



Too Big To Prosecute?

Never in my memory have two cabinet secretaries come to five separate hearings on competition in the agriculture industry. So, after all that effort, what was accomplished?

BY C. ROBERT TAYLOR



USDA It was unprecedented. The Attorney General and the Secretary of Agriculture came to five hearings on competition in the agriculture industry. And all that came out of it was a flimsy report. This is a picture from the hearing in Normal, Alabama, where testimony was taken on the poultry business. From the left: Alabama (D_7th District) Congressman Artur Davis, Agriculture Secretary Tom Vilsack, Attorney General Eric Holder, and Assistant Attorney General for Antitrust Christine Varney. Varney has since left the administration.

The U.S. Attorney General was at all five hearings. So were the Secretary of Agriculture and all the top anti-trust officials at the Departments of Justice and Agriculture.

It was unprecedented: At five public hearings in five places across the country in 2010, two cabinet secretaries and all the top antitrust cops on the federal payroll were in one room listening to farmers and consumers

talk about competition – or the lack of it – in the business of agriculture.

These officials were fulfilling a promise the Obama administration made soon after coming to office. The promise was that the markets for food would be free for producers and consumers – that violations of antitrust laws would be confronted in the courts.

That was the promise. Now, two

years later the Department of Justice has issued a report on those five hearings, the ones that consumed so much time from two cabinet secretaries. What's in the report? Mostly cheap talk, and little action.

Let me explain.

Five public workshops to explore competition issues in agriculture were held in 2010. Hosts were the U. S. Departments of Justice (DOJ) and Agriculture (USDA). Topics for the five workshops (and locations) were: General Issues of Concern to Farmers (Iowa); the Poultry Industry (Alabama); the Dairy Industry (Wisconsin); the Livestock Industry (Colorado); and Marketing Margins (Washington, DC).

U.S. Secretary of Agriculture Tom Vilsack, U.S. Attorney General Eric Holder, Assistant Attorney General and Head of the DOJ Antitrust Division Christine Varney, and the Grain Inspection, Packers and Stockyards

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Administration administrator, Administrator Dudley Butler attended all of the workshops.

(Conspicuously and inexplicably absent was the Federal Trade Commission (FTC), which has antitrust authority over the fertilizer industry as well as general antitrust responsibility in the retail food sector.)

Attendance of two Cabinet members other top antitrust cops at a public agricultural meeting, much less at five such meetings, is not a normal occurrence. In fact, I've never heard of anything like it.

Attorney General Holder stated that the purpose of the workshops was to learn how to best promote "free and fair competition" in agriculture. Assistant AG Varney observed that "agriculture is an essential part of the American economy" and "well functioning agricultural markets are not only a matter of economic efficiency, but a matter of national security and public health."

DOJ recently released their report on the Workshop. You can get the full report here. What does the report say?

Here are a few excerpts.

A clear lesson of the workshops ... is that antitrust enforcement has a crucial role to play in fostering a healthy and competitive agricultural sector. A number of participants (including Division staff and leadership) stressed the importance of vigorous antitrust enforcement and detailed the ways that anticompetitive mergers and conduct can harm producers, consumers, and others. ... These discussions confirmed that a healthy agricultural sector requires competition and, consequently, vigorous antitrust enforcement.

But what does the report really say? Here are my impressions.

Understanding the issues

A clear understanding of complex and often subtle competition issues

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unique to agriculture and the food system is reflected in the report. That, in and of itself, is unprecedented progress, and a necessary first step.

Cheap Talk About Fair Markets

AG Holder, Secretary Vilsack and other government officials made repeated reference to promoting “fair” markets. The word fair also permeates the report, and in official news releases and testimony by administration officials.

Antitrust law was originally intended to establish “free and fair competitive markets.” But early in the history of U.S. antitrust law, the courts decided that “fair” was difficult to define so they essentially deferred to economists’ notion of economic efficiency, which has nothing to do with fairness. It seems to me that the courts shirked their responsibility, particularly since the role of our legal system is justice, not economic efficiency.

A hundred years of case law and economics has completely removed the concept of fairness from the nation’s antitrust laws. Recent efforts to define what constitutes fair business practices under the Packers & Stockyard Act—the proposed GIP-SA Rules—were killed by powerful agribusiness interests in a compliant House of Representatives.

Actually the report contradicts the fairness rhetoric by Cabinet and other government officials. It says, “The antitrust laws focus on competition and the competitive process, and do not serve directly other policy goals like fairness ...”

So all the talk about fairness in the workshops and in the report is nothing more than political rhetoric, commonly known as cheap talk. New legislation will be required to define fair business practices, and new legislation ain’t gonna happen as long as powerful corporations control the legislators.

Too Big to Prosecute

Included in antitrust law is a process

by which the antitrust cops — DOJ and FTC — can block mergers and acquisitions by large companies. (A loophole in antitrust law is that it does not apply to firms that acquire bigness and market domination through internal growth, such as a Wal-Mart.)

That’s theory. Practice, however, seems to be that bigness is just fine, thank you.

Over 30 years of permissive merger policy by DOJ and FTC has led not only to banks and agribusiness firms “too big to fail,” but also to corporations that are “too big to prosecute” for antitrust violations.

The combined annual budget for the Antitrust Division of DOJ and the Competition Bureau of FTC is only about \$250 million, only a fraction of which can be devoted to agricultural and food issues. Government attorneys and economists are often grossly outnumbered, and can easily be buried in legal paperwork by an expensive herd of corporate lawyers.

The color of justice is green.

Cubicle Arrest

Another problem under previous administrations is that government employees — competition attorneys and economists — have at times been placed under “cubicle arrest” and have not been allowed to officially investigate formal complaints of antitrust violations. Or, high-ranking officials have buried results of the competition investigations.

Legislative Thuggery

But there is a more insidious problem. There are recent instances where antitrust cops and referees reluctantly backed away from investigations because of the very real threat that their funding would be cut by politicians on “The Hill.” This has happened before. This may happen again. This appears to be a bipartisan problem.

In my opinion, this is not legislation by representatives of “the people,” but plain thuggery by moneyed politicians at the beck and call of corporate donors. Legislators should change laws in an open transparent way, and not be

allowed to repeal parts of law behind our backs.

A Fight Without a Referee

Thurman Arnold, Assistant Attorney General in charge of the Antitrust Division in Franklin Delano Roosevelt’s Department of Justice, was arguably the last to attempt to strictly enforce antitrust law. Arnold once said, “The competitive struggle without effective antitrust enforcement is like a fight without a referee.”

The referees have put on quite a show with the hoopla surrounding the agriculture workshops and now this final report.

The DOJ report concluded, “... we are better positioned to lend our expertise ... to promote ‘free and fair competition’ in agriculture.”

Better positioned? That’s it? I guess this means that the referees now have a better understanding of anti-competitive infractions and are better ‘positioned’ to see an infraction and to throw a flag.

But will they throw flags for market manipulation? Will they throw flags for unfair business practices? Will they be impartial? Will they impose penalties sufficiently large so that violations will be meaningful and not just a cost of doing business?

And who will do any of this now? Both Christine Varney and Dudley Butler — the two people who were most likely to take any action after the five workshops — have both left the Administration.

In my opinion, we have some highly competent, hard working and conscientious attorneys and economists employed as antitrust cops and referees. Unfortunately political forces greatly limit their ability to throw flags and impose penalties stiff enough to change behavior.

Until the corporate strangle hold on government is broken, the competitive struggle in the food and agricultural system will continue to be a fight without a referee. ^{CRT}



Anybody but Obama

BY RICHARD OSWALD

The best explanation I've heard for why the world did not end last month according to Mayan prophecy is that "every calendar has a beginning and end"--when the last page is torn off we simply start a new one.

If it ain't the end of the world then maybe its just time to turn the page.

End of days came again, in November, when President Barack Obama was reelected to his second term. I don't really think he's that bad for us. But a lot of people here do.

That's because people said he was gonna regulate farm dust and make it impossible for farm kids to do their chores.

EPA farm dust rules never happened. According to administration officials they were never even planned. Child labor rules meant to safeguard kids of migrant workers gained attention when laws were said to impact family farms where farm kids do chores every day. The whole thing was widely publicized as an attack on middle America. Some farm groups helped promote the rumor.

That never happened either.

Obama was even gonna take our guns away. Then, after the election, panic sales of firearms tripled and gun shops placed pictures of the 44th President on their walls with the inscription, "top gun seller of the year".

Now NRA has proposed placing armed guards in schools. This does not look like gun control to me.

Obama Administration policies

have given lip service and a even some economic help to rural communities during the last four years. The final frontier of rural industry, ethanol, was rescued from pro big oil Republicans by none other than Obama. Obama had a rural jobs agenda, farm to table food projects, conservation, even a promise, albeit broken, to enforce laws in favor of more competition in Ag markets.

And while most Democrats pushed for a 5 year farm bill in September this year before the election (which is normally the very best time to write any farm friendly bill) Republicans drug their feet and promoted deep cuts to the USDA budget.

Most of USDAs budget goes toward feeding poor and disadvantaged people. The elderly, retired people whose social security doesn't provide enough, kids of poor parents, and school menus. Even though we benefit from them, big swaths of rural America supported those cuts by voting Republican.

But they rely on them as much or more than big cities.

Even some conservative farm groups supported cutting entitlements in the USDA budget. In return for that, urban Republicans--the conservatives who don't normally have much good to say about USDA's Ag programs--implied a hands off on most of Ag's measly 2% of the USDA budget.

In the end the farm bill was derailed mostly by Republicans, with a little help from House Democrats from more conservative districts.

Nothing much happened until well after the election when Congress drove us to the edge of the fiscal cliff. Once the brakes were on they included a 9 month extension of the old farm bill which takes us to September of 2013.

That could be very bad for agriculture.

One reason why is that after all the talk against public entitlements from USDA, Congress continued Direct Payments to what is commonly referred to these days as "production agriculture". With those big farms experiencing an unprecedented period of good prices, giving them payments originally intended to bolster profits in times of low prices amounts to an unneeded, unjustified entitlement.

Its money we didn't earn and don't really need.

Now, even though many of us didn't want it, farms have put themselves on the hit list with welfare Moms and deadbeat Dads. It was done in such a way that when the issue is revisited in midterm, between elections, our ability to influence the outcome of the farm bill will be at low ebb.

We lobbied for a farm bill last year in September, and we'll be doing it again this year, in September. A friend of mine found a unique way to look at it when he told me farm group lobbying for a new five year bill is going to cost twice what the last one did.

It is unprecedented.

When it comes up, once Congress returns from their August recess, the issue of farm entitlements



will surely come up also. It could be an embarrassment. While my group, Farmers Union, will surely call a halt to Direct Payments devoting those savings to a permanent disaster bill and helping family Dairy farmers into profitable businesses as we did last year, conservative southern farmers may be part of the opposition who want the handout to continue.

Missouri has been one of the states leaning more toward conservative lines. Rural areas here seem to be most Republican by a margin of two to one. Even after Democrats championed many important rural issues, our citizens continued to support anybody but Obama. I'm sure the newly re-elected administration has noticed that supported issues they thought important to us did not equal more votes in November. Now Missouri's overwhelming conservative majority in the General Assembly continues to push for a steady deregulation of CAFO agriculture to the detriment of family farms and property rights.

It is unprecedented. But there is a reason.

The political reality for any office holder is generating campaign dollars and translating those into votes. Yet many farm groups support conservative Ag budget buster candidates, ignoring Democratic champions. I think that's mostly

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Mr. President, Time to Create the People's Agriculture

BY C. ROBERT TAYLOR AND
RODRIGO RODRIGUEZ-KABANA

Native American wisdom says that decisions should be made with the next seven generations in mind. When it comes to agriculture and the production of food, we don't look ahead at all.



Vertical agriculture is one vision of the future. But isn't this just industrial agriculture transferred to the city?

Look and listen for the welfare of the whole people and have always in view not only the present but also the coming generations, even those whose faces are yet beneath the surface of the ground — the unborn of the future Nation. Constitution of the Great Iroquois Nations: The Great Binding Law

Now that we have been thankful for our food, it is time to develop a food system so that future generations can also be thankful.

Mr. President, we need a food and agricultural system that meets our needs now and for the future. Think not just about the next four years; think about implementing food policy that will feed the next seven generations. Let's take Michelle's garden to a higher, more expansive level.

Industrial farming, which has dominated world agriculture for decades, has met past food needs for many. But there are problems ahead. Big problems.

Agriculture is in transition, like it or not. But to what? For whom? And who is driving the tractor?

Industrial agriculture as commonly practiced is not sustainable because

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because they prefer to listen to unjustified claims against the political left for things like dust rules, child labor, gun owner rights, and abortion.

Rural Americas inability to judge issues clearly on the facts has allowed political campaigns based mostly on rhetoric to do it for them.

If the farm bill goes badly for us the second time it's taken up this year, it will be another year before we can make ourselves known at the ballot box. Even then, our failure to focus on our own best interests combined with low voter interest could amount to too little, too late.

By the time we start looking for old support again, after the way we've voted in two elections, that help might not come from anybody.

Not even Obama.^{RO}

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it relies almost exclusively on fossil fuels and mined phosphorous and potash fertilizer. Our world is finite. Resources are limited. Population, use of fossil fuel, mining of fertilizer, and drawdown of aquifers cannot continue to increase exponentially.

The corporate agribusiness mentality driving industrial farming and farm policy goes beyond fair profits to outright greed. It is oblivious to environmental consequences, future ecological damage, or long-term effects on the earth's capacity to support humans.

The mentality driving industrial agriculture doesn't look even one generation ahead, much less to the seven generations called for in Native American wisdom.

Allowing powerful special interests largely to control our food is undesirable; special interests do not have the public interest at the heart of their agenda (although their mouthpieces proffer otherwise).

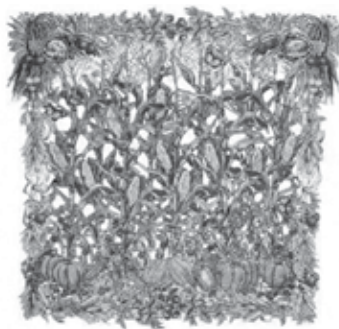
Corporate interests are spend-

ing millions on advertising trying to convince us that industrial farming is needed to feed the rapidly expanding world population. This makes no sense. How can an unsustainable system feed a growing population?

We feel that it is time — actually long past time — for the public to be involved in visioning an agricultural system for “the people,” a system that would provide for the needs of those who are concerned about having something to eat today, and for the generations ahead.

Here we provide links to a wide range of visions proposed by others, along with our brief comments. We hope to stimulate meaningful dialog on future agricultural systems in the Daily Yonder and beyond.

The Three Sisters



Combining corn, beans and squash -- The Three Sisters -- sustained Native Americans for thousands of years.

Native Americans had a system of companion plantings of corn, beans, and squash that is now known as the “Three Sisters.”

Through biological fixation, the beans add nitrogen needed by the corn. The corn plant provides a structure for pole beans. And the squash shades the ground, reducing evaporation and smothering weeds. Together, the three crops provide a fairly balanced diet.

The Three Sisters system was sustainable for 10,000-15,000 years and would have been sustainable for much longer had it not been replaced by modern farming practice.

Industrial farming, as presently

practiced, won't survive 100 years, much less thousands.

More sophisticated companionsystems are now available, but widespread adoption is hampered by mindset and policy.

Sustainable Agriculture

Recognition of problems with industrial food production has led to a growing “sustainable agriculture” movement.

Sustainable agriculture is more of a philosophy than a well-defined system or vision. Fred Kirschenmann points out that the basic concept “has focused our attention on how to make agriculture a little less bad—how to reduce soil erosion, how to mitigate the effects of toxic chemicals, how to improve our water quality, etc.”

Enough people have now subscribed to the sustainable philosophy that corporate agribusiness is catering products to this growing consumer group.

Unfortunately there are no legal standards governing sustainable food, which invites mischief and deceptive advertising.

Urban Skyscraper Farms

One vision put forth in a recent Scientific American article is an urban skyscraper, or vertical farm.

In many ways, the vertical farm may be more of a fantasy than a vision. It is industrial farming on a vertical rather than horizontal scale. This concept is attractive because wastes and plant nutrients can be recycled, and because it eliminates the cost of transporting food long distances.

But there are numerous economic and biological reasons why the high-rise idea may be nothing more than a pie-in-the-sky idea! The food skyscrapers would have to be extremely narrow, or have significant fewer floors, or integrated on the south side of office and residential buildings to get adequate sunlight to plants. Capital costs would be enormous.

Use of “cleansed city wastewater” is also problematic from a cost standpoint, due to all kinds of impurities and toxicants in municipal wastes, including drugs, growth hormones and heavy metals.

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Some plants uptake and concentrate heavy metals and impurities. Some heavy metals, such as mercury and lead, are toxic to humans. Costs of cleansing wastewater are high with known technology.

There is potential biological peril to relying on a food skyscraper for food, as many food crops are susceptible to air borne diseases. Such diseases could easily wipe out uniform crops depicted, or require use of pesticides inside an urban building that includes restaurants.

Greenhouse Fruit & Vegetable Production

Production of high value vegetable crops and some fruit crops in greenhouses and hoop houses is expanding rapidly in many parts of the world, particularly where extensive acreage of high quality land is not available. World acreage of covered vegetable production now exceeds a million acres, with over 300,000 acres in Europe. Over 900 acres of hydroponic (without soil) tomatoes are grown in the U.S.

Some of these covered production systems are nothing more than industrial farming on an intense, horizontal scale. Some covered systems may be sustainable. Most are located on the fringe of urban areas.



The Farmery is another ag scheme, using old shipping containers to combine covered production with retail space.

Small Scale Urban Food Gardening

A variety of small-scale urban farming and gardening visions has been proposed, and even tried with varying success. Community gardens have met with limited success. Some may be nothing more than a modern version of World

War II Victory Gardens, while others try to bring recent scientific advances to bear on urban systems.

In many urban areas, changes in local land use restrictions and bans on certain farm animals are incompatible with urban gardening on a large scale.

The Farmery

A considerably less grandiose urban farm that integrates food production with restaurants is a “farmery” constructed from used, low cost shipping containers. This concept combines covered production with a retail outlet.

Organic Farming and Gardening

Organic farming gained traction as a movement in the 1970s with concern over man-made chemicals—fertilizers and pesticides—that are now at the core of industrial agriculture. Initially, organic farming was small scale. As small organic producers developed markets and the industry began to expand in the 1980s, corporate agribusiness moved in and now dominates the industry.

USDA standards for organic produce provide some assurance to consumers about production practices, unlike “natural foods” and food from “sustainable” farms. Lack of any standards for natural foods and sustainable practices often leads to deceptive advertising.

The New York Times Products such

ing at the other, very few visions food and agricultural production for 21st century rural America are apparent.

While building cost is an impediment to development of the skyscraper vision, transportation costs are an impediment to development of sustainable food systems in rural areas distant from consumers.

To some extent, Grandmas’s garden was an evolution of the Three Sisters to include Aunts and Uncles (and maybe a few Grandkids!). Grandma’s garden, further developed for the 21st century, offers considerably more variety that translates into much richer cuisine, clearly beyond the feasibility of large-scale industrial farming.

Economic viability of new, non-industrial food production in rural areas hinges on either getting the people out to buy food, or getting food to consumers in urban areas. Moreover, for a rural system to be sustainable, waste products from human consumption—organic matter and plant nutrients—will need to be returned for future cycles of production.

A Time for Vision & Action

“We the people” need collectively to develop a vision of the agrifood system that is most desirable, then begin to build the institutions necessary for it to be realized. No single system, large or small, organic or inorganic, monoculture or multi-crop rotations, vegan or carnivore, will be appropriate for every area and all people.

To the extent that a food system involving both small and very large producers and processors is desirable, policy must include a business or market version of predator control to prevent the big companies and producers from consuming the small.

There is no assurance that continued evolution of industrial farming controlled largely by transnational corporate interests dominated by short-term greed will result in a system that best fits the public interest.

There is no assurance that a system built on a (false) free market ideology will be in the public interest.

There is certainty that a system built on deception will not be best for the public.

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MR PRESIDENT

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The people need a food system that is just, that provides for all, and that stewards resources on planet Earth well.

Mr. President (and especially Mrs. President), please help the people develop a common vision of an appropriate food system for the next seven generations, then begin building the institutional (policy) base necessary to realize that vision. CRT/RR-K

The authors are distinguished University Professors of Agricultural Policy and Plant Pathology at Auburn University, respectively.