#36 10/1/65

Memorandum 65-50

Subject: Study No. 36(L) - Condemnation Law and Procedure (The Jury System for Determining Just Compensation)

At a recent meeting, the staff was directed to report on the systems used in other states for the determination of just compensation. Attached is a research study on this matter prepared by the staff. We suggest you read the study. Please also read the exhibits attached to this memorandum for they set out the results of an analysis of this problem in other jurisdictions.

Background

It has been stated that there are more than 269 different methods of judicial procedure in different classes of condemnation and at least 56 methods of nonjudicial or administrative procedure in the United States. 3 Baron and Holtzoff, Federal Practice and Procedure Sec. 46. Many states have more than one type of procedure. The procedures in the various states are summarized in the attached research study.

Five states use only commissioners to determine just compensation, 23 states use commissioners with the right to appeal for a new trial, and 18 states use only a jury. Notes of the Advisory Committee on Rules, p.4356, following Rule 71A, 28 USC Sec. 2072 (1952). California uses the jury system and, of course, a jury trial may be waived by the parties and the matter tried by the judge. Also, in California the condemnor, at his option, may have utility property valued by the Public Utilities Commission instead of by a jury.

The Commission method

In most states where the commission system is used a right to appeal with a new trial by a court or jury is provided. As a result, the conclusion reached in a number of states using the commission system is that this system has proved to be a waste of time and an additional expense. See Exhibit I (New Jersey); Exhibit IV (New York); Exhibit V (Wisconsin). In New Jersey, for example, the Committee on Eminent Domain of the New Jersey State Bar Association, counsel for various state agencies, the New Jersey League of Municipalities, and specially appointed committees of the New Jersey Farm Bureau, New Jersey State Grange, and others, all recommended the abolition of hearings before Commissioners. There was some disagreement among the various groups as to whether there should be a trial before a judge or a trial before a jury, but all agreed that a court proceeding would be best. By a vote of six to five a separate Committee appointed by the New Jersey Supreme Court voted to retain the commission system, but recommended further that it be provided that the commission could be waived by the parties and the matter submitted directly to the court (without a jury). The minority report of the Supreme Court committee on this subject is attached as Exhibit VII.

In 1962, Alaska eliminated provisions requiring a commissioner's hearing on the issue of just compensation and substituted a master's hearing. Under the present Alaska procedure, if the only issue raised by the condemnee is that of just compensation, the court appoints a master to hold hearings and take evidence to determine the amount to be paid to him. After the hearing, the master submits his report to the court. When the master's report is filed, both parties may appeal it and have a completely new trial on the issue of compensation before the court sitting with or without a jury. The parties

can, of course, accept the master's report and conclude the proceedings when the money award decided by the master has been paid into court and a final order is made vesting title in the condemnor. See, Alaska Legislative Council, Report on Eminent Domain in Alaska 5-6, 13 (December 1962).

Minnesota uses the Commission system. The pertinent statute does not prescribe any special qualifications for the Commissioners. See the letter from John K. Hass, Santa Barbara attorney, stating that the Minnesota system has worked well in practice. See Exhibit VI (attached).

Just as in New Jersey, a number of states that have recently revised their condemnation laws have shown a reluctance to eliminate entirely the commission system. Instead, these states have included it as an optional system. (The primary factor that led to this decision seems to be the fear of court congestion.)

In Wisconsin, the condemnee may now have a jury trial or instead have a "trial" before a commission (with the right to appeal to the court). Commenting on this provision, a publication of the 1959 Wisconsin Lawyers' Seminars entitled "Land Condemnation" states at page 18:

> This provision gives the condemnee an option to by-pass the intermediate determination if he so chooses. Many Wisconsin lawyers feel that the former requirement to have a determination by the county judge and the circuit court before the issue could be settled at the trial court level was an unfair burden on the oftentimes limited economic resources of the condemnee as well as a needless burden on the time of the county judge and the parties to the action. The right to appeal to the supreme court remains of course.

Pennsylvania, apparently recognizing that the commission system usually results in undue expense and waste of time, made the system optional at the discretion of the condemnee. Pennsylvania also added Section 702 to its statute in an effort to meet one of the problems that arises under the commission system. The Comment to the section reads:

> Under existing law, the condemnor is not required to present testimony before the viewers. In some instances, condemnors have refused to present testimony. This is deemed unfair to the condemnee who has disclosed his figures but does not hear the condemnor's figures until the time of trial on appeal.
>
> It is not intended by this section to require the condemnor to present all its evidence at the viewers' hearing. The condemnor may present additional evidence at the trial in court. As long as the condemnor has one expert testify as to the damages, this is sufficient.

In summary, the commission system is not desirable when an appeal may be taken with a right to a trial by a judge or jury. It is a waste of time, a needless expense, and is burdensome to the condemnee not only because of the expense but because of the delay it introduces into the system. Nor is the commission system desirable when the decision of the commission is given the same effect as a jury verdict. Normally, the commission members are not trained in law and cannot make proper determinations on admissible evidence and ordinarily they do not make a record of their proceedings for review on appeal. Moreover, the actual experience in some of the other states indicates that commissions are not considered objective and fair and that they do not have the confidence of the persons who are before them. In view of the evidence we have assembled that indicates that the system has not worked well in other states, we see no justification for amending the California Constitution to authorize the commission system. The fear of court congestion is apparently the primary reason why the system has been retained in other states that have recently studied this matter. If the Commission does not agree with this conclusion, we can provide you with extracts from several hearings held by the New Jersey Commission that will provide additional evidence that the system is undesirable.

Special tribunal

The Commission indicated a special interest in having information indicating whether any other states provide for the determination of just compensation by a special tribunal consisting of one or more experts in property valuation instead of by a jury. With the exception of New York, we have found no state that has established a panel of experts to determine compensation in eminent domain cases although in some cases the persons appointed under the commission system may be experts if the appointing authority selects experts for the commission. So far as we have been able to determine, however, in actual practice the members of the commissions in other states have not been experts.

In New York, there is what might be considered an expert body used to determine valuation in takings by the State of New York. The New York Court of Claims, which determines damages in state tort liability and contract cases, also determines damages in cases where the State of New York takes property by eminent domain. In fact, condemnation cases constitute almost one-half of the business of the Court of Claims. (Of 1,102 claims filed with the Court of Claims in 1959, more than one-half (586) were condemnation claims.)

In actual practice, some of the commissioners in states using the commission system may in fact be valuation experts. However, as the attached research study indicates, so far as we can determine, none of the other states have an expert body similar to the New York Court of Claims for the determination of property values in eminent domain cases. There have been suggestions, however, that some type of special tribunal would be desirable. See Exhibit II (Select Subcommittee on Land Expropriation--Ontario); Exhibit IV (Law review article containing suggestions for improvement of New York

procedure--this article, written in 1959, has not resulted in the establishment of special condemnation courts in New York). The establishment of a special tribunal was considered and rejected in British Columbia (Exhibit III), Ontario (Exhibit II), New Jersey (Exhibit I), and Pennsylvania. In addition to the expense and doubtful public acceptance of a special tribunal, difficult problems arise as to the government appointing a tribunal to determine how much the government should pay when property is taken. Apparently, these are the problems that resulted in the New Jersey Commission rejecting the concept of a special condemnation tribunal.

We have not discovered any published material concerning the New York Court of Claims and, since apparently no other state has a special condemnation tribunal, we have no information on how satisfactory such a tribunal would be. It is safe to say, however, that there has been considerable sentiment expressed in the various exhibits attached to this memorandum, in the testimony given before the New Jersey Commission, and in other materials. that the most acceptable method to condemnors and condemnees alike is a trial by a court (with or without a jury). In addition, there is considerable sentiment for jury trials. California Condemnation Practice states at page 291:

> The choice between a judge and a jury should be based upon the characteristics of the particular case, the type and location of the land being valued, the individual or corporate nature of the owner, the tendencies (if known) of judges and jurors likely to hear the case, and, in particular, the individual ability of the lawyer to conduct a jury trial. Most practitioners in the field demand a jury initially when representing a property owner, and reserve the final decision to the pretrial hearing or later. The attorneys for most of the public bodies will waive a jury when the choice is left to them. The State Department of Public Works, however, which handles the largest volume of land acquisition of any condemnor in the state, insists upon a jury in almost all of its cases, regardless of the property owner's inclination.

We have not attempted to set out the arguments pro and con on whether the trial should be by the judge in every case. Obviously, such a change would result in strong objections by many persons.

The attitude of most attorneys toward persons who have expert knowledge is indicated by the following statement found on the same page:

> While the practice varies, peremptory challenges are most frequently used on prospective jurors who are or have been connected with the real estate business, who are or have been employed by some public agency, or who have previously served on a condemnation jury.

In summary, although the arguments in favor of a special tribunal are strong (summarized in various exhibits to this memorandum), the staff believes that it is unlikely that a change could be made in the California Constitution to provide a special condemnation tribunal. Both groups of lawyers in this field--those representing condemnors and condemnees--seem satisfied with the present procedure. Consider also the fear expressed in the hearings and publications in other states that the tribunal will tend to favor condemnors or condemnees and the problems that arise concerning the method of appointment, tenure, and the like.

Arbitration procedure

Existing California law apparently permits the submission of the issue of damages in a condemnation case to arbitration. See Code of Civil Procedure Section 640 and Section 1280 (which makes valuations, appraisals and similar proceedings matters subject to arbitration). Nevertheless, as far as we can determine, this procedure is not now used in California. There is, however, considerable experience with this method in some of the Canadian provinces. The experience in at least one province has not been good. See Exhibit III (British Columbia)(recommending substitution of court proceedings).

However, the staff suggests, in view of the desire on the part of some Commissioners to provide for an expert tribunal, that consideration be given to including in the comprehensive eminent domain statute a provision that would authorize the use of arbitration if the parties agree to this procedure. This would permit the establishment of one or more expert tribunals if the persons practicing in this field became convinced of the desirability of this practice. If such an optional procedure were provided, consideration might need to be given to such matters as whether the statute should indicate which party is to bear the cost of the arbitration proceedings. The inclusion of an optional arbitration provision might lead to use of arbitration as a method of resolving differences on valuation since it would provide clear authority to public entities to utilize the procedure if they wished. The absence of such clear authority may be one reason why the procedure is not used now.

Use of referee or master

As previously indicated, Alaska abolished the commission system and substituted use of a master who reports to the court. The master's hearing in Alaska would appear to be subject to many of the same objections that are made to the commission system since the parties can appeal and have a completely new trial by the court. The problems that arise when this type of procedure is used are, of course, the weight to be given to the master's report, whether the master is bound by the rules of evidence, the extent to which findings of fact and conclusions of law must be contained in his report, the extent to which evidence presented to the master is to be recorded and available for examination by the judge, and the like. England used a single permanent "abritrator" in particular areas to value property until 1949 when the system was abandoned.

The California statutes (Government Code Sections 3808-3812) provide a procedure where a referee may be appointed to determine the value of property and fix the compensation in certain situations. The Constitution would seem to limit this procedure to cases where the property owner does not demand a jury trial. To a considerable extent, these Government Code sections duplicate and are inconsistent with the existing general eminent domain statutes. (We plan to duplicate all California provisions relating to eminent domain, including the Government Code sections, and to distribute them to you prior to the meeting so that they will be available for your examination at the meeting.)

The staff believes that the optional arbitration provision suggested for consideration above is probably all that needs to be provided. If the parties are willing to waive a jury trial, it is perhaps better that the case be tried by the judge instead of a master or referee since this avoids the problems outlined above when a master or referee system is used.

Federal practice

Federal Rule Civ. Proc. 71A (h) is a compromise statute involving elements of trial by jury, trial by commission, and trial by the court without a jury. In the absence of congressional creation of special tribunals (Congress has created two such tribunals, one for Washington, D.C., and one for TVA), the issue of just compensation in federal condemnation proceedings is generally tried by a jury if either party so demands. Otherwise, the issue is tried by the court. But the court in its discretion in extraordinary circumstances can appoint a three man commission to determine the award. American Bar Association, 1963 Report of Committee on Condemnation and Condemnation Procedure, p. 166. It has been stated that: "In more recent

cases, the federal courts have been granting the right to trial by jury except in extraordinary cases where there are hundreds of parcels involved with scattered locations and diverse ownership and where it is apparent that a jury would not be appropriate." Current Trends in the Law of Condemnation, 27 Fordham Law Review 543 (1959).

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT I

EXTRACT FROM PAGES 19-24 OF REPORT OF

EMINENT DOMAIN REVISION COMMISSION OF NEW JERSEY

(April 15, 1965)

ARTICLE IV

Procedure for Determining Just Compensation

This phase of the research of the Commission has been its most difficult and controversial problem.

The existing procedure is as follows:

1. Upon the filing of a complaint, the court appoints three commissioners, who hold hearings and make an award.

2. Any party may appeal from the award, and a trial *de novo*, is held in the Superior Court with a jury, unless waived.

3. A further appeal may be taken from the judgment on appeal, as in other actions at law.

The Committee on Eminent Domain of the New Jersey State Bar Association has strongly recommended the abolition of hearings before Commissioners and favors a trial before a judge as in other civil litigation.

Similar representations have been made to the Commission by counsel for various State agencies, for the New Jersey League of Municipalities, and by specially appointed committees of the New Jersey Farm Bureau, New Jersey State Grange and others.

Frequently, the hearings before the Commissioners have taken the form of a "dress rehearsal" or a "trial-run" of the case to be tried on appeal. This result may have been reached because counsel were dissatisfied with the personnel of the Commission, or its lack of adequate authority or experience to pass upon involved questions of law and fact. Furthermore, counsel feel that they should not disclose the merits of their case before the Commissioners when an appeal is in the offing. This practice should be eliminated.

Present statutes do not permit a waiver of commission hearings and some title authorities contend that in the absence of a confirmatory deed, a failure to hold a commission hearing constitutes a defect in the statutory proceedings.

It having been adjudicated, *Port of New York Authority v. Heming* (14), that there exists no constitutional right of trial by jury in condemnation cases, the abolition of such trials has been urged. In support of this argument, it is said that the complexities of valuation are far too great for the comprehension of a group of persons, totally uninformed and ill-equipped to adjudicate such issue. It is well recognized that upon the *voir dire,* all persons having any semblance of expertise on the subject are excused from jury service. When it is recalled that our appellate courts frequently vacate adjudications of value made by state agencies, highly knowledgeable in the field, how can we expect adequate findings by a jury whose excursion into the area is an isolated experience.

Nevertheless, proponents of the jury system prefer the "verdict" of the jury to the decision of a single judge.

Various suggestions have been made to and considered by the Commissioners, as follows:

1. Compensation shall be fixed by the court, without a jury. This would eliminate entirely all hearings before Commissioners. On the other hand, it would increase substantially the already existing court calendar congestion. To meet this problem, suggestions were made that in the counties having large condemnation calendars, one week of each month should be devoted to such trials. In fact, there have been some suggestions of much broader reforms, such as the creation of a special calendar or branch of the court to adjudicate not only condemnation hearings, but also all prerogative writ proceedings involving zoning and other problems (already entitled to preferential hearing date) and other proceedings in which the valuation of property is the main issue.

2. Continue the existing practice, but authorize the parties to waive hearings before Commissioners and proceed directly to trial before the court and jury.

3. Continue the present practice, but create in each county a permanent board of several Commissioners with fixed terms, from whom appointments would be made in each case or group of cases affecting similar lands. The accumulated experience of such persons would create highly qualified personnel. They would be appointed and paid upon a per case basis as at present. Objections were made to this creation of these positions and the manner of appointment thereof.

4. Continue the present practice, but require the maintenance of a complete stenographic record and submission of written findings in accordance with forms to be prescribed by court rules. These findings would be reviewable on appeal in the Superior Court, without a jury, upon such record and findings without additional proofs, unless the court, for good cause, so permits or so requests. No presumption of correctness should attach to such findings and the substantial evidence rule should not apply.

5. Reduce the number of Commissioners from three to one, an attorney of at least ten years' experience, who would try the cause, fix compensation and render a *judgment*. Such trial could be held without a jury, unless a jury was requested by any party. Appeals would lie from this judgment, directly to the Appellate Division, as in other civil actions. The present trial *de novo* on appeal thus would be abolished. The Commissioner's compensation would be fixed by the court, paid by the condemning agency and probably would not exceed the present fees paid to three Commissioners. This suggestion would relieve the congested court calendar without any additional cost to the state. Objectors suggest that the combined judgment of three persons is preferable to that of a single individual.

6. Adopt of the procedure of the Port of New York Authority, explained and approved in *Port of New York Authority* v. *Heming* (14). Under this procedure, compensation is fixed by the court, without a jury. The Court is vested with power to appoint commissioners to take testimony and "advise" him, but the final conclusion is made by the court.

7. Various combinations of the foregoing suggestions have also been made and considered.

Many forceful and impressive presentations have been made to the Commission that the current practice is a waste of time, effort and money, and therefore, should be abolished. Should our court adopt the practice recently inaugurated by the United States Supreme Court (*U. S.* v. *Merz*, 376 U. S. 192, 1964) requiring the court to "charge" Commissioners appointed pursuant to Federal Rule 71A-(h), additional time will be expended. Nevertheless, the Commission was confronted with the very practical fact that the abolition of Commissioners hearings would increase the already congested trial calendar, particularly in the larger counties. It was also indicated to the Commission that a large number of cases are adjusted at the Commissioner's hearings, or shortly thereafter and before the trial on appeal. Consequently, it has been concluded that the hearings should be continued in a modified form, as follows:

EXHIBIT II

EXTRACT FROM PAGES 12-14 OF REPORT

OF

SELECT COMMITTEE ON LAND EXPROPRIATION

(Ontario, February 19, 1962)

3. Tribunal

Observations: Under the existing legislation there are as many tribunals authorized to assess compensation as there are bases for compensation. The Ontario Municipal Board has been carrying on a most admirable function in this field and there was general approbation by practically all representations as to the value of the services rendered by the Board. Similarly, the comments which were received respecting official arbitrators, local judges, boards of arbitration and other tribunals were most complimentary. However, the comments which were received of a critical nature were, in any cases, common to all tribunals and were in no way associated with the ultimate decisions arrived at by the tribunals. In many cases, because of pressure of other business, there have been delays in the arranging of an appointment for the hearing of an arbitration whether it be before the Ontario Municipal Board or a local judge. It is obvious to those persons involved in this phase of our law that persons of the calibre qualified to assess compensation must, by their very nature, be extremely busy individuals.

It has also recently been pointed out that the judges in our courts have very onerous duties which, in some areas, would make it difficult for a property owner to obtain an appointment for an arbitration without some reasonable delays which would be generated solely by the pressure of work in the area. In a similar way, the administrative tribunals have difficulties in allotting the time at their disposal because of the many demands which are placed upon it by the various statutes. The Ontario Municipal Board specifically has many duties aside from the assessing of compensation in expropriation matters and these other duties are of equal importance in the eyes of the public to those which might be demanded by the expropriation laws of the Province. In some instances, comment was received about procedural defects but most of the alleged defects were considered to be advantages in other submissions.

It was difficult for the Committee to distinguish any unanimity of opinion as to whether it was an advantage or disadvantage for the tribunal to be experienced in the valuation of land. In some submissions it was felt that the tribunal must be an experienced valuator or at least in a position to understand such a valuator before any decision might be arrived at by the tribunal. Other submissions, however, took the position that since it was the function of the tribunal to assess the compensation upon the basis of the evidence brought before the tribunal, any preconceived knowledge on the part of the members of the tribunal might lead to an improper result. Each of the arguments has validity but, when carried to the ultimate extreme, each argument becomes less practical in its application to the problems before the Committee.

One of the most serious problems encountered by the Committee was the confusion which exists in the minds of the individual property owners as to how they obtain an independent decision which will lay to rest the problem between himself and the public authority. With the many types of tribunals which may have jurisdiction in these matters, the

property owner's unrest is quite reasonable. If he could be made aware as to the exact procedure which would be followed and the tribunal which would assess the compensation, then there is little doubt but that his confusion would be eliminated. It would certainly appear that most of the public authorities favour some uniform type of tribunal as long as it does not create procedural difficulties which will increase the costs of arbitration.

Conclusion: In the opinion of the Committee it does not seem advisable to increase further the work of the judiciary by requiring them to assess compensation under the various expropriation laws of this Province. It also seems most advisable that the number of specialized authorities hearing these matters be eliminated so that there will not be a duplication of experience together with elections available to one party but not available to another party. While the arguments respecting the desirability of an expert tribunal are not without validity, the benefits which may be obtained through the adversary system are most essential to the proper determination of compensation in the interests of all parties. It is the very essence of any arbitration that it be available to either party with an absolute minimum of delay and that it be in a position to weigh properly the evidence which may be adduced at the hearing of the matter. It does not seem either necessary or advisable that the members of any tribunal have experience restricted to the valuation of property but it does seem reasonable that the members of such a tribunal have some background in either law, appraising of real property, or engineering. A combination of these particular qualifications seems desirable in the opinion of the Committee.

Recommendation: That a special tribunal be appointed by the Government of Ontario which would be solely responsible for the assessment of compensation arising from expropriation and associated powers, with consideration being given so that such a tribunal would have sufficient membership to deal expeditiously with the matters before it; that its membership would reflect a collective experience of existence in determining compensation; that it be in a position to weigh properly the evidence adduced before it by the parties, and that it be encouraged to give reasons in all cases. It is further recommended that the Government might give consideration to the extension of the responsibilities of such a special tribunal to other matters where the valuation of property is significant, if the tribunal has time at its disposal after fulfilling the duties necessitated by expropriation.

EXHIBIT III

EXTRACT
from

REPORT OF THE

BRITISH COLUMBIA

ROYAL COMMISSION ON EXPROPRIATION

1961-63

RECOMMENDATIONS

The Tribunal

It is recommended that compensation be determined by summary procedure in the Supreme Court of British Columbia or in the County Courts according to their respective jurisdictions. After consideration of the alternatives, the existing system, single arbitrators, panels of arbitrators and a permanent tribunal for expropriations, I have come to the conclusion that no tribunal, other than the one I have recommended, can determine satisfactorily the amount of compensation. Only the Courts can assure the determination of compensation disputes by persons who are impartial, trained in the law, and who enjoy full public confidence.

7. THE TRIBUNAL

The following types of tribunals were recommended by witnesses appearing before the Commission:

1. The existing system under the Arbitration Act and Department of Highways Act.

2. Single arbitrator.

3. Panel of arbitrators.

4. Permanent tribunal.

5. The Supreme Court and County Courts.

1. The existing system under the Arbitration Act and Department of Highways Act.

In British Columbia, nearly all compensation disputes in expropriation proceedings are presently determined by three-man boards, one member appointed by the owner, one by the taker, and the third either by the nominees or by application to a Supreme Court Judge or Magistrate depending on the special Act involved.

At the public hearings, the witnesses generally agreed that this type of tribunal was unsatisfactory. The main reasons given for this dissatisfaction were:

(i) The lack of consistency in decisions.

(ii) The tendency on the part of the arbitrator appointed by either the taker or the owner to become an advocate for the party that nominated him to the Board.

(iii) The failure of the system to obtain one of its prime objects - speedy judgment.

(iv) The excessive cost in obtaining the services of professional persons to serve on the arbitration boards. Apparently it is necessary to pay the arbitrators a daily rate between three and five times the $40.00 per diem stipulated in the schedule to the Arbitration Act. Hence the daily cost of the Board ranges from $360.00 to $600.00 and applies not only to the time required for the hearing but also to conferences held for making the decision.

Having heard and weighed the evidence submitted regarding the present procedure of arbitration, I have come to the conclusion that this type of tribunal is cumbersome, expensive, and slow. I, therefore, recommend that the existing system be abolished.

2. Single Arbitrator

In England the 1919 Act established a Reference Committee to appoint as official arbitrators a number of persons having special knowledge in the valuation of lands. Anyone so appointed was "precluded from engaging in private practice or business and from being a partner of any other person who so engages."[93] This in effect established the system of single permanent arbitrators appointed for particular areas.

In England this system lasted until the establishment of the Lands Tribunal in 1949.

In 1942 Mr. Justice Uthwatt commented on the appropriateness of single permanent arbitrators as follows:

> "Our conclusion, therefore, is that the existing system in England and Wales of arbitration before an official arbitrator is one which cannot readily be improved upon, and we do not recommend any amendment."

However, Parliament did not accept this recommendation and in 1949 proceeded to set up a Lands Tribunal under the

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93. See Uthwatt Report, p. 87.

Lands Tribunal Act of that year. One ground of justification used by the then Attorney-General for the change was that the arbitrators had no way of securing close co-ordination and consistency of decision.

In Scotland, experience of eleven years after the 1919 Act showed that the volume of work available was insufficient to justify the retention of the full time arbitrator. Further difficulty came from the fact that with only one arbitrator no deputy was available to act in his stead in cases of illness.

For the reason that it is doubtful that there would be a sufficient volume of work to require the services of full-time arbitrators, I reject this system as being unsuitable to determine compensation in British Columbia.

3. Panel of Arbitrators

The Real Estate Institute suggested this type of tribunal in their brief. An outline of its suggestion is as follows:

(i) That the Chief Justice of the Supreme Court establish a register of competent and available arbitrators consisting of practitioners from the British Columbia Bar Association and qualified appraisers from the Professional Division of the Real Estate Institute of British Columbia. It was suggested that the Chief Justice review this register from time to time.

(11) That where the parties are unable to agree upon the compensation either party may apply or in any event the taking authority must apply within six months to the District Registrar of the Supreme Court who shall then appoint either one, two, or three arbitrators as he in his sole discretion deems advisable.

This was the same recommendation made by the Scott Committee:

> "We think that the sanctioning authority should adopt the same system of appointing a panel of arbitrators selected from the most eminent surveyors and other experts on such conditions, and for such period, and remunerated on such scale as may be determined by the sanctioning authority."

This recommendation was not accepted, and a system of official arbitrators was used in England from 1919 to 1949. Partly as an economy measure, and partly as a more practical arrangement, the Acquisition of Land (Assessment of Compensation Scotland) Act 1931 was passed removing the ban on private practice so far as Scotland was concerned. This Act established a panel of part time arbitrators remunerated by fees and not precluded from engaging in private practice.

Mr. Justice Uthwatt in his Report of 1942 considered the system of determining compensation by panel:

> "The evidence we have received on this aspect from representative Scottish sources is not unanimous in its criticism of the existing procedure, but there is

> considerable indication that it is looked on with disfavour by acquiring authorities. It is stated in some quarters that there has been a noticeable disparity in awards in similar cases and varying attitudes on points of principle. Indeed, this is bound to be so to a greater extent where there is a large panel than would be the case if all awards were made by the same person or by members of the small and closely co-ordinated panel."

In my opinion, a panel, of arbitrators for determining compensation has many disadvantages of the existing system, and I would not recommend that this type of tribunal be instituted in British Columbia.

4. Permanent Tribunal

This system has been in effect in England since the passage of the Lands Tribunal Act in 1949. There is no doubt that a permanent tribunal has some definite advantages. Its awards are likely to be more consistent, and its hearings shorter. In these respects such a Board has definite advantages over our existing system. If this Board were set up, it would require provision for the appointment of members to the Board by someone other than the legislature in order to ensure that justice would not only be done but also appear to be done in cases involving the Crown in the right of the Province.

Among the disadvantages, such Boards are not generally trained to weigh and assess evidence, the members are not

appointed for life and do not as a rule give speedy decisions.

It is doubtful that there is sufficient work in British Columbia to justify the high cost of attracting competent people to such a Board. In England, the Lands Tribunal not only decides expropriation cases, but also settles property valuations in estate duty matters, and hears appeals against municipal assessments on real property and appeals under Planning legislation.

In my opinion this type of Board having diversified functions is not practicable in British Columbia because of constitutional division of administrative function in our federation.

It is my recommendation that a permanent tribunal would not be suitable to determine compensation for expropriation.

5. The Supreme Court and County Court within their respective jurisdictions

After examination of each alternative I am of the strong opinion that the Supreme and County Courts within their jurisdictions should determine in a summary manner compensation in expropriation cases.

Elsewhere in this report I recommend the procedure that I suggest to be followed if the Courts determine compensation.

In my opinion, benefits of paramount importance will accrue if the Courts hear compensation cases. Judges are experienced in hearing and weighing evidence and are traditionally impartial. Their reported judgments will establish a body of precedent and authority. This in turn will facilitate settlements in cases that otherwise might have gone to hearings.

For many years a Judge of the Exchequer Court has heard all compensation cases under the Federal Expropriation Act.

For the above reasons, I have come to the conclusion that hearings before a Supreme Court and County Court within their jurisdictions offer a fair and equitable method of determining compensation.

I recommend that the County Court have jurisdiction to deal with expropriation cases involving the compensation not exceeding $3,000.00 and that all other cases be heard in the Supreme Court.

EXHIBIT IV

EXTRACT FROM PAGES 538-539 OF

SEARLES AND RAPHAEL, CURRENT TRENDS IN THE LAW OF

CONDEMNATION, 27 FORDHAM LAW REVIEW 529 (1959)

II. Revision of Condemnation Procedures

During the past century, complaints have repeatedly been made in New York condemnation cases about the unsatisfactory way in which compensation has been awarded. Where new amendments have been proposed to the New York State Constitution, frequently the new procedure has not even been tried out.[35] The Commissioners' system was attacked because of the small awards granted by appraisers selected by the very people to whom were entrusted the sovereign power of condemnation.[36] The Commissioners' system under which commissioners were judges of "fair" compensation was criticized as being wasteful, particularly in New York State. As a result, a constitutional amendment was passed in 1913 which provided that the New York Supreme Court, with or without a jury, but not with a referee, could determine compensation in eminent domain proceedings. Subsequently, about twenty years later, a specialized three judge court of the supreme court was recommended for the trial of condemnation cases[37] and in 1933 the constitution of the state of New York was amended so as to provide that a term of the supreme court (one or more justices thereof) without jury, could try condemnation cases. Article 1-Section 7(b) of the New York Constitution now provides for four methods for determining compensation in other than state appropriations in condemnation; namely, a jury, the supreme court without a jury, an official referee, or no less than three commissioners appointed by a court of record.

A special committee was recently appointed by the Mayor to investigate condemnation practices and procedures.[38] It is recommended since the scope of condemnation has mushroomed to such a large extent in recent years that tribunals be created in the form of condemnation courts. This is not new, having been urged decades ago.[39] In many cases, owners have had to wait long periods of time before compensation was determined and paid, which condition has led to popular indignation. Competent and trained judges should be added to the courts trying eminent domain cases, with experienced personnel, so as to eliminate any delays with respect to the determination and payment of just compensation.

35. Inter-Law School Comm. Report on "The Problem of Simplification of the Constitution," Legislative Document No. 57, pp. 16-24 (1958).
36. Id. at 17.
37. Id. at 21.
38. N.Y. Herald Tribune, June 19, 1958, p. 1, col. 1.
39. Legislative Document No. 57, supra note 35, at 20 n.16.

EXHIBIT V

EXTRACT, PAGES 86-96 FROM

HEANEY, VALUATION OF PROPERTY FOR HIGHWAYS UNDER EMINENT DOMAIN (A THESIS FOR THE DEGREE OF DOCTOR OF JURIDICAL SCIENCE, UNIVERSITY OF WISCONSIN LAW SCHOOL, 1960)

F. The Appeal To the Judiciary

1. Introduction

> The legislature may determine what private property is needed for public purposes — that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public, through Congress or the legislature, its representative, to say what compensation shall be paid. . . . The constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry.[185]

Thus spoke the Supreme Court of the United States in 1892. However, the judicial determination need not be made by a jury or even a court sitting without a jury. Again, in the words of the United States Supreme Court:[186]

> The proceeding for the ascertainment of the value of the property and consequent compensation to be made is merely an inquisition to establish a particular fact . . . . and it may be prosecuted before commissioners or special boards or the courts, with or without the intervention of a jury, as the legislative power may designate. All that is required is that it shall be conducted in some fair and just manner with opportunity to the owners of the property to present evidence as to its value and to be heard thereon.

This language from the highest court in the land fairly states the position of American constitutional law on the question of who may determine just compensation. In respect to the validity of the award system the court's holding that the final determination need not be made prior to the appropriation is significant.[187]

> . . . It is settled by the decisions of this court that where adequate provision is made for the certain payment of the compensation without unreasonable delay the taking does not contravene due process of law in the sense of the Fourteenth Amendment merely because it precedes the ascertainment of what compensation is just. [Citations omitted.]

The Supreme Court of Wisconsin very early held that essentially the same factors are applicable in determining the validity of a taking procedure under the Wisconsin constitution.[188] The requirements were stated in these terms:[189]

> . . . One of two things must invariably be done before the public can, against the will of the owner, acquire the right to enter upon and permanently occupy his land, which may be needed for public uses.
>
> 1. The value of the property to be taken must be ascertained by some legal and proper proceeding, and be paid; or,

185) Monongahela Nav. Co. v. United States, 148 U.S. 312, 327 (1892).
186) United States v. Jones, 109 U.S. 513, 519 (1883).
187) Bragg v. Weaver *et al.*, 251 U.S. 57, 62 (1919).
188) Powers v. Bears, 12 Wis. 236 (1860).
189) *Id.* at 243.

2. If the value thus ascertained be not paid to, or received by the owner, an adequate and safe fund must be provided, from which he may at some future time be compensated.

The court goes on to say that an *ex parte* determination held in secret without granting the right to be heard to the landowner does not satisfy these requisites.[190]

The administrative award system without further appeal probably does not provide the necessary requisites. Questions can be raised as to its impartiality, it is *ex parte* and secret; and certainly there is insufficient opportunity for the owner to be heard. However, with the additional provisions for appeal which the legislature of the State of Wisconsin has provided the process provides the safeguards necessary to satisfy the federal and state constitutions. The Wisconsin system, of course, provides a dual appeal from the award. The first is to the county judge. The second is to the circuit court and jury. The remainder of this section will not be devoted to the constitutionality of the machinery for appeal but rather will be concerned with the performance of that machinery in applying the written law of valuation to the actual problems of land valuation in an eminent domain taking for highway purposes.

The percentage of parcels acquired by condemnation in 1957, *i.e.*, that percentage where it was necessary to make an award, was 13 per cent, 252 out of 1,886 parcels. Of these only 48 per cent or about half were appealed to the county judge. Of these in turn only 16 per cent or about one-sixth were appealed to circuit court. In 1958, 19 per cent were acquired by condemnation, 635 out of 3,296 parcels. Of these 23 per cent or about one-fourth were appealed to the county judge. Of these in turn 31 per cent or about one-third were appealed to circuit court. Thus in 1957 out of 1,886 parcels acquired 120 appeals were heard before the county judge and 19 were heard before the circuit court. In 1958 out of 3,296 parcels 143 were heard before the county judge and 53 were heard before the circuit court.[191] These figures suggest that only a small percentage of the landowners involved in highway condemnations actually ever have any kind of a judicial determination. However, this is not to say that the courts have not played an important role in eminent domain valuation. Condemnor and condemnee alike are responsive to what happens in cases which have been appealed. No condemnor will continue a particular set of valuation policies in the face of continual increases in awards on appeal.[192] To a lesser degree, but also true, landowners will not be so eager to pursue appeals if other landowners have consistently lost similar appeals.[193] The importance of court decisions,

190) *Id.* at 246-247.

191) These figures are taken from State Highway Commission of Wisconsin Right-of-Way Cost Data, 1957, 1958.

192) An attorney active in condemnation work on behalf of the state also confided to the author that he could stop obstructionist groups from forming if he could get one good case in the area which could be fought out and won showing to all the futility of resistance merely for the sake of resistance.

193) During the course of this study the author received a letter from a landowner facing condemnation. The following is abstracted from that letter.

Dear Sir:

I read in the paper where you state "take time selling land for highways, farmers cautioned." Is there true facts to this or is it only a lawyer's scheme, Caution. *So far I heard of farmers fighting this and (they) did not accomplish anything.* [Emphasis added.]

particularly supreme court decisions, in making law also makes the judicial role tremendously important.

2. *The Appeal to the County Judge*

a. Introduction

The appeal to the county judge is the first appeal which a dissatisfied landowner can take to an independent fact finder. The entire valuation process up to this point has been conducted by the condemning highway commission.

Reviewing briefly, appraisals have been made, an offering price arrived at, and negotiations to purchase have been carried on. If these negotiations succeed, what follows is an ordinary land transfer. If the landowner sells to the state, the process ends. If negotiations break down the highway commission makes its award under the provisions of Section 84.09(2). The landowner then has two years to decide if he will appeal. He can cash the check, spend the money and still appeal, or he can do nothing. Only the landowner, however, can initiate the appeal. Once an award has been made the highway commission has exhausted its rights to alter the price if the landowner does not choose to appeal.

Once this appeal has been taken by the landowner, the county judge assumes the task which up to this point has been the responsibility of the highway commission. The task is of course that of establishing "just compensation." The statutory framework within which he operates is quite liberal.[194] The county judge is not sitting as a court.[195] He may or may not hold a formal hearing as he chooses. If he does, the only procedural requirement is that the landowner present his evidence first, followed by the highway commission, with rebuttal by the landowner. Within five days of the termination of the hearing the county judge must file his award in his office. His determination can better be described as administrative rather than judicial.

Thus the first appeal under the Wisconsin system is not an appeal to a court. Instead it is an appeal to a referee, an unbiased third party who happens to be a judge.

b. The County Judge in Action

Although the county judge in a given appeal may make his value determination in almost any way he chooses, the usual procedure is to hold a hearing which in most respects is the familiar trial before a judge sitting without a jury. Witnesses are called and present evidence in the traditional way. The major distinguishing characteristic of this type of hearing in the usual case is the informality or lack of firm judicial control. Seldom before a county judge do counsel argue technical questions of evidence at length. Objections are used and often sustained but all parties concerned recognize that the judge can sustain or overrule an objection as he chooses without fear of reversal. The role of the objection, as confided to the author by one

194) The procedure which the judge must follow is controlled by WIS. STAT. §83.07(4) (1957).
195) Thielman v. Lincoln County Highway Committee, 262 Wis. 134, 54 N.W. 2d 50 (1952).

seasoned condemnation attorney, is to bring to the attention of the judge in a manner familiar to the judge, the probative limitations of evidence being offered. Very often a hearing of this nature can be completed in a half day. Almost invariably it can be completed in one day.

c. A Summary of Results of Appeals to the County Judge

The following two tables (TABLE I and TABLE II) illustrate the results of cases appealed to and decided by the county judges in 1957 and 1958, respectively.[196]

TABLE I, 1957

County	Original Award	County Judge Award	% Increase
Brown	$ 3,200.00	$ 3,618.30	13.1%
Chippewa	7,422.40	11,500.00	56.3
Chippewa	1,213.00	3,870.00	219.0
Chippewa	2,750.00	13,200.00	380.0
Chippewa	9,000.00	10,325.00	14.7
Chippewa	700.00	1,200.00	71.4
Clark	1,749.25	3,261.50	92.1
Clark	1,214.00	1,838.00	51.4
Crawford	300.00	2,400.00	700.0
Dane	7,500.00	11,000.00	46.7
Dane	3,000.00	5,352.00	78.0
Door	346.00	3,200.00	824.9
Fond du Lac	450.00	450.00	0.0
Fond du Lac	75,400.00	85,938.00	14.0
Fond du Lac	6,830.00	7,030.00	2.9
Iron	378.00	1,100.00	192.9
Iron	13,000.00	15,000.00	15.4
Jefferson	300.00	400.00	33.3
Kenosha	10,650.00	30,670.00	188.0
Kenosha	32,500.00	50,000.00	53.8
Milwaukee	14,500.00	20,213.00	39.4
Milwaukee	16,390.14	23,390.14	38.9
Milwaukee	168,000.00	221,800.00	32.0
Milwaukee	22,550.00	24,500.00	8.6
Milwaukee	8,000.00	8,500.00	6.2
Milwaukee	9,000.00	10,250.00	13.9
Milwaukee	22,800.00	24,575.00	7.8
Milwaukee	24,000.00	24,500.00	2.1
Monroe	1,650.00	1,650.00	0.0
Monroe	7,422.40	11,500.00	56.3
Oconto	3,400.00	4,500.00	32.4
Oconto	3,800.00	4,000.00	5.3
Oneida	4,264.00	4,264.00	0.0
Ozaukee	700.00	1,275.0	82.1
Ozaukee	20,000.00	30,000.00	50.0
Ozaukee	3,000.00	4,650.00	55.0
Ozaukee	5,800.00	11,250.00	92.3
Ozaukee	3,600.00	6,030.00	67.5
Ozaukee	25,000.00	28,500.00	14.0

196) These tables are from State Highway Commission of Wisconsin, Right-of-Way Cost Data, 1957, 1958.

Table I (Continued)

Ozaukee	4,000.00	6,950.00	73.8
Ozaukee	5.00	264.00	5,180.0
Ozaukee	10,800.00	16,700.00	54.6
Ozaukee	40.00	1,850.00	4,525.0
Ozaukee	1,250.00	2,375.00	90.0
Ozaukee	250.00	1,000.00	300.0
Ozaukee	5.00	1,409.95	28,119.0
Ozaukee	14,500.00	16,700.00	15.2
Ozaukee	750.00	6,750.00	800.0
Ozaukee	8,500.00	11,500.00	35.3
Ozaukee	9,000.00	13,500.00	50.0
Ozaukee	15,000.00	18,000.00	20.5
Ozaukee	750.00	2,000.00	166.7
Ozaukee	1,450.00	4,000.00	175.8
Portage	425.00	425.00	0.0
Portage	850.00	2,250.00	170.6
Portage	1,200.00	1,200.00	0.0
Rock	2,600.00	6,500.00	150.00
Sheboygan	5,767.15	7,500.00	30.4
Sheboygan	24,491.25	24,500.00	0.0
Sheboygan	11,447.50	12,750.00	11.4
Waukesha	850.00	1,000.00	17.7
Waukesha	18,500.00	21,000.00	13.5
Waukesha	5,650.00	9,000.00	58.4
Waukesha	9,800.00	14,000.00	42.9
Waukesha	1,120.00	2,200.00	96.4
Waupaca	1,085.25	1,300.00	19.8

This table shows that the county judges were raising awards rather consistently and were raising them by a substantial amount. Sixty-seven decided appeals are represented. Notice that in only seven cases was the award not increased by appealing to the county judge, and in only six cases was it increased by less than 10 per cent. In 15 cases the award was increased by more than 100 per cent and in 27 cases was increased between 30 per cent and 100 per cent. There were 12 cases showing an increase between 10 per cent and 30 per cent.

TABLE II, 1958

County	Original Award	County Judge Award	% Increase
Dane	$ 4,713.00	$ 5,500.00	16.7%
Dane	5,824.00	7,000.00	20.2
Dane	1,565.00	2,000.00	27.8
Dane	30,500.00	32,418.00	6.3
Dane	3,000.00	5,352.00	78.4
Dane	20,000.00	25,400.00	27.0
Dane	1,765.00	2,000.00	13.3
Dane	7,500.00	11,000.00	46.7
Fond du Lac	75,400.00	85,938.00	13.9
Fond du Lac	6,830.00	7,030.00	2.9
Kenosha	20,000.00	25,000.00	25.0
Kenosha	3,500.00	12,300.00	251.5
Kenosha	20,000.00	25,360.00	26.8
Kenosha	32,500.00	50,000.00	53.9

Table II (Continued)

Kenosha	10,650.00	30,670.00	188.0	
Kenosha	2,000.00	7,500.00	275.0	
Kenosha	600.00	2,750.00	358.3	
Kenosha	62,500.00	77,500.00	24.0	
Kenosha	11,200.00	12,500.00	11.6	
Kenosha	16,000.00	17,500.00	9.4	
Kenosha	94,350.00	97,600.00	3.4	
Ozaukee	700.00	1,275.00	82.1	
Ozaukee	20,000.00	30,000.00	500.0	[sic]
Ozaukee	3,000.00	4,650.00	55.0	
Ozaukee	5,600.00	11,250.00	64.0	
Ozaukee	3,600.00	6,020.00	67.5	
Ozaukee	25,000.00	28,500.00	14.0	
Ozaukee	4,000.00	6,950.00	73.8	
Ozaukee	10,800.00	16,700.00	54.6	
Ozaukee	1,250.00	2,375.00	90.0	
Ozaukee	250.00	1,000.00	300.0	
Ozaukee	175.00	5,020.00	2,768.7	
Ozaukee	30.00	570.00	1,800.0	
Ozaukee	1,500.00	3,250.00	116.7	
Ozaukee	1,000.00	1,050.00	5.0	
Ozaukee	14,500.00	16,700.00	15.2	
Ozaukee	4,250.00	6,750.00	50.8	
Ozaukee	8,500.00	11,500.00	35.3	
Ozaukee	1,450.00	2,772.00	91.9	
Ozaukee	800.00	2,877.00	259.6	
Ozaukee	3,250.00	8,438.00	159.6	
Ozaukee	1,500.00	7,323.00	388.2	
Ozaukee	5.00	1,409.95	28,099.0	
Ozaukee	1,450.00	4,000.00	175.9	
Ozaukee	40.00	1,850.00	4,525.0	
Ozaukee	5.00	264.00	5,180.0	
Ozaukee	37.00	700.00	1,791.9	
Ozaukee	36.00	800.00	2,122.2	
Ozaukee	5.00	1,800.00	35,900.0	
Ozaukee	798.00	2,000.00	166.7	
Ozaukee	15,000.00	18,000.00	20.0	
Ozaukee	5,400.00	9,000.00	66.7	
Ozaukee	30.00	570.00	1,800.0	
Ozaukee	1,600.00	8,481.00	467.6	
Ozaukee	1,700.00	5,970.00	251.2	
Racine	1,600.00	1,750.00	9.4	
Racine	20,000.00	28,943.00	34.7	
Racine	850.00	850.00	0.0	
Racine	100.00	100.00	0.0	
Waukesha	9,800.00	14,000.00	42.9	
Waukesha	8,950.00	9,850.00	10.0	
Waukesha	850.00	2,800.00	233.3	
Waukesha	1,120.00	2,200.00	96.5	
Waukesha	2,000.00	4,500.00	125.0	
Waukesha	50.00	165.00	230.0	
Oconto	3,800.00	4,000.00	5.3	
Oconto	3,400.00	4,500.00	32.4	
Oconto	838.00	1,330.00	58.7	
Outagamie	15,350.00	15,350.00	0.0	
Sheboygan	11,447.50	12,750.00	11.4	
Green Lake	9,956.00	11,608.50	16.6	
Portage	1,321.00	2,000.00	51.4	
Portage	740.00	740.00	0.0	
Portage	300.00	400.00	33.3	

Table II (Continued)

Crawford	50.00	375.00	650.0
Vernon	7,150.00	7,650.00	7.0
Vernon	50.00	50.00	0.0
Chippewa	1,213.00	3,870.00	219.0
Dunn	2,400.00	3,600.00	50.
Eau Claire	412.00	548.00	33.0
Eau Claire	1,901.00	2,472.00	30.0
Oneida	15,900.00	18,000.00	13.2
Rusk	130.00	330.00	153.8
Washburn	350.00	400.00	14.3
Milwaukee	18,715.00	18,715.00	0.0
Milwaukee	95,750.00	117,000.00	22.2
Milwaukee	18,800.00	21,650.00	15.2
Milwaukee	16,836.96	23,390.14	38.9
Milwaukee	112,000.00	123,700.00	10.4
Milwaukee	18,500.00	19,013.63	2.8
Milwaukee	21,500.00	22,100.00	2.8
Milwaukee	7,736.00	10,600.00	37.0
Milwaukee	30,000.00	44,000.00	46.7
Milwaukee	17,090.00	29,186.0	70.8
Milwaukee	4,389.85	5,600.00	27.5
Milwaukee	23,600.00	25,000.00	6.0
Milwaukee	24,800.00	26,233.00	5.8

This table shows approximately the same results as the previous table. Here 97 decided cases are represented. Notice that in only six cases was the award not increased by the appeal. In only 12 cases was it increased by less than 10 per cent and in 28 cases was increased between 30 per cent and 100 per cent. In 29 cases the award was increased by over 100 per cent. There were 22 cases showing an increase between 10 per cent and 30 per cent.

A comparison of the two years follows in Table III.

TABLE III

Year	No. of Cases	No. Increase	Increase Less Than 10%	Increase 10% - 30%	Increase 30% - 100%	Increase of Over 100%
1957	67	7 cases 10% of total	6 cases 9% of total	12 cases 18% of total	27 cases 14% of total	15 cases 22% of total
1958	97	6 cases 6% of total	12 cases 12% of total	22 cases 23% of total	28 cases 29% of total	29 cases 30% of total

These figures indicate a considerable disparity in the value attached to property between the state highway commission and the county judges of the state. Some explanations for these disparities can be offered without being critical of either fact finder. The first is that a number of the original awards were made as far back as 1954. The highway commission then followed some procedures different from those now used. For example, in the past an award sometimes was made by a county highway committee without benefit of any appraisal. On appeal to the county judge, the state highway commission did not defend this award but actually introduced appraisals

indicating a higher recovery. The county judge, under these conditions, is almost certain to raise the award. In some cases the increase was due to a difference of opinion between the county judge and the highway commission on a matter of law. Until the 1959 *Braun* decision, for example, no one was sure of the basic valuation formula in a partial taking. In a third class of cases the increase was due to a friendly appeal whereby the state discovered a mistake in its award and urged the landowner to appeal for a higher recovery. A fourth category resulting in substantially increased awards are those cases involving either proximity damage or a nominal payment ($5.00 for example) for access rights. Cases involving proximity damages show a considerable variation in some cases because it is so difficult to measure this damage. The access cases where only a nominal sum is awarded are often increased on the basis of the property's potential commercial use in the view of the county judge.

d. An Evaluation of the Procedure Providing an Appeal to the County Judge

1) *Criticisms*

For a law-in-action study, the system of appeal to the county judge as set up by the Wisconsin Statutes is of considerable importance. The system as operated reveals three significant influences acting to alter the law of valuation as written.

The first factor relates to the relationship of the county judges to the parties of the controversy. The county judge is an official elected by the local citizens. The appealing landowner is one of these local citizens. The other party to the controversy is essentially an outside intruder – the state. The state is depriving the landowner of his land against the landowner's will. Against this background the county judge must appraise the damages which the landowner has suffered. This much is factual.

A series of interviews in the various district offices of the highway commission revealed that many right-of-way people at the grass roots level are of the opinion that under the conditions outlined above some county judges entertain a bias in favor of the condemnee. Another observer who has appeared before county judges while representing the highway commission scores of times indicates that in his experience he has encountered some county judges who almost invariably raise the highway commission's award, some who almost always go along with the award and some who sometimes accept the highway commission's award as about right and sometimes do not.

Definite conclusions on the degree to which county judges are affected by their feeling of responsibility to the condemnee are difficult to draw. It can be said that as a group they are extremely competent, uniformly conscientious men of unquestioned integrity. It is of course equally a fact that they are local officials with local ties. Three possible explanations suggest themselves as to why certain judges consistently raise highway commission awards:

1) A desire to protect local people because they are local people.

2) A desire to protect local people because it is local people who keep him in office.

3) A desire to protect local people based on good cause, *i.e.*, to the mind of the particular judge the highway commission consistently makes awards which are too low.

The second important influence on the law resulting from the county judge system is due to the absence of strict rules of evidence. As indicated previously the degree to which a particular judge will require compliance with the rules of evidence varies. Some judges will hold the parties strictly within the rules in presenting testimony. Others will exert some control over what evidence will be accepted but avoid particularly confining technicalities – this appears to be the most common practice. A minority dispenses entirely with the rules of evidence. It is this last procedure which presents a definite possibility of a departure from the law of compensability. The following actual case is illustrative.

Witness Jones took the stand and presented testimony of the damages to the condemned property as found by appraisers Smith and Brown. He did not testify to a "before" value or an "after" value. He did not state whether the appraisal was based on a comparable sales, an income or a reconstruction cost basis. He did not indicate whether non-compensable items were considered. He couldn't even testify of his own certain knowledge that the appraisers had looked at the property except that he knew that they were instructed to do so. Yet his testimony was accepted by the judge and presumably given some consideration.

This is admittedly an extraordinary example, the most obvious possible disregard of the law of evidence before a county judge which the study has turned up. Yet it illustrates how easy it is to depart from the law of eminent domain valuation where there is a determination not subject to check by the rules of evidence. Whether this flexibility afforded the county judge is ultimately a good thing or a bad thing in the administration of justice is another matter, but it certainly makes the control of law less significant and the decisions of men more significant.

The third important influence exerted by the county judge on the law of eminent domain valuation is due to his sense of fairness. Certainly one of the functions of the county judge under the Wisconsin system as it has developed is to provide an impartial determination of value. Under the Wisconsin award system if a landowner does not appeal to the county judge the only official determination made as to the value of his land is that which is made by the highway commission itself. As pointed out in a previous section on the negotiation process, this determination, from the point of view of the landowner, is a secretive one. The landowner never sees the appraisals on which the offer or award is based. He may very well be suspicious of this kind of *ex parte* procedure. Therefore he may appeal to the county judge because he respects his judgment and his fairness. The average condemnee moreover views the county judge's determination as a determi-

nation of the county court. The technical inaccuracy of this assumption in no way alters the fact that a determination is being made by the county judge in the county court house with lawyers acting in the peculiar way that lawyers act before a court. All of this gives the added prestige of a judicial determination which carries a dignity and an air of due process which the condemnee can respect. This has resulted in some county judges in some situations granting to the condemnee on appeal the amount of the highway commission's award plus a sum which is reasonably close to the expenses a landowner would incur in an appeal. It isn't hard to see what is in the judge's mind. First of all on the facts of the case he concludes that the commission's award was proper. However, he also has in mind the award system which provides no truly impartial determination until the case reaches him. He undestands the desire of landowners for an impartial determination so he in effect awards to the landowner his costs. This application of old fashioned justice is another limitation on the accuracy of a literal interpretation of the law of eminent domain valuation.

Critics of the institution of review by the county judge urge further arguments for his removal from the review process. The argument is to this effect: After the determination by the county judge there is another possible appeal to circuit court. If the landowner wins, the state is unhappy and will appeal. If the state wins, the landowner is unhappy and will appeal. Therefore the county judge decides nothing and ought to be removed from the process. His presence adds nothing except costs to bring the appeal before him. Apparently many county judges themselves subscribe to a similar line of thought since they have indicated that if they cannot finally decide a matter on the trial court level it seems a waste of time for them to deal with it.

Occasionally the state highway commission will follow a policy which makes the task of the county judge an almost meaningless exercise. The policy is to present no evidence at the hearing. This is possible because the commission really loses nothing because it can still appeal to circuit court. The reason which one attorney for the state offered for this policy is that certain judges ignore the state's evidence anyway out of prejudice for the landowner. The reason which one private practitioner active in condemnation on behalf of the landowner offered was that the state wanted to have a preview of the landowner's case without exposing its own. This practice, which certainly does nothing to improve the process by which land is valued, is possible only because the county judge has no real power to decide anything.

2) The rebuttal

No evaluation of the role which the county judge has played in the determination of just compensation would be complete without some reply to the criticisms noted above. Therefore some counter arguments ought to be presented here.

Little need be said on the question of bias. As a generalization, it is either not present at all or merely a subconscious element with

little weight. In some instances where it is of greater importance, it can be suggested that (1) the leaning toward the landowner is not entirely objectionable for hard decisions with regard only to the written law and to the items of compensability can make bad justice; (2) the tendency to lean toward the landowner at this stage is no more pronounced then the tendency under the administrative award system to lean toward the state at the original award level. In either case the factfinder is trying to be as fair as he can. The unfairness in either case is a result of human frailty.

With respect to the failure to apply the rules of evidence, it can be said that this need not *necessarily* lead to a departure from the law. To match the episode cited above, another can be presented. In this situation the judge was perfectly willing to permit an obviously incompetent witness to present evidence based on an imagined high-volume gas station. The property in question did not at the time of the suit have a high-volume gas station on the premises. Nor did it seem likely that one would ever be constructed on the premises, because the property was directly between two such stations. The witness had no sales data. Reconstruction cost did not apply. His testimony was not based on a presently existing use. Instead he imagined this use, speculated on the volume of gas which could be sold and applying a capitalization figure arrived at a value for the property. The judge accepted the presentation of this worthless testimony over objection. However, when the witness was finished, the judge subjected the witness to a searching cross examination which was concluded with the witness thoroughly discredited and the judge thoroughly amused. No cross examination by counsel was necessary. All parties concerned realized the judge would pay no heed to what had been said. On the basis of this episode it can be suggested that lax rules of evidence do not invariably lead to findings at odds with the law. In relation to the tendency of some judges to award in effect the costs of an appeal, it can be argued that in view of the award system it is the only just thing to do.

As to the final objection to the presence of the county judge – that he doesn't really decide anything and therefore only makes a real appeal more expensive – it can be observed that a substantial number of cases are settled before the county judge. It must be conceded that when the landowner gets a large increase the state usually will appeal, but when the landowner loses oftentimes he will stop here. It is an indication that he probably will suffer a defeat before a jury also. Therefore the county judge is probably serving as a means of keeping a certain amount of litigation out of the circuit courts.

3) The resolution

This study is concerned primarily with the effects of administration on the reality of legal provisions. For these purposes it can be said that in two respects the county judge system of review imposes certain limits on the written law. Certainly there is some evidence of a tendency to favor the landowner. There is also more than a slight possibility that if a judge accepts testimony which the rules of evidence exclude, he will give some weight to it.

EXHIBIT VI

65-50

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TELEPHONE
WOODLAND 5-7014

September 17, 1965

California Law Revision Commission
30 Crothers Hall
Stanford University
Stanford, California 94305

Attention: John R. McDonough, Esq.

Re: Eminent Domain Statute

Dear Mr. McDonough:

For approximately fifteen years in my misspent life I was an attorney, or in other capacities, for the Minnesota Highway Commission.

I am most interested in your proposed revision of Eminent Domain laws of California. The Minnesota Statutes provide for the appointment of three disinterested appraisers by the Superior Court, and a report of their findings as to valuation to be filed with the Court. For thirty days after the filing, either side may appeal for a trial de novo. Either side may make recommendations for appraisers.

Hearings may be held by the Board if desirable, and all of the costs and expenses as assessed by the Supeior Court are payable by the Highway Department. Thus, condemnation handles most of the cases, and direct buying is done on an emergency or isolated basis.

It gets one away from the frailties of human beings negotiating directly and with perhaps a desire to do an outstanding job on the part of their clients who they interpret to be the Highway Department. In a great measure it removes political influence and attempts at bribery.

Perhaps an examination of the Minnesota Statutes would be of interest, and I would suggest that the best authority I know on the subject is Joseph Bright (aptly named), Legislative Counsel for the State of Minnesota, State Capitol, St. Paul, Minnesota.

Very truly yours,

JOHN K. HASS

JKH/tg

Minn. Stat §§ 117.07 - 117.14

EXHIBIT VII

Minority Reports of Supreme Court's Committee On Eminent Domain

To the Honorable Joseph Weintraub, the Chief Justice, and the Associate Justices of the Supreme Court:

The following report represents the expression of the recommendations of the minority of the members of the Committee on Eminent Domain on the Abolition or Retention of the Commissioner System. A majority of the committee, six members, voted for the retention of the commissioner system. A minority of the committee, five members, voted for the abolition of the commissioner system.

The minority of the committee favor the abolition of the commissioner system for the following reasons:

1. Hearings before Commissioners take much more time and are much more expensive than would be the case if they were conducted by a trial judge in the first instance because Commissioners lack the broad experience of trial judges and are unable to direct trial proceedings with the same expedition and with the same proper application of the rules of evidence.

Property owners, particularly owners of small homes, cannot afford the luxury of paying counsel and expert for two appearances—one before the Commissioners, and again, before the court on appeal.

2. The hearing by the Commissioners under Title 20 has not been and cannot be a judicial proceeding. The Commission usually consists of a lawyer, who has not had judicial experience or training, a real estate broker, and a businessman. The rules of evidence are not judicially applied, extraneous testimony is received "for what it is worth" and much valuable time and money are uselessly expended by both parties. The record is not available on appeal. In important cases, the proceeding before Commissioners is a preliminary skirmish and the decisive battle is fought in the appeal.

This is particularly true in cases in which the Federal Government is supplying a portion of the moneys to acquire the land. Apparently, Federal regulations and practice require that appeals must be taken from Commissioner's award if the award is 10 per cent in excess of the condemnor's appraisal. We are informed that appeals have been taken where this excess amounted to only slightly in excess of $100.

3. The abolition of the commissioner system would expedite the condemnation proceeding and make it a dignified vehicle for the prompt dispensation of justice in a judicial proceeding.

4. Condemnation cases are at least as important as the general run of litigated actions and therefore should have judicial hearing and be determined upon the highest plane. There is no good reason why condemnation actions should not be decided by the most expeditious and effective judicial procedure,—hearing and determination by a trial court applying the same rules of evidence, procedure and substantive law as are applied in other fields of litigation.

The trial of condemnation cases by a Superior Court Judge without the preliminary hearing and appeal to a Superior Court Judge and jury provided by Title 20, is not new in New Jersey procedure.

N. J. S. A. 32:1-35.15 authorizes the Port of New York Authority to exercise the right of eminent domain or condemnation to acquire real property for air terminal purposes by the procedure therein set forth. By other statutes, the same procedure is made available for the acquisition of real property by eminent domain or condemnation for other purposes.

N. J. S. A. 32:1-35.15(i) empowers the Superior Court to fix the amount to be paid for the lands under condemnation. This section provides that:

> "The court shall determine without a jury, and with or without a view of the real property being acquired, the compensation which should justly be made by the Port Authority to the respective owners of such real property, and judgment shall be entered in the amount so determined."

N. J. S. A. 32:1-35.36a is a permissive statute which authorizes the Superior Court Judge to appoint three Commissioners to hold a hearing and to fix such sum, if any, that in their judgment, will represent the fair value of the lands under condemnation. The Judge may review such findings and is not bound thereby but may alter or reject such findings in such manner as will, in his judgment, fairly protect the interests of the parties, and such review may be made either with or without further hearing.

This power to appoint "Advisory Commissioners" has been exercised in only one contested case. Twenty-four cases have been tried under the procedure prescribed by N. J. S. A. 32:1-35.15 in which the Court determined without a jury compensation to be paid by the Port Authority to the respective property owners.

Counsel representing the Port Authority in these cases, who is also a member of this subcommittee, in the light of his experience, strongly recommends the abolition of the commissioner system for the reasons hereinbefore stated.

5. Should it be concluded that the Commissioner system shall be continued, the parties should be permitted to waive such hearings and proceed directly to trial before the court. There is no authority for such waiver in the existing statutes and, without statutory approval, such a waiver might affect title to the lands being condemned.

Respectfully submitted, for the Minority,

By /s/ Russell E. Watson
/s/ Herbert J. Hannoch
/s/ James Rosen

The other Minority members of the subcommittee are John O. Bigelow and Grover C. Richman, Jr.

#36 9/29/65

PROCEDURES FOR ASSESSMENT OF DAMAGES IN EMINENT DOMAIN CASES*

*This study was prepared for the California Law Revision Commission by the staff of the Commission. No part of this study may be published without prior written consent of the Commission.

The Commission assumes no responsibility for any statement made in this study and no statement in this study is to be attributed to the Commission. The Commission's action will be reflected in its own recommendation which will be separate and distinct from this study. The Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature.

Copies of this study are furnished to interested persons solely for the purpose of giving the Commission the benefit of the views of such persons and the study should not be used for any other purpose at this time.

A Study Relating to

PROCEDURES FOR ASSESSMENT OF DAMAGES

IN EMINENT DOMAIN CASES

INTRODUCTION

In attempting to classify the statutes of the various states which deal with the procedures by which damages are assessed in condemnation cases one is confronted with a multitude of provisions which are almost as numerous as the agencies within the states which have the power to condemn property. When Rule 71A of the Federal Rules of Civil Procedure was enacted the Advisory Committee observed in the accompanying note that there were 269 different methods of judicial procedure in different classes of condemnation cases and 56 different methods of nonjudicial or administrative procedure.[1] It is unfortunate to note that since the time of that study, although statutes in various states have undergone many changes, the great variety of methods and requirements still exists.

There has been an attempt in several states to adopt a uniform procedure to deal with all condemnation actions.[1a] In a large number of other states commissions or study groups have been established to study the problem of the great variety of procedures within a particular state, and statutes providing for the adoption of more uniform methods have been presented to the legislatures of several of these states.[1b]

Since it is the desire of the Commission to have some indication of the procedure in the various states this study will attempt only to categorize these statutes under broad headings and to indicate notable variations from the general rule. There is a great deal of overlap but most frequently the

differences between various methods make little difference for purposes of evaluating the merit of the procedure. Further, it should be noted parenthetically that there often appears to be little reason for the variations of procedure between condemning bodies within a particular state. This would appear to depend upon the time in which the various statutes were adopted or the influence a particular group was able to wield in order to obtain unique treatment.[2]

A SURVEY OF THE STATES

The most common method of procedure among the states provides for the filing of a petition by the condemning agency in the local trial court in the county where the property is situated, the appointment by the court of three disinterested freeholders as commissioners or appraisers to determine and award damages, a right to appeal the commissioner's award with a trial de novo before a jury if requested, and finally, a right to appeal from the jury's award to the supreme court of the state. This procedure has been adopted for all or at least a portion of the condemnation situations in 28 states.[3] In some of these states, for example Minnesota, Delaware, Indiana and Kansas, the commissioners are automatically appointed by the court upon the filing of the petition while in others--such as Pennsylvania--the commission procedure is requested by petition and may be waived by agreement of the parties. In Michigan the court may, with or without the request of the parties, order the jury trial without the prior commission procedure.

The required qualifications of the commissioners and the method by which they are chosen also varies significantly. Many of the states merely require that the court appoint three disinterested free holders who are residents of

the county in which the property is situated. In about six states the parties each appoint an equal number and the appointed commissioners choose another. In several states the court puts forth a list of 9 or 13 and the parties have a right to exercise preemptory challenges as in choosing a jury.

In special situations there may be unique methods of appointing commissioners. For example in Iowa, when the state is the condemnor, the Chief Justice appoints the commissioner.

In Wisconsin, the commissioners are a permanent group of a specified number in each county who are appointed for three year terms by the circuit judge. Not more than one-third of the commissioners may be attorneys. The chairman of the commissioners, who is elected by the others, chooses from the panel the three who will serve in a particular case.[4]

In Wyoming, in cases involving highways, the appraisers are selected by the County Board of Commissioners (similar to California Board of Supervisors).[5] The qualifications for commissioners vary from the simple statement that he must be a disinterested freeholder to the requirement that he is worth $2,500 over and above debts in New Mexico,[6] or the requirement in Pennsylvania that one commissioner be an attorney, or the requirement in Maryland that where property is being condemned for road purposes the commission be composed of one engineer, one lawyer and one farmer.[7]

In the bulk of the states using commissioners they are required to hold hearings, take evidence and submit a written report of their award. In most cases they can or must view property. In Pennsylvania the attorney member must view, although a majority viewing is generally all that is required in other states. A majority vote will rule in most cases. A hearing on the

commissioner's report is required in most states.

The commissioner's award is most frequently disregarded entirely when there is a request for a jury trial and cannot be admitted in evidence since there is a trial de novo by the jury or court. An interesting variation from this procedure is found in Virginia where the commissioner's report is treated in the same manner as a jury verdict. There is no right to jury trial except in special cases (e.g. condemnation for public parks [8]) and the court is required to confirm the commissioners' report unless it finds fraud, corruption or improper conduct whereupon a new trial is had with new commissioners appointed.[9] In Colorado an initial choice is made by the property owner between commissioners or a jury.[10] In some states commissioners are used when the state itself is the condemnor but not where other condemnors are involved,[11] while in others[12] commissioners are used in all cases except where public works or the state or federal government is the condemnor.[13]

The procedure adopted by a large number of the other states involves a trial by jury on the question of damages with a right to appeal the jury verdict to a higher court. This method is used for at least some of the condemnation situations or as an alternative choice in 18 states.[14] In most of these states the jury must be specifically requested. If a jury is not specifically requested the court may appoint a special master (e.g., Arizona) as under the Federal Rules of Civil Procedure or may proceed to trial before the court. Under the Alaska statute the court appoints the special master after commencement of the action and the jury trial is in effect an appeal from the master's report.[15]

In most states where the jury makes the initial determination of damages there is a specific right to a jury view with the parties present.

Mississippi has a unique provision for a special court of eminent domain consisting of a justice of the peace and a jury. A trial is had with this jury and there is a right of appeal to the circuit court and a trial de novo with a jury.[16] In several states the parties make special request for the appointment of a master.[17]

In a few states there is no right to a jury trial at any stage of the proceedings.[18] Here the award is assessed by commissioners with a right to appeal to a higher court. In Louisiana the trial is by the court except for highway cases in which there is a procedure for determination by commissioners. In New York all cases involving condemnation by the state of New York are tried by a special procedure in the Court of Claims before the court without a jury with a right to appeal to the Appellate Division of the New York Supreme Court sitting in banco.

Finally it should be noted that although there has been and continues to be a considerable amount of study throughout the states with a view towards uniformity of procedure within a particular state, the new and proposed statutes of the states continue to represent a great variety of procedures among the states. For example, Pennsylvania has adopted a procedure for original assessment by a board of viewers, with a right to a jury trial on appeal and a further appeal to the Supreme Court. Maryland has provided for a uniform procedure with a jury trial, if a jury is requested as the first proceeding and Kansas, in 1963, amended their statute to eliminate a prior appraisal system. Connecticut proposes a uniform system whereby the award is made by a court appointed state referee with the court either approving the report or appointing a new referee and a right to appeal to the Supreme Court of Errors. New Jersey has a pending proposed statute which would provide

for the more common commissioner, appeal with a jury trial de novo and appeal from there to the New Jersey Supreme Court system. It would appear that despite the large amount of activity in the area of reform of assessment procedures there will continue to be a wide range of varying procedures among the states.

FOOTNOTES

1 Notes of the Advisory Committee on Rules of Civil Procedure, p.4356 following Rule 71A, 28 U.S.C. §2072 (1952).

1a See e.g., Kansas Stats. Annot.,§§ 26-501-26-508., Perdon's Penna. Stats. Annot., §§ 502-523; West's Wisc. Stats., §§32.05-32.08; Annot. Code of Md., Art. 33A, Subtitle U of Md. Rules Civ. Proc., Art. 89B (note that Maryland still maintains a different procedure for highways).

1b See, e.g., An Act Revising Eminent Domain Statutes, House Bill No. 4772, Senate Bill 1368, Connecticut, 1965; Proposed Eminent Domain Act of 1966, Eminent Domain Revision Commission, New Jersey (1966).

2. A glaring example of this appears in the state of Alabama where commissioners for assessment of damages are appointed by the judge of the probate court, the commissioners to have the same qualifications as jurors, except in counties with populations from 51,000 to 56,000 and 46,500 to 48,000 where the commissioners must be members of the County Board of Equalization.

3. Code of Ala., Tit. 19 §§ 10, 11, 17, 35, 38, 54; Colo. Rev. Stats., §§ 50-1-1--50-1-13, 50-3-1, 50-6-2--50-6-20; Conn. Gen. Stats. Annot.,§48-12; Code of Ga. Annot., §§ 36-313--36-603, 36-701--36-805; Idaho Code,§§ 7-706--7-717; Burns Ind. Stats. Annot., §§ 3-1702--3-1722; Iowa Stats. Annot., §§ 472.3-472.18; Kan. Stats. Annot., §§ 26-501--26-508, 60-2101; Ken. Rev. Stats., §§ 177.083-177.087, 416.230-416.310; Me. Rev. Stats. Annot., Tit. 35 §§ 3241-3252, Tit. 1 § 813; Annot. Code of Md., Art. 33A, Subtitle U of Md. Rules Civ. Proc., Art. 89B; Mich. Stats. Annot., §§ 8.3, 8.109-8.114, § 2133; Minn. Stats. Annot., §§ 117.07-117.14; Rev. Codes of Montana, §§ 93-9912--93-9915;

Vernon's Annot. Mo. Stats., §§ 523.010-523.060, 74.515; N.J. Stats. Annot., Tit. 20: 1-2--20:1-26; N.H. Rev. Stats. Annot., §§ 4:30-4:35, 371:15; N.M. Stats. §§ 22-9-1--22-9-33; Rev. Stats. of Neb. §§ 76-704--76-717, 77-719; Gen. Stat. N.C. §§ 40-12--40-20; Okla. Stats. Annot., Tit. 27, § 2, Tit. 66, §§ 53-56; Perdon's Penna. Stats. Annot., §§ 502-523; Gen. Laws of S.C. §§ 33-128, 25-55--25-58, 25-162--25-167; Vernon's Tex. Civ. Stats., Art. 3264, §§ 1-4, Art. 3264a-3268; Tenn. Code Annot., §§ 23-1401--23-1418; W.Va. Code, §§ 5372-5382; West's Wisc. Stats., §§ 32.05-32.08; Wyoming Stats., §§ 533-556.

4 West's Wisc. Stats. Annot., § 32.08.

5 Wyoming Stats., § 587.

6 N.M. Stats Annot., § 22-9-33.

7 Annot. Code of Md., Art. 89B, § 17.

8 Code of Va., §§ 25-182, 25-46.19.

9 Code of Va., § 25-46.21.

10 Colo. Rev. Stats., § 50-1-6.

11 Mass. and N.H.

12 S.C.

13 Ky. has no commissioners where city parks or condemnation by the telephone company is involved. Ky. Rev. Stats., §§ 416.120, 150-200.

14 Ark. Stats. Annot., §§ 35-101, 35-201-310, 35-406, 35-806; Ariz. Rev. Stats., §§ 12-1116-1122, 12-1146; Fla. Stats. Annot., §§ 73.01-73.16; Rev. Laws of Hawaii, §§ 8-9 - 8-10; Ill. Annot. Stats., Ch. 47, §§ 1-12; Annot. Laws of Mass., Ch. 29, §§ 14-22 (must make special request for jury); Annot. Code of Md., Art. 33A, § 2, Md. Rules of Civ. Proc. Subtitle U; Miss. Code Annot., §§ 2750-2771, 8319;

Nev. Rev. Stats., §§ 37.060-37.110, 37-200; N.D. Century Code §§ 32-15-17--32-15-34; Page's Ohio Rev. Codes Annot., §§ 719.05-719.20, 2709.06-2709.29; Oregon Rev. Stats. §§ 35.010-35.130, 281.220; Gen. Laws of R.I., §§ 24-1-3--24-1-9, 37-6-1--37-6-17, 45-32-34; S.D. Code of 1939 §§ 37.40, 34.4001-34.4012; Utah Code Annot., §§ 78-13-1, 18-34-16; Utah Const. Art. I, § 10; Vt. Stats Annot., Tit. 19, §§ 229-232; Wash. Stats. Annot., §§ 8.04.010-8.04.150, 8.08.080-8.08-050.

15 Alaska Stats., §§ 09.55.290-09.55.320.

16 Miss. Stats. Annot., §§ 2750-2771.

17 Ga. (Roads); Utah; N.C. (Public Works).

18 Delaware Code Annot., §§ 6102-6115; West's La. Stats. Annot., Art. 2633, Art. 19.4; Consol. Laws of N.Y., Ch. 73 (Condemnation Law, Laws of 1920, Ch. 923.) Art. 2, §§ 4-19.

19 West's La. Stats. Annot., §§ 19.51-19.66.