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IS EVERYONE PAYING THEIR FAIR SHARE? AN ANALYSIS OF TAXPAYERS' ACTIONS TO EQUALIZE TAXES*

JANE MORAN**

An assessor violates the law, and a portion of the taxpayers receive an advantage from such violation. When this occurs, other taxpayers naturally feel that they should be accorded the same treatment. Must the courts insist on, require and direct other violations of law by tax officials? Suppose next year the assessor of any county, or of all the counties in the state, decides to assess real and personal property of individuals at fifty percent of its true and actual value, would not the owners of public utilities, banks, building and loan associations and federal savings and loan associations be entitled to the same treatment? Is it not time to find some remedy for this situation, other than one involving an appeal to the courts to enforce a system of assessments for tax purposes which is plainly in violation of the law as written? It would be refreshing, indeed, if some taxpayer, or a group of taxpayers, would sponsor an effort to see that our tax laws are obeyed, rather than to take advantage of their open violation. It is not for this court to point out ways by which regard for law may be required of public officials, but they exist. It is probably too much to expect that they will ever be used.¹

I. INTRODUCTION

The culture of West Virginia has been forged by the cross currents of drastic and conflicting extremes. A state of extraordinary natural wealth,² West Virginia continues to struggle to meet acceptable standards of living for its populace.³ The coal rich southern counties experience particular deprivation and as a result, the state produces a disproportionate share of undereducated⁴

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¹ *In re Charleston Federal Savings and Loan Ass'n*, 126 W. Va. 506, 521, 30 S.E.2d 513, 520 (1944).

² See U.S. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 1978 (99th Ed. 1978) at 758. In 1976, West Virginia ranked third among the states in mineral production, producing \$3,498 million of the \$69,178 million worth of the minerals produced in the United States during that year.

³ *Id.* at 449. In 1977, West Virginia ranked 36th in personal income per capita among the states.

⁴ See SPRECHER, CURRENT STATISTICAL PROFILES OF THE 50 STATES, 118 (1972). West Virginia ranked 46th among the states in expenditures per pupil in the year 1972.

people who suffer congenital maladies⁵ and find little relief through the inadequate health care available to them.⁶ The birthplace of one of the most dynamic and influential labor unions in the country, West Virginia has a history of political factionalism which has been analyzed by the federal and state courts in several cases involving voting irregularities.⁷ The corporations of southern West Virginia maintain massive holdings of undeveloped surface interests in land⁸ while efforts of the state to provide adequate housing for the people—including the employees of the corporations—are delayed into obscurity as a result of the inability of the state offices to acquire even small plots of land for development.⁹

It was in this setting that a local citizens' group, the Tug Valley Recovery Center (hereinafter referred to as TVRC), initiated a taxpayers' action in February, 1978. TVRC and its counsel went before the Mingo County Board of Equalization and Review and charged that the owners of coal producing property in Mingo County were paying less than their fair share of property taxes. TVRC members did not protest the level of their own taxes, they simply demanded that the corporation pay their reasonable equivalent. As evidence of

⁵ See U.S. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 1981 (102nd Ed. 1981) at 74.

Comparative Death Rates Per 1,000 Deaths

	Heart Disease	Malignancies	Cerebro-Vascular	Pneumonia
U.S.	334.3	181.9	80.5	26.7
W. Va.	431.0	197.8	88.7	31.0
	Aterio Sclerosis	Diabetes Mellitus	Early Infancy Diseases	
U.S.	13.3	15.5	10.1	
W. Va.	14.8	17.6	11.8	

⁶ *Id.* at 106. In 1979 there were 133 non-federal physicians per 100,000 West Virginia population compared to a national rate of 181 per 100,000 population.

⁷ See *Brooks v. Crum*, 216 S.E.2d 220 (W. Va. 1975); *State v. Risk*, 139 W. Va. 380, 80 S.E.2d 226 (1954); *State ex rel. Hammond v. Hatfield*, 137 W. Va. 407, 71 S.E.2d 807 (1952); *State v. Simon*, 132 W. Va. 322, 52 S.E.2d 725 (1949); *Hatfield v. Scaggs*, 101 W. Va. 425, 133 S.E. 109 (1926); *Sutherland v. Miller*, 79 W. Va. 796, 91 S.E. 993 (1917); *Osborne v. Kanawha County Court*, 68 W. Va. 189, 69 S.E. 470 (1910).

⁸ APPALACHIAN LAND OWNERSHIP TASK FORCE, APPALACHIAN LAND OWNERSHIP STUDY VOL. VII: WEST VIRGINIA 19, Table VI (1980).

Owner	Acreage
U.S. Government	283,195AC
Georgia Pacific	121,360AC
Pocahontas Land Co.	115,833AC
Consolidation Coal	64,060AC
Chessie System	57,854AC
Rowland Land Co.	45,123AC
Union Carbide	42,648AC
Beaver Coal	35,122AC
U.S. Steel	32,720AC
Youngstown Mines	30,671AC

⁹ See *State of West Virginia v. Cotiga Dev. Co.*, Civil Action No. 78C-7565 (Mingo County Cir. Ct., July 28, 1978).

the inequitable distribution of the existing tax burden, TVRC pointed to the county land books which recorded hundreds of thousands of acres of corporate interests in fee assessed at \$15.00 to \$30.00 per acre. The bulk of these interests was in rich, coal-producing land.¹⁰

Concurrent with the presentation of their petition, TVRC submitted to the board a detailed projection of the impact upon services which could result from an increase in county tax revenues.¹¹ The exhibits presented also included the results of a current reappraisal of county mineral interests conducted by the West Virginia State Tax Commissioner's office.¹² Although these valuations had previously been submitted to the county by the tax commissioner, the assessor had chosen not to implement them until forced to do so by law.

The initial response of the board to the TVRC petition was favorable. It served notice by mail on most of the affected property owners of its intent to increase the assessment of county coal interests. Those owners who could not be reached by mail were notified through publication of the proposed action in the local newspaper. On the date set for hearings of protests to the proposed action, corporate representatives appeared armed with a battery of corporate counsel. The board's previously strong posture shifted to a more docile determination that the TVRC petition could best be handled by tabling it until the next meeting of the board eleven months hence.

The board's refusal to act was appealed by the TVRC to the Mingo County Circuit Court. That court held that TVRC lacked standing to appeal a tax action challenging the level of any assessment but its own. The West Virginia Supreme Court of Appeals disagreed. Its unanimous decision opened the door for taxpayers' actions throughout mineral rich southern West Virginia. During the years since the TVRC decision was handed down, community organizations and environmental groups have worked together with Legal Services attorneys, public interest firms and private counsel to facilitate more equitable taxation of corporate landholders. Although the initial thrust of these efforts was aimed at coal interests, the scope of the actions eventually expanded to include gas and oil interests, timber holdings and personal property used by the corporations to facilitate their multimillion dollar production.

The study reflected in this paper is designed to provide an overview of West Virginia taxpayers' actions in a historical perspective. The legal strategy employed by these citizens' groups can provide a plan of action for future efforts by West Virginia groups as well as organizations now being formed in other states. By placing West Virginia in the context of the growing sense of taxpayer revolt which is spreading throughout the country, it will be argued that the actions initiated by the group of Mingo County taxpayers provide a strategy that is not only timely, but practical as well. Finally, this paper is

¹⁰ See *Tug Valley Recovery Center, Inc. v. Mingo County Comm'n*, 261 S.E.2d 165 (W. Va. 1979).

¹¹ *Id.* at 168.

¹² The reappraisal figures of the State Tax Commissioner were those which resulted from implementation of the state-wide evaluation mandated by W. VA. CODE § 18-9A-11 (1982).

intended to provide an arsenal of legal weapons for the practitioner representing the taxpayer who seeks the degree of tax equality and fairness which is constitutionally guaranteed.

II. HISTORY OF TAXPAYERS' ACTIONS TO EQUALIZE TAXATION

A. *Statutory History*

Taxpayer resentment over the failure of taxing authorities to equalize taxes found expression long before a statutory system of relief was designed. In 1692, the governor of the Colonial Assembly received a petition requesting that he take action to force the town assessors of New York to address the inequities resulting from their assessment procedure.

There may be a certain method for the equal and proportionable assessing of subsidies, we doe pray his excell, would appoint commisioners in each respective county for the making of an estimate of their estaters, that the future there may not be such uncertainties.¹³

Controversy regarding the issue of uniformity has been inherent in the taxing process. This discussion is reflected by the presence of a uniformity clause in some form in at least forty-five state constitutions.¹⁴ Case law interpreting these constitutional mandates is massive.¹⁵ One section of the ten West Virginia constitutional articles dedicated to the subject of taxation¹⁶ has become popularly accepted as a standard by which the legal sufficiency of a taxing statute is determined. The directive that "taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law,"¹⁷ has been so consistently cited as the basis of judicial opinions that the concept has been adopted by citizens' groups as grounds for their challenges to the systems of assessing. It is not surprising that this particular section of the West Virginia Constitution has taken on such historic significance when the events precipitating the birth of the state are recalled.

By the middle of the nineteenth century, the sense of political dissatisfaction among the citizens of the western section of Virginia had reached a level of irresolvable resentment. Historic underrepresentation of western Virginia in the state legislature became an explosive political rallying point for the unhappy majority. When the population of western Virginia surpassed that of

¹³ 1 U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX* A-17 (1963) (citing F.D. BIDWELL, *TAXATION IN NEW YORK STATE* 12-13 (1918)).

¹⁴ For an analysis of constitutional uniformity provisions and State Supreme Court decisions implementing them, see W. J. NEWHOUSE, JR., *CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION* (1959).

¹⁵ *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1945); *Cumberland Coal Co. v. Board of Revision of Tax Assessments* 284 U.S. 23 (1931); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1922); *Southern Ry. Co. v. Watts*, 260 U.S. 519 (1922); *Dane v. Jackson*, 256 U.S. 589 (1920); *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350 (1917).

¹⁶ W. VA. CONST. art. X §§ 1-10.

¹⁷ W. VA. CONST. art. X § 1.

eastern Virginia, political leaders pointed to the relative lack of state subsidized improvements as the inevitable result of underrepresentation.

One source of particular bitterness was the taxing system which was generally believed to favor the slave holders of the east. The westerners argued that the state had imposed a grossly unfair tax burden upon them by fully assessing their cattle, oxen, donkeys and other animals while the assessors virtually ignored the slaves,¹⁸ considered to be the beasts of burden of the east.

The 1850 Reform Convention convened to address the problems which were clearly factionalizing the state. Many months of threats, debate, anger and political compromise resulted in the westerners being awarded twenty-seven new seats in the House of Delegates and ten new senatorial seats. In a further compromise unencumbered by any but the most pragmatic of motives; an agreement was reached regarding the tax on slaves. The Virginia Constitution was amended to specifically provide that all property, with the exception of slaves, would be taxed at its true and actual value. Once a slave reached twelve years of age, he would be assessed at the same level as a piece of land valued at \$300.00. Before the age of twelve, the slave was not taxable.¹⁹

The compromises of the 1850 convention were not sufficient to maintain the integrity of the state of Virginia. In the acrimonious days of 1861, which preceded the outbreak of the Civil War, West Virginia was born.

The recorded debates and proceedings of the First Constitutional Convention of West Virginia reflect a high degree of sensitivity to the issue of tax equalization.²⁰ Only property held by government, religious organizations and public schools were exempted from taxation in the original 1862 draft of the West Virginia Constitution.²¹ The constitutional mandate for equality and uniformity found in the original document was extended in 1872 to include the directive that "[n]o one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value"²² This seemingly innocuous redundancy was attacked and defended through considerable debate on the floor of the constitutional convention.²³ Proponents

¹⁸ AMBLER, *WEST VIRGINIA STORIES AND BIOGRAPHIES*, 199, 317 (1937). For an indication of the attitude of many westerners regarding abolition, see remarks from debate during 1831 general assembly, *Id.* at 196. WEST VIRGINIA STATE TAX DEPARTMENT, *GUIDE FOR WEST VIRGINIA ASSESSORS*, 1-1 (July, 1979).

¹⁹ AMBLER, *supra* note 18, at 199.

²⁰ Mr. J. W. Paxton, chairman of the committee on taxation and finance of the First Constitutional Convention of West Virginia reflected on the causes for secession during the convention debates.

I apprehend there can be little doubt in the mind of any one that the fundamental cause for this division and desire for a new state may be found in the injustice and oppression which our people have suffered from unequal taxation, from oppressive taxation and unequal representation.

3 DEBATES AND PROCEEDINGS OF THE FIRST CONSTITUTIONAL CONVENTION OF WEST VIRGINIA 55 (1862).

²¹ W. VA. CONST. art. VIII, § 1 (1863).

²² W. VA. CONST. art X, § 1 (1872).

²³ 3 DEBATES AND PROCEEDINGS OF THE FIRST CONSTITUTIONAL CONVENTION OF WEST VIRGINIA 54-65 (1862).

of the amendment appear to have convinced their colleagues that the language was necessary to communicate the mandatory and inclusive nature of the uniformity clause.

A national depression which occurred following the Civil War devastated the West Virginia farming community by 1875. In response, the legislature provided tax exemptions for agricultural goods. Tax relief was also afforded business in the form of exemptions for manufactured goods. The Baltimore and Ohio Railroad successfully lobbied for exemption of much of its West Virginia property. This loosening of the previously inflexible exemption standards resulted in drastic declines in tax revenues.²⁴ By 1879, Governor Jacob Jackson was spearheading efforts to repeal the exemption statutes. The legislature refused to act.²⁵ Finally, the courts curtailed the overly generous tax relief.²⁶

The court ruling was not enthusiastically received. Governor Jackson ordered the county assessors to implement the order of the court, but they responded slowly and grudgingly. With the upswing of the economy, there was even less incentive to take the highly unpopular position of supporting repeal of tax relief. The governor's effort to maintain continuing executive pressure was effectively subverted by the legislature. Through legislation to create new taxes on inheritance and corporate charters,²⁷ the lawmakers insulated the politically popular exemptions.

In 1884, an *ad hoc* tax commission submitted a report to the legislature regarding underlying inequities in the West Virginia tax system. The commission warned that the individual taxpayer of modest means was being forced to carry a disproportionate share of the property tax burden.

It is the first duty of a government so to shape its tax laws that this second class will be fairly dealt with . . . but it will be seen . . . that in West Virginia almost the reverse is the case, and that a man of small means pays, as a rule, more in proportion than a man of large means.²⁸

The legislature failed to meaningfully address the committee's warnings.

²⁴ COMETTI AND SUMMERS, *THE THIRTY-FIFTH STATE*, 471 (1966).

²⁵ WEST VIRGINIA STATE TAX DEPARTMENT GUIDE FOR WEST VIRGINIA ASSESSORS, 1-3 (July, 1979).

²⁶ The courts held that the exemptions provided by the legislature violated both the intent and the word of the West Virginia Constitution.

Can there be any doubt that the said act [an act confirming and amending the charter of the Chesapeake and Ohio Railroad which exempted them from property tax until their profits equaled ten percent of their capital] to this extent is in violation of the Constitution of 1863? The section of the Constitution we have been considering declares, first, that "taxation shall be equal and uniform throughout the State." This is very strong language and to say the least of it, would prevent inequality and want of uniformity in taxing the subjects. . . .

Much respect as we have for the legislature . . . we must pay greater respect to the sovereign will of the people expressed in the Constitution. . . . And where the court sees, that the Legislature has plainly violated that instrument [the Constitution], it is the highest duty of the court . . . to pronounce such act of the Legislature unconstitutional. *Chesapeake and Ohio R.R. Co. v. Miller*, 19 W. Va. 408, 435-37, *aff'd*, 114 U.S. 176 (1882).

²⁷ COMETTI AND SUMMERS, *supra* note 24, at 501.

²⁸ COMMISSION ON TAXATION, REPORT TO GOVERNOR JACOB B. JACKSON, at 8 (June 10, 1884).

Fanned by public concern and electoral rhetoric, the issue of uniformity politically burst into flames in 1904. The legislature was called into special session to address the problem. The resulting legislation abolished all exemptions except those originally provided by the constitution for government, religious and educational property. In addition, a state tax commission was created and a limitation was placed on levys.²⁹ A statutory assessment procedure was enacted which, on its face, required that all state property be assessed at its true and actual value.³⁰

The structure of West Virginia property tax law gradually evolved over the next quarter century, responding to pressures brought by the various affected interest groups.³¹ Despite any motive of reform which might have incited this process, it seems that the individual taxpayer gained relatively little protection by way of the new law. When West Virginia again found itself in the throes of the Depression, the small landowner was once more saddled with a disproportionate share of the tax burden. The legislature was forced to respond to the needs of a farming community which was fighting a desperate battle to hang onto its homes and land. The legislature's response was the most dramatic restructuring of West Virginia tax law in the state's history.

The Tax Limitation Act of 1933 was, as its name indicates, a drastic measure to reduce property taxes and thus provide immediate relief to victims of the Depression who were losing their homes because of their inability to meet the state tax burden. The statutory scheme first identified the government entities which could exercise taxing power on county property. More significantly, it divided all taxable property into one of four classes for purposes of levying and it limited the aggregate amount of taxes which might be levied on a particular piece of property during a year by all the authorized levying entities.³² This device of escalating levying allowances on the basis of the nature of the property being taxed, it was argued, would protect the individual homeowner, especially the farmer, against inequitable tax assessment.

²⁹ COMETTI AND SUMMERS, *supra* note 24, at 501.

³⁰ W. VA. CODE § 11-3-1 (1974).

An understanding of West Virginia tax assessment procedure requires a threshold comprehension of the terminology used. The procedure of assessment is actually a three step process. Initially the taxable property is appraised. This task is, under West Virginia Code § 18-9A-11 (1974), the responsibility of the State Tax Commissioner. Historically the county assessor has then assessed the property at some fraction of its appraised value. Finally the local levying bodies have set a tax levy on each one hundred dollars of appraised property value.

Confusion at the county level regarding the interpretation of Supreme Court decisions has been increased by usage of the term "assessment" to indicate the entire three step process or any part thereof. This has allowed manipulative county assessors to interpret an order of the court to assess property at its full market value as an order regarding appraisal. They have appraised property at the level directed by the court and then reduced that level by fractional assessment prior to affixing a levy on it.

³¹ COMMETTI AND SUMMERS, *supra* note 24, at 555-56; WEST VIRGINIA STATE TAX COMMISSION, BIENNIAL REPORT at 27, 29 (1926).

In 1904, the legislature established the County Court (now County Commission) as the Board of Equalization and Review for the purposes of hearing taxpayers' complaints. See W. VA. CODE §§ 11-3-24 to -27 (1974).

³² W. VA. CODE §§ 11-8-4 to -6 (1974).

The effect on revenues was immediate. Aggregate West Virginia levies on property dropped 46.28% between 1931 and 1933—from \$50,657,000 to \$27,212,000.³³ County governments suddenly found themselves without funds to operate necessary county programs and the state was compelled to take over funding of county schools, welfare, and roads.³⁴ Throughout the legislative period of adjustment to compensate for this great shift in fiscal responsibility, property taxes remained generally stable.³⁵ In 1947, the revenues increased sharply and have since continued to increase. The 1947 increase resulted from a review by the State Tax Commissioner of the appraisal process being used by the county assessors. In light of the fact the commissioner's program provided for reappraisal of only 1% of state lands and that revenues increased 14.73% as a result of this review, it was difficult to conclude any but the most negative implications regarding the accuracy of county assessors' evaluations.³⁶

The legislature's concern regarding the evaluation process used by the various county assessors was made clear in the provisions of the educational funding amendments which it enacted in 1953 and 1955.³⁷ The statutes called for a statewide reappraisal of all nonutility property by the Office of the State Tax Commissioner to be completed before July 1, 1967, and to be annually updated.³⁸ Local implementation of the findings of the commissioner was mandated.

[S]uch appraisal shall be delivered to the Assessor and the County Commission and in each assessment year commencing after such appraisal is so delivered and received, the County Assessor and the County Court, sitting as a Board of Equalization and Review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property. The total assessed valuation in each of the four classes of property shall not be less than fifty percent nor more than one hundred percent of the appraised valuation of each said class of property.³⁹

³³ WEST VIRGINIA STATE TAX COMMISSION BIENNIAL REPORT at 439 (1932); WEST VIRGINIA STATE TAX COMMISSION BIENNIAL REPORT at 991 (1934).

³⁴ See GUIDE FOR WEST VIRGINIA ASSESSORS, *supra* note 25, at 1-7.

³⁵ The biennial reports of the West Virginia State Tax Commissioner indicate there was no more than a 5.3 percent shift in property tax revenues in any year during the period between 1933 and 1947. But during this period, the legislature enacted a variety of other taxes to generate income which included a Consumer Sales Tax [W. VA. CODE § 11-15-1 (1974)], a State Income Tax [W. VA. CODE § 11-13B-3 (1937)], a Store Tax [W. VA. CODE § 11-13A-5 (1937)], a Beer Tax [W. VA. CODE § 11-16-66 (1974)] and a Racing Tax [W. VA. CODE § 19-23-15 (1949)].

³⁶ MELTON, THE PROPERTY TAX IN WEST VIRGINIA: POLICIES, PRACTICES AND PROCEDURES 3 (1979).

³⁷ W. VA. CODE §§ 18-9A-1 to -20 (1977).

³⁸ W. VA. CODE § 18-9A-11 (1977). The West Virginia Supreme Court of Appeals has held that W. VA. CODE § 18-9A-11 reflects a clear legislative perception that equalization of property taxation could not occur until current, accurate property reappraisal has been conducted in each of the state's 55 counties. See *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979). It reiterated this position in its decisions on *Killen v. Logan County Comm'n*, 295 S.E.2d 689 (W. Va. 1982) and *Rose v. Fewell*, 294 S.E.2d 434 (W. Va. 1982). A detailed description of the tax commissioner's process for implementing the statewide reappraisal can be found in Melton, *Coal Reserves Should Be the Subject of Equitable Ad Valorem Taxation* 76 W. VA. L. REV. 325 (1974).

³⁹ W. VA. CODE § 18-9A-11 (1977).

Once again, the West Virginia Legislature had attempted to attack the imbalances of the taxing system that the system itself appeared to insulate. Also motivated by the pressing need to generate tax dollars, the legislators made what appeared to be an earnest effort to equalize the increased tax burden. Case law reviewing the intent and efficacy of this program reflects minimal impact on traditional *ad hoc* systems of assessment used at the county level.⁴⁰

The most intensive review of this process was conducted during a 1981 circuit court remand of a school funding challenge brought by the parents of a child from Lincoln County, West Virginia. During the forty-three days of testimony, the court reviewed over one thousand exhibits. While the main thrust of the action was an attack upon the quality of the West Virginia educational system, the plaintiffs argued that the present weaknesses in tax procedure resulted in insufficient funding to maintain a school system of acceptable quality. In support of their argument, they presented an extensive analysis of the existing West Virginia tax procedure and argued that practical alternatives existed. Through the testimony of experts, these alternatives were presented to the court. Each of the proposed systems was based upon a more accurate and efficient method of appraising the value of individual and corporate property than is presently being used in West Virginia. The circuit court held that the West Virginia educational system was inadequate and that the assessment process currently being used in the state was inefficient.⁴¹

Dissatisfaction with the property tax system is a problem of national proportion. Groups claiming to represent the interests of the average taxpayer launched initiative and referendum campaigns for tax relief throughout the nation between the years of 1976 and 1980. Six of these campaigns resulted in constitutional or statutory spending limitations being placed upon the state legislature. In six other states, political pressure forced legislatures to limit spending on their own initiative. Between 1978 and 1980, eighteen states enacted constitutional and statutory restrictions upon local power to raise property tax revenue. Four were the result of voter referendums.⁴²

The "Citizens' Revolt" which attracted the most national attention was

⁴⁰ See section I-B of this paper for citations and analysis of cases reviewing W. VA. CODE § 18-9A-11 (1977).

⁴¹ Pauley v. Bailey, Civil Action No. 75-1278 (Kanawha County Cir. Ct., May 11, 1982).

⁴² The American Federation of State, County and Municipal Employees, AFL-CIO reports that between 1976 and 1980, Arizona, California, Michigan, and Washington enacted voter initiatives or referendums for constitutional limitations on government spending. Hawaii received voter approval of a constitutional convention referendum, while Texas successfully submitted a legislative referendum to the voters. Colorado, Louisiana, New Jersey, Oregon, Tennessee and Utah legislatures enacted spending limitations on their own initiative.

Between 1978—the year of Proposition 13—and 1980, California, Idaho, Michigan and Texas enacted voter referendum restrictions on local power to tax. The Alabama legislature successfully submitted a tax limitation measure for voter approval. Arizona, Arkansas, Colorado, Florida, Iowa, Kentucky, Maryland, Massachusetts, Nebraska, Nevada, New Mexico, Oregon and Utah legislatures enacted restrictions on local taxing power on their own initiative. New Jersey had enacted similar limitations prior to 1978. Information provided by American Federation of State, County and Municipal Employees, AFL-CIO.

that which launched the 1978 campaign for Proposition 13 in California. The campaign for Proposition 13 was conducted during a period of runaway real estate values⁴³ and escalating property taxes⁴⁴ on single-family residences throughout the state of California. A shift which had occurred in the property tax burden was exacerbated by a comparatively moderate increase in commercial, industrial and agricultural property values during the same period.⁴⁵ With a sense of panic, homeowners responded to the simplistic and well-financed campaign of the advocates of Proposition 13. The initiative provided that all property assessments would be rolled back to the 1975-76 level and future increases would be limited to 2% yearly. Levy rates were limited to 1% of market value and a two-thirds local voter approval was required for the assessment of any new or special tax.⁴⁶ Concerns expressed regarding the effect of drastic, across-the-board cuts in public services were neutralized by reminders of the general fund surplus which California state government had maintained for four years.⁴⁷ The voters of California accepted Proposition 13 on June 6, 1978.

The success of the Proposition 13 initiative spawned similar efforts which continue today. This appealingly simple concept of cutting off the amount of property tax which can be attached to a piece of property is presented to the average citizen as being the answer to the ever-growing needs of government for the individual's tax dollar. While tax limitation acts do provide immediate relief for the overburdened taxpayer, the California experience has shown that this across-the-board relief has a fatal weakness in that it fails to address existing inequities in the system. By ignoring the tax benefits which business and commercial interests were enjoying prior to its enactment, Proposition 13 further insulated that portion of the California taxpaying public which had traditionally carried less than its fair share of property tax. Inevitably the burden on the disenchanting single family homeowner has been increased as the availability of county services has decreased.⁴⁸

Any discussion of the impact of Proposition 13 on California's tax system must begin by identifying "who got what." California's property tax crisis was really a homeowner property tax crisis. Proposition 13 responded to this crisis by providing homeowners with a \$2 billion property tax reduction. However, since Proposition 13 reduced property taxes across the board for all types of properties, not just homes, the "price" of this \$2 billion home reduction was

⁴³ The Los Angeles Times reported that the average resale price of a single family residence in Southern California rose from \$37,800.00 in April, 1974, to \$83,200 in April, 1978—an increase of 120 percent. During the same period, resale values nationally rose 48 percent. *TIPPS, STATE AND LOCAL TAX REVOLT, NEW DIRECTIONS FOR THE '80's, CONFERENCE ON ALTERNATIVE STATE AND LOCAL POLICIES*, 69, Table 1 (1980).

⁴⁴ *Id.* at 69, Table 2B. The average tax paid by a Californian for owner occupied residential property in 1975 was \$2,149.00. By 1978 this had increased to \$4,117.00.

⁴⁵ *Id.* at 69, Table 2A. Between 1975 and 1978, the net assessed value of owner occupied property in California increased 110.9 percent. The net assessed value of commercial, industrial and agricultural property increased only 26.4%.

⁴⁶ *Id.* at 68.

⁴⁷ *Id.* at 72, Table 4. California had a general fund surplus of \$3,969.9 million for the fiscal year 1977-1978.

⁴⁸ *Id.* at 81, 82.

another \$3.5 billion in tax reductions for the owners of business properties. . . . Although homeowner property taxes were increasing more than six times as rapidly as taxes on business property, Proposition 13 gave the owners of business properties approximately \$1.80 in property tax relief for every \$1.00 going to homeowners.

The windfalls to individual businesses were staggering. The oil companies were among the largest beneficiaries. Standard Oil of California got \$47 million, Shell Oil, \$16 million, Getty Oil, \$12.3 million and Arco, \$10 million. . . . But while business taxpayers were reaping almost two-thirds of the benefits of Proposition 13's property tax cut, individual taxpayers were forced to bear most of the cost of the state's bail out of local government. By providing \$4.4 billion to pay for local services formerly funded by property taxes, the state shifted the cost of these services onto those taxpayers whose tax dollars contributed to the state's surplus—for the most part, sales and income taxpayers. Since business taxpayers contribute only 32% of the sales tax and 11% of the income tax, the effect was to substitute state tax revenues coming from homeowners and renters for property tax revenues formerly paid by businesses.⁴⁹

Tax relief measures appeared on the 1980 general election ballot in sixteen states.⁵⁰ Of those states which had supported reform or initiative action, at least one⁵¹ produced a plan which confronted the problems of creating uniformity and equality within the property tax system. The Ohio Fair Tax Initiative proposed a moderate increase in corporate taxes and a closing up of various corporate tax loopholes.

The property tax relief is delivered via a "circuit-breaker" device . . . any household whose income is below \$30,000 a year and whose property tax (considered to be 10 percent of annual rent for renters) exceeds 2.5 percent of that income is eligible for a rebate through an income tax credit. The amount is half the figure (60 percent for disabled and senior citizens) by which the property tax exceeds the 2.5 percent level, up to a maximum of \$300.

[T]he initiative would repeal the state laws allowing tax abatement, revoke certain exemptions from sales tax currently granted business and require the banks and savings and loans to pay the corporate franchise (income) tax like any other business. Franchise-tax rates would be altered to lower taxes for businesses earning under \$75,000 in net taxable income per year and hike them from 8 to 10 percent on income above that figure.⁵²

⁴⁹ *Id.*

⁵⁰ Arizona, Arkansas, Florida, Massachusetts, Michigan, Nevada, Oregon, South Dakota and Utah ballots in the 1980 general election contained measures which would effect across the board cuts in property taxes similar to those enacted by California's Proposition 13 in 1978. Montana proposed a similar cut in state income tax. Massachusetts and Missouri ballots proposed spending limitations. The Iowa ballot contained provisions for a State Constitutional Convention which would address property tax problems. Washington and West Virginia ballots proposed senior citizens tax exemptions and a North Dakota ballot contained measures for alternative state revenues. The tax initiative presented to the voters of Ohio is described in detail in later sections of this article. Tax cuts were passed in Arkansas, Florida and Massachusetts. The Montana income tax cut was passed. Only the spending limitaton proposed in Missouri was successful.

⁵¹ Organized efforts to bring about progressive tax reform were simultaneously being generated in several states, but the Ohio initiative gained national attention.

⁵² OSBORNE, *Renegade Tax Reform: Turning Proposition 13 on its Head*, SAT. REV., May 12, 1979.

The initiative which gained widespread popular support was ultimately lost in the labyrinth of the state legislature and went down to defeat at the polls—the victim of a highly-financed and well-organized campaign lead by the Ohio Manufacturers Association.⁵³

B. *Judicial History*

The petition which TVRC presented to the Mingo County Board of Equalization and Review was not unprecedented. Nor was the decision of the West Virginia Supreme Court of Appeals regarding that petition.

West Virginia assessors were first empowered to value land for tax purposes and to prepare land books on January 1, 1909.⁵⁴ Prior to that time, the state auditor appointed Commissioners to assess the land.⁵⁵ Review power over assessments was given initially to the Board of Public Works⁵⁶ and later delegated to a State Board of Equalization and Review composed of one member from each congressional district and one at-large member.⁵⁷ Eventually the County Court (now the County Commission) became the reviewing authority for the county assessor's valuations.⁵⁸

The nineteenth-century West Virginia Supreme Court of Appeals upheld a citizen's statutory right to challenge the tax assessment of another in the circuit court of her county. It was unwilling, however, to open its own doors to her for purposes of appeal.⁵⁹ It was not until the legislature specifically provided supreme court of appeals jurisdiction in those assessment cases involving property valued at over fifty-thousand dollars⁶⁰ that the court acknowledged a responsibility for evaluation review.⁶¹

More current West Virginia case law in this area presents an inconsistent pattern. It must be surmised that some portion of the existing confusion in the

⁵³ Information provided by American Federation of State, County and Municipal Employees, AFL-CIO.

⁵⁴ 1904 W. Va. Acts 31-97.

⁵⁵ 1872-1873 W. Va. Acts 643.

⁵⁶ 1891 W. Va. Acts 65.

⁵⁷ 1899 W. Va. Acts 87. Although taxpayers relief was statutorily provided as early as 1891 (1891 W. Va. Acts 123-33), and extended by the Reassessment Act of 1899 (1899 W. Va. Acts 86), the tangled procedure for seeking such relief is exemplified in *Clark v. Mercer County Court*, 55 W. Va. 278, 47 S.E. 162 (1904).

⁵⁸ W. VA. CODE § 11-3-24 (Supp. 1982).

⁵⁹ *Mackin v. Taylor County Court*, 38 W. Va. 338, 18 S.E. 632 (1893). Other decisions denying the jurisdiction of the Supreme Court to review assessment appeals are *Bluefield Water Works Co. v. State*, 63 W. Va. 480, 60 S.E. 403 (1908); *McClean v. State*, 61 W. Va. 537, 56 S.E. 884 (1907) and *Pittsburg C. & St. L. Ry. Co. v. Board of Public Works*, 28 W. Va. 264 (1886).

⁶⁰ 1929 W. Va. Acts 205, formerly W. VA. CODE 29-129-1.

⁶¹ The court had, however, heard appeals on other property tax issues prior to 1929 including the taxability of property, the propriety of assessment procedures and the constitutionality of a tax. *Copp v. State*, 69 W. Va. 439, 71 S.E. 580 (1911) (taxability of land); *Hannis Distilling Co. v. Berkeley County Court*, 69 W. Va. 426, 71 S.E. 576 (1911) (duty to list property for taxation); *Webb v. Ritter*, 60 W. Va. 193, 54 S.E. 484 (1906) (forfeiture of land for taxes); *Summers v. County of Kanawha*, 26 W. Va. 159 (1895) (forfeiture of land for taxes); *Miller v. Buchanan*, 24 W. Va. 362 (1884) (taxability of property).

area of property tax law results from the origin of each case in the unpredictable forum of the county commission.⁶² Born in the atmosphere of county politics, any litigation can be expected to assume the personalities and dynamics of those who give it life. It is equally predictable that moneyed interests will, for the most part, be overrepresented among the taxpayers who pursue their action along the long and expensive route to the supreme court. These problems are not unique to West Virginia.

In 1865, the Dickerson Suckasunny Mining Company of New Jersey appeared before the state courts to complain that its real estate was being appraised at actual value for tax purposes while other lands in the taxing district were being valued at a much lower level. The court was sympathetic, but determined that no justification existed for adjusting the petitioner's assessment which complied with New Jersey law. The court observed, however, that the lower tribunal's judgment was inherently unfair.

[A]lthough by rating the lands of the prosecutors at their actual value and the other lands in the township much below such value, great injustice may have been done by imposing on them more than their just share of taxes, yet that furnishes no ground for setting aside the assessment.⁶³

The court went on to suggest a vague remedy, giving little direction as to implementation.

The remedy for such injustice is to appeal from the assessment against themselves, and at the same time apply to the commissioners of appeal, under the act of March 9, 1848 . . . to raise such assessments as may be too low; by the provisions of that act . . . the commissioners could examine all the assessments made in the township, and after ascertaining the total value of the taxable property, could apportion the taxes to be raised ratably upon all, raising some and reducing others, as from the evidence before them might be agreeable to the principles of justice.⁶⁴

Twelve years later an Oregon federal court fashioned a remedy more specifically addressing the injury suffered by an overtaxed corporation. Using the same principles of interpretation employed by the West Virginia Supreme

⁶² See *Tug Valley Recovery Center, Inc. v. Mingo County Comm'n*, 261 S.E.2d 165, 175 (W. Va. 1979). It is a matter of common sense that the proceedings of county commissions, for obvious reasons, are to be construed with less strictness than courts of formal record.

See also *Tramel v. Stafford*, 75 W. Va. 98, 83 S.E. 299 (1930); *Davis v. Baker*, 109 W. Va. 192, 153 S.E. 491 (1930). Cf. *Kemp v. Boyd*, 275 S.E.2d 297 (W. Va. 1981) (clear and convincing evidence necessary for removal of a county commissioner).

⁶³ *The State v. Dickerson*, 25 N.J.L. 427, 431 (1856).

⁶⁴ *Id.* at 431. By 1908, the New Jersey court had issued a decision which indicated their continuing discomfort with unequal taxation and their commitment to protect victims of that system.

Any taxpayer who considers that other property in the same taxing district is undervalued, is entitled to go to the county court and apply to have the valuation of such other property raised . . . By that act the county boards are required to secure taxation for all property at its true value; so that the fact that the property of A is assessed at its true value and the property of other taxpayers within the same district is assessed below its true value affords A no grounds for demanding a reduction of his valuation; though it does entitle him to apply for an increase in the valuation of the others. *Royal Mfg. Co. v. Board of Equalization of Taxes*, 76 N.J.L. 402, 404-05 (1908).

Court of Appeals almost a century later,⁶⁵ the court recognized the statutory right of an Oregon corporate taxpayer to challenge the taxes of another.

The statute gives any person “interested” a right “to appear” before the board of equalization. The right “to appear” . . . implies the right to be heard . . . so far, at least as the party is “interested”. Now, everyone who has property on the assessment roll is so far “interested” in seeing that all other property subject to taxation in the county is put on such a roll, and is valued thereon, relatively as high as his own, or that his own is valued no higher than others. In the assignment of property for general taxation, a “just” or equal evaluation thereof is of more importance than an absolutely “true” one; therefore, it is no answer to the complaint of a property holder of an unequal assessment or valuation, that his property is assessed at its “true cash value”. For . . . he is entitled to have it valued at its true cash value relatively, or according to the standard of cash value adopted in the valuation of other property, either by lowering the valuation of the one, or raising that of the other.⁶⁶

There is also early history of the courts recognizing the right of the individual taxpayer to challenge corporate property taxes. In an 1893 case, a Connecticut court unsuccessfully struggled with the concept of a remedy for the petitioning taxpayer but the issue of the individual’s standing to complain appears to have been resolved.

There are two possible ways in which a taxpayer can be aggrieved, and a grievance in either way may entitle him to relief. The first is a valuation of the property in excess of its fair market value. An appeal on that ground presents a case of no difficulty. . . . The second is a valuation in excess of a rule . . . prescribed by statute, by which he is required to pay more than his fair proportion of the taxes. . . . When the grievance is that complainant’s property is assessed higher than the recognized rule requires, there would be no practical difficulty in reducing the valuation accordingly. But when the grievance is, as it may be, that others are assessed lower than the complainant, although his assessment may conform to the general rule, it is difficult to see how the Superior Court can afford him any redress. A reduction of his own assessment may be unjust to others, indeed to a great portion of the town; while an increase of the lower assessment is hardly practicable, especially if those taxpayers are not before the court as parties to the appeal.⁶⁷

Judicial ambivalence regarding an appropriate remedy for a taxpayer’s complaint regarding the assessment of another was widespread. In several ju-

⁶⁵ *Tug Valley Recovery Center, Inc. v. Mingo County Comm’n*, 261 S.E.2d 165 (W. Va. 1979).

⁶⁶ *Dundee Mortgage Trust Inv. Co. v. Charlton*, 32 F. 192, 194 (C.C.D. Ore. 1887). By 1909, the Oregon state courts had adopted the philosophy of the federal court. When a landowner appeared complaining that his property was assessed higher than the adjoining lands, the court found no grounds for reducing his assessment but they held “if the adjoining property is assessed under its actual value, it is the duty of the board to increase its assessment.” *Elmore v. Tillamook County*, 55 Ore. 224, 225, 105 P. 900, 901 (1909).

⁶⁷ *White v. Town of Portland*, 63 Conn. 18, 21-22, 26 A. 342, 344 (1893). The Connecticut court appears to have resolved its ambivalence over the availability of a taxpayer remedy by 1925. In *State ex rel. Foote v. Bartholomew*, 103 Conn. 607, 132 A. 30 (1925) the court directed the lower court to join the under-assessed party to the action, thereby addressing the concerns expressed in the *White* decision.

risdictions, the courts recognized the injustice suffered by many as a result of the under-assessment of a few, but nevertheless refused to take any action because of their inability to identify the proper equitable relief.⁶⁸

The United States Supreme Court offered little in the way of guidance. In 1879, the Court reviewed the petition of an Ohio banking corporation which alleged that its stock was being assessed at a level much closer to true and actual value than the level applied to other classes of county property. Recognizing the mandate of the Ohio Constitution to equalize taxation, the Court reduced the tax liability of the bank to the substandard level consistent with the valuation of other county property. The opinion reflects a surprisingly pragmatic rationale for the Court's decision.

[I]t is believed that the valuation of real estate for purposes of taxation rarely exceeds half of its current salable value. If we look for the reason for this common consent to substitute a custom for the positive rule of the statute, it will probably be found in the difficulty of subjecting personal property and especially invested capital, to the inspection of the assessor and the grasp of the collector. The effort of the land owner, whose property lies open to view which can be subject to the lien of a tax not to be escaped by removal or hiding, to produce something like actual equality of burden by an undervaluation of his land, has led to this result.⁶⁹

The Court thus fashioned relief which complied with state and federal guarantees of uniformity but did not disrupt the corrupted system which had evolved.

[W]hatever may be its cause, when it is recognized as the source of manifest injustice to a large class of property around which the Constitution of the State has thrown the protection of uniformity of taxation and equality of burden, the rule must be held void and the injustice produced under it must be remedied so far as the judicial power can give remedy.⁷⁰

The history of case law since the turn of the century reflects an increasingly liberal judicial concept of taxpayer's relief. Typically, the citizen who attacked the assessment on the property of another complained of one of four deficiencies in the taxing process: the property in question was omitted completely from the assessment rolls; the property was undervalued; the property valuation was diminished by a plan of fractional assessment; or the property owner was the benefactor of unlawful exemption.⁷¹ In those cases in which it has been recognized, standing of the complaining taxpayer has been grounded upon specific statutory authority or upon a showing by the taxpayer of injury resulting from the increase in his own tax burden by the underassessment of

⁶⁸ See *State v. Lakeside Land Co.*, 71 Minn. 283, 73 N.W. 970 (1898); *Ives v. Town of Goshen*, 65 Conn. 456, 32 A. 932 (1895); *People v. Lots in Ashley*, 122 Ill. 297, 13 N.E. 556 (1887).

⁶⁹ *Cummings v. Merchant's Nat'l Bank*, 101 U.S. 153, 163 (1879).

⁷⁰ *Id.* at 163. The *Cummings* decision was consistent with the other decisions handed down by the Supreme Court during this period on the general question of uniformity of taxes. See *Sicux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441 (1922) and *Cumberland Coal Co. v. Board of Revision of Tax Assessments*, 284 U.S. 23 (1931). These cases specifically provide that where it is impossible for an assessor to establish taxation based on true and actual value, which is also uniform and equal, he is to sacrifice the true and actual standard.

⁷¹ See Annot., 9 A.L.R. 4th 432 (1981).

his neighbor's property.⁷²

The concept of organized citizens' group action to force reassessment of corporate property emerged as early as 1901. A group of Nebraska taxpayers appeared before the courts to complain that the personal property of several of their local industries was being grossly undervalued by the county assessor at a level below that reported by the corporations themselves.

The lower court appears to have had no difficulty in reassessing the property to a figure closer to its true and actual value. The corporation appealed to an unsympathetic state supreme court.

The only wrong that appears in the action of the Board is that it did not fix the valuation of the property of the plaintiff in error at \$24,000.00, its admitted fair cash value. Plaintiff in error, having failed to present to the county board the fact that the property of other persons in that precinct was assessed too low, cannot be heard to complain of the valuation of its own property when it does not appear that an injustice has been done and that the valuation of the property of plaintiff in error as fixed by the county board is less than one-seventh of its real value.⁷³

One named taxpayer and "The Other Taxpayers of Montgomery County [Maryland]"⁷⁴ in 1907 companion cases enjoined their assessor's method of evaluating the corporate shares of a national bank, and those of a local fire insurance company. Unable to find statutory support for the standing of the citizens' group, the court rested its decision on equitable principles.

We have no doubt of the right of the appellee to resort to equity for relief by injunction in the present case. It is apparent that, if the Tax Commissioner be permitted to make the proposed assessment in accordance with his avowed purpose, serious loss and injury would result to the taxpayers of Montgomery County through the consequent reduction of the basis of taxation for the county purposes. From this unlawful assessment, if it should be made, the taxpayer would have no appeal. The right of appeal to the comptroller and treasurer from the assessment is given to the corporation but of that right the

⁷² See *Id.* for decisions holding that taxpayers had no standing to challenge the taxes of another. See *Stevens v. Fox Realty Corp.*, 23 Cal. App. 2d 199, 100 Cal. Rptr. 63 (1972); *Blogie v. State Tax Comm'r*, 111 N.H. 246, 279 A.2d 603 (1971); *Freuhauf Trailer Co. v. Detroit*, 321 Mich. 11, 31 N.W.2d 848 (1948); *In re Ericksen*, 69 S.D. 446, 11 N.W.2d 141 (1943); *State ex rel. Weyerhaeuser Timber Co. v. State Tax Comm'n*, 189 Wash. 56, 63 P.2d 494 (1937); *In re Muskogee Gas & Elec. Co.*, 83 Okla. 167, 201 P. 358 (1921); *Knight v. Thomas*, 93 Me. 494, 45 A. 499 (1900). *But see Knoff v. San Francisco*, 1 Cal. App. 3d 184, 81 Cal. Rptr. 683 (1969) and *Hyatt v. Allen*, 54 Cal. 353 (1880). For holdings that a taxpayer may challenge the entire taxing system, but not the taxes of a single taxpayer see *C.H.O.B. Ass'n Inc. v. Board of Assessors of the County of Nassau*, 257 N.Y.S.2d 31, *aff'g*, 256 N.Y.S.2d 550, 209 N.E.2d 820 (1964).

⁷³ *Lexington Mill & Elevator Co. v. Dawson County*, 1 Neb. 872, 876, 96 N.W. 62, 63 (1901). The same court, one year later held:

The right of a taxpayer to make complaint before the board and have corrected inequities in the assessments which result in increasing his burden of taxes is a substantial right and cannot be denied him. The board must receive his complaint, hear evidence upon the question of inequalities in the assessments presented thereby, determine the facts, and equalize the assessments.

State ex rel. Shriver v. Karr, 64 Neb. 514, 519, 90 N.W. 298, 300 (1902).

⁷⁴ *Schley v. Lee*, 106 Md. 390, 67 A. 252 (1907).

taxpayer cannot avail himself. Under such circumstances the right of the taxpayer to relief in equity by injunction . . . has been repeatedly recognized by this court.⁷⁵

The reform mentality evidenced by these attacks on a preferential tax system was influenced by a cycle of escalating taxes in times of increasing need for social services.⁷⁶ Those groups able to acquire the information needed to analyze the structure of local taxation were angered to find that business and industry were the recipients of unfair tax breaks. Often designed to entice a business into the area, tax exemptions given by local assessing authorities were carried on the land books year after year. A government report of 1963 evaluated the impact of these corruptions.

That gross inequalities in assessing are widespread is universally recognized. This condition is so ancient that it tends to be taken for granted as an inherent characteristic and state and national studies keep reaffirming its continuance. Over the past 50 years notable advances have been made in the organization methods of state and local fiscal administration, but in very many areas assessment administration has not kept pace with this progress.⁷⁷

The TVRC litigation presented the West Virginia Supreme Court of Appeals was a case of first impression.⁷⁸ Petitioners contended that the wording of the West Virginia statute which provided circuit court review for challenges to tax assessment⁷⁹ expressed a clear legislative intent that judicial review be extended to any party affected by the questionable assessment where the parties had first exhausted their administrative remedies before the county Board of Equalization and Review. TVRC argued that consistent underassessment of the mineral owners of Mingo County resulted in a proportionate increase in the petitioners' taxes and a decrease or minimizing of local government services. The West Virginia court agreed. The court held that the appellate review section of West Virginia property tax law⁸⁰ must be read in conjunction with

⁷⁵ *Id.* at 403, 67 A. at 258.

⁷⁶ See *Sloman-Polk Co. v. City of Detroit*, 261 Mich. 689, 247 N.W. 95 (1933); *Citizens Comm. for Fair Property Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953); *Balwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

⁷⁷ 1 U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX* 3, A-17 (June 1963).

⁷⁸ Although the TVRC case presented a first impression case regarding the standing of an interested party to challenge the tax assessment of another, there is a long history of West Virginia cases in which the petitioner asks that his taxes be lowered to a level consistent with the other property owners in his district. See *In re Assessment of Kanawha Valley Bank*, 144 W. Va. 346, 109 S.E.2d 649 (1959); *In re Tax Assessments Against the S. Land Co.*, 143 W. Va. 152, 100 S.E.2d 555 (1957); *In re Charleston Fed. Sav. & Loan Ass'n*, 126 W. Va. 506, 30 S.E.2d 513 (1944); *West Penn Power Co. v. Board of Review & Equalization*, 112 W. Va. 442, 164 S.E. 862 (1932).

⁷⁹ W. VA. CODE § 11-3-25 (1974):

Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation or whose assessment has been raised by the county court above the assessment fixed by the assessor or who has contested the classification or taxability of his property may, at any time up to thirty days after the adjournment of the county court, apply for relief to the circuit court of the county in which such books are made out.

⁸⁰ *Id.*

that section of the West Virginia Code establishing a program of equitable and regular re-evaluation of all property for tax purposes by the Office of the State Tax Commissioner.⁸¹ Because both sections provide a procedure of assessment review to “any interested party,” the court held that the legislature unquestionably intended to extend appeal rights to any party who could show an injury resulting from the assessment being challenged.⁸²

The court had no difficulty in identifying the petitioner’s injury as a legal one.

Implicit in our holding today, and in the Acts of the Legislature is the understanding that every taxpayer, every person affected by the tax base, has a financial interest in seeing that all property in the district be properly taxed. The recognition of this interest is by no means a new or radical concept.⁸³

Nor was the court dissuaded by the complaint of the circuit courts that they were not qualified to determine the true and actual value of a piece of property.

The court recognizes the problems inherent in setting the proper amount of tax to be paid on any given parcel of land. The assessment of real estate values is a very technical and complex area, particularly as we are dealing with the assessment of mineral estates, those estates being invisible to the eye and being difficult to properly and scientifically assess. The difficulty, however, does not justify a court in refusing to perform that task when an interested citizen has been denied relief within the appropriate administrative forums.

The task is lightened to a great extent by the provisions of W. Va. Code § 18-9a-11. As mentioned previously, that section of the Code specifically provides that the state tax commissioner is to make an appraisal of all mineral and surface estates in West Virginia, and *that appraisal is to serve as the basis for determining true and actual value for all assessment purposes*. . . . It is incumbent upon the circuit court, as it would be upon the county commission and assessor, to set the assessed value of all parcels of land at the amount established by the state tax commissioner.⁸⁴

The TVRC decision opened the doors of the West Virginia courts to taxpayers’ complaints. During the two years following the 1979 decision, citizens’ groups challenged corporate tax assessment before the Boards of Equalization and Review in Mingo, McDowell, Kanawha and Lincoln counties. TVRC peti-

⁸¹ W. VA. CODE § 18-9A-11(h) (1981) provides, in part:

[I]n the event the county commission shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the state board, or any other interested party, shall have the right to enforce the same by writ of Mandamus in any court of competent jurisdiction. (emphasis added).

⁸² *Tug Valley Recovery Center, Inc.*, 261 S.E.2d at 170.

⁸³ *Id.* at 171. In its decision the court cited *Board of County Comm’rs v. Buch*, 190 Md. 394, 58 A.2d 672 (1948) as authority. The *Buch* decision was grounded on statutory language very similar to that found in W. VA. CODE § 11-3-25 (1974). *Buch* cited 85 A.L.R. 699 (1933), containing parallel decisions based on the statutes of Arkansas, California, Connecticut, Florida, Idaho, Illinois, Iowa, Kentucky, Maine, Missouri, Michigan, Minnesota, Nebraska, New Jersey, New York, Oregon and Tennessee.

⁸⁴ 261 S.E. 2d at 173.

tioned for reassessment of Mingo County property interests in coal, oil, timber, land and industrial or corporate personal property.

Those petitions brought varying results. Repeated efforts by TVRC to enforce the coal appraisals issued by the Office of the State Tax Commissioner have been frustrated to some degree. Although the figures on the Mingo County land books have not reflected the minimum valuations set by the commissioner, the assessor explained that the discrepancy results from reductions in value for mined-out coal. These deductions are based upon confidential figures submitted to the assessor by the coal companies. The researchers have no access to these figures.⁸⁵

TVRC petitions to increase the valuation of oil and gas interests resulted in an across-the-board reassessment of all county gas and oil holdings to \$10.00 per acre. These interests were previously assessed between \$1.00 and \$2.00 per acre. The process of establishing an accurate assessment of these interests was complicated by the failure of the State Tax Commissioner's office to provide guidelines for the appraisal of oil and gas. A petition challenging the assessment of timber interests is presently pending in the Mingo County Circuit Court, awaiting decision on appeal.⁸⁶

Petitions alleging gross underassessment of the personal property used by Mingo County coal operations have, with one exception, failed due to a lack of access to actual figures of corporate holdings. The exception involved a coal company which, TVRC alleged, was under-assessed on both its real and personal holdings. The parties agreed upon a reasonable evaluation of the corporation's holdings. The corporation reappraised itself to the agreed level and the TVRC withdrew its petition.

A McDowell County citizens' group went before the Board of Equalization and Review in 1980 and petitioned for reassessment of the McDowell County corporate surface interests. These interests, held by Pocahontas Land Corporation, were evaluated for tax purposes at an average of \$12.48 per acre county-wide. The board denied the petition, but on its own action proposed a county-wide reassessment of surface interests to \$300.00 per acre. The McDowell Circuit Court reversed the board's action and an appeal is presently pending before the West Virginia Supreme Court upon the petition of the citizens' group as interveners.⁸⁷

The Lincoln County challenge which formed the basis of the companion case to the original TVRC action before the West Virginia Supreme Court of

⁸⁵ The argument of the corporations that the figures which they submit to the assessor are protected trade secrets may be weakening. In *Pauley*, 255 S.E.2d at 859, counsel moved the court to order the State Tax Commissioner to produce tax reports of certain corporations. The motion was granted. The state appealed to the West Virginia Supreme Court of Appeals for an order prohibiting enforcement of the lower court's order. The Supreme Court refused to hear their appeal.

⁸⁶ *Tug Valley Recovery Center, Inc. v. Mingo County Comm'n*, No. 80C-8807 (Mingo County Cir. Ct., 1980) (Georgia Pacific Corp. intervened).

⁸⁷ *In re Tax Assessments Against Pocahontas Land Corp.*, appeal granted, No. 15409 (W. Va. Sup. Ct. of App., Nov. 12, 1981).

Appeals⁸⁸ is still pending in the lower court. At the time it was remanded to the circuit court, the question arose as to how many of approximately 300 Lincoln County mineral owners would require hearings on the mandated reappraisal. Counsel for the citizens' group indicated to the court that they intended to pursue reassessment on only the five parties holding the most extensive interests in Lincoln County minerals. One of these parties has petitioned to have the question regarding the court's authority to entertain these selected petitions certified to the West Virginia Supreme Court of Appeals.

In 1980, West Virginians For Fair and Equitable Assessment of Taxes appeared before the Kanawha County Board of Equalization and Review alleging underassessment of coal interests throughout the Kanawha valley. This group presented expert testimony that the coal interest in all areas of the county except Cabin Creek had a true and actual value of at least \$100.00 per acre. Cabin Creek interests were valued at \$180.00 per acre. Petitioners proposed that these appraisals be applied only to all coal land holdings of over 150 contiguous acres. The Kanawha County Board of Equalization and Review granted the petition and served notice of the proposed assessment. The proposal was successfully opposed by six coal owners before the county board and by two others before the Kanawha County Circuit Court on appeal.

More recently, the West Virginia Supreme Court of Appeals has issued decisions upon two property tax cases which may have a profound effect on future assessment within the state. Both relate to the fractional assessment provisions of the West Virginia Code which provided for increased assessment of appraised value to take effect July 1, 1981.⁸⁹

A Putnam County citizens' group, reflecting the same sense of tax revolt which has been evidenced throughout the state, challenged the 1981 increase in taxes to be effected by the proviso in the statute. The members elicited the support and cooperation of the county officials who, in turn, defied the statutory mandate and refused to raise the assessments to sixty percent of appraised value as required. Contending that across-the-board reassessment "wasn't fair and equal taxation," they indicated that their argument was not with the increase, per se. Rather, the members contended, they were fighting

⁸⁸ Lincoln County Citizens for Tax Reassessment v. Louis Abraham, 261 S.E.2d 165 (W. Va. 1979).

⁸⁹ W. Va. Code § 18-9A-11(f) (Supp. 1982).

As such appraisal of property [by the state tax commissioner], under this section is completed, to the extent that a total valuation of each class of property [within the county] can be determined, such appraisal shall be delivered to the assessor and the county commission and in each assessment year commencing after such appraisal is so delivered and received, the county assessor and the county commission, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property. *The total assessed valuation in each of the four classes of property shall not be less than fifty percent or more than one hundred percent of the appraised valuation of each said class of property: Provided, however, that beginning July one, one thousand nine hundred eighty-one, the total valuation in each of the four classes of property shall not be less than sixty percent of the appraised valuation of each said class of property.* (emphasis added).

the effect of the increase which compounded the inequities already existing in the system.⁹⁰

The Putnam County assessor ignored the ensuing directive of the State Tax Commissioner and refused to turn the Putnam County land books over to him so that the state office might implement the increase under enforcement power afforded by the West Virginia Code.⁹¹ The State Tax Commissioner appealed to the West Virginia Supreme Court of Appeals for its support. The court held that the Tax Commissioner has the "clear legal right" to require the respondent Putnam County officials to comply with the law. The court further upheld the commissioner's power to seize the county's land books in order to effectuate a lawful increase.⁹²

In the Putnam County decision, the court enforced that portion of the West Virginia tax law that specifically empowers the State Tax Commissioner to appraise all property in West Virginia and mandates utilization of his appraisal by the county for assessment purposes. The fractional assessment provisions of that law were obviated, however, by a concurrent action of the court.

The same day the Putnam County decision was issued, the West Virginia Supreme Court of Appeals handed down a ruling on the petition of the Logan County Board of Education which sought to enforce assessment of one hundred percent of the Tax Commissioner's appraised evaluations of all classes of property. The board argued that the fractional assessment discretion provided by the West Virginia Code was unconstitutional in that equality and uniformity could not be maintained. The court agreed.

The term "value" as used in article 10, section 1 of the West Virginia Constitution means the "worth in money" of a piece of property—its market value. . . . We conclude that the percentage ratio scheme contained in W. Va. Code § 18-9A-11 results in fractional assessment which is prohibited by the constitutional requirement of equal and uniform taxation as well as by W. Va. Code § 18-9A-11. As the lower court found, the legislature has no authority to allow assessors discretion in determining the value of property. . . . Equal and uniform taxation cannot result when each county assessor can vary assessments up to 50 percent of the appraised value both within and among classes of property.⁹³

The court did not ignore the deficiencies within the state-controlled appraisal process or pretend that a full assessment plan would resolve these problems.

We do agree, however, that an up-to-date appraisal is needed and required by law. W. Va. Code § 18-9A-11. Use of the tax commissioner's present appraisals will not automatically ensure equitable taxation. Property is now under valued in much of the state and the tax commissioner's appraisal values do not necessarily reflect the most recent market value of property. *See Tug Valley Recov-*

⁹⁰ Hazlewood, *Putnam Double Loser on Tax Rulings*, *The Charleston Gazette* (Charleston, W. Va.) July 3, 1982 at 1, col. 5.

⁹¹ W. VA. CODE § 11-1-2 (1974).

⁹² *Rose v. Fewell*, 294 S.E.2d at 438.

⁹³ *Killen v. Logan County Comm'n*, 295 S.E.2d at 693.

ery Center, Inc. v. Mingo County Commission, 261 S.E.2d 165, 174 n.5 (1979).⁹⁴

The State Tax Commissioner was ordered to insure that market value appraisals for all state property would be uniformly updated.

The Tax Commissioner must proceed with all deliberate speed to comply with the law. All reappraisals by the State Tax Commissioner must be based on valuation factors calculated in the same year. We noted three years ago in *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, ___ W. Va. ___, 261 S.E.2d 165, 174 n.5 (1979), that the Tax Commissioner had not complied with the law. It is apparent from this case and the lower court's decision in *Pauley v. Bailey*, Civil Action No. 75-1268 (Kanawha County Circuit Court, May 11, 1982) that the Tax Commissioner has not met this statutory obligation defined by the legislature.⁹⁵

The courts' decisions had hardly been issued before a resounding political backlash was unleashed. The media quickly picked up the call of several state legislators to convene a special session of the West Virginia Legislature to address the court's mandate for 100% assessment. Governor John D. Rockefeller officially called the legislature to Charleston for the proposed purpose of drafting a constitutional amendment which would ratify the statutory directive to assess property at 60% of its true and actual value, and nullify the court's decision in the Logan County case. In an atmosphere of public confusion and anxiety over the actual effects of the Logan and Putnam County decisions, a proposed constitutional amendment⁹⁶ was adopted by the legislature. Only days before deadline for publication of its appearance on the general election ballot in November, 1982, a copy of the amendment was flown to key newspapers throughout the state.⁹⁷

In the general election of November, 1982, the West Virginia electorate ratified the proposed amendment and it became constitutional law.

The future of the property tax system in West Virginia will clearly be controlled by the response of its voters to this proposed constitutional change. Faced with the knowledge of increasing county costs and decreasing federal aid, the voters are being charged with the responsibility of generating resources—resources that county and state government have historically failed to draw upon. Their mandate has been that these resources must be found elsewhere than in the pockets of the West Virginia taxpayer.

II. STRATEGY BEHIND THE TVRC'S ACTION TO EQUALIZE PROPERTY TAXES

The TVRC litigation was generated through many months of community efforts. A devastating flood struck the Tug River Valley in the spring of 1977. The area, which had suffered from a severe housing shortage before the disaster, lost 1,200 homes to the flood waters. The entire business district of this

⁹⁴ *Id.* at 697 n.13.

⁹⁵ *Rose v. Fewell*, 294 S.E.2d at 440.

⁹⁶ Property Tax Limitation and Homestead Exemption Amendment of 1982.

⁹⁷ See *The Charleston Gazette* (Charleston, W. Va.) July 19, 1982.

southern West Virginia coal community was submerged. Most of the business and professional people in the area experienced the devastation of their homes, businesses and automobiles during the night. Those less able to bear the financial strain simply lost all they had.

The night the flood waters receded, TVRC was born. At a community meeting called by local leaders, an organization emerged to address the immediate survival needs of the town. This group served as a conduit for the Red Cross food and clothing supplies that were flown in. Setting up headquarters in the basement of a local church which escaped the flood, TVRC served hot meals throughout the day and night to hundreds of people for a number of weeks during the early stages of recovery. Not surprisingly, it became a lightning rod for community concern regarding the federal aid that was coming through the offices of the Department of Housing and Urban Development and the Small Business Administration.

Those persons who comprised the functioning core of TVRC formalized the organization, filed incorporation documents and, with the financial assistance of the churches of West Virginia, purchased a building to serve as the permanent headquarters of its activities. From this center, the members launched an effort to direct the incoming state and federal housing assistance dollars away from perpetuation of the mobile homes which proliferated in the area into safe, healthy, permanent housing at a cost people could afford.

The housing development efforts of TVRC were blocked at every juncture by the lack of available land for housing. The terrain of the Tug River Valley, like most of southern West Virginia, is extremely mountainous. Housing has developed in a rural sprawl along the highways. Traditionally, the land which has been made available for single-family homes is either within the incorporated areas or is the remnants of land presently held by the corporations, which the corporate owner is willing to parcel off into small lots. Recent studies have determined that out-of-state corporations own 46.6% of Mingo County surface interests.⁹⁸ Most of this land is undeveloped and uninhabited.

TVRC did not fight a solitary battle for land. In the early days following the flood, the state legislature had set aside \$10,000,000 for emergency housing assistance for those who had lost their homes to the flood. Advance planning teams from the West Virginia Housing Development Authority identified appropriate sites for housing and conceived a plan for construction of single-family dwellings which would ultimately be sold by the state to flood victims. The land which the Authority identified was recorded in fee in the name of Cotiga Development Corporation, a Philadelphia based landholding firm. Research revealed that Cotiga owned 39,648 acres of Mingo County mineral interests and 25,081 acres of Mingo County surface interests.⁹⁹

⁹⁸ APPALACHIAN LAND OWNERSHIP STUDY, *supra* note 8, at 8/181. The study further determined that out-of-county corporations own another 14.9 percent of Mingo County surface land.

⁹⁹ *Id.* at 10/183. Cotiga Development Corporation claims the largest holdings of any Mingo County property owner. The property is intermittently leased to coal and timber operations. Otherwise it is unused.

Representatives from the office of Governor Rockefeller made repeated efforts to negotiate the conveyance of approximately twenty-eight acres of the Cotiga property for state housing development. After months of delay, Cotiga extended a one-year option to the state of West Virginia to purchase the land at \$4,500.00 per acre with the stipulation that the state's project would not impede coal development on the land adjacent to the housing sites. The offer was unacceptable to the state and the Governor instructed the Attorney General of West Virginia to initiate condemnation proceedings. The Circuit Court of Mingo County held that the purposes for which the state sought the land were in the nature of public use in that the housing which would be placed on the land was intended to meet the needs of flood victims in underdeveloped Mingo County. On appeal, that decision was upheld in the West Virginia Supreme Court of Appeals. It has been remanded to the lower court for proceedings to set a value on the land.¹⁰⁰

The Cotiga incident pointed out the problem created by out-of-state corporations which have held massive tracts of land in Mingo County for many years. Unwilling to sell the land, the corporations are also slow to develop it. As a result, any private housing that was built was located on the same land which had been the site of previous floods. Those in TVRC leading the campaign to develop single-family housing began to investigate the causes for this uncharacteristic reluctance of the corporations to generate a profit in a willing marketplace.

A series of articles in the *Huntington Herald Dispatch*¹⁰¹ and the early findings of those conducting the research which was eventually documented in the *Appalachian Land Ownership Study*¹⁰² led the TVRC researchers to the offices of the Mingo County Commission, the repository of county land and tax records. With some help from the local office of the Legal Services Corporation, the community researchers were able to identify the factors which create a disincentive to land development. These community people donated countless hours of volunteer time in gathering data on the history of corporate and individual taxation in Mingo County.

Initially, the researcher would choose the land parcels at random and trace the tax assessment of the parcel back through the years. This tracing of corporate property often revealed corporate mergers and connections which would drastically increase the scope of what was originally believed to be the corporate holding. The findings of the community researchers were consistent with the information they had received from other counties. The Mingo County land books revealed enormous holdings of land in fee by out-of-state corporate interests. These holdings were, in most cases, assessed at minimal levels ranging from \$2.00 per acre to \$38.00 per acre. The fact that many of these interests were held by active coal companies indicated that the fee ownership in-

¹⁰⁰ *State of West Virginia v. Cotiga*, Civil Action No. 78C-7565 (Mingo County Cir. Ct. July 28, 1978).

¹⁰¹ T. Miller, *Who Owns West Virginia*, *The Herald Dispatch* (Huntington, W. Va.) Dec. 22-29, 1974.

¹⁰² APPALACHIAN LAND OWNERSHIP STUDY, *supra* note 8.

cluded rich mineral deposits.

Further at-random research revealed that individually owned property, while assessed at a level below the national average, was valued at a level much closer to its true and actual value than was the corporate property. The researchers took their information to two legal service corporation attorneys who had worked with them during the formative days of the organization. With the assistance of its legal counsel, TVRC organized the documentary evidence into a comprehensive analysis of the county tax structure and prepared a petition for presentation to the Board of Equalization and Review which requested increased assessment of coal interests in Mingo County. Because neither rules of evidence nor procedure exist in the county court system, TVRC was able to present its findings to the Board of Equalization and Review in the form of a report. It determined average per acre assessment rates of the major corporate holdings doing business within the county and compared them to average individual homeowner assessments. The comparison was impressive and attracted the attention of both county government and the press.

The single greatest obstacle faced by the group in generating public support for its petition was the popular image that tax law is too complex to be understood by the general public. To some degree, this is a self-fulfilling prophecy. TVRC chose to use the most basic elements of the law for education purposes. It distributed literature which emphasized the comparison between the per acre assessments of individual and corporate land owners. Without elaborating by mathematical analysis, the handouts also explained the relationship between the county tax base and the availability of county services. Because Mingo County is an area in need of public services, the significance of underassessment was not difficult to communicate. Public education regarding tax issues was accelerated by an interested press which was anxious to tell the story of the community group which took on the corporations. Representatives of TVRC and their legal counsel took full advantage of every opportunity to explain the complexities of the assessment process to conscientious reporters.

The meeting room of the Board of Equalization and Review became the forum in which the representatives of the taxpayers of Mingo County exercised their statutory privilege to challenge enforcement of the state law. Although TVRC counsel accompanied their clients to every appearance before the board, the informality of the county courtroom provided an opportunity for individual taxpayers to speak for themselves. The corporate landowner—always appearing in the person of its counsel—gained relatively little advantage over the lay representative through legal expertise. County tribunals, especially in rural areas, function in an atmosphere which fluctuates between politics on one extreme and a common sense of fairness on the other. The closer these two extremes come to meeting, the more successful the court. A lay person is as capable of recognizing these dynamics as is the most skilled lawyer. TVRC counsel served the function of reminding both the court and the parties of the purpose behind the taxpayers' action and diverting the board's attention from irrelevant legal maneuvering to a factual analysis of the argument at hand. Once the real issues were identified, TVRC counsel made every effort to allow their clients to speak for themselves.

The informality of the county forum can also work against the citizens' group. The board can decide either to support the group or it can decide to abandon it. In neither case is it required to state legal grounds for its action, since no official record of the proceedings is kept. As all parties have become more sophisticated regarding reassessment procedures, it has become typical for corporate counsel to bring its own reporter. This recording, as well as the case file compiled by the Board of Equalization and Review, will constitute the record for appeal.

Recognizing the precedent-setting nature of its action, TVRC identified the need for compiling as complete a record as possible for purposes of appeal. Since the county commission was not accustomed to compiling files for use in the circuit court, counsel for TVRC volunteered to assist the county clerk in collating the data which should appear in the appeal file. Its counsel and researchers also assisted the board and its staff by providing necessary information regarding statutory procedures for the review process. The county staff was, for the most part, responsive to the offers of help. TVRC repeatedly took the public and private position that the county assessor, his staff and the county commission were understaffed and burdened with responsibility far in excess of what they might reasonably be expected to carry. In February, 1979, TVRC appeared before the Mingo County Commission with a petition requesting creation of a Citizen's Advisory Board on Tax Assessment. The statutory provision for such a group¹⁰³ proposes a volunteer body to assist the Board of Equalization and Review in performing its duties to enforce fair and equitable tax assessment. The petition was denied.

At the time the original TVRC action was appealed from the county to the circuit court, a major policy decision was made. The State Tax Commissioner's appraisal of Mingo County coal interests had provided the most crucial and material evidence of underassessment presented to the Board of Equalization and Review. On the basis of that document, TVRC petitioned the board to increase the assessments of all of the more than two hundred coal owners listed. In addition, specific evidence of actual value and relative assessment on a number of parcels of coal land, most particularly that owned by Cotiga Development Corporation, existed. The citizens' group was forced to decide whether it would appeal the assessments of all the coal interests in Mingo County or only those interests upon which it possessed the most persuasive evidence of undervaluation. TVRC decided to concentrate its efforts on Cotiga Development Corporation, being convinced that no court could ignore its evidence of underassessment of that property. It was the consensus of the group that in so doing it created precedent to be applied to other corporate landholders and the potential for a limited and predictable impact upon the taxpaying public at large. In effect, the group created the antithesis of the across-the-board slash in taxes and spending which was simultaneously being launched in the form of California's Proposition 13.

The statutory appeal time provided for county decisions by West Virginia

¹⁰³ W. VA. CODE § 7-1-3(1) (1976).

law is brief. Within thirty days of the last day on which the Board of Equalization and Review sits, an appeal must be filed in the circuit court. A ten day Notice of Intent to file the appeal must be served on the office of the county prosecutor, the legal representative of the board.¹⁰⁴ In light of the lack of experience of most county staffs in preparing circuit appeals, the time provided for the TVRC appeal was minimal. This was the point at which the group's need for assistance of counsel became imperative.

When the TVRC appeal moved into the circuit court, it was styled as a controversy between TVRC and the Mingo County Commission. It remained such throughout the litigation process, there being no intervention by Cotiga or any other Mingo County coal interest. In many of the reassessment actions since that time, parties other than the commission and the petitioning citizens' group have intervened at either the county, circuit or state supreme court level. Failure of the corporate entity to become a party to the action leaves the county in the highly untenable position of defending its failure to assess corporate property at its true and actual value. In those cases which include the challenged corporation as a party, corporate counsel has presented an appropriate defense while the county has maintained a low litigation profile.

The circuit court which reviewed the original TVRC litigation focused on the issue of standing, essentially ignoring any question of true and actual value of the corporate property. In subsequent actions, courts have requested evidence to assist them in any potential re-evaluation process. The availability of this information to the court presents a procedural question. West Virginia law provides that in those cases where the property owner appeared before the Board of Equalization and Review or received actual notice certified by the board, the circuit court appeal will be based upon the evidence presented to the board. In those cases where no actual notice was given and the owner did not appear, the appeal will be heard *de novo* by the circuit court.¹⁰⁵ Where the circuit judges have insisted on proceedings which were, in part, *de novo* despite the owners appearance at the county level, they have characterized the evidence presented as expert or specialized information to assist the court in its findings. It is unlikely that either party would contest the opportunity to present additional factual evidence in support of its appellate argument.

The court's request for *de novo* evidence reflects dual concerns. Many judges contend that they have no expertise in the area and are incapable of determining the true and actual value of property. Equally important, they are acutely aware of the increasing public interest in tax matters. A decision which has the effect of increasing taxes risks incurring the disfavor of the community. It takes little imagination to envision the symbol of authority upon whom the responsibility for the tax increase is placed.

It is in the circuit court that a petitioning group is first met with serious financial concerns. The research done in preparation for the county appearance

¹⁰⁴ W. VA. CODE § 11-3-25 (1974).

¹⁰⁵ *Id.* It is unclear whether the rules of civil procedure apply on a *de novo* appeal in circuit court. See W. VA. R. Civ. P. 81(1).

has been performed by the community group, with minimal supervision by counsel. The magnitude of the task makes community involvement crucial at this initial stage and the flexible nature of the county proceedings make it likely that nearly all of the information uncovered may be used in some form. When the case moves into the circuit court, presentation of evidence must be more selective. Expert and lay witness preparation is required. Counsel must determine the form in which the voluminous documentary evidence can best be digested by the court. Trial briefs and motions must be submitted. The lack of access to accurate holdings and tax reports creates major proof problems throughout the litigation process.¹⁰⁶ These problems become especially acute in the circuit court when the full burden of proof is placed upon the petitioners.¹⁰⁷ Counsel's input becomes intensive at this point and remains so throughout the remaining litigation.

The current West Virginia Supreme Court of Appeals has evidenced consistent, thoughtful concern regarding issues of assessment, which corresponds with the growing sense of public awareness of the issue. Confusing and conflicting opinions of the past have provided little guidance on the procedure to be applied to present-day tax challenges. Decisions handed down in recent years reflect the increasing sensitivity of the court to the need for precise directives in this area. Despite the explicit nature of contemporary decisions, the citizens' groups are faced with many of their most frustrating problems at the stage of implementation of the directives of the circuit and appellate courts.

Typically, community pressure relaxes when the court's orders are issued. Sensing victory, the people who have maintained the struggle throughout months and years of litigation retire to observe the fruits of their labor. They frequently find that the bureaucratic resistance to change remains virtually unaffected. The same obscurantism to corporate tax records which necessitated the original action is often used to conceal the fact that the court's order is being crippled or negated. A crucial element in the entire litigation process is the group's understanding that the process of change is cyclical. Members must be willing to expend the same level of effort and energy at the stage of implementation that they exhibited at the stage of initiation. This includes more hours of research, more public education, more hours of public and private meetings to question the manner in which the court's order is enforced and the public benefits generated through this enforcement.

Over the years of their struggle, the people who comprised TVRC came to realize that their victories in the courtroom were only one highly gratifying portion of their accomplishment. The more important contribution, they have recognized, is the information they have been instrumental in bringing to the people of West Virginia. Through their efforts and those of groups like them, the media attention has been focused on the simple dynamics of their struggle. Through the press, the public-at-large has been made aware that there are al-

¹⁰⁶ *But see supra* note 83.

¹⁰⁷ *See Killen*, 295 S.E.2d at 706, for a discussion of the burden of proof carried by petitioners.

ternatives to the short-sighted restrictions of California's Proposition 13. Rather than further penalizing those least able to afford an increase in taxes and a decrease in services, the history of TVRC litigation suggests an equalizing process. The members contend that their approach takes stock of the natural wealth which remains in West Virginia and provides a method for insuring that the benefits and burdens attached to it are distributed in a fair and equitable fashion.

III. CONCLUSION

The conflict which sustained the TVRC action and has generated considerable litigation since that time is between the working class of West Virginia and the corporations. There is a strong, historic resentment evidenced by the poor and the working class of West Virginia regarding the tremendous mineral wealth which has been removed from the state to generate profits elsewhere. State history is replete with stories of mineral interests conveyed to corporate speculators for a fraction of their worth by poor, uneducated landowners struggling to survive in a world of technology. More often than not, these families have gone on generation after generation working in the mines which were dug from their land.

Left in the wake of the profits of the "Billion Dollar Coalfield" in Mingo County is a community which fights a never-ending battle to combat deficiencies in its housing, health care and education. Decreasing sources of federal and state funds have resulted in increased responsibility upon the county to generate funds for county services.

The focus on property taxes has provided a forum for the classic confrontation of Appalachian haves and have-nots. Much of the natural wealth of West Virginia has already been dissipated, but much more remains. The TVRC advocates contend that fair and equitable distribution of property taxes, based on the true "actual value" of the interest holder's property, is crucial to any plan for development of West Virginia's human resources. The actions initiated by TVRC were significant steps toward realization of this historic goal.

