

same conclusion. This committee made an exhaustive study of Federal condemnation problems generally as a basis for formulating what has become Rule 71A of the Federal Rules of Civil Procedure. That rule—which also had the endorsement of the American Bar Association—expressly preserves the commission system in TVA cases and the somewhat similar system in effect in the District of Columbia; and it also gives the Federal district courts discretion, because of the character, location or quantity of the property to be condemned, or for other reasons in the interest of justice, to refer the issue of just compensation to commissioners instead of juries in other Federal condemnation cases as well.

The committee, as they explained in their March 1951 report:

* * * wrote every Federal judge who had ever sat in a TVA condemnation case, asking his views as to whether the commission system is satisfactory and whether a jury system should be preferred. Of 21 responses from the judges 17 approved the commission system and opposed the substitution of a jury system for the TVA. Many of the judges went further and opposed the use of juries in any condemnation cases. Three of the judges preferred the jury system, and one dealt only with the TVA provision for a three-judge district court.

The committee went on to state:

The reasons which convinced the Advisory Committee that the use of commissioners instead of juries is desirable in TVA cases were these:

1. The TVA condemns large areas of land of similar kind, involving many owners. Uniformity in awards is essential. The commission system tends to prevent discrimination and provide for uniformity in compensation. The jury system tends to lack uniformity. Once a reasonable and uniform standard of values for the area has been settled by a commission, litigation ends and settlements result.
2. Where large areas are involved many small landowners reside at great distances from the place where a court sits. It is a great hardship on humble people to have to travel long distances to attend a jury trial. A commission may travel around and receive the evidence of the owner near his home.
3. It is impracticable to take juries long distances to view the premises.
4. If the cases are tried by juries the burden on the time of the courts is excessive.

To us, the single most important advantage of the commission system is the opportunity the commissioners have to view the property being condemned, the community in which it is located, and other properties which have recently been sold and as to which evidence of sales prices has been introduced at the hearing. As the Advisory Committee pointed out, juries normally cannot be given a similar opportunity. In a condemnation case, the triers of fact, whether a commission or a jury, will almost always hear testimony by two groups of expert witnesses who present widely differing estimates of value. These estimates will usually be based on actual sales prices of other tracts which the witnesses claim are comparable to the tract being condemned. The obvious and best way in which to test the relative reliability of the two groups of experts is for the triers of the case to view the property condemned, the community in which it is located, and the other tracts claimed to be comparable.

I am sure no one here, for example, would set a price at which he would sell land without looking at it and at the community in which it is situated. Yet this is what is expected of jurors. They are not experts in land values; most juries represent a cross section of society—housewives, office workers and so on—who have had no experience