

A Gag Reflex?

Agricultural Gag Law Is Challenged

BY RITA BRHEL
P&D Correspondent

It's every producer's worst fear: an undercover film recorded on their farm by an animal rights activist posing as a worker, subsequently released to the public with a narration misrepresenting common production practices, like ear-notching, branding, castrating or docking.

Not only could that individual farmer be ruined, but negative repercussions would ripple through the industry like wildfire as the public tends to react out of knee-jerk emotion rather than double-checking the so-called facts of a story.

"Unfortunately, just because one farm is being looked at on the media," said Ashley Newhall, Extension legal specialist with University of Maryland in College Park, Md., during a recent online seminar, "if it's a dairy farm, it's going to affect all dairy farms and milk prices."

Every once in a while, though, these undercover films reveal a situation of abuse that needs to be corrected to keep accountable the few stray producers who are lax in their animal husbandry.

In 2014, Idaho's Gov. C. L. Otter signed into law a bill that imposed jail time and fines against people who engage in undercover filming at livestock facilities. The state legislative bill was written in response to videos released by Mercy for Animals showing abuse to cows at Bettencourt Dairy in 2012.

Idaho's Agricultural Security Act was not the first ag gag law enacted in the nation but was generally regarded as the one to set a precedent for the rest of the nation's state ag gag laws. The purpose of the Idaho law was to criminalize activists who secretly filmed situations of alleged abuse on Idaho's commercial farms. The law also made it a crime for people to misrepresent themselves when requesting a tour, obtaining records or seeking employment.

Other state's laws touch on various undercover-reporting activities, from lying to employers to recording and distributing recordings to requiring mandatory disclosures to law enforcement. But Idaho's law was viewed as pioneering protection of farms and ranches from potentially damaging activism.

However, there was concern — from the beginning — that the Idaho law provided no protection of legitimate investigative journalism or whistleblowing.

Then in August of this year, a federal judge struck down Idaho's ag gag law, calling it unconstitutional regarding the First Amendment.

U.S. District Judge B. Lynn Winmill ruled that the law sought to punish people who speak out against agriculture. He was particularly concerned that the law discourages whistleblowing of situations that are truly illegal, dishonest or unethical and should be exposed.

He referenced a 1906 novel entitled "The Jungle," written by American journalist Upton Sinclair portraying the exploited lives of immigrants in Chicago. Instead, readers rallied against the author's descriptions of health violations and unsanitary practices in the meat-packing industry. This led to federal laws on meat inspection. According to Winmill, Idaho's law would have made Sinclair's work illegal.

"The constitutional analysis is a bit suspect," said Erin Morrow Hauley, an associate law professor at the University

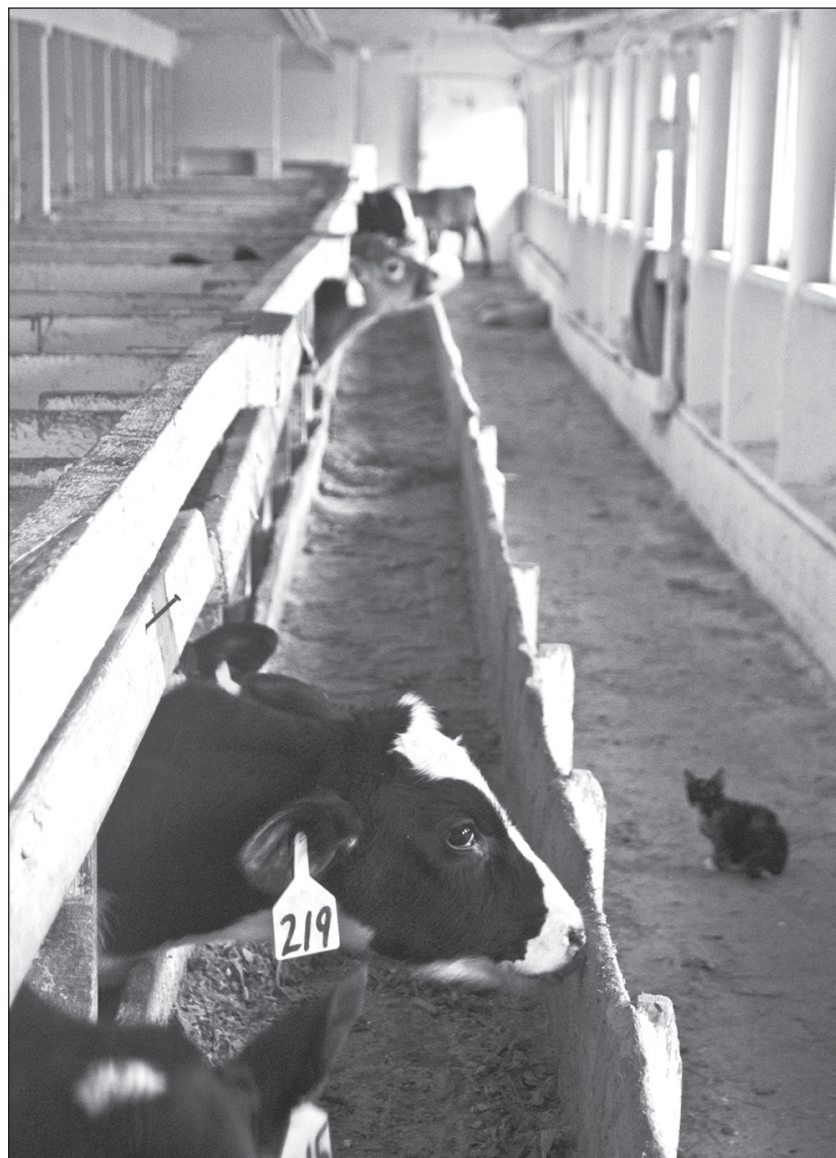


PHOTO: METRO GRAPHICS

of Missouri in Columbia, Mo., where she specializes in constitutional litigation, agricultural law and tax policy.

One of the top controversies was whether undercover filming can be defined as a journalistic activity.

"The Supreme Court has never addressed a photographer-videographer under the First Amendment," Morrow Hauley said. "To be protected, they must prove they have a message to communicate and an audience. A key here is that such speech is protected in the public forum."

According to the American Civil Liberties Union, the owner of private property is who should be allowed to set rules regarding filming, and these rules would then apply also to employees.

"The court didn't buy that," Morrow Hauley said.

If not a journalistic activity, she said the court argued that undercover reporting could also be seen as a purely expressive activity, a view that she disagrees with.

"That's not necessarily true," Morrow Hauley said. "Law concerning audiovisual is more nuanced than the court lets on."

Aside from First Amendment issues, Winmill's ruling also referred to existing criminal and civil laws in place that he stated are adequate to protect people against false statements.

"This is key," Morrow Hauley said. "The courts are obligated to seek out conceivable reasons for validating chal-

lenged laws, and the courts can hypothesize legitimate interests."

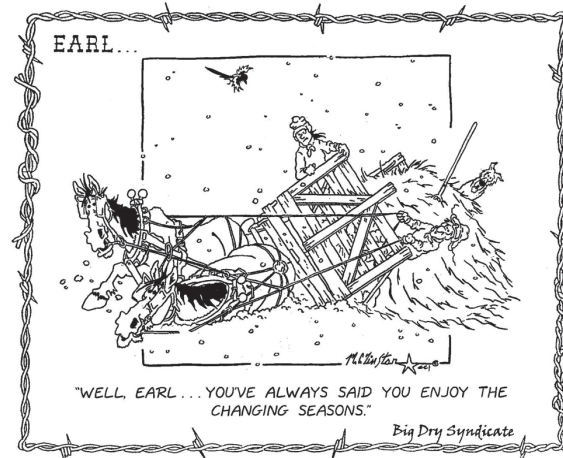
The defendant in the case, State of Idaho, had failed to provide evidence of why existing laws don't already protect agriculture, she added. Still, she said that existing laws have limited protection against false statements made through undercover reporting.

"The government may criminalize false statements only when these statements themselves cause a legally cognizable harm," Morrow Hauley said, but added that Winmill had also determined there was no evidence that undercover reporting causes harm because there is no physical property damage during the act of filming — though, as she pointed out, "trespassing is the quintessential harm to private property."

While there is no question about the importance of upholding the First Amendment for legitimate cases, the concern is that not all undercover reporting is actual whistleblowing and that some activists wish to use the First Amendment to disguise unethical intentions of their actions.

To conclude her analysis of Winmill's ruling, Morrow Hauley said that undercover filming may require an updated approach, legally.

"Animal agriculture is a heavily regulated industry, and food production and safety are matters of the utmost public safety," she said. "This [undercover filming] may require some special justification."



Climate/Ag Workshop Set For Mitchell

BROOKINGS — SDSU Extension is hosting a climate and agriculture workshop in Mitchell on Tuesday, Dec. 15.

The workshop will highlight trends in temperature and precipitation in the region and some agronomic best management practices to adapt to a changing and variable climate.

Speakers for the one day workshop include: Dennis Todey, South Dakota State Climatologist & SDSU Extension Climate Specialist; Chris Graham, SDSU Extension Agronomist; Febina Mathew, SDSU Oilseeds Plant Pathologist; Adam Varenhorst, SDSU Extension Entomology Specialist; Laura Edwards, SDSU Extension Climate Field Specialist; and Windy Kelley from the USDA's Northern Plains Regional Climate Hub.

This is the first workshop of its kind in South Dakota, to focus primarily on farm management with climate and weather in mind. The speakers will discuss agronomy, insect pests and plant disease. The topics will primarily address corn and soybean farming, but all agriculture producers are invited to attend.

RSVP is not required, but requested. To RSVP or to ask questions, contact Laura Edwards at 605-626-2870 or by email at laura.edwards@sdstate.edu.

Visit the iGrow events page for more information.

Agriculture United Luncheon Dec. 15

SIoux FALLS — Agriculture United for South Dakota will host its annual luncheon to recognize the state's farm and ranch families on Tuesday, Dec. 15, at 11:30 a.m. at the Sioux Falls Convention Center, 1201 Northwest Ave., Sioux Falls. Registration will begin at 11 a.m., with the meal at 11:30 a.m.

Charlie Arnot, CEO of the Center for Food Integrity, a national non-profit dedicated to building consumer trust in the food system, will deliver the keynote address. He will share the results of the 2015 Consumer Trust Research that highlighted what consumers expect food companies to be transparent about, from labeling to production practices.

The luncheon will also include the announcement of the second annual AgUnited AgVocate of the Year. The award will recognize an individual or family in South Dakota who has gone above and beyond in sharing their story with the public.

Ag United will mark the start of its second decade at the event, celebrating 11 years of supporting South Dakota farm and ranch families and rural communities. Ag United has worked with farm families to host tens of thousands of visitors to their farms, reach out to thousands of students and share information through social media. Programs like Farms After Five, Moms' Day Out on the Farm, Restaurant Crawls and Adopt-A-Farmer videos have helped introduce the stories of modern agriculture to South Dakota consumers. Ag United has also helped the state's livestock producers start or expand their operations during the planning and permitting processes.

Sponsors of the annual luncheon include Farm Credit Services of America, Sanford Health, Wheat Growers, Eide Bailly, Paulsen Marketing, Maximum Promotions, United Tent and Convention and Farm Bureau Financial agent Darrel Spielman.

Visit www.agunited.com, South Dakota Farm Families on Facebook or @SDFarmFamilies on Twitter for more information on the annual luncheon or Ag United's activities.

SDSU Extension Hosts AI Schools

BROOKINGS — SDSU Extension will host two artificial insemination (AI) schools on the campus of South Dakota State University Dec. 17-19, 2015, and Jan. 17-19, 2016.

The fee for these schools will cover all materials as well as one meal each day.

Enrollment is limited to 20 participants. "We want to ensure that students have sufficient opportunity for hands-on practice and personal attention from the instructors," said Warren Rusche, SDSU Extension Cow/Calf Field Specialist.

These schools usually fill up quickly, so call or e-mail soon to reserve your seat.

To register for the Dec. 17-19 school, contact Judy Carlson, SDSU Animal Science Department, at Judith.Carlson@sdstate.edu or 605-688-5165.

To register for the Jan. 17-19 school, contact Taylor Grussing, SDSU Extension Cow/Calf Field Specialist, at 605-995-7378 or Taylor.Grussing@sdstate.edu.

The coordinator for that school will provide instructions for payment after the registration is confirmed. There will also be a waiting list in case of cancellations.

Commentary

Group Helps Veterans Transition To Farming

BY RITA BRHEL
P&D Correspondent

My brother, father and uncle are all veterans. They all came back from their deployments and found successful careers, started families and are living meaningful lives.

It wasn't necessarily easy for them, though they haven't told me that. But I do know of other veterans who experienced rough transitions to civilian lives.

Part of it may be that their skills set for their military position really didn't have a similar position in the civilian world. Part of it may also be the toll that being in battle can have on a person's physical or emotional health.

War is something I've never seen, and I will hopefully never experience firsthand, and I have no idea what memories that our veterans carry around with them — or what it would take to heal some people of the trauma they have witnessed.

But I do know a good program when I see one. And the Farmer Veteran Coalition (FVC) looks like an excellent organization for veterans interested in or already involved in agriculture.

The mission of FVC is to develop viable employment and meaningful careers for military veterans. The organization features two main programs:

1. The Homegrown By Heroes label for items offered for sale by members; and
2. The Farmer Veteran Fellowship Fund, which assists veterans with grants, cost-share and low-interest loans

for their agricultural careers.

The stories of FVC members certainly communicate the valued support that has, and continues to, helped them transition from military to civilian life. Here are a few to share:

• Garrett Dwyer of Dwyer Family Farm near Bartlett, Nebraska — Garrett was raised on the family ranch and joined the Marines after high school, serving for four years, including a deployment to Iraq. After coming home, he attended college and graduated with an agricultural degree, feeling ready to take over the family ranch from his father.

• Dan Hromas of Prairie Pride Poultry near York, Nebraska — Dan grew up in a military family, with his mother in the Marines and his father in the Air Force. After high school, Dan served in the Marines for 4 years and the Army for 2 years. He attended college on an ROTC scholarship, and after graduation with a microbiology degree, he went into the Nebraska Army National Guard. His last deployment was to Iraq in 2006-2007. Now as a disabled veteran, he travels the country to speak about

his transition from military life to farming.

• Will Fellers of Lexington, Nebraska — Will grew up on the family farm and joined the local Army National Guard unit after high school, later being deployed to Iraq. After coming home in 2005, he came back to work on the family farm. Today, he grows corn and soybeans on leased land.

FVC sounds like an organization worth a look from any veteran with a farmer's heart. For more information about FVC, visit www.farmvetco.



Deadline is less than a week away!

The open enrollment deadline for Obamacare is **Tuesday, December 15**. Have you had your insurance tune-up? Let me help you understand the plans available to you and your family and help you determine if you are eligible for a tax credit or subsidy. Call me today & avoid possible penalties.

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Christmas & New Year Holiday Deadlines

The Press and Dakotan will be closing at noon Thursday, Dec. 24, and closed all day Friday, Dec. 25.

The Press and Dakotan will also be closed Thursday, Dec. 31 at 3:00 pm and closed all day Friday, Jan. 1.

Publish Date	Deadline Date
Sat., Dec. 26	Tues., Dec. 22
Mon., Dec. 28	Tues., Dec. 22
Out On The Town	Wed., Dec. 23
Tues., Dec. 29	Wed., Dec. 23
Wed., Dec. 30	Thurs., Dec. 24, Noon

FRIDAY DEC. 1 - NO PAPER

Sat., Jan. 2	Tues., Dec. 29
Mon., Jan. 4	Tues., Dec. 29
Out On The Town	Wed., Dec. 30
Tues., Jan. 5	Wed., Dec. 30
Wed., Jan. 6	Thurs., Dec. 31, 3pm

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