closing days of the legislative session. After more than two years, 10 drafts, and 30 amendments, House Bill 1652 became law on June 9, 1994.

The new law (Title 16, RCW: Chap. 16.52, Prevention of Cruelty to Animals) created a new category of animal cruelty in the first degree, a class-C felony, which can now be charged for

> Anyone who intentionally inflicts substantial pain on, causes physical injury to or kills an animal by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury or death of an animal.

Animal cruelty in the second degree, a misdemeanor, may be charged for:

> Anyone who knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal under circumstances not amounting to first degree animal cruelty;
>
> An owner of an animal who knowingly, recklessly or with criminal negligence:
>
> Fails to provide the animal with necessary food, water, shelter, rest, sanitation, ventilation, space or medical attention and the animal suffers unnecessary or unjustifiable physical pain;
>
> Abandons the animals.

A civil penalty of $1,000 shall be paid to the county to prevent cruelty to animals. A convicted person shall also be liable for reasonable costs incurred by law enforcement, animal care, and animal control agencies. A court may also order a defendant to participate in an animal cruelty prevention or education program or to obtain psychological counseling, at his or her own expense, for treatment of mental health problems contributing to the crime.

The law also declares that when a domestic animal has been confined without necessary food and water for more than 36 hours, anyone may enter the premises and supply the animal with food and water. This person shall not be liable to action for entry and may collect from the animal's owner the reasonable cost of the food and water. If an investigating officer finds it extremely difficult to supply the confined animal with food or water, the animal may be removed to protective custody, in which case the owner will be given written notice of the circumstances of the removal and the legal remedies available. The agency with custody of the animal

may euthanize it or place it up for adoption not less than 15 business days after it is taken into custody.

What does all this mean from a sentencing standpoint? Misdemeanors can be up to 90 days jail time and up to a $1,000 fine, while class C felons can be imprisoned for up to five years and fined up to $10,000. (By comparison, class-B felonies include first-degree manslaughter; class-A felonies include kidnapping and premeditated murder or arson.)

A BEGINNING

Writing to the Senate Law and Justice Committee in support of the felonization bill, Heather Chambers, coordinator of the Sex Offender Treatment Program for the Snohomish County Juvenile Court and a therapist in private practice specializing in treating survivors of sexual and other kinds of childhood abuse, urged the legislators to consider the human health implications of animal abuse.

"I have had more than ample opportunity to observe that very often animal abuse is also present in families where other types of physical and emotional violence are present," she wrote. "Frequently in these situations the abusive family member will not only maltreat, injure and/or kill family pets, but often does this deliberately in front of other family members as a way to intimidate them, thus further traumatizing the human victims. In turn, victims (primarily children) begin abusing family pets or wildlife as a result of their own victimization, the pet frequently being the only living being in the home over whom the child feels any power.

"If society is to make any significant dent in the enormous problem of family violence of all types, which I am certain is the original cause of all the street and gang violence, preoccupation with guns, myriad serial murders, etc., that occur today, we must approach this issue from every direction possible. *As long as we as a society condone, allow or excuse any type of violence, we give the perpetrators leeway to justify all types of violence.*"

The Pesado case, the outpouring of support in its wake, and the legislative legacy that resulted with the enactment of the new law, brought Washington's animal cruelty laws into the twenty-first century. We presumed that by making serious animal abuse a more serious offense, judges and law enforcement officials would take it more seriously, and in the years since enactment this has turned out to be absolutely true. With the upgrade has come an increase in court activity. This has led to more newspaper coverage as well. And we do not have a cavalier dismissal of cases any more.

The felony law sends a powerful message and helps the law enforcement and criminal justice communities recognize animal cruelty as having serious implications not only for animal protection, but also for society's welfare.

So many people were involved in the struggle to secure passage of the law that

I wore to take my hat off to each of them it would look like an Air Force Academy graduation ceremony. We were also very lucky in that the bill was directed initially to the Law and Justice Committee, where we found a far more receptive audience because these committee members did not have an animal usage agenda. State legislatures' Agriculture Committees, where animal bills usually go, typically see animals in terms of food and fiber production and they tend to fight the encroaching of city laws into animal husbandry. They see animal rights in terms of conspiracies and hidden agendas. The Law and Justice Committee did not; they just saw an inequity in the law and they did not question our motives.

It was doubly tragic that it took the death of a donkey to achieve the critical mass needed to galvanize the public, the press, and the legislature into updating a law that was a century behind the times. We are pleased, however, that the experience raised the consciousness level of animal welfare in our legislature and our state. The case, and the new law, told everyone that animal protection is an issue worthy of debate, and that animal abuse is a serious crime worthy of serious sanctions.

the link between animal abuse and human violence

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CHAPTER

7

Examining Children's Exposure to Violence in the Context of Animal Abuse

FRANK R. ASCIONE

A substantial research literature now exists examining the potentially deleterious mental health correlates of children's exposure to intimate partner violence.[1] As noted by Moffitt and Caspi, 'demographic statistics suggest that young children and partner violence are concentrated together in the same segment of the population, with the result that many children witness adults' partner violence'.[2] It is now also evident that in homes with companion animals or pets, animal abuse may occur in the context of intimate partner violence (IPV).[3] This paper explores recent research addressing the following risk factors related to mental health variables: exposure to IPV, exposure to animal abuse, perpetrating animal abuse, and children's emotional responses to exposure to animal abuse.

The framework for this review reflects the diverse samples of children and adults involved in such research: normative samples of young people, college-attending adults, incarcerated adults, victims of child maltreatment, victims of and those exposed to IPV, and young people with psychiatric disorders (specifically, Conduct Disorder[4]). Although animal abuse that occurs outside of the home may be considered a form of community violence, I am not aware of any research on exposure to community violence that has included measures of animal abuse.

Setting the context for what follows, I note a recent report on a large Northeast American city examining 1,517 substantiated domestic violence incidents, with police involvement, over a one-year period.[5] In 43 per cent of these incidents, children were present. Of these children, 81 per cent experienced 'sensory exposure' to IPV: they heard the IPV incident, saw it, or were injured in some way during the incident. Most of these children (60 per cent) were less than six years of age. Another study examined children's behavioural responses to IPV exposure.[6] Even one-year-old infants may display

symptoms of trauma associated with exposure to severe IPV.[7] Reflecting the concerns raised by such findings, some physicians, social workers, and psychologists have recommended screening for IPV in paediatric settings,[8] screening that includes questions about pet abuse. The links among child maltreatment, IPV, and exposure to animal abuse have also been noted.[9] What research tells us about these links is the focus of the remainder of this paper.

Definition and Assessment

As a starting point, I define animal abuse as non-accidental, socially unacceptable behaviour that results in harm to and/or the death of a non-human animal.[10] The age of onset, frequency, and severity of such abuse may vary – as may the species of animal abused. Harm may involve physical, sexual, and emotional components. In my first review of the topic of animal abuse, I could only guess about the potential effects of witnessing animal abuse: 'One may speculate that witnessing marital aggression may be a form of observational learning through which children may learn violent problem-'solving' behaviours. If companion animals are present in such situations and are also targets of parental aggression, children may imitate parents' behaviour'.[11] When colleagues and I developed the first comprehensive assessment of animal abuse issues in childhood and adolescence,[12] we included items related to both perpetrating and witnessing animal abuse. However, just as measures of exposure to IPV vary from study to study, there currently is no standard assessment for measuring young people's exposure to or perpetration of animal abuse. Addressing these measurement issues is beyond the scope of this paper. At the conclusion of this paper, I will offer methodological and conceptual recommendations related to future research on this topic.

Normative Samples

Exposure to animal abuse appears to be a common childhood experience. Baldry[13] surveyed 1,356 nine- to seventeen-year-olds in Rome, Italy about their animal-related experiences and home environments. Exposure to animal abuse perpetrated by peers was reported by 63.7 per cent of respondents and exposure to non-parental adult animal abuse by 60.9 per cent. Exposure to mothers (5.1 per cent) and fathers (9.0 per cent) harming animals was also reported. Children's perpetration of animal abuse was related to their exposure to IPV and exposure to animal abuse. In a similar study of five hundred and thirty-two nine- to twelve-year-old Roman school children,[14] 70.1 per cent of boys and 60.3 per cent of girls reported exposure to animal abuse perpetrated by others. Children who had witnessed parental IPV (broadly defined to include verbal and emotional, as well as physical abuse) or who had witnessed

animal abuse were approximately three times more likely to have abused animals themselves than non-exposed children.

Pagani, Robustelli, and Ascione[15] studied eight hundred Roman children who were between nine and eighteen years of age. Witnessing some form of animal abuse was reported by 65 per cent of the respondents. More girls (seventy-eight per cent) than boys (51 per cent) reported feeling 'very sorry' at the time animal abuse had been witnessed. This emotional reaction to witnessing animal abuse persisted for many children to the time of the study's assessment: continuing to feel 'very sorry' was reported by 65 per cent of girls and 36 per cent of boys.

Studying an Australian sample of two hundred and eighty-one adolescents between twelve and eighteen years of age, Thompson and Gullone measured animal abuse the adolescents perpetrated and/or witnessed.[16] Witnessing animal abuse at least once was reported by 77.5 per cent of the sample. Perpetrators included strangers (58.7 per cent), friends (33.8 per cent), parents (10 per cent), siblings (17.1 per cent), and other relatives (14.6 per cent). Animal abuse perpetration scores were higher for adolescents who had witnessed animal abuse and were higher if animal abuse had been witnessed 'frequently' as distinct from witnessed 'a few times'. Witnessing a parent, sibling, friend, or relative perpetrate animal abuse was associated with higher perpetration scores (witnessing a stranger as perpetrator was associated with lower animal abuse perpetration scores).

Henry asked one hundred and sixty-nine college students about exposure to and perpetration of animal abuse as well as self-reported delinquency (more common for men) and general attitudes toward the treatment of animals (more humane for women).[17] Animal abuse was witnessed at least once by 50.9 per cent of the participants (64.9 per cent of men and 39.1 per cent of women) and more than once by 37.3 per cent of the sample (54.5 per cent of men and 22.8 per cent of women). Perpetration of animal abuse at least once was reported by 35.1 per cent of men and 3.3 per cent of women; more frequent perpetration was reported by 24.7 per cent of men and 2.2 per cent of women. Perpetration of animal abuse was significantly higher (25.6 per cent) for participants who had witnessed animal abuse than for those who had not (9.6 per cent). Witnessing animal abuse before thirteen years of age was associated with higher perpetration rates (32 per cent) than witnessing occurring at thirteen years of age or later (11.5 per cent). Past year self-reported delinquency was higher for those who witnessed animal abuse. Attitudes toward animals were less humane for men who witnessed animal abuse but more humane for women who had witnessed animal abuse; this finding may be related to the sex difference in children's emotional response to animal abuse reported by Pagani, Robustelli, and Ascione.

In a similar study with a sample of two hundred and six college students, Henry found that 62.1 per cent of men and 37.9 per cent of women reported witnessing animal abuse.[18] Perpetrating animal abuse was again associated with exposure to animal abuse (and age of exposure), specifically for men.

Perpetration of animal abuse was reported by 39 per cent of men exposed to animal abuse before thirteen years of age and 15 per cent of men exposed at thirteen years of age or later. These sex differences as well as the apparent significance of the developmental timing of exposure to animal abuse warrant further study. Despite the differing assessments and methodologies in these studies, it is clear that exposure to animal abuse is a significant and relatively common developmental phenomenon.

Incarcerated Men

Early research on the animal abuse issue often focused on samples of male and female prison inmates. More recently, Merz-Perez and Heide[19] interviewed fifty violent and fifty non-violent male criminals at a maximum-security prison in Florida about their animal-related experiences. Although no difference was found between the two groups in exposure to animal abuse (seventy-five acts were reported by the violent men and sixty-seven by the non-violent men), non-violent criminals were more likely to express remorse about the animal abuse they had observed.

Hensley and Tallichet surveyed two hundred and sixty-one men incarcerated in two medium-security and one maximum-security prison in the southern part of the United States.[20] Although the authors did not report frequencies or percentages for responses to questions about abusing or witnessing the abuse of animals, they noted that witnessing animal abuse was associated ($r = .30$) with the frequency of perpetrating animal abuse. The younger the age at which witnessing occurred, the younger the age at which the first perpetration of animal abuse occurred ($r = .49$). The significance of the age at which animal abuse was first witnessed reported with this sample of incarcerated men and its relation to perpetrating animal abuse reinforces the findings of Henry, noted earlier.

Exposure to IPV and Other Stressors

A recent case-control study of four hundred and twenty-seven women who were victims of IPV and four hundred and eighteen who were not victims found that partners' threats to and/or actual abuse of pets yielded an adjusted odds ratio of 7.59 in predicting victim/non-victim status.[21] Despite a failure to control for the presence of pets in homes, this study found that victims of IPV were nearly eight times more likely to report that their partner had threatened and/or abused pets than women who were not victims of IPV. Similar results have been reported in a number of studies reviewed by Ascione.[22]

Becker, Stuewig, Herrera, and McCloskey studied, over a ten-year period, children (six to twelve years of age) of one hundred and ninety-one women who were victims of IPV and a comparison group of one hundred and seventy-

two women who were not IPV victims.[23] Children from violent homes were more than twice as likely to be reported as cruel to animals (assessed via maternal reports or child self reports) than children from non-violent homes (11.4 per cent vs. 5.3 per cent). Children's fire setting was also higher if women's partners had abused pets (16.3 per cent) than if they had not abused pets (7.7 per cent).

Boys in residential treatment (eight to seventeen years of age at admission) for Conduct Disorder were divided into two groups in a study by Duncan, Thomas, and Miller.[24] One group of fifty boys had documented animal abuse perpetration in their histories and the other group of fifty did not. The group with documented animal abuse had higher rates of physical and/or sexual abuse victimization as well as exposure to domestic violence. In a recent report from Japan with a small sample of abused children residing in an institution, approximately 40 per cent reported exposure to animal abuse and 18.2 per cent admitted to perpetrating animal abuse.[25]

Ascione, Friedrich, Heath, and Hayashi reported on a sample of five hundred and forty children with no known history of abuse (normative), four hundred and eighty-one children who were victims of sexual abuse, and four hundred and twelve children who were in outpatient psychiatric care but did not have a history of sexual abuse victimization.[26] The children were between six and twelve years of age. The authors also noted the presence of parental physical fighting (a proxy for exposure to IPV) and whether children had been victims of physical abuse. Parental physical fighting was reported for 5.9 per cent of the normative group, 35.7 per cent of the sexually abused group, and 18.5 per cent of the psychiatric group. Reports of cruelty to animals for these three groups were 3.1 per cent, 17.9 per cent, and 15.6 per cent, respectively. Even higher rates of perpetrating animal abuse were reported for other subgroups: cruelty to animals was reported for 36.8 per cent of boys and 29.4 per cent of girls who were sexually abused, physically abused, *and* from homes with parental physical fighting. These results suggest than an accumulation of adverse childhood experiences may be related to children's perpetration of animal abuse.

Currie studied women who had children between five and seventeen years of age.[27] Forty-seven women were victims of IPV and forty-five were not. More children from homes with IPV were reported to be cruel to animals than children from homes without IPV (seventeen vs. seven per cent; odds ratio = 2.95). It should be noted that there was no assessment, in this study, of the presence of pets in the homes of participants. Thus, the reported percentages may be underestimates.

Ascione *et al.* reported on one hundred and one women residing at five different Utah shelters for IPV victims.[28] Thirty-nine of these women granted permission for their accompanying children to be interviewed. Actual harm or killing of pets by partners was reported by 54 per cent of these women (pet abuse was reported by 5 per cent of a comparison group of one hundred and nineteen women who were not victims of IPV). For IPV victims' children, 66.7 per cent reported that they had seen or heard one of their pets hurt. In most cases, the perpetrator was either a parent figure (46.4 per cent) or a male sibling (7.1 per cent). Being 'very upset' or 'sort of upset' was reported by 92.6 per cent of children who had been exposed to pet abuse. Fifty-one per cent of children reported that they had tried to protect their pet from being hurt. Clearly, these children were concerned about the welfare of their pets. However, if concern turns into active intervention, children's welfare may be endangered. Programmes designed to shelter the pets of IPV victims,[29] and the inclusion of pets in orders of protection,[30] might reduce such dangers.

In Ascione's review, five other studies assessed children's exposure to animal abuse.[31] The percentage so exposed ranged from 29 per cent to 75.5 per cent. Allen, Gallagher, and Jones reported on a small sample of women who were IPV victims in Ireland.[32] 52.4 per cent reported their partners had abused pets. According to maternal reports, 50 per cent of children had witnessed threats to family pets and 41.2 per cent witnessed actual abuse of pets.

The issue of pet abuse in the context of IPV has now moved beyond being the concern primarily of animal welfare professionals and is emerging as a mainstream issue in research on domestic violence. Strauchler *et al.* examined items from sixteen assessment instruments used to measure IPV and found that while 21.2 per cent of items addressed physical violence, 0.06 per cent of items tapped animal abuse experiences.[33] These authors noted that physical violence is, of course, a critical element of IPV but that insufficient attention has been given to abusive partners' humiliation, manipulation, and control tactics. They recommend use of the Artemis Intake Questionnaire, an assessment instrument that includes two items on animal abuse: my partner 'threatened to abuse my pets'; my partner 'abused my pets'. In a factor analysis of the responses of four hundred and eighty-five IPV victims to this questionnaire, the pet abuse factor accounted for 3.94 per cent of the variance (a child abuse factor accounted for 3.90 per cent of the variance).

In a similar study, Simmons and Lehmann interviewed 1,283 pet-owning women seeking shelter at domestic violence refuges in Texas.[34] Twenty-five per cent of women reported that their partner had engaged in verbal or physical abuse of their pets. For the entire sample, 9 per cent of women reported that their children had watched animals abused in their homes (since the percentage of women who had children was not reported, the 9 per cent figure is likely an underestimate of the prevalence of children's exposure to pet abuse). In cases where any pet abuse had occurred, women were more likely to report that their partner engaged in sexual violence, marital rape, emotional violence, and stalking than in cases where pet abuse was absent. The authors' own assessment measure of IPV and controlling behaviours includes ten sub-scales (e.g., isolation, blaming, and economic abuse). Women who reported any pet abuse (as distinct from no pet abuse) or who reported that one of their pets had been killed by their partner (as distinct from cases where pets had not been killed) had significantly higher victimization scores on each of the ten sub-scales.

The studies cited in this paper clearly illustrate the maturation of our under-

standing about how animal abuse may be implicated in interpersonal violence and how exposure to and perpetration of IPV and animal abuse may be intricately related. What follows are recommendations that, I hope, will further enhance our understanding of these phenomena.

- Perpetration of animal abuse has most often been assessed via single items that may appear on checklists of children's problem behaviours[35] or single items peculiar to a specific research study ('were you ever mean or cruel to animals . . . ?'[36]). A number of newly developed assessments with multiple items can now be recommended. These include the Dadds *et al.* (2004) assessment of animal abuse perpetration that has both parent-report and child self-report forms,[37] Henry and Sanders' animal-related assessment for adults,[38] and Ascione *et al.'s* measures of animal abuse in the context of IPV that can be used with adult victims and with their children.[39]
- Just as measures of children's exposure to IPV are becoming more detailed (see, for example, Fantuzzo and Fusco's measure of 'sensory exposure'[40]), so too must we be more specific about measuring the dimensions of children's exposure to animal abuse (e.g., type of animal abused, quality of the child's relations with and attachment to the animal abused, age at first exposure, type of exposure, frequency and chronicity of exposure, identity of the perpetrator, children's affective responses to exposure). This will require careful consideration of ethical issues in directly querying children about their experiences of violence.[41]
- Studies of animal abuse and IPV have most often relied on samples of victims at shelters. Comparative research is needed that includes IPV victims who remain in the community as well as women who experience marital distress but who are not victims of IPV. I am also unaware of any research that has examined animal abuse in the context of dating or courtship violence.
- A recent study examined batterers' views of the effects of their children's exposure to IPV.[42] Similar research is warranted in cases where batterers have threatened or abused family pets. Pet abuse may also be related to emerging batterer typologies.
- A survey of psychologists who practice as therapists indicated that the overwhelming majority (87 per cent) considered animal abuse to be a mental health issue.[43] Animals may also facilitate the healing process.[44] It is time for critical and methodologically-rigorous exploration of the therapeutic value of animals in addressing the needs of children who are exposed to violence, children who are themselves victims of violence, and children who perpetrate violence.[45]

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Animal Abuse and the Victims of Domestic Violence

Star Jorgensen and Lisa Maloney

> Man can no longer live for himself alone. We must realize that all life is valuable and that we are united to all life. From this knowledge comes our spiritual relationship with the universe.
>
> —Albert Schweitzer

DOMESTIC VIOLENCE, or spousal abuse or partner abuse, is usually described as any physical or psychological harm experienced by one person from another with whom an intimate relationship is shared. An increasing number of agencies are beginning to recognize that this violence often encompasses the physical and emotional abuse of children and household pets.

Providing adequate, and sometimes life-saving, assistance for the victims of domestic violence is the goal of many domestic violence prevention organizations. This requires an awareness of the many dynamics of abuse. The effects of domestic violence are amplified when animals are being abused, particularly with the knowledge of, or in front of, the children. For many victims, the first opportunity to tell their story in a safe and understanding environment comes when they seek help and refuge at a domestic violence prevention organization. As their story unfolds, many victims reveal abuse of animals as part of their histories. Victims and the professionals who work with them may be unaware of the importance animal abuse has in the abuse scenario. A growing number of studies are beginning to reveal the significance of this critical link (Arkow 1996).

Case Study

A victim entered the domestic violence center seeking a restraining order; she had been beaten the previous evening and had several bruises on her face and upper torso. The crucial factor in her deciding to seek help was that the abuser had hit her oldest child who had tried to intervene when an argument began. The victim noted

on the checklist that household animals had also been abused. Upon further inquiry by the case manager, the victim stated the fight had begun when the children's new puppy soiled the carpet and the perpetrator had yelled at and kicked the puppy, picked it up and threw it against the wall. The perpetrator became verbally and physically abusive toward the victim and the child who was trying to protect the puppy.

Domestic violence professionals throughout the United States hear similar stories of abuse to animals and children as part of the power and control dynamics of the abuser. This composite of behaviors, violence toward animals and children, has been recognized within the domestic violence scenario only within the last couple of decades. Although American laws to protect animals date back to 1641 (Animal Welfare Institute 1990) and the first child abuse laws were passed in 1875 in New York State, today it is widely believed that child abuse and animal abuse are drastically underreported. A growing number of professionals are becoming aware of, and documenting, this relationship of abuse involving animals and children within the domestic violence context.

The direct forms of animal abuse are hands-on assaults from which the animal victim may receive bodily harm. These are physical, aggressive actions. Examples include pushing, slapping, kicking, striking with an object, and sexual assault. These are done to let the human victim know the capabilities of the abuser and what may be in store if the human victim does not conform to the wishes of the abuser. Control, intimidation, or retaliation are the goals intended. Certainly, this form of abuse has a profound effect if carried out in front of, or with the knowledge of, the children. It will also have a similar effect on the family pet.

Examples of direct animal abuse recorded at the Center for Prevention of Domestic Violence in Colorado Springs, Colorado, include

- kicking the dog or cat;
- throwing the dog or cat across the room or into objects;
- shooting the animal with a pellet gun;
- taking the animal into a field and shooting it with the human victim present;
- breaking the pet's legs or neck;
- hanging the family pet;
- cutting the cat's ears with scissors and burning its tail; and
- putting the dog in the corner and tying weights to it.

Indirect animal abuse may be less obvious, as there is no bodily contact. Yet this still has the capability of controlling and intimidating all victims involved. As with direct abuse, victims are profoundly affected. Examples of indirect abuse that we have noted include

- abandonment of the family pet;
- neglecting to feed and water farm animals;

- threatening to take the family pet away if the victim doesn't comply;
- taking pets to be euthanized to retaliate against the human victim;
- threatening to kill and cook the pet rabbit;
- mysterious disappearances of pets;
- intentionally overfeeding fish; and
- making a severely asthmatic woman live in a house with long-haired cats

THE IMPACT OF ANIMAL ABUSE ON CHILDREN

> Boys stone a frog in sport, but the frog dies in earnest.
>
> —Poet Bion, 100 B.C.

Children and animals in a household have special relationships and they are profoundly affected by the abuse they experience and witness. The physical and behavioral indicators of abuse and neglect may apply to both children and animal victims. These similarities are striking, and include

- risk of being injured by the abuser;
- unexplained bruises, welts, fractures, or lacerations;
- changes in behavior such as relapses in training, regressive behavior;
- failure to thrive, withdrawal, and passivity;
- hostility and aggressiveness toward humans and animals;
- fear or distrust of the abuser or others similar to that person; and
- running away from home.

Children are at risk of repeating the abuse they experienced. Retrospective research studies (Felthous & Yudowitz 1977; Felthous 1980; Kellert & Felthous 1985; Tingle et al. 1986; Ressler et al. 1986; Felthous & Kellert 1987; Ressler, Burgess, & Douglas 1988) generally support the anecdotal claims (Lockwood & Hodge 1986; Lockwood 1987; Goleman 1991; Sitno 1994) that many criminals who have been violent toward people share a common history of brutal parental punishment and cruelty to animals. Many serial killers and mass murderers were abused as children and have a history of abusive acts toward animals. DeViney, Dickert, and Lockwood (1983) looked at families being treated by the New Jersey Division of Youth and Family Services for incidents of child abuse. In 88 percent of the cases, animal abuse had also occurred. Like charity, pathology begins at home (White & Shapiro 1994).

We must emphasize that not all children who abuse animals will grow up to become mass murderers, nor do all children who are abused become abusers themselves. It is becoming apparent, however, that many persons who abuse animals were themselves abused as children.

Professionals working in domestic violence prevention, child protection agencies, and humane societies are beginning to recognize the connection between violence toward animals and violence toward humans. Boat (1995) has identified key reasons why this link is important.

GATHERING DATA

As awareness of the relationship between animal abuse and domestic violence increases, the need for development of identification methods and education programs becomes necessary. In February 1993 a conference—"Family Violence: Children in Jeopardy"—was presented by the Domestic Violence Coalition in Colorado Springs, Colorado. Phil Arkow, then Education and Publicity Director for the Humane Society of the Pikes Peak Region, gave a presentation entitled, "The Advantages of Cooperation Between Humane and Human Service Agencies." This became the impetus for the development of a protocol at the Center for Prevention of Domestic Violence to identify abuse toward animals and its role in the cycle of domestic violence.

By mid-1993, Star Jorgensen, then Advocacy Case Manager at the Center, developed a system to document abuse reported by clients utilizing the Center's services. At that time, intake forms had questions relating to incidence of child abuse and animal abuse, although no procedures were in place to record the answers statistically. Case managers reported child abuse to the El Paso County Department of Human Services, yet there was no follow-up for information gathered about animal abuse.

A Domestic Violence Checklist was developed to accompany intake forms with the following categories related to animals: (1) abuser threatened to harm animals and (2) abuser injured or killed pets. This was in addition to a question about animal abuse on the client intake form. A procedure was developed to gather statistics and comments in all three of the Center's programs: Advocacy, Safehouse, and MOVE (Men Overcoming Violent Encounters).

In the Advocacy program, clients are given assistance with obtaining restraining orders, findings counseling and community referrals, and crisis intervention. Most clients are walk-ins who have recently experienced a battering incident. For many clients the visit is less than one hour long. Clients are tracked for three and six months after their visit to the Center.

Clients in the Safehouse remain longer (up to six weeks) and will be assisted in developing long-range plans. Clients and their children are afforded a safe atmosphere during this process. Women and their children are required to participate in their own support groups. After they leave the Safehouse they are tracked for two weeks, one month, and two months.

Case managers and volunteers in Advocacy and the Safehouse were asked to record cases of clients who marked "yes" to animal abuse on the intake forms and to request and document detailed information. MOVE therapists and case managers were also asked to gather information. The statistics relating to animal abuse were gathered from the three programs and added to the Center's monthly statistics and later added to the annual data.

Case Manager Lisa Maloney took over responsibilities for documentation of animal abuse when Star Jorgensen left the Center. In 1996, the format on the intake form and checklists was modified to better represent the categories. Previously, intake forms included a statement that asked if any animal abuse had occurred. It was found that although many clients marked "no" on the forms, during their interviews many admitted that their partner had kicked or hit their pet in the past and that there had been animal abuse involved. The wording on the questionnaire was changed to read: "Has an animal you care about ever been hurt?" This elicited more responses from clients, which strengthened the correlation between animal abuse and domestic violence.

For the advocacy statistics there are now three categories: (1) animals injured, (2) animals killed, and (3) animals threatened. Adding the "threatened" category recognized that threatening to hurt or kill an animal was another method utilized by perpetrators to gain psychological control over their victims. Separating the questions into three categories would make the statistics more precise. Comments and data continue to be collected monthly from client intake forms and interviews regarding the specific incidents of animal abuse. Survey results for 1993 to 1996 are presented as table 1.

THE ROLES OF DOMESTIC VIOLENCE PERSONNEL

> "I am scared when I see my kitten with blood on his neck. I think he [my dad] did it."
> —Tony, age 5

> "The church people said my cat was evil because he jumped at my legs—they took him away. My mom got a 101 Dalmatians dog for us—his name was Ice, but we had to give him away when we came to the Safehouse. I miss him because he listens to me."
> —Tina, age 8

Perpetrator treatment providers play an important role in lessening domestic violence and they must be educated to the relationship between spousal, child, and animal abuse. Procedures must be developed for identification during intake, and abusers must be questioned and held accountable for their actions. Interviews with perpetrator treatment providers indicate there is a low awareness of this correlation and reluctance to introduce the subject as part of the therapy. According to the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association 1994, 95–91) the diagnostic features of Conduct Disorder include being physically cruel to animals, people, and performing other acts of aggression toward people or animals. Addressing the issue of child abuse and animal abuse in perpetrator treatment is indicated.

Safehouse case managers play a special role in the dynamics of domestic vio-

Table 1. Animal Abuse Statistics, Center for Prevention of Domestic Violence, Colorado Springs, Colorado. Of note is the low incidence of animal abuse reported in the MOVE program. Many participants are in denial that they are abusers and they will not or do not volunteer information about abuse of children or animals.

	1993 (June–December)	1994	1995	1996	Total
Advocacy					
Total Intakes	1,175	2,238	2,103	1,748	7,264
Animals Threatened	n.a.	n.a.	n.a.	23	23
Animals Abused	124	265	241	181	811
Animals Killed	4	3	11	18	36
% Threatened, Abused, or Killed	10.9	12.0	12.0	12.7	12.0
Safehouse					
Total Intakes	122	247	238	203	810
Animals Abused	29	31	30	36	126
Animals Killed	unknown	unknown	unknown	unknown	unknown
% Abused or Killed	23.8	12.6	12.6	17.8	15.5
MOVE					
Total Intakes	189	411	435	319	1,354
Animals Abused	1	unknown	11	1	13
Animals Killed	unknown	unknown	unknown	unknown	unknown
% Abused or Killed	0.5	unknown	2.5	0.3	0.9

fence and the safety of victims. Many victims of abuse are reluctant to leave an abusive situation for fear of leaving the family pets behind. The safehouse at the Center for Prevention of Domestic Violence has an agreement with the Humane Society of the Pikes Peak Region to have pets boarded for up to 10 days at no cost to victims who seek shelter in the safehouse; the costs of longer stays are negotiated with the victims.

Programs for children at the safehouse include a field trip to the Humane Society and visits by the Humane Society's Petmobile to the safehouse. According to the children's case manager, the children eagerly visit the Humane Society to see the animals. The children are excited prior to the arrival of the Petmobile, yet hesitate to approach and play with the pets once they arrive. Humane Society volunteers have suggested that the children may be afraid to interact in a home-like atmosphere with an animal that reminds them of the pet they saw abused or left behind.

Study

[illegible] entered the safehouse one evening, and her little dog was taken in by a [illegible] manager as the Humane Society was closed for the evening. While in the home, [illegible] manager noticed the dog reacted fearfully to certain objects, later found to be objects used to beat the dog. It was later determined the dog had been also [illegible] abused by having been chained up just out of reach of its food and water dishes [illegible] within sight of two hound dogs who had access to their food and water.

THE DVERT PROGRAM

The DVERT (Domestic Violence Enhanced Response Team) program was initiated in 1996. It seeks to identify individuals who pose a significant risk to their past or present intimate partners. Individuals who are selected as appropriate for DVERT action will benefit from an enhanced response to any future abusive incidents.

The DVERT response team includes a Colorado Springs Police Department detective, a deputy district attorney, a caseworker from the Department of Human Services, a Colorado Springs Police Department Rotation officer, an El Paso County Sheriff's deputy, a Woodland Park Detective, a CASA court appointed special advocate supervisor and a victim advocate from the Center for Prevention of Domestic Violence. The team is on call 24 hours a day and responds to all calls involving an identified DVERT client's address where a patrol officer has determined there is probable cause that a new violation has been committed. The purpose of the team is to assist the patrol officer in the investigation of the offense, containment of the perpetrator, and providing support services for the victim. The DVERT protocol is presented in figure 1.

When cases involving children, elders, at-risk adults, military personnel, or animal abuse are indicated, a secondary response team made up of individuals with special expertise in these areas is called out. Such agencies include the El Paso County Department of Human Services, the Humane Society of the Pikes Peak Region, and the Senior Victim Assistance Team. Cases are staffed on a weekly basis to bring these agencies together to develop a plan to help with family intervention.

The Humane Society response protocol is presented in figure 2. Humane Society procedures note that, "Through combined efforts, we can hopefully stop a situation from escalating into a lethal one. An offender may abuse pets and children prior to, or in conjunction with, abuse of a spouse. One type of violent behavior can be an indicator of other violent acts."

Five Humane Society employees are designated to respond to calls for assistance from the DVERT team on a 24 hour basis. The procedure notes that when the Humane Society communications center or answering service receives a call from the Police Department requesting a member of DVERT to assist at the scene of a

DOMESTIC VIOLENCE

DVERT Protocol

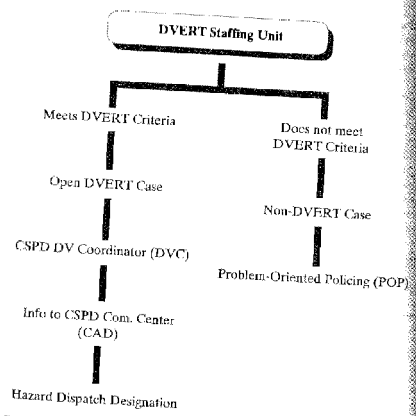
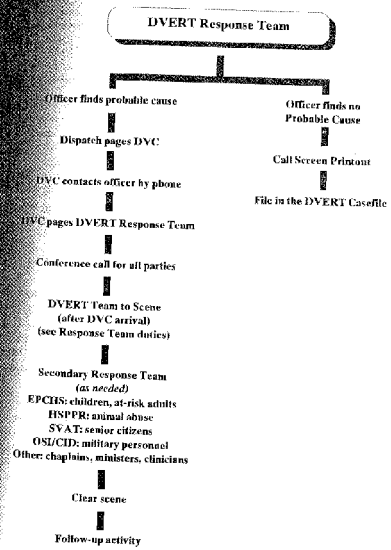


Figure 1. DVERT protocol

ENHANCED RESPONSE TEAM



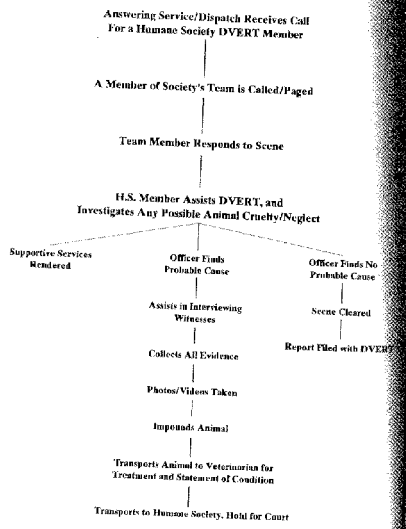


Figure 2. Protocol for Humane Society DVERT Team

[illegible] offense, this call is considered a priority and will receive immediate re-[illegible]. The Humane Society's services in these cases includes

- [illegible]stigation of cruelty or neglect;
- [illegible]ping of victims' animals;
- [illegible] animals that are hampering investigations;
- [illegible] suspected cases of domestic violence or child abuse to other appropri-[illegible]ncies; and
- [illegible]ellaneous supportive services to DVERT.

[illegible]ions cross-training initiatives have been implemented, such as training con-[illegible] and having humane officers ride along with Police Department domestic [illegible] officers.

[illegible] interagency referral form (figure 3) has been designed to aid agencies in [illegible]ying individuals believed to be potential candidates for DVERT. The reasons [illegible] referral are detailed.

[illegible]hough the DVERT program is in its infancy, it has received national recogni-[illegible] for its early success. In December 1996 DVERT received the National League [illegible]ities' 1996 Award for Excellence in Community Policing, and in 1997 was awarded [illegible]$16,000 federal grant from under the Department of Justice's COPS (Commu-[illegible] Oriented Policing Services) program (see the editors' note at the end of this [illegible]).

[illegible]se Study

[illegible] woman had left her abusive husband and was not allowed to take her elderly pet [illegible] her. The pet died shortly after she left. A few months later, the woman awoke [illegible] find her pet's frozen body hanging in a tree outside her residence. The body had [illegible] been doused with gasoline and set afire.

GUIDELINES FOR ORGANIZATIONS

Organizations that work with victims and perpetrators of abuse are of major importance in the identification, documentation, and prevention of abuse to animals. One of the challenges of documenting animal abuse is that persons gathering the data need to recognize the importance of this type of information given by clients. Professionals who work with victims need to be able to help clients protect themselves, their children, and their animals from further abuse. Likewise, perpetrator treatment providers need to learn to encourage their clients to disclose abuse, and to develop methods to include the prevention of animal abuse in their treatment programs. We offer the following recommendations.

DOMESTIC VIOLENCE
Enforcement Response Team

DVERT Referral Form

DVERT Case Number:

Referring Person
Name:
Agency:
Phone:
Date:

Offender
Name (AKA, Last, First, Middle) Jr., Sr., II:
Date of birth: Month Day Year
Social Security #:
Gender:
Address: Apt#
City/State/Zip:
Home (H): (w)
Name of Employer:
Relationship with Victim:

Victim
Name (AKA/Maiden) Name (Last, First, Middle):
Date of birth: Month Date Year
Social Security #:
Race/Sex:
Address: Apt#
City/State/Zip:
Phone: (H) (w)
Children (Name and DOB's):

Please give detailed responses to the areas below:

1. History of Relationship:
2. Prior domestic violence and child abuse (check/indicate):
3. List sexual statements (or threats of violence):
4. What were victim's actions after threat? (check one or more):
   ___ Remaining silent ___ Silent out ___ Called police/another
   ___ Refuse neighbors ___ Refused to go to a safe place
   ___ Other (describe)
5. Witness (who (job, family, friend, etc.):
6. List all injuries from this offender:
   ___ Medical treatment?
   ___ Where, etc. when
7. Abuse of others (children, elders, pets):
8. Access to weapon:
9. Stalking behavior (check one or more):
   ___ Violation of harassing Order
   ___ Surprise, driving by
   ___ Harassment
   ___ Criminal trespass/burglary
   ___ Threat of death or physical harm
   ___ Leaving objects
   ___ Unwanted appearance
   ___ Other (describe)

Figure 3. DVERT Referral Form

Develop educational training and outreach programs. Educate all personnel working with victims. This is the most important part; it is the foundation of your efforts. The success of these programs will be greatly affected by the cooperative efforts of all personnel. If case managers and therapists who work with victims and perpetrators are not allowed to or minimize the impact of animal abuse in domestic violence, any programs you develop will be inadequate and ineffective. Utilize the resources available to educate and encourage professionals to take a proactive stance. These might include posters that educate how domestic violence and animal abuse are interrelated, such as the American Humane Association's Campaign Against Violence Posters or special training programs (Smith 1995). Identify appropriate organizations in your community and develop programs for presentations at in-services, seminars, and conferences.

Develop methods to gather data. If a checklist is already in use, add questions regarding animal abuse. Most organizations have to record client data as part of their accountability programs. Using simple checklists will alert personnel working with victims or perpetrators to ask for more information about animal abuse. This information can be integrated into an existing format.

Develop programs for perpetrator treatment providers. Our data seem to indicate that perpetrators' abuse of animals needs to be addressed as part of their treatment programs. Treatment providers must include awareness of child abuse and animal abuse within their treatment plans whether or not this abuse has been indicated by clients. Like child abuse, sexual abuse, and partner abuse, animal abuse may not be admitted by perpetrators until they have been in treatment for a long time. It is important that perpetrator treatment providers become knowledgeable about the various forms of animal abuse as part of the cycle of violence and develop methods to address this early in their treatment.

SUMMARY

> The human spirit is not dead; it lives on in secret. It has come to believe that compassion, in which all ethics must take root, can only attain its full breadth and depth if it embraces all living creatures and does not limit itself to mankind.
>
> —Albert Schweitzer, Nobel Peace Prize Address

The challenge to educate professionals in domestic violence prevention, child protection agencies, and animal protection organizations is before us. Professionals who are dedicated to reducing violence against women, children, and animals need to develop community-wide prevention programs. It is our hope that the continued gathering and sharing of data and methods will enable us to predict and prevent domestic violence and animal abuse.

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Editor's Note: Federal Funding Available under COPS Program

The DVERT program in Colorado Springs, Colorado, was awarded a $516,000 federal grant for its innovative approach in linking several community agencies—in-

cluding a child protection service and humane society—in a coordinated response to domestic violence and having an emergency response team where a high potentiality is indicated.

Under the 1994 Crime Act, the U.S. Department of Justice implemented several grants through the COPS program—Community Oriented Policing Services. Community policing is a philosophy that promotes and supports organizational strategies to address the causes and reduce the fear of crime and social disorder through problem-solving tactics and community-police partnerships. The initiatives include efforts directed against gangs and youth firearms violence, hiring more officers for community policing, innovative community problem-solving partnerships, and training former soldiers for community policing.

One component of the COPS program for which grant money is available is Community Policing to Combat Domestic Violence. These grants provide law enforcement agencies with a unique opportunity to execute well-planned, innovative strategies employing community policing to combat domestic violence. There is no match requirement for this program. Grant applications are submitted under one of three categories:

1. domestic violence training with a community oriented policing philosophy;
2. problem solving and community based programs; community policing partnerships and problem solving initiatives focusing on domestic violence; or
3. changing police organizations to be more responsive to domestic violence.

Initial projects were funded for a one-year period. Additional resources may be obtained for up to two additional years. Grant funds must be used to supplement, and not supplant, state or local funds that otherwise would be devoted to law enforcement.

All state, local, Indian Tribal, and other public and private law enforcement agencies which are committed to using community policing to address domestic violence are eligible to apply. Police departments are encouraged to partner with nonprofit, nongovernmental victim service programs, domestic violence shelters, or community service groups. This partnership must be described in a memorandum of understanding signed by both parties as part of the application.

Policing agencies must have an exemplary community policing plan which demonstrates that they:

1. have been practicing community policing for at least two years;
2. are currently training officers in community policing; and
3. have implemented an organizational style that is participatory, value-based, result-oriented, decentralized, and focused on innovative leadership and effectiveness.

An award under the Community Policing to Combat Domestic Violence Program does not affect the eligibility of an agency to apply to other COPS programs.

For additional information, or to contact the grant advisor for your state, contact:

US Department of Justice
Office of Community Oriented Policing Services
1100 Vermont Avenue, NW, Washington, D.C. 20530
(202) 514-2058 or (800) 421-6770
www.usdoj.gov/cops

For information about the DVERT program, contact:

Colorado Springs Police Department Operations Center
705 S. Nevada Ave.
Colorado Springs, Colo. 80903
(719) 444-7815

Humane Society of the Pikes Peak Region
633 S. 8th St.
Colorado Springs, Colo. 80905
(719) 473-1741

Center for Prevention of Domestic Violence
P.O. Box 2662
Colorado Springs, Colo. 80901
(719) 633-1462

Resistance to The Link at a Domestic Violence Shelter

Anne Grant

A CASE HISTORY

NINE-YEAR-OLD "Charlie" has been tormenting his sister's cat. He is a gentle, sensitive child who sometimes writes in a notebook about his feelings.

Three years ago, after their parents separated, his sister "Kay," then 3, started having nightmares and wetting the bed. She complained of stomach aches and refused going to her father's home for the three days and two nights the judge had ordered. She and Charlie said their father had given her a "bad touch."

At the hospital, the doctor found "positive signs of abrasions on hymen, vaginal area." Though these were consistent with digital penetration, he reported his findings were not conclusive. The father hired a psychologist who testified in court that the mother was emotionally unstable and needed counseling to resolve her feelings of inadequacy and help her to "perceive [her husband] as less abusive."

After the parents separated, the mother testified in court that her husband had driven her in his Porsche at speeds over 110 miles an hour yelling, "I'm in control now! How does it feel?" She told how he choked and kicked her.

Unable to keep paying an attorney, the mother tried to plead the children's case in court, only to become numb and flustered. With his lawyer and psychologist arguing for him, the father insisted that his estranged wife had a history of nervous disorder. But he assured the court he was willing to care for her if only she would come back to him. Surely he should not be kept from seeing his children, and they should not continue in counseling. Ruling in the father's favor, the judge allowed him unsupervised visits with Charlie and Kay, including a week's vacation at the father's country home.

Later, the children laughed nervously to tell how he taught them to burrow through the cat's fur in search of its little red penis. Their mother increasingly had to stop Charlie from tormenting the cat.

Charlie, Kay, and their mother had once lived at a shelter for victims of domestic violence. There the mother learned that cruelty to animals is a warning sign of

Journal of Interpersonal Violence

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Is Animal Cruelty a "Red Flag" for Family Violence?: Investigating Co-Occurring Violence Toward Children, Partners, and Pets

Sarah DeGue and David DiLillo

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Is Animal Cruelty a "Red Flag" for Family Violence?

Investigating Co-Occurring Violence Toward Children, Partners, and Pets

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John Jay College of Criminal Justice

David DiLillo
University of Nebraska at Lincoln

Cross-reporting legislation, which permits child and animal welfare investigators to refer families with substantiated child maltreatment or animal cruelty for investigation by parallel agencies, has recently been adopted in several U.S. jurisdictions. The current study sheds light on the underlying assumption of these policies—that animal cruelty and family violence commonly co-occur. Exposure to family violence and animal cruelty is retrospectively assessed using a sample of 860 college students. Results suggest that animal abuse may be a red flag indicative of family violence in the home. Specifically, about 60% of participants who have witnessed or perpetrated animal cruelty as a child also report experiences with child maltreatment or domestic violence. Differential patterns of association were revealed between childhood victimization experiences and the type of animal cruelty exposure reported. This study extends current knowledge of the links between animal- and human-directed violence and provides initial support for the premise of cross-reporting legislation.

Keywords: *animal; child; family; abuse; violence*

Links between animal cruelty and interpersonal violence have been recognized throughout history (Ascione & Arkow, 1999). Recently, legislation in several U.S. states has begun to codify colloquial belief in these associations through the development of mandated cross-reporting systems for child protection and animal welfare agencies. Typically, such laws allow animal cruelty investigators to refer families to child welfare services and vice versa, with the expectation that homes with one type of substantiated

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violence will also be at a higher risk for additional forms of victimization. As of July 2007, nine U.S. states had signed some type of cross-reporting legislation into law (California, Connecticut, District of Columbia, Ohio, Louisiana, Maine, Oregon, Tennessee, and West Virginia; Humane Society of the United States [HSUS], 2007), and five states had bills pending (District of Columbia, New York, Ohio, Massachusetts, and New Jersey; HSUS, n.d.-b).In addition, nine states (Maine, New York, Tennessee, Colorado, Indiana, Nevada, Connecticut, Vermont, and Illinois) currently have laws permitting pets to be included in protection orders for domestic violence, with similar legislation pending in three jurisdictions (District of Columbia, California, and New Jersey; HSUS, n.d.-a).

Despite these formal indications of support by policy makers and advocates for a link between animal- and human-directed violence, rigorous scientific efforts to elucidate the patterns of association between animal cruelty and interpersonal violence remain limited. Research to date has focused primarily on the link between exposure to animal abuse in childhood or adolescence (i.e., witnessing and/or perpetration) and subsequent perpetration of adult violence (e.g., Arluke, Levin, Luke, & Ascione, 1999; Felthous & Kellert, 1986; Hensley, Tallichet, & Singer, 2006; Kellert & Felthous, 1985; Peterson & Farrington, 2007; Tallichet & Hensley, 2004; Wright & Hensley, 2003). This research was spurred by MacDonald's (1961) early triad theory of violence (i.e., cruelty to animals, firesetting, and enuresis) and inclusion of animal cruelty in the *Diagnostic and Statistical Manual of Mental Disorders*, third edition, text revision (American Psychiatric Association, 1987) as a symptom of conduct disorder.

In contrast, relatively few studies have directly examined the co-occurrence of animal abuse and violence within the family. Despite widespread acceptance of the links between animal and family violence by advocates, policy makers, and researchers (see Becker & French, 2004), in which a substantial overlap between child abuse, domestic violence, and cruelty to animals is assumed, little evidence exists to support this contention (Piper & Myers, 2006). Most research has used a pairwise approach, examining links between animal and child abuse or between animal and partner abuse, with virtually no direct evidence regarding the overlap among all three forms of violence. The goal of the current investigation is to address this gap in the literature by simultaneously examining the co-occurrence of animal cruelty, child maltreatment, and domestic violence.

Why does the degree of overlap matter? Researchers and advocates point to the practical utility of using the identification of a home with one form of violence as an indicator that other members of the household may also be at risk of victimization (e.g., Becker & French, 2004; Boat, 1995).

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This premise forms the basis for cross-reporting legislation that permits or requires child welfare and animal control investigators (and some other related professionals) to refer families with identified child maltreatment or animal cruelty for investigation by parallel agencies. In some states, cross-reporting is extended to suspected adult victims of violence (e.g., partner abuse, elder abuse). The prospect of early intervention (particularly for children identified as abused subsequent to an animal cruelty investigation), or intervention in homes that may not otherwise have been identified, is promising for child and animal welfare advocates who seek to identify high-risk homes and prevent (further) victimization. Although no published data have evaluated the effectiveness of these new reporting practices, how these policies will fare in future cost–benefit analyses will likely depend on the validity of the underlying assumption—that child maltreatment, domestic violence, and animal cruelty frequently coexist.

A Triad of Family Violence?

Recent research has provided compelling evidence that child maltreatment and domestic violence commonly occur within the same household (Appel & Holden, 1998; Clemmons, DiLillo, Martinez, DeGue, & Jeffcott, 2003; Higgens & McCabe, 2000; Saunders, 2003). As noted, it has been suggested that these types of household violence may extend to another group of vulnerable household members—pets. For instance, Lacroix (1999), citing research indicating that the vast majority of pet owners see their animals as "members of the family," argued that companion animals who are abused within the home can rightfully be considered victims of family violence. Consistent with this notion, researchers have begun to explore the connection between witnessing and/or perpetrating animal abuse, childhood maltreatment, and domestic violence. The links posited by researchers and advocates tend to fall into two related categories: (a) the co-occurrence of animal abuse, child abuse, and domestic violence and (b) the perpetration of animal cruelty by children who witnessed animal abuse or were themselves abused. Current theories and evidence regarding these potential links are reviewed below.

Co-Occurrence of Animal Cruelty, Child Maltreatment, and Domestic Violence

Animal cruelty and domestic violence. Several researchers (Ascione, 1998; Carlisle-Frank, Frank, & Nielsen, 2004; Faver & Strand, 2003; Flynn, 2000) have assessed the co-occurrence of partner violence and animal

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cruelty by asking women seeking services from domestic violence shelters about their experiences with animal abuse. Sample sizes were small across studies, ranging from 28 (Ascione, 1998) to 41 (Faver & Strand, 2003) pet-owning women. Findings from these studies indicated that between 46.5% and 71% of respondents reported that a male abuser had threatened, harmed, or killed their pet, whereas between 25.5% and 57% reported that their pet had actually been injured or killed by a partner. Although these results suggest that witnessing violence toward pets may be a common problem for abused women, the small sample sizes and lack of nonabused comparison groups make generalization and interpretation of these findings difficult.

In a recent study, Ascione et al. (2007) compared the reports of women in domestic violence shelters ($n = 101$) with a nonabused community sample ($n = 120$) and found that women in shelters were 11 times more likely to report that their partner had hurt or killed a pet (54% vs. 5%) and 4 times more likely to indicate that their partner had threatened a pet (52.5% vs. 12.5%) than the comparison group. Notably, the strongest predictors of threats toward pets in this study were the Minor Physical Violence and Verbal Aggression subscales of the Conflict Tactics Scale (CTS; Straus, 1979), whereas the strongest predictor of actual harm or killing of animals by a partner was the Severe Physical Violence subscale of the CTS. These results suggest that the severity of partner-perpetrated animal cruelty may increase as the severity of domestic violence in the home increases. Though consistent with earlier research, the addition of a comparison sample in this study provides important normative data suggesting a significantly increased risk of experiences with animal cruelty among battered women.

Simmons and Lehmann (2007) utilizing a much larger sample of women seeking services at an urban domestic violence shelter ($N = 1,283$) found that abusive males who were also cruel to animals used more forms of violence and employed more controlling behaviors toward their female victims than men who did not abuse their pets. These findings suggest that the presence of animal cruelty in conjunction with domestic violence may be indicative of a particularly high-risk relationship, with associated implications for the assessment and treatment of victims and perpetrators.

Animal cruelty and child maltreatment. An early study by DeViney, Dickert, and Lockwood (1983) examined 53 pet-owning families being treated by a state child welfare agency for substantiated cases of child abuse and neglect and found evidence of the concurrent abuse or neglect of a companion animal in 60% of these households. When cases were divided by the type of child maltreatment reported, the authors found that 80% of families with substantiated child physical abuse had existing records of

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companion animal abuse versus 34% of families with either substantiated child sexual abuse or neglect. These findings suggest that the abuse of children and animals within a home may be fairly common and that identifying the specific type(s) of child maltreatment experienced may be important when exploring the nature and strength of the relationship between animal- and child-directed violence.

Miller and Knutson (1997) examined correlations between exposure to animal cruelty (including witnessing and perpetrating animal abuse) and retrospective reports of physical punishment and negative family environment in childhood among 314 inmates and 308 college students. In both samples, results pointed to significant, although weak, correlations between animal cruelty and being raised in negative or physically punitive home environments. Unfortunately, the authors neither provided specific information regarding the proportion of overlap between childhood exposure to animal abuse and severe physical punishment nor differentiated between individuals who witnessed versus perpetrated animal cruelty.

Animal Cruelty by Children Exposed to Family Violence

Research investigating the perpetration of animal cruelty by children exposed to domestic violence or child maltreatment provides additional insight regarding the overlap and potential etiological links between these forms of violence within the home. Notably, many of these investigations (in contrast to those discussed above) have employed large, and more representative, samples with greater potential for generalization. For instance, Baldry (2003) found that animal-abusing youth in a large, nonclinical Italian sample (N = 1,392) were more likely to have witnessed animal cruelty perpetrated by their peers or parents, and reported more overall exposure to parental violence, than their nonabusive peers. Another study compared conduct-disordered adolescent boys with and without a history of animal cruelty and found that the animal-abusing group was more likely to report histories of physical and/or sexual abuse and exposure to domestic violence (Duncan, Thomas, & Miller, 2005). Two studies using maternal reports on the Child Behavior Checklist (CBCL) found that mothers who reported that their children were exposed to domestic violence were also more likely to report that their children had been cruel to animals (Currie, 2005) and that the prevalence of cruelty to animals was five times higher in a sexually abused sample of children than in a nonabused sample (Ascione, Friedrich, Heath, & Hayashi, 2003). In contrast to these findings, Dadds, Whiting, and Hawes (2006) found an association between animal cruelty and the presence of psychopathic (callous or unemotional) personality traits in a nonclinical

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sample of adolescent boys but found no link between animal cruelty and a general measure of family conflict. These authors suggested that animal cruelty may be an early manifestation of conduct problems and empathic deficits associated with psychopathic personality traits, rather than the result of general externalizing or parenting problems.

Similar to Baldry (2003), Thompson and Gullone (2006) reported that a history of witnessing animal abuse was associated with significantly higher levels of animal cruelty among adolescents, especially when the abuse was perpetrated by a family member or friend (vs. stranger) and when it was witnessed more frequently. These findings suggest that social learning may play a role in the abuse of animals by children, particularly when these behaviors are modeled by important figures in the children's lives. Of course, in cases involving parental animal abuse, it may also be that the animal cruelty exists as part of a pattern of violence in the home and is utilized as a means of exerting control over or intimidating human victims of family violence. For example, reports indicate that male batterers may threaten or actually harm family pets as a way of controlling and manipulating female victims (Arkow, 1996; Ascione, 1999; Ascione et al., 2007; Boat, 1999; Flynn, 2000; Millikin, 1999). Similarly, child abusers may threaten, injure, or kill animals as a means of gaining silence or compliance from a child victim or as a threat to the child directly (i.e., This is what could happen to you; Boat, 1999). Thus, animal abuse as a form of victim control may hinder the reporting of child abuse or domestic violence occurring within the household and delay potential intervention.

Overall, these studies point to a significant relationship between childhood animal cruelty and exposure to family violence as well as between witnessing and perpetrating animal abuse. In particular, the existing data suggest that a history of sexual abuse, exposure to domestic violence, and witnessing of family members and friends engaging in animal cruelty may be important correlates (and potentially precursors) of animal abuse perpetration by children and adolescents. Furthermore, the results of these investigations imply that when animal abuse at the hands of children in a household is also considered, the co-occurrence of animal- and family-directed violence may be quite common.

The Present Study

The combined weight of the existing research provides preliminary support for the presence of a significant link between animal cruelty, child abuse, and domestic violence, with evidence suggesting that animal cruelty

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may occur more frequently in homes with child maltreatment or domestic violence and that animal cruelty perpetrated by children may be associated with exposure to family violence. Furthermore, research suggests that the specific type or severity of family violence experienced may be important when examining the nature of the relationship between animal, child, and partner abuse and that witnessing animal cruelty may be a significant predictor of animal abuse perpetration in childhood. However, existing data provide little information regarding the rates of overlap among all three types of family violence or the predictive value of animal abuse as a indicator of family violence (and vice versa). In addition, with the exception of a few large-scale studies on childhood animal cruelty, much past research has been limited by the use of small and highly selective samples.

The present study addresses these gaps in the literature by (a) investigating the co-occurrence of child maltreatment, exposure to domestic violence, and animal cruelty and (b) examining the perpetration of animal cruelty by children exposed to family violence. On the basis of past research, we expect to identify substantial rates of overlap between animal cruelty and both forms of family violence. In addition, it is hypothesized that exposure to child abuse or parental violence in the home will predict animal cruelty perpetration by children. Furthermore, the limited existing research suggests that the link between animal cruelty and family violence may vary by the specific type of violence experienced. Although the literature is too sparse to support specific hypotheses by abuse type, it is expected that a history of physical abuse, in particular, will be associated with both witnessing and perpetrating animal cruelty. This study will examine several forms of child maltreatment independently, in addition to considering overall exposure to family violence. Finally, this investigation expands on past research by utilizing a detailed, behaviorally specific measure of family violence with a large, geographically diverse sample of college students to examine the links between multiple forms of violence in the home.

Method

Participants

The current study utilized a sample of 860 college students recruited from three universities in the Midwest and West. More specifically, participants included students attending a private university located in a large, urban city in California (50.8%), a public university in a midsized city in Nebraska (12.7%), and a private college in a small town in Ohio (36.5%). The majority

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of the participants were female (75.6%; $n = 650$) and White (70.1%; $n = 603$), although other ethnicities were also represented in the sample (i.e., Asian, 11.2%; Hispanic/Latino, 7.1%; Black, 4.2%). The average age of participants was 20.1 (SD = 1.72; range = 17-37), and most had never been married (97%).The median annual family income reported by participants while growing up was between US$71,000 and US$80,000, although reported family incomes ranged from less than US$10,000 to more than US$150,000.The vast majority (84.9%) of participants reported that their family owned a pet while they were growing up, whereas 72.3% indicated that animals were an important part of their life while growing up. Participants received credit through their psychology courses for their participation.

Measures

Participants provided demographic information and retrospective reports of child maltreatment and violence in their family of origin using the Computer-Assisted Maltreatment Inventory (CAMI; DiLillo, DeGue, Kras, & Di Loreto-Colgan, 2006; DiLillo, Fortier, et al., 2006). The CAMI is a computer-based, self-report measure designed to assess for a childhood history of sexual abuse, physical abuse, psychological abuse, neglect, and exposure to domestic violence. Sexual abuse, physical abuse, and exposure to domestic violence are assessed on the CAMI using a series of behaviorally specific screening questions, which are followed (on one or more affirmative responses) by more detailed queries regarding the nature and circumstances of the reported experiences (see DiLillo, Fortier, et al., 2006, for further discussion of the CAMI design). In contrast, psychological abuse and neglect are assessed by the CAMI using Likert-type scales, which ask respondents to indicate their level of agreement with a range of statements regarding their family and home environment while growing up. Because the CAMI is a newly developed measure, information regarding its psychometric properties is limited. However, available data indicate that 1- to 2-week test–retest reliability for the sexual and physical abuse subscales were .71 and .86, respectively, with additional evidence of concurrent and convergent validity (DiLillo, Fortier, et al., 2006).

Respondents also completed the Animal Violence Inventory (AVI), a modified version of the Boat Inventory on Animal-Related Experiences (Boat, 1999). Consistent with past research, participants were asked whether they had ever (a) witnessed someone intentionally neglect, hurt, torture, or kill an animal or (b) intentionally neglected, hurt, tortured, or killed an animal themselves. Animal abuse was defined as including the neglect of (e.g.,

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denial of food, water, or medical treatment; excessive confinement; allowing the animal to live in filth) or intentional infliction of physical pain or injury (e.g., beating, shooting, drowning; making an animal fight; engaging in sexual acts with an animal) on any household pet or wild animal. Participants were specifically asked to exclude hunting and routine farm activities. In addition to these items assessing animal cruelty exposure, participants were asked whether (a) animals were an important part of their life and (b) their family owned a pet while they were growing up.

Results

Exposure to Animal Cruelty

Results indicated that 22.9% of the full sample reported some exposure to animal cruelty. Less than a quarter (21.6%) of the full sample reported witnessing cruelty toward animals in their lifetime, with males more likely to witness animal abuse than females, $\chi^2(1, 860) = 28.9$, $p < .01$. The most frequent perpetrators were friends or acquaintances, although 31.1% of the witnesses saw a parent or other family member hurt or kill an animal. Most animal abuse was witnessed during middle childhood and adolescence and involved companion animals (i.e., dogs, cats). The types of cruelty witnessed most often involved hitting, beating, or kicking and throwing objects at an animal.

Only 4.3% of the full sample reported perpetrating animal cruelty, with males significantly more likely than females to report intentionally neglecting, hurting, torturing, or killing an animal, $\chi^2(1, 860) = 18.4$, $p < .01$. The majority of participants (77.8%) reported engaging in these behaviors more than once, with almost half of perpetrators (47.4%) reporting that they engaged in these acts between two and five times. Most respondents engaged in these behaviors alone, but when others were involved, brothers and mothers were reported most often. Participants who reported abusing animals cited dogs and cats as their most common victims, with hitting, beating, or kicking as the primary form of cruelty employed.

Exposure to Child Maltreatment and Domestic Violence

Nearly half (49.4%) of the full sample of college students reported experiences with at least one form of family violence during childhood, including physical abuse, sexual abuse, emotional abuse, physical neglect, or

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witnessing of parental violence. The most common form of childhood maltreatment reported was physical abuse. More than one quarter (27.2%) of respondents reported experiencing a severe form of physical abuse by a parent on at least one occasion (i.e., hitting with a fist or hard object, kicking, throwing or knocking down, choking, intentional burning, or threatening with or using a weapon). To ensure a conservative estimate of physical abuse, respondents were only categorized as physically abused if they had an overall severity score (based on abuse type, frequency, and level of injury) that was greater than the mean severity score for all respondents reporting any experience with physical punishment. Thus, only cases involving relatively more severe physical abuse were included. A history of sexual abuse was reported by 15.7% of respondents and included any sexual contact under the age of 18 that was forced with a family member (excluding sexual play or exploration with a similar-age peer) or with someone more than 5 years older (excluding voluntary sexual activity with a dating partner). Participants with total scale scores one standard deviation above the mean on the physical neglect (14.4%) and psychological abuse (14.5%) subscales were categorized as experiencing these maltreatment types during childhood. Parental violence was witnessed by 17.7% of respondents overall, with 10.7% reporting physical abuse of their father by their mother and 14.8% reporting physical abuse of their mother by their father. Thus, 7.8% of the sample witnessed bidirectional domestic violence.

When analyses were limited to only severe domestic violence (involving injury, 10 or more occurrences, or in which the participant was still very bothered by the events as an adult), 11.6% of the sample was classified as domestic violence exposed. Domestic violence is defined as exposure to *any* parental violence (as opposed to only severe violence) in all analyses below, except where explicitly specified.

Overlap Between Animal Cruelty and Family Violence

Overall rates of overlap between animal cruelty exposure (including witnessing and/or perpetrating animal abuse), domestic violence, and childhood maltreatment are represented in Figure 1. In this college population, using retrospective self-report data, 36.2% of the sample experienced no exposure to family or animal violence, 37.2% reported exposure to only one form of violence, 17.8% experienced two types of violence, and 4.1% reported exposure to all three forms of violence.

Victims of family violence were significantly more likely to report experiencing animal cruelty (as a witness or perpetrator) than nonvictims in this

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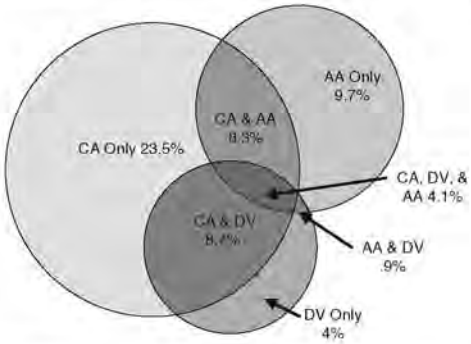
Figure 1
Overlap of Exposure to Child Abuse (CA), Domestic Violence (DV), and Animal Abuse (AA) in a College Sample



Note: Percentages are of the full sample. AA includes witnessing and/or perpetrating abuse. Scale of figure is approximate.

study, $\chi^2(1, 860) = 7.3$, $p < .01$, with more than a quarter of victims (26.8%) reporting some exposure to animal abuse. Chi-square analyses were utilized to compare rates of animal cruelty exposure between participants with no family violence history and those who experienced child abuse, domestic violence, or both child abuse and domestic violence (see Figure 2). Results indicated that child abuse victims, $\chi^2(1, 860) = 8.8$, $p < .001$, and victims of both child abuse and domestic violence, $\chi^2(1, 860) = 5.7$, $p < .01$, were more likely to witness or perpetrate animal abuse than nonvictims, although the difference did not reach significance for those exposed to any parental violence, $\chi^2(1, 860) = 3$, *ns*. However, when the sample was limited to those who witnessed severe domestic violence, rates of animal cruelty exposure were also significantly higher in this group, $\chi^2(1, 860) = 6.5$, $p < .05$. Notably, the majority (73.2%) of family violence victims overall did not report any exposure to animal abuse.

Participants who witnessed and/or perpetrated animal abuse were also significantly more likely to report experiencing at least one form of family violence than those who were not exposed to animal cruelty, $\chi^2(1, 860) = 7.3$, $p < .01$. Notably, however, rates of family violence victimization among those exposed to animal cruelty were significantly higher than vice

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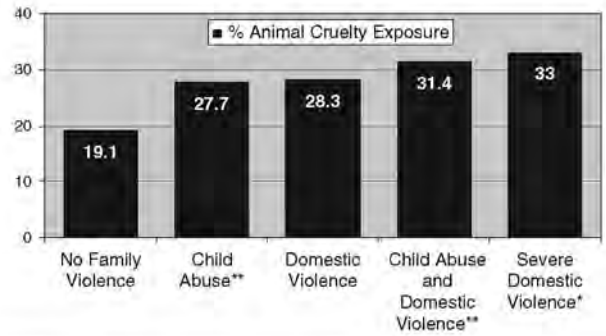
Figure 2
Animal Cruelty Exposure by Family Violence Victimization (%)



Note: Asterisks indicate that rates of animal cruelty exposure (including witnessing and/or perpetrating animal abuse) were significantly higher among those exposed to family violence than among those not exposed to the same category of violence in chi-square analyses ($df = 1$, $N = 860$). Categories are not mutually exclusive.
$^{*}p < .05$, $^{**}p < .01$.

versa (i.e., rates of animal abuse exposure among family violence victims), with a majority (57.9%) of this group reporting co-occurring family violence. Chi-square analyses were again conducted to compare rates of family violence victimization between participants who were not exposed to animal cruelty and those who witnessed, perpetrated, or both witnessed and perpetrated animal abuse (see Figure 3). Results reached statistical significance for those individuals who witnessed animal cruelty, $\chi^2(1, 860) = 6.7$, $p = .01$, indicating that these participants were more likely to report a history of family violence than those who did not witness animal abuse. Despite even higher rates of victimization among animal abuse perpetrators, $\chi^2(1, 860) = 2.5$, *ns*, and combined witnesses/perpetrators of animal cruelty, $\chi^2(1, 860) = 2.8$, *ns*, these differences did not reach the level of significance, likely due to reduced power associated with the small sample of animal abuse perpetrators.

Further examination of animal cruelty exposure by abuse type indicated that participants who witnessed animal abuse were significantly more likely

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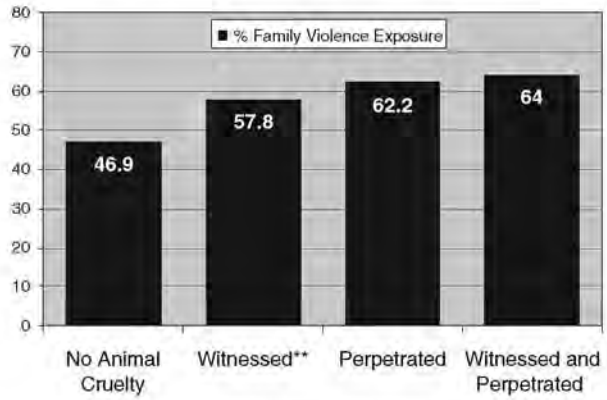
Figure 3
Family Violence Victimization by Animal Cruelty Exposure (%)



Note: Rate of family violence exposure (including child abuse and/or domestic violence) was significantly higher among individuals who witnessed animal cruelty than among those who did not witness animal cruelty in chi-square analyses ($df = 1$, $N = 860$). Categories are not mutually exclusive.
$^{**}p < .01$.

to report a history of child physical abuse, $\chi^2(1, 860) = 7.5$, $p < .01$, emotional abuse, $\chi^2(1, 860) = 16.2$, $p < .01$, and severe domestic violence, $\chi^2(1, 860) = 7.4$, $p < .01$, than participants who did not witness animal abuse. However, witnesses to animal cruelty were not more likely than nonwitnesses to be victims of sexual abuse or neglect, or to be exposed to parental violence generally.

Binary logistic regression analyses were employed to predict exposure to family violence by both witnessing and perpetrating animal cruelty in independent models. Results indicated that witnessing, $\chi^2(1, 860) = 5.34$, $p < .05$, and perpetrating, $\chi^2(1, 860) = 4.47$, $p < .01$, animal cruelty were predictive of family violence, with each increasing the odds of child abuse or domestic violence exposure by 1.5 to 2 times (see Table 1).

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Table 1
Binary Logistic Regressions Predicting Family Violence and Animal Cruelty

Outcomes/Predictors	β	*SE*	Odds Ratio	Wald Statistic
Family violence exposure				
Witnessing animal cruelty	0.39	.17	1.48	5.26*
Family violence exposure				
Perpetrating animal cruelty	0.75	.37	2.11	4.14*
Witnessing animal cruelty				
Perpetrating animal cruelty	2.10	.37	8.22	32.8**
Sexual abuse	0.05	.24	1.05	0.04
Physical abuse	0.21	.20	1.24	1.14
Emotional abuse	0.81	.28	2.25	8.68**
Neglect	–0.25	.29	0.78	0.79
Domestic violence	0.10	.23	1.10	0.18
Perpetration of animal cruelty				
Witnessing animal cruelty	2.10	.37	8.15	32.4**
Sexual abuse	0.44	.43	1.55	1.05
Physical abuse	0.63	.38	1.88	2.70
Emotional abuse	–0.43	.53	0.65	0.67
Neglect	0.68	.49	1.98	0.16
Domestic violence	–0.05	.44	0.95	0.01

* $p < .05$. ** $p < .01$.

Regression analyses were also used to predict witnessing animal cruelty by animal abuse perpetration, four types of child maltreatment (i.e., sexual, physical, emotional, and neglect), and exposure to parental violence. A test of the full model versus a model with intercept only was statistically significant, $\chi^2(6, 860) = 53.1$, $p < .001$. Perpetrating animal abuse and emotional abuse appeared as the only significant predictors of witnessing animal cruelty (see Table 1). Odds ratios indicated that when holding the other factors constant, perpetrating animal violence and emotional abuse increased the risk of witnessing animal abuse by more than 8 and 2 times, respectively.

Perpetration of Animal Cruelty

Prevalence rates of animal cruelty perpetration were somewhat higher among those who experienced at least one form of family violence as a child than among those who did not, 5.4% versus 3.2%; $\chi^2(1, 860) = 2.5$, *ns*, although this pattern did not reach significance. Of those participants

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who engaged in animal abuse, a majority (62.2%) had also experienced child maltreatment or exposure to domestic violence. Individuals who reported abusing animals were more likely to report a history of sexual abuse, $\chi^2(1, 860) = 3.8$, $p < .05$, physical abuse, $\chi^2(1, 860) = 5$, $p < .05$, and neglect, $\chi^2(1, 860) = 5$, $p < .05$, than nonperpetrators. However, they did not differ significantly from nonperpetrators with regard to emotional abuse or exposure to domestic violence.

Perpetration of animal abuse was also significantly correlated with a history of witnessing animal abuse ($r = .24$, $p < .001$). In fact, results indicated that 67.6% of animal abuse perpetrators had witnessed animal cruelty versus 19.4% of nonperpetrators, $\chi^2(1, 860) = 45.2$, $p < .001$.

Binary logistic regression analysis was employed to predict the perpetration of animal cruelty. Six predictors were entered into the model, including witnessing animal abuse, four types of child maltreatment (i.e., sexual, physical, emotional, and neglect), and exposure to parental violence. A test of the full model versus a model with intercept only was statistically significant, $\chi^2(6, 860) = 48.6$, $p < .001$. Witnessing animal abuse appeared as the only significant predictor of perpetrating animal cruelty when compared with each of the family violence types assessed (see Table 1). The odds ratio for witnessing animal abuse indicated that when holding family violence exposure constant, the risk of animal abuse perpetration was 8.14 times greater among those who witnessed animal cruelty than among those who did not.

Discussion

An examination of the overlap between animal cruelty and family violence in this college sample provides some support for the links hypothesis proposed by child and animal welfare advocates, with results indicating that a substantial proportion of individuals had been exposed to multiple forms of violence in the home, including child abuse, domestic violence, and animal cruelty. In fact, about 40% of the participants who experienced family or animal violence were also exposed to *at least* one additional type of abuse. However, the success of cross-reporting systems in correctly identifying at-risk households may depend on the type of violence initially documented. Specifically, the results suggest that animal abuse may prove a more reliable marker for other forms of family violence than vice versa. For instance, although about 60% of individuals who witnessed or perpetrated animal abuse also experienced family violence, only about 30% of family violence

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victims had experienced animal cruelty. Similarly, regression analyses pointed to both witnessing and perpetrating animal abuse as significant predictors of family violence, whereas childhood emotional abuse (the form least likely to be investigated by child welfare authorities) was the only type of family violence that significantly predicted exposure to animal abuse.

These findings lend support to evolving practices in many jurisdictions in which child welfare referrals are made in response to animal cruelty complaints and suggest that child maltreatment or domestic violence may be present in many (perhaps even the majority) of these homes. If one considers that only the most severe instances of animal cruelty are likely to come to the attention of authorities (and, thus, potentially the most at-risk households), it is possible that rates of concurrent family violence in these families may be even higher than the 60% suggested by these findings. These results also stress the need for professionals in school, medical, and mental health settings to assess for exposure to family violence when presented with a child who is reporting a history of witnessing or perpetrating animal cruelty.

Overall, individuals who reported witnessing or perpetrating acts of animal cruelty were more likely to have a history of family violence than those with no exposure to animal abuse (although the small sample size may have precluded significant findings for perpetrators). Although more data are needed to draw firm conclusions, results from a closer examination by the *type* of family violence experienced sheds some initial light on the context in which animal cruelty occurs. For instance, as hypothesized, a strong link was identified between child physical abuse and *both* witnessing and perpetrating animal abuse. These findings suggest that some homes may be prone to generalized physical violence—with lines blurred between victims and perpetrators. Significant associations between physical punishment and exposure to animal cruelty were also identified among college students by Flynn (1999a, 1999b) and Miller and Knutson (1997). Furthermore, specific to witnessing animal cruelty was an increased prevalence of childhood emotional abuse. These findings may point to an underlying family dynamic in which vulnerable or dependent household members are devalued. In addition, it may be that animal-directed violence is being used in some homes as an additional form of psychological abuse, with the intention of intimidating, controlling, frightening, or distressing children. The same tactics may explain, in part, the overall pattern of overlap between child maltreatment and witnessing family violence. That is, there may be situations in which adults abuse animals to frighten or manipulate their child victims into complying or not reporting their abuse, as described in anecdotal accounts (e.g., Ascione, 1999). The link between sexual abuse and perpetration (but not

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witnessing) of animal cruelty identified in this study has also been reported by other researchers (Ascione et al., 2003; Friedrich et al., 1992; McClellan, Adams, Douglas, McCurry, & Storck, 1995). It is possible that animal cruelty committed by victims of sexual abuse reflects a means of coping through redirected aggression (i.e., directing abuse-related anger and pain toward an animal). Finally, animal abuse perpetration was also associated with higher rates of childhood neglect. Although this relationship could, as well, be the product of redirected aggression at neglecting or inattentive parents, the overlap between this form of maltreatment and animal abuse might also reflect a generalized lack of parental supervision often associated with child neglect.

Results revealed a robust link between witnessing animal abuse and perpetrating cruelty toward animals. In fact, regression analyses indicated that witnessing animal abuse was the only significant predictor of animal cruelty perpetration in a model that included child abuse and domestic violence exposure. Furthermore, individuals who witnessed animal cruelty were eight times more likely to be perpetrators. The strong overlap between witnessing and perpetrating animal cruelty suggests that social learning may play an important role in the development of animal abuse behaviors (Haden & Scarpa, 2005). That is, individuals may learn these behaviors by observing their peers, family members, or other adult abusers engaging in similar acts. When witnessing interacts with a history of child maltreatment or exposure to domestic violence, the risk of animal cruelty may increase even further.

Seemingly in contrast to the results of past research conducted in domestic violence shelters, this study did not find significant relationships between overall exposure to parental violence and animal cruelty. However, when domestic violence was limited to only the most severe cases, exposed individuals were more likely to have experienced animal cruelty overall and, specifically, to have witnessed animal abuse. These results are consistent with the findings of Ascione et al. (2007) suggesting that severity of animal cruelty in the home is directly related to the severity of the domestic violence experienced. It is likely that the overall level of violence witnessed by this college sample was less severe than the one experienced by women entering a domestic violence shelter, which in turn, resulted in a weaker relationship with animal cruelty exposure. Thus, it may be that an important link between animal abuse and domestic violence is present only in homes where the parental violence is particularly acute, chronic, or distressing to child witnesses.

The present study is limited by the use of retrospective self-report data, which could result in over- or underestimates of exposure to family and animal violence owing to intentional (e.g., social desirability) or unintentional

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(e.g., forgetting) errors. Rates of exposure to animal cruelty in this study were somewhat lower than those reported in other college samples using versions of the same measure (Flynn, 2000; Miller & Knutson, 1997), suggesting that underreporting was more likely in this sample and that the present estimates may be conservative. In addition, it was not possible to determine whether the various abuse types occurred concurrently or whether certain experiences preceded others. The inability to determine temporal sequencing precludes any conclusions regarding causal relationships. Despite these limitations, this research adds to the current literature by using behaviorally specific measures to concurrently examine child maltreatment, domestic violence, and animal cruelty in a large, geographically diverse sample, providing empirical data regarding the extent and nature of the links between animal abuse and family violence.

Overall, the results suggest that there is a significant overlap between these various forms of abuse within the home and that, in particular, the identification of animal cruelty in a home (perpetrated by parents or children) may serve as a reliable red flag for the presence of child maltreatment or severe domestic violence. These findings provide initial support for the underlying assumptions of cross-reporting legislation. However, given the limited resources available to these welfare agencies, future research is needed that specifically examines the implementation and effectiveness of these policies to assess whether increased attention to the link between animal- and human-directed violence results in improved intervention and prevention efforts for at-risk families.

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Welcome!

This blog examines behaviors and mental illnesses which are at the extreme edge of the human repertoire. Nevertheless, such behaviors and syndromes have at different times and cultures been considered normal. In this blog we will examine such behaviors and syndromes with an open mind, while attempting to

THURSDAY, NOVEMBER 12, 2009

Stomp and Crush - Part 2

In our previous post on stomping and crushing fetishes we mentioned federal law H.R. 1887, championed by Congressman Elton Gallegly, which makes the creation and selling of 'crush' videos involving cruelty to animals illegal. After the Ventura County California District Attorney's Office was frustrated in their attempts to prosecute a known producer of 'crush' videos from Thousand Oaks, CA, they joined together with the Doris Day Animal League to convince Gallegly to put forward a bill making the creation and sale of these videos illegal. As part of the bill's passage through Congress the House Subcommittee on Crime solicited testimony on 'crush' videos. I was able to dig up the extremely cogent and interesting testimony given by Susan Creede, a Ventura County police investigator, to the subcommittee on September 30, 1999. It makes for interesting reading, gives a great deal of insight into the 'crush' phenomenon, and shows how important a psychological perspective can be for investigative police work:

"My name is Susan Creede. I am an investigator with the Ventura County District Attorney's Office. I have been a police officer for nearly twenty years, but I only became familiar with animal crush videos in September 1998, when this case was first assigned to me. The investigation began after we received a video from the United States Humane Society in Washington D.C. They purchased the video on the Internet from an individual using the name "Steponit," a resident of Thousand Oaks, a city in Ventura County.

During my investigation, I ran searches for animal crushing on the INTERNET. I found different websites and chat rooms announcing crushing activities. I also located bulletin boards involving animal crushing activities. While in the different chat rooms involving foot fetishes, I communicated on line with people and told them that I was interested in animal crushing. I was eventually directed to a chat room called "Crushcentral," where people with foot fetishes and different sexual deviances meet to talk with people of similar interests. I spent the majority of my time in "Crushcentral," but I was able to locate two other chatrooms that were similar in nature, "Crush 101" and "Feet." People from all over the world meet in these chatrooms. They use stage names such as "Under Her Feet", "Squished," etc. I met these people on a daily basis, using the name Minnie. I talked to and "made friends with" people from the Netherlands, the United Kingdom, Italy, Mexico, and the United States. Each day I chatted with these individuals during the day and evening, depending on where in the world they lived. We shared crush experiences as well as everyday life experiences. The fact

understand that so-called normal behaviors in our own culture could be construed as abnormal in other parts of the world.

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that people do not use their real names makes investigating these crimes difficult. One never knows with who they are actually corresponding, which makes it very difficult to prove who is actually producing the videos.

Through my conversations, I learned that the common denominator was the "foot fetish." They spoke about their fetishes and how they developed. For many of them the fetish developed as a result of something they saw at a very early age, and it usually occurred before the age of five. Most of these men saw a woman step on something. She was usually someone who was significantly in their lives. They were excited by the experience and somehow attached their sexuality to it. As these men grew older, the woman's foot became a part of their sexuality. The power and dominance of the woman using her foot was significant to them. They began to fantasize about the thought of being the subject under the woman's foot. They fantasized about the power of the woman, and how she would be able to crush the life out of them if she chose to do so. Many of these men love to be trampled by women. Some like to be trampled by a woman wearing shoes or high heels. Others like to be trampled by women who are barefoot. They prefer to be hurt and the more indifferent the woman is to their pain, the more exciting it is for them.

I have learned that the extreme fantasy for these men is to be trampled or crushed to death under the foot of a powerful woman. Because they would only be able to experience this one time, these men have found a way to transfer their fantasy and excitement. They have learned that if they watch a woman crush an animal or live creature to his death, they can fantasize that they are that animal experiencing death at the foot of this woman.

Many videos are produced wherein defenseless animals are tortured and crushed to death, for the sole purpose of sexually exciting men. The animals are tortured in a slow, cruel and deliberate way. The women torturing the animals talk to them as if they are human. The women play the part of the dominitrix.

These videos are usually sold for fifty to two hundred dollars a piece. Special orders are made at the request of the buyer. He merely E-mails his request in detail to the producer. The fantasy is then acted out by the actress while being filmed by the producer.

During my chats, I have learned that many of these videos are being produced in the United States. Several of the producers live in California. However, I have learned that there are producers living in Texas and Ohio as well.

The animals being crushed include, but are not limited to, mice, pinkies (baby mice), guinea pigs, rats, squirrels, rabbits, birds, chickens, cats, dogs and monkeys. I have been personally asked to make a video of a dog being crushed. I was also approached on the INTERNET by an individual that asked how big an animal I was willing to crush. I was once instructed on how to torture a dog on video, step by step. I was told to purchase the dog at a place that would not check on the animal at a later date. I was told to make the video immediately after purchasing the animal to avoid the risk of becoming attached. I was told to make the crushing incident last ninety minutes before the animal actually died.
In May 1999, I was contacted through the INTERNET by Gary Thomason, known to the crush community as "Getsmart." Thomason

sent me a clip of a mouse and rat crush video he filmed with "Diane." Thomason told me he would much rather produce a video with me, and he asked me to consider making a video with him. I agreed and we made arrangements to meet at his apartment on June 19, 1999.

With the assistance of Long Beach Police and investigators from the Ventura County District Attorney's Office, I went under cover with a second police officer from Long Beach. After we arrived at Thomason's residence, he went to the local pet store and purchased five large rats. Thomason arranged for a second camerman to video tape the crushing event from a different angle. After Thomason taped one of the rats to a table and both camera men had the cameras running and ready to film, the arrests were made. At that point the Long Beach Police Department took over the investigation. Mr. Thomason awaits trial on Felony Animal Cruelty charges.

During my conversations in the different chat rooms, individuals have sent me samples or clips of these videos to add to my collection. Many photos of animal crush and trampling have also been sent to me over the INTERNET through the chat rooms similar to the ones you have seen today. Tom and I will be happy to answer any questions you may have."

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History of animal-cruelty law at issue in *Stevens* poses incongruity
By Adam Ezra Schulman, First Amendment Center legal intern

Posted by Kevin Volkan & Neil Rocklin at 3:44 PM
Labels: animal cruelty , crush fetish , crush videos , Gallegly , H.R. 1887 , Susan Creede

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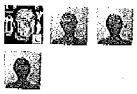

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* STEVENS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08–769. Argued October 6, 2009—Decided April 20, 2010

Congress enacted 18 U. S. C. §48 to criminalize the commercial creation, sale, or possession of certain depictions of animal cruelty. The statute addresses only *portrayals* of harmful acts, not the underlying conduct. It applies to any visual or auditory depiction "in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed," if that conduct violates federal or state law where "the creation, sale, or possession takes place," §48(c)(1). Another clause exempts depictions with "serious religious, political, scientific, educational, journalistic, historical, or artistic value." §48(b). The legislative background of §48 focused primarily on "crush videos," which feature the torture and killing of helpless animals and are said to appeal to persons with a specific sexual fetish. Respondent Stevens was indicted under §48 for selling videos depicting dogfighting. He moved to dismiss, arguing that §48 is facially invalid under the First Amendment. The District Court denied his motion, and Stevens was convicted. The Third Circuit vacated the conviction and declared §48 facially unconstitutional as a content-based regulation of protected speech.

Held: Section §48 is substantially overbroad, and therefore invalid under the First Amendment. Pp. 5–20.

(a) Depictions of animal cruelty are not, as a class, categorically unprotected by the First Amendment. Because §48 explicitly regulates expression based on content, it is " 'presumptively invalid,' . . . and the Government bears the burden to rebut that presumption." *United States* v. *Playboy Entertainment Group, Inc.,* 529 U. S. 803, 817. Since its enactment, the First Amendment has permitted restrictions on a few historic categories of speech—including obscenity, defamation, fraud, incitement, and speech integral to criminal con-

duct—that "have never been thought to raise any Constitutional problem," *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572. Depictions of animal cruelty should not be added to that list. While the prohibition of animal cruelty has a long history in American law, there is no evidence of a similar tradition prohibiting *depictions* of such cruelty. The Government's proposed test would broadly balance the value of the speech against its societal costs to determine whether the First Amendment even applies. But the First Amendment's free speech guarantee does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. *New York* v. *Ferber*, 458 U. S. 747, distinguished. Pp. 5–9.

(b) Stevens's facial challenge succeeds under existing doctrine. Pp. 9–20.

(1) In the First Amendment context, a law may be invalidated as overbroad if "a 'substantial number' of its applications are unconstitutional, '"judged in relation to the statute's plainly legitimate sweep."'" *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 449, n. 6. Stevens claims that common depictions of ordinary and lawful activities constitute the vast majority of materials subject to §48. The Government does not defend such applications, but contends that the statute is narrowly limited to specific types of extreme material. Section 48's constitutionality thus turns on how broadly it is construed. Pp. 9–10.

(2) Section 48 creates a criminal prohibition of alarming breadth. The statute's definition of a "depiction of animal cruelty" does not even require that the depicted conduct be cruel. While the words "maimed, mutilated, [and] tortured" convey cruelty, "wounded" and "killed" do not. Those words have little ambiguity and should be read according to their ordinary meaning. Section 48 does require that the depicted conduct be "illegal," but many federal and state laws concerning the proper treatment of animals are not designed to guard against animal cruelty. For example, endangered species protections restrict even the humane wounding or killing of animals. The statute draws no distinction based on the reason the conduct is made illegal.

Moreover, §48 applies to any depiction of conduct that is illegal in the State in which the depiction is created, sold, or possessed, "regardless of whether the . . . wounding . . . or killing took place" there, §48(c)(1). Depictions of entirely lawful conduct may run afoul of the ban if those depictions later find their way into States where the same conduct is unlawful. This greatly expands §48's scope, because views about animal cruelty and regulations having no connection to

cruelty vary widely from place to place. Hunting is unlawful in the District of Columbia, for example, but there is an enormous national market for hunting-related depictions, greatly exceeding the demand for crush videos or animal fighting depictions. Because the statute allows each jurisdiction to export its laws to the rest of the country, §48(a) applies to any magazine or video depicting lawful hunting that is sold in the Nation's Capital. Those seeking to comply with the law face a bewildering maze of regulations from at least 56 separate jurisdictions. Pp. 11–15.

(3) Limiting §48's reach to crush videos and depictions of animal fighting or other extreme cruelty, as the Government suggests, requires an unrealistically broad reading of the statute's exceptions clause. The statute only exempts material with "serious" value, and "serious" must be taken seriously. The excepted speech must also fall within one of §48(b)'s enumerated categories. Much speech does not. For example, most hunting depictions are not obviously instructional in nature. The exceptions clause simply has no adequate reading that results in the statute's banning only the depictions the Government would like to ban.

Although the language of §48(b) is drawn from the Court's decision in *Miller* v. *California*, 413 U. S. 15, the exceptions clause does not answer every First Amendment objection. Under *Miller*, "serious" value shields depictions of sex from regulation as obscenity. But *Miller* did not determine that serious value could be used as a general precondition to protecting *other* types of speech in the first place. Even "'wholly neutral futilities . . . come under the protection of free speech.'" *Cohen* v. *California*, 403 U. S. 15, 25. The First Amendment presumptively extends to many forms of speech that do not qualify for §48(b)'s serious-value exception, but nonetheless fall within §48(c)'s broad reach. Pp. 15–17.

(4) Despite the Government's assurance that it will apply §48 to reach only "extreme" cruelty, this Court will not uphold an unconstitutional statute merely because the Government promises to use it responsibly. Nor can the Court construe this statutory language to avoid constitutional doubt. A limiting construction can be imposed only if the statute "is 'readily susceptible' to such a construction," *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 884. To read §48 as the Government desires requires rewriting, not just reinterpretation. Pp. 18–19.

(5) This construction of §48 decides the constitutional question. The Government makes no effort to defend §48 as applied beyond crush videos and depictions of animal fighting. It argues that those particular depictions are intrinsically related to criminal conduct or are analogous to obscenity (if not themselves obscene), and that the

ban on such speech would satisfy the proper level of scrutiny. But the Government nowhere extends these arguments to other depictions, such as hunting magazines and videos, that are presumptively protected by the First Amendment but that remain subject to §48. Nor does the Government seriously contest that these presumptively impermissible applications of §48 far outnumber any permissible ones. The Court therefore does not decide whether a statute limited to crush videos or other depictions of extreme animal cruelty would be constitutional. Section 48 is not so limited but is instead substantially overbroad, and therefore invalid under the First Amendment. Pp. 19–20.

533 F. 3d 218, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, THOMAS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed a dissenting opinion.

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SUPREME COURT OF THE UNITED STATES

No. 08–769

UNITED STATES, PETITIONER *v.* ROBERT J. STEVENS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[April 20, 2010]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Congress enacted 18 U. S. C. §48 to criminalize the commercial creation, sale, or possession of certain depictions of animal cruelty. The statute does not address underlying acts harmful to animals, but only portrayals of such conduct. The question presented is whether the prohibition in the statute is consistent with the freedom of speech guaranteed by the First Amendment.

I

Section 48 establishes a criminal penalty of up to five years in prison for anyone who knowingly "creates, sells, or possesses a depiction of animal cruelty," if done "for commercial gain" in interstate or foreign commerce. §48(a).[1] A depiction of "animal cruelty" is defined as one

[1] The statute reads in full:

"§48. Depiction of animal cruelty

"(a) CREATION, SALE, OR POSSESSION.—Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5

"in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed," if that conduct violates federal or state law where "the creation, sale, or possession takes place." §48(c)(1). In what is referred to as the "exceptions clause," the law exempts from prohibition any depiction "that has serious religious, political, scientific, educational, journalistic, historical, or artistic value." §48(b).

The legislative background of §48 focused primarily on the interstate market for "crush videos." According to the House Committee Report on the bill, such videos feature the intentional torture and killing of helpless animals, including cats, dogs, monkeys, mice, and hamsters. H. R. Rep. No. 106–397, p. 2 (1999) (hereinafter H. R. Rep.). Crush videos often depict women slowly crushing animals to death "with their bare feet or while wearing high heeled shoes," sometimes while "talking to the animals in a kind of dominatrix patter" over "[t]he cries and squeals of the animals, obviously in great pain." *Ibid.* Apparently these depictions "appeal to persons with a very specific sexual

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years, or both.

"(b) EXCEPTION.—Subsection (a) does not apply to any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value.

"(c) DEFINITIONS.—In this section—

"(1) the term 'depiction of animal cruelty' means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State; and

"(2) the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States."

fetish who find them sexually arousing or otherwise exciting." *Id.,* at 2–3. The acts depicted in crush videos are typically prohibited by the animal cruelty laws enacted by all 50 States and the District of Columbia. See Brief for United States 25, n. 7 (listing statutes). But crush videos rarely disclose the participants' identities, inhibiting prosecution of the underlying conduct. See H. R. Rep., at 3; accord, Brief for State of Florida et al. as *Amici Curiae* 11.

This case, however, involves an application of §48 to depictions of animal fighting. Dogfighting, for example, is unlawful in all 50 States and the District of Columbia, see Brief for United States 26, n. 8 (listing statutes), and has been restricted by federal law since 1976. Animal Welfare Act Amendments of 1976, §17, 90 Stat. 421, 7 U. S. C. §2156. Respondent Robert J. Stevens ran a business, "Dogs of Velvet and Steel," and an associated Web site, through which he sold videos of pit bulls engaging in dogfights and attacking other animals. Among these videos were Japan Pit Fights and Pick-A-Winna: A Pit Bull Documentary, which include contemporary footage of dogfights in Japan (where such conduct is allegedly legal) as well as footage of American dogfights from the 1960's and 1970's.[2] A third video, Catch Dogs and Country Living, depicts the use of pit bulls to hunt wild boar, as well as a "gruesome" scene of a pit bull attacking a domestic farm pig. 533 F. 3d 218, 221 (CA3 2008) (en banc). On the basis of these videos, Stevens was indicted on three counts of violating §48.

Stevens moved to dismiss the indictment, arguing that §48 is facially invalid under the First Amendment. The

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[2]The Government contends that these dogfights were unlawful at the time they occurred, while Stevens disputes the assertion. Reply Brief for United States 25, n. 14 (hereinafter Reply Brief); Brief for Respondent 44, n. 18.

District Court denied the motion. It held that the depictions subject to §48, like obscenity or child pornography, are categorically unprotected by the First Amendment. 2:04–cr–00051–ANB (WD Pa., Nov. 10, 2004), App. to Pet. for Cert. 65a–71a. It went on to hold that §48 is not substantially overbroad, because the exceptions clause sufficiently narrows the statute to constitutional applications. *Id.,* at 71a–75a. The jury convicted Stevens on all counts, and the District Court sentenced him to three concurrent sentences of 37 months' imprisonment, followed by three years of supervised release. App. 37.

The en banc Third Circuit, over a three-judge dissent, declared §48 facially unconstitutional and vacated Stevens's conviction. 533 F. 3d 218. The Court of Appeals first held that §48 regulates speech that is protected by the First Amendment. The Court declined to recognize a new category of unprotected speech for depictions of animal cruelty, *id.,* at 224, and n. 6, and rejected the Government's analogy between animal cruelty depictions and child pornography, *id.,* at 224–232.

The Court of Appeals then held that §48 could not survive strict scrutiny as a content-based regulation of protected speech. *Id.,* at 232. It found that the statute lacked a compelling government interest and was neither narrowly tailored to preventing animal cruelty nor the least restrictive means of doing so. *Id.,* at 232–235. It therefore held §48 facially invalid.

In an extended footnote, the Third Circuit noted that §48 "might also be unconstitutionally overbroad," because it "potentially covers a great deal of constitutionally protected speech" and "sweeps [too] widely" to be limited only by prosecutorial discretion. *Id.,* at 235, n. 16. But the Court of Appeals declined to rest its analysis on this ground.

We granted certiorari. 556 U. S. ___ (2009).

II

The Government's primary submission is that §48 necessarily complies with the Constitution because the banned depictions of animal cruelty, as a class, are categorically unprotected by the First Amendment. We disagree.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft* v. *American Civil Liberties Union*, 535 U. S. 564, 573 (2002) (internal quotation marks omitted). Section 48 explicitly regulates expression based on content: The statute restricts "visual [and] auditory depiction[s]," such as photographs, videos, or sound recordings, depending on whether they depict conduct in which a living animal is intentionally harmed. As such, §48 is "'presumptively invalid,' and the Government bears the burden to rebut that presumption." *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 817 (2000) (quoting *R. A. V.* v. *St. Paul*, 505 U. S. 377, 382 (1992); citation omitted).

"From 1791 to the present," however, the First Amendment has "permitted restrictions upon the content of speech in a few limited areas," and has never "include[d] a freedom to disregard these traditional limitations." *Id.*, at 382–383. These "historic and traditional categories long familiar to the bar," *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 127 (1991) (KENNEDY, J., concurring in judgment)—including obscenity, *Roth* v. *United States*, 354 U. S. 476, 483 (1957), defamation, *Beauharnais* v. *Illinois*, 343 U. S. 250, 254–255 (1952), fraud, *Virginia Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 771 (1976), incitement, *Brandenburg* v. *Ohio*, 395 U. S. 444, 447–449

(1969) (*per curiam*), and speech integral to criminal conduct, *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 498 (1949)—are "well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571–572 (1942).

The Government argues that "depictions of animal cruelty" should be added to the list. It contends that depictions of "illegal acts of animal cruelty" that are "made, sold, or possessed for commercial gain" necessarily "lack expressive value," and may accordingly "be regulated as *unprotected* speech." Brief for United States 10 (emphasis added). The claim is not just that Congress may regulate depictions of animal cruelty subject to the First Amendment, but that these depictions are outside the reach of that Amendment altogether—that they fall into a "'First Amendment Free Zone.'" *Board of Airport Comm'rs of Los Angeles* v. *Jews for Jesus, Inc.*, 482 U. S. 569, 574 (1987).

As the Government notes, the prohibition of animal cruelty itself has a long history in American law, starting with the early settlement of the Colonies. Reply Brief 12, n. 8; see, *e.g.*, The Body of Liberties §92 (Mass. Bay Colony 1641), reprinted in American Historical Documents 1000–1904, 43 Harvard Classics 66, 79 (C. Eliot ed. 1910) ("No man shall exercise any Tirranny or Crueltie towards any bruite Creature which are usuallie kept for man's use"). But we are unaware of any similar tradition excluding *depictions* of animal cruelty from "the freedom of speech" codified in the First Amendment, and the Government points us to none.

The Government contends that "historical evidence" about the reach of the First Amendment is not "a necessary prerequisite for regulation today," Reply Brief 12, n. 8, and that categories of speech may be exempted from

the First Amendment's protection without any long-settled tradition of subjecting that speech to regulation. Instead, the Government points to Congress's "'legislative judgment that . . . depictions of animals being intentionally tortured and killed [are] of such minimal redeeming value as to render [them] unworthy of First Amendment protection,'" Brief for United States 23 (quoting 533 F. 3d, at 243 (Cowen, J., dissenting)), and asks the Court to uphold the ban on the same basis. The Government thus proposes that a claim of categorical exclusion should be considered under a simple balancing test: "Whether a given category of speech enjoys First Amendment protection depends upon a categorical balancing of the value of the speech against its societal costs." Brief for United States 8; see also *id.,* at 12.

As a free-floating test for First Amendment coverage, that sentence is startling and dangerous. The First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it. The Constitution is not a document "prescribing limits, and declaring that those limits may be passed at pleasure." *Marbury* v. *Madison,* 1 Cranch 137, 178 (1803).

To be fair to the Government, its view did not emerge from a vacuum. As the Government correctly notes, this Court has often *described* historically unprotected categories of speech as being "'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'" *R. A. V., supra,* at 383 (quoting *Chaplinsky, supra,* at 572). In *New York* v. *Ferber,* 458 U. S.

747 (1982), we noted that within these categories of unprotected speech, "the evil to be restricted so overwhelmingly outweighs the expressive interests, if any, at stake, that no process of case-by-case adjudication is required," because "the balance of competing interests is clearly struck," *id.,* at 763–764. The Government derives its proposed test from these descriptions in our precedents. See Brief for United States 12–13.

But such descriptions are just that—descriptive. They do not set forth a test that may be applied as a general matter to permit the Government to imprison any speaker so long as his speech is deemed valueless or unnecessary, or so long as an ad hoc calculus of costs and benefits tilts in a statute's favor.

When we have identified categories of speech as fully outside the protection of the First Amendment, it has not been on the basis of a simple cost-benefit analysis. In *Ferber*, for example, we classified child pornography as such a category, 458 U. S., at 763. We noted that the State of New York had a compelling interest in protecting children from abuse, and that the value of using children in these works (as opposed to simulated conduct or adult actors) was *de minimis*. *Id.,* at 756–757, 762. But our decision did not rest on this "balance of competing interests" alone. *Id.,* at 764. We made clear that *Ferber* presented a special case: The market for child pornography was "intrinsically related" to the underlying abuse, and was therefore "an integral part of the production of such materials, an activity illegal throughout the Nation." *Id.,* at 759, 761. As we noted, "'[i]t rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute.'" *Id.,* at 761–762 (quoting *Giboney, supra,* at 498). *Ferber* thus grounded its analysis in a previously recognized, long-established category of unprotected speech,

and our subsequent decisions have shared this understanding. See *Osborne* v. *Ohio*, 495 U. S. 103, 110 (1990) (describing *Ferber* as finding "persuasive" the argument that the advertising and sale of child pornography was "an integral part" of its unlawful production (internal quotation marks omitted)); *Ashcroft* v. *Free Speech Coalition*, 535 U. S. 234, 249–250 (2002) (noting that distribution and sale "were intrinsically related to the sexual abuse of children," giving the speech at issue "a proximate link to the crime from which it came" (internal quotation marks omitted)).

Our decisions in *Ferber* and other cases cannot be taken as establishing a freewheeling authority to declare new categories of speech outside the scope of the First Amendment. Maybe there are some categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law. But if so, there is no evidence that "depictions of animal cruelty" is among them. We need not foreclose the future recognition of such additional categories to reject the Government's highly manipulable balancing test as a means of identifying them.

III

Because we decline to carve out from the First Amendment any novel exception for §48, we review Stevens's First Amendment challenge under our existing doctrine.

A

Stevens challenged §48 on its face, arguing that any conviction secured under the statute would be unconstitutional. The court below decided the case on that basis, 533 F. 3d, at 231, n. 13, and we granted the Solicitor General's petition for certiorari to determine "whether 18 U. S. C. 48 is facially invalid under the Free Speech Clause of the First Amendment," Pet. for Cert. i.

To succeed in a typical facial attack, Stevens would have to establish "that no set of circumstances exists under which [§48] would be valid," *United States* v. *Salerno*, 481 U. S. 739, 745 (1987), or that the statute lacks any "plainly legitimate sweep," *Washington* v. *Glucksberg*, 521 U. S. 702, 740, n. 7 (1997) (STEVENS, J., concurring in judgments) (internal quotation marks omitted). Which standard applies in a typical case is a matter of dispute that we need not and do not address, and neither *Salerno* nor *Glucksberg* is a speech case. Here the Government asserts that Stevens cannot prevail because §48 is plainly legitimate as applied to crush videos and animal fighting depictions. Deciding this case through a traditional facial analysis would require us to resolve whether these applications of §48 are in fact consistent with the Constitution.

In the First Amendment context, however, this Court recognizes "a second type of facial challenge," whereby a law may be invalidated as overbroad if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 449, n. 6 (2008) (internal quotation marks omitted). Stevens argues that §48 applies to common depictions of ordinary and lawful activities, and that these depictions constitute the vast majority of materials subject to the statute. Brief for Respondent 22–25. The Government makes no effort to defend such a broad ban as constitutional. Instead, the Government's entire defense of §48 rests on interpreting the statute as narrowly limited to specific types of "extreme" material. Brief for United States 8. As the parties have presented the issue, therefore, the constitutionality of §48 hinges on how broadly it is construed. It is to that question that we now turn.[3]

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[3] The dissent contends that because there has not been a ruling on

B

As we explained two Terms ago, "[t]he first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *United States* v. *Williams*, 553 U. S. 285, 293 (2008). Because §48 is a federal statute, there is no need to defer to a state court's authority to interpret its own law.

We read §48 to create a criminal prohibition of alarming breadth. To begin with, the text of the statute's ban on a "depiction of animal cruelty" nowhere requires that the depicted conduct be cruel. That text applies to "any . . . depiction" in which "a living animal is intentionally maimed, mutilated, tortured, wounded, or killed." §48(c)(1). "[M]aimed, mutilated, [and] tortured" convey cruelty, but "wounded" or "killed" do not suggest any such limitation.

The Government contends that the terms in the definition should be read to require the additional element of "accompanying acts of cruelty." Reply Brief 6; see also Tr. of Oral Arg. 17–19. (The dissent hinges on the same

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the validity of the statute as applied to Stevens, our consideration of his facial overbreadth claim is premature. *Post,* at 1, and n. 1, 2–3 (opinion of ALITO, J.). Whether or not that conclusion follows, here no as-applied claim has been preserved. Neither court below construed Stevens's briefs as adequately developing a separate attack on a defined subset of the statute's applications (say, dogfighting videos). See 533 F. 3d 218, 231, n. 13 (CA3 2008) (en banc) ("Stevens brings a facial challenge to the statute"); App. to Pet. for Cert. 65a, 74a. Neither did the Government, see Brief for United States in No. 05–2497 (CA3), p. 28 (opposing "the appellant's facial challenge"); accord, Brief for United States 4. The sentence in Stevens's appellate brief mentioning his unrelated sufficiency-of-the-evidence challenge hardly developed a First Amendment as-applied claim. See *post,* at 1, n. 1. Stevens's constitutional argument is a general one. And unlike the challengers in *Washington State Grange*, Stevens does not "rest on factual assumptions . . . that can be evaluated only in the context of an as-applied challenge." 552 U. S., at 444.

assumption. See *post,* at 6, 9.) The Government bases this argument on the definiendum, "depiction of animal cruelty," cf. *Leocal* v. *Ashcroft,* 543 U. S. 1, 11 (2004), and on "'the commonsense canon of *noscitur a sociis*.'" Reply Brief 7 (quoting *Williams,* 553 U. S., at 294). As that canon recognizes, an ambiguous term may be "given more precise content by the neighboring words with which it is associated." *Ibid.* Likewise, an unclear definitional phrase may take meaning from the term to be defined, see *Leocal, supra,* at 11 (interpreting a "'substantial risk'" of the "us[e]" of "physical force" as part of the definition of "'crime of violence'").

But the phrase "wounded . . . or killed" at issue here contains little ambiguity. The Government's opening brief properly applies the ordinary meaning of these words, stating for example that to "'kill' is 'to deprive of life.'" Brief for United States 14 (quoting Webster's Third New International Dictionary 1242 (1993)). We agree that "wounded" and "killed" should be read according to their ordinary meaning. Cf. *Engine Mfrs. Assn.* v. *South Coast Air Quality Management Dist.,* 541 U. S. 246, 252 (2004). Nothing about that meaning requires cruelty.

While not requiring cruelty, §48 does require that the depicted conduct be "illegal." But this requirement does not limit §48 along the lines the Government suggests. There are myriad federal and state laws concerning the proper treatment of animals, but many of them are not designed to guard against animal cruelty. Protections of endangered species, for example, restrict even the humane "wound[ing] or kill[ing]" of "living animal[s]." §48(c)(1). Livestock regulations are often designed to protect the health of human beings, and hunting and fishing rules (seasons, licensure, bag limits, weight requirements) can be designed to raise revenue, preserve animal populations, or prevent accidents. The text of §48(c) draws no distinction based on the reason the intentional killing of an

animal is made illegal, and includes, for example, the humane slaughter of a stolen cow.[4]

What is more, the application of §48 to depictions of illegal conduct extends to conduct that is illegal in only a single jurisdiction. Under subsection (c)(1), the depicted conduct need only be illegal in "the State in which the creation, sale, or possession takes place, regardless of whether the . . . wounding . . . or killing took place in [that] State." A depiction of entirely lawful conduct runs afoul of the ban if that depiction later finds its way into another State where the same conduct is unlawful. This provision greatly expands the scope of §48, because although there may be "a broad societal consensus" against cruelty to animals, Brief for United States 2, there is substantial disagreement on what types of conduct are properly regarded as cruel. Both views about cruelty to animals and regulations having no connection to cruelty vary widely from place to place.

In the District of Columbia, for example, all hunting is unlawful. D. C. Munic. Regs., tit. 19, §1560 (2009). Other jurisdictions permit or encourage hunting, and there is an enormous national market for hunting-related depictions in which a living animal is intentionally killed. Hunting periodicals have circulations in the hundreds of thousands or millions, see Mediaweek, Sept. 29, 2008, p. 28, and hunting television programs, videos, and Web sites are equally popular, see Brief for Professional Outdoor Media

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[4]The citations in the dissent's appendix are beside the point. The cited statutes stand for the proposition that hunting is not covered by animal cruelty laws. But the reach of §48 is, as we have explained, not restricted to depictions of conduct that violates a law specifically directed at animal cruelty. It simply requires that the depicted conduct be "illegal." §48(c)(1). The Government implicitly admits as much, arguing that "instructional videos for hunting" are saved by the statute's exceptions clause, not that they fall outside the prohibition in the first place. Reply Brief 6.

Association et al. as *Amici Curiae* 9–10. The demand for hunting depictions exceeds the estimated demand for crush videos or animal fighting depictions by several orders of magnitude. Compare *ibid.* and Brief for National Rifle Association of America, Inc., as *Amicus Curiae* 12 (hereinafter NRA Brief) (estimating that hunting magazines alone account for $135 million in annual retail sales) with Brief for United States 43–44, 46 (suggesting $1 million in crush video sales per year, and noting that Stevens earned $57,000 from his videos). Nonetheless, because the statute allows each jurisdiction to export its laws to the rest of the country, §48(a) extends to *any* magazine or video depicting lawful hunting, so long as that depiction is sold within the Nation's Capital.

Those seeking to comply with the law thus face a bewildering maze of regulations from at least 56 separate jurisdictions. Some States permit hunting with crossbows, Ga. Code Ann. §27–3–4(1) (2007); Va. Code Ann. §29.1–519(A)(6) (Lexis 2008 Cum. Supp.), while others forbid it, Ore. Admin. Reg. 635–065–0725 (2009), or restrict it only to the disabled, N. Y. Envir. Conserv. Law Ann. §11–0901(16) (West 2005). Missouri allows the "canned" hunting of ungulates held in captivity, Mo. Code Regs. Ann., tit. 3, 10–9.560(1), but Montana restricts such hunting to certain bird species, Mont. Admin. Rule 12.6.1202(1) (2007). The sharp-tailed grouse may be hunted in Idaho, but not in Washington. Compare Idaho Admin. Code §13.01.09.606 (2009) with Wash. Admin. Code §232–28–342 (2009).

The disagreements among the States—and the "commonwealth[s], territor[ies], or possession[s] of the United States," 18 U. S. C. §48(c)(2)—extend well beyond hunting. State agricultural regulations permit different methods of livestock slaughter in different places or as applied to different animals. Compare, *e.g.,* Fla. Stat. §828.23(5) (2007) (excluding poultry from humane slaughter requirements)

with Cal. Food & Agric. Code Ann. §19501(b) (West 2001) (including some poultry). California has recently banned cutting or "docking" the tails of dairy cattle, which other States permit. 2009 Cal. Legis. Serv. Ch. 344 (S. B. 135) (West). Even cockfighting, long considered immoral in much of America, see *Barnes* v. *Glen Theatre, Inc.*, 501 U. S. 560, 575 (1991) (SCALIA, J., concurring in judgment), is legal in Puerto Rico, see 15 Laws P. R. Ann. §301 (Supp. 2008); *Posadas de Puerto Rico Associates* v. *Tourism Co. of P. R.*, 478 U. S. 328, 342 (1986), and was legal in Louisiana until 2008, see La. Stat. Ann. §14:102.23 (West) (effective Aug. 15, 2008). An otherwise-lawful image of any of these practices, if sold or possessed for commercial gain within a State that happens to forbid the practice, falls within the prohibition of §48(a).

C

The only thing standing between defendants who sell such depictions and five years in federal prison—other than the mercy of a prosecutor—is the statute's exceptions clause. Subsection (b) exempts from prohibition "any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value." The Government argues that this clause substantially narrows the statute's reach: News reports about animal cruelty have "journalistic" value; pictures of bullfights in Spain have "historical" value; and instructional hunting videos have "educational" value. Reply Brief 6. Thus, the Government argues, §48 reaches only crush videos, depictions of animal fighting (other than Spanish bullfighting, see Brief for United States 47–48), and perhaps other depictions of "extreme acts of animal cruelty." *Id.*, at 41.

The Government's attempt to narrow the statutory ban, however, requires an unrealistically broad reading of the exceptions clause. As the Government reads the clause, any material with "redeeming societal value," *id.*, at 9, 16,

23, "'at least some minimal value,'" Reply Brief 6 (quoting H. R. Rep., at 4), or anything more than "scant social value," Reply Brief 11, is excluded under §48(b). But the text says "serious" value, and "serious" should be taken seriously. We decline the Government's invitation—advanced for the first time in this Court—to regard as "serious" anything that is not "scant." (Or, as the dissent puts it, "'trifling.'" *Post*, at 6.) As the Government recognized below, "serious" ordinarily means a good bit more. The District Court's jury instructions required value that is "significant and of great import," App. 132, and the Government defended these instructions as properly relying on "a commonly accepted meaning of the word 'serious,'" Brief for United States in No. 05–2497 (CA3), p. 50.

Quite apart from the requirement of "serious" value in §48(b), the excepted speech must also fall within one of the enumerated categories. Much speech does not. Most hunting videos, for example, are not obviously instructional in nature, except in the sense that all life is a lesson. According to Safari Club International and the Congressional Sportsmen's Foundation, many popular videos "have primarily entertainment value" and are designed to "entertai[n] the viewer, marke[t] hunting equipment, or increas[e] the hunting community." Brief for Safari Club International et al. as *Amici Curiae* 12. The National Rifle Association agrees that "much of the content of hunting media . . . is merely *recreational* in nature." NRA Brief 28. The Government offers no principled explanation why these depictions of hunting or depictions of Spanish bullfights would be *inherently* valuable while those of Japanese dogfights are not. The dissent contends that hunting depictions must have serious value because hunting has serious value, in a way that dogfights presumably do not. *Post,* at 6–8. But §48(b) addresses the value of the *depictions,* not of the underlying activity. There is simply no

adequate reading of the exceptions clause that results in the statute's banning only the depictions the Government would like to ban.

The Government explains that the language of §48(b) was largely drawn from our opinion in *Miller* v. *California*, 413 U. S. 15 (1973), which excepted from its definition of obscenity any material with "serious literary, artistic, political, or scientific value," *id.*, at 24. See Reply Brief 8, 9, and n. 5. According to the Government, this incorporation of the *Miller* standard into §48 is therefore surely enough to answer any First Amendment objection. Reply Brief 8–9.

In *Miller* we held that "serious" value shields depictions of sex from regulation as obscenity. 413 U. S., at 24–25. Limiting *Miller*'s exception to "serious" value ensured that "'[a] quotation from Voltaire in the flyleaf of a book [would] not constitutionally redeem an otherwise obscene publication.'" *Id.*, at 25, n. 7 (quoting *Kois* v. *Wisconsin*, 408 U. S. 229, 231 (1972) (*per curiam*)). We did not, however, determine that serious value could be used as a general precondition to protecting *other* types of speech in the first place. *Most* of what we say to one another lacks "religious, political, scientific, educational, journalistic, historical, or artistic value" (let alone serious value), but it is still sheltered from government regulation. Even "'[w]holly neutral futilities . . . come under the protection of free speech as fully as do Keats' poems or Donne's sermons.'" *Cohen* v. *California*, 403 U. S. 15, 25 (1971) (quoting *Winters* v. *New York*, 333 U. S. 507, 528 (1948) (Frankfurter, J., dissenting); alteration in original).

Thus, the protection of the First Amendment presumptively extends to many forms of speech that do not qualify for the serious-value exception of §48(b), but nonetheless fall within the broad reach of §48(c).

D

Not to worry, the Government says: The Executive Branch construes §48 to reach only "extreme" cruelty, Brief for United States 8, and it "neither has brought nor will bring a prosecution for anything less," Reply Brief 6–7. The Government hits this theme hard, invoking its prosecutorial discretion several times. See *id.,* at 6–7, 10, and n. 6, 19, 22. But the First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly. Cf. *Whitman* v. *American Trucking Assns., Inc.,* 531 U. S. 457, 473 (2001).

This prosecution is itself evidence of the danger in putting faith in government representations of prosecutorial restraint. When this legislation was enacted, the Executive Branch announced that it would interpret §48 as covering only depictions "of wanton cruelty to animals designed to appeal to a prurient interest in sex." See Statement by President William J. Clinton upon Signing H. R. 1887, 34 Weekly Comp. Pres. Doc. 2557 (Dec. 9, 1999). No one suggests that the videos in this case fit that description. The Government's assurance that it will apply §48 far more restrictively than its language provides is pertinent only as an implicit acknowledgment of the potential constitutional problems with a more natural reading.

Nor can we rely upon the canon of construction that "ambiguous statutory language [should] be construed to avoid serious constitutional doubts." *FCC* v. *Fox Television Stations, Inc.,* 556 U. S. ___, ___ (2009) (slip op., at 12). "[T]his Court may impose a limiting construction on a statute only if it is 'readily susceptible' to such a construction." *Reno* v. *American Civil Liberties Union,* 521 U. S. 844, 884 (1997). We "'will not rewrite a . . . law to conform it to constitutional requirements,'" *id.,* at 884–885 (quot-

ing *Virginia* v. *American Booksellers Assn., Inc.*, 484 U. S. 383, 397 (1988); omission in original), for doing so would constitute a "serious invasion of the legislative domain," *United States* v. *Treasury Employees*, 513 U. S. 454, 479, n. 26 (1995), and sharply diminish Congress's "incentive to draft a narrowly tailored law in the first place," *Osborne*, 495 U. S., at 121. To read §48 as the Government desires requires rewriting, not just reinterpretation.

* * *

Our construction of §48 decides the constitutional question; the Government makes no effort to defend the constitutionality of §48 as applied beyond crush videos and depictions of animal fighting. It argues that those particular depictions are intrinsically related to criminal conduct or are analogous to obscenity (if not themselves obscene), and that the ban on such speech is narrowly tailored to reinforce restrictions on the underlying conduct, prevent additional crime arising from the depictions, or safeguard public mores. But the Government nowhere attempts to extend these arguments to depictions of any other activities—depictions that are presumptively protected by the First Amendment but that remain subject to the criminal sanctions of §48.

Nor does the Government seriously contest that the presumptively impermissible applications of §48 (properly construed) far outnumber any permissible ones. However "growing" and "lucrative" the markets for crush videos and dogfighting depictions might be, see Brief for United States 43, 46 (internal quotation marks omitted), they are dwarfed by the market for other depictions, such as hunting magazines and videos, that we have determined to be within the scope of §48. See *supra*, at 13–14. We therefore need not and do not decide whether a statute limited to crush videos or other depictions of extreme animal cruelty would be constitutional. We hold only that §48 is

not so limited but is instead substantially overbroad, and therefore invalid under the First Amendment.

The judgment of the United States Court of Appeals for the Third Circuit is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 08–769

UNITED STATES, PETITIONER *v.* ROBERT J. STEVENS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[April 20, 2010]

JUSTICE ALITO, dissenting.

The Court strikes down in its entirety a valuable statute, 18 U. S. C. §48, that was enacted not to suppress speech, but to prevent horrific acts of animal cruelty—in particular, the creation and commercial exploitation of "crush videos," a form of depraved entertainment that has no social value. The Court's approach, which has the practical effect of legalizing the sale of such videos and is thus likely to spur a resumption of their production, is unwarranted. Respondent was convicted under §48 for selling videos depicting dogfights. On appeal, he argued, among other things, that §48 is unconstitutional as applied to the facts of this case, and he highlighted features of those videos that might distinguish them from other dogfight videos brought to our attention.[1] The Court of

[1] Respondent argued at length that the evidence was insufficient to prove that the particular videos he sold lacked any serious scientific, educational, or historical value and thus fell outside the exception in §48(b). See Brief for Appellant in No. 05–2497 (CA3), pp. 72–79. He added that, if the evidence in this case was held to be sufficient to take his videos outside the scope of the exception, then "this case presents . . . a situation" in which "a constitutional violation occurs." *Id.*, at 71. See also *id.*, at 47 ("The applicability of 18 U. S. C. §48 to speech which is not a crush video or an appeal to some prurient sexual interest constitutes a restriction of protected speech, and an unwarranted violation of the First Amendment's free speech guarantee"); Brief for

Appeals—incorrectly, in my view—declined to decide whether §48 is unconstitutional as applied to respondent's videos and instead reached out to hold that the statute is facially invalid. Today's decision does not endorse the Court of Appeals' reasoning, but it nevertheless strikes down §48 using what has been aptly termed the "strong medicine" of the overbreadth doctrine, *United States* v. *Williams*, 553 U. S. 285, 293 (2008) (internal quotation marks omitted), a potion that generally should be administered only as "a last resort." *Los Angeles Police Dept.* v. *United Reporting Publishing Corp.*, 528 U. S. 32, 39 (1999) (internal quotation marks omitted).

Instead of applying the doctrine of overbreadth, I would vacate the decision below and instruct the Court of Appeals on remand to decide whether the videos that respondent sold are constitutionally protected. If the question of overbreadth is to be decided, however, I do not think the present record supports the Court's conclusion that §48 bans a substantial quantity of protected speech.

I

A party seeking to challenge the constitutionality of a statute generally must show that the statute violates the party's own rights. *New York* v. *Ferber*, 458 U. S. 747, 767 (1982). The First Amendment overbreadth doctrine carves out a narrow exception to that general rule. See *id.*, at 768; *Broadrick* v. *Oklahoma*, 413 U. S. 601, 611–612 (1973). Because an overly broad law may deter constitutionally protected speech, the overbreadth doctrine allows

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Respondent 55 ("Stevens' speech does not fit within any existing category of unprotected, prosecutable speech"); *id.*, at 57 ("[T]he record as a whole demonstrates that Stevens' speech cannot constitutionally be punished"). Contrary to the Court, *ante*, at 10–11, n. 3 (citing 533 F. 3d 218, 231, n. 13 (CA3 2008) (en banc)), I see no suggestion in the opinion of the Court of Appeals that respondent did not preserve an as-applied challenge.

a party to whom the law may constitutionally be applied to challenge the statute on the ground that it violates the First Amendment rights of others. See, *e.g.*, *Board of Trustees of State Univ. of N. Y.* v. *Fox*, 492 U. S. 469, 483 (1989) ("Ordinarily, the principal advantage of the overbreadth doctrine for a litigant is that it enables him to benefit from the statute's unlawful application *to someone else*"); see also *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 462, n. 20 (1978) (describing the doctrine as one "under which a person may challenge a statute that infringes protected speech even if the statute constitutionally might be applied to him").

The "strong medicine" of overbreadth invalidation need not and generally should not be administered when the statute under attack is unconstitutional as applied to the challenger before the court. As we said in *Fox, supra,* at 484–485, "[i]t is not the usual judicial practice, . . . nor do we consider it generally desirable, to proceed to an overbreadth issue unnecessarily—that is, before it is determined that the statute would be valid as applied." Accord, *New York State Club Assn., Inc.* v. *City of New York*, 487 U. S. 1, 11 (1988); see also *Broadrick, supra,* at 613; *United Reporting Publishing Corp., supra,* at 45 (STEVENS, J., dissenting).

I see no reason to depart here from the generally preferred procedure of considering the question of overbreadth only as a last resort.[2] Because the Court has addressed the overbreadth question, however, I will explain why I do not think that the record supports the conclusion that §48, when properly interpreted, is overly broad.

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[2] For the reasons set forth below, this is not a case in which the challenged statute is unconstitutional in all or almost all of its applications.

II

The overbreadth doctrine "strike[s] a balance between competing social costs." *Williams*, 553 U. S., at 292. Specifically, the doctrine seeks to balance the "harmful effects" of "invalidating a law that in some of its applications is perfectly constitutional" against the possibility that "the threat of enforcement of an overbroad law [will] dete[r] people from engaging in constitutionally protected speech." *Ibid.* "In order to maintain an appropriate balance, we have vigorously enforced the requirement that a statute's overbreadth be *substantial*, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Ibid.*

In determining whether a statute's overbreadth is substantial, we consider a statute's application to real-world conduct, not fanciful hypotheticals. See, *e.g.*, *id.*, at 301–302; see also *Ferber*, *supra,* at 773; *Houston* v. *Hill*, 482 U. S. 451, 466–467 (1987). Accordingly, we have repeatedly emphasized that an overbreadth claimant bears the burden of demonstrating, "from the text of [the law] *and from actual fact*," that substantial overbreadth exists. *Virginia* v. *Hicks*, 539 U. S. 113, 122 (2003) (quoting *New York State Club Assn.*, *supra,* at 14; emphasis added; internal quotation marks omitted; alteration in original). Similarly, "there must be a *realistic danger* that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds." *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 801 (1984) (emphasis added).

III

In holding that §48 violates the overbreadth rule, the Court declines to decide whether, as the Government maintains, §48 is constitutional as applied to two broad categories of depictions that exist in the real world: crush

videos and depictions of deadly animal fights. See *ante,* at 10, 19. Instead, the Court tacitly assumes for the sake of argument that §48 is valid as applied to these depictions, but the Court concludes that §48 reaches too much protected speech to survive. The Court relies primarily on depictions of hunters killing or wounding game and depictions of animals being slaughtered for food. I address the Court's examples below.

A

I turn first to depictions of hunting. As the Court notes, photographs and videos of hunters shooting game are common. See *ante,* at 13–14. But hunting is legal in all 50 States, and §48 applies only to a depiction of conduct that is illegal in the jurisdiction in which the depiction is created, sold, or possessed. §§48(a), (c). Therefore, in all 50 States, the creation, sale, or possession for sale of the vast majority of hunting depictions indisputably falls outside §48's reach.

Straining to find overbreadth, the Court suggests that §48 prohibits the sale or possession in the District of Columbia of any depiction of hunting because the District—undoubtedly because of its urban character—does not permit hunting within its boundaries. *Ante,* at 13. The Court also suggests that, because some States prohibit a particular type of hunting (*e.g.,* hunting with a crossbow or "canned" hunting) or the hunting of a particular animal (*e.g.,* the "sharp-tailed grouse"), §48 makes it illegal for persons in such States to sell or possess for sale a depiction of hunting that was perfectly legal in the State in which the hunting took place. See *ante,* at 12–14.

The Court's interpretation is seriously flawed. "When a federal court is dealing with a federal statute challenged as overbroad, it should, of course, construe the statute to avoid constitutional problems, if the statute is subject to such a limiting construction." *Ferber,* 458 U. S., at 769,

n. 24. See also *Williams, supra,* at 307 (STEVENS, J., concurring) ("[T]o the extent the statutory text alone is unclear, our duty to avoid constitutional objections makes it especially appropriate to look beyond the text in order to ascertain the intent of its drafters").

Applying this canon, I would hold that §48 does not apply to depictions of hunting. First, because §48 targets depictions of "animal cruelty," I would interpret that term to apply only to depictions involving acts of animal cruelty as defined by applicable state or federal law, not to depictions of acts that happen to be illegal for reasons having nothing to do with the prevention of animal cruelty. See *ante,* at 12–13 (interpreting "[t]he text of §48(c)" to ban a depiction of "the humane slaughter of a stolen cow"). Virtually all state laws prohibiting animal cruelty either expressly define the term "animal" to exclude wildlife or else specifically exempt lawful hunting activities,[3] so the statutory prohibition set forth in §48(a) may reasonably be interpreted not to reach most if not all hunting depictions.

Second, even if the hunting of wild animals were otherwise covered by §48(a), I would hold that hunting depictions fall within the exception in §48(b) for depictions that have "serious" (*i.e.,* not "trifling"[4]) "scientific," "educa-

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[3] See Appendix, *infra* (citing statutes); B. Wagman, S. Waisman, & P. Frasch, Animal Law: Cases and Materials 92 (4th ed. 2010) ("Most anti-cruelty laws also include one or more exemptions," which often "exclud[e] from coverage (1) whole classes of animals, such as wildlife or farm animals, or (2) specific activities, such as hunting"); Note, Economics and Ethics in the Genetic Engineering of Animals, 19 Harv. J. L. & Tech. 413, 432 (2006) ("Not surprisingly, state laws relating to the humane treatment of wildlife, including deer, elk, and waterfowl, are virtually non-existent").

[4] Webster's Third New International Dictionary 2073 (1976); Random House Dictionary of the English Language 1303 (1966). While the term "serious" may also mean "weighty" or "important," *ibid.,* we should adopt the former definition if necessary to avoid unconstitutionality.

tional," or "historical" value. While there are certainly those who find hunting objectionable, the predominant view in this country has long been that hunting serves many important values, and it is clear that Congress shares that view. Since 1972, when Congress called upon the President to designate a National Hunting and Fishing Day, see S. J. Res. 117, 92d Cong., 2d Sess. (1972), 86 Stat. 133, Presidents have regularly issued proclamations extolling the values served by hunting. See Presidential Proclamation No. 8421, 74 Fed. Reg. 49305 (Pres. Obama 2009) (hunting and fishing are "ageless pursuits" that promote "the conservation and restoration of numerous species and their natural habitats"); Presidential Proclamation No. 8295, 73 Fed. Reg. 57233 (Pres. Bush 2008) (hunters and anglers "add to our heritage and keep our wildlife populations healthy and strong," and "are among our foremost conservationists"); Presidential Proclamation No. 7822, 69 Fed. Reg. 59539 (Pres. Bush 2004) (hunting and fishing are "an important part of our Nation's heritage," and "America's hunters and anglers represent the great spirit of our country"); Presidential Proclamation No. 4682, 44 Fed. Reg. 53149 (Pres. Carter 1979) (hunting promotes conservation and an appreciation of "healthy recreation, peaceful solitude and closeness to nature"); Presidential Proclamation No. 4318, 39 Fed. Reg. 35315 (Pres. Ford 1974) (hunting furthers "appreciation and respect for nature" and preservation of the environment). Thus, it is widely thought that hunting has "scientific" value in that it promotes conservation, "historical" value in that it provides a link to past times when hunting played a critical role in daily life, and "educational" value in that it furthers the understanding and appreciation of nature and our country's past and instills valuable character traits. And if hunting itself is widely thought to serve these values, then it takes but a small additional step to conclude that depictions of hunting make a non-trivial

contribution to the exchange of ideas. Accordingly, I would hold that hunting depictions fall comfortably within the exception set out in §48(b).

I do not have the slightest doubt that Congress, in enacting §48, had no intention of restricting the creation, sale, or possession of depictions of hunting. Proponents of the law made this point clearly. See H. R. Rep. No. 106–397, p. 8 (1999) (hereinafter H. R. Rep.) ("[D]epictions of ordinary hunting and fishing activities do not fall within the scope of the statute"); 145 Cong. Rec. 25894 (Oct. 19, 1999) (Rep. McCollum) ("[T]he sale of depictions of legal activities, such as hunting and fishing, would not be illegal under this bill"); *id.*, at 25895 (Rep. Smith) ("[L]et us be clear as to what this legislation will not do. It will in no way prohibit hunting, fishing, or wildlife videos"). Indeed, even *opponents* acknowledged that §48 was not intended to reach ordinary hunting depictions. See *ibid.* (Rep. Scott); *id.*, at 25897 (Rep. Paul).

For these reasons, I am convinced that §48 has no application to depictions of hunting. But even if §48 did impermissibly reach the sale or possession of depictions of hunting in a few unusual situations (for example, the sale in Oregon of a depiction of hunting with a crossbow in Virginia or the sale in Washington State of the hunting of a sharp-tailed grouse in Idaho, see *ante*, at 14), those isolated applications would hardly show that §48 bans a substantial amount of protected speech.

B

Although the Court's overbreadth analysis rests primarily on the proposition that §48 substantially restricts the sale and possession of hunting depictions, the Court cites a few additional examples, including depictions of methods of slaughter and the docking of the tails of dairy cows. See *ante*, at 14–15.

Such examples do not show that the statute is substan-

tially overbroad, for two reasons. First, as explained above, §48 can reasonably be construed to apply only to depictions involving acts of animal cruelty as defined by applicable state or federal law, and anti-cruelty laws do not ban the sorts of acts depicted in the Court's hypotheticals. See, *e.g.*, Idaho Code §25–3514 (Lexis 2000) ("No part of this chapter [prohibiting cruelty to animals] shall be construed as interfering with or allowing interference with . . . [t]he humane slaughter of any animal normally and commonly raised as food or for production of fiber . . . [or] [n]ormal or accepted practices of . . . animal husbandry"); Kan. Stat. Ann. § 21–4310(b) (2007) ("The provisions of this section shall not apply to . . . with respect to farm animals, normal or accepted practices of animal husbandry, including the normal and accepted practices for the slaughter of such animals"); Md. Crim. Law Code Ann. §10–603 (Lexis 2002) (sections prohibiting animal cruelty "do not apply to . . . customary and normal veterinary and agricultural husbandry practices, including dehorning, castration, tail docking, and limit feeding").

Second, nothing in the record suggests that any one has ever created, sold, or possessed for sale a depiction of the slaughter of food animals or of the docking of the tails of dairy cows that would not easily qualify under the exception set out in §48(b). Depictions created to show proper methods of slaughter or tail-docking would presumably have serious "educational" value, and depictions created to focus attention on methods thought to be inhumane or otherwise objectionable would presumably have either serious "educational" or "journalistic" value or both. In short, the Court's examples of depictions involving the docking of tails and humane slaughter do not show that §48 suffers from any overbreadth, much less substantial overbreadth.

The Court notes, finally, that cockfighting, which is illegal in all States, is still legal in Puerto Rico, *ante*, at 15,

and I take the Court's point to be that it would be impermissible to ban the creation, sale, or possession in Puerto Rico of a depiction of a cockfight that was legally staged in Puerto Rico.[5] But assuming for the sake of argument that this is correct, this veritable sliver of unconstitutionality would not be enough to justify striking down §48 *in toto*.

In sum, we have a duty to interpret §48 so as to avoid serious constitutional concerns, and §48 may reasonably be construed not to reach almost all, if not all, of the depictions that the Court finds constitutionally protected. Thus, §48 does not appear to have a large number of unconstitutional applications. Invalidation for overbreadth is appropriate only if the challenged statute suffers from *substantial* overbreadth—judged not just in absolute terms, but in relation to the statute's "plainly legitimate sweep." *Williams*, 553 U. S., at 292. As I explain in the following Part, §48 has a substantial core of constitutionally permissible applications.

IV

A

1

As the Court of Appeals recognized, "the primary conduct that Congress sought to address through its passage [of §48] was the creation, sale, or possession of 'crush videos.'" 533 F. 3d 218, 222 (CA3 2008) (en banc). A sample crush video, which has been lodged with the Clerk, records the following event:

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[5] Since the Court has taken pains not to decide whether §48 would be unconstitutional as applied to graphic dogfight videos, including those depicting fights occurring in countries where dogfighting is legal, I take it that the Court does not intend for its passing reference to cockfights to mean either that all depictions of cockfights, whether legal or illegal under local law, are protected by the First Amendment or that it is impermissible to ban the sale or possession in the States of a depiction of a legal cockfight in Puerto Rico.

> "[A] kitten, secured to the ground, watches and shrieks in pain as a woman thrusts her high-heeled shoe into its body, slams her heel into the kitten's eye socket and mouth loudly fracturing its skull, and stomps repeatedly on the animal's head. The kitten hemorrhages blood, screams blindly in pain, and is ultimately left dead in a moist pile of blood-soaked hair and bone." Brief for Humane Society of United States as *Amicus Curiae* 2 (hereinafter Humane Society Brief).

It is undisputed that the *conduct* depicted in crush videos may constitutionally be prohibited. All 50 States and the District of Columbia have enacted statutes prohibiting animal cruelty. See 533 F. 3d, at 223, and n. 4 (citing statutes); H. R. Rep., at 3. But before the enactment of §48, the underlying conduct depicted in crush videos was nearly impossible to prosecute. These videos, which "often appeal to persons with a very specific sexual fetish," *id.*, at 2, were made in secret, generally without a live audience, and "the faces of the women inflicting the torture in the material often were not shown, nor could the location of the place where the cruelty was being inflicted or the date of the activity be ascertained from the depiction." *Id.*, at 3. Thus, law enforcement authorities often were not able to identify the parties responsible for the torture. See Punishing Depictions of Animal Cruelty and the Federal Prisoner Health Care Co-Payment Act of 1999: Hearing before the Subcommittee on Crime of the House Committee on the Judiciary, 106th Cong., 1st Sess., p. 1 (1999) (hereinafter Hearing on Depictions of Animal Cruelty). In the rare instances in which it was possible to identify and find the perpetrators, they "often were able to successfully assert as a defense that the State could not prove its jurisdiction over the place where the act occurred or that the actions depicted took place within the time specified in

the State statute of limitations." H. R. Rep., at 3; see also 145 Cong. Rec. 25896 (Rep. Gallegly) ("[I]t is the prosecutors from around this country, Federal prosecutors as well as State prosecutors, that have made an appeal to us for this"); Hearing on Depictions of Animal Cruelty 21 ("If the production of the video is not discovered during the actual filming, then prosecution for the offense is virtually impossible without a cooperative eyewitness to the filming or an undercover police operation"); *id.*, at 34–35 (discussing example of case in which state prosecutor "had the defendant telling us he produced these videos," but where prosecution was not possible because the State could not prove where or when the tape was made).

In light of the practical problems thwarting the prosecution of the creators of crush videos under state animal cruelty laws, Congress concluded that the only effective way of stopping the underlying criminal conduct was to prohibit the commercial exploitation of the videos of that conduct. And Congress' strategy appears to have been vindicated. We are told that "[b]y 2007, sponsors of §48 declared the crush video industry dead. Even overseas Websites shut down in the wake of §48. Now, after the Third Circuit's decision [facially invalidating the statute], crush videos are already back online." Humane Society Brief 5 (citations omitted).

2

The First Amendment protects freedom of speech, but it most certainly does not protect violent criminal conduct, even if engaged in for expressive purposes. Crush videos present a highly unusual free speech issue because they are so closely linked with violent criminal conduct. The videos record the commission of violent criminal acts, and it appears that these crimes are committed for the sole purpose of creating the videos. In addition, as noted above, Congress was presented with compelling evidence

that the only way of preventing these crimes was to target the sale of the videos. Under these circumstances, I cannot believe that the First Amendment commands Congress to step aside and allow the underlying crimes to continue.

The most relevant of our prior decisions is *Ferber*, 458 U. S. 747, which concerned child pornography. The Court there held that child pornography is not protected speech, and I believe that *Ferber*'s reasoning dictates a similar conclusion here.

In *Ferber,* an important factor—I would say the most important factor—was that child pornography involves the commission of a crime that inflicts severe personal injury to the "children who are made to engage in sexual conduct for commercial purposes.'" *Id.,* at 753 (internal quotation marks omitted). The *Ferber* Court repeatedly described the production of child pornography as child "abuse," "molestation," or "exploitation." See, *e.g.*, *id.*, at 749 ("In recent years, the exploitive use of children in the production of pornography has become a serious national problem"); *id.*, at 758, n. 9 ("Sexual molestation by adults is often involved in the production of child sexual performances"). As later noted in *Ashcroft* v. *Free Speech Coalition*, 535 U. S. 234, 249 (2002), in *Ferber* "[t]he production of the work, not its content, was the target of the statute." See also 535 U.S., at 250 (*Ferber* involved "speech that itself is the record of sexual abuse").

Second, *Ferber* emphasized the fact that these underlying crimes could not be effectively combated without targeting the distribution of child pornography. As the Court put it, "the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled." 458 U. S., at 759. The Court added:

"[T]here is no serious contention that the legislature

> was unjustified in believing that it is difficult, if not impossible, to halt the exploitation of children by pursuing only those who produce the photographs and movies. . . . The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product." *Id.*, at 759–760.

See also *id.*, at 761 ("The advertising and selling of child pornography provide an economic motive for and are thus an integral part of the production of such materials").

Third, the *Ferber* Court noted that the value of child pornography "is exceedingly modest, if not *de minimis,*" and that any such value was "overwhelmingly outweigh[ed]" by "the evil to be restricted." *Id.*, at 762–763.

All three of these characteristics are shared by §48, as applied to crush videos. First, the conduct depicted in crush videos is criminal in every State and the District of Columbia. Thus, any crush video made in this country records the actual commission of a criminal act that inflicts severe physical injury and excruciating pain and ultimately results in death. Those who record the underlying criminal acts are likely to be criminally culpable, either as aiders and abettors or conspirators. And in the tight and secretive market for these videos, some who sell the videos or possess them with the intent to make a profit may be similarly culpable. (For example, in some cases, crush videos were commissioned by purchasers who specified the details of the acts that they wanted to see performed. See H. R. Rep., at 3; Hearing on Depictions of Animal Cruelty 27). To the extent that §48 reaches such persons, it surely does not violate the First Amendment.

Second, the criminal acts shown in crush videos cannot be prevented without targeting the conduct prohibited by §48—the creation, sale, and possession for sale of depic-

tions of animal torture with the intention of realizing a commercial profit. The evidence presented to Congress posed a stark choice: Either ban the commercial exploitation of crush videos or tolerate a continuation of the criminal acts that they record. Faced with this evidence, Congress reasonably chose to target the lucrative crush video market.

Finally, the harm caused by the underlying crimes vastly outweighs any minimal value that the depictions might conceivably be thought to possess. Section 48 reaches only the actual recording of acts of animal torture; the statute does not apply to verbal descriptions or to simulations. And, unlike the child pornography statute in *Ferber* or its federal counterpart, 18 U. S. C. §2252, §48(b) provides an exception for depictions having any "serious religious, political, scientific, educational, journalistic, historical, or artistic value."

It must be acknowledged that §48 differs from a child pornography law in an important respect: preventing the abuse of children is certainly much more important than preventing the torture of the animals used in crush videos. It was largely for this reason that the Court of Appeals concluded that *Ferber* did not support the constitutionality of §48. 533 F. 3d, at 228 ("Preventing cruelty to animals, although an exceedingly worthy goal, simply does not implicate interests of the same magnitude as protecting children from physical and psychological harm"). But while protecting children is unquestionably *more* important than protecting animals, the Government also has a compelling interest in preventing the torture depicted in crush videos.

The animals used in crush videos are living creatures that experience excruciating pain. Our society has long banned such cruelty, which is illegal throughout the country. In *Ferber*, the Court noted that "virtually all of the States and the United States have passed legislation

proscribing the production of or otherwise combating 'child pornography,'" and the Court declined to "second-guess [that] legislative judgment."[6] 458 U. S., at 758. Here, likewise, the Court of Appeals erred in second-guessing the legislative judgment about the importance of preventing cruelty to animals.

Section 48's ban on trafficking in crush videos also helps to enforce the criminal laws and to ensure that criminals do not profit from their crimes. See 145 Cong. Rec. 25897 (Oct. 19, 1999) (Rep. Gallegly) ("The state has an interest in enforcing its existing laws. Right now, the laws are not only being violated, but people are making huge profits from promoting the violations"); *id.,* at 10685 (May 24, 1999) (Rep. Gallegly) (explaining that he introduced the House version of the bill because "criminals should not profit from [their] illegal acts"). We have already judged that taking the profit out of crime is a compelling interest. See *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.,* 502 U. S. 105, 119 (1991).

In short, *Ferber* is the case that sheds the most light on the constitutionality of Congress' effort to halt the production of crush videos. Applying the principles set forth in *Ferber,* I would hold that crush videos are not protected by the First Amendment.

B

Application of the *Ferber* framework also supports the

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[6] In other cases, we have regarded evidence of a national consensus as proof that a particular government interest is compelling. See *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.,* 502 U. S. 105, 118 (1991) (State's compelling interest "in ensuring that victims of crime are compensated by those who harm them" evidenced by fact that "[e]very State has a body of tort law serving exactly this interest"); *Roberts* v. *United States Jaycees,* 468 U. S. 609, 624–625 (1984) (citing state laws prohibiting discrimination in public accommodations as evidence of the compelling governmental interest in ensuring equal access).

constitutionality of §48 as applied to depictions of brutal animal fights. (For convenience, I will focus on videos of dogfights, which appear to be the most common type of animal fight videos.)

First, such depictions, like crush videos, record the actual commission of a crime involving deadly violence. Dogfights are illegal in every State and the District of Columbia, Brief for United States 26–27, and n. 8 (citing statutes), and under federal law constitute a felony punishable by imprisonment for up to five years, 7 U. S. C. §2156 *et seq.* (2006 ed. and Supp. II), 18 U. S. C. §49 (2006 ed., Supp. II).

Second, Congress had an ample basis for concluding that the crimes depicted in these videos cannot be effectively controlled without targeting the videos. Like crush videos and child pornography, dogfight videos are very often produced as part of a "low-profile, clandestine industry," and "the need to market the resulting products requires a visible apparatus of distribution." *Ferber,* 458 U. S., at 760. In such circumstances, Congress had reasonable grounds for concluding that it would be "difficult, if not impossible, to halt" the underlying exploitation of dogs by pursuing only those who stage the fights. *Id.*, at 759–760; see 533 F. 3d, at 246 (Cowen, J., dissenting) (citing evidence establishing "the existence of a lucrative market for depictions of animal cruelty," including videos of dogfights, "which in turn provides a powerful incentive to individuals to create [such] videos").

The commercial trade in videos of dogfights is "an integral part of the production of such materials," *Ferber, supra,* at 761. As the Humane Society explains, "[v]ideotapes memorializing dogfights are integral to the success of this criminal industry" for a variety of reasons. Humane Society Brief 5. For one thing, some dogfighting videos are made "solely for the purpose of selling the video (and not for a live audience)." *Id.*, at 9. In addition, those

who stage dogfights profit not just from the sale of the videos themselves, but from the gambling revenue they take in from the fights; the videos "encourage [such] gambling activity because they allow those reluctant to attend actual fights for fear of prosecution to still bet on the outcome." *Ibid.;* accord, Brief for Center on the Administration of Criminal Law as *Amicus Curiae* 12 ("Selling videos of dogfights effectively abets the underlying crimes by providing a market for dogfighting while allowing actual dogfights to remain underground"); *ibid.* ("These videos are part of a 'lucrative market' where videos are produced by a 'bare-boned, clandestine staff' in order to permit the actual location of dogfights and the perpetrators of these underlying criminal activities to go undetected" (citations omitted)). Moreover, "[v]ideo documentation is vital to the criminal enterprise because it provides *proof* of a dog's fighting prowess—proof demanded by potential buyers and critical to the underground market." Humane Society Brief 9. Such recordings may also serve as "'training' videos for other fight organizers." *Ibid.* In short, because videos depicting live dogfights are essential to the success of the criminal dogfighting subculture, the commercial sale of such videos helps to fuel the market for, and thus to perpetuate the perpetration of, the criminal conduct depicted in them.

Third, depictions of dogfights that fall within §48's reach have by definition no appreciable social value. As noted, §48(b) exempts depictions having any appreciable social value, and thus the mere inclusion of a depiction of a live fight in a larger work that aims at communicating an idea or a message with a modicum of social value would not run afoul of the statute.

Finally, the harm caused by the underlying criminal acts greatly outweighs any trifling value that the depictions might be thought to possess. As the Humane Society explains:

> "The abused dogs used in fights endure physical torture and emotional manipulation throughout their lives to predispose them to violence; common tactics include feeding the animals hot peppers and gunpowder, prodding them with sticks, and electrocution. Dogs are conditioned never to give up a fight, even if they will be gravely hurt or killed. As a result, dogfights inflict horrific injuries on the participating animals, including lacerations, ripped ears, puncture wounds and broken bones. Losing dogs are routinely refused treatment, beaten further as 'punishment' for the loss, and executed by drowning, hanging, or incineration." *Id.,* at 5–6 (footnotes omitted).

For these dogs, unlike the animals killed in crush videos, the suffering lasts for years rather than minutes. As with crush videos, moreover, the statutory ban on commerce in dogfighting videos is also supported by compelling governmental interests in effectively enforcing the Nation's criminal laws and preventing criminals from profiting from their illegal activities. See *Ferber, supra,* at 757–758; *Simon & Schuster,* 502 U. S., at 119.

In sum, §48 may validly be applied to at least two broad real-world categories of expression covered by the statute: crush videos and dogfighting videos. Thus, the statute has a substantial core of constitutionally permissible applications. Moreover, for the reasons set forth above, the record does not show that §48, properly interpreted, bans a substantial amount of protected speech in absolute terms. *A fortiori,* respondent has not met his burden of demonstrating that any impermissible applications of the statute are "substantial" in relation to its "plainly legitimate sweep." *Williams,* 553 U. S., at 292. Accordingly, I would reject respondent's claim that §48 is facially unconstitutional under the overbreadth doctrine.

* * *

For these reasons, I respectfully dissent.

APPENDIX

As the following chart makes clear, virtually all state laws prohibiting animal cruelty either expressly define the term "animal" to exclude wildlife or else specifically exempt lawful hunting activities.

Alaska	Alaska Stat. §11.61.140(c)(4) (2008) ("It is a defense to a prosecution under this section that the conduct of the defendant . . . was necessarily incidental to lawful fishing, hunting or trapping activities")
Arizona	Ariz. Rev. Stat. Ann. §§13–2910(C)(1), (3) (West Supp. 2009) ("This section does not prohibit or restrict . . . [t]he taking of wildlife or other activities permitted by or pursuant to title 17 . . . [or] [a]ctivities regulated by the Arizona game and fish department or the Arizona department of agriculture")
Arkansas	Ark. Code Ann. §5–62–105(a) (Supp. 2009) ("This subchapter does not prohibit any of the following activities: . . . (9) Engaging in the taking of game or fish through hunting, trapping, or fishing, or engaging in any other activity authorized by Arkansas Constitution, Amendment 35, by §15–41–101 et seq., or by any Arkansas State Game and Fish Commission regulation promulgated under either Arkansas Constitution, Amendment 35, or statute")
California	Cal. Penal Code Ann. §599c (West 1999) ("No part of this title shall be construed as interfering with any of the laws of this state known as the 'game laws,' . . . or to interfere with the right to kill all animals used for food")
Colorado	Colo. Rev. Stat. Ann. §18–9–201.5(2) (2009) ("In case of any conflict between this part 2 [prohibiting cruelty to animals] or section 35–43–126, [Colo. Rev. Stat.], and the wildlife statutes of

	the state, said wildlife statutes shall control"), §18–9–202(3) ("Nothing in this part 2 shall be construed to amend or in any manner change the authority of the wildlife commission, as established in title 33, [Colo. Rev. Stat.], or to prohibit any conduct therein authorized or permitted")
Connecticut	Conn. Gen. Stat. §53–247(b) (2009) ("Any person who maliciously and intentionally maims, mutilates, tortures, wounds or kills an animal shall be fined not more than five thousand dollars or imprisoned not more than five years or both. The provisions of this subsection shall not apply to . . . any person . . . while lawfully engaged in the taking of wildlife")
Delaware	Del. Code Ann., Tit. 11, §1325(f) (2007) ("This section shall not apply to the lawful hunting or trapping of animals as provided by law")
Florida	Fla. Stat. §828.122(9)(b) (2007) ("This section shall not apply to . . . [a]ny person using animals to pursue or take wildlife or to participate in any hunting regulated or subject to being regulated by the rules and regulations of the Fish and Wildlife Conservation Commission")
Georgia	Ga. Code Ann. §16–12–4(e) (2007) ("The provisions of this Code section shall not be construed as prohibiting conduct which is otherwise permitted under the laws of this state or of the United States, including, but not limited to . . . hunting, trapping, fishing, [or] wildlife management")
Hawaii	Haw. Rev. Stat. §711–1108.5(1) (2008 Cum. Supp.) ("A person commits the offense of cruelty to animals in the first degree if the person intentionally or knowingly tortures, mutilates, or poisons or causes the torture, mutilation, or poisoning of any pet animal or equine animal resulting in serious bodily injury or death of the pet animal or equine animal")

Idaho	Idaho Code §25–3515 (Lexis 2000) ("No part of this chapter shall be construed as interfering with, negating or preempting any of the laws or rules of the department of fish and game of this state . . . or to interfere with the right to kill, slaughter, bag or take all animals used for food")
Illinois	Ill. Comp. Stat., ch. 510, §70/13 (West 2006) ("In case of any alleged conflict between this Act . . . and the 'Wildlife Code of Illinois' or 'An Act to define and require the use of humane methods in the handling, preparation for slaughter, and slaughter of livestock for meat or meat products to be offered for sale', . . . the provisions of those Acts shall prevail"), §70/3.03(b)(1) ("For the purposes of this Section, 'animal torture' does not include any death, harm, or injury caused to any animal by . . . any hunting, fishing, trapping, or other activity allowed under the Wildlife Code, the Wildlife Habitat Management Areas Act, or the Fish and Aquatic Life Code" (footnotes omitted))
Indiana	Ind. Code §35–46–3–5(a) (West 2004) (subject to certain exceptions not relevant here, "this chapter [prohibiting "Offenses Relating to Animals"] does not apply to . . . [f]ishing, hunting, trapping, or other conduct authorized under [Ind. Code §]14–22")
Iowa	Iowa Code §717B.2(5) (2009) ("This section [banning "animal abuse"] shall not apply to . . . [a] person taking, hunting, trapping, or fishing for a wild animal as provided in chapter 481A"), §717B.3A(2)(e) ("This section [banning "animal torture"] shall not apply to . . . [a] person taking, hunting, trapping, or fishing for a wild animal as provided in chapter 481A")
Kansas	Kan. Stat. Ann. §21–4310(b)(3) (2007) ("The provisions of this section shall not apply to . . . killing, attempting to kill, trapping, catching or taking of any animal in accordance with the

	provisions of chapter 32 [Wildlife, Parks and Recreation] or chapter 47 [Livestock and Domestic Animals] of the Kansas Statutes Annotated")
Kentucky	Ky. Rev. Stat. Ann. §§525.130(2)(a), (e) (Lexis 2008) ("Nothing in this section shall apply to the killing of animals . . . [p]ursuant to a license to hunt, fish, or trap . . . [or] [f]or purposes relating to sporting activities"), §525.130(3) ("Activities of animals engaged in hunting, field trials, dog training other than training a dog to fight for pleasure or profit, and other activities authorized either by a hunting license or by the Department of Fish and Wildlife shall not constitute a violation of this section")
Louisiana	La. Rev. Stat. Ann. §14:102.1(C)(1) (West Supp. 2010) ("This Section shall not apply to . . . [t]he lawful hunting or trapping of wildlife as provided by law")
Maine	Me. Rev. Stat. Ann., Tit. 17, §1031(1)(G) (West Supp. 2009) (providing that hunting and trapping an animal is not a form of prohibited animal cruelty if "permitted pursuant to" parts of state code regulating the shooting of large game, inland fisheries, and wildlife)
Maryland	Md. Crim. Law Code Ann. §10–603(3) (Lexis 2002) ("Sections 10–601 through 10–608 of this subtitle do not apply to . . . an activity that may cause unavoidable physical pain to an animal, including . . . hunting, if the person performing the activity uses the most humane method reasonably available")
Michigan	Mich. Comp. Laws Ann. §§750.50(11)(a), (b) (West Supp. 2009) ("This section does not prohibit the lawful killing or other use of an animal, including . . . [f]ishing . . . [h]unting, [or] trapping [as regulated by state law]"), §750.50b(9)(a), (b) ("This section does not prohibit the lawful killing or other use of an ani-

	mal, including . . . [f]ishing . . . [h]unting, [or] trapping [as regulated by state law]")
Missouri	Mo. Rev. Stat. §578.007(3) (2000) ("The provisions of sections 578.005 to 578.023 shall not apply to . . . [h]unting, fishing, or trapping as allowed by" state law)
Montana	Mont. Code Ann. §45–8–211(4)(d) (2009) ("This section does not prohibit . . . lawful fishing, hunting, and trapping activities")
Nebraska	Neb. Rev. Stat. §28–1013(4) (2008) (exempting "[c]ommonly accepted practices of hunting, fishing, or trapping")
Nevada	Nev. Rev. Stat. §§574.200(1), (3) (2007) (provisions of Nevada law banning animal cruelty "do not . . . [i]nterfere with any of the fish and game laws . . . [or] the right to kill all animals and fowl used for food")
New Hampshire	N. H. Rev. Stat. Ann. §644:8(II) (West Supp. 2009) ("In this section, 'animal' means a domestic animal, a household pet or a wild animal in captivity")
New Jersey	N. J. Stat. Ann. §4:22–16(c) (West 1998) ("Nothing contained in this article shall be construed to prohibit or interfere with . . . [t]he shooting or taking of game or game fish in such manner and at such times as is allowed or provided by the laws of this State")
New Mexico	N. M. Stat. Ann. §30–18–1(I)(1) (Supp. 2009) ("The provisions of this section do not apply to . . . fishing, hunting, falconry, taking and trapping")
New York	N. Y. Agric. & Mkts. Law Ann. §353–a(2) (West 2004) ("Nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing")
North Carolina	N. C. Gen. Stat. Ann. §14–360(c)(1) (Lexis 2009) ("[T]his section shall not apply to . . . [t]he lawful taking of animals under the jurisdiction

	and regulation of the Wildlife Resources Commission . . .")
North Dakota	N. D. Cent. Code Ann. §36–21.1–01(5)(a) (Lexis Supp. 2009) (" 'Cruelty' or 'torture' . . . does not include . . . [a]ny activity that requires a license or permit under chapter 20.1–03 [which governs gaming and other licenses]")
Oregon	Ore. Rev. Stat. §167.335 (2007) ("Unless gross negligence can be shown, the provisions of [certain statutes prohibiting animal cruelty] do not apply to . . . (7) [l]awful fishing, hunting and trapping activities")
Pennsylvania	18 Pa. Cons. Stat. §5511(a)(3)(ii) (2008) ("This subsection [banning killing, maiming, or poisoning of domestic animals or zoo animals] shall not apply to . . . the killing of any animal or fowl pursuant to . . . The Game Law"), §5511(c)(1) ("A person commits an offense if he wantonly or cruelly illtreats, overloads, beats, otherwise abuses any animal, or neglects any animal as to which he has a duty of care")
Rhode Island	R. I. Gen. Laws §4–1–3(a) (Lexis 1998) (prohibiting "[e]very owner, possessor, or person having the charge or custody of any animal" from engaging in certain acts of unnecessary cruelty), §§4–1–5(a), (b) (prohibiting only "[m]alicious" injury to or killing of animals and further providing that "[t]his section shall not apply to licensed hunters during hunting season or a licensed business killing animals for human consumption")
South Carolina	S. C. Code Ann. §47–1–40(C) (Supp. 2009) ("This section does not apply to . . . activity authorized by Title 50 [consisting of laws on Fish, Game, and Watercraft]")
South Dakota	S. D. Codified Laws §40–1–17 (2004) ("The acts and conduct of persons who are lawfully engaged in any of the activities authorized by Title 41 [Game, Fish, Parks and Forestry] . . . and

	persons who properly kill any animal used for food and sport hunting, trapping, and fishing as authorized by the South Dakota Department of Game, Fish and Parks, are exempt from the provisions of this chapter")
Tennessee	Tenn. Code Ann. §39–14–201(1) (2010 Supp.) (" 'Animal' means a domesticated living creature or a wild creature previously captured"), §39–14–201(4) ("[N]othing in this part shall be construed as prohibiting the shooting of birds or game for the purpose of human food or the use of animate targets by incorporated gun clubs")
Texas	Tex. Penal Code Ann. §42.092(a)(2) (West Supp. 2009) (" 'Animal' means a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal"), §42.092(f)(1)(A) ("It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful . . . form of conduct occurring solely for the purpose of or in support of . . . fishing, hunting, or trapping")
Utah	Utah Code Ann. §76–9–301(1)(b)(ii)(D) (Lexis 2008) (" 'Animal' does not include . . . wildlife, as defined in Section 23–13–2, including protected and unprotected wildlife, if the conduct toward the wildlife is in accordance with lawful hunting, fishing, or trapping practices or other lawful practices"), §76–9–301(9)(C) ("This section does not affect or prohibit . . . the lawful hunting of, fishing for, or trapping of, wildlife")
Vermont	Vt. Stat. Ann., Tit. 13, §351b(1) (2009) ("This subchapter shall not apply to . . . activities regulated by the department of fish and wildlife pursuant to Part 4 of Title 10")
Virginia	Va. Code Ann. §3.2–6570D (Lexis 2008) ("This section shall not prohibit authorized wildlife

	management activities or hunting, fishing or trapping [as regulated by state law]")
Washington	Wash. Rev. Code §16.52.180 (2008) ("No part of this chapter shall be deemed to interfere with any of the laws of this state known as the 'game laws' . . . or to interfere with the right to kill animals to be used for food")
West Virginia	W. Va. Code Ann. §61–8–19(f) (Lexis Supp. 2009) ("The provisions of this section do not apply to lawful acts of hunting, fishing, [or] trapping")
Wisconsin	Wis. Stat. §951.015(1) (2007–2008) ("This chapter may not be interpreted as controverting any law regulating wild animals that are subject to regulation under ch. 169 [regulating, among other things, hunting], [or] the taking of wild animals")
Wyoming	Wyo. Stat. Ann. §6–3–203(m)(iv) (2009) ("Nothing in subsection (a), (b) or (n) of this section shall be construed to prohibit . . . [t]he hunting, capture or destruction of any predatory animal or other wildlife in any manner not otherwise prohibited by law")

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