

Acquisitions for transmission lines, rights-of-way, I wouldn't know how to project that, Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. JONES. Mr. Schwengel.

Mr. SCHWENGEL. Mr. Chairman, this is a very interesting discussion. Let me ask you something, and I have been following lately developments on the treatment of our Indians and I think the history shows the Commission set the price and wrote the treaties on certain lands that we acquired from the Indians.

Now, these people are coming back and asking for additional millions of dollars of money for the Indians who we determine are people who have not been fairly treated. These are all cases that resulted from Commission action and in the Interior Department, so I suggest that maybe sometime in the future your case may be in jeopardy because of the system we have.

Mr. JONES. Any other questions?

Mr. SNYDER. Yes; I want to ask some more questions.

As I understand it, you refer to the fact that after the Commissioners have made a determination it is tried de novo. The de novo hearing really does not constitute the taking of the previous record, but in this case they apparently do that and you have made some point that your jurors were not experts and this was a deterrent to using the jury system.

Is it then your conclusion that the Federal judges are experts?

Mr. MARQUIS. I would say the Federal judges have had a lot more experience than the average juror.

Mr. SNYDER. In what type of cases do they take additional evidence?

Mr. MARQUIS. I would think in probably a relatively small percent, well under 50 percent.

Mr. SNYDER. In other words, in most cases they do decide based on the record.

Mr. MARQUIS. Based on the record.

Mr. SNYDER. And that is not de novo. It is an appellant type of procedure.

Mr. MARQUIS. They are not bound by the Commissioners' award.

Mr. SNYDER. I would think if it was an error or something based on an accepted legal definition of de novo they do not try de novo then.

Mr. MARQUIS. Well, they certainly review the record completely and are not bound by the Commissioners' determination.

Mr. SNYDER. But that is an appellate procedure.

Mr. MARQUIS. They take the same record but they may get a different result.

Mr. SNYDER. No; that is an appellate procedure then.

Mr. MARQUIS. This is quite different from the normal appellate procedure. Where you have a jury and are under rule 71(a), the normal procedure is that if there is no obvious error in the record, if there is no technical error or anything of that sort, then the verdict must be affirmed.

Mr. SNYDER. Is that your definition of de novo?

Mr. MARQUIS. No, of course, that is not de novo. I am trying to point out the difference, sir, under our system. Under our system the judge may take the record and he may, if he wishes, hear additional evi-