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*UNIVERSITY of PENNSYLVANIA*

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The Law School  
3400 Chestnut Street  
Philadelphia, PA 19104-6204

May 11, 1989

Gail Bumsted, R.N.  
2927 Westwind Lane  
York, Pa 17404

Re: House Bill 873/Session of 1989

Dear Ms. Bumstead:

It is my understanding that the Judiciary Committee of the House of Representatives plans to hold a hearing on the above bill on Thursday, May 25, 1989. I will be unable to attend the session because of prior professional obligations. I would, however, like to make a statement concerning H. 873, and I would be very grateful if you would read this statement on my behalf. If any members of the Judiciary Committee wish to speak to me about my views, or if there are further hearings, please contact me. I am currently visiting at Rutgers University School of Law-Newark/15 Washington Street/Newark, New Jersey 07102/201-648-5486.

STATEMENT OF PROFESSOR GARY L. FRANCIONE

I am a tenured law professor at the Penn Law School. I joined the Penn faculty after serving as law clerk to Justice Sandra Day O'Connor of the United States Supreme Court and practicing law at the firm of Cravath, Swaine & Moore in New York. For the past two years, I have been Chairperson of the American Bar Association/Young Lawyers' Division Animal Protection Committee. I have written on the subject of animal

welfare, and I have lectured throughout the United States on this subject.

I have reviewed House Bill 873, and I consider it to represent a sound and very reasonable approach to the problem of animal abuse. The bill cannot be characterized fairly as "anti-research" or "anti-science" except by those who are opposed in principle to any improvement in the treatment of animals, or those who believe that the law simply should discriminate in favor of experimenters.

### **1. The Search Warrant Exemption**

H. 873 seeks to remove the exemption from search warrants currently enjoyed by research facilities in Pennsylvania. The current exemption is not sound and should be eliminated. The Pennsylvania anti-cruelty statute originally exempted animals used in experimentation from the scope of the law. When the Pennsylvania legislature removed that exemption, and allowed the anti-cruelty statute to cover animals used in experiments, it nevertheless permitted an exemption from search warrant procedures for research facilities. But this search warrant exemption had the unintended effect of continuing the overall exemption of experimental animals from the scope of the anti-cruelty statute; that is, even though the legislature brought experimental animals under the protective scope of the anti-cruelty statute, the legislature made it impossible to get evidence about animal cruelty in laboratories through the search warrant exemption. Although an experimenter could violate the anti-cruelty statute in theory, the search warrant exemption made it impossible for the authorities to detect the violation in practice. In this respect, H.873 does nothing more than to accomplish what the legislature tried to do earlier when it eliminated the exemption of experimental animals from the scope of the Pennsylvania anti-cruelty law.

I should add that I was very heavily involved in efforts to close the now infamous head injury laboratory at the University of Pennsylvania Medical School. As you know, that laboratory was closed by the Public Health Service for violation of various laws and regulations concerning animal treatment and occupational safety. On several occasions, I spoke to the Philadelphia District Attorney's office and tried to get an investigation of the laboratory by local officials. On each occasion, I was told that the search warrant exemption effectively precluded such an investigation. If the exemption were not in the law, perhaps the abuse of animals at the lab could have been stopped years earlier.

It is absolutely essential that laboratories not be exempt from the requirements of the anti-cruelty law. As the past ten years have demonstrated, some of the most egregious abuses of animals occur in laboratories. The Animal and Plant Health

Inspection Service ("APHIS") of the United States Department of Agriculture is well known to be ineffective in the enforcement of the federal Animal Welfare Act and the regulations promulgated thereunder. The funds that the Department of Agriculture requests and gets for the enforcement by AIPHIS of the animal welfare laws are insufficient to have a successful national enforcement program, and AIPHIS is notorious for not responding to even the most serious animal abuses. For example, AIPHIS had for years given a clean bill of health to the Penn head injury laboratory even though, as we all know now, the Penn laboratory violated numerous federal laws and regulations. AIPHIS, however, failed to detect those problems for many years despite having received complaints about the laboratory from persons in the humane community. The list goes on and on and proves one thing: those concerned about the humane treatment of animals in laboratories cannot look to AIPHIS to ensure that humane treatment.

Some critics of H.873 have argued that since the use of animals in experiments supposedly occurs in the context of "scientific" experimentation, it will be difficult for others without the needed expertise to judge what is "cruelty" and what is not. This argument is misguided for several reasons. First, this battle was already fought and lost when the Pennsylvania legislature removed from the anti-cruelty statute the exemption concerning experimental animals. That is, when the legislature ruled that research animals were covered by the law, the legislature accepted that the law could judge "cruel" treatment even in an allegedly "scientific" context. Second, that judgment--that the law can determine "cruelty" irrespective of context--is fundamentally sound. There are all sorts of laws that regulate scientific research and that rest on the notion that our society can judge the propriety of research. For example, there are federal and state laws that regulate human experimentation and that are routinely enforced by lay persons. Laws dealing with animal cruelty--even in a "scientific" context--are routinely interpreted by and enforced by lay persons who are not necessarily scientists. When expertise is needed, that expertise is always available. Turning back to the Penn head injury lab, I personally consulted medical experts from several universities who helped me to collect the data needed to show that the head injury experiments were "cruel" under any definition.

Experimenters are part of our society--our laws should not be fashioned to discriminate in their favor and to allow them to act above the law.

## **2. Licensing and Inspection Requirements**

H.873 establishes licensing and inspection requirements. These requirements are long overdue. Federal law regulates

animal experimentation in two ways. First, AIPHIS enforces the federal Animal Welfare Act and the regulations promulgated thereunder. Second, most federal grant recipients are subject to guidelines established by the National Institutes of Health.

These federal mechanisms have proven to be completely unsatisfactory means to ensure the humane treatment of laboratory animals. The literature is full of myriad instances of serious animal abuse that have gone undetected or unremedied by AIPHIS or NIH. It is clear that enforcement at the state level would help to ensure greater scrutiny of laboratory practices and eradication of at least the more serious abuses.

H.873 requires that each research facility have an animal care committee. Although this requirement is contained in federal law, H. 873 also requires that the committee have as a member someone from a humane society or animal welfare organization. This is a great improvement over federal law, which only requires that the facility include a member of the community, and not someone necessarily involved in, or even knowledgeable about, issues of animal welfare. Many facilities have put on their committees community members who will simply "rubber stamp" whatever the experimenters want. H.873 helps to ensure that these animal care committees do what they were intended to do--scrutinize research projects to ensure humane treatment.

The problem of animal abuse is as much a state problem as a federal problem. H873 seeks to provide a state mechanism to deal with a problem of great interest to many persons in the Commonwealth of Pennsylvania.

### **3. The Testing Requirements**

H.873 prohibits the use of the LD50 and Draize tests for the purpose of testing cosmetics or household products. This prohibition is perfectly sound.

In recent years, scientists have criticized the Draize test and LD50 test as unreliable and crude. Alternatives to both tests have been developed and are in use throughout the United States. No federal law or regulation requires the use of these tests for cosmetics or product testing. There is simply no reason to continue the use of these tests. They are hideously cruel, they do not provide reliable data, and they are not required by law for the purposes specified in H.873.

As I read H.873, the bill does not affect testing for any products other than cosmetics and household products. Therefore, critics of H.873 who claim that H.873 will affect drug testing have simply failed to read the bill carefully.

### **4. The Right to Object to Vivisection/Dissection**

H.873 provides that students and employees may not be penalized for their refusal to dissect or to vivisect. As an

educator, I most thoroughly agree with this provision. No student or employee should be forced to act in violation of his or her fundamental religious or ethical beliefs.

In my view, the first amendment to the United States Constitution protects the right to refuse when the student or employee is located at a state institution which is subject to federal constitutional law. But if the student or employee is at a private school or facility, which in some cases may not be subject to constitutional requirements, then the student or employee is subject to harassment for refusing to engage in action that violates fundamental beliefs. H.873 will vindicate freedom of conscience, and is an important affirmation of one of the rights that we cherish most dearly in the United States.

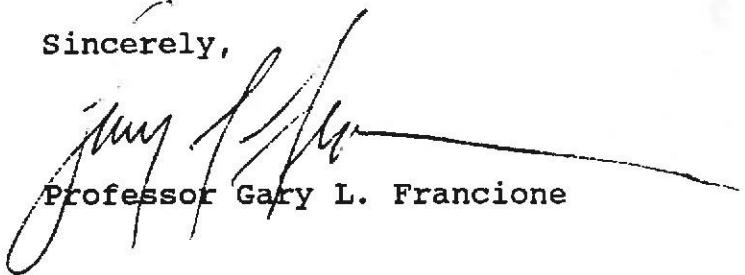
I might add that in Great Britain, it has been illegal for over 100 years to use animals in teaching students. Nevertheless, Great Britain produces first-class doctors, vets, and scientists. It is simply unnecessary to use animals in education. There are many, many alternatives to the use of animals in the classroom.

### Conclusion

More and more people are becoming aware of, and are objecting to, the abuses of animals in various contexts. Social norms concerning the treatment of animals are going through a dramatic transformation, and the legal system must change to accommodate these evolving social values. H.873 is a moderate step in the right direction. H.873 does not ban research, but only seeks to ensure that research will be carried out in a humane manner. I certainly hope that the legislature will enact this bill.

I offer these observations as an academic who teaches and writes on the issues involved in animal welfare. The views stated herein are not necessarily endorsed by the University of Pennsylvania.

Sincerely,



Professor Gary L. Francione