

Senator MUSKIE. From your experience in Newark, what has been the effect of fair market value concept on these land takings?

Mr. STERNLIEB. I think the fair market concept has a deceptive sound ring to it. By the very definition of fair market, we all believe it is a market, and we all believe it is fair. I think, however, its reality is that there typically is no market. Technically, the concept of market refers to a willing buyer and a willing seller.

Now, by the very definition of the fact that I am not in the market this means that market prices, as far as I am concerned, do not make a market which attracts me. That the sum of my feelings, affections, inertia, desire, are such that I want to stay where I am rather than sell to you. There is no one moment that all the properties in an area are for sale.

Now, the Government comes in and says at a moment of time we are going to have a market, fellows, and do you know what is going to determine that market? The fellows who did not want to stay, the last sales in the area.

Now, by the very definition of these last comparable sales, these were the people who wanted to sell, and by the very definition that was not one of the sellers, there are sales that have no relevance to me.

Now, this is perhaps overly logistic and conceptual, but let us turn to the owner.

The fair market, at best, in concept, should be a fair market which permits him to reproduce that which he has given up, and the money merely becomes a facilitating means of exchange. The basic fact of the market is that all too frequently this simply is not the case, that in order to be a buyer on an open market rather than a seller on a closed market, he must pay more.

Now, there may simply not be available the same type of facility, the same type of conveniences that he enjoyed before.

In business we say "Well, that is his tough luck," but it seems to me that in the Government-person relationship, we cannot say that. We have a unique responsibility over and above the general concept of a fair market, to provide at least fair market to the individual. It is not the individual who is profited by this program, it is the individual who is paying a very substantial part of the price for the program which has universal application, and it seems to me that the Government must bear the brunt of defending its payments.

Senator MUSKIE. What standards of measurement can be used for establishing the amount of these payments?

Mr. STERNLIEB. I think here we have to look into the reality of where will this individual go, what will it actually take him to get there, to be reestablished, to be made whole. We have to accept the fact that we have cut, at the very least, significant days out of this individual's enjoyment of his facilities, we have put him to considerable difficulty, not uncommonly, particularly amongst people who are not too learned. We have forced him to go to an agent, whether it be a lawyer, a consultant, or a confidant, and pay significant fees because of his own uncertainties. I think all of these have to be taken into account, and to the degree that we have distressed him, let me repeat again, we must make him whole. That is our basic responsibility.

Senator MUSKIE. This could be a case-by-case test?