

whatever with land values, soil classifications, land uses, and other factors involved in a condemnation proceeding. Yet, without viewing any of the properties involved, they must nevertheless reach a unanimous determination as to value, based on acceptance of the estimates of one or the other group of experts or on some kind of compromise between them.

Such a procedure seems to us much less likely than the commission system to produce informed and just results. It is also much less likely to result in consistent treatment of landowner. As Mr. Wagner noted in his testimony, and as was also pointed out by the Advisory Committee, consistency of treatment is particularly important in the case of a regional agency like TVA, which carries on a program within a single region. The difficulties which a jury system presents from that standpoint have often been pointed out. For example, Judge John Paul, who served for 27 years as Federal district judge for the western district of Virginia, stated in a law review article published in 1958:

In such cases each owner is entitled to a separate trial and by a separate jury. This may result in the widest sort of inconsistency in the awards. For example, one jury may fix a valuation on tract X in an amount decidedly larger than another jury may value tract Y: whereas it is common knowledge in the community that tract Y is the more valuable. Such inconsistencies lead to dissatisfaction among landowners and distrust and criticism of the processes of the courts. Paul, *Condemnation Procedures Under Federal Rule 71A*, 43 Iowa L. Rev. 231, 237 (1958).

As also noted by the Advisory Committee, a jury trial system would be likely to produce considerable delay. Courts must fit jury trials into crowded dockets when all cases are set at the beginning of the term. If the case cannot be tried at the time scheduled, it must be passed and usually reset at the next term. In this connection, I should like to quote from an article written in 1961 for the Vanderbilt Law Review by Judge William E. Miller of the middle district of Tennessee, who has had a great deal of experience with condemnation cases brought to acquire land for Corps of Engineers projects as well as for TVA projects. Judge Miller expressed his views as follows:

I have in my files copies of letters from twenty-three district judges who expressed their views during recent congressional consideration of appropriation acts. Twenty-two of those judges favor the use of commissioners in appropriate cases * * *. One judge, speaking of a single project in his district comprising 3,000 tracts, observed that "with a small percentage of settlements out of Court, a Judge spending all of his time trying these tracts to a jury would devote approximately ten years of his judicial life to the disposition of cases in just this one project. There would, by necessity, be a long delay in the disposition of these cases. Landowners would be required to wait several years at least before receiving all of their money which would be a great injustice" * * *. The consensus of the judges who have appointed commissioners under Rule 71A(h) is that (1) the commission method is more expeditious and less expensive to all parties than jury trials, and (2) that commission awards are generally consistent, thus eliminating the wide disparity often found in jury verdicts. Miller, *Federal and State Condemnation Proceedings—Procedure and Statutory Background*, 14 Vand. L. Rev. 1085, 1093-94 (1961).

Since Judge Miller had expressed these views in a published article, we thought it appropriate to ask him a few months ago whether he had in any way changed his views since the article was written. He told us that he had not, and authorized us to so state.

As I mentioned earlier, the Supreme Court Advisory Committee and the Supreme Court itself were so impressed with the desirability