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An Agricultural Law Research Article

AAALA Presidential Address

September 11, 2001, and Agricultural Law

by

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AALA PRESIDENTIAL ADDRESS

SEPTEMBER 11, 2001, AND AGRICULTURAL LAW

*Steven C. Bahls**

The intended topic for my Presidential Address was how five trends in American society have helped shape legislation and court decisions in the area of agricultural law over the last twenty years. As I was thinking about those trends a few days ago, it struck me that the tragic events of September 11, 2001, have overshadowed most, if not all, of the trends I had intended to speak about. Hence, the 2001 Presidential Address appropriately focuses on the impact of the September 11th tragedy on us as lawyers and as members of the agricultural community.

I'd like to reflect on two statements about the events of September 11th as they relate to agriculture, agricultural policy, and agricultural law. As the Capital University Law School community watched the tragic events unfold on the morning of September 11th and after two prayer vigils at the Law School, one emotionally exhausted student said to me, "I'm glad I go to school in Columbus, Ohio, safe from the problems in New York. Better yet, I'm glad I'm from a farm town, where terrorism will not affect me."

A second comment that intrigued me was from Senator Pat Roberts. In early October he spoke about Afghanistan to *The Kansas City Star*: "[W]e can use agriculture as a tool for foreign policy concerns."¹ When comparing the student's comments with Senator Roberts' comments, it is clear there are distinctly different assessments within the agricultural community about the impact of the events of September 11th.

Of course, the student was a bit naïve in saying that the events of September 11th did not affect the agricultural community. Though the impact on the agricultural community was not as immediate as the devastating impacts on New York City or Washington, D.C., the impact on agriculture and rural communities is significant, nonetheless. Agriculture is an integral part of the economy, some might say the foundation of the national and world economies. The world economies and political struc-

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1. Steve Kraske, *Strikes Elicit Senators' Support, Worry*, KANSAS CITY STAR, Oct. 8, 2001, at A12.

tures cannot be shaken, without also affecting agriculture. Events taking place shortly after the terrorists' attacks should demonstrate how vulnerable U.S. agriculture really is.

Within the week after the attack, all aerial crop dusting in the United States was halted on two separate occasions. The first occasion was immediately after the attack when all flights were grounded, the second was the weekend after September 11th when government officials feared terrorists planned to use crop dusting planes to spread harmful chemicals and diseases. While the timing of the ban impacted agriculture, it could have been much worse. Tom Reabe, president of Reabe's Flying Service, told *The Capital Times* of Madison, Wisconsin: "If this would have occurred in July, it probably would have been a major disaster."² He was speaking about the sensitive potato, sweet corn, green bean, and cranberry crops, important to the economy of several Wisconsin counties.³

The attacks on the World Trade Center have had a significant adverse effect on air service, particularly on the smaller cities whose airports serve rural America. As airlines reduced service throughout the country, hardest hit were small airports. Mesa Airlines president Mike Lotz told *Aviation Weekly* that its 20% reduction in service would have a particular impact on rural communities.⁴ Several airports in the nation's heartland may be forced to close.⁵

The events of September 11th may also result in a change in immigration policy, which will have a substantial impact on the number of guest workers available to assist the fruit and vegetable industry. President Bush, Mexican President Vicente Fox, and Senator Phil Gramm had spoken of a possible program to make it easier to increase the number of legal guest workers in the United States.⁶ Doing so will insure an ample supply of workers at harvest time. However, changes in immigration policy as a result of terrorism may threaten this positive development.

The largest concern, however, is the concern about bioterrorism on the nation's food supplies. Could terrorists introduce an obscure disease to wipe out significant amounts of crop production? Could terrorists spread livestock diseases like foot and mouth disease or swine cholera? John Wefald, President of Kansas State University observed: "If the terrorists have the expertise to put 18 or 19 on board American commercial airliners and fly three of them into the symbols of America, they clearly have the expertise to at least try and invade America and wreak mayhem on agricul-

2. Jeff Richgels, *Crop Dusting Again; Grounding No Disaster for State Farmers*, CAPITAL TIMES, Sept. 26, 2001, at 8D, available at 2001 WL 25526550.

3. See *id.*, available at 2001 WL 25526550.

4. See *Mesa Cuts Executive Pay, Decreases Capacity*, AVIATION DAILY, Sept. 18, 2001, at 4, available at 2001 WL 8899312.

5. See Dave Ruepke, *Fort Dodge Air Service Is Imperiled*, DES MOINES REG., Sept. 20, 2001, at 4.

6. See David Montero, *Guest-worker Laws Less Likely Now, Security Concerns After Terrorists Attacks Limit Chances for Proposed Farm-labor Programs*, VENTURA COUNTY STAR, Oct. 5, 2001, at B01.

ture in America.”⁷ Doing so may be easier than attacking human targets, according to Peter Chalk of the Rand Corporation. He remarked that “[t]his concern has been generated by a growing realization that chemical-biological terrorism attacks against livestock and the food chain are substantially easier and less risky to carry out than those directed at civilian targets.”⁸

It is not difficult to believe that agriculture could be a target of those waging war against the United States. Anthrax was used in World War I to kill horses.⁹ A United Nations Special Commission found evidence that Iraq developed anti-crop weapons.¹⁰ Tamil militant groups used biological agents to kill crops in Sri Lanka.¹¹ Cult followers of Bhagwan Shreen Rajneeshee poured bacteria on salad bars in Oregon in an ill-fated attempt to influence local elections.¹² Seven hundred and fifty-one people became sick with salmonella poisoning as a result.¹³

Concerns about bioterrorist attacks on food is heightened because of the absence of systems to protect our food supply. The U.S. Food and Drug Administration inspects less than 1% of foods and ingredients imported from other countries. States’ public health veterinarian offices are woefully understaffed and underfunded. The federal government’s food safety oversight is too fragmented with thirty-five federal laws, twelve federal agencies, and twenty-eight congressional House and Senate committees.¹⁴

It is time to get our country in order to protect our food supply against bioterrorism. Even if the nation does not face bioterrorist attacks against its food supply, insuring food safety may protect the seventy-six million Americans who now suffer from food poisoning each year and reduce the 325,000 hospitalizations and 5000 deaths annually.

The student who felt insulated from terrorist actions was, indeed, shortsighted. Rural communities are affected when America is at war. Rural communities, like the rest of America, must rise to the challenge.

I’ve also pondered Senator Pat Roberts’ comment that the United States can use agriculture as a tool for foreign-policy concerns. What did he mean? He clearly meant that dropping food (meals ready to eat) in Afghanistan presents a way to soften the opinions of those who would otherwise condemn our military campaign. Did he mean more?

7. Michael Mansur, *Terrorism Experts Warn of Possible Threat to American Agriculture*, KANSAS CITY STAR, Oct. 3, 2001, at A8.

8. *Id.*

9. *See id.*

10. *See id.*

11. *See id.*

12. See Jonathan B. Tucker & Amy Sands, *An Unlikely Threat*, 55 Bulletin of the Atomic Scientists, 46, 46 (July/Aug. 1999), available at <http://www.bullatomsci.org/issues/1999/ja99tucker.html>.

13. *See id.*, available at <http://www.bullatomsci.org/issues/1999/ja99tucker.html>.

14. See Jane Norman, ‘*Ag Counterterrorism*’ Seen as Crucial, DES MOINES REG., Oct. 8, 2001, at 13A.

What Senator Roberts didn't mean, I feel confident, is that farm groups should be unfairly opportunistic in using the events of September 11th to extract more money for the farm bill. Greater farm subsidies are not necessary to make sure we have sufficient food supplies for our national defense. I agree with Senator Dick Lugar of Indiana when he stated: "To imply somehow we need a farm bill in order to feed our troops, to defend our nation, is ridiculous."¹⁵

How can agriculture help with this national crisis? Dropping food into Afghanistan is commendable, but I would suggest that there is a far greater role for agriculture than merely providing food. Traditional agrarian values can be instrumental in the defeat of terrorism. The traditional agrarian values of faith and determination, as well as a renewed emphasis on community are more potent than the terrorist bombs or biological weapons. When speaking of agrarian values, Thomas Jefferson may have been correct when he wrote, "corruption of morals in the mass of cultivators is a phenomenon of which no age nor nation has furnished an example."¹⁶ Lawyers by virtue of their education and experience are ideally suited to develop policies that use these values to help see the country through this crisis.

The agrarian values Jefferson wrote about built this country and will sustain this country. The faith and determination of thousands of our ancestors provide a model for us today. Their faith was not blind faith, nor was their determination a militant-type determination. It was quiet, patient determination and abiding faith. Our ancestors continued to have faith in farming despite repeated drought, insect infestation and unpredictable markets. They remained focused and determined, just as America needs focus and steady determination to weather our current storm. We must not allow setbacks to cause us to lose our faith and determination.

An equally important agrarian value is the value of community. Community barn raisings built America's early farms. Agricultural communities have a tradition of providing for neighbors who experience difficult times. Americans must expand their definition of community to global community.

The degree to which the global community has broken down is apparent from the October 15, 2001 edition of *Newsweek* magazine. Its cover featured a boy carrying a rifle at an anti-U.S. rally in Istanbul. The headline on the magazine read, "*Why They Hate Us.*" I've read much of this magazine and it didn't really answer the question of why terrorists hate the United States as much as it showed that the terrorists have several common traits. Usually, they live in abject poverty, their societies are run by totalitarian governments and they come from non-functional societies, where economic,

15. Lawrence Solomon, *War Profiteers at Work: U. S. Farmers Are More Concerned With Lining Their Own Pockets With Subsidies Than With Feeding Troops or Defending Their Country From Foreign Competition*, FINANCIAL NATIONAL POST, Oct. 9, 2001, at FP11, available at 2001 WL 28025012.

16. Thomas Jefferson, *Notes on Virginia*, in BASIC WRITINGS OF THOMAS JEFFERSON 161 (Philip S. Faner ed., 1944).

educational, and other key institutions are non-existent or ineffective. These societies are breeding grounds for terrorists.

How can the agrarian values help address the nation's crisis? As members of the American Agricultural Law Association, most of us have our feet in two camps—the community of lawyers and the community of agriculturalists. After the military action is over in the Middle East, the legal community can export democracy to Middle Eastern countries, just as we exported democracy to Eastern Europe. Lawyers played a key role in building viable legal systems after the fall of communism. They can again play key roles after the fall of fanatical governments in the Middle East. The agricultural community, in working with our government, can feed those in countries suffering from starvation and desperation. Likewise, we can export our large farm surpluses to feed the world and to serve as a weapon against fanaticism. Just as the United States has lent its agricultural technical experts to improve farming techniques and productivity in many areas of South America and Africa, we can do the same in the Middle East.

Lawyers and agriculturalists working together can employ traditional values of faith, determination, and community to address the poverty and broken systems that served as the breeding grounds for those attacking our nation. In doing so, we need to remember the words of Missouri Senator Kit Bond when he recited the twenty-third Psalm. During these times, he said, “we may walk through the valley of the shadow of death, but its going to be without fear.”¹⁷

My friends, it will be through traditional agrarian values, using the skills of lawyers, policy makers, and others that will enable us to conquer this crisis. The members of the American Agricultural Law Association are proud to be part of these agrarian values and are ready to do their part.

17. See Kraske, *supra* note 1 at A12.