

AALA PRESIDENTIAL ADDRESS

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I. INTRODUCTION

Fellow members of the American Agricultural Law Association, distinguished guests, long suffering husband, Richard DeMott Conover, thank you for allowing me to serve as your president for this millennial year. One of the best things about the Aglaw Association is our ability to communicate with each other. The members are generous in sharing information and analysis of past, current, and future agricultural events and trends. This symposium is where we network. Here in this room, in the Aglaw Update, through newsletters and bar journals, by word of mouth, and from the school of hard knocks.

I have a few pertinent questions...have you ready answers? If not, do you know the experts who can give you the answer, or a good start in looking for the answer?

Your dairyman client learns from the tank truck driver that the milk cooperative has an arrangement with “someone” in San Antonio, Texas who can provide cheap labor from Mexico. All the farmer puts up is the price of a bus ticket. The deal is this: the workers are hired to milk the cows; the farmer provides housing, an old tenant house, and pays minimum wages. If the workers do not pan out, the farmer can send them home and another worker takes his place. How would you advise this farmer?

You represent a rural bank. The bank wants to foreclose on a dairyman who is in arrears on a large operating loan, cross-collateralized by land, equipment and livestock. Within the last year the farmer purchased adjoining land that had been formerly used as a filling station.¹ The farmer intended to operate a retail outlet there. Over the past three years the

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1. “Filling station” is southern for a gas station.

dairy herd has increased from sixty mature animals to six hundred. Would you be comfortable telling the bank to foreclose, business as usual?

Your farmer client is cited for saving genetically engineered seed from 1999 to use in 2000. What do you advise? Do you recommend an attorney versed in criminal matters?

Your client is diagnosed with a physically debilitating disease and wants advice on how to arrange farm assets so that the next generation will have the family farm. Your suggestions?

And last: You represent suburbanites who want to stop a ten thousand head sow operation from being constructed? Or alternatively, you represent the farm corporation that wants to build?

In the American Agricultural Law Association you can build a even large, more diverse network of friends and smart lawyers. Some can even answer the San Antonio question.

I urge you to make regular visits to the AALA website at www.aglaw-assn.org. My vision for my tenure as President was to incorporate as many aglaw resources as possible through an extensive bibliography, membership directory, and expended electronic links. The wonderful bibliography that Drew Kershen² has created is now available at the website. In addition, I envisioned an improved financial and managerial position for the Association. In this endeavor, I had a strong start from the efforts of past president Tom Lawler,³ who instituted the Strategic Planning Special Committee. Paul Wright⁴, who chairs the committee, has accomplished remarkable feats: a signed contract with the Center for Agricultural Law at Fayetteville, Arkansas, a comprehensive mission statement, and blue print for future management of the Association.

II. NAILS THAT STICK UP

There is an old Russian proverb: “The nail that sticks up gets hammered down.”

The advice that we as agricultural lawyers give is slanted for the most part toward people who have problems, or think ahead to the time when they may have problems. Many of your clients are “nails that stick up.” Producers who are outstanding their communities—

2. Professor Drew L. Kershen is the Earl Sneed Centennial Professor of Law at the College of Law of the University of Oklahoma in Norman, OK and past president of the AALA. He was the recipient of the AALA Distinguished Service Award for 2000 in recognition of his many deeds and accomplishments in the agricultural law field. In addition to the bibliography, Professor Kershen and his graduate students have created and maintained the AALA website.

3. Thomas A. Lawler of Lawler & Swanson, P.L.C. in Parkersburg, Iowa.

4. Paul L. Wright of Wright & Logan Co., Dublin, Ohio. His committee included: Drew L. Kershen; Susan A. Schneider, Professor, University of Arkansas School of Law, Fayetteville, Arkansas; J. W. Looney, Professor, University of Arkansas School of Law, Fayetteville, Arkansas; James R. Baarda, The Ackerson Group, Washington, D.C.; James Dean, Attorney at Law, Denver, Colorado.

daring to try new forms of management, new styles of business ventures, new equipment—are walking paths that are different from their neighbors.

I would like to share with you the story of the hidden price paid by my family members for their innovative ideas.

Twenty years ago, when this Association was just getting started, I was (at this very moment in the day) sweeping the dairy barn, spreading lime on the platforms, and distributing hay in the mangers.

After five years as an extension dairyman on contract with North Carolina State University in the country of Peru under the original Agency for International Development, my husband moved his family of five sons, who ranged in age from nine months to seven years, to a 265-acre dairy farm in the Pocono mountains of Pennsylvania. It was a beautiful place, but boy was it ever cold in the wintertime! I will match any Minnesota farmer degree for degree in that place. Water pipes and waste pipes were buried six feet deep, and they still froze. The wind blew constantly, through both winter and summer, on Conover Hill Farm.⁵

Within five years the farm had grown to six hundred contiguous acres. We had built a double four herringbone milking parlor, a lagoon for dairy waste water, a free stall barn with silage feeder, a calf barn, two concrete stave silos, a machinery shed, and a garage. Feeding transponders hung on the necks of high producing cows. The old bank barn and the main house had been remodeled. In the fields, stone hedgerows were buried, wet spots were tiled out, old watering ponds were drained, and new stock ponds were built. One pond was even stocked with large mouth bass and blue gills. Fields were sectioned into strips and terraces in accordance with soil conservation recommendations. New pasture fences were built. The dairy herd grew and milked well. We gloried in our youth, energy, and skills.

We were not eligible for government loans so we were at a competitive disadvantage; however, the value of the land was steadily increasing. We capitalized every cent we could lay our hands on. After all, we were founding our dynasty.

We were about to learn a very hard lesson in psychology. We had made *change*. As “flatlanders” we “weren’t from around here.”

Farmers then were isolated by geography, competition, and shortage of time. Only in times of extreme hardship would a farmer welcome charity or admit that someone else might be a “better” farmer.

5. Located outside Ulster, Pennsylvania.

The fierce independence of farmers is well documented. It has brought down many efforts to mount a united front in support of higher prices for commodities. Politicians of all stripes have successfully pitted one farm sector against another. But not everyone who lives in the country is a farmer. Many just set up a small house or mobile home and commute into a job in town, usually an eight-hour job with weekends off.

It began with nails in the driveway. Then sugar in the tractor diesel tank. Snowmobiles roared by in the night, circling the house endlessly and running races over the first year alfalfa fields. A large river carp fish showed up in the milk bulk tank. Rocks were thrown through the dairy parlor window on a sub zero night. Over the next nine years there was a steady line of cut fences. Glass canning jars were tied to towering corn stalks, which were then sucked up in the silage chopper. Rods of number four rebar were driven in the cornrows to destroy the silage chopper.

Phone threats were made in the vein of: “We’ll show your wife what a real man is like when she tends the calves in the other barn,” and “How would you like a nice barn fire?” Tractors driven by the boys were run off the narrow dirt road into the ditches. Calf barn doors were propped open in the dead of winter so the calves would freeze. Hunting season was the worst. Hunters from the local towns and factories came in gangs of forty or fifty and “drove” the fields for deer. Guns blazed night and day. “Jack lighting” of deer was rampant.⁶

Some of the actions were pranks, like the time the baby donkey was “kidnapped” and tied up in town. We had a photographer staying with us from the Department of Agriculture the week of the donkey episode. He took lots of pictures.⁷

That is a sample of what we endured. What do you do? How do you make it go away? There was no extended family to call on. We certainly did not have the time or the inclination to “do unto other.” How would you advise a farmer with such a problem? How would you advise a bank considering additional financing to a farmer with “neighbor problems?”

Insurance covered major damage, after the \$1000 per occurrence deductible. State police investigated. The police were hampered by the fact that the phone line was of the nine-party variety. Lack of privacy and the inability to tap the phone frustrated the efforts to trap the midnight callers. The police rode by on patrol. We called on community leaders who quietly visited suspected ringleaders and tried to negotiate a cessation. I felt real kinship with the biblical Job as I tried to explain that we had not done anything to stir the

6. Jack lighting is the illegal and unsportsmanlike practice of hunting at night with a strong spot light. Often it is combined with “road hunting” in which the hunter roams the road shining a mounted spotlight. Deer are shot through the window of the truck.

7. The farm was one of the featured farms in the 1976 Yearbook of Agriculture.

pot. I learned a new word: “sociopath.” There was no way to make up the sleepless nights, the fear for the children, or the over whelming sense of powerlessness.

III. WHAT WERE OUR OPTIONS?

We could change the arena of combat. Attorneys are the wrestlers, the gladiators who fight the battles of your clients. Some of you work in quiet rooms, some in mediation and persuasion, some in the courtroom. We were unwilling to fight in the street because we knew we could not win there. In firearms training it is always emphasized to never draw your weapon unless you are prepared to use it. We knew we would not shoot.

We had other options. Start a 4-H club and invite the neighbor children to participate. Move our letter from the Lutheran Church in town to the country Federated Church comprised of American Baptists, Disciples of Christ, and Congregationalists. Serve on the local school board’s long range planning committee. Organize a farm cooperative to negotiate higher milk prices.

The purpose was to bring community pressure to bear. And to bring economic pressure to bear.

But it was in the courtroom that we had a better chance of controlling the outcome. We could and did file complaints for criminal mischief, trespass, vandalism, and destruction of property; and a civil suit for intentional interference with business.

IV. SO HOW DID IT END?

Sort of a “Job” ending. Over the years we had noted that decisions out of Washington, D.C. and the Pennsylvania state capitol in Harrisburg had as much effect in deciding profitability as our hard work and the Lord’s good weather. In this case it was the oil embargo and the Clean Water Act. The first created high transportation costs and the second resulted in governmental action against non-point and point source pollution.

A major mozzarella cheese manufacturer bought a butter and powder plant from a financially challenged milk cooperative. After a while, the local towns sewer plant shut down due to an overload of salt whey. At the urging of the Pennsylvania Department of Environmental Resources, (“DER”), the cheese manufacturer went searching for land upon which to spread the excess salt whey. Land that DER would approve of was needed. River land had a gravel base and whey could be spread on it in fine weather or foul. But it had the bad habit of allowing the whey to leach into the nearby Susquehanna River. Hill land sloped and was hard to get to in the winter snows. If too much whey was spread on the heavy wet, volusia clay soil, it would turn anaerobic and smell like rotten eggs. The cheese manufacturer needed a hill farm that would look good from the air to facilitate DER inspections. The farm in question had to have long strips of flat land for spreading the whey. The farm needed to have a completed conservation plan.

One sunny August afternoon when I was making pickles, a rented Oldsmobile came up the drive (you always note things about cars and strangers in the country). A small neatly dressed man with clean shoes got out and asked whether I knew of any farms for sale in the area, about three hundred acres in size. I gave him the names of a few perpetually hopeful souls who always wanted to sell. Then he asked me if “this place” were for sale. I said, “You wanted three hundred acres, this one has six hundred”. We chatted a bit more and I made noises about the unfinished pickles.

Well, I would hazard a guess that most of you in this room have a figure in mind that, if said sum were proffered, would sell your practice and retire to go ice fishing instead of listening to CLE speakers.

I told him our numbers and he said that was fine. The pickles waited. We had at that time two sons at Cornell University, one senior in high school, and two others right behind them, a junior and a sophomore. We faced higher labor costs in the immediate future. We believed that milk prices would remain flat and that the rise in land values would slow. There would be more environmental regulations. It looked like the right time for us to move. The last cow left the farm in April of 1982.

We were the nail that stuck up.

So fast-forward a few years. In the spring of 1999, the cheese corporation auctioned the farmland. I considered making a bid on one of the five parcels offered. I even had a local appraiser check it out for me. The land had had a potential eight-acre pond site and a small tenant house. In the intervening years, beaver had created a wetlands area and the house had deteriorated. In 2000, the wetlands would have had to be preserved or replaced. The pond’s watershed acreage would have necessitated a pond dam capable of containing the hundred-year rain storm. Moreover any new house could not make use of the old septic system that had been grand fathered in at the last sale. I had serious doubts that the land would pass a percolation test.

No bid was tendered.

Thank you.