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California's War on Agricultural Crimes

by

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INTRODUCTION

Agricultural crime is not the first thing that comes to mind when one thinks about crime in general. Almost all of the information we receive from the media, including crime reports and statistics, is urban-based. Little attention is given to rural crime,¹ partly because of the involvement of fewer victims.² However, the monetary loss and economic damage incurred by these victims is staggering and every bit as damaging to society as urban-based crimes.³

Several factors combine to make farms and ranches easy targets for criminals. First is the isolation of rural areas. Farms generally occupy vast tracts of land, and most are sparsely inhabited.⁴ Valuable produce, livestock, and equipment are often kept outdoors, unguarded, and lighting is usually dim or nonexistent. Due to this isolation factor, rural crimes are often undiscovered for several days. Thus, when the crime is discovered, the perpetrator is nowhere to be found, and trace evidence is destroyed or lost. Even in those instances where the thief is apprehended, the case is often difficult to prove in court because the stolen goods are generally fungible.⁵ Examples of such fungible goods include chemicals, fruits, nuts, and vegetables.

¹ Tulare County District Attorney's Office, Tulare County Sheriff's Office, *Rural Crime Prevention and Prosecution Model Program*, Oct. 27, 1995, at 2 [hereinafter *Program Proposal*].

² Tulare County District Attorney's Office, Tulare County Sheriff's Office, Tulare County District Attorney's Office Annual Report, FY 1995-1996: Responses to the Rural Crime Prevention Survey (Dec. 1996), at 17 [hereinafter *Rural Crime Prevention Survey*]. Of the 620 survey responses, 370 reported agricultural crimes in 1995, compared with 4,044 felony violations, 13,636 misdemeanors, and 3,703 incidents of driving under the influence (DUI) filed in the same period.

³ Louis Galvan and Dennis Pollock, *Rural Crime, Thieves Find Easy Pickings in California's Fields and Barns*, THE FRESNO BEE, Mar. 2, 1997, at A16. Tulare County incurred a \$2.1 million loss in 1996.

⁴ *Program Proposal*, *supra* note 1, at 2.

⁵ *Id.* at 3.

Very few farms and ranches have access to private security. Even for those that retain their own security, the efforts are often ineffective.⁶ The vast majority of farmers and ranchers rely upon local law-enforcement for protection. This agency most often will be the county sheriff, because the majority of farms are located beyond the city limits, placing them outside the jurisdiction of the local police department.⁷ Because the pressures of combating urban crime require nearly all law-enforcement resources be directed to that problem, the rural areas are left underprotected.⁸

Currently, there is no national agency that tracks statistics on rural crime.⁹ According to a recent report by National Public Radio (NPR), Tulare County lost more than \$3 million worth of crops, equipment, and livestock in 1994.¹⁰ According to the NPR report, rural crimes have been on the rise for several decades.¹¹ Most of these crimes occur in agricultural-based counties. As farms and ranches grow in size, they tend to become highly mechanized and acquire more and costlier equipment, thereby making them more likely to be the target of crime.¹² Rural areas are not only subject to the petty thief, content to steal items of rather minimal value, but are also subject to organized criminal activity. The combination of vulnerability to crime and the fact that agricultural thefts can result in large profits has led to an increase in sophisticated, highly organized criminal groups engaging in rural crime.¹³ To facilitate his criminal endeavors, the more sophisticated criminal has learned how to handle animals, operate farm equipment, and defuse alarm systems, and may even study the harvest schedule to determine when a given farmer or rancher is most vulnerable.¹⁴ In addition to monetary loss, there is an immeasurable psycho-

⁶ *Id.*

⁷ Telephone Interview with Sgt. Robert Matthews, Tulare County Sheriff's Office, Agricultural Crime Unit (Mar. 5, 1997).

⁸ *Program Proposal, supra* note 1, at 3.

⁹ Act of July 29, 1996, ch. 327, A.B. No. 2768, Cal. Legis. Counsel's Digest 1980 (to be codified at CAL. PENAL CODE § 14170, *Rural Crime Prevention Demonstration Project - Tulare County* [hereinafter *Rural Crime Bill*]). Introduced by California State Assembly Member Chuck Poochigian on Feb. 22, 1996, the act sought to add and repeal Title 11.5 commencing with CAL. PENAL CODE § 14170 and appropriate funds for crime prevention.

¹⁰ *Country Crime On the Rise* (NPR radio broadcast, Morning Edition, Aug. 29, 1995).

¹¹ *Program Proposal, supra* note 1, at 5.

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.*

logical impact on the farmer or rancher and his family, who have invested heavily in equipment and have nurtured crops or livestock to maturity, only to lose their equipment and/or profits to criminals.¹⁵

The economic strength of California's agricultural industry depends on farmers and ranchers being able to market profitably the commodities they produce. Based on this premise, the legislative intent behind the agricultural laws is the promotion and protection of the agricultural industry in California, and the protection of public health, safety, and welfare.¹⁶ However, before 1996, little attention had been paid to the problem of rural crime. Left unchecked, rural crime is a problem that seriously threatens an industry that is the lifeblood of California and is central to America's economy.¹⁷ This comment is intended to enlighten the reader on the serious problem of agricultural crime. It addresses the steps that are currently in progress and suggests future courses of action that will assist in the alleviation of these crimes.

I. THE INITIAL STEP IN STOPPING AGRICULTURAL CRIME

The California Legislature has taken the initiative to combat targeted areas of criminal activity by expanding definitions of certain crimes, creating evidentiary presumptions that assist the prosecution of the targeted criminal activity, expanding the range of admissible evidence, increasing sentences, and by funding model crime suppression programs. Successful examples of model crime suppression programs currently in operation at the Tulare County District Attorney's Office include the Career Criminal Prosecution Unit, Major Narcotics Ven-

¹⁵ *Id.*

¹⁶ CAL. FOOD & AGRIC. CODE § 821 (1997) provides:

As part of promoting and protecting the agricultural industry of the state and for the protection of public health, safety, and welfare, the Legislature shall provide for a continuing sound and healthy agriculture in California and shall encourage a productive and profitable agriculture. Major principles of the state's agricultural policy shall be all of the following:

(a) To increase the sale of crops and livestock products produced by farmers, ranchers, and processors of food and fiber in this state.

(b) To enhance the potential for domestic and international marketing of California agricultural products through fostering the creation of value additions to commodities and the development of new consumer products.

(c) To sustain the long-term productivity of the state's farms by conserving and protecting the soil, water, and air which are agriculture's basic resources.

¹⁷ *Rural Crime Bill*, *supra* note 9.

dors Unit, and Gang Violence Suppression Unit.¹⁸

No concerted effort had been undertaken to combat agricultural crime until 1996, when California Assemblyman Chuck Poochigian introduced *The Rural Crime Prevention and Prosecution Model Program* (Rural Crime Bill).¹⁹ The bill was passed by the California Legislature and signed by the Governor in July 1996. This bill authorizes the County of Tulare to develop *The Rural Crime Prevention Demonstration Project*.²⁰ The project is to be administered by the county District Attorney's Office pursuant to a joint powers agreement with the county Sheriff's Office for a three-year period.²¹

II. TULARE COUNTY IS THE PRIME CANDIDATE FOR AN AGRICULTURAL "PILOT PROGRAM"

Tulare County, located in California's agriculturally rich Central Valley, was chosen to conduct this model agricultural crime-prevention project because the county has a large agricultural-based economy.²² In 1995, there were 1,537,583 acres under cultivation,²³ of which 325,916 acres alone were devoted to orchard crops and grapes.²⁴ Tulare County is the number one dairy producing county in California.²⁵ It is also California's number one producer of fruits, nuts, and livestock.²⁶ The agricultural income in Tulare County has increased every year since 1976,²⁷ except for 1991, when the county suffered from a devastating record freeze that destroyed much of the citrus crop.²⁸ Another record year occurred in 1995, with gross agricultural income at \$2,611,088,000.²⁹ This figure was second in the state to Fresno

¹⁸ *Rural Crime Prevention Survey*, *supra* note 2, at 22, 30, 33.

¹⁹ *Rural Crime Bill*, *supra* note 9.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Tulare County Agricultural Commissioner, *1995 Tulare County Agricultural Crop and Livestock Report* (1996), at 10 [hereinafter *Agricultural Crop and Livestock Report*].

²⁴ *Id.* at 1.

²⁵ Tulare County Agricultural Commissioner, *Summary of County Agricultural Commissioner's Report* (Gross Values By Commodity Groups - Cal. 1994-1995), at 9 [hereinafter *Summary Agricultural Report*].

²⁶ *Id.*

²⁷ *Agricultural Crop and Livestock Report*, *supra* note 23, at 12.

²⁸ Telephone Interview with Thomas LaMunyon, Agriculture Commissioner's Office (Mar. 5, 1997).

²⁹ *Agricultural Crop and Livestock Report*, *supra* note 23, at 1.

County, which grossed \$3,167,157,000 for the same year.³⁰ Even though agriculture-related jobs accounted for only 9.78 percent of statewide employment and 29.01 percent in the Central Valley in 1990,³¹ they accounted for 59.59 percent of the total jobs in Tulare County.³²

Tulare County, in addition to being a leading agricultural producer, is plagued with a significant rural crime problem. According to Tulare County Sheriff's Office records on agricultural crimes, there were 5,408 reported cases in 1992, of which 1,049 were crimes against persons and 4,359 were property crimes. The reported value of property losses was \$3,505,935.³³ In 1993, there were 5,581 reported cases, of which 1,135 were crimes against the person and 4,446 were property crimes.³⁴ Property losses were valued at \$3,731,996.³⁵ In 1994, the situation improved slightly from the standpoint of monetary loss. There were 5,607 reported cases, composed of 1,116 crimes against the person and 4,491 property crimes, with property losses valued at \$3,667,660. In three years, Tulare County suffered direct property loss of nearly \$11 million, according to reported cases alone.³⁶ Additional losses due to lost productivity and other noneconomic damages are beyond calculation. With limited resources available to law-enforcement offices, resolution was reached in only 19 percent of these reported crimes.³⁷ Thus, Tulare County is a prime location in which to employ this model agricultural crime program.

In an effort to become more aware of the thoughts and concerns of local farmers, the Tulare County District Attorney's Office conducted a direct-mail survey to 1,000 farmers in Tulare County.³⁸ The survey allowed the Tulare County District Attorney's Office to become more educated about the number of farmers who have been victims of agriculture-related crimes and, of those, the result of their estimated loss.³⁹

³⁰ *Summary Agricultural Report*, *supra* note 25, at 9.

³¹ *Program Proposal*, *supra* note 1, at 7. The Central Valley is composed of 18 counties in the San Joaquin and Sacramento Valleys.

³² GEORGE GOLDMAN AND VIJAY PRADHAN, U.C. BERKELEY, *ECONOMIC IMPACTS OF TULARE COUNTY'S FOOD AND FIBER INDUSTRY, AGRICULTURE AND RESOURCES ECONOMICS* (1990).

³³ *Program Proposal*, *supra* note 1, at 7.

³⁴ *Id.* at 8.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Interview with Chris Haydn-Myer, Tulare County deputy district attorney, Agricultural Special Prosecutions Unit in Tulare, Cal. (Mar. 4, 1997).

³⁹ *Rural Crime Prevention Survey*, *supra* note 2.

The survey also included questions regarding the types of crime of which the farmers were victims, whether anyone was prosecuted in connection with the incident, and their biggest concerns in relation to the various types of agricultural related crimes.⁴⁰

The District Attorney's Office received 620 responses to the survey.⁴¹ Of those responding, 533 had themselves been, or know someone who had been, the victim of a crime related directly to agriculture.⁴² Approximately 129 responding farmers had been a crime victim within the past six to twelve months, sixty-eight in the past three to six months, and 138 within the past three months.⁴³ Because of the overwhelming amount of money lost as a result, more than half indicated that the stability of their business was threatened by these crimes.⁴⁴ The number of prosecutions in connection with the number of reported incidents was stunning: 370 reported cases with only fifty-seven prosecutions.⁴⁵ This is extremely low when compared with the overall conviction rate for felony prosecutions, approximately 95 percent.⁴⁶ The strongest concerns among those responding were, in order of importance: equipment, crops or livestock, and personal assault.⁴⁷ The majority of farmers stated that the Sheriff's Office or the District Attorney's Office could better serve their needs by increasing the number of agriculturally trained investigators. The survey also indicated that the farmers were glad to see a program take effect and were more than willing to cooperate with the Sheriff's Department and District Attorney's Office in any way possible.⁴⁸

III. THE STEPS BEING TAKEN TO MEET THE GOALS OF THE RURAL CRIME PREVENTION PROJECT

While enacting the Rural Crime Bill, the California Legislature found that no law-enforcement agency in the state had a program specially designed to detect or monitor agricultural criminal activities.⁴⁹ Additionally, the Legislature found that local law-enforcement agen-

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Rural Crime Bill, supra* note 9.

cies did not possess "the jurisdictional authority, investigative facilities, or data systems to coordinate a comprehensive approach to the state's agricultural crime problem."⁵⁰

The establishment of *The Rural Crime Prevention Demonstration Project* is a suggested answer to the unique needs of the agricultural community.⁵¹ Penal Code section 14171 defines the operation of the project.⁵² The Tulare County District Attorney's Office, under a joint powers agreement with the Tulare County Sheriff's Office, shall administer this project and form a task force with the Office of the Tulare County Agricultural Commissioner.⁵³ This newly formed task force will develop problem-solving and crime-control techniques, encourage timely reporting of agricultural crimes, and evaluate the results of these activities.⁵⁴ In performing this function, the task force shall consult other law-enforcement agencies and other state and private organizations deemed necessary to effectuate the goal of the project.⁵⁵ Further, this task force is to solicit the support of the media and the community to promote this crime prevention endeavor.⁵⁶

Reporting requirements are also included in this pilot program, mandating that Tulare County report to the Legislature annually on the activities and accomplishments of the project. The report must include a summary of the project's operations, activities, and costs, an itemized list of the arrests made pursuant to the project, an account of the county's investigative role, and an itemization of services provided to other law-enforcement agencies.⁵⁷ Most importantly, the annual report shall include a cost-benefit analysis measuring the cost to operate the project with the savings realized from crime prevention and suppression.⁵⁸ Because economic savings attributed to crime prevention are the primary concern of the project,⁵⁹ this cost/benefit analysis will be the benchmark for the success of the program.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² CAL. PENAL CODE § 14171 (1997).

⁵³ *Rural Crime Bill*, *supra* note 9.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

IV. LEGISLATIVE INTENT

The legislative intent behind California's Food and Agricultural Code is the promotion and protection of the agricultural industry in California and the protection of public health, safety, and welfare.⁶⁰ This is due to the agricultural industry's dependence on the ability of farmers and ranchers to profitably market their commodities. Based on this premise, the Legislature has attempted to encourage productive and profitable agriculture.⁶¹ The main focus of the California Legislature is to increase the sale of crops and livestock, enhance marketing, and sustain the long-term productivity of the state's farms.⁶²

Any crime-prevention endeavor must have, at its core, laws that clearly define those actions declared to be criminal and the punishment attendant thereto. A potential benefit that could well accrue from the concentrated efforts of attacking rural crime pursuant to the Rural Crime Bill is input from the Tulare County District Attorney's Office with respect to necessary increases in sentences for particular agricultural crimes, suggestions affecting the admissibility of evidence relating to certain areas of agricultural crimes, and advice with respect to amending the language of certain criminal statutes to make them more effective in combating rural criminal activity.⁶³

V. PROBLEM AREAS AND RECOMMENDATIONS

No matter how much effort is expended by local law-enforcement agencies and the District Attorney's Office to catch and prosecute perpetrators of rural crimes, it is nearly impossible to obtain a conviction because of current laws. Many of the California codes require elements that are generally impossible to prove with respect to agriculture-related incidents, including Penal Code Section 602(k), regarding trespassing.⁶⁴ Other laws are not clearly defined, making it difficult to prove guilt, including Food and Agricultural Code Section 861. Finally others, such as grand theft, Penal Code Section 487, do not extend far enough to incorporate many of the agricultural crimes being committed.

It is a necessary component of criminal prosecution that criminal of-

⁶⁰ CAL. FOOD & AGRIC. CODE § 821 (1997).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Interview with the Honorable Ronn M. Couillard, Tulare County Municipal Court Judge, in Visalia, Cal. (Feb. 26, 1997).

⁶⁴ CAL. PENAL CODE §602(k) (1997).

fenses be set forth in a clear and concise manner.⁶⁵ Unfortunately, many of the current criminal offenses relating to agricultural crime contain definitions that are ineffective.⁶⁶ Others are not sufficiently broad to adequately cover certain actions involved in agricultural crimes.⁶⁷ Examples of lack of clarity and/or unreasonable proof requirements, peculiar to agricultural crimes, are set forth in California's theft, trespass, and vandalism statutes.⁶⁸

A. Grand Theft

1. Crops and Domestic Fowl

Grand theft is defined in subsection (a) of California Penal Code Section 487 as any theft of money, labor, or property of a value in excess of \$400. Subsection (b) recognizes certain instances of theft as constituting grand theft even though the value of items taken is under \$400. This subsection provides that theft of "domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars (\$100)" constitutes grand theft.⁶⁹ Grand theft is a felony that provides for a state prison sentence of sixteen months, or two or three years; or up to one year in county jail and/or up to a \$10,000 fine.⁷⁰ All other thefts are petty theft and are punishable by a sentence

⁶⁵ Interview with Couillard, *supra*, note 63.

⁶⁶ Interview with Haydn-Myer, *supra* note 38.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ CAL. PENAL CODE § 487 (1997) provides:

Grand theft is committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1)(A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars (\$100).

(B) For purposes of establishing that the value of avocados or citrus fruit under this paragraph exceeds one hundred dollars (\$100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars (\$100) in wholesale value.

⁷⁰ CAL. PENAL CODE § 18 (1997) provides:

of up to six months in the county jail and/or a \$1,000 fine.⁷¹

The grand theft section applies to certain agricultural goods even though the value is less than the stated \$400 because of the inherent damage to the victim and the difficulty of establishing a determinative value.⁷² While all theft victims suffer loss due to the unlawful acts of those who prey upon them, the farmer or rancher suffers even more, in that the items referred to in subsection (b) are the products of his labor. These are the items he is marketing to provide a livelihood for himself and his family.⁷³ Based on this premise, the courts must recognize the need to enforce the laws to their fullest to protect the farmer. The farmer's loss does not always seem to be the focus when judgments are handed down, as shown in *People v. Gardner*.⁷⁴

In *Gardner*, the defendant killed five domestic hogs during a single volley, and removed the carcasses from the owner's land. The total loss to the owner of the hogs constituted four counts of grand theft, under the reasoning used by the trial court in the conviction of Gardner.⁷⁵ His original conviction of four counts of grand theft was deemed reversible error as to all but one count, and the Court of Appeal determined that the defendant was subject to prosecution and conviction for only a single offense of grand theft.⁷⁶ The court viewed the offense not

Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years; provided, however, every offense which is prescribed by any law of the state to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

⁷¹ CAL. PENAL CODE § 486 (1997) provides: "Theft is divided into two degrees, the first of which is term grand theft; the second petty theft."

See also CAL. PENAL CODE § 487(c) (1997) which provides:

Every person who converts real estate of the value of less than one hundred dollars (\$100) into personal property by severance from the realty of another, and with felonious intent to do so steals, takes, and carries away such property is guilty of petit theft and is punishable by imprisonment in the county jail for not more than one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.

⁷² CAL. PENAL CODE §487 (1997).

⁷³ Interview with Haydn-Myer, *supra* note 38. See also Telephone Interview with Rod Parichan, owner of Sherman Thomas Farms (Mar. 11, 1997).

⁷⁴ 90 Cal.App.3d 42 (1979).

⁷⁵ *Id.*

⁷⁶ *Id.*

as four separate and distinct acts, but only a single offense.⁷⁷

Another distinction regarding crop thefts is that thieves often will descend upon a given crop in numbers. There may be 10 to 20 people stealing fruits, nuts, or vegetables from the field or orchard. By using many people to perpetrate the crime, thieves can go to a given area, pick what they can, and be gone in a relatively short period of time.⁷⁸

Imposing tougher sentences on those convicted of agricultural crimes will more likely serve as a deterrent. This will benefit not only the victim, but other farmers who are potential victims of these criminals.⁷⁹

2. Chemicals

While California Penal Code Section 487, subsection (b) serves the intended purpose of defining grand theft, it does not extend far enough.⁸⁰ The farmer and rancher suffer great loss, not only when their crops are stolen, but when the necessary tools to produce those crops are stolen. Chemicals are an essential tool of all farmers and ranchers and a favorite theft object of agricultural thieves.⁸¹ Chemical loss in 1996 for Tulare County totaled \$33,450.⁸² These chemicals consist of pesticides used to kill insects and rodents, herbicides used to kill weeds, fungicides used to destroy harmful fungi, and chemical fertilizers.⁸³ Chemicals are ideal objects for the thief to target because they are easy to handle and carry away. Most are in plastic containers of two and one-half to five gallons. There is a ready market for chemicals, making them much easier to sell than crops, and similar to crops, chemicals are nearly impossible to trace to the rightful owner.⁸⁴

The expansion of subsection (b) to include chemicals of a value in excess of \$100, also constituting grand theft, would be an effective tool to both police and prosecutors in combating this profitable form of agricultural theft. This expansion would tend to eliminate tedious technicalities in the valuation of the chemicals involved.

⁷⁷ *Id.* at 43.

⁷⁸ Interview with Haydn-Myer, *supra* note 38. See also Telephone Interview with Parichan, *supra* note 73.

⁷⁹ Interview with Haydn-Myer, *supra* note 38.

⁸⁰ *Id.*

⁸¹ Interview with Haydn-Myer, *supra* note 38. See also Telephone Interview with Parichan, *supra* note 73.

⁸² Telephone Interview with Matthews, *supra* note 7. Statistics derived from the Tulare County Sheriff's Department database.

⁸³ Telephone Interview with LaMunyon, *supra* note 28.

⁸⁴ Telephone Interview with Matthews, *supra* note 7.

3. Apiaries

Another area to include within subsection (b) is apiculture, the raising of bees. Apiculture is a highly specialized science critical to commercial honey production and agricultural needs in general.⁸⁵ Beekeepers facilitate pollination of crops, most notably fruit crops. Placing beehives in strategic locations gives bees access to a given orchard or grove.⁸⁶ In 1996, Tulare County suffered a monetary loss in apiaries of \$3,360.⁸⁷ However, this amount is only the value of the beehives and does not reflect any of the damage to orchards caused by lack of pollination. The value of a beehive is based on colony strength, which is measured by pollination value per colony.⁸⁸ This calculated strength determines how much acreage the apiary will pollinate.⁸⁹ Although the value of the beehive itself is determinable, the loss to the owner of the orchard or grove sought to be pollinated is incalculable.⁹⁰ In addition to chemical thefts, the theft of bees and/or beehives is a logical subject to include within the grand theft definitions.

4. Valuation

Another potential problem develops when determining whether the specified products under subsection (b) of Penal Code Section 487 do in fact value \$100. Subsection (b)(1)(B) provides that in order to establish the value of the avocados or citrus fruit as exceeding one hundred dollars (\$100) as specified in subsection (b)(1)(A), credible evidence may be presented that on the day of the theft, avocados or citrus fruit of the same variety and weight exceeded one hundred dollars (\$100) in wholesale value. Prior to this statement, subsection (b)(1)(A) includes domestic fowls, avocados, olives, citrus, or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farms crops as the exceptions to the \$400 limit to grand theft.

Subsection(b)(1)(B) was added in 1987 to better define grand theft. Although the subsection helps to determine the value of citrus fruits and avocados, it does not aid in determining the value of the remaining items. Are these also to be determined by the wholesale value of

⁸⁵ Telephone Interview with Parichan, *supra* note 73.

⁸⁶ *Id.*

⁸⁷ Telephone Interview with Matthews, *supra* note 7. Statistics derived from the Tulare County Sheriff's Department database.

⁸⁸ Telephone Interview with LaMunyon, *supra* note 28.

⁸⁹ *Id.*

⁹⁰ Telephone Interview with Parichan, *supra* note 73.

the item on the day of the theft? If so, how is the wholesale amount to be determined?

To better aid in the understanding and application of Penal Code Section 487, it would be helpful if the \$100 value of these various products were better defined. One possible solution would be to include all items mentioned in subsection (b)(1)(A) in (b)(1)(B), making their values determinable on their wholesale value at the time of the theft.

5. Proof of Ownership

California Food and Agricultural Code Section 861 establishes a means of identifying the owner of any fruits, nuts, or vegetables that are the food product of any tree, vine, or plant so as to provide an additional control over thefts.⁹¹ This section requires proof of ownership to sell or transport lots in excess of 200 pounds of any fruits, nuts, or vegetables marketed for commercial purposes.⁹²

Before this enactment, the law did not require that each lot of an agricultural commodity be identified.⁹³ This section allows law enforcement to better enforce the laws by giving police the authorization to question any such activity when there is probable cause to suspect that the fruits, nuts, or vegetables are being unlawfully transported.⁹⁴ It also makes it a misdemeanor for any person to violate the requirements under this section, thereby creating an added incentive for compliance.

A problem arises when determining what exactly accounts for a lot of more than 200 pounds. This issue may arise when an individual as-

⁹¹ CAL. FOOD & AGRIC. CODE § 861 (1997) provides:

For lots of over 200 pounds of any fruits, nuts, or vegetables which are the food product of any tree, vine, or plant and which are marketed for commercial purposes, all of the following apply:

(a) Every person who sells the commodity shall provide the buyer or transporter with a record of proof of ownership for each lot of the commodity.

(b) Every person who buys the commodity for resale shall obtain from the previous buyer or from the transporter a record of proof of ownership for each lot of the commodity.

(c) Every person who transports for commercial purposes shall possess a record showing proof of ownership for each lot of the commodity during transportation.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

serts that his lot of more than 200 pounds was obtained from more than one supplier. If he received less than 200 pounds from several suppliers and the total number of lots amounts to more than 200 pounds, would the requirements of section 861 be satisfied? It would be a welcome addition to this section if the wording "lots of over 200 pounds" were better defined. Amending the statute to state "for lots totaling over 200 pounds whether provided from one or more than one supplier" may clarify the intent.

To better serve the farmers, the scope of Section 861 of the Food and Agricultural Code needs to be extended beyond fruits, nuts, and vegetables. This extension would also benefit dairymen and beekeepers if the section included cows, bees, pigs, and any other farm animal. Another possible addition would be the inclusion of grains, fertilizers, and farm chemicals. Proof of ownership would be required upon request for any of the above items as long as probable cause existed to suspect the items were stolen.

B. Trespass

California Penal Code Section 602 regulates trespassing by describing acts of trespass punishable as a misdemeanor. Subsection (h) penalizes the destruction or opening of any fence on the enclosed land of another, or maliciously destroying any sign forbidding shooting on private property. Subsection (k) penalizes the act of trespass on cultivated or enclosed land or uncultivated or unenclosed land with signs posted forbidding trespass.⁹⁵

⁹⁵ CAL. PENAL CODE § 602, subsections (h) and (k)(1)-(4) (1997) provide:

Except as provided in section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the land immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard,

Not only is this section confusing, but it also makes it extremely difficult to establish the crime of trespass.⁹⁶ All of the elements of at least one of the subsections must be shown to prove trespass, and each of these is complex in and of itself.⁹⁷ Subsection (h) and subsection (k) are the two most commonly used in an agricultural crime case.⁹⁸ The intent behind the trespass regulation is to keep private property private.⁹⁹ Not allowing others to even enter another's property would eliminate vandalism, burglary, or any other like crime. However, section 602 is so complex and involved, it is ineffective to serve its intended purpose of keeping private property private.

The characterization in subsection (h) of opening or tearing down a fence as trespass is based on the premise that individuals have notice that they are entering property not open to the public.¹⁰⁰ If intruders are unable to walk in, they are put on immediate notice that they are in an area not open to them. If a gate is open and they walk in without having to open or tear it down, they are still on notice that the area is not open to the public. It is also unnecessary to require the tearing down or mutilation of a sign. The fact that a sign exists is enough to establish proper notice to the public and it serves no purpose to incorporate vandalism (tearing down a sign) into this section.

Subsection (k) presents ambiguous terms such as "cultivated land" and "trail."¹⁰¹ If the subject property is between crops, is it still considered "cultivated"? And if so, how is the trespasser to know that it is in fact "cultivated"? Furthermore, this subsection requires placement of signs at all roads and trails entering uncultivated or unfenced property.¹⁰² What is considered a "trail"? Can a "trail" be created by merely walking across and forming one yourself?

Once this is established, one must then satisfy the next requirement by proving one of the four listed elements. The first element is that the trespasser failed to leave after the owner, owner's agent, or lawful

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- or notice forbidding trespass or hunting on the lands, or
 - (3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or
 - (4) Discharging any firearm.

⁹⁶ Interview with Haydn-Myer, *supra* note 38.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ CAL. PENAL CODE § 602 (1997).

¹⁰⁰ CAL. PENAL CODE §602(h) (1997).

¹⁰¹ Interview with Haydn-Myer, *supra* note 38.

¹⁰² CAL. PENAL CODE §602(k) (1997).

possessor ordered him to do so.¹⁰³ Even if an acquaintance, friend, or neighbor asked the trespasser to leave, the element is not satisfied. The intent or reasoning behind this element is the trespasser is entitled to notification that he does not have a right to be on the property.¹⁰⁴ If after such warning, the person fails to leave, he is then guilty of trespassing. However, the way in which this element is worded, it is the owner, owner's agent, or lawful possessor's duty to give personal notice to the trespasser.¹⁰⁵ This element places upon the victim a requirement that is both unreasonable and unnecessary. It also purports to give the wrongdoer a license to trespass unless and until he is told not to and places upon the prosecuting agency a rather insurmountable obstacle to overcome.

The next element requires proof that the suspect tore down a sign. If no one actually saw the person tear down the sign, it would be close to impossible to prove. Furthermore, there is no logical reason for this element and nothing in the statute or accompanying case law that provides the legislative purpose underlying this requirement. As long as the first portion of Penal Code Section 602(k) is satisfied, the accused is on notice that the land is private property and that he is not authorized to enter. There is no purpose in requiring that the accused actually tear down the sign or destroy it in some way.

The third element, requiring a lock to be destroyed, is similar to the notice requirement. The accused is on constructive notice that the property is private by virtue of its condition, and to require a lock to be broken has no significance.

Another form of trespass may also be charged; however, it also presents evidentiary problems. Penal Code Section 602(l) defines another form of trespass as "entering and occupying real property or structures of any kind" without the owner's consent.¹⁰⁶ The obvious and arguably unattainable obstacle is proving the element of occupation, which virtually requires a showing of adverse possession by the alleged trespasser. This obstacle is discussed in *People v. Harper*, where the court analyzed whether the defendant was not only guilty of burglary but also trespass as described under California Penal Code

¹⁰³ Interview with Haydn-Myer, *supra* note 38. See also Interview with Couillard, *supra* note 63.

¹⁰⁴ CAL. PENAL CODE § 602 (1997).

¹⁰⁵ CAL. PENAL CODE § 602(k) (1997).

¹⁰⁶ CAL. PENAL CODE § 602(l) (1997) (defining occupation as "[e]ntering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession").

Section 602(1).¹⁰⁷ The *Harper* court stated that, “[c]riminal trespass requires the occupation of real property or structure, as well as the entry. To occupy means a non-transient, continuous type of possession.”¹⁰⁸ The court concluded that because a burglar does not have the intent to occupy, as required by the criminal trespass statute, he cannot be guilty of trespass.¹⁰⁹

Another case defining occupation is *People v. Wilkinson*, which states that the Legislature in passing subdivision (1) of Penal Code Section 602 intended the word “occupy” to mean a nontransient, continuous type of possession.¹¹⁰ This court further went on to say that it is not a violation of Penal Code Section 602, subdivision (1), to enter private property without consent unless such entry is followed by occupation thereof without consent. Nor is it a violation to occupy without consent if the entry be made with consent. This is so because the statute is worded in the conjunctive rather than the disjunctive.¹¹¹ This raises problems when the victim is the employer of the trespasser. The trespasser may have been given consent to enter the land for a particular purpose but extends his entry for a longer period of time and perhaps causes damage or steals from the farmer. Based on this inherent obstacle, which in no way benefits the victim, it certainly seems reasonable for the element of occupation to be removed by legislation, thereby protecting private property from unconsented invasion of any kind.

Penal Code Section 459 defines burglary as entering “any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building . . . with intent to commit grand or petit larceny or any felony”¹¹² The actual intended crime does not

¹⁰⁷ *People v. Harper*, 269 Cal.App.2d 221 (1969).

¹⁰⁸ *Id.* at 222.

¹⁰⁹ *Id.* at 223.

¹¹⁰ *People v. Wilkinson*, 248 Cal.App.2d Supp. 906, 910 (1967).

¹¹¹ *Id.* at 909-10.

¹¹² CAL. PENAL CODE § 459 (1997) provides:

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, as defined in Section 21 of the Harbors and Navigation Code, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code when the doors are locked, aircraft as defined by Section 21012 of the Public Utilities Code, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any fel-

have to be carried out. Burglary is complete as soon as the actor enters the area with the requisite criminal intent.¹¹³

Incorporating the elements of burglary into those of trespass, without the element of specific intent to commit a theft or other felony, would eliminate many of the problems that arise with Penal Code Section 602. The elimination of the various elements, including the tearing down of a sign, the opening of a gate, the destruction of a lock, etc., would be a welcome change. This would require amendment to Penal Code Section 602 to state that "every person who knowingly enters real property or a structure of any kind of another, without the consent of the owner, the owner's agent, or the person in lawful possession, is guilty of trespass." Making trespass a violation merely upon the entering of another's property would be much less confusing and easier to prove, and would better satisfy its intent.¹¹⁴

C. Vandalism

Though thieves are an obvious problem for farmers and ranchers, so too are vandals. Apiculture is most likely to be the object of vandalism. Whether the offense is committed maliciously or as a prank, destroyed bee hives are as costly as stolen ones to farmers and beekeepers. The bees scatter and are often lost when separated from their colony. Additionally, the targeted area does not receive the intended pollination.¹¹⁵

Vandalism, as described in Penal Code Section 594, is a misdemeanor offense, unless the damage exceeds \$5,000. If damage exceeds \$5,000, the crime may be a felony.¹¹⁶ Statutes relating to vandalism

ony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

¹¹³ *People v. Walters*, 249 Cal.App.2d 547, 550 (1967) (holding that the crime of burglary is complete when entry with the essential intent is made, regardless of whether the felony planned was committed).

¹¹⁴ Interview with Haydn-Myer, *supra* note 38. See also Interview with Couillard, *supra* note 63.

¹¹⁵ Telephone Interview with LaMunyon, *supra* note 28. See also Telephone Interview with Parichan, *supra* note 73.

¹¹⁶ CAL. PENAL CODE § 594, subsections (b)(1) and (2) (1997) provide:

(b)(1) If the amount of defacement, damage, or destruction is fifty thousand dollars (\$50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine

define the criminal act and then tend to focus on the very real problem of graffiti by setting forth various acts and punishments relating to graffiti activity.¹¹⁷ This statute is an example of the Legislature recognizing a serious criminal problem and reacting to it through appropriate legislation defining the proscribed activity and setting forth penalties commensurate with such activity. Accordingly, to deter the losses attendant to vandalism occurring within the bee industry, it seems prudent to focus on this problem by enactment of special legislation.

Making the vandalism of beehives a felony, either by creating a new statute or by including such activity within the dictates of Penal Code Section 594 (b)(1) or (2), would inform those inclined to such acts of vandalism that they will be dealt with as serious criminal offenders.

CONCLUSION

At long last, legislators have taken a first step in combating the costly and increasing problem of agricultural crime. The first pilot program focusing on agricultural crime, *The Rural Crime Prevention and Prosecution Model Program*, went into effect in 1996. It calls for the development of a joint powers agreement with the Tulare County District Attorney's Office and Sheriff's Department.¹¹⁸ Tulare County was chosen to conduct the project because of its large agriculture-based economy, in that agriculture-related jobs account for approximately 60 percent of the county's employment.¹¹⁹ It naturally follows that Tulare County, as the leading agricultural county in the state, also has a sig-

of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars (\$5,000) or more but less than fifty thousand dollars (\$50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand (\$10,000), or by both that fine and imprisonment.

Thus, if the damage is over \$5,000, the crime is punishable as a misdemeanor or felony. The punishment is equivalent to that which CAL. PENAL CODE § 18 (*supra* note 70) describes as punishment of a felony. Courts have interpreted this to constitute felony behavior. (*See People v. Wild*, 60 Cal.App.3d 829, 834 (1976).)

¹¹⁷ CAL. PENAL CODE § 594(a)(1) (1997) provides: "Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material."

¹¹⁸ *Rural Crime Bill*, *supra* note 9.

¹¹⁹ *Program Proposal*, *supra* note 1, at 3.

nificant rural crime problem.¹²⁰

Although the Rural Crime Bill is a critical step in the right direction, problems persist that prevent rural crimes from being successfully prosecuted. Many of the criminal statutes do not adequately cover agricultural crime. Theft and trespass are difficult to prosecute. Agricultural-crime statutes must be amended in support of California's "war on agricultural crime."

California's agricultural community will be watching the crime-fighting efforts and evaluations of Tulare County as it operates under this landmark pilot program. Those efforts and evaluations will become crucial in developing laws, procedures, and task forces for the state to combat and deter agricultural crime.

The Rural Crime Bill, after being in effect for just three months, resulted in arrests for crimes worth over \$500,000 and \$370,000 in recovered stolen property.¹²¹ From January 1997, the effective date of the project, to May 6, 1997, there was a 100 percent conviction record.¹²²

As of October 1997, the Rural Crime Bill has shown continued success. Statistics from January to October of 1997 report \$750,000 in recovered stolen property in Tulare County.¹²³ There have been 210 arrests, with resolution reached in 101 of them,¹²⁴ making a 48 percent resolution rate. There have been 99 convictions, one hung jury, and one not-guilty verdict, generating a 98 percent conviction rate.¹²⁵ These results have improved tremendously in comparison with 1995 statistics which reflect a 19 percent resolution rate of fifty-seven prosecutions out of 370 reported cases.¹²⁶

The Rural Crime Bill has, thus far, proven to be a tremendous aid in combating rural crimes as well as a very cost-effective project.

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¹²⁰ *Id.* at 7.

¹²¹ Eric Coyne, *Special Task Force Develops Perfect Conviction Record*, VISALIA TIMES-DELTA, May 6, 1997, at 1C, 5C.

¹²² *Id.*

¹²³ Telephone Interview with Matthews, *supra* note 7. Statistics derived from the Tulare County Sheriff's Department database.

¹²⁴ *Id.*

¹²⁵ Interview with Haydn-Myer, *supra* note 38. Statistics derived from the Tulare County District Attorney's Office.

¹²⁶ *Rural Crime Prevention Survey*, *supra* note 2.