

# PRESIDENTIAL ADDRESS<sup>1</sup>

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## I. INTRODUCTION

In preparing this address to the assembled members of the American Agricultural Law Association (AALA), I prepared as many presidents had before me—I read many of the Presidential Address articles previously published by the *Drake Journal of Agricultural Law*. In 2003, then-AALA President John C. Becker<sup>2</sup> conducted a literature review of the prior 23 Presidential addresses in preparation for his speech,<sup>3</sup> and concluded that Presidential Addresses:

- Rally support for agricultural law as an intellectual topic;
- Rally support for the AALA;
- Rally support for a specific cause; and
- Reflect on agriculture and how it has changed during the career of the President.<sup>4</sup>

Without exception, each Presidential Address acknowledges the inherent challenge: how can the President's remarks add value to an already excellent

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1. This article is based in part on the Presidential Address delivered to the American Agricultural Law Association (AALA) Annual Education Conference and Symposium, held on September 25-26, 2009, in Williamsburg, Virginia.

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2. Professor of Agricultural Economics and Law, Pennsylvania State University.

3. John C. Becker, *AALA Presidential Address: "Looking Back and Looking Forward"*, 9 DRAKE J. AGRIC. L. 1 (2004).

4. *Id.* at 1-3.

AALA educational symposium with cutting edge topics and nationally and internationally recognized legal, economic, and policy experts?

This 29th Presidential Address includes a “snapshot” of AALA’s activities in 2008 and 2009, some “tall thoughts from a short person” on the topic of sustainability, and a brief introduction to Volume 15, Number 1 issue of the *Drake Journal of Agricultural Law*.

## II. THE STATE OF THE AMERICAN AGRICULTURAL LAW ASSOCIATION

In 2010, the AALA will be thirty years old. During its tenure, it has held a unique place in American professional education as the only national professional organization focusing on the legal needs of the agricultural community. AALA crosses traditional professional divisions because it includes practitioners, academics and government (legislative, executive, regulatory, administrative) and others involved in agricultural law (for example, extension, communications, and nonprofit foundations).

The AALA started as an independent forum for investigation of innovative and workable solutions to complex agricultural law problems, and its members continue this tradition in 2009. This cross-section of interests strengthens the expertise of each member; AALA provides opportunities to learn of current international, technological, and environmental issues reshaping agriculture, food, rural communities, and energy production.

The culture of AALA reflects member interests and activity, with a Board of Directors elected by the membership. The Board relies on recommendations of committees; major committees and their responsibilities include:

- Membership: focused on recruitment, retention, and evaluation of benefits;
- Communications: focused on professional communication with the members, including publication of the *AgLaw Update*<sup>5</sup> and the work of the *AgLaw Update* Editorial Board;
- Awards: reviewing nominations for student and professional scholarship; and

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5. The *AgLaw Update* is the monthly publication of the American Agricultural Law Association edited by Linda Grim McCormick with substantial contributions from AALA’s Executive Director, Robert Achenbach. For past issues of the *AgLaw Update*, see, The Nat’l Agric. Law Ctr., Index, <http://www.nationalaglawcenter.org/reporter/aala> (last visited Apr. 24, 2010).

- Program: working with the President-elect to develop the annual educational conference.

The AALA added 173 new members in 2009, 61 of whom are attending this conference. This is a “high water” mark for new members, and we look forward to more new members in 2010. Through the hard work of the AALA Membership Committee,<sup>6</sup> AALA added several new activities and benefits in 2009:

- The “Welcome Reception” the night before our conference begins is an opportunity to greet new attendees and welcome fellow members.
- The *United States Agricultural & Food Law and Policy Blog* [www.agandfoodlaw.com](http://www.agandfoodlaw.com), is a cooperative effort between AALA and the National Agricultural Law Center at the University of Arkansas providing comprehensive news, research, and information blog resource for the nation’s agricultural community.
- The AALA Listserv has hosted lively discussions since its inception in 2009.
- The listserv has been a source of referrals, and the listserv and blog allow all members to be part of a virtual professional community, despite distance and regional differences.

### III. THOUGHTS ON SUSTAINABILITY

For the first time, the 2009 AALA annual educational conference and symposium included a series of presentations focused on “sustainability.” For a way of thinking about this hard-to-define concept, consider reading “Science and

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6. The Board of Directors is particularly grateful to the following members of the AALA Membership Committee: Anne Hazlett, retiring co-chairperson of the AALA membership committee; Harrison Pittman, co-chairperson of the AALA Membership Committee in 2008; Jesse Richardson, chair of the *AgLaw Update* editorial board; Anthony Schutz, member of the *AgLaw Update* editorial board; Ruth Moore, Membership committee chairperson for 2009; and Membership Committee members, Mark Surprenant, Charles Sullivan, Pat Dillon, and Amy Cornell; and the National Agricultural Law Center at the University of Arkansas.

Technology for Sustainable Well-Being”<sup>77</sup> by Dr. John P. Holdren who recently finished his service as President of the American Association for the Advancement of Science. While lawyers are looking at the regulatory and legal aspects of sustainability, the challenge is to examine the scientific challenges related to sustainability as well. Holdren’s challenge to the scientific community is grand, contending it is the responsibility of scientists to achieve sustainability, and sustainable well being is improving the human condition by means that may continue indefinitely.<sup>8</sup>

Human well-being rests on a foundation of three pillars, the preservation and enhancement of all three of which constitute the core responsibilities of society:

- *Economic conditions and processes*, such as production, employment, income, wealth, markets, trade, and the technologies that facilitate all of these;
- *Sociopolitical conditions and processes*, such as national and personal security, liberty, justice, the rule of law, education, health care, the pursuit of science and the arts, and other aspects of civil society and culture; and
- *Environmental conditions and processes*, including our planet’s air, water, soils, mineral resources, biota, and climate, and all of the natural and anthropogenic processes that affect them.<sup>9</sup>

Holdren emphasizes that each of the three pillars is essential. To help solve these problems, our profession must engage beyond the realm of law and regulation deepen understanding of the scientific bases for the environmental conditions and processes. Members of the AALA have demonstrated this versatility, and the AALA is an effective forum for further exploration. There are opportunities for engagement: write about your work for the *AgLaw Update* or for the *Drake Journal of Agricultural Law*, or submit articles to the AALA Listserv or to the *United States Agricultural & Food Law and Policy Blog*. Each of us will benefit from a better understanding of interdisciplinary approaches.

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7. John P. Holdren, *Presidential Address: Science and Technology for Sustainable Well-Being*, 319 *SCIENCE* 424 (2008).

8. *Id.*

9. *Id.*

#### IV. INTRODUCTION TO THE DRAKE JOURNAL OF AGRICULTURAL LAW

Since 1995, the *Drake Journal of Agricultural Law* has enjoyed a unique position among legal publications, a forum focused on “cutting edge” issues affecting U.S. and international agricultural law and business. Volume 15, Number 1 issue includes timely and thought-provoking analyses of federal and state law applied to local food systems, antitrust analysis of agribusiness, land use, intellectual property rights, estate tax, and international trade regulations.

##### A. Local Food Systems

Local food systems are examined in “Legal Issues in Local Food Systems” by Derrick Braaten and Marne Coit. This topic is particularly relevant given the U.S. Department of Agriculture current emphasis on “Know Your Farmer, Know Your Food” which Secretary Tom Vilsack and Deputy Secretary Kathleen Merrigan believe helps American consumers better connect to the source of the food they eat and the people who produce it.<sup>10</sup>

##### B. Antitrust

In 2010, the Sherman Act of 1890 will have been part of United States law for 120 years. First responsible for the break-up of Standard Oil Company, the act is now the subject of intense scrutiny and debate as the U.S. Justice Department Antitrust Division considers its current implementation and enforcement. While the law was intended always to prevent companies from illegally monopolizing, colluding, and artificially setting prices, current enforcement of the Act includes evaluation of U.S. Department of Justice approaches to protect competition by preventing the artificial raising of prices through the mergers of competing entities and prohibiting a company from using its market dominance to stifle competition.<sup>11</sup>

The issue includes two articles focused on antitrust issues which are receiving increased attention due to a major U.S. Department of Justice review of antitrust law and enforcement, led by Assistant U.S. Attorney General Christine

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10. See Press Release, U.S. Dep’t of Agric, USDA Launches “Know Your Farmer, Know Your Food” Initiative to Connect Consumers with Local Producers to Create Economic Opportunities for Communities (Sept. 15, 2009), available at [www.usda.gov/wps/portal/!ut/p/\\_s.7\\_0\\_A/7\\_0\\_1OB?contentidonly=true&contentid=2009/09/0440.xml](http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?contentidonly=true&contentid=2009/09/0440.xml).

11. See *e.g.*, Dep’t of Justice, The Justice Blog, Posting by Tracy Russo, <http://blogs.usdoj.gov/blog/archives/692> (Apr. 20, 2010).

A. Varney with support from U.S. Secretary of Agriculture Tom Vilsack.<sup>12</sup> Dr. Brian E. Buhr's article "Economics of Antitrust in an Era of Global Agri-food Supply Chains: Litigate, Legislate and/or Facilitate?" is a comprehensive examination of the economics and unintended consequences of market intervention to improve competition when no clearly illegal action has occurred under anti-trust law. Dr. Buhr explores risk management strategies beyond legislative and litigation.

"The Debilitating Effects of Concentration in Markets Affecting Agriculture" by David A. Domina and Dr. C. Robert Taylor argues that producers and consumers are hurt because of economic concentration in the agricultural economy. The article uses empirical economic data to refute the conclusions of a June 2009 General Accounting Office's Report, GAO 09746R, *Concentration in Agriculture*. The article discusses trends in concentration within major agricultural sectors, trends in prices received by producers for raw agricultural commodities, the views of experts on concentration in agricultural commodity and food prices, and the GAO's use of available data and its methodologies.

### C. Land Use

"The Agriculture, Communities and Rural Environment Act: Protecting Pennsylvania's Agricultural Operations from Unlawful Municipal Regulation" by Ross H. Pifer describes a new remedy that limits the role of local government entities and its effective implementation using a review process and the need for further negotiation to avoid litigation.

### D. Intellectual Property Rights

This issue of the *Drake Journal of Agricultural Law* includes two articles focused on intellectual property rights. "Anticompetitive Tactics in Ag Biotech Could Stifle Entrance of Generic Traits" by Michael Stumo is a prospective examination of waning patents on biotech seeds and possible strategies such as "product hopping" by seed companies to extend patents and restrain generic competition.

A student note by Justin Rogers examines the seed industry and its impact on producers. "The Enchroachment of Intellectual Property Protections on

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12. See Press Release, Dep't of Justice, DOJ and USDA Hold First-Ever Workshop on Competition Issues in Agriculture: First of Five Workshops Features Discussion on Competitive Dynamics in the Seed Industry, Trends in Contracting, Transparency and Buyer Power (Mar. 12, 2010), available at [http://www.justice.gov/atr/public/press\\_releases/2010/256496.htm](http://www.justice.gov/atr/public/press_releases/2010/256496.htm).

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the Rights of Farmers” explains the historical practice of producers saving seed from year to year, intellectual property rights of seed companies and how they are enforced to prevent saving of seed, and recent decisions of the U.S. Supreme Court interpreting federal laws that limit economic choices of producers.

#### *E. Estate Tax*

A student note, “Dodging the Tax Bullet: The Use of Foreign Limited Liability Companies by Retired Farmers to Limit State Inheritance Tax Liability for the Next Generation of Small Farmers,” by Curt Steger describes the tax implications of passing ownership and identifies tools available to minimize inheritance taxes.

#### *F. International Trade Regulation*

Finally, a student note addresses the impacts of international trade regulations on a small business in “Analysis of the ISPM 15 and its Impact on the Wood Pallet Industry” by Nicole Woodroffe. This article reviews the International Standards for Phytosanitary Measures, Guidelines for Regulating Wood Packaging Material in International Trade and their impacts on a wood pallet business where the pallets are used for internationally exported goods.

### V. CONCLUSION

The American Agricultural Law Association is proud to be a sponsor of the *Drake Journal of Agricultural Law*. We look forward to a continued productive collaboration to benefit the legal and professional community as we focus on agricultural law.