

12/18/68

First Supplement to Memorandum 69-17

Subject: Agenda Topics

With reference to the study of condemnation law and procedure, I think that you will be interested in the attached letter and the enclosures from the Reader's Digest and the New York Times sent with the letter.

Respectfully submitted,

John H. DeMouly
Executive Secretary

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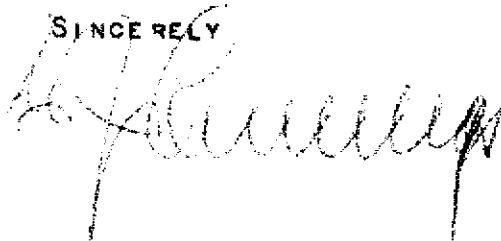
ATT: MR. J. H. DEMOULLY.

DEAR MR. DEMOULLY:

ENCLOSED A NEWS-CLIP I
THAT WOULD BE OF INTEREST TO THE GROUP ON
THIS SUBJECT.

I HOPE YOU ARE PROSPEROUS IN HEALTH
AND FORTUNE.

SINCERELY



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Eminent Domain

Your Castle vs. The Bulldozer

"EMINENT DOMAIN" is a high-sounding expression for what often appears to be high-handed action.

Essentially the words mean the right of the Government or State or other legally constituted authority, or even a private corporation, to seize a person's property for public use.

Ever since the Magna Carta (and even before) the right of private property has been recognized. As one legal source puts it, a person is entitled to the "free use, enjoyment, disposal of all his acquisitions without any control or diminution save only by the laws of the land."

Under the "laws of the land" the rule of eminent domain prevails. The owner's consent is not required and his objections are to no avail as long as property is taken for public use. His only argument can be over the fair market value he should receive.

Unfortunately, what constitutes public use has been so liberalized that the property owner can be beset on all sides. Families in Bucks County, Pa., are faced with the prospect of a State highway going through lush farmland at the same time an electric utility wants other parts of the same properties for a power line right of way.

Slum clearance, streets, docks, schools, dams, flood control projects, public markets are examples of public use.

Financial Editor Sidney P. Allen is on vacation.

Even public parking lots have gotten approval for land seizures. In some States only cemeteries are exempt.

Generally the private property owner, seeking to stave off seizure of his property, cannot even claim effectively; another site might serve just as well and cause less disruption.

However, he is entitled to "just" compensation. Most initial offers tend to be low. If so he can demand, depending on State law, a valuation by an impartial commission, usually consisting of three experts. If either side objects to the value set, the landowner may go to court where a jury decides the value of his land.

* * *

LOSING ONE'S HOME (or even part of it) to a bulldozer is never pleasant. Tilted against impossible odds can affect property owners psychologically, not to mention financially.

Sometimes, however, owners fare reasonably well. Take Edward Nettleton of Morristown, N.J. As chairman of the Morristown planning board a few years ago he was called to a meeting in Trenton to hear the State's plans for a new road, Route 287. He found that his house was slated to be taken.

Efforts failed to change the route of the road through Morristown, on the grounds of destruction of historic property.

Nettleton made sure the local newspaper kept up with the plight of property owners and its columns were peppered with letters to the editor. Meanwhile, he hired a reputable real estate man to appraise his house on Morristown's South street, getting a value of \$52,500. The State Highway Commission offered him \$56,500.

Nettleton, an advertising executive and consultant for the New Yorker magazine, accepted the offer and received one-third down payment in cash. He wrote to Governor Richard Hughes of New Jersey for an extension of time to get out of his house, and was granted a month extra.

* * *

IF NETTLETON fared reasonably well, others in the area believe they did not. For example, a family living nearby was told they would lose only part of their property — a driveway, a garage and most of their lawn, leaving the house within a few feet of a busy entrance to the new highway.

After a very low offer from the State, they hired a lawyer and asked a valuation by commission. The commission doubled the amount offered by the State, whereupon the State objected and took the matter to court. The jury, not permitted to know the commission's valuation, decided on an amount only about \$3000 above the State's original offer. After expenses (lawyer's fees and expert testimony by appraisers) the couple netted a mere \$1000 more than the State's original offer, or about one-fifth of the estimated market value of the house before loss of the driveway, garage and lawn.

They felt bitter and frustrated about the decision, yet they advise others to fight all the way. *New York Times*

With shocking frequency—and often tragic results—owners are forced to sell property to government agencies at ridiculously deflated prices. We must reform the system *now*

The Great Land-Grab Scandal

BY WILLIAM SCHULZ

SEBASTIAN PATANIA and his wife had lived in their neat two-story frame house for nearly 40 years, when the Monterey, Calif., Urban Renewal Agency ordered them out. Five years earlier the Patanias had turned down an offer of \$25,000 for their property. Now they were told that they must accept a "fair market" settlement of \$12,000. Their home would be razed and the property sold to a private developer.

"Find me a comparable house for \$12,000," Patania said. Renewal officials admitted that they could not. "Then move this one to a new location," he begged. Impossible, he was told. Finally, in February 1966, when the Patanias refused to leave, the sheriff was called in. As television cameras whirred, the husband and

wife were forcibly evicted. Then a bulldozer mowed down the home.

From coast to coast, chaotic land-acquisition statutes—and the high-handed, often callous bureaucrats who carry them out—are imposing severe personal and financial hardships upon countless citizens, all in the name of progress. No one disputes the government's authority to take private property for public purpose, the right of eminent domain. But, as the American Bar Association has noted, our present statutes are the product of "rules laid down in a bygone, comparatively uncomplicated age" when land was plentiful and government seizures were few. Now, as demands grow for public projects—from jetports to dams to interstate highways—the awesome

power of eminent domain threatens millions.

Each year the government transfers from private to public ownership enough land to blanket all of Delaware, and the trend is upward. Sen. Edmund Muskie recently predicted that, within the next decade, federal bulldozers will probably dislocate more than a million families and individuals, 180,000 businesses and 40,000 farm operators. Dozens of government agencies, from the Atomic Energy Commission to the U.S. Department of Defense to the Fish and Wildlife Service, as well as hundreds of state and local bodies operating with federal dollars, have the power to take private property.

Incredibly, Congress has yet to set down uniform regulations covering federal land acquisition. Procedures vary from agency to agency—and even within agencies—with the result that landowners are often denied the “just compensation” guaranteed them by the Constitution, or are thrown out of business permanently. Declares Oscar Beasley, Jr., one of the country’s leading land appraisers, “The manner in which land is grabbed from citizens is a national disgrace.”

Anemic Appraisals. Talk with residents of the Somerville, Texas, area, where the U.S. Army Corps of Engineers acquired more than 30,000 acres for a dam and reservoir on Yegua Creek. These are ranchers and farmers who have been on this land all their lives. One day, rancher

Harvey Fry (not his real name) looked out his window and saw a half dozen appraisers driving stakes into his ground. “They never even asked permission,” Fry recalls. Professional negotiators followed, and chunks of three counties were soon in federal hands.

Today bitterness is widespread. “They assured me that they were offering me the going price,” one farmer told me recently. “It never occurred to me that they’d be lying.” Corps negotiators paid him an average of \$176 an acre. But that was hardly the “going price.” Other landowners drove harder bargains, were paid \$325 and \$340 an acre for comparable land.

Corps officials say that no landowner is offered less than what his land is worth. But the record shows otherwise. Willie Neinast, a 69-year-old retired grocer, balked when his land was appraised at \$190 an acre. “This land’s been supporting my people for longer than I’m alive,” he said. “I know what it’s worth.”

Ignoring Neinast’s protests, the Corps in February 1964 condemned his property for \$168 an acre. Ten months later a court-appointed commission reviewed the case and awarded Neinast \$291 an acre, 75-percent more than the Corps’ condemning price. Even then, not until October 1967—nearly three years later—did Neinast finally receive full compensation from the government.

Too Little, Too Late. Neinast fared better than Emmie and Wil-

liam Bell, an elderly couple who farmed a small homestead in Brookeland, 85 miles north of Beaumont, Texas. In July 1960 a Corps negotiator informed the Bells that the government wanted their land for the \$61-million Sam Rayburn Dam and Reservoir. The Bells, who had lived on the land for more than 50 years, rejected the government's offer as too little. "There's no way we can replace this property for what the Corps wants to give us," Bell said.

Ten times the negotiator returned to the Bells' home to pressure them into selling. Finally he sat himself down in their living room and made it clear to them that he was staying until they signed. Several hours later, when the 84-year-old Bell had to leave to feed the chickens and milk the cows, his wife said to him, "It looks like we'll have to sign or he won't ever leave." The Bells signed over their entire homestead—92 acres and their home—for \$11,900. But they immediately wrote to the Corps saying that they didn't want to go through with the sale, that they had signed under duress.

When the case finally came to federal court in 1966, Judge Joe J. Fisher was bitterly critical of the Corps' tactics. "I have never listened to evidence that has caused the Court more displeasure," he said. "I feel that, as a representative of the government, I should apologize for the actions of the agents representing the government." A jury brought in an award of \$19,720, two-thirds more than the Corps' offer. But it did

the Bells little good. Mrs. Bell had died in 1965, and Bell died shortly after the final payment was made.

Highway Robbery. The Corps is by no means the only offender. The state highway departments which buy up land for the 42,500-mile Interstate Highway Program (financed 90 percent by the federal government) also often victimize landowners.

Travel across the rolling countryside of Virginia's Shenandoah County and you learn quickly the heartache and anguish suffered by people who live in the path of a proposed highway. Agents for the Virginia Highway Department moved into Shenandoah in 1962 to acquire land for Interstate 81. When John G. Miller, editor of the *Shenandoah Valley*, learned of the prices offered local landowners, he was outraged. "This is criminal," he thundered, and then week after week in his newspaper encouraged residents to reject inadequate offers and fight for just compensation in court.

Three out of every five landowners did just that. They often had to wait long, agonizing periods before getting their hearing from a court-appointed commission (in fact, some 20 Shenandoah County landowners, whose property was taken in 1963 and 1964, have not yet received commission hearings). But the commission has found that in 68 of 70 cases the highway agents attempted to underpay property owners. Total commission awards were 71-percent higher than the Highway Department's offers.

Even Shenandoah County residents who won their court battles have not always made up their losses. Interstate 81 cut a 25.9-acre swath through Earl Wilkins' small farm, dividing his remaining 50 acres into three separate tracts. Forced out of business, the 49-year-old farmer operated a restaurant for more than two years while he waited for his hearing. The commission finally awarded him \$19,932 for land and damages—more than two and a half times the Highway Department's offer. Thus vindicated, he was able to purchase adjoining land and resume farming. But legal fees ate up 25 percent of the difference between what the Highway Department offered and what the commission finally awarded him. "I had to pay pretty near \$4000 to fight them," Wilkins said, shaking his head dejectedly.

Price of Progress. Even greater inequities can be found in the nation's cities. In Nashville, Tenn., an interstate highway is wiping out or seriously damaging about three quarters of that city's Negro-owned businesses. For many, relocation is simply impossible. "What are we supposed to do?" demands one angry shopkeeper. "Lie down and die?"

Similar questions are asked from Boston to San Francisco. Take Emerich Jezek, owner of a small radio-parts outlet in the Bronx, N.Y. Jezek had occupied the same store for 13 years when the government seized the building for a giant postal complex, to be named in honor of

the late political boss, Rep. Charles Buckley.

Jezek's old rent was \$465 a month. He now pays close to \$800 a month for a store far smaller. He received nothing for moving or the myriad expenses of relocating. For example, he had to leave behind a \$1000 neon sign, worthless in his new location. He had to purchase new fixtures, from shelving to a burglar alarm. All in all, he lost \$10,000.

A government official with whom I talked shrugged off the plight of those like Emerich Jezek. "I may sound cynical," he conceded, "but this is a price that we pay for progress."

The price may be too high. Studies show that nearly a quarter of the businesses shut down by the Interstate Highway Program never reopen, and more than a third uprooted by urban renewal discontinue their operations. And Harvard Medical School experts, studying Boston's mammoth West End renewal project, concluded: "When a working-class community is wiped out by a redevelopment project, many of the people who lived there grieve as deeply as they would over the death of a husband or a wife. This general sense of loss persists in some cases for at least two years, threatens the emotional health and social functioning of those afflicted, and brings an increase in mental illness."

"There's no doubt that for too long we have treated people shabbily," concedes a top official of the Department of Housing and Urban

Development. "In our zeal to remake cities, to improve the general welfare, we have pushed around the very people who need help most."

Bills Against Bulldozers. Clearly, drastic reforms are needed. One sound legislative proposal, introduced by Senator Muskie, would establish a "uniform policy for the fair and equitable treatment" of those displaced by the federal bulldozer. This would prevent such inconsistencies as that which took place in Roxbury, Mass. Here, on one side of a street, buildings were being razed by the local urban-renewal agency. On the other, property had been acquired by highway engineers for widening the road. Those businesses displaced by urban renewal were eligible for \$25,000 in moving expenses; those shut down by the highway project were limited to \$3000. To correct such inequities, the Senate passed the Muskie proposal last summer, but it was not acted upon by the House. It should be reconsidered and passed without delay.

Several members of Congress have introduced bills to prohibit agencies from acquiring land at less than its appraised value. According to a 1964 House subcommittee report on land acquisition over a three-year period, half the purchases by the

National Park Service, 23 percent of those by the Corps of Engineers, and 34 percent of those by agencies building low-rent public housing were made below official appraisals.

Also needed is the legislation introduced by Sen. Wayne Morse, and supported by the American Bar Association, which would require the government to pay the costs of the landowner's litigation when a court rules in his favor. "Only then can the dispossessed receive full value for their land," Morse says.

Some legislative progress has been made, but in only two areas. Earlier this year, Congress enacted legislation that increased financial aid to anyone forced to move because of the federal-highway or urban-renewal program.

Much more must be done. As Sidney Z. Searles, a nationally renowned attorney in land condemnation, puts it: "At a time when government is spending billions to end poverty for some, it is jeopardizing the economic well-being of countless others. We can postpone no longer what is desperately needed—a complete overhaul of our outmoded laws of eminent domain."