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LARGE-SCALE FARMED ANIMAL ABUSE AND NEGLECT: LAW AND ITS ENFORCEMENT**INTRODUCTION**

The vast majority of animals that are raised and killed in the United States (and many other countries) for their meat, milk, and eggs are raised in large-scale industrial “factory farm” conditions.² This paper sketches out the issue of factory farming and places it in its proper context as a social justice issue with wide-ranging implications. It then focuses on one area -- the mistreatment of animals and the cruelty and neglect inherent in industrialized animal agriculture. More specifically, the focus of this paper is to evaluate one particular tool to target the ills of factory farming: seeking enforcement of existing laws to address the abuse and neglect of animals on factory farms. There are several types of statutes that address the treatment of farmed animals but this paper will focus mostly on the use of state-level criminal animal cruelty statutes. Historically, factory farms have not been the subject of cruelty prosecutions or other legal enforcement for their mistreatment of animals. However, over the course of approximately the last decade, significant strides have been made whereby advocates have been successful in bringing forth evidence of animal abuse and neglect on factory farms that has resulted in legal enforcement. The developments in this area will be addressed in this paper. Case studies will be used to show the trend in enforcement of animal cruelty laws on behalf of factory farmed animals and how it has progressed, and the weaknesses and obstacles of the law will be highlighted. Finally, proposed changes to the law and an evaluation of the efficacy of this strategy as a technique to combat factory farming and address animal suffering will be made.

***64 I. INDUSTRIALIZED FARMING AS A SOCIAL JUSTICE ISSUE**

This factory farming system is arguably the single largest social justice issue facing our society. While this may seem like an overstatement, it is clear that factory farming conditions are of central importance in the areas of animal treatment, environmental degradation and resource consumption, and human health.³ The magnitude of the problem will inevitably get worse if it continues on the current trajectory without due prioritization of this issue.⁴ This is simply not sustainable for the environment or human health, and it results in enormous suffering for the animals.

A. Animal Treatment

Of all the land animals killed in the U.S., animals raised to be killed for food comprise over 98% of this number. Over 10 billion land animals alone are killed in the U.S. each year for food.⁵ Well over 90% of these are raised in intensively confined and industrialized factory farming conditions.⁶ From an animal advocacy perspective, this means *65 that all of the animals killed in vivisection (100 million), in hunting, trapping, and fur (34,657,000), companion animals (dogs and cats) in shelters (4 million), in entertainment (approximately 20,000),⁷ and all other types of animals killed by humans do not even comprise

2% of the overall number.⁸ For this reason alone, the factory farming issue commands priority in advocating against cruelty and killing of animals.

Factory farming is highly entrenched as the system by which Americans obtain parts or products of animals for consumption. This system has its roots in the post-World War II era, whereby the post-war economy allowed people to purchase more meat per capita, the percentage of Americans who were sustenance farmers dropped, and technological advances allowed industrial means to be applied to agricultural production, including intensive confinement, mechanized treatment, and the beginnings of genetic manipulation of animals to increase their meat, egg, and milk output.⁹ All of these factors contributed to the growth of the industrialization of farming and the increase in demand for animal products, which led to the entrenched industrial factory farming system that is prevalent today.

The treatment of factory farmed animals causes some of the most acute suffering, causes suffering over prolonged periods of time, and is inflicted on these animals as part of the inherent nature of the system. For example, 95 - 98% of eggs come from hens raised in tiny wire “battery” cages,¹⁰ too small for the animals to even spread their wings or lie down comfortably without touching another animal or the sides of their cages.¹¹ The egg industry also kills male chicks as a matter of *66 course soon after they are hatched,¹² cuts off the ends of hens' beaks without anesthetic,¹³ and kills so-called “spent” hens after their approximately 24-month lifetime laying cycle¹⁴ under conditions that are not regulated by federal humane slaughter laws.¹⁵

Poultry killed for their meat account for about 9 billion of the 10 billion animals killed for food.¹⁶ Chickens and turkeys raised for their meat are subject to ailments from years of genetic selection to grow at rapid speeds, including heart problems and broken bones, exacerbated by rough handling and transport,¹⁷ and they are subject to federally unregulated slaughter practices.¹⁸ Per capita consumption of chicken has almost tripled since 1970.¹⁹ These animals have been bred for rapid *67 weight gain to meet this demand.²⁰ They reach slaughter weight-- at the young age of 6-7 weeks--in half the time it took for their counterparts 50 or 60 years ago, and that weight is two-thirds larger than it was in 1950.²¹ Turkeys suffer similar fates, bred to grow so fast that they often have heart attacks and other physiological problems if not slaughtered at a young age,²² and are also often subject to detoeing and debeaking after hatching.²³ There have also been investigations into the artificial insemination process used for turkeys, which is highly invasive.²⁴

The pork industry cuts the tails of piglets, punches out parts of the animals' ears, and castrates the males, all without anesthetic,²⁵ and confines pregnant and nursing pigs in so-called “gestation” or “farrowing” crates, respectively. These are metal crates which restrict them from even turning around.²⁶ Over the course of their lives, pigs can be in these crates for three-five years.²⁷ These crates severely restrict the naturally social and intelligent nature of these animals, and can lead to “insanity”-type behaviors such as pawing, biting, chewing the bars of their cages, etc.²⁸

Livestock such as cattle raised for beef and pigs are subject to long and brutal transport conditions²⁹ and a flawed slaughter system which often results in animals being conscious while they are being slaughtered.³⁰ Pigs are especially prone to severe stress and *68 overheating or freezing from long transport,³¹ and investigations have shown a large degree of injury and death from these conditions.³² Cattle raised for beef are also made to endure crowded, dirty, and unhealthy feedlot conditions before slaughter.³³ Beef cattle are also subject to dehorning, castration, and branding without painkillers.³⁴

Dairy cows frequently experience painful udder infections and other health problems related to constant milking and dirty, crowded conditions.³⁵ They may also be dehorned and/or have parts of their tails cut off without anesthetic.³⁶ They are sent to slaughter to be made into low-grade meat at about the age of 5, after their milk productivity declines. This practice contributes to

the high numbers of “downer” dairy cows on their way to slaughter.³⁷ These animals are often too sick or weak to walk because of the physical toll the dairy industry puts on their bodies. The dairy industry is also the driving force behind the veal industry, because cows must regularly be impregnated to produce milk, and the calves (particularly the male calves) are not commercially valuable to the dairy industry, they are sent to be raised and slaughtered as veal calves.³⁸ Veal calves are severely restricted in their confinement; they are often chained by their necks in wooden stalls where they can barely move for the duration of their 16-week confinement.³⁹ They are also usually kept in the dark, and fed a *69 nutrient-deficient diet to keep them sick their whole lives.⁴⁰ This is done intentionally in order to keep the flesh a certain color.⁴¹

There have been many books and articles written on the horrors of factory farming and the conditions the animals have to endure. Suffice it to say the cruelty inherent in factory farming is endemic to the industry. It is not imprudent to assert that a person eating an animal product in the United States is likely eating from an animal that suffered acutely and over a prolonged period of time. The treatment of animals in factory farms remains one of the gravest and most entrenched issues in this country when it comes to concern over animal cruelty and neglect.

B. Environment

1. Resource Consumption

The issue of industrialized farming is also one of the most important environmental issues facing our society. Nearly half the water consumed in the U.S. is diverted to animal agriculture,⁴² and over two thirds of grain consumed is fed to farmed animals rather than to people.⁴³ “Of all the agricultural land in the U.S., nearly 80 percent is used in some way to raise animals-- this equates to roughly half of the total land mass of the U.S.”⁴⁴ Over 260 million acres of U.S. forest have been cleared to create cropland to grow grain to feed farmed animals.⁴⁵ It takes roughly up to 15 pounds of grain to produce one pound of *70 meat.⁴⁶ One pound of wheat requires 100 times less water to produce than 1 pound of meat.⁴⁷ To illustrate this more concretely, a person can save more water by not eating a pound of beef than by not showering for an entire year.⁴⁸ Clearly, from the perspective of sustainability and resource consumption, meat-eating in modern society is incredibly resource-intensive as compared to plant-based foods, and in fact can be less sustainable than a plant-based diet by an order of magnitude or more.

2. Pollution

Factory farms are also some of the largest sources of environmental pollution in existence. In addition to being the single biggest consumer of water, agriculture for the production of animal products is the single biggest nonpoint source polluter of water.⁴⁹ “Animals raised for food produce 130 times as much excrement as the entire U.S. population, roughly 89,000 pounds per second, all without the benefit of waste treatment systems. According to the Union of Concerned Scientists, animals on factory farms in America produce 20 tons of fecal matter each year for every U.S. household. A pig farm with 5,000 animals produces as much fecal waste as a city of 50,000.”⁵⁰ This pollution can have dramatic and wide-ranging results. For example, the “EPA reports that chicken, hog, and cattle excrement have polluted 35,000 miles of rivers in 22 states and contaminated groundwater in 17 states.”⁵¹ Massive fish kills, a many-miles wide “dead zone” in the Gulf of Mexico *71 at the base of the Mississippi River, and groundwater contamination are all strongly linked to animal agriculture.⁵²

Animal agriculture is also responsible for major air pollution, particularly in feedlot areas.⁵³ The massive amount of excrement produced by these farms emits toxic gases such as hydrogen sulfide and ammonia into the air. “The EPA reports that roughly 80 percent of ammonia emissions in the United States come from animal waste ... the meat and dairy industries often knowingly add to the air-quality crisis. When the cesspools holding tons of urine and feces get full, factory farms will frequently get around water pollution limits by spraying liquid manure into the air, creating mists that are carried away by the wind.”⁵⁴

3. Global Climate Change

Factory farming is a central driving force in perhaps the most politically complex and potentially damaging modern environmental issue: global climate change. A study done by the University of Chicago indicates that the single largest thing an individual can do to combat global warming is to adopt a plant-based diet,⁵⁵ and a study done by the United Nations⁵⁶ indicates that livestock production is responsible for 18% of the total greenhouse gas emissions.⁵⁷ The magnitude of the impact the animal agriculture industry has on greenhouse gases makes sense when one considers the forces behind bringing animal products to the American table. Fossil fuel-based feed fertilizers, transport, packaging, and storage of feed, housing and transport of live animals, additional transport, packaging, and (cold) storage of final product add to the CO₂ output significantly, not to mention the inefficient use of grain and land discussed above.

*72 4. Biodiversity Loss

Because of the heavy and increasing demand Americans have for animal products, feed and animals are often produced in other countries. The landscape of the U.S. is largely already devoted to feeding agricultural animals, discussed *supra*. So in order to feed the growing demand, large swaths of land on other continents are being destroyed in order to raise animals or grain to be fed to animals. “From tropical rain forests in Brazil to ancient pine forests in China, entire ecosystems are being destroyed to fuel our addiction to meat. According to scientists at the Smithsonian Institute, the equivalent of seven football fields of land is bulldozed every minute to create more room for farmed animals.”⁵⁸ Livestock grazing is also the number one cause of threatened and extinct species.⁵⁹ Add this to the threat to species loss from global climate change, and it is clear that the impact of animal agriculture on the world's ecosystems is dire.

C. Human Health

1. Hunger

Factory farming is one of the most deleterious forces in the fight to protect human health. The industrialized animal agriculture system is directly implicated in the problem of hunger across the globe, as well as the threat to future sustainability. More than 70 percent of the grain and cereals that we grow in this country are fed to farmed animals.⁶⁰ “The world's cattle alone consume a quantity of food equal to the caloric needs of 8.7 billion people--more than the entire human population on Earth. About 20 percent of the world's population, or 1.4 billion people, *73 could be fed with the grain and soybeans fed to U.S. cattle alone.”⁶¹ According to *The Guardian*, “It now seems plain that [a vegan diet] is the only ethical response to what is arguably the world's most urgent social justice issue.”⁶²

2. Chronic Diseases

Consumption of animal products has been linked to several of the biggest killers of Americans, including heart disease, some cancers, stroke, diabetes, high blood pressure and cholesterol, obesity, osteoporosis, and others.⁶³ In addition, chemicals such as pesticides, hormones, antibiotics, and other substances in animal feed become many times more concentrated in the flesh. Intensive confinement increases the need particularly for antibiotics and insecticides. Because of this, meat consumption increases risk of reproductive defects, antibiotic resistance, some cancers, immune diseases, learning disabilities, and other problems.⁶⁴ For example, pesticide residue is about 7 times⁶⁴ more concentrated in meat and dairy products than the highest plant product (oils and shortening).⁶⁵

3. Infectious Diseases

The methods of raising animals in factory farms both create and exacerbate the risk of infectious food-borne illnesses. Traditional food-poisoning due to E. Coli, salmonella, etc. are all a result of animal agriculture. E. Coli, for example, is a bacteria only found in the intestines of human and nonhuman animals.⁶⁶ It is feces, therefore, that contains the bacteria, and that fecal contamination is the result of the contamination of vegetable products (e.g. spinach) that leads to possible illness. In addition, these infections are made worse due to drug-resistant strains created by the intensively confined conditions at *74 factory farms, and the prevalent use of antibiotics.⁶⁷ For example, regarding the effects of a drug-resistant strain of E.Coli, Brienne Kiner, mother of an infected ten year old who developed an E.Coli infection after eating hamburger, stated:

“Her intestines swelled to three times their normal size. She fell into a deep coma that lasted forty days. All of her body organs swelled ... The doctor rushed her into emergency surgery to remove her colon ... At one point her heart stopped beating, but the doctor revived her. Her heart was so swollen it was like a sponge. It bled from every pore. The toxins shut down [her] liver and pancreas. Several times her skin turned black for weeks ... She had a[untreatable] brain swell ... EEGs revealed thousands of grand mal seizures, which had caused blood clots in her eyes. Then the neurologists told us she was essentially brain dead” She survived, but with “heart disease, brain damage, diabetes, and seriously scarred lungs. She had only one third of her liver” and has to be on a feeding pump at night because her stomach lining was severely burned, so she can only eat small amounts at a time.”⁶⁸

Other infectious diseases are directly linked to factory farming as well. The H1N1 flu virus' origins are linked to factory farming,⁶⁹ and the intensive confinement conditions of modern factory farms increase the risk of flu viruses becoming more contagious and more deadly.⁷⁰ As we confine animals, and as we continue to demand animal products for consumption as food, we continue to negatively impact human health.

D. Solutions

A variety of approaches have been developed to address the issues raised by factory farming. Veganism and vegetarianism are the most obvious and basic ways a person can elect not to support factory farming. This sort of boycott of animal products is key to effecting tangible change, as is providing educational and other resources to help encourage the growth of vegetarianism and veganism, and to encourage *75 a reduction in the consumption of animal products generally. Additional tools, however, are also required to target a problem of such magnitude. Advocacy groups have used a variety of tools, including humane education, corporate campaigning, outreach to restaurants and other businesses, social network-building, the creation and maintenance of animal sanctuaries, investigations into factory farming practices, campaigns to get healthy plant-based items in schools, and a variety of other methods to combat factory farming.

II. ANIMAL LAW AND FACTORY FARMING

In addition to the tools above, the law has increasingly been used to address factory farming practices. For example, legislation and lobbying on animal treatment has been rapidly growing and has had some major successes, environmental laws have been used to target the pollution created by factory farms, nuisance suits have been used against factory farms, food safety and contamination laws have been enforced, false advertising laws have been used to target misleading advertising about animal treatment on food products, among others. All of these tools are promising and have created important and tangible strides in the fight against factory farming over the last decade or so. The focus of this paper, however, is on the use of one particular legal tool: enforcement of laws to combat the abuse and neglect of animals on factory farms. As discussed *infra*, the legal landscape as applied to farm animals is not very strong, but the use of the existing laws to target mistreatment of animals is a growing and promising avenue.

A. Legal Landscape as it applies to Farmed Animals

1. Federal Laws

There are no federal laws that govern the on-farm treatment of farmed animals. That is to say that no federal statutes or regulations govern the way that animals are treated from the time they are born or hatched to the time they are sent off to be slaughtered. There are only three federal laws that even apply to farmed animals at all.

First, the Humane Methods of Slaughter Act (HMSA) governs the methods by which livestock are to be slaughtered.⁷¹ Theoretically, it is meant to require animals be rendered insensible to pain before they are *76 slaughtered,⁷² but it is limited in its effectiveness because (1) it has an allowance for ritual slaughter that does not require insensibility to pain,⁷³ (2) in practice the methods used to render animals insensible to pain often do not work,⁷⁴ (3) there is no private right of action for enforcement,⁷⁵ (4) and it does not apply to poultry, which represent approximately 90% of the animals slaughtered for food in the U.S., discussed *supra*.

Second, the Twenty-Eight Hour Law, which was last amended over 100 years ago, is intended to require that livestock that are transported by common carrier in a vehicle for more than 28 consecutive hours have at least five hours of rest and be provided food and water.⁷⁶ However, there are significant problems and restrictions in this law as well. First, the USDA (the agency that was tasked with the law's enforcement) had for decades interpreted the word “vehicle” to not apply to trucks, despite the fact that over 90% of the livestock transported in this country are transported by truck.⁷⁷ This was changed as a result of a petition in 2005 by the Humane Society of the United States, Compassion Over Killing, and Animals' Angels; the latter two of these groups conducted investigations confirming that animals are in fact transported for much longer than 28 hours without food, water, or rest, and that this appears to be common practice.⁷⁸ As a result of this petition, the USDA announced that it reversed its interpretation of the definition of “vehicle” and that the Law now applies to truck transport as well.⁷⁹ Even with this victory, however, *77 negating the exclusion of truck transport from coverage, the Twenty-Eight Hour Law has apparently not been enforced for over 60 years. Lastly, the penalties for violations are negligibly small.⁸⁰

Third, the Animal Welfare Act⁸¹ technically does have farmed animals in its purview. However, it only applies to these animals if they are being used for research, which of course is a tiny percentage of all the farmed animals raised and killed in the U.S., and does not address the farming practices issue.⁸²

There are other laws that apply to the regulation of the agriculture industry, but they do not apply to the treatment of animals; they mainly concern food safety, sanitation, and labeling.

2. State Laws

Because of the limitations of the federal laws, it is important for advocates to understand and utilize tools at the state level as well as the federal level, to whatever extent possible. The most directly applicable type of state law to the treatment of farmed animals is state-level animal cruelty law. However, as applied to farmed animals, state cruelty laws pose substantial hurdles for animal advocates seeking their enforcement.

3. Substantive Hurdles

Every state has a criminal animal cruelty law,⁸³ generally setting out conduct that constitutes animal cruelty, often with categories for greater and lesser penalties, defining certain terms, and frequently including a section exempting certain behavior

from coverage by the law. The exemptions are particularly important in understanding how these laws apply to factory farming conditions. In approximately 37 states, there are exemptions for things such as “common” or “normal” farming practices.⁸⁴ This means that no matter how much suffering a *78 practice inflicts upon animals, if it is something done commonly in the industry, it is per se not cruel under the law.⁸⁵ In addition to the common farming exemptions, the definitions sections of these laws sometimes limit their applicability to farmed animals.⁸⁶ Importantly, the way the substantive offenses are worded also often present difficulty in using them to target factory farming practices. For example, the term ‘neglect’ is often poorly defined, making it unclear how long, for example, an animal must be left without access to food or water before there is a violation. Additionally, there are rarely published cases on these statutes that apply to farmed animals, and the ones that do apply are often very old.

4. Procedural Hurdles

In addition to the substantive limitations of the criminal animal cruelty laws, the vast majority of these state laws are exclusively criminal in nature.⁸⁷ As a general matter, therefore, their enforcement is largely dependent on a prosecutor agreeing to pursue the case. There are some limited avenues for private individuals to encourage or have some hearing on animal cruelty issues, and there are a significant number of states where local Humane Societies or SPCAs have some law enforcement authority, although the extent of that authority varies.⁸⁸ In the vast majority of states, however, the ultimate authority rests with the prosecutor's office, and their commitment to prosecuting any given case is key under existing laws.

*79 5. Fact-Gathering Hurdles

The abuses at factory farms take place largely behind closed doors. This could be seen as one of the core reasons why the factory farming system is allowed to propagate in a society where 93% of the population opposes the suffering of animals raised for food, and 90% oppose factory farming when asked their opinion.⁸⁹ The secretive and hidden nature of the realities of factory farming also presents significant difficulties in obtaining evidence from these facilities to encourage the enforcement of these laws.

In addition, recent attempts have been made to quell information-gathering on factory farms even further. Three states introduced bills in quick succession that would criminalize photographing a farm, among other similar prohibitions clearly targeted at preventing anyone from accessing factory farms and publicizing the truth about their operations. Florida was the first of these three states to introduce such a bill,⁹⁰ which seeks to criminalize the photographing or recording of a farm without the owner's written consent. Iowa's bill was introduced next, on March 2, 2011 and then amended on March 15, 2011. An amended version of the bill was passed by the Iowa House on March 17, 2011.⁹¹ The Iowa bill as passed by the House would ban “animal facility interference,” among other things, which is defined in part as “Produc[ing] a record which reproduces an image or sound occurring at [an] animal facility” and “Possess[ing] or distribut[ing]” such a record, as well as gaining entry by false pretenses.⁹² An amended version of the bill is still pending in the Iowa Senate.⁹³ The Minnesota bill was *80 modeled on the Iowa bill and has not been debated in either the Minnesota House or Senate as of the time of this writing.⁹⁴

These bills indicate a desire to squelch public awareness of the realities of factory farming and to prevent the types of investigations discussed in this paper, as well as the legal consequences that follow from these investigations. These bills, if they were to become law, would severely infringe upon the public's ability to learn of these abuses and the first amendment rights of animal advocates, media outlets, and anyone who is interested in obtaining or disseminating this important information.

C. Cases of Enforcement against Factory Farms

Regardless of the difficulties and flaws these laws present, there have been a significant number of cases in recent years whereby advocacy groups -- through their investigations of factory farms and their encouragement of legal enforcement --

have successfully garnered enforcement of laws against factory farms and their owners, workers, and managers based on the documented mistreatment of animals. The following cases are divided into two loose categories: egregious cruelty of workers and cruelty in day-to-day farming operations.

1. Egregious Cruelty of Workers

There has been an evolution of these cases, and they can be categorized by cases that (1) are based on the egregious or sadistic cruelty of workers that is ostensibly not directly related to the agricultural practice at hand, and (2) cases that are based on the cruelty and neglect inherent in these farms' daily operations and management. People for the Ethical Treatment of Animals (PETA) deserves much of the credit for breaking ground on the issue of obtaining enforcement for cruelty at factory farms, and particularly for the egregious cruelty category. Several of PETA's cases in particular, as well as cases from other groups, are worth noting here, all of which are based on investigations uncovering egregious abuse to farmed animals.

***81 i. PETA: North Carolina, Belcross Farms Pigs: First Felony Indictment for Factory Farm Abuse**

In late 1998-early 1999, a PETA investigation uncovered extensive abuse by pig farm workers to the animals in their care.⁹⁵ Among the many disturbing incidents documented by the investigation were incidents of workers “beating and bludgeoning pregnant sows with a wrench, ramming an iron pole a foot deep into mother pigs' rectums and vaginas, and sawing off the legs of the pigs and skinning them while they were still completely conscious and squealing in agony and terror.”⁹⁶ As a result of PETA's efforts, felony indictments were handed down against three of the workers and a manager responsible for this abuse. This was the first time that felony charges were brought as the result of abuse to farmed animals.⁹⁷ Each of these employees was convicted, and one of the three served jail time for the abuse.⁹⁸

The Belcross investigation and animal cruelty took place in North Carolina, which is the second-largest pork industry state in the nation.⁹⁹ North Carolina's animal cruelty law is somewhat unusual in that it has a civil law that parallels its criminal law.¹⁰⁰ Both versions of the North Carolina cruelty statutes include language in them apparently meant to exempt certain farming practices from coverage under the law.¹⁰¹ It is unclear by looking at these exemptions, however, what they cover specifically. The Belcross case, however, by using the criminal law ***82** successfully to obtain convictions, indicates that a prosecutor was confident that -- at the very least -- egregious cruelty to animals is not exempted from the law, and that industrial farming is held to the standards of the criminal cruelty statute. It also indicates that the abusers (and possibly their attorneys) in this case did not seek to challenge this basic assumption that farmed animals are protected by the cruelty laws, even under the stringent criminal standard and the burden the prosecutor carried (of course the burden is even lower for the civil version of the law, so these principles should apply there too). The court apparently agreed with this interpretation of the cruelty law, enough for the charges to result in convictions. This case helped establish a basic yet important concept: animal cruelty laws can and should cover abuse to animals on commercial farms.

ii. PETA: Oklahoma, Seaboard Pigs: First Felony Plea for Factory Farm Abuse

PETA was able to procure felony charges just two years later in 2001, as a result of an investigation of Seaboard Farms, a pig facility in Oklahoma.¹⁰² The investigation revealed repeated beating, kicking, bludgeoning, and other violence toward these animals. The manager of the facility was charged with three felony counts of cruelty to animals for bludgeoning pigs with an iron rod.¹⁰³ He entered into a plea agreement, which is sealed, but this marks “the first case in U.S. history in which a farmer pleaded to felony cruelty to animals for injuring and killing animals raised for food.”¹⁰⁴ Similarly to Belcross, this further indicates that animals on factory farms are covered by the animal cruelty laws, and that these laws can and should be enforced on their behalf.

1. PETA: West Virginia: Pilgrim's Pride (KFC Supplier) Chicken Slaughterhouse: Grand Jury Presentation but No Indictment

In 2004, PETA investigated a chicken slaughterhouse in West Virginia owned by Pilgrim's Pride, which supplied chicken to KFC. The investigation revealed widespread egregious abuse, including stomping, *83 kicking, and slamming chickens against the wall, ripping beaks off, “twist[ing] their heads off, sp [itting] tobacco into their eyes and mouths, spray-paint[ing] their faces, and squeeze[ing] their bodies so hard that the birds expelled feces--all while the chickens were still alive.”¹⁰⁵

PETA urged enforcement of West Virginia's criminal animal cruelty law, which prohibits “cruelly mistreat[ing]”¹⁰⁶ and “intentionally tortur[ing]”¹⁰⁷ an animal. PETA argued for the enforcement of these laws and stated their intention to use West Virginia's mandamus provision, which allows a private party to file a mandamus action to bring a case before the grand jury.¹⁰⁸ In response, the prosecutor brought the case before the grand jury but the grand jury did not indict.

This case again underscores the prevalence of shocking animal cruelty at factory farms. It is unfortunate that the grand jury did not indict, but West Virginia's mandamus provision allowing a private party to push for instituting criminal proceedings proved to offer a second chance at prosecution here where otherwise the prosecutor would have simply elected to refuse to prosecute the case.¹⁰⁹ These procedural avenues allowing some opportunity beside pure prosecutorial discretion are important tools to use in seeking enforcement in these cases.

2. PETA: North Carolina, Murphy Pig Farms (Smithfield Supplier): Criminal Charges filed against Two Workers for Abuse to Pigs

In 2007, PETA investigated a North Carolina Pig Farm called Murphy Family Ventures, LLC, which is a supplier to the largest pig company in the U.S., Smithfield Foods. Documented abuse included dragging pigs by their snouts, ears, and legs before killing them, beating pigs with a metal rod, using fingers to gouge pigs' eyes, untreated cysts, sores, and a uterine prolapse, and even “a farm supervisor admitted that he violently beat pigs, saying of one that he ‘cut the sh** out of his *84 God damn nose with a f***ing gate rod,’” among other abuses.¹¹⁰ PETA successfully sought enforcement of North Carolina's criminal animal cruelty law against two of the workers responsible for this abuse. Six charges were filed against one of the workers for his dragging and beating of the pigs. This worker reportedly fled after being served, and another worker was charged but was never located for service and reportedly fled the state.¹¹¹

This case is interesting because it further underscores the point that the North Carolina law (discussed *supra*) does not preclude enforcement of the cruelty law for cruelty inflicted on farmed animals. It is also particularly interesting to note that while the cruelty here included a lot of egregious -- and particularly violent and sadistic -- incidents of animal cruelty, the line between “egregious” and “institutionalized” cruelty is blurred. The cruelty charges were based on the more violent incidents of abuse as well as the dragging of the animals to be killed. The dragging was arguably done for “purposes of production of livestock” or “conducted for the primary purpose of providing food for human or animal consumption”¹¹² -i.e. as part of the workers' jobs, and not merely gratuitous violence. This indicates that it is reasonable to interpret the North Carolina law's farming exemptions as not sweepingly broad. Rather, North Carolina law can criminalize conduct that is done as part of a person's job on a factory farm, at least when that conduct is done violently. The blurring of the line between egregious and institutionalized abuses is discussed *infra*.

iii. PETA: Iowa, Pig Farm (Hormel Supplier): 22 Counts of Animal Cruelty against Pig Farm Workers and a Manager for Animal Cruelty

Another PETA pig farm investigation -- this time in Iowa in 2008, at a facility that supplies Hormel -- resulted in a total of twenty-two criminal charges against six workers at the facility, including a manager and a supervisor.¹¹³ Fourteen of these 22 charges were aggravated misdemeanors, which are the stiffest possible charges for animal *85 cruelty in Iowa.¹¹⁴ Five of the six employees pled to the criminal charges.¹¹⁵ The abuse here was particularly violent, of the ilk uncovered in the other PETA pig farm investigations, including multiple beatings of pigs with metal rods, sticking clothespins into pigs' eyes and faces, and “[a] supervisor kicked a young pig in the face, abdomen, and genitals to make her move and told PETA's investigator, ‘You gotta beat on the bitch. Make her cry.’”¹¹⁶

This further underscores the widespread nature of this vicious and violent abuse. It is also encouraging that the animal cruelty laws were enforced against these abusers in Iowa, which is the largest pig-producing state,¹¹⁷ and that they were used to their full capacity, at least on 14 of the counts.

iv. PETA: West Virginia, Aviagen Turkeys: First felony indictments for cruelty to farmed birds; first cruelty convictions of turkey factory farm workers

PETA also successfully uncovered abuse that led to the first felony indictments for cruelty to farmed birds, and the first cruelty convictions for workers on a turkey farm.¹¹⁸ The investigation took place in West Virginia in 2008, and covered several locations of Aviagen's turkey farms.¹¹⁹ The investigation uncovered workers stomping on turkeys' heads, breaking their necks, and shoving feces and feed into their mouths, among other abuses.¹²⁰ The grand jury indicted three workers for this cruelty with 19 indictments, 11 of which were for felony charges.¹²¹ This marked the first felony indictments for cruelty to farmed birds. All three of these workers pled guilty to misdemeanors for this abuse.¹²² One interesting wrinkle of this case is that because the abuse took place over several counties, the workers were indicted for *86 this cruelty in two separate counties.¹²³ One of these workers, Scott White, served jail time for cruelty in one of these counties and then was charged in another county. He was indicted in one county on one felony count and he pled guilty to one misdemeanor, and was sentenced to one year of home confinement, a \$500 fine, and one hundred hours of community service; he is also banned from residing with or possessing animals for five years under West Virginia law.¹²⁴ Another worker, Walter Hambrick, was also indicted in both counties.¹²⁵ In Greenbrier County, Hambrick's sentence was merely 18 months probation -- and no jail time -- but he cannot be employed in a position where he will have contact with animals during this time, nor can he reside with or possess animals for five years.¹²⁶ In Monroe County, Hambrick was indicted on three felony counts and pled guilty to two misdemeanors; the prosecutor agreed that his sentence could be served concurrently with the sentence in Greenbrier County.¹²⁷ At the time of this writing, the sentence has not yet been handed down.¹²⁸ The third worker, Edward Gwinn, pled guilty and was sentenced to six months home confinement.¹²⁹ He is also banned from “living with, owning, or working with animals for five years.”¹³⁰

West Virginia's animal cruelty law is a criminal law which prohibits certain types of cruelty, including cruel mistreatment, abandonment, and torture, among other things.¹³¹ West Virginia's law is not particularly out of the ordinary, but the fact that there was a felony prosecution for abuse -- and particularly for abuse to birds -- in a major agricultural state, indicates the vitality of animal cruelty laws as tools and the need to pursue prosecutions like this in the future. One other *87 point of note here is that West Virginia law's banning of these workers from living with, working with, or owning animals for five years is the type of remedy that advocates should be seeking on top of traditional criminal remedies, whether the state statute sets forth that as an optional requirement or not. Otherwise, it may be all too easy for these people to perpetrate their abuse elsewhere.

v. Mercy For Animals: Conklin Dairy Farms: Worker Charged with 12 Counts of Animal Cruelty

In early 2010, a Mercy For Animals investigation of Ohio's Conklin Dairy Farms uncovered vicious and sadistic abuse of cows and calves used in the dairy industry. The investigation revealed abuse to calves that included repeated and violent punching,

body slamming them to the ground, throwing and pulling them by their ears, and bragging about beating them to death.¹³² Abuse to cows included routine stabbing with pitchforks in the face, legs, and stomach, punching in the udders, beating them in the face with crowbars, kicking downed cows in the face and neck, “twisting cows’ tails until the bones snapped,” and “bragging about stabbing, dragging, shooting, breaking bones, and beating cows and calves to death.”¹³³ Some of these actions were “encouraged and carried out by the farm’s owner.”¹³⁴

Directly following the investigation, Mercy For Animals sought prosecution for the documented animal cruelty through the City Prosecutor’s Office of Marysville, Ohio.¹³⁵ Charges were filed almost immediately against a worker at Conklin for his role in the abuse, who plead not guilty.¹³⁶ These charges were relatively extensive -- he was charged with twelve counts of cruelty to animals.¹³⁷ He plead guilty to 6 of these counts and was fined \$1,000, a penalty which he could alternatively satisfy by performing community service, sentenced to 18 months in jail, have no contact with animals for three years and attend a rehabilitation course. Unfortunately, more than half his sentence was *88 suspended.¹³⁸ In addition, these were misdemeanor cruelty charges, which is the maximum that can be charged under Ohio law for cruelty to farmed animals.¹³⁹ Also unfortunately, the prosecutor’s office declined to file charges against the owner of the farm, Gary Conklin, who is cited in media reports denying that the video is reflective of the practices on his farm, despite the extensive documentation as part of a lengthy MFA investigation.¹⁴⁰ Ohio law prohibits torturing, unnecessarily or cruelly beating, needlessly mutilating or killing, and carrying and conveying animals in a cruel or inhuman manner, among other acts and omissions.¹⁴¹ The evidence MFA obtained falls very squarely within the purview of this law. In fact, these are likely the types of actions most people envision when they think of animal cruelty.

The immediate and relatively high number of charges filed against the abusive worker here is highly encouraging, and perhaps indicative of a trend toward taking cases like these more seriously. In fact, late May and early June 2010 marked several important milestones in targeting factory farm animal cruelty.¹⁴² In addition, during the time the Conklin case was being publicized, a major effort was underway, led by HSUS and other groups, to institute a ballot campaign in Ohio to require minimum standards of care for farmed animals including space adequate for them to turn around without touching another animal or the sides of their enclosures.¹⁴³ This political backdrop likely added to the impact of the Conklin case and perhaps contributed to its widespread publicity. The ballot initiative effort ended in a settlement between the groups organizing the effort and big agriculture industry *89 interests entering into a settlement which creates tangible improvements for animals without having to go through a costly and risky ballot initiative process.¹⁴⁴ The agreement does not obtain everything sought by the ballot initiative -- notably requiring only a ban on new construction of battery cages rather than an outright ban on them -- but it obtains more sweeping and tangible changes in other areas than the ballot initiative would have.¹⁴⁵ In addition, this settlement is set to prevent a 6 million hen battery cage facility from opening in Ohio.¹⁴⁶ This is a uniquely large and sweeping settlement.¹⁴⁷ While the Conklin case and the ballot initiative and resulting settlement are not officially related to each other, it would be difficult to argue that the Conklin case did not have a significant impact on public opinion surrounding the ballot initiative process; in fact it very likely influenced the opposition’s willingness to settle on the issue.

Perhaps the most noteworthy outcome of the Conklin case, however, is the widespread public outrage at the abuse on Conklin Dairy Farms. The investigation video was seen by countless people, and garnered widespread media attention. Celebrities and other prominent *90 figures expressed their dismay at the cruelty MFA uncovered.¹⁴⁸ The extreme and egregious nature of the cruelty undoubtedly contributed to this. But it is also possibly indicative of a greater public consciousness and willingness to care about the treatment of farmed animals. This type of dawning mainstream awareness is relatively recent, perhaps due in part to movies like *Food, Inc.* and *Fast Food Nation* (which was also a book), books like Johnathan Safran Foer’s *Eating Animals* and Micheal Pollan’s *Omnivore’s Dilemma*, as well as legislative efforts like Proposition 2 in California and other ballot initiatives in recent years.¹⁴⁹ Many of these (with the notable exception of *Eating Animals*) do not directly advocate veganism, and rather offer less feasible and less effective solutions, or offer no comprehensive solution at all.¹⁵⁰ However they

are bringing these issues into the public consciousness in a way that allows them to be receptive and to understand at least some semblance of the nature and scale of the factory farming problem. This may be part of the reason for the widespread outrage at the cruelty at Conklin Dairy Farms, which is highly encouraging. Still, the egregious nature of this cruelty may prevent many members of the public from questioning the very nature of dairy production and whether they would find it to be cruel. An investigation showing institutionalized cruelty might be more likely to result in people questioning their support of the industry as a whole. At the same time, the egregious nature of the cruelty here may allow people to identify with these animals and lay the groundwork for a more sophisticated understanding of the cruelty inherent in the system in the future.

***91 2. Egregious Cruelty in Context**

The above cases are examples of animal cruelty which was ostensibly not part of the workers' job. That is, the companies in these cases often claim that these workers were acting on their own, and were not committing these abuses at the behest of the corporation. The veracity of this claim is arguable at best. One can imagine that if a job involves repeated killing, institutionalized infliction of suffering en masse (discussed in further detail *infra*), and/or required “care” of 100,000 animals or more,¹⁵¹ a factory farm employee may become desensitized to the violence and suffering inherent in his or her job. It is not much of a stretch to imagine an inherently violent workplace leading to the atrocities described above. In fact, the entire system by which we as a society exploit animals can be attributed at least in part to this mechanism of desensitization and normalization of violence. These workers may come into the position thinking of these animals as objects rather than feeling beings,¹⁵² and that viewpoint may be exacerbated by the way in which the animals are treated by the system -- as economic production units. In addition, workers at factory farms work under notoriously bad conditions.¹⁵³ There is a very high worker turnover rate, and factory farms have been known to hire undocumented immigrants for these low-wage manual labor positions;¹⁵⁴ these are people who likely have little other choice in employment. All of these factors may contribute to the type of violence and apparent sadism toward farmed animals evidenced in the cases above. The above incidents of egregious cruelty are not isolated examples: many investigations by animal advocacy groups over the years have revealed horrific abuses by factory farm workers.¹⁵⁵

***92** Regardless of the extent to which the violence in the above cases is attributable to the violence and disregard for sentient life inherent in the work of factory farms, the above cases mark an important watershed moment in using the law to target the animal abuse on factory farms. They establish that industrial farms are not exempt from the animal cruelty laws, and that prosecutors apparently agree with the idea that these operations have a duty to each and every animal in its care. While this may seem like a basic concept, factory farmers have made comments that seem to indicate they do not believe their conduct is subject to animal cruelty laws.¹⁵⁶ These cases indicate otherwise, which provides a major foothold for the movement toward enforcement of laws on behalf of these abused animals.

3. Cruelty in Day-to-Day Factory Farming Operations

The egregious cruelty cases establish that factory farmed animals should and do fall within the scope of legal protection, which is a vital point. However, animals raised on factory farms must endure systematic abuse and prolonged suffering as a matter of course given the nature of the factory farming system and its practices.¹⁵⁷ If the law is to be used effectively as a tool to protect these animals from abuse and neglect, the daily operations of factory farms and the practices purposely, wantonly, or negligently done by factory farmers must be targeted. While most state laws have some sort of exemption which carves out protection for industrial farming when the practices are “common” or “normal” in the industry,¹⁵⁸ suffering and waste is an inherent part of the factory farming industry, and it is worthwhile to use every tool available to target this problem. For this reason, the next phase in factory farm anti-cruelty advocacy must be targeting the worst suffering experienced by the largest numbers of animals over prolonged periods of time. Animal cruelty laws and other laws present valuable ***93** opportunities to target this abuse. Actual cases targeting the cruelty inherent in day-to-day factory farm operations are discussed below.

i. Pasado Safe Haven: Amberson Egg Farm: First Conviction for Factory Farm Neglect

In 2000, Keith Amberson, an egg farmer in Washington State, decided to close down his battery egg operation, which held about 50,000 hens.¹⁵⁹ When he closed the doors, he simply left the live hens in the facility to languish and die from thirst, starvation, or disease.¹⁶⁰ The environmental issues it created attracted the attention of a local reporter. “After weeks of starving and dehydrating the hens, an environmental disaster soon began: The hens started laying shellless eggs, then they laid just blood. Then they started dying by the hundreds, and rats infested the barns. A slurry--knee deep--of manure, blood, and shellless eggs, poured from the farm into a nearby creek, causing E-coli form levels, in a formally pristine lake, to swell.”¹⁶¹ The reporter contacted nonprofit animal rescue and sanctuary Pasado Safe Haven, which then documented some of this neglect and used it to file cruelty charges through the sheriff's department.¹⁶² Pasado Safe Haven also rescued many of the living birds, and some were taken to other rescues.¹⁶³ At first, the prosecutor's office refused to prosecute because Washington State University experts indicated to the prosecuting attorney that it was common practice in the industry to starve chickens for up to 22 days and that it was acceptable to deprive them of water for up to two days; this apparently caused the prosecutor to believe there was no violation of Washington's animal cruelty law, presumably because it fell within the common practices exemption.¹⁶⁴ However, this *94 position was eventually reversed and Keith Amberson was charged with second-degree animal cruelty.¹⁶⁵ He was not charged with first degree animal cruelty because the prosecutor apparently did not think this met the intent requirement for that offense.¹⁶⁶ Amberson plead guilty and was sentenced to two years probation, a \$500 fine, a 90 day suspended jail sentence, 200 hours of community services, and was prohibited from owning, controlling, or possessing farm animals during his probation.¹⁶⁷ For a variety of reasons, Amberson's facility went into foreclosure and is no longer in operation.¹⁶⁸

This case marks the first time a factory farmer was convicted for neglect. This case once again blurs the line between egregious and institutionalized cruelty: while the neglect here was likely not motivated by a violent or sadistic attitude toward the animals, it caused massive amounts of suffering and was done in a highly reckless and egregious manner. It must have been glaringly obvious to Mr. Amberson that abandoning his hens would cause them painful and slow deaths, but the prosecutor did not consider this to rise to the level of intentional cruelty. Still, it is encouraging that this case was prosecuted, and this case indicates that even when factory farm neglect affects a large number of animals -- and even may be considered part of a commonly accepted practice -- it can and should be the basis of successful criminal prosecution.

ii. Farm Sanctuary: ISE Egg Farm's Live Hens on a Dead Pile: Conviction for Factory Farm Neglect, Later Overturned

In 2000, a Farm Sanctuary employee investigated an ISE America egg facility in New Jersey.¹⁶⁹ This was a large-scale farm which *95 employed battery cages and had over a hundred thousand animals in one facility.¹⁷⁰ The investigation revealed two live hens that had been discarded by a farm employee on a pile of dead birds,¹⁷¹ left to die of starvation, dehydration, crushing, or whatever fate awaited them. This was not apparently motivated by sadism or directly by violent intentions, but by neglect and a lack of adequate care toward the hens.

ISE Farms was charged with animal cruelty under New Jersey law.¹⁷² New Jersey, like the majority of other states, has an exemption in its law for accepted or routine practices.¹⁷³ However, at the trial level, the defense argued that the corporate policy for “spent chickens that are down” was “vertebrae dislocation.”¹⁷⁴ The hens in the trash can showed no signs of vertebrae dislocation, so the customary practice of that method of “euthanasia” was not at issue here.¹⁷⁵ Rather, the defense argued that New Jersey's Right to Farm Act provided immunity under its waste disposal provisions, arguing that hens should be considered the legal equivalent of manure.¹⁷⁶ This argument failed, however, and the trial court found ISE Farms guilty on two counts of cruelty, stating “You better train your people better, you better get somebody to do it who knows the difference between a live chicken and a dead chicken. If you're going to do it, you better do it right.”¹⁷⁷

However, this conviction was overturned on appeal.¹⁷⁸ While it is unfortunate that the conviction was overturned, it is worth noting the rationale behind the appellate decision: the appellate court acquitted ISE because the level of mens rea required by the cruelty statute was *96 not met. The court indicated that the following questions were not established in favor of the prosecution: “whether there was an attempt at vertebrae dislocation which was unsuccessful or whether in fact perhaps vertebrae dislocation was negligently done or attempted in this case or whether the employee in this case believed the chickens were even already dead and neglected to do it at all.”¹⁷⁹ That is, the New Jersey law used here requires at least a knowing or reckless mental state¹⁸⁰ and the court found the facts supported mere negligence, which was not enough to rise to the level required by the cruelty law. However, it is important to note what was *not* the basis of the appellate court’s decision: the common practices exemption or immunity defense.

This case illustrates two important points: first, that neither the immunity defense likening birds to manure nor the common practices defense prevailed in this case indicates that these exemptions or other protections for farming activities are not reasons to avoid pursuing a case based on inadequate animal care at a factory farm. Second, this case importantly demonstrates that violations of the cruelty laws do not have to be based on sadism, violence, or be completely gratuitous in order to be the basis of a cruelty prosecution. Rather, neglect of animals in the course of one’s job at a factory farm can and should be the basis of these prosecutions. On this point, the lesson of the appellate court’s decision is that it is important for these investigations to document knowledge or recklessness on the part of the workers or management in the facility with respect to the neglect of animals, in order to meet the mens rea standard (depending on what it is) in the particular state where the prosecution is being sought. In addition, the narrow nature of the appellate court’s decision should be emphasized: it was simply the fact that there was no evidence of knowledge or recklessness with respect to this incident of neglect that led to the reversal of the conviction. It is important to note that multiple investigations have shown that there is an empirically sound basis for the assertion that knowing, reckless, and wanton neglect of animals is endemic in the factory farming industry, and in fact that neglect is encouraged by the *97 way the system is structured.¹⁸¹ This type of neglect can and should be targeted through the use of the animal cruelty laws and any other legal tools available. Additionally, this mens rea issue should be kept in mind by the prosecutor when determining what provision of the relevant animal cruelty statute is appropriate to use to charge neglect.

iii. Compassion Over Killing: Perdue Chicken Slaughter Plant: Enforcement Thwarted

In 2004, Compassion Over Killing (COK) investigated a Perdue slaughter plant in Showell, Maryland.¹⁸² The investigation revealed systemic abuse and mistreatment of the animals. The investigator was given no training on animal welfare as part of his employment, and was simply told to “[p]ick up the chickens upside-down and put their legs in the shackle.”¹⁸³ This refers to the method which is apparently commonly employed in the chicken slaughter industry: chickens hung in shackles upside-down by their legs to be mechanically transported to the kill blade, which is intended to slice their throats. The investigator wrote in his notes:

“Nearly every chicken responded with screams and violent physical reactions from the moment they were grabbed by workers and as they went through the line. The screaming of the birds and the frenzied flapping of their wings were so loud that you had to yell to the worker next to you, who was standing less than two feet away, just so he could hear you.”¹⁸⁴

Clearly the cruelty inherent in the shackling process at this Perdue facility had wide-reaching consequences and affected many, many animals. In addition, this investigation uncovered employees kicking and throwing birds onto the conveyor belts to be shackled.¹⁸⁵ The investigator also witnessed chickens being hung with their heads caught between their legs and the shackle, presumably destined to miss *98 the kill blade and go into the scalding tank fully conscious, and he witnessed birds “properly”

shackled that still missed the kill blade.¹⁸⁶ He also witnessed cruelty such as a bird being spiked like a football, workers purposely stepping on injured or sick birds, and a worker slapping a bird, among other abuses.¹⁸⁷ The issues at this farm were not merely sadistic violence by an errant worker or two -- the abuses were inherent in the process by which these animals were handled for the business at hand, and large numbers of animals suffered because of it.

Compassion Over Killing sought animal cruelty charges for these abuses, asking for an investigation by the sheriff's office and enforcement of the laws by the local prosecutor.¹⁸⁸ A Perdue spokesperson responded to the allegations of cruelty by saying that there was "no evidence to indicate that anyone did anything to intentionally harm chickens."¹⁸⁹ The sheriff's office later did commence an investigation and met with Compassion Over Killing (as did the prosecutor), but stopped their investigation when the plant was closed due to corporate restructuring, unrelated to the cruelty charges.¹⁹⁰ While a plant closure should not have logically absolved these abusers from accountability for the abuse documented on the video, the outcome of this case is particularly interesting for another reason: the enforcement of the law was thwarted by the prosecutor's office itself. Pursuant to procedures allowed under Maryland law, Compassion Over Killing submitted a sworn complaint based on the cruelty uncovered by the investigation, and a District Court commissioner brought a misdemeanor animal cruelty charge against Perdue based on this evidence.¹⁹¹ In response, the county's District Attorney -- who "oversees all prosecutions in the county -- intervened before the summons could be issued and requested that the charge be dismissed."¹⁹² Not only was dismissal requested, but this District Attorney and an assistant state's attorney made sure to effect an acquittal -- i.e. to attach prejudice -- so the charge could not be brought again.¹⁹³ The District Attorney here stated, "I wanted this case over, because this defendant is not guilty."¹⁹⁴

This case highlights some of the political and procedural hurdles that animal advocates face in achieving enforcement against factory farm abuse. The prosecutor's office not only did not want to prosecute the charges themselves, but was able to simply eradicate any chance of Perdue being held accountable for its animal cruelty. As discussed *infra*, this concentration of power in the hands of prosecutors is particularly problematic for use of animal cruelty laws against factory farms. As can be inferred here, political considerations, rather than the strength of the evidence, ruled the day and led to the cruelty being ignored. Such political considerations are often a problem in seeking enforcement. Although it is worthwhile to pursue these cases using the tools available, the law should be reformed to include checks to prevent similar situations. Suggestions for reform are discussed *infra*.

iv. Humane Society Of The United States (HSUS): Moark Egg Farm -- First Indictment Based on the Cruelty of Independent Contractors and \$100,000 Fine

In the summer of 2005, a local environmental activist in Neosho, Missouri was driving by one of the largest egg factory farms in Missouri, owned by Moark, LLC. From the road, this activist videotaped hens being dumped into a dumpster. It was clear from the tape that some of these hens were still alive.¹⁹⁵ It turned out that these were so-called "spent hens" -- egg-laying hens that had outlived their egg-laying prime, which happens typically around the age of 24 months in the egg industry.¹⁹⁶ These hens are of little value to the egg industry because *100 their meat is of low quality and they are often in poor health.¹⁹⁷ In this case, HSUS was notified of the video and encouraged prosecution under Missouri's criminal animal cruelty law.¹⁹⁸ The Missouri animal cruelty law includes birds in its definition of "animal" and criminalizes both abandonment of an animal and killing an animal in a manner not included in an enumerated list (which interestingly includes the killing of an animal by an owner or the agent of an owner).¹⁹⁹ It also exempts "normal or accepted practices of animal husbandry" in the context of farm animals.²⁰⁰

Moark defended itself by arguing (1) that these were independent contractors that were hired to do the killing and disposal and therefore Moark should not be held responsible for their acts, (2) that they were told to kill the animals by gassing before putting them in the dumpster and therefore Moark should not be responsible for the contractors improperly following instructions, and (3) that the proper method that Moark authorized -- which Moark argued was a common practice and therefore exempt from coverage under the cruelty law -- was effective to kill the birds by gassing in garbage drums, and there was no knowledge or assent to dumping them into the dumpster while alive.²⁰¹ HSUS disputed all these arguments. First, according to Missouri law,

an independent contractor relationship, even if established, does not absolve the principal of liability. Here, the prosecutor did not even accept Moark's argument that the workers were in fact independent contractors.²⁰² Second, under Missouri law, where an agent is acting at the direction of the principal, the principal is still responsible for the act of the agent aimed at completing the task it is doing for the principal, even if it disobeys the instructions of the principal. Third, the facts simply did not support the argument that the killing method used was *101 effective or that the actors did not know these animals were not being killed by the gassing method used. In fact, there is what appears on the video to be chicken wire on the chute that carried the animals into the dumpster. Obviously there is no logical reason to restrain dead birds with chicken wire.

HSUS presented these counter-arguments to the local prosecutor and urged that Moark be held responsible. The prosecutor filed charges against Moark, and entered into an agreement whereby Moark paid a \$100,000 penalty to benefit the local animal shelter.²⁰³ Pursuant to the agreement, Moark also was required to purchase the most modern available technology to dispose of the hens, and the prosecutor's office followed up to ensure compliance.²⁰⁴ This case is noteworthy for several reasons. Several important points are implied: (1) a corporate entity can be held criminally responsible for factory farm cruelty; (2) a farm practices exemption in the cruelty law once again does not give carte blanche to mistreat and abuse animals; (3) independent contractors (and presumably employees) of factory farms can create criminal liability for the corporate entity by carrying out their job in a way that constitutes animal abuse, even if that method is the "wrong" way to carry out their job and (4) this indicates that even massive egg factory farms can be held accountable for animal cruelty.²⁰⁵ This is an important inroad for targeting cruelty and neglect of large numbers of animals as a matter of course at factory farms.

v. Compassion Over Killing: Esbenshade Egg Farm -- First Criminal Charges against Owner and Manager of Factory Farm for Day-to-Day Abuses

In December of 2005, Compassion Over Killing investigated an egg farm called Esbenshade Farms in Pennsylvania's largest agricultural county, Lancaster County.²⁰⁶ The investigation revealed animal cruelty *102 and neglect which led to 35 counts of animal cruelty against the manager of the farm and 34 counts against the owner.²⁰⁷ The categories of cruelty included severely decomposed birds in cages with live birds (expert testimony at trial indicated that some of these birds had likely been dead for 6-8 weeks), birds immobilized or impaled by cage wires, unable to access food or water, birds left in aisles without access to food or water, and dead birds impaled and hung by their beaks on protruding wires near the water delivery system.²⁰⁸

The substantive animal cruelty law in Pennsylvania contains a fairly typical common practices exemption. The law criminalizes wanton or cruel conduct toward animals, but exempts "normal agricultural operations."²⁰⁹ Procedurally, however, this was an unusual case. Pennsylvania law allows Humane Officers who are representatives of a state association for the prevention of cruelty to animals to make a motion to prosecute an animal cruelty case on behalf of the state.²¹⁰ In order to do this, the case has to be presented to the District Attorney's office, which must decline to prosecute.²¹¹ This was done here, and a motion was made with the court and granted, whereby the Humane Officer was allowed to prosecute the case in her official capacity, on behalf of the state, represented by private attorneys.²¹² This prosecution was assisted by Compassion Over Killing and the Humane Society of the United States. The case was before a magisterial district judge and no jury or discovery was available.²¹³ The trial was spread out over the course of eighteen months, ending in 2007.²¹⁴

At trial, the COK investigator testified as to the instances of cruelty and neglect documented in the video, the manager's involvement in this cruelty and neglect, and the absence of the owner -- who had a duty of care to these animals under Pennsylvania law²¹⁵ -- during the time *103 period when the investigator shot this video.²¹⁶ The prosecution made these arguments to substantively establish neglect and wanton cruelty from the five categories listed *supra*. All of the experts -- on both sides -- testified that the actions and conditions depicted in the video were not normal agricultural practices.²¹⁷ The prosecution also used existing caselaw to argue that Pennsylvania cruelty law criminalizes cruel or wanton conduct or omission

toward any type of animal (including chickens), that it criminalizes such action or omission toward even one animal on one occasion, that it includes neglect, and that it includes deprivation of food, water, or clean and sanitary shelter.²¹⁸

The defense argued essentially that some of the practices were normal over time and space. In particular, they argued that the number of dead birds in cages with live birds did not exceed what is considered acceptable according to industry standards, although they never claimed that normal agricultural practices includes leaving dead birds there for weeks.²¹⁹ They also argued that the facility should fall under the normal agricultural practices exemption because their inspector came onto the facility three months after the investigation ended, rolled a die and decided to go into a building that was not the subject of any of the charges, spent a half an hour in that building, and concluded that it looked like it was run normally.²²⁰ The defense also implied that the investigator was not doing his job properly, and that the video was staged.²²¹ In response, the prosecution argued that the normal agricultural operations defense has to be raised with respect to the specific practice and specific animals at issue, at the time that the animals are being mistreated, and certainly not evaluated three months later on different animals.²²² Additionally, it was impossible for the documented instances of animal cruelty on the video to be attributed to the investigator's poor job performance, as his job -- and the job of each worker there -- required the care of care of approximately 150,000 *104 animals per day,²²³ which would require 23.5 hours a day if he spent merely a half-second per bird. In addition, many of the animals were so decomposed that they clearly had been there long before the investigation started.²²⁴ To counter the allegation that the video evidence was illegitimate, the prosecution offered expert testimony indicating that attempts to stage the video would not have been successful considering the stage of decomposition and mummification of some of the dead birds, who would likely have fallen apart with any attempt to move them.²²⁵ Perhaps most importantly, when the prosecution directly questioned the defense witness, asking whether there was any evidence of staging, he said no.²²⁶ This does not meet the standard required to make a defense under Pennsylvania law.²²⁷

The judge eventually acquitted the defendants on all charges. Before making her ruling, she made a call to the prosecution's main attorney and indicated to him that (1) she thought the case demonstrated clear neglect of animals, (2) the normal agriculture operations exemption did not apply, and (3) the prosecution's evidence and testimony was reliable.²²⁸ However, she explained that she was intending to acquit because she felt there was no guidance in the law relating to the cruelty standard for industrial or commercial operations.²²⁹ In essence, she imagined a standard outside the substantive cruelty law and the exemption for common practices, presuming with no legal basis that there was some other standard of cruelty for factory farmers, and then presuming that these facts did not meet it.²³⁰

This case exemplifies a number of important lessons. First, it is key that the acquittal was not based on any evidentiary or legal *105 shortcomings, and particularly that it was not based on the common practices exemption. Second, it is important that the judge said she found there to be clear neglect based on the evidence, which indicates that she found the substantive law to have been violated. Perhaps the most important takeaway, however, is that it is crucial for these types of cases to continue to be brought to prosecutors, and the need to emphasize to them what should be a very basic and legally straightforward point: that farm animals are subject to protection under state cruelty laws. Specifically, this author posits that the role of a common farming exemption in animal cruelty laws is to set forth the entire category and scope of exempt animal abuse and neglect -- and to provide the only basis under which a defendant can argue an exemption from the law's coverage. That is, if a defendant cannot successfully build a common practices defense on the evidence, there should be no other way in which clear animal cruelty or neglect can be considered to be exempt from the law's coverage. Double standards for commercial facilities outside of this are simply not legally or morally justifiable.²³¹ Factory farmers need to be held accountable for the suffering they inflict upon the massive numbers of animals in their care, and the animal cruelty laws present a valuable tool to help accomplish this.

vi. Humane Farming Association (HFA): Wiles Pig Farm: First Ohio Conviction for Cruelty to Factory Farmed Pigs

In June 2007, the animal cruelty trial based on an investigation by the Humane Farming Association (HFA) concluded against the owners of the Wiles Pig farm in Ohio.²³² The investigation revealed “starvation of sick and injured pigs, forcing pigs to live in their own waste, severe overcrowding and cannibalism, beatings, inhumane transport -- and the hanging and slow death by asphyxiation of struggling and fully conscious pigs.”²³³ Despite resistance from local law enforcement officials, including the county's District Attorney's office, and including a judge's refusal to sign *106 arrest warrants for the defendants, a special prosecutor was appointed and criminal charges were filed, and the case went to trial.²³⁴ The case was tried by the same judge who had refused to sign the arrest warrants.²³⁵ Much of the discussion at the trial level centered on the issue of the hanging of the pigs as a method of killing, and whether that constituted cruelty under Ohio law. One expert witness testified that hanging pigs was not a method accepted in the industry.²³⁶ The defense expert witness denied that any of the incidents documented in the video were animal cruelty, including the hanging of the pigs and leaving sick or injured animals for two days without care until they died.²³⁷ Of the ten cruelty charges filed, one resulted in a conviction: defendant Joe Wiles was convicted of one count of cruelty based on his grabbing and throwing of piglets by their ears and legs.²³⁸ There were no convictions based on the hanging or deprivation of food, water, and care to injured or sick animals.²³⁹ This case was also profiled in an HBO documentary called “Death on a Factory Farm.”²⁴⁰ Aside from the criminal trial, HFA pursued a civil case as well²⁴¹ based on discrimination against one of the farm workers, whistleblower law violations, and defamation and other torts.²⁴²

Ohio law criminalizes abandoning animals, injuring animals, torturing, depriving of necessary sustenance, unnecessarily or cruelly beating, needlessly mutilating or killing, carrying or conveying in a cruel or inhuman manner, among other things.²⁴³ It does exempt livestock *107 from exercise requirements and the requirement to provide shelter in the event that the animals are confined prior to slaughter.²⁴⁴ None of these are wholesale common practices exemptions or exemptions for farming practices per se. Regardless, the severe neglect documented in this case and the hanging of pigs did not result in a cruelty conviction. With respect to the hanging, the trial testimony focused on whether this was “torture” to the animals, rather than the more basic carrying in a cruel or inhuman manner.²⁴⁵ It appears here that the court was looking for a way to acquit these defendants on the hanging issue in particular, and found a reason to do so in the pliable and vague wording of the law.

Despite the outcome, the filing of charges and going to trial alone is noteworthy. Given the resistance of the District Attorney's office to file charges and the refusal of the judge to even sign warrants, it is encouraging that this case was allowed to proceed at all. This was probably largely due to the appointment of a special prosecutor, similar to Esbenshade, discussed *supra*. Difficulty overcoming the procedural challenge of finding a willing prosecutor is unfortunately an ever-present reality in factory farm cruelty cases. This case highlights the need for access to enforcement that is not fully dependent on the unfettered discretion of local prosecutors and other local law enforcement. Alternative mechanisms like appointment of a special prosecutor used in Wiles and/or like the procedural avenue used in Esbenshade are important tools to provide a check against local authorities abusing their discretion. These types of procedural avenues and examples of avenues available in other states, as well as suggestions for future legislative reform, are discussed further *infra*.

Additionally, the Wiles case highlights the lack of clarity with respect to the definition of words and standards in animal cruelty laws. Terms like “unnecessary,” “needlessly,” and “torture” are all fairly vague and subject to a variety of interpretations; this is a basic flaw in many state cruelty laws. This case also underscores the need for clearer up-front guidance on how to establish basic standards of animal care on factory farms. Otherwise, where there is any ambiguity, convictions will be sparse, given the high burden the prosecutor carries in criminal cases. Notwithstanding all these hurdles, however, this case stands for the proposition that it is possible to get convictions for cruelty that is *108 claimed to be normal and common within the industry, and cruelty that is part of the institutionalized practices of a particular facility. This is encouraging, and it is worthwhile to continue in this direction.

vii. Humane Society of the United States: Hallmark Meat Packing Slaughterhouse: First Filing of Criminal Charges Based on Slaughterhouse Cruelty; First Conviction For Slaughterhouse Cruelty; Largest Beef Recall in U.S. History

In 2007, the Humane Society of the United States investigated Chino, California slaughter plant, Hallmark Meat Packing (“Hallmark”). Their investigation revealed a large number of so-called “downer” cows -- *i.e.*, cows that are too sick or weak to walk or stand.²⁴⁶ The video shows workers -- in an effort to get these cows to move to slaughter -- kicking them, ramming them with blades of a forklift, jabbing them in the eyes, and using electric shocks and water torture.²⁴⁷ The investigation was widely publicized and had far-reaching consequences. The slaughter plant at issue in this case supplied beef that was ultimately destined in part for use in USDA's National School Lunch program, and “to needy families and the elderly.”²⁴⁸ In addition, the company Hallmark supplied -- Westland Meat Company -- had received USDA's “Supplier of the Year” award just a few years before this investigation.²⁴⁹ Westland Meat Company was the second-largest supplier to these USDA programs.²⁵⁰ These facts, coupled with the widespread publicity of the abuse in the video and the fact that it was abuse to downed animals (which raises food safety concerns),²⁵¹ perhaps explain the swiftness and scope of the reaction.

*109 First, two of the slaughterhouse workers were charged with animal cruelty under California's criminal animal cruelty statute.²⁵² HSUS had urged enforcement of [Cal. Pen. Code § 597](#), which prohibit cruelty including torture, torment, cruelly beating, mutilating, cruelly killing, etc., and § 599f, which requires the humane euthanasia and prohibits the dragging of downed -- “nonambulatory” -- animals.²⁵³ The San Bernadino County District Attorney's office filed felony and misdemeanor cruelty charges against the manager of Hallmark and misdemeanor charges against another employee.²⁵⁴ These defendants were later convicted.²⁵⁵

In addition, USDA “apparently hastened its efforts” to react to the investigation, interviewed the HSUS investigator, and then two days later announced what would turn out to be the largest beef recall in U.S. history as a result of the investigation.²⁵⁶ Congress then held hearings on the issue, which resulted in the introduction of a bill that would create “meaningful civil penalties.” Ultimately, federal regulatory action was taken to close the downer loophole as a result of this case.²⁵⁷ According to the HSUS attorneys who worked on this case, these actions were taken in part because of the District Attorney filing state cruelty charges.

There is also currently a civil Qui Tam action being litigated as a result of the Hallmark investigation. A Qui Tam action is an unusual procedural mechanism whereby a person can bring an action on behalf of the U.S. government if they believe someone is defrauding the *110 government.²⁵⁸ With respect to Hallmark, the primary claim is essentially a breach of contract claim, arguing that because the Agriculture Marketing Service of the USDA required in its contract with Westland/Hallmark that no downed animals be used in the beef products and that the animals be humanely handled (also set forth in FSIS directives and regulations), the contract between Westland Meat Company and AMS was breached. The suit also alleges that Hallmark/Westland falsely represented itself as humanely handling cattle, and thereby fraudulently procured its contract with the AMS, in violation of the False Claims Act.²⁵⁹ Under the rules of Qui Tam actions, a U.S. Attorney has the option to intervene in the case, and in this case one did.²⁶⁰ The damages sought exceed \$150,000,000, and target the individuals who ran the companies.²⁶¹ The case is still pending at the time of this writing.

The impact of the Hallmark case has been by far the single most wide-reaching of any factory farm animal cruelty case. No other case garnered such persistent and prolonged media attention to the animal cruelty that goes on in industrialized farmed animal agribusiness. It is likely that a major reason for the scope of the impact was not directly for animal cruelty reasons per se, but because the cruelty was perpetrated on downer animals who were then sent into the food supply. The food safety concerns probably provided the case the traction this investigation needed to make such an impact. However, it is interesting to note that it is the enforcement of the state animal cruelty law that seemed to be the push that influenced USDA taking the case seriously. In addition, it is the animal cruelty law -- and not the USDA regulations -- that allow for actual penalties for the animal cruelty

*111 (beyond temporary closing of a slaughter plant.²⁶²) The fact that there is a federal law that addresses slaughter and there are regulations that cover treatment of animals at a slaughter plant (even if the coverage is narrow) distinguishes this from the other cases discussed here. If slaughter had been unregulated on the federal level, this case is highly unlikely to have had the impact it did. At the same time, however, the use of the state level animal cruelty law appears to have been a central reason for the national reaction. This again indicates the importance of uncovering animal abuse on factory farms, and seeking the enforcement of the state-level animal cruelty laws.

viii. Mercy For Animals (MFA): Maine Contract Farming/Quality Egg of New England Egg Factory Farm: Large-Scale Search Warrant and Raid based on Cruelty Complaint; First Major Egg Producer Commits to going Completely Cage-Free because of Cruelty Evidence; MFA Urges State Cruelty Law Enforcement

In the winter of late 2008 through early 2009, a Mercy For Animals investigator documented widespread animal cruelty and neglect at an egg factory farm in Maine. Like the Esbenshade case, discussed *supra*, this facility confines egg-laying hens in battery cages. Battery cage confinement is the method by which approximately 95 - 98% of eggs are produced in the United States.²⁶³ The Maine investigation took place at Maine Contract Farming, which is closely affiliated with Quality Egg of New England (“QENE”). The investigation revealed abuse and neglect at QENE including dead and decomposing birds in cages with live birds, improper “euthanasia” done by spinning birds by their heads and leaving them to suffer from their injuries (including one instance of kicking a bird struggling for her life after having been spun by the neck through the slat in the floor into the manure pit and other instances of kicking birds into the manure pit), forty-nine documented instances of live hens left to die in piles of dead birds, birds suffering from bloody open wounds, broken bones, and untreated infections, severe overcrowding, and birds trapped in the wires of their cages, among other abuses.²⁶⁴ Many of these instances of abuse and neglect were *112 brought to the attention of farm managers and were allowed or ignored.²⁶⁵ Some were even perpetrated by supervisors and managers.²⁶⁶

As a result of the investigation, Mercy For Animals collaborated with Compassion Over Killing to seek enforcement of Maine's animal cruelty laws against the facility and its managers and supervisors. Maine animal cruelty laws are unusual in that there are two versions which are substantively very similar: one is in the criminal code and one is in the agricultural code. The criminal animal cruelty law²⁶⁷ criminalizes almost identical conduct as is prohibited by the civil agricultural law,²⁶⁸ and the criminal laws are classified as either Class C or Class D crimes, depending on prior offenses.²⁶⁹ The criminal law is only enforceable by the District Attorney's office and the Agricultural Commissioner.²⁷⁰ There is also an almost identical civil version of the law in the agricultural code.²⁷¹ Under this law, the following are prohibited:

B. ... kills or attempts to kill an animal by a method that does not cause instantaneous death; [...]

D. Injures, overworks, tortures, torments, abandons or cruelly beats or intentionally mutilates an animal ...

*113 E. Deprives an animal that the person owns or possesses of necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions²⁷²

The documentation of abuse and neglect at this facility clearly fall under these categories. The Agricultural Commissioner has powers to enforce this law.²⁷³ There is also a special program under the Department of Agriculture called the Animal Welfare Program, which has the authority and mandate to investigate any complaints of animal cruelty and neglect under this

scheme.²⁷⁴ The Animal Welfare Program is housed in the Department of Agriculture, and is meant to be an enforcement arm of the animal cruelty laws in the agricultural code.²⁷⁵

Urging the investigation and enforcement of the Maine cruelty laws based on the documented evidence from QENE, representatives from MFA and COK met with the director of the Animal Welfare Program of the state of Maine and representatives from the Department of Agriculture and law enforcement. The State Veterinarian, Donald Hoenig, reacted to the video evidence by saying it was “clearly egregious” and promised to take the matter “very seriously.”²⁷⁶ As a result of this meeting, the Department of Agriculture worked with the District Attorney's office and decided to file a search warrant to raid the facility to seek corroborating evidence.²⁷⁷ As a result of the raid and the publicity surrounding the investigation, Eggland's Best, which had a contract with one of QENE's corporate customers, Radlo Brothers, announced it was breaking its contract with Radlo Brothers as a result of the cruelty investigation.²⁷⁸ Radlo Brothers then responded by pledging to change its operations to entirely cage-free within ten *114 years.²⁷⁹ This marks the first time a major egg company has pledged to completely change from cage production to cage-free, and it was done as a result of the MFA investigation.²⁸⁰ Other customers of QENE also reacted negatively to the revelations of mistreatment.²⁸¹

After the raid of the QENE facility, the Animal Welfare Program, other officials at the Maine Department of Agriculture and the District Attorney's office continued their investigation into whether to pursue legal enforcement against QENE and its owners. MFA and COK worked with the authorities in advocating this enforcement and provided resources and guidance. The District Attorney's office informed COK and MFA that it was working out a settlement with QENE, and that the terms of the settlement would include prospective monitoring and other remedial measures. COK and MFA recommended certain terms to seek to ensure QENE made tangible changes for the animals and that QENE would be held accountable for any future abuse or neglect. The District Attorney's office apparently incorporated many of these suggested items into the final agreement.

On June 7, 2010, the case went to court to be settled. The company was charged with ten counts of animal cruelty under the civil version of the animal cruelty law. These counts were based on the April 1, 2010 raid by the Department of Agriculture. As part of the settlement, Maine Contract Farming admitted to these 10 counts of animal cruelty, agreed to pay the maximum fine of \$2,500 per count, additionally agreed to pay over \$9,000 in restitution for the investigation and case development, and \$100,000 to the Department of Agriculture to monitor the facility over a five year period.²⁸² In addition, the agreement included unlimited unannounced visits to any and all stages of the production process to ensure compliance with the agreement and a waiver of double jeopardy on prosecution of the original evidence if subsequent violations are found.

*115 Several points about this case are particularly encouraging. First, the investigation footage is particularly strong as an evidentiary tool. This apparently anticipated the type of defense arguments that were (unsuccessfully) raised in *Esbenshade (supra)*, by taking care to document evidence showing direct knowledge and assent of mistreatment by managers and supervisors, and the legitimacy of the footage, as well as indications that the cruelty and neglect was not the fault of the investigator.²⁸³ Second, the coordinated and rapid efforts of the Maine Department of Agriculture and local District Attorney's office is commendable, and of course the nature and scope of the raid -- which was a day-long raid that resulted in the removal of many dead animals to examine for evidence of mistreatment -- was unprecedented. The swift and widespread reaction by the public and by buyers of QENE products was heartening and represents a tangible impact. Factory farms should be held accountable for their abuses and losing business is an appropriate and encouraging response. Third, the scale and scope of the ultimate enforcement of the cruelty law here is highly encouraging. This appears to be the largest-ever monetary penalty for factory farm abuse or neglect.²⁸⁴ In addition, the District Attorney's office and the Animal Welfare Program should be commended for the care they took to incorporate elements into the settlement that would guard against future noncompliance and require tangible improvements in the living standards of these animals. While the hens at QENE are still being raised in factory farm conditions and still suffering immensely from the intensive confinement and other inherent cruelties of battery cage production, this case marks a major step forward. It can and should be used as a model for future cases to show a thoughtful and competent approach to the use of the state cruelty law as a tool to tangibly and meaningfully protect farmed animals.

One additional interesting point that comes out of this case is that the State Veterinarian called the documented abuses “egregious,” presumably as opposed to the type of suffering inflicted as a part of acceptable daily farm management practices. The evidence of mistreatment here, however, is not particularly different from that uncovered in Esbenshade (*supra*), or from other egg factory farm *116 investigations,²⁸⁵ indicating that this type of cruelty and neglect is not isolated or an “egregious” example of bad management relative to the way the egg industry is normally run. Rather, it seems that this sort of mistreatment may be much more typical in the egg industry than industry defenders would like to admit, and the line between so-called “egregious” cruelty and business-as-usual institutionalized cruelty is not much of a line at all. Instead, these investigations indicate that cruelty is an inherent part of industrialized farming. Cases below discuss this issue in more detail.

ix. Humane Society of the United States: Bushway Packing Veal Slaughterhouse: USDA Inspector and Plant Co-Owner Cruelty Compliance - State and Federal Authorities Suspend Operations at Slaughterhouse; HSUS Urging Criminal Cruelty Charges

In 2009, another HSUS investigation of a slaughterhouse uncovered shocking animal cruelty. Bushway Packing, Inc. in Grand Isle, Vermont slaughters young calves, called “bob veal,” some of whom are so young that their umbilical cords are still attached.²⁸⁶ These animals are generally slaughtered within a week of being born, and some are as young as a day old.²⁸⁷ This slaughter plant was inspected by the USDA under its authority to enforce the federal Humane Methods of Slaughter Act.²⁸⁸ The abuses include: a worker skinning a calf alive as a USDA inspector looks on, even after admitting that the plant could be shut down if another USDA inspector witnessed that abuse, live calves left to suffer in piles of dead calves with the USDA inspector's knowledge, the co-owner of the plant shocking downed calves with an electric prod and joking about the abuse and other repeated instances of use of electric prods on calves, including one calf being shocked 30 times and at least *117 one instance of water being thrown on a calf to increase the intensity of the electric shock, and improper stunning of the calves before they have their throats slit and are skinned and dismembered.²⁸⁹

As a result of this investigation, HSUS complained to the Vermont Agency of Agriculture and the USDA, arguing that the HMSA had been violated, and also urged prosecution under the Vermont animal cruelty law.²⁹⁰ As a result of this investigation and these complaints, both USDA and the Vermont Agency of Agriculture suspended operations at the plant.²⁹¹ Subsequently, the USDA decided to allow Bushway Packing to reopen its plant under a new name,²⁹² however as of the time of this writing, the plant has not yet been reopened. On June 4, 2010, the Office of the Attorney General of Vermont announced that two employees of Bushway were criminally charged.²⁹³ One of these men, Christopher Gaudette, was charged with two misdemeanors and a felony.²⁹⁴ The other, Frank Perretta, has been charged with a misdemeanor.²⁹⁵ At the time of that announcement, neither man could be located by law enforcement.²⁹⁶ However, in August, the Vermont AG office announced that Frank Perretta was found and arrested,²⁹⁷ and Christopher Gaudette pleaded not guilty.²⁹⁸

*118 The rapid response to the discovery of this abuse indicates -- as was the case in Hallmark -- the likely importance of the fact that there was a federal law that covered the abuse in getting some kind of meaningful enforcement. In addition, what is particularly shocking about this case is the level of explicit knowledge and assent the USDA inspector and the owner had for the violent and torturous abuses these baby animals were forced to endure. This case blurs the line between the egregious cruelty cases, discussed *supra*, and the institutionalized day-to-day abuses, indicating that perhaps these two categories are not truly separate. The level of abuse at Hallmark and Wiles can also be said to blur this line between sadistic cruelty and institutionalized quotidian cruelty. Here this issue comes into especially stark relief. It is clear that the individuals tasked with meeting the basic standards of animal treatment flagrantly violated their duties to these animals, and in fact perpetrated violent and shocking cruelties on a regular basis against these baby animals. The assent by the co-owner and the USDA inspector indicates that this was likely done to many animals as part of the course of daily business. It is encouraging that the facility was shut down and that cruelty charges were filed; it would also be encouraging if the facility's operations were permanently suspended and if the individuals charged were brought to justice. This case also highlights one disadvantage to only charging individual perpetrators

with animal cruelty: that the individuals may abscond and enforcement may be prevented. Even when this does not happen, charging the corporation for the cruelty and neglect documented at its facility presents a greater opportunity to target the abuse itself and create opportunity for meaningful change in the future. In addition, it communicates the important message to the public that these are institutional problems with the factory farming industries, rather than isolated incidents. The cases discussed in this paper and other investigations done in recent years indicate overwhelmingly that this abuse and neglect is an accurate picture of the industry.

x. Mercy For Animals: Willet Dairy Cruelty Documentation: MFA Urges Criminal Charges, One Person Plead to Animal Cruelty

In 2008-2009, Mercy For Animals investigated the largest dairy factory farm in New York: Willet Dairy.²⁹⁹ The investigation uncovered severe neglect as well as violent physical cruelty. The documentation *119 included untreated open wounds, prolapsed uteruses, workers hitting, punching, kicking, and electric-shocking cows, tails being cut off with emasculators, horns being burned off while workers have their fingers in the eyes of young calves, cows in overcrowded conditions and slipping on manure-covered floors, and other mistreatment.³⁰⁰ Some of the documented instances are overtly violent, gratuitous, and sadistically motivated, and some are just as violent and horrific, but ostensibly part of institutionalized daily operations at the facility.³⁰¹

MFA submitted a detailed complaint letter seeking enforcement of New York's criminal animal cruelty laws to the local District Attorney's office. After a notable lack of meaningful responses to MFA's complaint and requests for action, representatives from MFA and COK went to New York to meet in person with the local SPCA investigator and then with the Assistant District Attorney and the District Attorney's office investigator who had been assigned to the case, to seek enforcement of the animal cruelty laws. The SPCA investigator Josh Crane indicated that he was taking his cues from the District Attorney's office and was not intending to act without their guidance and support.³⁰² In the meeting with MFA and COK representatives, the ADA and her investigator were overtly and explicitly resistant to filing charges or considering the case to be evidence of animal cruelty.³⁰³ In fact, she stated there was "no crime" in the video and that she had more important "human" cases to deal with, even asking why MFA did not go to "a bigger county."³⁰⁴ She made it clear that she would not file charges based on the investigation. However, in January of 2010, ABC World News Tonight and Nightline aired stories on the abuses MFA uncovered at Willet Dairy and garnered widespread publicity.³⁰⁵ As a result of this news coverage, the local District Attorney denied that his office ever refused to prosecute the case,³⁰⁶ and officially opened an investigation into the abuse, including *120 facility visits and interviews with the farm owner.³⁰⁷ In addition, on June 6, 2010, it was announced that one person may be charged in connection with this cruelty, but that the name of the person who might be charged would not be revealed.³⁰⁸ On March 22, 2011, the District Attorney's office released their report on the Willet case, along with the report from the SPCA, including assessment from dairy-industry insiders.³⁰⁹ The reports indicate that (1) one worker plead guilty to animal cruelty for striking a cow with a screwdriver, (2) another worker who was documented on the video fled the country and was not charged, (3) that the facility has discontinued the use of tail docking and has lowered the age at which calves are disbudded, and (4) the dairy industry representatives determined that Willet was in compliance with industry standards.³¹⁰

This case further underscores the horrific and pervasive abuse toward animals at factory farms. It also highlights the problem of prosecutorial discretion in seeking justice in the enforcement of these laws. The evidence in this case is just as horrifying -- if not more so -- than the evidence in any of the other cases discussed above that resulted in enforcement of the animal cruelty laws against the perpetrators of the abuse. However, the initial response by the ADA was an unequivocal rejection. Thankfully, the publicity surrounding the case caused the District Attorney's office to change its position and it appears that the case is being taken seriously at this point. (This is another lesson learned here: publicity simply exposing the animal cruelty at these facilities can encourage people to do the right thing and pursue justice for these animals). However, many investigations of factory farms have been done that have uncovered rampant and disturbing mistreatment that is as bad or worse than the abuse here or in the

other cases listed in this paper, but these cases have not been prosecuted.³¹¹ Generally speaking, in most states, the power is *121 concentrated in the hands of the prosecutor's office, whereby the prosecutor can merely elect not to prosecute this animal cruelty, for any reason he or she so chooses, whether or not it is justified. This sort of concentration of power is a particularly important issue that needs to be changed if there is to be a reliable and measured response to factory farm cruelty. The fact that there was initially a blatant refusal in this case to consider the evidence of abhorrent cruelty merely highlights this problem. This area is ripe for reform, discussed *infra*.

In addition, this case is an interesting study in the categorization of egregious versus institutionalized cruelty. The investigation itself clearly indicated that the documented practices are ingrained within the standard operations of the dairy. However, the District Attorney's office seemingly went out of its way to exonerate the corporation itself and its practices, while downplaying and marginalizing the role of 'bad apple' worker(s). In fact, the reports repeatedly praise the practices of the dairy, and their very existence shows a desire to clear the corporation's name. Marginalization of animal cruelty should be resisted wherever possible, and the tendency on the part of some prosecutors to do this indicates a need for greater prioritization of the crime of animal cruelty.

xi. PETA: Pennsylvania: Reitz Dairy (Land O'Lakes Supplier): Cruelty Charges and Acquittal for Dairy Farm Neglect

In 2009, PETA investigated Reitz Dairy in Pennsylvania, which supplies Land O'Lakes.³¹² The documentation included filthy conditions, "lame, thin, and downed cows left to suffer and die and a cow whose teat was banded and left to decay and fall off--not to mention expert testimony that all this constituted cruelty."³¹³ Charges were filed against Lloyd Reitz and his son Andy Reitz based on the documented evidence.³¹⁴ The judge acquitted, indicating that he found the evidence insufficient to establish that the animals were malnourished and not given adequate medical care, and insufficient to show the facility had not been cleaned when the investigator was not *122 present.³¹⁵ He also took issue with the expert witness' reliance on video evidence rather than personally visiting the facility.³¹⁶

This case again highlights the difficulty facing prosecutions for farm animal cruelty cases. One would assume that in the average criminal case, video evidence of a crime -- particularly one as graphic as was the case here -- would be a luxury to a prosecutor, and constitute strong evidence. Added to eyewitness testimony, contemporaneous notes documenting the crimes, and expert testimony, this should be a solid case. Apparently, however, some judges may hold these cases to a higher standard, and it is not clear exactly what that standard is. Perhaps in cases like these it is because the judge is disinclined to hold the abusers accountable for their actions from the outset, regardless of what the evidence shows, as seemed to be the case here as well as in *Esbenshade* and *Wiles*, discussed above. While discouraging, this problem should further underscore the importance of seeking enforcement of animal cruelty laws against factory farm abuse and neglect; it should be made clear that abuse to farmed animals is just as legitimate and worthy of justice as abuse to other animals or as any other crime. Perhaps as more of these cases are brought, the more accepted that concept will become. Anticipating and addressing this issue, ensuring strong evidence, educating law enforcement, prosecutors, and judges about the importance of this issue, and continuing to seek justice in these cases are all crucial to overcoming this set of challenges.

xii. Compassion Over Killing: Allen Family Farms Slaughterhouse: Denial to Prosecute Criminally but Support on Civil/Regulatory Measures

In 2009, a Compassion Over Killing investigator worked inside the Allen Family Foods Inc. ("Allen") chicken slaughterhouse in Hurlock, Maryland.³¹⁷ The investigation revealed institutionalized practices that cause massive suffering to animals. The slaughtering process consists of chickens being loaded onto trucks for transport, transported to the slaughter facility, then unloaded from the trucks and in some instances manually moved into holding crates, then transferred onto a conveyor belt, where they are then picked up by employees and hung by their feet in metal shackles on a system which brings them to an electrical *123 stunning bath and then to a kill blade, where their throats are slit before being dunked into a scalding tank

to remove their feathers.³¹⁸ At Allen, COK documented practices including the routine handling, hanging, and processing of animals who were too sick or weak to stand and/or birds suffering from broken legs, the routine kicking, shoving, throwing, and dragging of birds, operation of the conveyor belt so that the birds fall off and pile on top of each other and then are thrown back on, and cruel methods of killing birds.

Maryland law criminalizes “the unnecessary or unjustifiable physical pain or suffering caused or allowed by an act, omission, or neglect ... includ[ing] torture and torment.”³¹⁹ It also prohibits anyone with the custody or control failing to provide adequate veterinary and other types of care.³²⁰ It explicitly includes farm animals and corporately owned animals.³²¹ These substantive provisions of the law are fairly typical for state animal cruelty laws, and while they have some vague language (particularly language like “unnecessary” and “unjustified”), it is clear that acts such as kicking, throwing, abusive handling and hanging of live animals, and the other types of cruelty documented at Allen fall within its purview. Maryland does not have a blanket farm practices exemption. Rather, one provision of the law carves out a narrow exception for “*customary and normal* veterinary and agricultural husbandry practices including dehorning, castration, tail docking, and limit feeding” and one for “an activity that may cause unavoidable physical pain to an animal, including food processing ... *if the person performing the activity uses the most humane method reasonably available.*”³²² This is a notable departure from the language of the typical farming practices exemption. It would require a showing not merely that the challenged practices were common or normal (as would be the standard in many states) but that they were the most humane reasonably available -- i.e. best possible practices. Clearly kicking, throwing, processing downed animals, and the other cruelty shown at Allen would not fit into this exemption. COK's analysis of the law and the evidence indicates clear violations of the Maryland criminal cruelty law.

***124** Pursuant to the procedure in Maryland, Compassion Over Killing presented the video evidence, expert statement, legal arguments and other factual information to the Sheriff's department in Dorchester county, Maryland in early 2010. An animal control officer in the Sheriff's office met with COK to review the materials. She indicated that she had never been involved in a farm animal cruelty case and would discuss the matter with the Sheriff, who owns chickens himself. On the day of that meeting, COK also attempted to present materials to the State's Attorney's office in Dorchester County, but were referred back to the Sheriff's office. Through follow-up calls with the Sheriff's office and with the State's Attorney's office, COK learned that the matter had been referred to the State's Attorney's office for review. After several months of seeking updates on the case and requesting in person or phone meetings, COK was granted a meeting with the State's Attorney in July 2010. In the intervening time, and unrelated to COK's investigation, it was announced that Allen was cited for worker safety violations by Maryland Occupational Safety and Health (MOSH), which imposed a \$1 million fine, constituting the largest fine ever levied by the agency.³²³ Shortly after the July meeting, the State's Attorney sent COK a letter on stating they did not find “violations that would rise to the level necessary for a criminal conviction.” However, the letter also states “your video does reveal what may be certain regulatory violations as well as other infractions that violate Allen Family Foods' own standards ... we feel these matters are more appropriately resolved in a civil venue ... We believe that the best solution, and the best use of our resources, is to work with you and your organization using what civil and regulatory remedies are available.” COK responded with disappointment over the decision not to prosecute the case criminally, but with a willingness to assist the State's Attorney's office in pursuing meaningful change, provided it tangibly alleviates the suffering uncovered here. Currently COK is in contact with the State's Attorney's office and conducting its own research on moving forward with this effort. This matter is ongoing at the time of this writing.

This case is particularly interesting because the outcome indicates a possible joint effort on the part of the prosecuting attorney, an animal protection nonprofit, and a state agency such as the state's Department ***125** of Agriculture. In addition, the evidence uncovered is almost entirely institutionalized practices. In Maryland, there are no standards for the treatment of poultry in slaughterhouses (or elsewhere, for that matter) outside of the criminal animal cruelty laws. The question then becomes whether it is a feasible or prudent solution to encourage the Department of Agriculture to adopt such standards. These standards could theoretically set forth what would be considered the “most humane method reasonably available.” Assuming that this option is possible, given the disparate interests that would be attempting to influence the content of the standards, the question becomes whether this is something that should be done. Again because the interests of Compassion Over Killing, the Department of

Agriculture, and the State's Attorney's Office may vary widely, it is unclear whether enough common ground can be found to make an effort like this worthwhile. The concern is that the standards would be so watered down so as to codify existing practices as “humane” that are inherently very cruel and in fact inhumane. Creation of similar standards in other states serve as a cautionary tale here.³²⁴ While incremental changes alleviating some of the worst suffering of animals on a large scale is a laudable goal, great care should be taken to ensure that inherently cruel practices are not codified and given a free pass as “humane” as a result of our efforts. It is worthwhile to monitor the progress of this matter, as the future is likely to bring more cases like it.

III. IMPLICATIONS OF THESE CASES AND PROPOSALS FOR FUTURE ADVOCACY AND REFORM

The above cases demonstrate a widespread lack of regard for the well-being of factory-farmed animals. While it is possible that not every factory farm has such blatant and pervasive violence inflicted on its animals on a daily basis as the Bushway Veal slaughterhouse or the Willet Dairy, it is important to recognize that investigations of factory farms have shown us that widespread institutionalized suffering is the rule and not the exception.³²⁵ Even Feedstuffs, which is an agribusiness *126 industry publication that is very much against animal advocacy or factory farming reform, reacted to the trend in investigations uncovering rampant abuse and neglect on factory farms by saying “to consumers who have seen these videos again and again-- there are no bad apples anymore. The bad apple, to consumers now, is the industry.”³²⁶ Consumers have good reason to conclude that the meat, milk, and eggs sold in supermarkets, schools, and at restaurants are coming from an abusive industry. Investigations have shown that workers are given no training on animal welfare or animal handling,³²⁷ workers are expected to “care” for over a hundred thousand animals,³²⁸ owners, managers, and others tasked with a duty of care to animals blatantly renege on that duty,³²⁹ baby animals are killed without so much as a chance at a life longer than a week or two, or even a day,³³⁰ *127 millions of animals are confined so intensively they can barely move and regularly die from sheer neglect,³³¹ and animals are dragged, prodded, kicked, thrown, and shoved to their death, which is often painful and violent.³³² The evidence is clear: abuse, violence, and disregard for animal life or suffering is endemic in the industry.

The question becomes, then, how to address this problem from a legal advocacy perspective. There are some clear lessons that come out of these cases. Each of the following sections identifies a tool, the problematic nature of the tool, and suggests a course of action using the tool as it exists as well as a proposal for reform.

A. Increased Enforcement of Animal Cruelty Laws

The cases described in this paper show that it is possible to use state-level animal cruelty laws to hold the factory farming industry accountable for the suffering they inflict on animals in their care. Substantively, these laws are far from perfect, often including broad exemptions for common farming practices and offering little guidance on what constitutes abuse and neglect, discussed *supra*. It is also difficult to obtain evidence of what is happening on factory farms, and difficult to effectuate enforcement of the laws, discussed *supra*. Nonetheless, it is possible to make significant gains for the protection of farmed animals by using these laws, and it is important to use them to the greatest extent possible, notwithstanding their flaws.

***128 B. Increased/Continued Investigation and Urging Prosecution**

The cases discussed above indicate that it is possible to garner meaningful attention and enforcement of animal cruelty laws against factory farmers. This should undoubtedly be continued, and animal advocates should continue to bring legally-obtained evidence of mistreatment of animals at factory farms to local law enforcement and encourage enforcement of the appropriate state cruelty laws. The cases discussed in this paper should help advocates anticipate the issues they may face, and help them shape their strategy in seeking enforcement. There is no reason state animal cruelty laws should not be used to their fullest

extent. The shortcomings and limitations of the laws do not preclude their enforcement on behalf of farmed animals and there is no reason that these limitations should dissuade the pursuit of its enforcement in this context.

C. Education of Law Enforcement

Humane/SPCA officers, police, and sheriffs' departments should be educated on these issues to help them understand the extent of the problem and their powers and jurisdiction in enforcing cruelty laws, particularly against large-scale commercial farming operations.³³³ Prosecutors and judges should also be given the educational resources to understand the extent of animal cruelty on factory farms, and encouraged to prosecute these laws to the fullest extent possible and rule against the perpetrators where the evidence merits it, respectively. It is particularly important that decisions on whether to enforce laws against cruelty to farmed animals do not depend on irrelevant points like their status as commercial animals or the potential economic fallout of a prosecution or conviction. The latter consideration would not be considered legitimate in other types of criminal prosecutions, and there is no justification for it preventing enforcement of the law here. In addition, the cases discussed above indicate that these cases can and do get prosecuted and result in convictions (though not all the time), and that should be encouraging to prosecutors and judges.

***129 1. Publicity**

Publicity is key to helping solve the problem of animal cruelty on factory farms. As more abuse is uncovered, it is important to disseminate the information widely so that contemporary production of animal products in the U.S. becomes synonymous in the public zeitgeist with widespread infliction of animal suffering. The more mainstream this idea becomes, the more likely it will be that existing laws will be enforced to their fullest extent and that new laws will be enacted to better protect these animals.³³⁴

2. Private/Civil Enforcement Reforms

In addition to the enforcement of existing laws, it is important to advocate for changes to the animal cruelty laws and the enactment of new laws to solve major weaknesses. One of these weaknesses is the limited ability for private parties or entities other than local prosecutors to enforce the law. While some prosecutors have shown that they are willing to seek justice for these animals, it is not uncommon for a prosecutor to simply refuse to prosecute blatant animal abuse.³³⁵ It is crucial to meaningful reform that local prosecutors' power of unfettered discretion is decentralized.

There are several state laws that provide alternative models to pure prosecutorial discretion in enforcing cruelty laws. Pennsylvania, for example, allows humane officers to move to file charges and prosecute on behalf of the state if the prosecutor declines to do so, discussed *supra*. This type of law is definitely a step in the right direction, although it requires the prosecution be at the expense of the humane officer and humane society, which may be prohibitive in many situations, and the Pennsylvania law's classification of the animal cruelty law as merely a minor crime limits the procedural tools available to the prosecutor, discussed *supra*. However, allowing private or pseudo-private prosecution is definitely worthwhile to replicate in other states.

***130** Similarly, aspects of North Carolina's law are worth using as a model for reform in other states. The animal cruelty law has a criminal and a civil provision, the latter of which importantly allows for any person to enforce the civil animal cruelty law against perpetrators of abuse.³³⁶ North Carolina's civil law is not ideal, however, because of its confusing common practices exemption for farm animals,³³⁷ and because its remedy is only injunctive relief. Ideally, a model law would allow both injunctive relief and some kind of monetary damages -- even if those damages go to the state or to benefit animal advocacy³³⁸ rather than to the private party enforcing the law, or limit recovery to the private party for costs of the suit.

Maine's law, discussed *supra*, also has interesting aspects that would be worthwhile for other states to replicate. Similar to North Carolina's law, Maine has criminal cruelty laws and nearly identical civil cruelty laws. However, a private individual

does not have the right to enforce the civil cruelty laws, which is not ideal. What is particularly progressive about Maine's law is the Animal Welfare Program -- a department that is part of the state's Department of Agriculture and is tasked with enforcing cruelty laws.³³⁹ Having civil cruelty laws and dedicating a position to enforcement of those laws, focused at least in part on agricultural animals, are aspects of Maine's law that are worth using as a model in other states. Ideally, however, a private individual should be able to enforce the civil laws. Perhaps more importantly, if the enforcement power is to be centralized in the Department of Agriculture, it risks political allegiances to agriculture lobbies preventing enforcement of cruelty laws against factory farms. Thankfully this was not an issue in the QENE case, *supra*, but state Departments of Agriculture are notoriously resistant to change on behalf of animals; centralizing power in the Department of Agriculture therefore is not an ideal model to follow in other states. Perhaps instead *131 the enforcement powers could lie in both the Department of Agriculture and private individuals in enforcing civil cruelty laws.

3. Increased Access to Information

One main hurdle to the enforcement of laws against factory farm cruelty is that it is very difficult to obtain information on what is taking place in the farms. The closed-door policies of these operations and the private property rationale they use to restrict public access inside fuels public ignorance about the abuse inside the facilities and may even encourage that abuse. Advocates should seek to remedy this problem by continuing to investigate these facilities, pushing for open-door policies (and not merely a small handful of white-gloved tours),³⁴⁰ as well as increased private enforcement of animal cruelty laws and promulgation of new civil causes of action for animal cruelty.

4. Challenges to Farming Exemptions

Most states have exemptions in their animal cruelty laws for common or normal farming practices. The mere existence of these exemptions is a problem both practically and from an ideological perspective. To address this, advocates should continue to advocate the enforcement of the law, since the cases discussed in this paper indicate that these exemptions do not operate as a complete bar to any chance of success in a cruelty case, even if the cruelty is institutionalized cruelty that is ostensibly committed for the production of food and profits. In addition, it is worthwhile to advocate that these exemptions be repealed: there is no reason that abuse and neglect to a dog or a cat could be criminally prosecuted -- and even be a felony in most states -- while the same conduct done to a farm animal is made explicitly legal *132 by the laws. These animals must be treated like the living sentient beings they are, and not merely like meat-, milk-, and egg-producing machines. Eliminating the common farming exemptions from animal cruelty laws would go a long way toward recognizing these animals' sentience.

5. Use of a Variety of Legal Tools

The cases and analysis discussed in this paper indicate the importance of using state-level animal cruelty laws (both civil and criminal) to target abuse to animals on factory farms. Other important legal tools to address this abuse have and should continue to be used as well, including false advertising and consumer protection laws, the qui tam action used in the Hallmark case, *supra*, antitrust actions, environmental laws, federal laws on slaughter and transport, and lobbying for new laws on both the federal and state levels to fill gaps and weaknesses in the existing laws and improve conditions for farmed animals.

CONCLUSION

Factory farming is one of the most wide-reaching and destructive forces facing modern society, responsible for massive animal suffering, environmental destruction, inefficient resource consumption, and deleterious effects on human health.

With respect to animal treatment, cases discussed here and a multitude of other investigations have shown the brutality and cruelty inherent in factory farming. This combined with the sheer scale and unrelenting demand for artificially cheap animal

products indicates that this problem is unlikely to be fully solved by legal advocacy alone. Ideally, exploitation of animals and the factory farming industry would not exist. However, it is important to maximize the impact of the tools available to us as animal advocates and to seek to improve these tools. The cases and laws discussed in this paper are evidence that change is possible, and that these incremental changes may help bring the plight of farmed animals into the public consciousness, where it deserves to be.

Footnotes

- 1 General Counsel, Compassion Over Killing
- 2 For a discussion of factory farm conditions, see Marcus, Erik, *Meat Market: Animals, Ethics & Money*, 2005, Chapter 1; see also In Defense of Animals, "Facts: Factory Farming," at <http://www.idausa.org/facts/factoryfarmfacts.html> (last visited March 25, 2010).
- 3 Worker treatment is also a major concern on factory farms, but this is outside the scope of this paper. This is also an under-explored and under-researched area. In the interest of time, because of the relative lack of data and because this area directly affects a relatively small number of people compared to the other issues discussed here, this issue will not be addressed in detail. For more information, see People for the Ethical Treatment of Animals, "Down on the Factory Farm," at http://www.goveg.com/workerRights_farms.asp (last visited March 25, 2010); Mercy For Animals, "Former Factory Farm and Slaughterhouse Workers Speak Out" at <http://www.mercyforanimals.org/behind-closed-doors.asp> (last visited March 25, 2010).
- 4 Demand per capita for almost every animal product has increased significantly over the last 50 years or so in the U.S., and of course the U.S. population has continued to grow throughout that time. Per capita demand for chicken and for cheese have particularly increased. USDA Amber Waves, "Guess Who's Turning 100? Tracking A Century of American Eating," March 2010 at <http://www.ers.usda.gov/AmberWaves/March10/Features/TrackingACentury.htm> (last visited March 25, 2010).
- 5 Change.Org, "Animal Use and Abuse Statistics: The Shocking Numbers" at http://animals.change.org/blog/view/animal_use_and_abuse_statistics_the_shocking_numbers (last visited March 25, 2010).
- 6 Looking at chickens alone is enough to arrive at this figure. "Virtually all of the chicken sold in America -- more than 99 percent -- according to Bill Roenigk, Vice President of the National Chicken Council comes from factory farm production ..." Peter Singer and Jim Mason, *The Way We Eat: Why Our Food Choices Matter*, 2006 at 21-22. Broiler chickens alone account for almost nine billion of these animals. USDA, "Poultry Production and Value 2008 Summary" at <http://usda.mannlib.cornell.edu/usda/current/PoulProdVa/PoulProdVa-05-29-2009.txt> (last visited March 25, 2010). In addition, 95-98% of egg-laying hens are confined in small wire "battery cage" conditions (United Egg Producers "Today" at <http://www.uepcertified.com/about/today> (last visited March 25, 2010) which accounts for over 250 million hens (Compassion Over Killing, "Crack the Cruelty: Take COK's 30-day Egg-Free Pledge" at <http://www.eggindustry.com/pledge/> (last visited March 25, 2010) and the approximate equivalent number of their brothers who are killed upon hatching. Change.Org, "Animal Use and Abuse Statistics: The Shocking Numbers" at http://animals.change.org/blog/view/animal_use_and_abuse_statistics_the_shocking_numbers (last visited March 25, 2010). Add the statistic that 90% of pigs are confined in these types of conditions at some point in their lives (In Defense of Animals, "Facts: Factory Farming," at <http://www.idausa.org/facts/factoryfarmfacts.html> (last visited March 25, 2010)) and the percentage of American food animal products that come from factory farms is well over 90% without even having to evaluate the other industries (turkey, beef, sheep, duck, etc).
- 7 Change.Org, "Animal Use and Abuse Statistics: The Shocking Numbers" at http://animals.change.org/blog/view/animal_use_and_abuse_statistics_the_shocking_numbers (last visited March 25, 2010)
- 8 The total of the non-farming figures is 138,677,000 which is 1.39% of 10 billion.
- 9 See Marcus at 7-13 for discussion on this.
- 10 United Egg Producers "Today" at <http://www.uepcertified.com/about/today> (last visited March 25, 2010).
- 11 United Egg Producers (UEP) is the egg-industry trade group that has created a set of "guidelines" for animal husbandry that effectively codify factory farming practices. These guidelines afford laying hens merely 67 square inches of floor space per bird -- less than a letter-sized sheet of paper to live almost their entire lives. See UEP, "Animal Welfare Guidelines" available at <http://www.uepcertified.com/media/pdf/UEP-Animal-Welfare-Guidelines.pdf> at 18 (last visited March 25, 2010); see also documentation

of battery cage facilities, e.g., Compassion Over Killing “Dunkin Donuts Egg Supplier Exposed” Photo Gallery at <http://dunkincruelty.com/investigation#photos> (last visited March 25, 2010); Compassion Over Killing “COK Takes Egg Industry to Court for Consumer Fraud and Exposes Cruel Conditions Inside New Jersey Egg Factory Farm” Photo Gallery at <http://www.cok.net/camp/inv/acc-lawsuit/gallery/> (last visited March 25, 2010).

12 For a recent investigation exposing the horrors of this practice, see Mercy For Animals “Hatchery Horrors: The Egg Industry’s Tiniest Victims” at <http://www.mercyforanimals.org/Hatchery/> (last visited March 25, 2010).

13 As listed in UEP, “Animal Welfare Guidelines” at <http://www.uepcertified.com/media/pdf/UEP-Animal-Welfare-Guidelines.pdf> at 8 (last visited March 25, 2010).

14 Humane Society of the United States “Laying Hens Fact Sheet,” at https://wadmin3.getactive.com/preview!www.hsus.org/farm_animals/factory_farms/the_hen_factory_farm/laying_hens_fact_sheet.html?authToken=af77cce01d4dd99ba07008158186083ae3fa72a7 (last visited March 25, 2010).

15 The federal Humane Methods of Slaughter Act (HMSA) does not include poultry. 7 U.S.C.A. §§ 1901 - 1907. This was confirmed by the dismissal of a challenge to the exclusion of poultry from the HMSA by the Humane Society of the United States. Victoria Kim, “Turkey Slaughter Lawsuit Won’t Fly, Judges Rule,” Los Angeles Times, November 26, 2009, available at <http://articles.latimes.com/2009/nov/26/local/la-me-poultry26-2009nov26> (last visited March 25, 2010).

16 USDA, “Poultry Production and Value 2008 Summary” at <http://usda.mannlib.cornell.edu/usda/current/PoulProdVa/PoulProdVa-05-29-2009.txt> (last visited March 25, 2010).

17 Catch rates of 1,000 - 1,500 birds per hour as standard in the industry contribute to the frequent injury rates. Humane Society of the United States, “An HSUS Report: Welfare Issues with Conventional Manual Catching of Broiler Chickens,” at http://www.hsus.org/farm/resources/research/practices/manual_catching_chickens_turkeys.html#edn17 (last visited March 25, 2010).

18 7 U.S.C.A. §§ 1901 - 1907.

19 USDA Amber Waves, “Guess Who’s Turning 100? Tracking A Century of American Eating,” March 2010 at <http://www.ers.usda.gov/AmberWaves/March10/Features/TrackingACentury.htm> (last visited March 25, 2010).

20 Marcus at 10-11.

21 *Id.* at 11.

22 Compassion Over Killing “A COK Report: Animal Suffering in the Turkey Industry,” at <http://www.cok.net/images/pdf/COKTurkeyReport.pdf> (last visited March 25, 2010).

23 *See* Compassion Over Killing, “A New COK Investigation Uncovers Cruelty at a North Carolina Hatchery that Supplies Butterball,” at <http://www.cok.net/camp/inv/turkeys06/> (last visited March 25, 2010).

24 *See, e.g.*, Farm Sanctuary “Inside a Turkey Breeding Facility” at <http://www.youtube.com/watch?v=ZMx7w9DD7Xk> (last visited March 25, 2010).

25 Compassion Over Killing, “The Pigs,” at <http://www.tryveg.com/cfi/toc/?v=04pigs> (last visited March 25, 2010).

26 *Id.*

27 Farm Sanctuary “Confinement Legislator Brief” at http://farmsanctuary.org/get_involved/assets/Confinement%20Legislator%20Brief_vf.pdf (last visited March 25, 2010).

28 *Id.*; Humane Society of the United States, “Gaining Ground for Sows” at <http://hsus.typepad.com/wayne/2008/01/gestation-crate.html> (last visited March 25, 2010).

29 For discussion on legal action on this issue and investigation into transport conditions, see Compassion Over Killing, “COK Investigation Exposes Farmed Animal Suffering During Interstate Transport” at <http://www.cok.net/feat/usti.php> (last visited March 25, 2010).

- 30 See Eisnitz, *Slaughterhouse: The Shocking Story of Greed, Neglect, and Inhumane Treatment Inside the U.S. Meat Industry*, Prometheus Books 2007.
- 31 Temple Grandin, “The Welfare of Pigs During Transport and Slaughter,” at [http:// www.grandin.com/references/pig.welfare.during.transport.slaughter.h](http://www.grandin.com/references/pig.welfare.during.transport.slaughter.h) (last visited March 25, 2010).
- 32 Compassion Over Killing, “COK Investigation Exposes Farmed Animal Suffering During Interstate Transport” at <http://www.cok.net/feat/usti.php> (last visited March 25, 2010).
- 33 These feedlot conditions can be particularly deleterious on the health of the cattle. See Farm Sanctuary, “Factory Beef Production” at [http:// farmsanctuary.org/issues/factoryfarming/beef/](http://farmsanctuary.org/issues/factoryfarming/beef/) (last visited March 25, 2010).
- 34 *Id.*; Even industry scientists recognize this: James W. Oltjen, Ph.D, and Frank M. Mitloehner, Ph.D., “An Overview of Current Beef Welfare Concerns,” at <http://www.nal.usda.gov/awic/pubs/Beef/overview.htm> (last visited March 25, 2010).
- 35 Compassion Over Killing “The Cows,” at [http:// www.tryveg.com/cfi/toc/?v=04cows](http://www.tryveg.com/cfi/toc/?v=04cows) (last visited March 25, 2010).
- 36 For documentation of this, see Mercy For Animals, “Dairy’s Dark Side: The Truth Behind Sour Milk,” at <http://www.mercyforanimals.org/dairy/> (last visited March 25, 2010).
- 37 For an investigation uncovering the details of this abuse, see Humane Society of the United States, “Rampant Animal Cruelty at California Slaughter Plant,” at http://www.humanesociety.org/news/news/2008/01/undercover_investigation_013008.html (last visited March 25, 2010).
- 38 Compassion Over Killing “The Cows,” at [http:// www.tryveg.com/cfi/toc/?v=04cows](http://www.tryveg.com/cfi/toc/?v=04cows) (last visited March 25, 2010).
- 39 *Id.*
- 40 Laura Allen, Animal Law Coalition, “Help Save Downed Veal Calves from Cruelty,” Nov. 5, 2009 at <http://www.animallawcoalition.com/farm-animals/article/1086> (last visited March 26, 2010).
- 41 *Id.*
- 42 People for the Ethical Treatment of Animals, “Wasted Resources,” at <http://www.goveg.com/environment-wastedresources-water.asp> (last visited March 26, 2010).
- 43 Last Chance for Animals, “Vegan: For Animals, For Health, for Environment,” at http://www.lcanimal.org/cmpgn/cmpgn_005.htm#axzz0jHzFgjCy (last visited March 26, 2010); see also Change.Org, “Animal Use and Abuse Statistics: The Shocking Numbers” available at [http:// animals.change.org/blog/view/animal_use_and_abuse_statistics_the_shocking_numbers](http://animals.change.org/blog/view/animal_use_and_abuse_statistics_the_shocking_numbers) (last visited March 25, 2010) (“More than 90 percent of soybean meal grown in the United States is used to feed animals being raised for human food; these animals also consume 80 percent of corn grown in the United States.”)
- 44 Mind the Planet, “Mindful Eating,” available at [http:// www.mindtheplanet.org/mindful_eating.html](http://www.mindtheplanet.org/mindful_eating.html) (last visited March 26, 2010).
- 45 Bay Weekly, “The Environmental Beef with Meat,” Volume 13, Issue 1 ~ January 6 - 12, 2005 at [http:// www.bayweekly.com/year05/issuexiii1/earthtalkxiii1.html](http://www.bayweekly.com/year05/issuexiii1/earthtalkxiii1.html) (last visited March 26, 2010).
- 46 San Diego Veg Pledge Week, “The Environmental Impact of Meat,” at <http://www.sdvegpledge.com/environment.html> (last visited March 26, 2010).
- 47 It takes 25 gallons of water to produce a pound of wheat, and 2500 gallons of water to produce a pound of meat. John Robbins, Earthsave, “2500 Gallons All Wet?” at <http://www.earthsavve.org/environment/water.htm> (last visited March 26, 2010);⁴⁷ People for the Ethical Treatment of Animals, “Wasted Resources,” at <http://www.goveg.com/environment-wastedresources-water.asp> (last visited March 26, 2010). In addition, A totally vegetarian diet requires only 300 gallons of water per day, while a meat-eating diet requires more than 4,000 gallons of water per day. People for the Ethical Treatment of Animals, “Wasted Resources,” at <http://www.goveg.com/environment-wastedresources-water.asp> (last visited March 26, 2010)

- 48 People for the Ethical Treatment of Animals, “Wasted Resources,” at <http://www.goveg.com/environment-wastedresources-water.asp> (last visited March 26, 2010).
- 49 Environmental Protection Agency, “The Nation’s Largest Water Quality Problem,” at <http://www.epa.gov/nps/facts/point1.htm> (last visited March 26, 2010).
- 50 People for the Ethical Treatment of Animals, “Pollution” at <http://www.goveg.com/environment-pollution.asp> (last visited March 26, 2010).
- 51 People for the Ethical Treatment of Animals, “The Water We Drink” at <http://www.goveg.com/environment-waterwedrink.asp> (last visited March 26, 2010).
- 52 *Id.*
- 53 People for the Ethical Treatment of Animals, “The Air We Breathe” at <http://www.goveg.com/environment-airwebreathe.asp> (last visited March 26, 2010).
- 54 *Id.*
- 55 Ezra Klein, Washington Post, “Gut Check, Here’s the Meat of the Problem,” at <http://www.washingtonpost.com/wpdyn/content/article/2009/07/28/AR2009072800390.html> (last visited March 26, 2010).
- 56 Food and Agriculture Organization of the United Nations, *Livestock’s Long Shadow*, 2006, available at <http://www.fao.org/docrep/010/a0701e/a0701e00.HTM> (last visited March 26, 2010).
- 57 *Id.*; Food and Agriculture Organization of the United Nations, “Livestock Impacts on the Environment” at <http://www.fao.org/ag/magazine/0612sp1.htm> (last visited March 26, 2010).
- 58 People for the Ethical Treatment of Animals, “Wasted Resources” at <http://www.goveg.com/environment-wastedResources.asp> (last visited March 26, 2010).
- 59 *Id.*; see also People for the Ethical Treatment of Animals, “Rainforest” at <http://www.goveg.com/environment-wastedResources-rainforest.asp> (last visited March 26, 2010).
- 60 Last Chance for Animals, “Vegan: For Animals, For Health, for Environment,” at http://www.lcanimal.org/cmpgn/cmpgn_005.htm#axzz0jHzFgjCy (last visited March 26, 2010); see also Change.Org, “Animal Use and Abuse Statistics: The Shocking Numbers” at http://animals.change.org/blog/view/animal_use_and_abuse_statistics_the_shocking_numbers (last visited March 25, 2010) (“More than 90 percent of soybean meal grown in the United States is used to feed animals being raised for human food; these animals also consume 80 percent of corn grown in the United States.”)
- 61 People for the Ethical Treatment of Animals, “Wasted Resources” at <http://www.goveg.com/environment-wastedResources-food.asp> (last visited March 26, 2010).
- 62 Cited by People for the Ethical Treatment of Animals, “World Hunger” at <http://www.goveg.com/worldhunger.asp> (last visited March 26, 2010).
- 63 John Robbins, *Diet for a New America*, New World Library, 1987 at Part 2.
- 64 *Id.* at Part 3.
- 65 *Id.* at 317.
- 66 Medicine.net “E. Coli 0157:H7” at http://www.medicinenet.com/e_coli_0157h7/article.htm (last visited March 26, 2010).
- 67 Humane Society of the United States, “Antibiotics in Animal Agriculture and Human Health” at http://www.hsus.org/farm/resources/research/enviro/fact_sheet_antibiotics.html (last visited March 26, 2010).

- 68 Eisnitz, *Slaughterhouse: The Shocking Story of Greed, Neglect, and Inhumane Treatment Inside the U.S. Meat Industry*, Prometheus Books 2007 at Ch.4.
- 69 Humane Society of the United States “CDC Confirms Ties to Virus First Discovered in U.S. Pig Factories” at http://www.humanesociety.org/news/news/2009/04/swine_flu_virus_origin_1998_042909.html
- 70 For an extensive discussion on this, see Dr. Michael Greger, M.D., *Bird Flu Book*, available in its entirety at <http://birdflubook.com/g.php?id=5> (last visited March 26, 2010).
- 71 7 U.S.C.A. §§ 1901 - 1907.
- 72 7 U.S.C.A. § 1902(a).
- 73 7 U.S.C.A. §§ 1902(b) and 1906.
- 74 See, e.g., Eisnitz, *Slaughterhouse: The Shocking Story of Greed, Neglect, and Inhumane Treatment Inside the U.S. Meat Industry*, Prometheus Books 2007.
- 75 This was confirmed by the denial of standing in the HMSA challenge taken by the Humane Society of the United States. Victoria Kim, “Turkey Slaughter Lawsuit Won’t Fly, Judges Rule,” Los Angeles Times, November 26, 2009, available at <http://articles.latimes.com/2009/nov/26/local/la-me-poultry26-2009nov26> (last visited March 25, 2010)
- 76 49 U.S.C. § 80502.
- 77 Humane Society of the United States, “Loophole on Wheels: Trucks and the Twenty-Eight Hour Law” at http://www.hsus.org/farm/news/ournews/28-hour_law.html (last visited March 26, 2010); Compassion Over Killing, “COK Investigation Exposes Farmed Animal Suffering During Interstate Transport,” at <http://www.cok.net/feat/usti.php> (last visited March 26, 2010).
- 78 *Id.*
- 79 Compassion Over Killing, “USDA To Start Regulating the Transport of Farmed Animals” at http://www.cok.net/feat/28_hour_law/ (last visited March 26, 2010); Humane Society of the United States, “USDA Reverses Decades-Old Policy on Farm Animal Transport” 2006, at http://www.hsus.org/farm/news/ournews/usda_reverses_28_hour_policy.html (last visited March 26, 2010).
- 80 49 U.S.C. § 80502(d).
- 81 7 U.S.C.A. §§ 2131 - 2159.
- 82 7 U.S.C.A. § 2131. It also excludes birds from its coverage entirely.
- 83 Rebecca Wisch, “Overview of State Cruelty Laws” at <http://www.animallaw.info/articles/ovusstatecrueltylaws.htm> (last visited March 26, 2010).
- 84 David Wolfson and Mariann Sullivan, “Foxes in the Henhouse: Animals, Agribusiness, and the Law: A Modern American Fable” in Cass Sunstein and Martha Nussbaum (eds.) *Animal Rights: Current Debates and New Directions* at 212-218.
- 85 For more discussion on this, see David Wolfson and Mariann Sullivan, “Foxes in the Henhouse: Animals, Agribusiness, and the Law: A Modern American Fable” in Cass Sunstein and Martha Nussbaum (eds.) *Animal Rights: Current Debates and New Directions* at Ch. 9.
- 86 *Id.*
- 87 There are notable exceptions, such as North Carolina’s N.C.G.S. § § 19A-1-70 and Maine’s civil provisions in their agriculture code at 7 M.R.S. §§ 4011-4019. However, in Maine, the fact that there are civil animal cruelty provisions does not provide much help to the animal advocate who seeks enforcement of these laws. Rather, in Maine the Department of Agriculture’s Commissioner must enforce the law. In North Carolina, while 19A does provide a route for any person to enforce the cruelty law and seek an injunction, there is a very broad and vague farm animal exemption which limits the effectiveness of the law, although this is not a bar to its enforcement for factory farmed animals, discussed *infra*.

- 88 *See, e.g.*, Pennsylvania, discussed *infra*.
- 89 Global Stewards, “U.S. Public Opinion Survey Results on the Environment, Trade, and Campaign Finance Reform” at <http://www.globalstewards.org/survey.htm> (last visited March 26, 2010).
- 90 Florida CS/SB 1246 was first introduced on February 21, 2011 by Senator Jim Norman, with co-introducers Hays and Bullard. The original version of the bill would make it a felony to photograph a farm without the owner's written consent, and the amended version of the bill would make it a first degree misdemeanor. The Florida bill was passed by the Agriculture subcommittee and moved through to Criminal Justice, and as of the time of this writing, is in Budget. It was amended on March 22, 2011 to make the offense a misdemeanor rather than a felony. The Florida Senate, “CS/SB 1246” available at <http://www.flsenate.gov/Session/Bill/2011/1246> (last visited April 28, 2011).
- 91 The Iowa Legislature, House File 589 -- Reprinted, available at <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=HF589> (last visited April 29, 2011).
- 92 *Id.*
- 93 Iowa S.J. 1074, last amended April 27, 2011 as of the time of this writing.
- 94 Minnesota H.F. No. 1369, available at <https://www.revisor.mn.gov/bin/bldbill.php?bill=H1369.0.html&session=ls87> (last visited May 2, 2011).
- 95 People for the Ethical Treatment of Animals, “Belcross Farms Investigation” available at <http://www.goveg.com/belcross.asp> (last visited March 15, 2010); see also *Id.* at http://www.goveg.com/belcross_investigator.asp (last visited March 15, 2010).
- 96 *Id.*
- 97 *Id.*
- 98 *Id.* While he only served five months, this still represents a major watershed moment for animals in factory farms.
- 99 American Meat Institute, “Meat Industry at a Glance” at <http://www.meatami.com/ht/d/sp/i/47465/pid/47465> (last visited March 26, 2010).
- 100 See N.C.G.S. §§ 19A-1-70 (civil) and 14-360 - 363.2 (criminal).
- 101 N.C.G.S. § 19A-1.1. Exemptions
This Article shall not apply to the following: [...] (2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species. (3) Lawful activities conducted for the primary purpose of providing food for human or animal consumption. [...]
See also, N.C.G.S. § 14-360
... [T]his section shall not apply to the following activities: [...] (2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species. (2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.
- 102 People for the Ethical Treatment of Animals, “Seaboard Farms Investigation” available at <http://www.goveg.com/seaboard.asp> (last visited March 16, 2010)
- 103 *Id.*
- 104 *Id.*
- 105 People for the Ethical Treatment of Animals, “Thousands of Chickens Tortured by KFC Supplier,” at <http://www.kentuckyfriedcruelty.com/u-pilgrimspride.asp> (last visited March 24, 2010).
- 106 W. Va. Code § 61-8-19(a)
- 107 W. Va. Code § 61-8-19(b)

- 108 PETA's legal complaint is available at People for the Ethical Treatment of Animals, "Cruelty to Animals at Pilgrim's Pride Corporation," Letter to the Prosecuting Attorney, July 19, 2004 at http://www.kentuckyfriedcruelty.com/pdfs/pp_complaint.pdf.
- 109 Personal Interview with Lorri Kettler, PETA, March 24, 2010.
- 110 People for the Ethical Treatment of Animals, "Charges Filed After Investigation Reveals Torture of Pigs," at <https://secure.peta.org/site/Advocacy?cmd=display&page=UserAction&id=697> (last visited March 24, 2010).
- 111 *Id.*; Personal Correspondence with Lorri Kettler, PETA, April 1, 2010.
- 112 N.C.G.S. § 19A-1.1 and N.C.G.S. § 14-360
- 113 People for the Ethical Treatment of Animals, "22 Charges Filed Based on PETA Investigation at Hormel Supplier," at http://blog.peta.org/archives/2008/10/22_charges_file.php (last visited March 24, 2010).
- 114 *Id.*
- 115 People for the Ethical Treatment of Animals, "Mother Pigs and Piglets Abused by Hormel Supplier," at <https://secure.peta.org/site/Advocacy?cmd=display&page=UserAction&id=1131> (last visited March 24, 2010).
- 116 *Id.*
- 117 American Meat Institute, "Meat Industry at a Glance" at <http://www.meatami.com/ht/d/sp/i/47465/pid/47465> (last visited March 26, 2010).
- 118 People for the Ethical Treatment of Animals, "More Indictments for Aviagen Turkey Abusers," Oct. 1, at <http://blog.peta.org/archives/aviagen/> (last visited March 17, 2010).
- 119 *Id.*
- 120 *Id.*
- 121 People for the Ethical Treatment of Animals, "Turkey Abusers Convicted: One Jailed!" June 29, at <http://blog.peta.org/archives/aviagen/> (last visited March 17, 2010).
- 122 *Id.*
- 123 "The first indictments were handed down in Greenbrier County, and now further felony indictments have been issued in Monroe County against Walter Hambrick and Scott White. White was already convicted in Greenbrier County of the cruelty he committed there, and he went to jail. Hambrick--whose charges in Greenbrier County are still pending--now faces three more felonies just a few minutes down the road." People for the Ethical Treatment of Animals, "More Indictments for Aviagen Turkey Abusers," Oct. 1, at <http://blog.peta.org/archives/aviagen/> (last visited March 17, 2010).
- 124 Personal Correspondence with Lorri Kettler, PETA, April 1, 2010
- 125 People for the Ethical Treatment of Animals, "More Indictments for Aviagen Turkey Abusers," Oct. 1, at <http://blog.peta.org/archives/aviagen/> (last visited March 17, 2010).
- 126 Personal Correspondence with Lorri Kettler, PETA, April 1, 2010.
- 127 *Id.*
- 128 *Id.*
- 129 People for the Ethical Treatment of Animals, "Turkey Abusers Convicted: One Jailed!" June 29, at <http://blog.peta.org/archives/aviagen/> (last visited March 17, 2010).
- 130 *Id.*

- 131 W. Va. Code, §§ 7-10-1 - 5; 61-8-19 - 23
- 132 Mercy For Animals, “Ohio Dairy Farm Investigation” available at <http://www.mercyforanimals.org/ohdairy/> (last visited August 4, 2010).
- 133 *Id.*
- 134 *Id.*
- 135 *Id.*
- 136 Fox 8 News, “\$100,000 Bond For Farm Worker in Cow Abuse Case,” May 26, 2010 at <http://www.fox8.com/news/wjw-man-arrested-ohio-animal-abuse-dairy-farm-txt,0,5927461.story> (last visited August 4, 2010).
- 137 *Id.*
- 138 In addition, this same worker was later charged for improper handling of a firearm in a motor vehicle, which is a felony in Ohio. Officials discovered this firearm issue because he brought the firearm in his vehicle when he drove to the sheriff’s office to be questioned about the animal abuse. The Columbus Dispatch, “Cow abuser pleads in gun case,” January 19, 2011.
- 139 Kris Alingod, All Headline News, “Extreme Video of Dairy Farm Abuse, Misdemeanor Charges Ignite Anger,” May 28, 2010 at <http://www.allheadlinenews.com/articles/7018833559> (last visited August 4, 2010).
- 140 Huffington Post, “No Charges For Farm Owner Gary Conklin in Dairy Farm Abuse Case,” July 7, 2010 at http://www.huffingtonpost.com/2010/07/07/conklin-dairy-farm-abuse_n_637847.html (last visited August 4, 2010).
- 141 OH ST § 959.13. Further aspects of Ohio cruelty law are discussed *infra*.
- 142 Particularly notable are the Quality Egg of New England, Bushway, and Willet cases, discussed *infra*.
- 143 Humane Society of the United States, “Seeking Common Sense Farm Measures in Ohio,” March 25, 2010 at http://www.humanesociety.org/news/news/2010/03/ohio_farm_ballot_032510.html (last visited August 4, 2010).
- 144 These changes include a ban on veal crates by 2015, a phase-out of gestation crates, a ban on strangulation of farmed animals, felony penalties for cockfighting, and puppy mill and exotics laws. Ohioans for Humane Farms at <http://www.ohiohumane.com/> (last visited August 5, 2010).
- 145 In particular, the ballot initiative would not have affected the puppy mill or cockfighting issue at all.
- 146 Ben Sutherly, Dayton Daily News, “Changes Could Cost Ohio’s Egg, Hog Industries,” July 25, 2010 at <http://www.daytondailynews.com/business/changes-could-cost-ohios-egg-hog-industries-828186.html?showComments=true> (last visited August 5, 2010). However, months after this agreement, this 6-million hen facility petitioned to be allowed to build regardless of the agreement. Dispatch Politics, “Much rests on state hearing for egg farm,” December 15, 2010 at http://www.dispatchpolitics.com/live/content/local_news/stories/2010/12/15/copy/much-rests-on-state-hearing-for-egg-farm.html?adsec=politics&sid=101 (last visited May 2, 2011). No final resolution has been reached as of the time of this writing, but the state hearing officer determined that the permit should be denied, but the authority to make that determination now rests with the director of the Department of Agriculture. Dispatch Politics, “Ohio’s new farm chief can overturn denial of egg farm,” April 14, 2011, available at http://www.dispatchpolitics.com/live/content/local_news/stories/2011/04/14/copy/ohios-new-farm-chief-can-overturn-denial-of-egg-farm.html?adsec=politics&sid=101 (last visited May 2, 2011).
- 147 Humane Society of the United States, “Landmark Ohio Animal Welfare Agreement Reached Among HSUS, Ohioans for Humane Farms, Gov. Strickland, and Leading Livestock Organizations,” June 30, 2010 at http://www.humanesociety.org/news/press_releases/2010/06/landmark_ohio_agreement_063010.html (last visited August 5, 2010).
- 148 *See, e.g.*, Jamie Lee Curtis and Christopher Guest, Huffington Post, “An Open Letter to Gary Conklin and the Workers of the Conklin Dairy Farm,” May 27, 2010 at http://www.huffingtonpost.com/jamie-lee-curtis/an-open-letter-to-gary-co_b_591730.html (last visited August 5, 2010).

- 149 For more information on these ballot initiatives, *see, e.g.*, Encyclopedia Britannica, “Measuring the Benefits of Ballot Initiatives,” May 26, 2010 at <http://advocacy.britannica.com/blog/advocacy/2010/05/measuring-the-benefits-of-ballot-measures/> (last visited August 5, 2010).
- 150 There has been extensive debate over so-called “humane meat” and “sustainable” animal agriculture, and this debate continues to develop. It is the position of this paper that the “humane meat” and “sustainable” animal agriculture movements are a naïve and scientifically unsupportable solution to the social ills brought about by factory farming. (*see, e.g.*, Humane Myth at <http://www.humanemyth.org/> last visited August 5, 2010). It is outside the scope of this paper to examine the scientific, ideological, and policy arguments about alternatives to factory farming that still include production of animal flesh, eggs, and milk for human consumption on a large scale. However, this paper's position is that the most viable way to address this problem is working toward the drastic reduction and ideally toward the ultimate elimination of animal agriculture as a way to produce food.
- 151 As was the case in *Esbenshade* discussed *infra*.
- 152 For more on the mechanism of objectification and its relationship to exploitation and consumption, see Adams, Carol *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory*, Continuum 1999.
- 153 *See* People for the Ethical Treatment of Animals, “Down on the Factory Farm,” at http://www.goveg.com/workerRights_farms.asp (last visited March 25, 2010); Mercy For Animals, “Former Factory Farm and Slaughterhouse Workers Speak Out” at <http://www.mercyforanimals.org/behind-closed-doors.asp> (last visited March 25, 2010).
- 154 Farm Forward, “Factory Farming” at <http://www.farmforward.com/farming-forward/factory-farming> (last visited March 26, 2010).
- 155 *See, e.g.*, People for the Ethical Treatment of Animals, “Agriprocessors” at <http://www.goveg.com/feat/agriprocessors/> (last visited March 26, 2010); Compassion Over Killing, “A New COK Investigation Uncovers Cruelty at a North Carolina Turkey Hatchery that Supplies Butterball” at <http://www.cok.net/camp/inv/turkeys06/> (last visited March 26, 2010).
- 156 *See, e.g.*, the Vice President of the National Pork Producers Council, Dallas Hockman, responded to the HBO documentary on abuse at the Wiles Pig Farm (discussed *infra*) by saying “The bigger issue, of course, is that the film highlights the cultural divide between what is acceptable to livestock producers and what is deemed shocking to our customers. Unfortunately, there are a lot of things on a farm that are just not pretty. And people like “Pete” [the investigator] will continue to exploit that in an effort to promote legislation at the state and national levels that will make livestock production more expensive.” Drovers, “Industry Responds to ‘Death on a Factory Farm” at http://www.drovers.com/news_editorial.asp?ts=nl2&pgID=675&ed_id=5341 (last visited March 26, 2010).
- 157 *See supra* for examples of common practices which cause suffering and pain.
- 158 Discussed *supra*.
- 159 Pasado Safe Haven, “Amberson Egg Farm” at <http://www.pasadosafehaven.org/RESCUES/AMBERSON/Amberson.htm> (last visited April 19, 2010). Note: it is possible that he abandoned these animals in retaliation against local authorities' fining him for clean-up orders. Inhumane.org, “Keith Amberson Animal Cruelty Casefile” at <http://www.inhumane.org/data/KAmberson.html> (last visited April 19, 2010).
- 160 Pasado Safe Haven, “Amberson Egg Farm” at <http://www.pasadosafehaven.org/RESCUES/AMBERSON/Amberson.htm> (last visited April 19, 2010).
- 161 *Id.*
- 162 *Id.*
- 163 Pasado Safe Haven, “Amberson Egg Farm” at <http://www.pasadosafehaven.org/RESCUES/AMBERSON/Amberson.htm> (last visited April 19, 2010).
- 164 *See* Inhumane.org, “Keith Amberson Animal Cruelty Casefile” at <http://www.inhumane.org/data/KAmberson.html> (last visited April 19, 2010). Washington's animal cruelty statute Wash St. §§ 6.52.011 - 6.52.230 specifically exempts “accepted husbandry practices used in the commercial raising or slaughtering of livestock or poultry” Wash St. § 6.52.185.

- 165 Inhumane.org, “Keith Amberson Animal Cruelty Casefile” at <http://www.inhumane.org/data/KAmberson.html> (last visited April 19, 2010). Washington's second-degree animal cruelty law prohibits an owner's “knowingly, recklessly, or with criminal negligence (a) 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 as a result of the failure, or; (b) abandons the animal.” Wash St. § 6.52.207.
- 166 Inhumane.org, “Keith Amberson Animal Cruelty Casefile” at <http://www.inhumane.org/data/KAmberson.html> (last visited April 19, 2010).
- 167 *Id.*
- 168 *Id.*
- 169 Farm Sanctuary, “Egg Company Appeals Cruelty Conviction: Contends that Hens Can be Discarded Like Manure and that Disposing of Hens in Trash Cans is Legal” 2001 at http://farmsanctuary.org/mediacenter/past/pr_eggs_01.html (last visited April 6, 2010).
- 170 Personal correspondence with Delcianna Winders, Farm Sanctuary, April 4, 2010).
- 171 Farm Sanctuary, “Egg Company Appeals Cruelty Conviction: Contends that Hens Can be Discarded Like Manure and that Disposing of Hens in Trash Cans is Legal” 2001 at http://farmsanctuary.org/mediacenter/past/pr_eggs_01.html (last visited April 6, 2010).
- 172 Waisman et al., *Animal Law Cases and Materials*, Carolina Academic Press 2006 at 335. Appeal is at *State of New Jersey v. ISE Farms, Inc.*, Appeal No. A-45-00 (N.J. Super. Ct., Law Div. Mar. 8, 2001).
- 173 N.J.S.A. § 4:22-16. Note the current law regarding the farm animal exemption relates to regulations that were promulgated by the New Jersey Department of Agriculture to define what these acceptable practices are, but at the time of this case these regulations were not in place. Note also that after the regulations were promulgated, the New Jersey Supreme Court struck down the routine husbandry practices provisions which were in the law at the time of this case.
- 174 Waisman et al., *Animal Law Cases and Materials*, Carolina Academic Press 2006 at 335.
- 175 *Id.*
- 176 Personal Correspondence with Delcianna Winders, Farm Sanctuary, April 4, 2010.
- 177 Waisman et al., *Animal Law Cases and Materials*, Carolina Academic Press 2006 at 335 citing Trial Transcript (N.J. Muni. Ct., Warren County Oct. 17, 2000).
- 178 *Id.*
- 179 *Id.* quoting Appeal Transcript, N.J. Super. Ct., Law Div. Mar. 8, 2001 at p. 49.
- 180 N.J.S.A. § 4:22-17(b). Note, however, that this applies to the “torture, torment, maim, hang, poison ...” portion of the law, which is distinct from the portion of the law which criminalizes deprivation of necessary sustenance, abuse, needless killing, unnecessary cruelty, unnecessary failure to provide proper food, drink, shelter, or protection from the weather, and lists no mens rea element. N.J.S.A. § 4:22-17(a) Note also that the knowledge and acts of an agent are imputed to the corporation under the cruelty law. N.J.S.A. § 4:22-15.
- 181 *See, e.g.*, Esbenshade case, QENE case, etc., discussed *infra* for examples of investigations that have shown institutionalized knowing, reckless, or wanton neglect.
- 182 Compassion Over Killing, “COK Investigation Exposes Chicken Industry Cruelty -- Undercover Footage of Perdue Slaughterhouse Reveals Routine Abuse,” available at <http://www.cok.net/camp/inv/perdue/> (last visited March 16, 2010); see also “Investigation Log Notes” at <http://www.cok.net/camp/inv/perdue/notes.php> (last visited March 17, 2010).
- 183 Compassion Over Killing, “Investigation Log Notes” at <http://www.cok.net/camp/inv/perdue/notes.php> (last visited March 17, 2010).
- 184 Compassion Over Killing, “Investigation Log Notes” at <http://www.cok.net/camp/inv/perdue/notes.php> (last visited March 17, 2010).

- 185 *Id.*
- 186 *Id.*
- 187 *Id.*
- 188 Shawn Soper, “No Probe Yet in Alleged Perdue Cruelty Case,” *The Maryland Coast Dispatch*, Nov. 5, 2004, available at http://www.cok.net/inthenews/perdue_mcd.php (last visited March 29, 2010).
- 189 *Id.*
- 190 Associated Press, “Sherriff: Perdue Plant’s Closure May Complicate Animal Cruelty Investigation” 2004, available at <http://www.cok.net/inthenews/perdueplantclosure2.php> (last visited March 29, 2010).
- 191 Gretchen Parker, “Prosecutors Halt Complaint, Dismiss Perdue Animal Cruelty Charge,” Associated Press, available at http://www.cok.net/inthenews/020305_ap.php (last visited March 29, 2010).
- 192 *Id.*
- 193 *Id.*
- 194 *Id.*
- 195 Humane Society of the United States, “Rare Bird: Missouri County D.A. May be the First to File Animal Cruelty Charges Against an Egg Producer” at http://www.hsus.org/farm/news/ournews/missouri_county_files_charges_against_moark.html (last visited March 29, 2010).
- 196 Humane Society of the United States “Laying Hens Fact Sheet,” at https://wadmin3.getactive.com/preview!www.hsus.org/farm_animals/factory_farms/the_hen_factory_farm/laying_hens_fact_sheet.html?authToken=af77cce01d4dd99ba07008158186083ae3fa72a7 (last visited March 25, 2010).
- 197 *Id.*
- 198 Humane Society of the United States, “Rare Bird: Missouri County D.A. May be the First to File Animal Cruelty Charges Against an Egg Producer” at http://www.hsus.org/farm/news/ournews/missouri_county_files_charges_against_moark.html (last visited March 29, 2010).
- 199 V. A. M. S. 578.005 - 188; V.A.M.S. 566.111.
- 200 V. A. M. S. 578.007(8).
- 201 *Id.*; Humane Society of the United States, “Moark Must Pay \$100,000 and Overhaul its Spent Hen Procedures to Settle Animal Cruelty Charges” at http://www.hsus.org/farm/news/ournews/moark_settles_case.html (last visited March 29, 2010); personal interview with Scott Watson, former Newton County, MO prosecutor, April 20, 2010.
- 202 Personal interview with Scott Watson, former Newton County, MO prosecutor, April 20, 2010.
- 203 Humane Society of the United States, “Moark Must Pay \$100,000 and Overhaul its Spent Hen Procedures to Settle Animal Cruelty Charges” at http://www.hsus.org/farm/news/ournews/moark_settles_case.html (last visited March 29, 2010).
- 204 Personal interview with Scott Watson, former Newton County, MO prosecutor, April 20, 2010.
- 205 Humane Society of the United States, “Rare Bird: Missouri County D.A. May be the First to File Animal Cruelty Charges Against an Egg Producer” at http://www.hsus.org/farm/news/ournews/missouri_county_files_charges_against_moark.html (last visited March 29, 2010).
- 206 Compassion Over Killing, “Update: Pennsylvania Court finds that Animal Abuse on Factory Farm is Legal” at <http://www.cok.net/feat/paefi.php> (last visited March 29, 2010).

- 207 *Id.*
- 208 *Id.*
- 209 18 Pa.C.S.A. § 5511(C)(3).
- 210 18 Pa.C.S.A. § 5511(i).
- 211 *Id.*
- 212 18 Pa.C.S.A. § 5511(o).
- 213 Compassion Over Killing, “Pennsylvania Court finds that Animal Abuse on Egg Factory Farm is Legal” June 4, 2007 at <http://www.cok.net/inthenews/releases/?pr=pennsylvania-court-finds-that-animal-abuse-on-egg-factory-farm-is-legal> (last visited March 29, 2010).
- 214 Compassion Over Killing, “Update: Pennsylvania Court finds that Animal Abuse on Factory Farm is Legal” at <http://www.cok.net/feat/paefi.php> (last visited March 29, 2010).
- 215 18 Pa.C.S.A. § 5511.
- 216 *Commonwealth of Pennsylvania v. Esbenshade and Musser*, trial transcript (on file with author).
- 217 *Id.*
- 218 *Commonwealth of Pennsylvania v. Esbenshade and Musser*, trial brief (on file with author).
- 219 *Commonwealth of Pennsylvania v. Esbenshade and Musser*, trial transcript (on file with author).
- 220 *Id.*
- 221 *Id.*
- 222 *Commonwealth of Pennsylvania v. Esbenshade and Musser*, trial brief (on file with author).
- 223 Compassion Over Killing, “Update: Pennsylvania Court finds that Animal Abuse on Factory Farm is Legal” at <http://www.cok.net/feat/paefi.php> (last visited March 29, 2010).
- 224 *Commonwealth of Pennsylvania v. Esbenshade and Musser*, trial brief (on file with author).
- 225 *Commonwealth of Pennsylvania v. Esbenshade and Musser*, trial transcript (on file with author).
- 226 *Id.*
- 227 *Commonwealth v. Donough*, 377 Pa. 46, 52, 103 A.2d 694, 697 (1954); see also *Commonwealth v. Parsons*, 233 Pa. Super. 419, 421, 335 A.2d 800, 801 (1975).
- 228 For more discussion on this case, see Leahy, Cheryl, “The Challenges and Importance of Combating Institutionalized Cruelty to Farmed Animals: The Commonwealth of Pennsylvania v. Esbenshade and Musser Case” ABA TIPS ALC Newsletter, Fall 2007.
- 229 *Id.*
- 230 *Id.*
- 231 The common practices exemptions themselves are also not morally justifiable. For more discussion on the ethics of this issue, see David Wolfson and Mariann Sullivan, “Foxes in the Henhouse: Animals, Agribusiness, and the Law: A Modern American Fable” in Cass Sunstein and Martha Nussbaum (eds.) *Animal Rights: Current Debates and New Directions* at Ch. 9.

- 232 For more discussion on the case, see Humane Farming Association, “Animal Cruelty Conviction at Wiles Hog Factory: HFA Evidence Ruled Factual, Accurate, and Admissible.” November 2007 at http://www.hfa.org/campaigns/wiles_update11_07.pdf (last visited March 19, 2010).
- 233 *Id.* HFA’s legal petition is available from HFA upon request.
- 234 *Id.*
- 235 *Id.*
- 236 *Id.*
- 237 *Id.*
- 238 Christine Pratt, “Hog Farmers Found Not Guilty on Several Other Charges,” *The Daily Record*, June 21, 2007, available at <http://www.the-daily-record.com/news/article/2160082> (last visited March 19, 2010).
- 239 *Id.*
- 240 HBO “Death on a Factory Farm” website and video available at <http://www.hbo.com/documentaries/death-on-a-factory-farm/index.html> (last visited March 29, 2010).
- 241 Humane Farming Association, “Animal Cruelty Conviction at Wiles Hog Factory: HFA Evidence Ruled Factual, Accurate, and Admissible.” November 2007 at http://www.hfa.org/campaigns/wiles_update11_07.pdf (last visited March 19, 2010). This civil case is still pending and has not yet gone to trial.
- 242 Personal interview with Gail Eisnitz, March 29, 2010.
- 243 OH ST §§ 959.01-99. The Ohio cruelty law also “does not apply to or prohibit the slaughtering of livestock under Chapter 945” of the Ohio Code. Chapter 945 Governs Humane Slaughter of Livestock, which states, in relevant part, “(A) In the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals *are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut*” OH ST § 945.01. However, this law did not apply to the killing at issue in the Wiles case because it protects only animals that are being killed at a slaughterhouse, and not on-farm killing, which was the issue here.
- 244 OH ST § 959.13
- 245 Personal interview with Gail Eisnitz, March 29, 2010.
- 246 Humane Society of the United States, “Rampant Animal Cruelty at California Slaughter Plant,” January 30, 2008, at http://www.humanesociety.org/news/news/2008/01/undercover_investigation_013008.html (last visited March 19, 2010).
- 247 Humane Society of the United States, “Rampant Animal Cruelty at California Slaughter Plant,” January 30, 2008, at http://www.humanesociety.org/news/news/2008/01/undercover_investigation_013008.html (last visited March 19, 2010).
- 248 Nancy Perry and Peter Brandt, “A Case Study on Cruelty to Farm Animals: Lessons Learned from the Hallmark Meat Packing Case,” *Michigan Law review First Impression* Vol. 106:117, 2008.
- 249 *Id.*
- 250 *Id.*
- 251 See Farm Sanctuary “No Downers” at <http://www.nodowners.org/> (last visited March 29, 2010).
- 252 Nancy Perry and Peter Brandt, “A Case Study on Cruelty to Farm Animals: Lessons Learned from the Hallmark Meat Packing Case,” *Michigan Law review First Impression* Vol. 106:117, 2008.
- 253 *Id.*

- 254 *Id.*
- 255 Wayne Pacelle, Humane Society of the United States, “Case Finally Closed on Downers Loophole” March 14, 2009 at <http://hsus.typepad.com/wayne/2009/03/obama-downers.html> (last visited March 29, 2010).
- 256 Nancy Perry and Peter Brandt, “A Case Study on Cruelty to Farm Animals: Lessons Learned from the Hallmark Meat Packing Case,” Michigan Law Review First Impression Vol. 106:117, 2008. See also in the Perry and Brandt article an analysis of the shortcomings of the USDA’s authority to react to a violation of its animal handling regulations.
- 257 Wayne Pacelle, Humane Society of the United States, “Case Finally Closed on Downers Loophole” March 14, 2009 at <http://hsus.typepad.com/wayne/2009/03/obama-downers.html> (last visited March 29, 2010).
- 258 See Jon Lovvorn, Humane Society of the United States, “A Day of Reckoning” at <http://hsus.typepad.com/wayne/2009/05/false-claims.html> (last visited March 29, 2010).
- 259 *United States of America ex rel. The Humane Society of the United States v. Westland/Hallmark Meat Company et al.*, No. EDCV 08-0221 VAP (OPx) U.S. Dist. Ct. Central Dist. of Calif. Eastern Div., United States’ First Amendment Complaint in Intervention and Demand for Jury Trial, March 2010 at 2, 11, 15-16. False Claims Act is at 31 U.S.C. §§ 3729-3733. Note: there are other claims being made in the Hallmark Qui Tam action, including the concealment from the FSIS of a felon’s involvement in the operation of the slaughterhouse. *Id.*
- 260 See Jon Lovvorn, Humane Society of the United States, “A Day of Reckoning” at <http://hsus.typepad.com/wayne/2009/05/false-claims.html> (last visited March 29, 2010).
- 261 *Id.*
- 262 Nancy Perry and Peter Brandt, “A Case Study on Cruelty to Farm Animals: Lessons Learned from the Hallmark Meat Packing Case,” Michigan Law Review First Impression Vol. 106:117, 2008.
- 263 United Egg Producers “Today” at <http://www.uepcertified.com/about/today> (last visited March 25, 2010).
- 264 Mercy For Animals, “The Rotten Truth: Egg Industry Cruelty Revealed,” at <http://www.mercyforanimals.org/maine-eggs/> (last visited March 22, 2010).
- 265 Mercy For Animals QENE Complaint to District Attorney, at <http://mercyforanimals.org/memedia/QENELegalComplaint.pdf> (last visited April 6, 2010).
- 266 *Id.*
- 267 17 M.R.S. §§ 1011-1038.
- 268 The criminal law prohibits:
...
B. Except for a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not cause instantaneous death
D. Injures, overworks, tortures, torments, abandons or cruelly beats or intentionally mutilates an animal; gives drugs to an animal with an intent to harm the animal; gives poison or alcohol to an animal; or exposes a poison with intent that it be taken by an animal
D-2. Abandons an animal in violation of paragraph D and that animal dies as a result
E. Deprives an animal that the person owns or possesses of necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions.
17 M.R.S. § 1031.
- 269 17 M.R.S. § 1031. Maine structures its crimes by letter category. Roughly, a Class C crime is the equivalent of a felony and a class D crime is the equivalent of a misdemeanor.
- 270 17 M.R.S. § 1023. There are also seizure and investigation powers held by other entities, e.g., humane officers, constables, police officers, etc. 17 M.R.S. § 1027.

- 271 7 M.R.S. §§ 4011-4019.
- 272 7 M.R.S. § 4011.
- 273 7 M.R.S. § 4017.
- 274 Maine Department of Agriculture, “Animal Welfare Program” at <http://www.maine.gov/agriculture/aw/index.html> (last visited March 29, 2010).
- 275 *Id.*
- 276 Author's Personal Witnessing, March, 2009. Hoenig reiterated this point publicly: Lindsay Tice, Sun Journal, “Probe Goes on Day After Raid at Turner Plant” April 3, 2009, available at http://findarticles.com/p/news-articles/sun-journal-lewiston-me/mi_8028/is_20090403/probe-raid-turner-plant/ai_n44730641/ (last visited March 29, 2010).
- 277 WCBV TV Boston, “Team 5 Investigates Chicken Farm Abuse,” at <http://www.thebostonchannel.com/video/19073199/index.html> (last visited March 23, 2010); see also WCBV TV Boston, “Region's Largest Egg Supplier Raided,” at <http://www.thebostonchannel.com/news/19075283/detail.html> (last visited March 23, 2010).
- 278 Scott Taylor, *Sun Journal*, “Egg Giants Work on Reforms,” April 7, 2009.
- 279 *Id.*
- 280 Donna Goodison, *Boston Herald*, “Radlo Cuts Ties with Egg Farm” available at <http://www.highbeam.com/doc/1G1-197376043.html> (last visited March 29, 2010).
- 281 See Clarke Canfield, *ABC News*, “Grocers Urged to Stop Buying Eggs from Maine Farm” April 2, 2009, available at <http://abcnews.go.com/Business/wirestory?id=7242622&page=1> (last visited March 29, 2010).
- 282 Susan Sharon, Maine Public Broadcasting Network, “Former DeCoster Egg Farm Agrees to Settle Animal Cruelty Case” at <http://www.mpbn.net/Home/tabid/36/ctl/ViewItem/mid/3478/ItemId/12483/Default.aspx> (last visited August 17, 2010).
- 283 For the video footage, see Mercy For Animals, “The Rotten Truth: Egg Industry Cruelty Revealed” June 7, 2010 at <http://www.mercyforanimals.org/maine-eggs/> (last visited March 23, 2010).
- 284 Moark's \$100,000 settlement appears to be the closest, discussed *supra*.
- 285 See, e.g., Compassion Over Killing “Dunkin Donuts Egg Supplier Exposed” Photo Gallery at <http://dunkincruelty.com/investigation#photos> (last visited March 25, 2010); Compassion Over Killing “COK Takes Egg Industry to Court for Consumer Fraud and Exposes Cruel Conditions Inside New Jersey Egg Factory Farm” Photo Gallery at <http://www.cok.net/camp/inv/acc-lawsuit/gallery/> (last visited March 25, 2010); Mercy For Animals, “Undercover at a California Factory Egg Farm” at <http://www.mercyforanimals.org/norco/> (last visited March 29, 2010); Mercy For Animals, “Egg Industry Exposed!” at <http://www.mercyforanimals.org/CAEggs/> (last visited March 29, 2010).
- 286 Humane Society of the United States, “More Video of Abused Calves at Vermont Slaughter Plant,” Nov. 2, 2009, at http://www.humanesociety.org/news/news/2009/11/veal_investigation_110209.html (last visited March 22, 2010).
- 287 *Id.*
- 288 7 U.S.C.A. § 1901 - 1907.
- 289 Humane Society of the United States, “More Video of Abused Calves at Vermont Slaughter Plant,” Nov. 2, 2009, at http://www.humanesociety.org/news/news/2009/11/veal_investigation_110209.html (last visited March 22, 2010).
- 290 *Humane Society of the United States v. Vlisack* Petition available at http://www.fsis.usda.gov/PDF/Petition_HSUS_Humane_Handling.pdf (last visited July 1, 2010).
- 291 *Id.*

- 292 Humane Society of the United States, “HSUS Statement on USDA’s Decision to Settle Administrative Complaint Against Bushway Slaughter Plant” March 24, 2010 at http://www.humanesociety.org/news/press_releases/2010/03/bushway_032410.html (last visited March 29, 2010).
- 293 The Office of the Attorney General of Vermont, “Arrest Warrants Issued in Cruelty to Animals Case,” June 4, 2010 at <http://www.atg.state.vt.us/news/arrest-warrants-issued-in-cruelty-to-animals-case.php> (last visited August 4, 2010).
- 294 *Id.*
- 295 *Id.*
- 296 *Id.*
- 297 The Office of the Attorney General of Vermont, “Frank Perretta Arrested on Extradition Warrant in Cruelty to Animals Case” at <http://www.atg.state.vt.us/news/frank-perretta-arrested-on-extradition-warrant-in-cruelty-to-animals-case.php> (last visited August 11, 2010).
- 298 Bloomberg Business Week, “Co-Owner of Closed Vt. Slaughterhouse Arrested” August 6, 2010 at <http://www.businessweek.com/ap/financialnews/D9HE7UG80.htm> (last visited August 17, 2010).
- 299 Mercy For Animals “Dairy’s Dark Side: The Sour Truth Behind Milk,” at <http://www.mercyforanimals.org/dairy/> (last visited March 23, 2010).
- 300 *Id.*
- 301 For the legal complaint detailing the legal arguments and factual instances of mistreatment, see Mercy For Animals, “Enforcement of Animal Cruelty Laws at Willet Dairy,” August 17, 2009, available at http://www.mercyforanimals.org/dairy/Willet_Criminal_Complaint.pdf (last visited March 23, 2010).
- 302 Personal phone meeting including MFA’s Daniel Hauff and Josh Crane, Dec. 1, 2009.
- 303 Statement from MFA to Cayuga County District Attorney’s Office (on file with author).
- 304 *Id.*
- 305 ABC News, “Disturbing Reality of Dairy Land,” January 27, 2010 at <http://abcnews.go.com/video/playerIndex?id=9671990> (last visited March 23, 2010).
- 306 ABC News, “Animal Rights Groups Call for Prosecution of Dairy Workers,” February 2, 2010 at <http://abcnews.go.com/Blotter/animals-rights-groups-call-prosecution-dairy-workers/story?id=9677209> (last visited March 29, 2010).
- 307 *Id.*
- 308 Debra J. Groom, Syracuse.com Blog, The Post Standard, “One Person may be Charged in Willet Dairy Video Investigation,” June 6, 2010 at http://blog.syracuse.com/farms/2010/06/one_person_may_be_charged_in_w.html (last visited August 4, 2010).
- 309 Documents on file with author.
- 310 *Id.*
- 311 *See, e.g.*, People for the Ethical Treatment of Animals, “Agriprocessors” at <http://www.goveg.com/feat/agriprocessors/> (last visited March 26, 2010); Mercy For Animals, “Turkey Slaughter Investigation: House of Raeford” at <http://www.mercyforanimals.org/HOR/> (last visited March 29, 2010); Compassion Over Killing, “A New COK Investigation Uncovers Cruelty at a North Carolina Turkey Hatchery that Supplies Butterball” at <http://www.cok.net/camp/inv/turkeys06/> (last visited March 26, 2010), among many others.
- 312 People for the Ethical Treatment of Animals, “No Justice for Cows in Pennsylvania,” March 19, 2010, at http://blog.peta.org/archives/2010/03/land_olakes.php (last visited March 24, 2010).
- 313 *Id.*

- 314 Personal Correspondence with Lorri Kettler, PETA, April 1, 2010.
- 315 *Id.*
- 316 *Id.*
- 317 All reference material for the Allen Farms case is not currently published at this time, and is on file with author.
- 318 For more information on the process by which birds are raised and killed for food, see Compassion Over Killing, “The Birds” at <http://www.tryveg.com/cfi/toc/?v=04birds> (last visited August 5, 2010).
- 319 Md. Criminal Law Code § 10-601.
- 320 Md. Criminal Law Code § 10-604.
- 321 Md. Criminal Law Code § 10-602.
- 322 Md. Criminal Law Code § 10-603 (emphasis added).
- 323 Center for a Liveable Future, “Poultry Processing Plant Receives Maryland’s Highest Ever Fine for Occupational Safety and Health Violations,” June 25, 2010 at <http://www.livablefutureblog.com/2010/06/poultry-processing-plant-receives-maryland%E2%80%99s-highest-ever-fine-for-occupational-safety-health-violations/> (last visited August 5, 2010).
- 324 *See, e.g.* the agribusiness interests that influenced the codification of factory farming practices in New Jersey and the animal groups’ litigation and controversy surrounding New Jersey’s standards, discussed at Animal Law Coalition, “New Jersey Supreme Court Strikes Down Regulations for Treatment of Farm Animals” August 3, 2008, *available at* <http://www.animallawcoalition.com/farm-animals/article/568> (last visited August 5, 2010).
- 325 For example, see Compassion Over Killing “Investigations” at <http://www.cok.net/investigations/> (last visited March 29, 2010); Mercy For Animals, “Undercover Investigations of Factory Farms and Slaughterhouses” at <http://www.mercyforanimals.org/investigations.aspx> (last visited March 29, 2010); People for the Ethical Treatment of Animals, “Animal Rights TV: Investigations” at <http://www.petatv.com/inv.html> (last visited March 29, 2010). Note from these examples that if you take any given industry -- *e.g.*, the egg industry -- similar themes of severe neglect and abuse emerge -- *e.g.*, abandoned animals, stuck birds, injured birds, decomposing birds in cages, etc. Other industries have similar recurring themes as well.
- 326 Feedstuffs, editorial “Animal Welfare Cannot Break Down,” September 28, 2009, Issue 40, Vol. 81, *available at* <http://www.feedstuffs.com/ME2/dirmod.asp?sid=49804C6972614A63A1A10DF54CD95D65&nm=Search+our+Archives&type=Publishing&mod=Publications%3A%Article&mid=AA01E1C62E954234AA0052ECD5818EF4&tier=4&id=83A1A6BABF3C4FFAA60C1FF9E5F33C3E>.
- 327 *E.g.*, no animal care or welfare training was given to the worker in Compassion Over Killing’s Perdue slaughterhouse case. Compassion Over Killing, “COK Investigation Exposes Chicken Industry Cruelty -- Undercover Footage of Perdue Slaughterhouse Reveals Routine Abuse,” *available at* <http://www.cok.net/camp/inv/perdue/> (last visited March 16, 2010); *see also* “Investigation Log Notes” at <http://www.cok.net/camp/inv/perdue/notes.php> (last visited March 17, 2010). When training is given, it is often so minimal that it might as well not have been given.
- 328 *E.g.*, Compassion Over Killing, “Update: Pennsylvania Court finds that Animal Abuse on Factory Farm is Legal” *available at* <http://www.cok.net/feat/paefi.php> (last visited March 29, 2010).
- 329 *E.g.*, Compassion Over Killing, “Update: Pennsylvania Court finds that Animal Abuse on Factory Farm is Legal” at <http://www.cok.net/feat/paefi.php> (last visited March 29, 2010); Humane Society of the United States, “More Video of Abused Calves at Vermont Slaughter Plant,” Nov. 2, 2009, at http://www.humanesociety.org/news/news/2009/11/veal_investigation_110209.html (last visited March 22, 2010); Mercy For Animals, “The Rotten Truth: Egg Industry Cruelty Revealed,” at <http://www.mercyforanimals.org/maine-eggs/> (last visited March 22, 2010).
- 330 *E.g.*, Compassion Over Killing, “A New COK Investigation Uncovers Cruelty at a North Carolina Turkey Hatchery that Supplies Butterball” at <http://www.cok.net/camp/inv/turkeys06/> (last visited March 26, 2010); Mercy For Animals “Hatchery Horrors: The

Egg Industry's Tiniest Victims” at <http://www.mercyforanimals.org/Hatchery/> (last visited March 25, 2010); Humane Society of the United States, “More Video of Abused Calves at Vermont Slaughter Plant,” Nov. 2, 2009, at http://www.humanesociety.org/news/news/2009/11/veal_investigation_110209.html (last visited March 22, 2010).

- 331 See, e.g., Compassion Over Killing “Dunkin Donuts Egg Supplier Exposed” Photo Gallery at <http://dunkincruelty.com/investigation#photos> (last visited March 25, 2010); Compassion Over Killing “COK Takes Egg Industry to Court for Consumer Fraud and Exposes Cruel Conditions Inside New Jersey Egg Factory Farm” Photo Gallery at <http://www.cok.net/camp/inv/acc-lawsuit/gallery/> (last visited March 25, 2010); Compassion Over Killing, “Update: Pennsylvania Court finds that Animal Abuse on Factory Farm is Legal” at <http://www.cok.net/feat/paefi.php> (last visited March 29, 2010); Mercy For Animals, “The Rotten Truth: Egg Industry Cruelty Revealed,” at <http://www.mercyforanimals.org/maine-eggs/> (last visited March 22, 2010).
- 332 See, e.g., Humane Society of the United States, “More Video of Abused Calves at Vermont Slaughter Plant,” Nov. 2, 2009, at http://www.humanesociety.org/news/news/2009/11/veal_investigation_110209.html (last visited March 22, 2010); Humane Society of the United States, “Rampant Animal Cruelty at California Slaughter Plant,” January 30, 2008, available at http://www.humanesociety.org/news/news/2008/01/undercover_investigation_013008.html (last visited March 19, 2010).
- 333 For an educational guide for law enforcement on animal cruelty, see Wolfe, Catherine, *Get the Edge in Fighting Animal Cruelty Cases*, Wolfe Pack Press, 2006.
- 334 Using animal cruelty investigations and cases to publicize factory farming abuse also has the ancillary benefit of encouraging people to take other actions to reduce the suffering of farmed animals: e.g., going vegetarian or vegan, educating others about the abuse and other issues surrounding factory farming, seeking out and creating markets for vegan products, community-building among those concerned about animal suffering and about factory farming generally, lobbying for law reforms, corporate campaigns, etc.
- 335 See, e.g., Esbenshade, discussed *supra* (which would not have been prosecuted but for PA's law allowing Humane Officers to move to take the case on behalf of the state).
- 336 N.C.G.S. § 19A-2.
- 337 N.C.G.S. § 19A-1.1.
... (2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species. (3) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.
- 338 See, e.g., Humane Society of the United States, “Rare Bird: Missouri County D.A. May be the First to File Animal Cruelty Charges Against an Egg Producer” at http://www.hsus.org/farm/news/ournews/missouri_county_files_charges_against_moark.html (last visited March 29, 2010).
- 339 Maine Department of Agriculture, “Animal Welfare Program” at <http://www.maine.gov/agriculture/aw/index.html> (last visited March 29, 2010).
- 340 Hudson Valley Foie Gras (HVFG) is a key example of using this mechanism to react to negative publicity about the cruelty inherent in foie gras. The owner of Hudson Valley Foie Gras originally began by giving a tour of his facility to representatives from Whole Foods Market, where he had apparently claimed the process was humane. The response letter from Whole Foods reads, in relevant part, “It was a pleasure meeting you, although unfortunately under tragic circumstances ... found this trip to be very upsetting that these types of practices still exist ... Our main reason for going was to see for ourselves what D'Artagnan claimed ... [is] almost a pleasurable experience for the ducks. Obviously that is not the case. Neither will our company endorse it or any by-products related to the production of foie gras.” Letter on file with author. Apparently HVFG later learned its lesson in restricting what tour attendees could see in the facility. This restriction was evident in Compassion Over Killing's 2008 investigation based on a tour of HVFG. Compassion Over Killing, “COK Goes Undercover Inside Hudson Valley Foie Gras” at <http://www.cok.net/feat/hudsonvalley.php> (last visited March 29, 2010).