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# Government Acquisitions of Private Property in Rural Areas: The U.S. Army Corps of Engineers and the Cave Run Reservoir Project

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# Note

## GOVERNMENT ACQUISITION OF PRIVATE PROPERTY IN RURAL AREAS: THE U.S. ARMY CORPS OF ENGINEERS AND THE CAVE RUN RESERVOIR PROJECT

### EDITORS' INTRODUCTION

The following evaluation and proposals for improvement of the methods of land acquisition by the United States Army Corps of Engineers is the result of empirical and academic research by the staff of the *Kentucky Law Journal* under the auspices of a grant from the American Bar Foundation.

In the introductory section, a description of the Corps' project chosen for study, the Cave Run Reservoir, is given and the survey and other research methods are detailed. The second section details the contemporary definition of the just compensation concept of the fifth amendment required in governmental takings of private property—fair market value—and in turn appraises the definition of that concept.

Proceeding from this background, the following three sections discuss the difficulties that are raised by the adversarial nature of the appraisal process. It is noted that the two parties' [*i.e.*, the landowner and the government] evaluations of each tract of property by comparing it with a few, most favorable sales creates a gross disparity in the parties' evaluations, neither of which is completely valid as both rest on a few similar, rather than all, transfers of nearby property. The landowners' distrust arising from the variant appraisals is compounded by the government's practice of initially offering less than even the previously ascertained government appraisal valuation, a practice here shown to occur as often as seventy-five percent of the time. This "horsetrading" method of the government in acquiring property to be condemned is thereby revealed to be an unfair attempt to circumvent the constitutional requirement of just compensation.

Moreover, this "minimizing the cost to the government" approach is actually causative of litigious delay, costly to both the government and the landowner. Only six percent of the surveyed landowners accepted the government's initial offer and twenty-two percent preferred to endure a trial and gamble on a jury verdict than to accept

any government offer. The profitability of this gamble, however, and perhaps the injustice of the government's appraisals, is revealed by the fact that in the studied project, jury awards have exceeded government appraisals by as much as seventy-eight percent.

Consequently, it is proposed that a new system of government acquisition of private property be enacted. It is suggested that in the interest of fairness of valuation and of the procedure for obtaining the property that a board of legal and appraisal representatives of both the government and the landowners be formed in each project area involving the government acquisition of multiple tracts of property. This board would oversee the programming of a computer analysis of all recent sales of area real property to obtain the average value per acre of each type of land in the general project area. Rather than a biased view of a few sales of land similar in totality to a tract in question, these supervised valuations of the different types of land, based upon all recent sales, would determine the true market value of each topographical segment of a tract which, when aggregated, would compose the true market value of the whole. This truly "fair" market value would then be required to be the government's offer to the landowner.

The final section of the study deals with the "uncompensable" losses of eminent domain proceedings. These include: moving, relocation and replacement costs; tax consequences, specifically the capital gains tax treatment of condemnation proceeds; social and psychological factors involved in the displacement of the landowner; and finally attorneys' fees and allied costs, specifically noting the inherent unfairness of a system in which a landowner who determines that the government offers for his property are inadequate and resorts to judicial action, has the jury award, the "just compensation," for his property reduced by the amount of his attorney fees and court costs, even when the jury determines that the government's offer was grossly inadequate, a not unusual situation in condemnation suits arising out of the Cave Run project. Viewing this as unfair and countervailing a policy of equitable offers, it is proposed that the government bear the landowner's litigation expenses where the verdict exceeds the highest government offer.

S.G.S.

C.G.P.

## I. INTRODUCTION

The fifth amendment provides, ". . . nor shall private property be taken for public use without just compensation." With this constitutional structure in mind, the *Kentucky Law Journal* in the Spring of 1969 made a proposal to the American Bar Foundation which aimed at charting the application of this provision of the fifth amendment in rural condemnation by the United States Army Corps of Engineers.<sup>1</sup> The purpose of the project which was spawned by that proposal was, through empirical and academic research, to determine the viability of the present acquisition procedures and laws which are being employed by the Corps of Engineers in rural land acquisition. The emphasis of the project was placed on the economic hardships that displaced landowners inevitably face. Attendant to this primary emphasis was the constant inquiry into how present procedures and law might better serve to alleviate the severe financial hardships displaced landowners often face.

The *Journal* recognizes that landowners who have been displaced by government acquisition of their property encounter not only economic difficulties but also psychological and sociological hardships.<sup>2</sup> However, our emphasis as delineated above was placed mainly in the realm of economics.

The basic methodology promulgated to accomplish the purposes of the American Bar Foundation proposal was two fold. First, the staff members involved conducted extensive research into all areas of land acquisitions by the government. This academically oriented phase encompassed such subjects as constitutional authority for the power of eminent domain, case law concerning eminent domain, approaches to defining just compensation, procedures of land acquisition by the government with special consideration given to the acquisition policies of the Corps of Engineers, procedures of real estate valuation and appraisal techniques, with special consideration given to rural property, congressional hearings concerning land acquisition policies of the government with special consideration of the Corps of Engineers, and examination of court records in condemnation proceedings.

The second phase of the project was to a great extent empirical. In order to carry out this empirical phase, a representative project area which involved rural land acquisition by the Corps of Engineers

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<sup>1</sup> The research proposal is attached as App. A.

<sup>2</sup> See Sec. VI *infra*. See also 21 STAN. L. REV. 801 (1969) and STAN. L. REV. 693 (1969) for an excellent discussion of the psychological impact that eminent domain taking have on the displaced landowners.

was chosen as a sample. The area chosen was the Cave Run Project, which includes Bath, Morgan, Menifee and Rowan counties, Kentucky. The Cave Run Project had its origin with the Flood Control Act of 1936.<sup>3</sup> At that time the Corps of Engineers was directed by Congress to conduct an investigation into the feasibility of a public works project in the Licking River Valley of Bath, Morgan, Menifee and Rowan counties. No further action was taken until 1958. In 1958 Congress finally authorized a flood control project in the Cave Run area.<sup>4</sup>

The project physically envisions the construction of an earth and rock fill dam 140 feet in height and 2,700 feet in length; a spillway 280 feet wide; and a reservoir with a total storage capacity of 614,000 acre feet. The land necessary to complete these constructions consist predominantly of 40,000 acres of agricultural property in the project counties.<sup>5</sup>

The project justification is basically flood control. However, a very significant additional justification for the project is the prediction that it will bring additional revenues into the project area. The Corps reflects this resulting economic enhancement in what they refer to as their cost benefit ratio, *i.e.* the ratio of each tax dollar spent to the additional revenue which will be brought into the area in the form of recreational areas, new industries, etc. This ratio for the Cave Run area is 1 to 1.8, or for each tax dollar spent 1.8 new dollars will come into the project area because that tax dollar was expended.<sup>6</sup>

The original estimate of the cost to complete this project was \$16,100,000 in 1958.<sup>7</sup> That estimate was increased to \$18,900,000 in 1963. It rose still higher in 1964 to \$24,500,000.<sup>8</sup> Another increase to \$30,100,000 was necessary in 1966. The last estimate for the project through the year of 1969 reached \$30,600,000.<sup>9</sup>

Of the \$30,600,000 contemplated as necessary to complete the project, Congress, as of 1969, had a balance of \$18,306,000 which still was unappropriated.<sup>10</sup> Obviously these increases have caused delays in the projected time table for completion. Consequent to the delays have been varying hardships on the prospective displacees. These hardships will be reserved for appropriate comment in a later section. As might be expected the reason given by the Corps of Engineers

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<sup>3</sup> Flood Control Act of 1936, ch. 688, § 6, 49 Stat. 1592-93.

<sup>4</sup> Act of July 3, 1958, Pub. L. No. 85-500, § 101, 59 Stat. 10.

<sup>5</sup> HOUSE APPROPRIATIONS COMM., 90TH CONG., 2D SESS., PUBLIC WORKS APPROPRIATIONS FOR 1969 908 (Comm. Print 1969).

<sup>6</sup> *Id.* at 913-914.

<sup>7</sup> *Id.* at 914.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

for the persistent increases in the cost estimates on the project is the general increase in land values.

#### A. *County Description*

The land which makes up the project area, *i.e.* the land which has been taken by the Corps, is, as mentioned previously, predominantly agricultural property in Bath, Menifee, Morgan and Rowan counties. A rather extended description of the Cave Run area and its inhabitants is necessary to grasp, in the proper perspective, the overall conclusions that will be developed subsequently. The four counties which are touched by the Cave Run project lie in the Northeast corner of Kentucky. Three of the counties, namely Rowan, Menifee and Morgan, lie in what is generally referred to as the Southern Appalachian Coal Mining Subregion. Characteristic of this subregion is rugged topography sliced by frequent ridges and creek bottoms. The soil is shallow and the slopes steep, both of which reduce farming in many sections to a mere subsistence level. The remaining county which is touched by the Cave Run Project is Bath county which lies at the edge of the Kentucky Bluegrass Subregion where it borders on the Southern Appalachian Coal Mining Subregion. The topography in the outer rim of this Bluegrass Subregion is rugged and hilly. This outer section is a limestone area with thinner and less fertile soil than the heart of the Bluegrass subregion.

Rowan County occupies a land area of 290 square miles which is unusually small in view of the fact that the median area for a county in the United States is 620 square miles. Only 0.7% of the land area is occupied by urban places. In fact, Rowan is classified as an isolated, semi-rural area. The population of Rowan was estimated to be 13,200 in 1966. 66.7% of this number lived in rural sections as opposed to urban ones. In the United States as a whole, only 29.4% of the inhabitants live in rural areas. The population growth of the county has been substantially behind the average population growth rate for the United States. From 1960-1966 Rowan had a gain of 3.1% in population while the United States had a gain of 8.8%. The slow growth was mainly attributable to emigration from the area.

Morgan County is slightly larger than Rowan with its 369 square miles of area. It is similar to Rowan in that it is considerably smaller than the average size for a U.S. county in land area. Morgan County is entirely rural, having no urban areas. It is classified as an isolated rural area, composed of approximately 9,200 persons as of 1966. The county has sustained a steady loss of population since 1940. The loss in population was again due to outward migration from the county.

Menifee County, like the previous two counties, occupies an ex-

tremely small land area of only 210 square miles. None of this county is occupied by an urban area. In demographic terminology the county is classified as an isolated rural area. The population of the county was approximately 4,100 persons in 1966. Like Morgan, Meniffee County has suffered a steady loss of population since 1940 due to outward migration.

Bath County, like the previously mentioned three counties in the Cave Run area, has an unusually small land area—287 square miles. Bath has no urban centers either and is also classified demographically as an isolated rural community. It had a population of 8,800 persons in 1966. Bath too has had a steady population decline since 1940 due to outward migration.

All the counties in the Cave Run area possess similar geographic and demographic characteristics, such as lack of urban development, decreasing or static population and an unusually rough topography. These characteristics are reflected in the quality of economic life of the local citizenry. Perhaps the best means to indicate the economic vitality of a community is by comparing that community with the other communities in the United States. The Office of Economic Opportunity in their publication *Community Profile* compares each county's economic conditions with those of the average United States county. This comparison or profile gives an accurate picture of the economic condition of each county and how that condition compares to national averages. The community profile uses certain categories as indicators of a county's economic life. The categories which are relevant to the present description of the economic conditions in the project counties include the following: magnitude of poverty, severity of poverty, economic activity, family resources, and sufficiency of housing.

The only one of the above economic indicators in which the Cave Run area counties register better than the average United States county is the first, magnitude of poverty. Magnitude of poverty is simply the number of families in a given county who receive less income than the Social Security Administration poverty cut-off level. The national county norm in 1966 was 1,221 families. Bath County had 897 families below the cut-off level, Meniffee 371, Morgan 854 and Rowan 1,143.

The indicator of the "severity of poverty" better reflects the actual position of a county's average income with regard to the national norm because the comparison is made on a percentage basis, *i.e.* the percentage of families below the Social Security Administration cut-

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<sup>10</sup> *Id.*

off point. In this category all the Cave Run area counties compare unfavorably with the national norm. The national county norm of families below this cut-off point is 22.6%. The four counties we are concerned with have a range from 38.3% to 43.4% below that level.

Another significant indicator which demonstrates the economic weakness in these counties is "economic activity," or more simply the amount of retail sales transacted for each person in the county. In 1966 the national norm was \$1,204, while the Cave Run counties ranged from \$360 to \$1,118.

In terms of "family resources," or median family income, the project counties in 1966 ranged from \$2,427 to \$3,589. This compares with the U.S. county standard of \$4,630. These low family resources also explain, to some degree, the fact that from 15.6% to 24.1% of the dwelling units in these counties housed more than the national average of 1.01 persons per room.<sup>11</sup>

The inevitable conclusion which must be drawn from the above is that the counties in the Cave Run Dam Project area are below the national economic norms in almost every significant category. Obviously families in such an area will be strained to bear the financial hardships of dislocation more so than families in an economically prosperous area.

### B. *Field Research*

The second or empirical phase of the research consisted of two parts. First, numerous preliminary interviews were conducted with agencies such as the Farmer's Home Loan Administration. Perhaps the most significant of these preliminary interviews was with the Corps of Engineers. The Corps branch which is located in Morehead, Kentucky is responsible for the major part of the operational aspects of the Cave Run Project. That branch was particularly helpful in reviewing their land acquisition procedures. They were able to identify for our field research the families who had already been dislocated and those who were subject to future dislocation. This information also included the amount of property in each tract which was taken and the present address of the displacees.<sup>12</sup>

In order to interview the displaced landowners effectively, the staff members in association with a sociologist devised a somewhat lengthy questionnaire.<sup>13</sup> The object of the interviews and the questionnaire

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<sup>11</sup> The Office of Economic Opportunity's *Community Profile* study for these four counties is set out in full at App. B.

<sup>12</sup> Interview with William Dodge, Project Director for Cave Run Project, Morehead, Ky.

<sup>13</sup> The questionnaire with statistical summary of the responses to each question appears as App. C.



was to develop a body of data regarding the land appraisal and acquisition procedures of the Corps in the Cave Run area. This questionnaire was specifically aided by having the displaced landowner recount his contacts with the Corps of Engineers from the time he was informed his land was to be taken to the time the Corps actually purchased his property voluntarily or involuntarily via condemnation proceedings. Included within this time span was the appraisal and negotiation process in which the Corps engages with every displaced landowner. The questionnaires were employed in personal interviews with displaced landowners.

Ninety-six landowners were interviewed on a personal basis. This particular type of interview served not only the purpose of gathering statistical data, but also the purpose of revealing the subjective attitudes of the persons most directly involved toward the land acquisition policies of the Corps of Engineers.

In order to better understand the data that was gathered it is necessary to outline generally the steps in the process of land acquisition. The first step is the announcement of the project itself. In the case of the Cave Run Project this announcement was made in 1958.<sup>14</sup> After the announcement the Corps of Engineers employed appraisers to make a general survey of the land values in the area. From this general survey the Corps proceeded to individual appraisals of each tract of property that was required for the project. Using this appraisal, a fair market value was set for the property. After the fair market value was established, the formal negotiations with the individual landowner began. The Corps was represented in these negotiations by one of its staff negotiators. The individual landowner, almost without exception represented himself. The negotiations were carried on in a horse trading manner with the staff negotiator making offers to the landowners. Generally several offers were made. If none of these offers were acceptable to the landowner the Corps recommended to the District Attorney's Office that the tract be involuntarily taken by condemnation. In this event, a date was set for trial and a jury impanelled to set a value on the property in question.

## II. EMINENT DOMAIN AND JUST COMPENSATION

### A. *A Short History*

There existed at common law in England, the principle that property and its use was a right inherent in every Englishman,<sup>15</sup>

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<sup>14</sup> See note 4 *supra*.

<sup>15</sup> 1 BLACKSTONE, COMMENTARIES 138.

absolute save for the concurrent power inherent in the king to take property that was needed for the good of the state—the power of eminent domain. Blackstone, discussing the Englishman's absolute rights, gave an example of a new road whose path went through private property. Realizing that the communal good outweighed the private right to the land, he said, "But how does it [the legislature] interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained. . . . All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price."<sup>16</sup> This is the concept of just compensation that existed in English common law at the time of the American Revolution. It is natural that before the Constitution was ratified the provision should be added which prevented the federal government from taking private property without some compensation to the owner other than that which accrues to all citizens.<sup>17</sup>

But beyond our English heritage, there appears to be another justification for the concept of just compensation—the natural law doctrine.<sup>18</sup> Viewed under this doctrine, the just compensation provision of the fifth amendment was a mere restatement and guarantee of existing law.<sup>19</sup> The courts have, in some cases, recognized that natural justice would require compensation where the state's eminent domain power has operated on private property, even in the absence of our constitutional provision.<sup>20</sup>

Whatever the origin or the source of the requirement for just compensation, the fact remains that the Constitution contains a mandate to the state, that when it takes private property for public use it shall provide just compensation to the owner.<sup>21</sup>

#### B. *The American Concept of Just Compensation*

The just compensation required by the Constitution to be made

<sup>16</sup> *Id.* at 139.

<sup>17</sup> A. JAHR, *LAW OF EMINENT DOMAIN* 2 (1953) [hereinafter cited as JAHR].

<sup>18</sup> Lenhoff, *Development of the Concept of Eminent Domain*, 42 COLUM. L. REV. 596, 599 (1942).

<sup>19</sup> Marquis, *Constitutional and Statutory Authority to Condemn*, 43 IOWA L. REV. 171, n.5 (1958). This article cites Vattel, *LAW OF NATIONS* 112 (1859) as saying that when the eminent domain power of the community is exercised, "justice requires that this community, or this individual, be indemnified at the public charge: and if the treasury is not able to bear the expense, all the citizens are obliged to contribute to it; for, the burden of the state ought to be supported equally, or in a just proportion."

<sup>20</sup> Grant, *The Natural Law Background of Due Process*, 31 COLUM. L. REV. 56, 71 (1931). This article lucidly explains the philosophical development of the natural law doctrine.

<sup>21</sup> For an example of the complicated course that English eminent domain law has followed, see R. STEWART-BROWN, *A GUIDE TO COMPULSORY PURCHASE AND COMPENSATION* (4th ed. 1960).

to the owner is to be measured by the loss caused to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public.<sup>22</sup>

It was not until 1875 that the right of the federal courts to condemn property was recognized.<sup>23</sup> Previous to that the practice was for the federal government to file its condemnation cases in state courts.<sup>24</sup> However, this did not preclude early judicial review by the Supreme Court. It has been in that court that the concept of just compensation has been nurtured, evaluated and explained, and it was not the legislature that determined what comprised just compensation, but the judiciary.<sup>25</sup> Now, in a federal condemnation proceeding, it is federal law as interpreted by the federal courts that determines what constitutes just compensation.<sup>26</sup>

If only "compensation" were required, the argument could be made that an equivalent in money for the property is all that is required.<sup>27</sup> This would be an attempt to find the inherent value of the specific property, not its worth to the individual owner.<sup>28</sup> The problem arises with the adjective "just" which the Constitution does not define.<sup>29</sup> It is in the quest for a definition of "just" that the federal courts have formulated two theories.<sup>30</sup> The first is stated above, that property has a value apart from the owner and its value once found is the basis for just compensation.<sup>31</sup> The second is that the word "just" means that the owner must be made whole, that he must be indemnified.<sup>32</sup> This theory rests on an implied contract principle.<sup>33</sup> The owner of the property should be "put in as good position pecuniarily as he would have been if his property had not been taken."<sup>34</sup> It would seem

<sup>22</sup> *Bauman v. Ross*, 167 U.S. 548, 574 (1896).

<sup>23</sup> *Kohl v. United States*, 91 U.S. 367 (1875).

<sup>24</sup> *United States v. Carmack*, 329 U.S. 230, 237 (1946).

<sup>25</sup> *Monongahela Navigation Co. v. United States*, 148 U.S. 312 (1893); *Charles River Bridge v. Warren Bridge*, 36 U.S. (11 Pet.) 420 (1837).

<sup>26</sup> 4 J. SACKMAN & R. VAN BRUNT, *NICHOLS ON EMINENT DOMAIN* § 12.1[3], at 34 (1962) [hereinafter cited as *NICHOLS*].

<sup>27</sup> *Monongahela Navigation Co. v. United States*, 148 U.S. 312 (1893).

<sup>28</sup> *Id.* at 326.

<sup>29</sup> "The charters of government rarely elaborate as to what is meant by words like 'just' . . . hence the details must be supplied by the courts." Boyer & Wilcox, *An Economic Appraisal of Leasehold Valuation in Condemnation Proceedings*, 23 U. MIAMI L. REV. 245, 247 (1969).

<sup>30</sup> Note, *Eminent Domain—Rights and Remedies of an Uncompensated Landowner*, 1962 WASH. U. L.Q. 210 (1962).

<sup>31</sup> *Monongahela Navigation Co. v. United States*, 148 U.S. 312 (1893).

<sup>32</sup> "The owner is not limited to the value of the property at the time of the taking; he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking." *Jacobs v. United States*, 290 U.S. 13, 17 (1933).

<sup>33</sup> See note 30 *supra*.

<sup>34</sup> *Seaboard Air Line Ry. v. United States*, 261 U.S. 299, 304 (1922).

illogical to argue that the fifth amendment and the other amendments, after reciting the individual rights, would make the provision for "just compensation" inure to the property rather than to the individual. It would be as reasonable to say that the amendment regarding quartering of soldiers was for the benefit of the house rather than the owner.

These theories are not always in conflict and some cases have used both theories to justify the resulting "just compensation" that the court wanted to make.<sup>35</sup> It is in the case where the owner places special importance, and hence a high value, on property that the conflicts arise.<sup>36</sup> The courts then justify something less than the "full and perfect equivalent for the property taken"<sup>37</sup> by saying that the public too, is entitled to just compensation,<sup>38</sup> that the government can take advantage of a "bargain with a landowner,"<sup>39</sup> or that there is no evidence of proof of damages in the taking.<sup>40</sup> However it is not the theory of indemnification of the property owner as just compensation that the courts are finding problems with. Rather it is the "valuation" of the property, the measure of just compensation.<sup>41</sup>

Justice Holmes said that the Constitution merely requires that ". . . [A]n owner of property taken should be paid for what is taken from him. And the question is what has the owner lost, not what has the taker gained."<sup>42</sup> It is the problem of how the courts have measured the "loss" that will next be considered.

### C. Fair Market Value

"When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean—neither more nor less."

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<sup>35</sup> I J. BONBRIGHT, *THE VALUATION OF PROPERTY* 411. (1937) [hereinafter cited as BONBRIGHT]. The author offers the proposition that the court really grants compensation on the seriousness of the injury. If the injury is large there is compensation. If small, it is regarded as incidental and is not compensated.

<sup>36</sup> See generally G. LAWRENCE, *CONDEMNATION, YOUR RIGHTS WHEN GOVERNMENT ACQUIRES YOUR PROPERTY* (1967), where the author states:

"Just compensation" does not mean that payment will be made for every loss in value to all things that were privately owned at the condemnation. From one point of view, it might be said that every attempt on the part of the condemnor to establish a value of property taken is an attempt to arrive at "just compensation." *Id.* at 16.

<sup>37</sup> *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893).

<sup>38</sup> "Just compensation means a compensation which would be just in regard to the public, as well as in regard to the individual. . . ." *Chesapeake & Ohio Canal Co. v. Key*, 5 F. Cas. 563, 564 (No. 2649) (C.C.D.C. 1829).

<sup>39</sup> *United States v. 229.34 Acres of Land*, 246 F. Supp. 718, 723 (N.D. Ind. 1965).

<sup>40</sup> *Brand v. Union Elevated R.R.*, 238 U.S. 586 (1915).

<sup>41</sup> I BONBRIGHT 408.

<sup>42</sup> *Boston Chamber of Comm. v. Boston*, 217 U.S. 189, 195 (1910).

"The question is," said Alice, "whether you *can* make words mean so many different things."<sup>43</sup>

In the search to prove a value for property taken,<sup>44</sup> the courts early adopted fair market value as a standard for determining what should be just compensation.<sup>45</sup> Superficially the principle is not difficult to understand. As a literal interpretation of the appellation implies, it is "the price in cash or equivalent that probably would have been paid for its highest and best use that purchasers with ability and desire to buy would willingly pay at a sale offered by one wanting to sell, both in a free transaction."<sup>46</sup> The property is valued at the time of the taking, disregarding the influence of the taking on the land.<sup>47</sup> This statement of the rule does not make it any less vague.<sup>48</sup> Market value is not a precise term, but rather a matter of judgment upon which well qualified persons could disagree.<sup>49</sup> In fact, it is an assumption. To establish market value it is unnecessary to show that a particular person is willing to buy the property at a given price, or that the seller is willing or even legally capable of selling it. These are actual facts that not only are not controlling, but may not even be material.<sup>50</sup> This is not to say that individual considerations are not relevant, but the considerations which are germane are those assumed to be taking place in an artificial or hypothetical sale, rather than those taking place in an actual sale.<sup>51</sup> And the placing of a relative term like "value" in the standard, using it in an infinite variety of circumstances,<sup>52</sup> and superimposing it on a non-existent sale, gives an "Alice in Wonderland" aura to the condemnation case.<sup>53</sup> Be that as it

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<sup>43</sup> L. CARROLL, *THROUGH THE LOOKING GLASS* ch. 6.

<sup>44</sup> There are essentially three economic views as to the *value* of property: 1) Value as the original cost of the property or current reproduction cost less depreciation. 2) Value as the function of consumer demand. 3) Value as a function of exchange between supply and demand, which is a combination of the previous theories. 4 NICHOLS 28.

<sup>45</sup> *Id.* at 32.

<sup>46</sup> *United States v. 344.85 Acres of Land*, 384 F.2d 789, 792 (7th Cir. 1967).

<sup>47</sup> C. McCORMICK, *HANDBOOK ON THE LAW OF DAMAGES* § 129 (1935).

<sup>48</sup> Speaking of this definition, Jahr says, "The definition itself raises more questions than it answers." JAHR 98.

<sup>49</sup> McCarthy, *Land Acquisition Policies and Proceedings in TVA—A Study of the Role of Land Acquisition in a Regional Agency*, 10 OHIO ST. L.J. 46, 55 (1949).

<sup>50</sup> See 4 NICHOLS 57.

<sup>51</sup> I BONBRIGHT 16. This general principle is discussed to some extent in *Kimball Laundry Co. v. United States*, 338 U.S. 1, 5 (1948).

<sup>52</sup> "Value" is a term which is relative in character. The difficulty experienced in fixing a norm has been the result of the almost infinite variety of circumstances to which it has been sought to apply it." 4 NICHOLS 9.

<sup>53</sup> For an example of the complexity in the use of the fair market value standard, particularly the evidentiary problem, see *United States v. 190.71 acres of Land*, 300 F.2d 52 (7th Cir. 1962).

may, fair market value is the standard now used in the federal courts.<sup>54</sup>

Applying this standard, the courts draw the distinction between the possible uses to which the property may be put and the probable uses it has.<sup>55</sup> What is compensable are those uses "to which it is plainly adapted."<sup>56</sup> This does not mean that the fair market value is the sum of values of the various uses to which the property is adaptable.<sup>57</sup> Nor is the cost of the owner's investment controlling. It is the property at the time of taking and "not the cost of it that is safeguarded."<sup>58</sup>

If this were the end of the discussion of fair market value, it is conceivable that the proper balance between the owner and the state might be achieved. But the discussion is not complete until the exclusions from fair market value are examined.

As already indicated, the courts will consider the highest and best use to which the property can be put but they will exclude any remote uses.<sup>59</sup> They will also ignore any enhancement of the value due to the taking.<sup>60</sup> While any property located on land being condemned is compensable, the "business" itself is not included in fair market value.<sup>61</sup> Likewise, the incidents of business such as loss of good will, profits, and increased expenses due to relocation are excluded.<sup>62</sup> Moving and removal cost are not considered a part of fair market value.<sup>63</sup> There are other exclusions but basically the question is an evidentiary one:<sup>64</sup>

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<sup>54</sup> *Kimball Laundry Co. v. United States*, 338 U.S. 1, 5 (1948); *United States v. Miller*, 317 U.S. 369, 373 (1942).

<sup>55</sup> One author has explained this distinction in the following manner:

What the courts have done is to attempt to draw a distinction between probability and mere possibility, holding that a man is entitled to be paid for the land which is taken from him at a value based upon its highest availability or highest adaptability, but such availability or adaptability must be more than mere possibility. I. LEVEX, *CONDEMNATION IN U.S.A.* 334 (1969).

<sup>56</sup> *Boom Co. v. Patterson*, 98 U.S. 403, 407 (1878).

<sup>57</sup> "... [A] landowner may not prove separately the values of various uses to which the land is adapted and then add the separate items of value to obtain the compensation for the whole." *United States v. Phillips*, 50 F. Supp. 454, 456 (N.D. Ga. 1943).

<sup>58</sup> *Olson v. United States*, 292 U.S. 246, 255 (1933).

<sup>59</sup> *Searl v. School Dist., Lake County*, 133 U.S. 533 (1890); *United States v. First Nat'l Bank*, 250 F. 299 (M.D. Ala. 1918).

<sup>60</sup> *Olson v. United States*, 292 U.S. 246, 256 (1933).

<sup>61</sup> *Mitchell v. United States*, 267 U.S. 341, 345 (1924).

<sup>62</sup> *United States v. Inlots*, 26 F. Cas. 482, 489 (No. 15,441) (C.C. Ohio 1873).

<sup>63</sup> *United States v. Building Known as 651 Brannon St.*, 55 F. Supp. 667, 669 (N.D. Cal. 1944).

<sup>64</sup> The following analysis has been made of the appraisal problem:

What is called "the theory of appraisal" is a systematic treatment of two problems that arise in every valuation of property. The first problem is to secure a definition of value acceptable for the purpose of the particular inquiry. The second problem is to determine the method by which the

(Continued on next page)

what facts can be shown that would have an influence on the market price of the property in a free market transaction?<sup>65</sup> Even the rationale used by the courts in excluding a particular value show that they are less concerned about the theory behind the exclusion than they are about the practicality of proving the value.<sup>66</sup> They justify exclusions by saying that to permit them for consideration "would be to allow mere speculation and conjecture to become a guide for the ascertainment of value."<sup>67</sup> "Remote," "speculative" or "inconsequential probative utility" are the terms used to restrict evidence as to special value of the property to the owner,<sup>68</sup> assessed valuation,<sup>69</sup> and other such "values" which combine to become the actual value.<sup>70</sup>

There are some cases where fair market value is not used as the sole measure of just compensation. If only part of a man's land is taken, the courts recognize that the market value of the part taken may not fully compensate the owner.<sup>71</sup> But any benefits accruing to the owner because of the partial taking will also be considered.<sup>72</sup> If property has no market value because of its unique construction or single adaptability for a particular purpose, such as the New York Stock Exchange building, then market value is not the standard.<sup>73</sup> Where the taking is of property owned jointly, the measure is not the

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(Footnote continued from preceding page)

quantum of the value shall be estimated. . . . A holding by a court that the owner of condemned property is entitled to compensation based on the market value of his property purports to answer the first question, whereas a ruling that a previous sale of similar property is admissible evidence of market value answers one aspect of the second question.  
1 BONBRIGHT 10.

<sup>65</sup> 4 NICHOLS § 12.1, at 5. See also *Cromwell, Some Elements of Damage in Condemnation*, 43 IOWA L. REV. 191 (1958), where it is said:

It is apparent from this brief discussion that the adjectives employed—remote, speculative, conjectural, uncertain, improbable—cover many situations; each must be weighed on its peculiar facts. It seems also apparent that this category represents another effort by courts to give meaning and content to the goals marked "just compensation" and "market value." . . . [A]nd all of the efforts, consciously or otherwise, tend toward a result which reflects what the market place thinks of the effect of the taking: How much less will the selling price be? *Id.* at 204.

<sup>66</sup> *United States v. Petty Motor Co.*, 327 U.S. 372, 377 (1945).

<sup>67</sup> *Olson v. United States*, 292 U.S. 246, 257 (1933).

<sup>68</sup> *United States v. Miller*, 317 U.S. 369, 375 (1942).

<sup>69</sup> *United States v. 2.02 Acres of Land*, 51 F. Supp. 56 (S.D. N.Y. 1943); *United States v. Phillips*, 50 F. Supp. 454 (N.D. Ga. 1943).

<sup>70</sup> *Boyer & Wilcox*, *supra* note 29, at 255.

<sup>71</sup> *Bauman v. Ross*, 167 U.S. 548, 574 (1896).

<sup>72</sup> *United States v. 2,477.79 Acres of Land*, 259 F.2d 23 (5th Cir. 1958).

<sup>73</sup> This view as to "unique" property was recently enunciated in *Harwell v. United States*, 316 F.2d 791 (10th Cir. 1963), where the court stated,

Where private property having a prevailing market value is taken for public use, the market value at the time and place of the taking is the measure of just compensation. But where property taken has no market value, it is appropriate to resort to other data for the ascertainment of its value. *Id.*

total of the market values of the separate estates but rather is the value of the property treated as if it were owned by an individual.<sup>74</sup> There are other examples of by-passing the fair market value standard, as indeed there should be. The fixing of fair market value as the measure of just compensation is theoretically sound. But the implementation of the theory often leaves something to be desired.<sup>75</sup> The allowance of consequential damages in a partial taking and the exclusion of those damages in a full land acquisition does not seem logical, much less fair.<sup>76</sup> While nothing short of actual sale in a free market can show what the market price is at a given time, and can show what factors are considered to reach market value,<sup>77</sup> the test for just compensation remains the same. Granted that the problem of proving in the courts what constitutes fair market value is necessarily dependent on the circumstances of each case,<sup>78</sup> there should be a reappraisal of the relationship of just compensation to the test of fair market value as it is being employed.

#### D. *A Reappraisal of Just Compensation and Fair Market Value*

Property, like liberty, though immune under the Constitution from destruction, is not immune from regulation essential for the common good. What the regulation shall be, every generation must work out for himself.<sup>79</sup>

Courts cannot mean literally that market value at the time of the taking is the proper measure of just compensation because there is no market place transaction. It is a hypothetical device which assumes

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<sup>74</sup> *United States v. 25,936 Acres of Land*, 153 F.2d 277, 279 (3d Cir. 1946).

<sup>75</sup> "Ultimately, the public which benefits from improvements should bear the incidental losses occasioned by any condemnation for which just compensation is required; no reason appears for placing an inordinate burden on the individual whose property is appropriated for the public benefit." Note, *Eminent Domain Valuation in an Age of Redevelopment: Incidental Losses*, 67 *YALE L.J.* 61, 96 (1957).

<sup>76</sup> In *United States v. General Motors Corp.*, 323 U.S. 378 (1945), Justice Douglas, speaking of consequential damages in a taking of a lease, stated:

If we allow consequential damages to be shown here, I do not see how we can refuse such an offer of proof when a 10 year lease, a 99 year lease, or a fee interest is condemned. If cost of moving is relevant to market price in one case, I cannot say it is irrelevant in the other. And if one type of consequential damage is relevant to market price, I do not see why almost any type may not be. *Id.* at 385 (Douglas, J., concurring). However Douglas doesn't believe such damages as the cost of removal of personal property should be compensable, as the case held.

<sup>77</sup> *Boyer & Wilcox*, *supra* note 29, at 250.

<sup>78</sup> "Although cash market value may not be proved with certainty the test of just compensation remains the same and the required proof need rise no higher than the circumstances permit." *United States v. Silver Queen Mining Co.*, 285 F.2d 506, 510 (10th Cir. 1960).

<sup>79</sup> Benjamin N. Cardozo.



that there is a market.<sup>80</sup> In fact, there is an unwilling seller and a market where all factors contributing to value are not considered.<sup>81</sup> The very proceeding used to set up this hypothetical market is a drain on the seller because he is not reimbursed for his legal fees.<sup>82</sup> It is said that to consider the seller's personal damages would be to make the test of fair market value "completely unstandardized and illusory."<sup>83</sup> But it is really these personal items that affect the value of property in the real market place. The arguments that the value to the owner would be too costly and that property is worth *at least* what it would bring in the market, overlook the fact that market value is something less than fair market value.<sup>84</sup>

In a situation where there is no market for the property, the courts, in the "substitute facilities" doctrine, abandon the market value concept.<sup>85</sup> Value to the owner, such as the cost of substitute facilities, is made part of the measure of just compensation.<sup>86</sup> The property is said to have an actual or intrinsic value in such cases. However, property taken that does have marketable qualities has some of the elements of actual value excluded from the compensation determination.<sup>87</sup> One authority on valuation has said:

But even when the market value criterion is rejected the courts by no means invariably turn openly to the alternative of special value to the owner. Perhaps more frequently they invoke some completely undefined, mythical concept of "real" or "actual" value—a value supposedly inherent in the property itself without reference to the peculiar relations between the owner and his valued possession. This economic heresy. . . goes hand in hand with the orthodox doctrine of eminent domain as constituting a proceeding in rem.<sup>88</sup>

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<sup>80</sup> 1 BONBRIGHT 414.

<sup>81</sup> Morse, *Just Compensation in Federal Condemnation Cases*, 15 RIGHT OF WAY 34 (1968).

<sup>82</sup> "It is axiomatic that just compensation less the costs of litigation no longer equals just compensation. It follows that any landowner who is forced into court to obtain a fair award is penalized the amount of his expenses of litigation." Note, *Attorney's Fees in Condemnation Proceedings*, 20 HASTINGS L.J. 694, 696 (1968).

<sup>83</sup> *United States v. Building Known as 651 Brannon St.*, 55 F. Supp. 667, 670 (N.D. Cal. 1944).

<sup>84</sup> Jahr recognizes this in his work where he says:

"Value to the owner" would be too costly as a measure of just compensation. Hence [the courts] have adopted market value because they know that any piece of property is worth *at least* the price it would bring in the market. The principle of indemnity is cast aside as unworkable. The net result is a denial of strict justice to the condemnee. JAHR 96.

<sup>85</sup> *United States v. Certain Property in Borough of Manhattan*, 403 F.2d 800, 803 (2d Cir. 1968).

<sup>86</sup> *California v. United States*, 395 F.2d 261 (9th Cir. 1968).

<sup>87</sup> 4 NICHOLS 17.

<sup>88</sup> BONBRIGHT 420.

He indicates that anything less than the value of the property to the owner whether there is a market or not, is not just compensation.<sup>89</sup> Indeed, several opinions indicate that the objective in any proceeding to take property is to reach the true, real or actual value of the property and that market value is used only because it is the best approximation available.<sup>90</sup> But, it is also noted that while speaking of indemnity to the owner, and of a "willing buyer whose need for the property is the same as the owner's," the courts use exclusionary rules of evidence to exclude those factors which would really indemnify the owner.<sup>91</sup> What then is fair market value and what should it be?

First, it is a means for ascertaining what is just compensation in a given case.<sup>92</sup> It is a practical standard that has been eroded to fit a number of different situations.<sup>93</sup> It is not actual sale price<sup>94</sup> and it is not entirely the sales price of comparable land.<sup>95</sup> Value to the taker is not considered market value although the argument can be made that there is a definite relationship between the two.<sup>96</sup> And in the past, value to the owner has not been the measure of market value.<sup>97</sup> It is, in effect, a nebulous concept used either as a net to bring in evidence, or as a barrier to keep evidence out.

Second, the concept of fair market value should be changed by disregarding the myth of the willing buyer and willing seller in a free market transaction. The courts have already begun to do this. It is recognized that "just compensation is not wedded to market value

<sup>89</sup> *Id.* at 421. Bonbright recognizes the inconsistency of the Supreme Court saying that fair market value is the criterion for compensation and at the same time, declaring that the policy is to fully indemnify the owner.

<sup>90</sup> *Id.* at 413.

<sup>91</sup> "Some support can be found for the hypothesis that the courts regard value to the owner as the real objective, and that they talk about market value because they are loath frankly to adopt a purely subjective measure of compensation." *Id.* at 448.

<sup>92</sup> 4 NICHOLS 41. Nichols says that market value is not an end in itself but a means to ascertain just compensation.

<sup>93</sup> See, e.g., *United States v. 34.09 Acres of Land*, 290 F. Supp. 551, 555 (E.D. Va. 1968).

<sup>94</sup> 4 NICHOLS 57.

<sup>95</sup> *United States v. 206.82 Acres of Land*, 205 F.Supp. 91, 93 (M.D. Pa. 1962).

<sup>96</sup> Speaking of the consideration of value to the taker as affecting just compensation, Bonbright says, ". . . [A]ny distinction that must seem applicable to one given set of cases will break down if applied to other cases. The development of a definite and satisfactory distinction between market value and value to the taker is a task for the future." 1 BONBRIGHT 426.

<sup>97</sup> After concluding that courts stop at a point before value to the owner, it is difficult to understand why more resentment has not been aroused. Citations to case holdings won't answer this question. Only a personal study of the facts of the cases will provide meaningful answers. This viewpoint is discussed further in 2 L. ORGEL, VALUATION UNDER THE LAW OF EMINENT DOMAIN § 246, at 260 (2d ed. 1953) [hereinafter cited as ORGEL].

or any other method or formula."<sup>98</sup> The Supreme Court stated in *United States v. Cors*<sup>99</sup> that:

The Court in its construction of the constitutional provisions has been careful not to reduce the concept of "just compensation" to a formula. . . . The Court in an endeavor to find working rules that will do substantial justice has adopted practical standards including that of market value. But it has refused to make a fetish even of market value, since that may not be the best measure of value in some cases.<sup>100</sup>

The Constitution does not say that market value is just compensation. Sometimes market value is insufficient.<sup>101</sup> There is no express constitutional prohibition against considering anything that may be a factor in just compensation. Any attempt to fix a standard like fair market value and then add and subtract factors from it, as in an algebraic equation should be avoided.<sup>102</sup> Just compensation should be identified as an equitable term. Hence, any standard for measuring it should be similarly identified. And while equity requires that the measure of just compensation depends on the facts of each case,<sup>103</sup> there still must be a guiding principle of fairness.

Third, the guiding principle of fairness in an eminent domain case is indemnification to the owner. If that is the principle, then value to the owner is the correct measure.<sup>104</sup> This does not mean an abandonment of the concept of market value. Rather, it is a realization of the real function of the term as a starting point and not as an end in itself.<sup>105</sup> Indeed, the addition of the word "fair" would indicate that market value is not sufficient in itself. It seems that courts are trying to reach a more equitable solution for the property owner and are attempting, with genuine effort, to utilize the indemnity principle.<sup>106</sup> This is evidenced by a liberalization of the "cannons for the re-

<sup>98</sup> *J. A. Tobin Constr. Co. v. United States*, 343 F.2d 422, 425 (10th Cir. 1965).

<sup>99</sup> 337 U.S. 325 (1948).

<sup>100</sup> *Id.* at 332.

<sup>101</sup> *Flood v. United States*, 274 F.2d 483, 484 (9th Cir. 1960).

<sup>102</sup> *United States v. 34.09 Acres of Land*, 290 F.Supp. 551, 555 (E.D. Va. 1968).

<sup>103</sup> *AM. JUR.BD EMINENT DOMAIN* § 266 (1966).

<sup>104</sup> *J.AHR* 96.

<sup>105</sup> *United States v. Merz*, 306 F.2d 39, 41 (10th Cir. 1962).

<sup>106</sup> One author has commented on this trend toward greater use of the indemnity principle:

Until recently, the "taker's gain" view seemed predominant. Lip service was paid to the principle of indemnity, but statement of the principle was invariably followed by a catalogue of emasculating exceptions. Lately there has been a pronounced shift toward genuine recognition of the principle of indemnity. *Kratouil & Harrison, Eminent Domain-Policy and Concept*, 42 *CALIF. L. REV.* 596, 616 (1954).

imbursement of those who are dispossessed through the exercise of the right of eminent domain,"<sup>107</sup> and by recent cases which permit evidence which was previously excluded as "remote and speculative."<sup>108</sup> Yet while the trend is toward the admission of all pertinent data, there is still one problem which begs solution: what weight should be given to the evidence once it is admitted?<sup>109</sup> The answer, of course, depends on the accuracy and objectivity of the factual data and the fairness of the gathering process. It is in this area that this reappraisal of "just compensation" and "fair market value" can be best realized and that we can make the best, in Cardozo's words, "regulation essential for the common good."

### III. VALUATION

The foregoing discussion of just compensation concludes with the finding that fair market value is the most viable standard of compensating an owner of property which has been taken under the laws of eminent domain. An equally difficult task is determining just what is the fair market value of a specific parcel of real property.

In Cave Run virtually all of the property being acquired by the Corps of Engineers is farmland. This fact causes the method of valuation to differ from methods applied in condemning such types of property as residential and industrial.<sup>110</sup> Nearly all land valuations have as their basis a comparison between the subject property and properties of similar characteristics situated in the general locale which have recently passed through the normal buy-sell marketing process.<sup>111</sup> The acceptance of similar sales as evidence of value is the rule in the majority of jurisdictions and is followed in the federal courts.<sup>112</sup> The minority rule would exclude similar sales as tending to raise too many collateral issues which would only confuse and excessively prolong the trial.<sup>113</sup>

<sup>107</sup> Phillips v. United States, 243 F.2d 1, 2 (9th Cir. 1957).

<sup>108</sup> Sackman, *Just Compensation—The "Mod" Look*, 15 RIGHT OF WAY 46 (1968).

<sup>109</sup> 2 ORGEL § 246.

<sup>110</sup> When evaluating industrial properties, the most often used criterion of value is the cost of reproduction. Obviously, industrial properties such as a manufacturing plant do not lend themselves to a market analysis. *See, e.g., In re Bellevue Hospital Psychopathic Pavilion Site in New York*, 132 Misc. 774, 230 N.Y.S. 411 (Sup. Ct. 1928).

<sup>111</sup> In seven condemnation suits arising out of the Cave Run Reservoir Project and consolidated for trial on June 4, 1969 in the U.S. District Court for the Eastern District of Kentucky [*see* note 152 *infra*], nearly all evidence received by the court as the indicia of value was "similar sales." All properties in these suits were rural and invariably being used only for farming.

<sup>112</sup> 1 ORGEL § 137, at 582.

<sup>113</sup> *Id.* at 585.

Generally, three to five comparable properties are chosen to compare with the subject property.<sup>114</sup> These properties are all compared as to size, percent of the acreage which is tillable, soil characteristics, access, number and condition of buildings, slope of terrain, tobacco acreage allotment, corn acreage allotment, etc. Knowing the sale price of the comparable properties, the appraiser then adds to or subtracts from the value of the subject property to determine its value. The whole approach is generally one entitled "the comparable sales approach" or "market data analysis" by those persons knowledgeable in the field of real estate appraisal. This approach is almost invariably taken as conclusive evidence of market value in litigated cases.<sup>115</sup>

As to what constitutes a truly comparable or similar property is subject to disagreement among the practitioners of real property appraisal. This divergence is most noticeable when opposing appraisers for the land-owner and the condemnor offer their respective selections as evidence in a litigated case. Most authorities maintain that there are three major limitations in the use of similar properties as the best evidence of the fair market value of the subject property: (a) the *degree* of similarity; (b) the proximity between date of sale and date of valuation; and (c) the nature of the sale, as determined by the circumstances under which it was made.<sup>116</sup>

Two methods of valuation other than the market data approach are the cost approach and the income approach. By the simplest definition, the cost approach means the determination of value based on proof of the cost of reproducing the structures situated upon the land.<sup>117</sup> This method is most applicable to properties easily reproduced, such as schools and churches.<sup>118</sup> In Cave Run, this approach does not give an adequate interpretation of value, for farmland's best economic value is determined by the crop producing capabilities of the soil. If each farm in this area were analyzed in terms of reproducing the structures situated thereon, most often we would be placing a value on an ancient outdoor toilet, ramshackle tool sheds, and old barns, as well as the farm families' homes. Farmland is simply not conducive to the cost approach.

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<sup>114</sup> In these instances where governmental evaluations were available for inspections (generally following a jury trial), this practice of comparing the subject property with three to five comparable sales was evident.

<sup>115</sup> 1 ORGEL 581.

<sup>116</sup> *Id.*

<sup>117</sup> *Guideline Analysis for the Appraised Process*, prepared by the Appraisal Division, U.S. Army Corp of Engineers (1969).

<sup>118</sup> When attempting to value schools and churches, items of real property which have no "market" value for purposes of paying just compensation, value is determined by the cost of reproduction of these structures less depreciation. This method was typically used in the Cave Run area.

The income approach attempts to derive value based upon realized or prospective income which is produced by the subject property.<sup>119</sup> This approach generally carries very little weight with the courts because, in the hands of unskilled judges and jurors and possibly biased expert witnesses, there is no check on value derived by means of capitalizing earnings. As difficult as is the problem of determining value by market data, it is magnified when attempting to infer value by anticipating future earnings.

Thus, the courts and the experts have generally conceded the market data approach to be the most accurate. However, this approach is not without pitfalls. At best, the valuation of farmland can be described as educated opinion. The appraisal division of the Corps of Engineers admits: "This opinion is worth no more than the experience, qualifications and data behind the preparation of the appraisal."<sup>120</sup> Just how grossly inaccurate an opinion can be is the subject of much discourse. In seven condemnation cases arising out of the Cave Run Reservoir Project and consolidated for trial on June 4, 1969, in the Federal District Court for the Eastern District of Kentucky, those opinions of value offered by experts for the government and by experts for the various landowners differed from a low of 98% to a high of 140%,<sup>121</sup> with the government, not surprisingly, submitting the lowest valuations.

This wide variation in opinions as to the value of the condemned property should be of great concern. Even admitting that the appraisers are somewhat biased by virtue of their representation of opposing parties, when one remembers that each appraiser is evaluating the same tract of property, that each has the same list of "similar sales" at his disposal, that each is utilizing substantially the same techniques in evaluation, this range is staggering. The appraisal division within the Corps, as well as other reputable appraising institutions, allows a standard margin of error of 10%.<sup>122</sup> This means there is a recognized margin of error 10% above or below the market value submitted. Theoretically, one hundred qualified appraisers evaluating the same tract would submit a fair market value falling somewhere within this range. When both the governmental and private ap-

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<sup>119</sup> *Guideline Analysis for the Appraisal Process*, prepared by the Appraisal Division, U.S. Army Corps of Engineers (1969). This method is considered the least dependable; the difference in value of \$27,500 net income at 5% and 5½% is \$50,000.

<sup>120</sup> *Id.*

<sup>121</sup> *United States v. 421.39 Acres of Land More or Less, Situate in Bath, Menifee, Morgan and Rowan Counties, Commonwealth of Kentucky, and Edith R. Thomas, et al.*, Civ. No. 1828 (June 4, 1969).

<sup>122</sup> Interview with James Dodge, Chief of the Real Estate Purchasing Division, U.S. Army Corps of Engineers, Morehead, Kentucky (June 18, 1969).

praisals for the same tract of property in the Cave Run Reservoir area were available, we were unable to find any two opposing appraisals that deviated by only 10%. In most instances the appraisals done by those experts retained by the landowners were at least double the value fixed by the Corps appraisers.

After examining the appraisals for select tracts of property submitted by the government and by the landowner, it would appear that this vast difference is primarily attributable to one facet of the appraisal—the similar sales selected by the individual appraiser as the indicia of the market value of the subject property. These similar sales, which are the backbone of any appraisal, carry the most weight with any court attempting to place a fair market value on the property in question.<sup>123</sup> In any given geographic locale which is usable or habitable, there exists a market for the purchase and sale of property. If one is “in the market,” he may obtain a fairly good estimate as to his buying or selling price by examining a number of sales prices for tracts of property possessing the same or similar characteristics as property he wishes to buy or sell. Naturally, he would want to consider several factors regarding the sale of these similar properties: (1) was the property transfer recent, or too long ago to give any current comparison; (2) was the transfer a true “bargain and sale” or was it a “wash sale,” as, for example, between father and son; (3) was the transfer a “forced sale,” for example, did the owner sell under the threat of condemnation; (4) was the property truly similar; (5) is the similar property located near enough to the subject property or too far to be considered a fair indicia of the “local” market; (6) finally, is the local market undergoing an inflation or depression and why does such condition presently exist. After lengthy consideration a buyer or seller should be able to intelligently establish a price which he intends to offer or ask.

Within the Cave Run Reservoir area there exists a market which is somewhat abnormal in comparison to existing markets in the surrounding areas. There are an excessive number of forced sale transactions due to the state purchase of property for Interstate No. 65, Morehead State University (located in Rowan county), fish hatcheries to be erected in conjunction with the recreational aspects of the Cave Run Reservoir, and federal purchase of property for the reservoir and connected activities. These federal purchases would include both those made by the Corps of Engineers and the United States Forestry

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<sup>123</sup> In those condemnation suits tried in conjunction with Cave Run property, nearly all expert testimony directed toward evaluation centered around “similar sales.”

Service, an agency developing suitable recreational sites adjoining the reservoir.<sup>124</sup> In addition to these forced sales in this area, there are an abnormal number of transactions between private parties. This is due to the vast number of displacees from the area of the reservoir who hope to resettle in the same area. It is only the sale and exchange of property between private parties which may be considered as probative evidence of value since forced sales are excluded as having an abnormal market affect.<sup>125</sup>

Generally, an appraiser will narrow his selection of similar properties for use in evaluating a subject property to three to five tracts. In addition, his appraisal report will also contain the notation that one or possibly two similar sales were relied on most heavily for the final determination since they were the most similar.<sup>126</sup> The whole matter is entirely within the discretion of the appraiser (and, in the case of the Corps appraisers, subject to a check by review appraisers).<sup>127</sup> The appraiser may choose any one of three channels to pursue in his narrowing of valid comparable sales. He may choose to: (1) use only those sales indicating the lowest prices paid; (2) use only those sales indicating the highest prices paid; or (3) with due regard to both the landowner and the government, choose sales indicating high, low, and medium range sales prices with the intention of deriving a value based upon a fair interpretation of all. The appraiser's choice of one of these three methods is perhaps the most important decision in the process of land evaluation for the purpose of acquisition of property under the law of eminent domain. The vast margin of difference between private and governmental appraisals for select properties is due to the government appraisers' selection of the first option as their course of action, and the landowners' appraisers' selection of the second option as their course of action. These respective selections have tended to create general discontent and mutual distrust, and are promoting an excessive amount

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<sup>124</sup> The U.S. Forestry Service, an arm of the U.S. Department of Agriculture, has been purchasing thousands of acres of land in this area for several years; primarily in conjunction with the Daniel Boone National Forest, a federal park adjoining the Cave Run Reservoir. Since the inception of the Cave Run project, its land acquisition activities have spread to the purchase of much land surrounding the future lake site for purposes of developing recreational areas and to act as a quasi-zoning board in determining future construction.

<sup>125</sup> *Epstein v. Boston Housing Authority*, 317 Mass. 297, 58 N.E.2d 135 (1944); *Morrison v. Cottonwood Development Co.*, 38 Wyo. 190, 266 P. 117 (1928); *Lewisburg & N.R. Co. v. Hinds*, 134 Tenn. 293, 183 S.W. 985 (1915).

<sup>126</sup> In referring to the governmental appraisals which were available for our inspection, these appraisals, though containing up to five or more comparable sales, generally "earmarked" one or two sales as relied on most heavily because of the high degree of similarity.

<sup>127</sup> The standard Corps procedure is for at least one "office" review of each "field" appraisal.



of litigation.<sup>128</sup> Ideally, experts for the opposing parties should pursue the third option—the one designed for mutual satisfaction. Nonetheless, each respective appraiser tends to “hand-pick” his comparable sales; the result being a “hand-picked” value. The choice to pursue one of the two extreme patterns of selecting comparable sales is perhaps a natural result of the adversary nature of governmental acquisition of privately owned property. In Cave Run, the general attitude of the landowner is to feel “pitted” against an awesome opponent.<sup>129</sup> In retrospect, the reaction of the government is one of frustration in attempting to carry out a project at the largest tax dollar savings possible. The effect of these two diverse positions upon the evaluators of the property is to further polarize the two groups.

Rapport between most property owners and the various agents of the Corps is severely strained. Other than those agents of the Corps who actually negotiate the purchase of the land, the Corps representative with whom the owner has the most contact is the appraiser. Generally, the owner is contacted and told that someone from the Corps will be around to view the property.<sup>130</sup> Landowners were polled as to the facts surrounding this appraiser's view. Interviewers questioned them concerning: (1) notice of the time of appraisal; (2) whether an invitation was extended permitting the owner to accompany the appraiser; (3) the time actually spent on the property by the appraiser; (4) what the appraiser actually did as to (a) photographs, (b) measurements of buildings, (c) questions asked of the owners, (d) having a complete view of the property; and (5) whether any future views of the property were taken.<sup>131</sup> Since this contact is generally the first personal contact for the landowner with the Corps, it would seem exceedingly important that rapport be established. If the Corps is to gain any measure of trust, it should originate here. However, an alarming number of owners were dismayed. Our survey indicated that many persons were uninformed as to when their property would be viewed, that many were not invited to accompany the appraiser, and, most alarming to the landowner, only a short amount of time was actually spent on the property and, in many cases, a

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<sup>128</sup> The U.S. District Attorney's office in Lexington, Ky., indicates that litigation in the Cave Run area is running as high as 20-25% as compared with a national average of 10% for projects similar to this one.

<sup>129</sup> Many comments by individual landowners during our interviews with them indicated a “lost” or “hopeless” feeling on their part. They indicated an attitude of futility in their dealings with the Corps. Typical was this comment from one landowner: “They just take what they want, when they want it, and there ain't nothing you or I can do to change it.”

<sup>130</sup> See App. C, Nos. 8, 10, 11.

<sup>131</sup> *Id.* at No. 15.

complete view of all the acreage was not taken.<sup>132</sup> A common complaint was, "I don't see how he could tell what my property was worth when he didn't even leave the barnyard." Some owners were even confronted with derogatory remarks directed toward their buildings and crops.

Though all owners did not experience difficulty, the essence of the problem is revealed by the large number who did. Initial foundations of distrust were laid. Once appraisals were made on each tract of property, the owners commonly and naturally wished to know what the Corps evaluation figure revealed. This figure, however, was secreted during the negotiations, part of the governmental negotiating policy which is discussed in detail later.<sup>133</sup> Thus, the owner, unless he is willing and able to hire his own appraiser (usually paid from \$100 to \$300 per tract) is left to speculate as to the value of his farm.<sup>134</sup> Most often he has no expertise in real property market analysis since he has neither bought nor sold real property in several years. A large number of persons had inherited their property, deeds to which often go back in the family prior to the Civil War.<sup>135</sup> Their own evaluation of their property is a combination of: (1) what their own neighbors are asking and obtaining from the Corps; (2) in some instances, the assessed value for tax purposes; and (3) probably most importantly, what the property is worth to him as the owner. None of the foregoing is, of course, acceptable by the courts as an indicator of market value.

The owner's only other recourse is to refuse all negotiated offers and allow his land to be condemned. However, his own fear of litigation and desire "to be done with it" has led most owners to accept a negotiated offer.<sup>136</sup> Generally, this meant accepting a purchase price considerably less than his counter-offer. Whether his counter-offer was based on an intelligent or haphazard evaluation is irrelevant in any analysis of the landowner-governmental relationship. The owner views

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<sup>132</sup> *Id.* at Nos. 14, 15.

<sup>133</sup> The present purchasing procedure of the Corps is "negotiation," or "horse-trading" as the local inhabitants prefer to term it. The policy is to secret the governmental appraisal while making several offers to buy. This is contrasted with the old "single offer" policy wherein the governmental appraisal was revealed.

<sup>134</sup> The necessity of paying \$100-\$300 for a private appraisal is often a heavy burden for a landowner in an area where per capita disposable income, in 1966, ranged from \$907 to \$1,372. See App. B § VI, G.

<sup>135</sup> See App. C, No. 2.

<sup>136</sup> Many landowners who sold their property on a negotiated sale expressed a desire to have litigated the question of compensation. Nonetheless, they did not do so, and for several reasons: (1) "I'm too old to be running over to [the federal district court in] Lexington." (2) "Me and my wife were both just too sick to fight."; (3) "What's the use, they gonna give me what they want anyway."; (4) "I ain't got the money; them fellows who come out to see me said I'd go broke trying to fight them."

the governmental secretness with a jaundiced eye and invariably feels cheated, whether or not such is the case. In his view, his own interests have not been fairly represented. He often ventures the opinion that "my farm is worth every bit as much as Charley Jones' farm and he got twice as much as I did."

One of the most critical areas of land evaluation in a governmental project which requires the acquisition of a great many tracts of land is consistency in valuation from tract to tract. Whereas these individual owners in Cave Run have no particular expertise in deriving a "fair market value" for their own property, they are sensitive when it comes to the comparison between their own property and the property of an adjoining or nearby neighbor. Since the lines of communication between neighbors are normally quite good, each owner is usually aware of prices being offered in the general vicinity. Since the price offered closely parallels actual governmental evaluation, it is obvious that the government must remain consistent in their evaluation or run the risk of irate owners demanding to know why they were not receiving their comparative fair share. This was not a major problem in Cave Run since most owners felt that the government was too low with everyone. However, several isolated instances point to this as a potentially serious problem.<sup>137</sup> It is true that the owner of a tract who felt his neighbor received a substantially better price for a similar farm may not understand, for example, that his neighbor's better access increased the value of his farm. The problem here is due in large part to the secrecy with which the government operates. If a landowner could be made aware, by any number of educational and informational methods at the disposal of the Corps, of the various factors which, when accumulated, bear on the overall value of a select piece of property, he might not be so quick to judge his own situation as one of unfair treatment.<sup>138</sup>

If one were to attempt to devise a scheme whereby all parties to the condemnation would be satisfied, he would certainly be frustrated. Obviously, landowners are never going to be completely satisfied when confronted with the prospect of having to vacate a farm which has been in the family for generations. Nonetheless, some improvement is

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<sup>137</sup> Many landowners in the area expressed the fact (or rumor) that one landowner had "battered up" the government appraisers and negotiators thereby getting "a fair price for his land." The striking aspect of their comments was not bitterness toward that particular landowner, but instead toward the officials.

<sup>138</sup> Often these farmers did not realize the many factors which bear on farmland evaluation, that is, chemical make-up of the soil, access, available water for livestock, mineral deposits, etc. The Corps has done nothing to educate these persons as to what factors they use to determine value. Consequently, the landowners, left to apply their own value indicators, often wrongfully overvalue their property.

in order. In the area of valuation, this improvement should come in the form of the elimination, as much as is possible, of human error.

Presently, as previously pointed out, land evaluation depends all too largely on the fallibility of the appraiser. His experience, integrity, familiarity with the locale, and sense of fair play all enter into the discretionary measures he utilizes in making a value analysis. Obviously, to limit his discretion as much as possible should be the ultimate goal.

The Corps of Engineers, as well as other governmental condemning agencies, has overlooked, to a large extent, a most valuable tool in procuring a land valuation least encumbered with human error. That tool would be the computer. Here is the brainchild of man which has come to have increasing importance in all facets of life. In some few areas it has been tried in the valuation of real property—with notable success.<sup>139</sup> Its validity, of course, is in direct proportion to the attendant care of its human programmer. However, given the proper knowledge, the computer can more accurately and more rapidly assess the value of a given parcel of property than can any appraiser.

To illustrate its use as compared with the efforts of one appraiser, consider the following example. An appraiser will select relatively few similar sales to compare with his subject tract. They are generally chosen on the basis of their degree of similarity to the subject tract. To bring the similar sales to their closest degree of similarity, the appraiser will discount the value of the subject tract, if for example its access is not as good as the similar sale. Conversely, he will add value to the subject tract when its access is better. He will continue this discount-addition process until he has weighed all the factors having a bearing on the value. Whereas the comparable property would have an average price per acre of \$210, the subject tract will be valued at \$220 or \$200 per average acre price. This process is necessary for true evaluation.

To be most accurate, the appraiser must assign an average per acre value to each type of land existing within the subject tract itself. Most farms in the Cave Run area consist of several different types of terrain, each type having a specific use or non-use. To illustrate, a 200-acre farm in this mountainous area may break down in this manner: (1) sixty acres in valleys, colloquially known as bottom land, (2) forty acres of first tillable soil (sloping), (3) thirty-five acres of hilly pasture, (4) forty acres wooded hillside, (5) twenty-four acres of ricky waste, and (6) one acre of homesite. Obviously, each type of

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<sup>139</sup> See K. DAVIS, *A STATISTICAL APPROACH TO REAL ESTATE VALUE WITH APPLICATIONS TO FARM APPRAISAL* (1965).

terrain has a specific agricultural value—this value being reflected by what the farm would bring on the open market. The sum of the values of the segments, determined by the acreage valued at the average per-acre value of each type of terrain, will give the full value of the farm. The above illustrated farm would, of course be less valuable than a 200 acre farm which had 190 acres of bottom land. This is the problem of the appraiser. His discount-addition analysis is of course the correct approach. However, he severely limits his compilation of average per-acre value when he makes his market data analysis based on two or three comparable sales. The average value of choice bottom land should not depend on the value of merely two other similar sales. It should depend on the value of the average per-acre value for choice bottom land in the entire area of the local market. This is why “handpicking” a comparable property can be such a devastating human decision. And this is why we are confronted with the wide margin of difference between values set by the government and values set by the private appraiser on behalf of the landowner. Under what is presently acceptable in a court of law as indicia of market value, these respective appraisers may offer values which are far from an equitable consideration.<sup>140</sup> The decision to utilize a particular similar sale as a comparative factor can mean a difference of several thousand dollars to the owner.

The foregoing discussion is the primary reason that the utilization of a computer data analysis would be invaluable. A computer programmed to accept *all* open market sales, as opposed to one or two similar properties, is certain to offer more equitable and consistent land valuation. The storage in a computer bank of all market data in a given area lends itself to a more accurate analysis of a given type of terrain on an average per-acre value. Thus, in a given area of condemnation, it would be relatively simple to determine the average per-acre value of choice bottom land. Naturally, the computer would have to be programmed to balance the various factors on a given subject tract. That is, discounts and additions to value must be considered based on various factors affecting value, *e.g.*, access, available water, buildings, chemical makeup of the soil, commercial timber, sub-surface minerals, etc.

Naturally, the validity of a computer value depends on the accuracy of the programming and the various market data supplied to the computer. This, of course, brings us back to human error—we can-

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<sup>140</sup> Under what is presently acceptable, the court will receive evidence of the value of a subject tract based on its comparison with only one other property sold on the open market.

not hope to eliminate it entirely. Obviously, the computer could be programmed to distort value just as grossly as does a single appraiser who carries out his own analysis.

However, there is no good reason why the government and the private landowner cannot work hand-in-hand to accomplish this end. It is suggested that an evaluation board be established, composed of governmental and landowner representatives. This board would be responsible for the compilation of all valid market data, the programming of the computer, and for the submission of data from a subject tract to the computer analysis.

This board of representatives serves another quite important psychological purpose. It would allow the landowner, who in the past has felt much maligned and singularly persecuted, a personal representative to protect his interests.

Then too, the use of the computer analysis should have the effect of reducing litigation which is costly to both sides. Though the landowner may still have his day in court, the probability of his successfully attacking a carefully pre-planned computer analysis would be minimal. Of course, the accurateness and fairness of the computer program would be open to the severest scrutiny by the court.

To further the ends just discussed, the following proposal is made:

*Proposal: Method for Valuation of Private Real Property for Purposes of Paying Just Compensation to Private Property Owners Whose Land is Taken Under the Laws of Eminent Domain.*

To alleviate the absence of communication between landowners and government appraisers, to insure equitable valuations to both the private landowner and the acquiring governmental agency, to insure consistency among the valuations of the several tracts being taken, to provide a system of check and balance against governmental and private valuations, and to insure the landowner that his personal interests will be fairly represented from the outset, A BOARD OF FOUR APPRAISERS AND TWO ATTORNEYS SHALL BE ESTABLISHED WHOSE FUNCTION IT SHALL BE TO ESTABLISH A FAIR MARKET VALUE FOR SUCH PROPERTY TO BE ACQUIRED UNDER THE LAWS OF EMINENT DOMAIN. SUCH BOARD SHALL BE COMPOSED OF: (1) TWO APPRAISERS SELECTED BY THE ACQUIRING AGENCY; (2) TWO APPRAISERS ELECTED BY THE OWNERS OF SUCH PROPERTY BEING ACQUIRED (whether the appraisers are qualified would be reviewable, in the first instance by the federal district court in whose jurisdiction the land in question lies); (3) ONE ATTORNEY SELECTED BY THE ACQUIRING AGENCY, AND: (4) ONE AT-

TORNEY ELECTED BY THE LANDOWNERS (Whose only qualification be that he be admitted to practice before the federal courts of the United States).

The Board shall endure from a point in time when the initial appraisal in the particular project area shall be made until that time when the last tract of land therein shall be recompensed.

A fair market value shall be placed on the subject property in the following manner:

(A) The Board shall select a radial distance from each subject parcel within which comparable sales shall be selected in order to aid in the determination of valuation.

(B) The Board shall select an interval in time within which such comparable sales shall be selected, *e.g.*, from the point in time when the value of a specific parcel is derived, January 1, 1969, the Board will consider all comparable sales between January 1, 1964 and January 1, 1969 (a five-year period).

(C) Within the radial distance and within the designated time interval, the Board shall consider all exchanges of real property between private parties as a comparable sale. The Board shall then consider each individual sale and reject those sales which have not been arm'slength transactions or which do not fairly represent an open market transaction; *e.g.*, rejected would be (1) wash sales, (2) sales between family members, and (3) sales which result from other eminent domain proceedings. As to the remaining sales retained by the Board as "open market sales," it shall be the task of the Board to obtain a complete description of such sale property.

(D) The Board shall then utilize all market data collected and submit it to computer analysis. Programming of the computer should be supervised by the Board. Subject properties in the given area should then be subjected to computer analysis to determine a computer designated fair market value.

(E) The value of each property should then be made available on a public listing. Each individual landowner should then be allowed, prior to the negotiation of the sale, a hearing before the Board for the purpose of the explanation of valuation and presentation of grievances.

#### IV. OFFERING PROCESS

Prior to detailing the offering process which is carried on between the government and landowners, some initial data will demonstrate the lack of viability in the present process. As mentioned previously,

ninety-six landowners in the Cave Run area were interviewed. The information was computerized at the University of Kentucky. The data which was obtained is quite revealing in regard to the offering process which is presently being employed by the Corps of Engineers.

The Corps' first offer to the landowner was accepted by only 6% of the landowners interviewed.<sup>141</sup> Perhaps the reason for such a low acceptance of the first offer is found in another response; 84% of the landowners whose property was acquired by voluntary sale felt the amount they received for their property was unfair.<sup>142</sup> In fact 22% of the landowners interviewed accepted none of the offers the Corps made them.<sup>143</sup> This means the great majority of the landowners believed they were being inadequately compensated.

One might logically ask why such a great percentage of the displaced landowners were dissatisfied with the offers that were made to them by the Corps. This dissatisfaction stemmed directly from the inherent weaknesses in the philosophy of the present negotiating process.

The entire negotiating process is conducted in an adversary atmosphere. The best example of this horsetrading is the fact that the Corps never reveals to the landowner the appraisal value that has been established for his property. In addition, in nearly 75% of the cases, the Corps' initial offer is below the fair market value that has been established for the property.<sup>144</sup> The net effect of this type of offering process is a realization on the part of the landowner that the Corps is trying to obtain his property for the smallest price possible rather than for "just compensation" as the Constitution requires. As a result of this impression the landowner will generally never accept the initial offer of the Corps. The offering process is consequently extended over a longer period at added cost to the government and to the landowner. The Corps is forced to make repeated trips to see the landowner in order to find a price which is mutually agreeable. The landowner loses valuable time that he could be using in securing replacement property and making it operational. This process of land acquisition is also objectionable on principle. The fifth amendment requires that when private property is taken just compensation shall be paid to the landowner. The legal measure of just compensation is fair market value.<sup>145</sup> This value is placed on the property by the Corps appraiser. However, as mentioned above, the Corps, in 75%

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<sup>141</sup> See App. C, No. 21.

<sup>142</sup> *Id.* at No. 25.

<sup>143</sup> *Id.* at No. 24.

<sup>144</sup> *Id.* at Nos. 19, 20, 27. See also note 146 *infra*.

<sup>145</sup> *Boom Co. v. Patterson*, 98 U.S. 403 (1878).



of the cases, initially offers below fair market value, or less than just compensation.<sup>146</sup> Such a procedure of agents of the State offering the landowner less than what is just compensation is certainly unfair. The whole emphasis of the present procedure is misplaced. The emphasis should be on compensating the landowner fully for his loss, not minimizing the government's cost.

This misplaced emphasis on minimizing the government's cost also results in consternation on the part of the landowners. As the buying out process progresses the remaining landowners become increasingly more difficult to deal with. They have heard from their neighbors that the Corps is trying to pay as little as possible for the land it is purchasing. Perhaps the best evidence of the inherent weakness in the minimizing cost approach was the fact that negotiations with the Corps tended to be long drawn out rounds placing a strain on both sides. Also an increasing number of landowners were unable to reach any agreement with the Corps .

The extended negotiations and increasing condemnation proceedings could be significantly alleviated if the emphasis in the negotiation process was re-evaluated. Each landowner should be informed that the purchase is not an arm's length business transaction where the buyer is purchasing the property at the lowest possible price. If the individual landowner was advised at the very outset that the object of negotiations was to compensate him fully, he would be considerably easier to deal with. In addition, of course, this declaration must be true. Hence, the offering system whereby the landowner receives a first offer below the fair market value must be abandoned. The effect of this procedure is to instill in the landowner what may be a conception that he is not being dealt with fairly. The first offer should at least be a reasonable offer which is equal to the fair market value the Corps has established. An extremely low first offer is rejected almost in every case, serving only to make the landowner wary of any subsequent offers and increase the probability of the necessity for formal condemnation proceedings.

The guiding principle in the offering process should be the acceptance by the government that the sale is an involuntary transaction. In a normal sale the seller has the option of withdrawing his property

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<sup>146</sup> SELECT SUBCOMMITTEE ON REAL PROPERTY ACQUISITION OF THE HOUSE COMMITTEE ON PUBLIC WORKS, 88TH CONG., 2D SESS., STUDY OF COMPENSATION AND ASSISTANCE FOR PERSONS AFFECTED BY REAL PROPERTY ACQUISITIONS IN FEDERAL AND FEDERALLY-ASSISTED PROGRAMS. (Comm. Print 1964). This study revealed that from Jan. 1, 1961 to Dec. 31, 1963, the Corps of Engineers made 18,784 purchases of real property. In 14,204 of these purchases, the initial offer of the Corps was below the fair market value it had established for the property in its own appraisal.

from the market. The landowner who is negotiating with the Corps does not have that alternative. Therefore it seems only fair that he not be subjected to an approach where he has no leverage. This does not mean that every landowner should be paid exorbitant prices. It simply suggests that the government should realize that this is not a marketplace transaction. The government should accept the task of working jointly with the landowner in order to justly compensate him. These suggestions are not in the least novel. A bill was introduced in the Eighty-Ninth Congress which substantially encompassed the suggestions that have been made here.<sup>147</sup> That bill provided:

. . . It is hereby declared to be the policy of the Congress that owners, tenants and other persons affected by the acquisition of real property in federal and federally assisted programs shall be afforded fair and equitable treatment on a basis as nearly uniform as practicable. It is the objective of Congress to assume that owners and tenants shall be fairly compensated for their property and for other losses and necessary expenses and that no person who is caused to move from his home, farm, or place of business, or to lose his employment or in other economic injury shall have to suffer hardships by reason of such programs.<sup>148</sup>

To implement this general policy the bill proposed:

. . . Before the initiation of negotiations for property, the head of the federal agency concerned should establish a price which he believes to be fair and reasonable consideration therefore and should make a prompt offer to acquire the property for the full amount so established. *In no event should such price be less than the appraised fair value of such property, as approved by such agency head.*<sup>149</sup> [Emphasis added]

In further amplification of this policy of full compensation the bill provided that the term "fair value" be defined as:

. . . [T]he *highest cash price* which a property could reasonably be expected to bring if exposed for sale in the open market for a reasonable time.<sup>150</sup> [Emphasis added]

These three quotations exemplify the proposals made here that the government's policy in land acquisition should be one of full compensation. Such a policy should include minimally the criteria that no purchases can be made for less than fair market value and that the highest cash price which is reasonable should be paid. A full compensation philosophy would first of all reduce the great dissatisfaction

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<sup>147</sup> H. R. REP. No. 3421, 89th Cong., 1st Sess. (1965).

<sup>148</sup> *Id.* at 4.

<sup>149</sup> *Id.* at 5.

<sup>150</sup> *Id.* at 9.

the landowners in the Cave Run area evidenced. Secondly, it would reduce the tremendous expense incurred by both the government and private landowner when approximately one-third of the acquisitions in a project area must be accomplished in condemnation proceedings.

#### V. FAILURE OF NEGOTIATION

The most dramatic failure of the present "minimizing the cost" approach is the percentage of landowners who are unable to reach agreement with the Corps. As mentioned previously, approximately one-third of the landowners in the Cave Run area fell into this category. As a general guideline, 10% would be acceptable according to the Justice Department.<sup>151</sup> When the landowner does not accept the offers of the Corps he is subject to an involuntary sale in condemnation proceedings. In this proceeding several tracts will be consolidated for expediency and a jury will determine the fair market value of the tracts in question. The jury awards which were rendered at two of these consolidated condemnation proceedings in the Eastern District of Kentucky reveal a wide divergence between the value the Corps had placed on the property and the value the jury placed on the same property.<sup>152</sup> In one of these proceedings seven tracts were consolidated for trial. The total value set by the Corps for this property was \$66,415. The jury returned awards that placed the value at \$118,184. This meant an overall increase of 77.78% over the Corps estimate. Other cases in the same court reveal a substantial increase over the Corps estimate by the jury also. On eleven tracts tried at different times the Corps set an estimated \$113,675 value. The jury again set a value considerably higher for these tracts in their awards which totaled \$202,730. The percentage increase of the jury award over the Corps estimate was approximately 80%. Individual tracts are even more revealing than these aggregate amounts and percentage. For example, two tracts show more than a 100% increase by the jury over the Corps' estimate. In the first of these the Corps set a value of \$6,825 and the jury returned an award of \$15,140 for a 121% increase. In the second the Corps set a value of \$10,850 and the jury returned an award of \$22,200 for a 140% increase.<sup>153</sup>

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<sup>151</sup> Interview with William Kline, U.S. Attorney for the Eastern District of Kentucky.

<sup>152</sup> *United States v. 421.39 Acres of Land More or Less, Situate in Bath, Menifee, Morgan and Rowan Counties, Commonwealth of Kentucky and Edith R. Thomas, et al.*, Civ. No. 1328, (June 4, 1969); *United States v. 497.74 Acres of Land, More or Less, Situate in Bath and Rowan Counties, Commonwealth of Kentucky, and Coleman McKenzie, et al.*, Civ. No. 1742, (March 8, 1968; March 2, 1968; May 5, 1968).

<sup>153</sup> *Id.*

It would obviously be naive to attribute the above statistics entirely to the "minimizing the cost" approach. Other factors such as the skill of the attorneys and appraisal witnesses, and the jury's natural empathy with the landowner contribute to the increased jury award. The minimizing approach is a significant factor in forcing landowners to go through condemnation proceedings rather than accept any offers made to them by the government. There is certainly the possibility that the jury awards may be inflated, but the fact remains that if the government would employ a more liberal offering policy along the lines suggested previously, there would be no need for a court proceeding in a much greater percentage of cases. Most landowners do not relish the experience of condemnation proceedings with the attendant loss of time and payment of attorney's fees. However, when a landowner is faced with an offer by the government which he feels is substantially below what is fair he is left with little choice.

One obvious reason landowners would gladly avoid condemnation proceedings is the fact that attorney's fees must be paid out of the award a landowner receives from the court.<sup>154</sup> This, in practical terms, means that when the landowner finally receives compensation for his property it is fair market value less attorney's fees. In other words, an expensive burden of court proceedings is placed upon the landowner even when a jury determines the government's offer was unjust. The burden is not a small one either, in view of the fact that the attorney's fees may be one-third of the amount the landowner receives above the Corps' estimate.

It does appear inequitable to place this burden of court expenses on the landowner when the court award is substantially higher than the Corps' offer. Since the jury becomes the final arbiter of fair market value in such cases, its decision must naturally be considered correct. If the jury award exceeds the Corps' estimate, it must be accepted that the estimate was too low. When the government's estimate and offers are below fair market value as estimated by the jury it is logical that the burden of court expenses be placed on the government, who necessitated the proceedings by offering what the jury determined to be less than the constitutionally mandated just compensation. There is no logical or equitable reason that the landowner who has been offered compensation below fair market value should bear the court expenses in his attempt to receive fair compensation for his property. A bill which was introduced in Congress in 1969 would have allocated court costs to the government when its estimate is

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<sup>154</sup> *United States v. Harralson*, 43 F. R. D. 318 (W.D. Ky. 1966).

below the fair market value established in the proceedings. The bill proposed the following:

If, in any action brought by the United States for the acquisition of any interest in real property through the exercise of the power of eminent domain, it is determined that just compensation for such interest exceeds the maximum amount offered by the United States for such interest before the institution of that action, any judgment entered in that action in favor of the United States with respect to that interest shall provide for the payment to the defendant having title to that interest of (1) the amount determined to constitute just compensation for that interest, and (2) a sum equal to the aggregate amount of costs and expenses incurred by such defendant incident to that action.<sup>155</sup>

In explaining what is included within the meaning of the term expenses, the bill in section (a) stated:

The term 'expenses' include, but is not limited to, expenses reasonably incurred for appraisal and other expert services incident to the preparation and trial of a civil action, and a reasonable attorney's fee incurred incident to the preparation and trial of such action and the review of any judgment or decree entered therein, as determined by the court in that action.

A policy in line with this proposed bill is necessary to guarantee that condemnees are fully compensated for their property. A policy that allocates court expenses to the government when its estimate was below the court award would force the government to offer the landowner the highest reasonable price for his property initially which is the equitable manner that eminent domain purchases should always follow. Further, it would insure the compensation a condemnee receives is full compensation, not compensation less than full to the extent of the court costs.

## VI. THE UNCOMPENSABLE LOSSES OF EMINENT DOMAIN

When a constitutional mandate becomes inadequate to fill the needs of a nation's citizens and, in effect, discriminates against individuals in the name of the public good, there is urgent need for a change. Certainly our founding fathers in drafting the Constitution and Bill of Rights could not have wanted to shackle our legislative and judicial branches in their meeting of the demands of a constantly changing society. To them the fifth amendment's just compensation standard for compensating the landowner (and tenant) for

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<sup>155</sup> H. R. REP. No. 8541, 91st Cong., 1st Sess., 2 (1969).

government acquisition of private property through exercise of the power of eminent domain *was* a fair and just standard—not only for the public, but also for the individual involved. That which may have been fair and equitable in an earlier era of our history has certainly “become an anomaly today.”<sup>156</sup>

It is pertinent to point out that in the context of this study uncompensated expenses and non-economic hardships of the landowners will generally be referred to by their rightful name—losses. The purpose of this section is to point out the various economic and non-economic losses incurred by landowners as a result of the land acquisition policies and practices under which the Corps of Engineers operates.

Few would argue that freedom can survive and flourish without dissent. Despite the characteristic human elements of error and mistake found therein, a constitutional form of government, which is the nucleus of a truly democratic society, is the best yet devised by the minds of men. Therefore the use of majority rule does not seem repugnant to our ideals and way of life. Even though majority rule is the vital cog that keeps our society on the move forward, it should not be allowed to function in such a way as to injure a minority group of individuals in order to enhance an abstract “public good.” If the public is going to benefit through the acquisition of an individual’s private property, then certainly it is only fair and equitable that the displaced or otherwise injured landowner be fully compensated for that which is taken from him, as well as for the losses, both economic and non-economic, sustained as a consequence of the government’s taking.<sup>157</sup> Justice demands fairness for both parties.<sup>158</sup> The point is

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<sup>156</sup> See Note, *Relocation Payments in Urban Renewal: More Just Compensation*, 11 N.Y. L.F. 80 (1965). As that writer pointed out:

The just compensation standard very early became married to the market value rule and the union has been a very formidable one. While the market value rule was no doubt appropriate in an era when public takings were usually in underdeveloped rural areas, it has become an anomaly today. *Id.*

<sup>157</sup> See Note, *Compensation For Moving Expenses of Personal Property In Eminent Domain Proceedings*, 20 HASTINGS L.J. 749 (1969). What is becoming increasingly more evident is that:

The available English precedent was not followed in this country because of the different geographic, economic and industrial matrix of early America. Today the urban-rural ratio of the United States has changed and the principle has emerged that *every individual is entitled to be made whole for losses he incurred as the “price” that society must pay for progress and civilization*. . . . Procedure established to determine compensation one hundred years ago, when the only loss that the landowner incurred was the loss to virgin land, are inadequate for the present. . . . [Emphasis added] *Id.* at 751-52.

<sup>158</sup> *Bauman v. Ross*, 167 U.S. 548, 570 (1897) quoting *Chesapeake & O. Canal Co. v. Key*, 5 Fed. Cas. 563 (No. 2649) (C.C.D.C. 1892) stated: “Just

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that the present standard of the fifth amendment is inadequate to meet the ever-increasing needs and hardships brought on by the government's exercise of its inherent and sovereign right of eminent domain.

The list of losses sustained by the unfortunate landowner is lengthy, but due to the specific area<sup>159</sup> of this study, that of basically rural farmowners, the list has been condensed to a few areas of the most prevalent abuses. Those areas of loss include: (1) moving, relocation and replacement costs; (2) tax consequences (specifically the capital gains tax treatment of condemnation proceeds); (3) attorneys' fees and various other court costs; and (4) social and psychological factors involved in the displacement of the landowner.

As so often happens, a common practice, which at the outset is so reasonable and logical, becomes so solidly imbedded in tradition that the people who make the law (legislators, executives and judges) find their innately human instinct is apathy, and often even resistance, to change. Looking at moving costs as losses inherent in the exercise of eminent domain, one writer has noted:

Because of the rural character of early American life, condemnation did not result in the incurring of significant moving expenses. Rarely did the condemnation necessitate the taking of the dwelling, as customarily there was substantial adjacent farm land that could adequately serve the project of the condemning authority. . . .

In the southern states, originally there was not even a duty to compensate *at all* for unimproved land. Its value, in relation to the obligation to the state, was said to be so small that its taking was not considered to be damage. The growth and development of the country necessitated the removal of all possible burdens to industrial progress.<sup>160</sup>

Although the source of much American law is found in the English common law and statutory precedents, the different situations<sup>161</sup> in England and in the early history of the United States, caused the "very liberal system of compensation"<sup>162</sup> found in England never to gain a foothold here.

To some extent the Corps of Engineers is able to compensate the landowner or tenant in the area of moving, relocation and replace-

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compensation as interpreted by the United States Supreme Court means a compensation that would be just in regard to the public as well as in regard to the individual. . . ."

<sup>159</sup> For an excellent study of the problems besetting urban condemnation, See Note, *The Nassau County Study: An Empirical Look Into The Practices of Condemnation*, 67 COLUM. L. REV. 430 (1967).

<sup>160</sup> Note, *supra* note 2, at 750.

<sup>161</sup> *Id.* at 750-51.

<sup>162</sup> *Id.*

ment costs.<sup>163</sup> In a standard-form memorandum prepared by the Corps for the individual landowner, the Corps pointed out:

Under certain conditions set out in the Resettlement Act, Title 10, United States Code, Section 2680, you may be entitled to reimbursement for expenses, losses and damages incurred by you as a direct result of moving yourself, your family and your possessions because of Government acquisition. If you are eligible, reimbursement will be made to the extent determined to be fair and reasonable.<sup>164</sup>

<sup>163</sup> 10 U.S.C. § 2680 is entitled "Reimbursement of Owners of Property Acquired for Public Works Projects for Moving Expenses" and states:

(a) Under regulations approved by the Secretary of Defense and without regard to sections 1001 and 1003-1011 of title 5, the Secretary of a military department, or his designee, may upon application by the owners and the tenants of land to be acquired for a public works project of his department, reimburse those owners and tenants for those expenses, losses, or damages that he determines to be fair and reasonable and that are incurred by them as a direct result of moving them and their families and possessions because of that acquisition. However, application for reimbursement must be made within one year after that acquisition or within one year after the property is vacated, whichever date is later, and be accompanied by an itemized statement of the expenses, losses, and damages incurred.

(b) The total payments under this section with respect to a parcel of land may not be more than 25 percent of the fair market value of that land, as determined by the Secretary of the military department concerned. They are in addition to, but may not duplicate, any other payments that may be made under law as a result of acquisition of that land.

(c) Any funds appropriated for civil or military public works may be used to make payments under this section. (Added Pub. L. 87-651, title I, Sec. 112(c), Sept. 7, 1962, 76 Stat. 511).

<sup>164</sup> Taken from standard-form Army Corps of Engineers memorandum presented to student interviewers by Corps officials. That memorandum also listed various eligible items for compensation and various ineligible items. They are listed as follows:

#### I. ELIGIBLE ITEMS

##### 1. *Time and Travel in Search of, and Movement to, Replacement Site.*

a. Value of applicant's time actually spent in search, not to exceed 56 hours in absence of special circumstances, at his average hourly salary or earnings but not over \$10.00 per hour allowed for services of a real estate expert. Also, value of applicant's time lost during the move, normally not to exceed two 8-hour days.

b. Allowance for use of vehicle: for passenger cars and small carriers—8 cents per mile; ¾-ton and 1-ton trucks—9 cents; 1½-ton trucks—11 cents; 2-ton and 3-ton trucks and tractors—13 cents; larger vehicles—a reasonable amount.

c. Allowance for increase in cost of food while traveling of \$1.00 for breakfast and \$1.50 for other meals for each applicant during search, and for both applicant and members of his family during the move.

d. Expense of lodging away from home, to the extent deemed reasonable, for applicant during search, and for both applicant and members of his family during the move.

2. *Acquisition of Replacement Site.* Out-of-pocket expenses for survey, appraisal, title search, title option, a mortgage replacing and not exceeding one on the acquired property, normal settlement charges, and recording fees, where such charges are normally borne by the purchaser, and to the extent that they do not exceed similar expenses in acquiring a site comparable in size and value to that acquired by the Government.

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The reimbursement for moving expenses by federal statute and by some state statutes remains a minority, but growing, view. The fact that this is a growing minority view seems to indicate a growing realization that payment of strictly fair market value for property taken does not guarantee the condemnee or landowner just compensation. In *Jacksonville Expressway Authority v. Henry G. Du Pree Company*,<sup>165</sup> Florida recently adopted the minority view—without the aid of an existing statute. The rationale of that court represents the more modern view of compensation.

The theory and spirit of [the constitutional requirement of full or just compensation for appropriation of private property] require[s] a practical attempt to make the owner whole. A person

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3. *Moving Costs (Persons, Household Goods, Livestock, Machinery, Etc.)*
- a. Commercial mover's charges, including packing, unpacking, insurance, and temporary storage expenses not resulting from delays attributable to the applicant. (If applicant moves himself, reimbursement may be made for his expenses and services, which, however will not exceed normally what would have been charged by a commercial mover.) Reimbursement for cost of moving possessions other than household goods and personal effects will not exceed their market value.
  - b. Truck or trailer hire.
  - c. Allowance for use or movement of personally-owned vehicular equipment. See paragraph 1b.
  - d. Labor hired. Allowance for applicant's labor normally will not exceed commercial charges for the same work.
  - e. Reinstallation of machinery, equipment and appliances not acquired by the Government, to extent not constituting an improvement to the replacement site.
  - f. Uninsured loss or damage to possessions in transit or while loading and unloading, not involving contributory negligence.
  - g. Interest on short-term loan for moving expenses only.
  - h. Service reconnection charges for utilities (not including improvements to replacement site.)
  - i. Inoculation costs for movement of livestock when legally required.

## II. INELIGIBLE ITEMS

1. Consequential damages, losses or expenses such as loss of business, profits, good will, or trained employees, and increased expenses because of living or doing business in a new location.
2. Costs of moving buildings or other improvements reserved from Government acquisition, or acquired and resold to the applicant.
3. Interest on loans (other than for costs of moving).
4. Costs of conveying property to Government, including settlement costs, time and travel, etc.
5. Any part of the cost of purchasing, maintaining, or improving the replacement site or adding to its value or utility, including down payment, insurance premiums, taxes and capital improvements.
6. Expense of cutting or readapting draperies, rugs, etc., to fit the replacement site.
7. Personal injury.
8. Losses from any expenses of sales or personal property. However, cost of selling unmovd property such as grain or hay and replacing it in kind may be allowed if not in excess of the moving cost or its market value, whichever is less.
9. Cost of preparing application for reimbursement.

<sup>165</sup> 108 So.2d 289 (Fla. 1959).

who is put to expense through no desire or fault of his own can only be made whole when his reasonable expenses are included in compensation.<sup>166</sup>

Some other moving costs that are not compensated by the Corps include: (1) losses incurred in selling or abandoning personal property that may be useless at the new location or not worth the transportation cost; (2) mortgage prepayment penalties; and (3) the "pro rata share of previously paid real estate taxes allocable to the period after government acquisition."<sup>167</sup> This latter tax item will be discussed in the area of tax consequences of eminent domain.

In actuality relocation and replacement losses are similar and therefore can be combined for the present study. One of the major losses in this area comes from the displaced landowner's having to purchase comparable property, or whatever is available, for an increased cost over that which he received from the government for his previously acquired property. In addition, the replacement property may require the expenditure of considerable sums for new household furnishings, additional machinery and equipment (not needed on his old land), and basically for other needed capital improvements to bring his newly acquired property up to the same standard of living which he enjoyed on his old property. None of these new and additional costs are presently compensated by the Corps and naturally fall into the category of uncompensable losses.<sup>168</sup> If, as is often the case in a generally rural area, replacement property is scarce, the displaced landowner may frequently have to rent until such replacement housing becomes available. As a result the displacee may have to bear rental costs for an undertermined period. If a displaced tenant has to pay increased rental costs as a result of government acquisition of land, he should receive some type of financial aid. Neither the possible rental costs of the displaced landowner nor the increased rental costs of a displaced tenant are presently compensable.<sup>169</sup>

A second area in which the landowner is unfairly treated as a result of the involuntary acquisition of his land encompasses the tax consequences. This is especially true in the area of capital gains taxation. In the landmark case *Eisner v. Macomber*,<sup>170</sup> the Supreme Court held that a gain can constitutionally be taxed only when it is

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<sup>166</sup> *Id.* at 292.

<sup>167</sup> See Note, *The Interest in Rootedness: Family Relocation and an Approach to Full Indemnity*, 21 STAN. L. REV. 801, 807-08 (1969).

<sup>168</sup> See note 164 *supra*.

<sup>169</sup> *Id.*

<sup>170</sup> 252 U.S. 189 (1920).

realized. The Internal Revenue Code provides, "Except as otherwise provided in this subtitle, on the sale or exchange of property the entire amount of the gain or loss, . . . shall be recognized."<sup>171</sup> Therefore it would seem that the individual taxpayer-landowner can, by deciding when to sell or exchange his property, determine when and if to incur a capital gain tax. Of course, the Internal Revenue Code also provides that the taxpayer can avoid the gains tax altogether by merely holding on to the property until his death.<sup>172</sup>

The taxpayer who has had his property acquired by the government through the involuntary process of eminent domain, whether by direct negotiation or by condemnation proceedings, is discriminated against because he cannot make the decision as to when and if he will sell his property so as to incur or to avoid the gains tax. One writer has predicated an analysis of the present tax structure toward condemnation proceeds on the theory that there are two basic policies of the present tax law.

The first is that the taxpayer is generally free to decide when to incur a gains tax by selling his property; therefore, the tax treatment of a condemnation award can be considered unfair when it accelerates the incidence of taxation so that it occurs before it would have occurred in the absence of condemnation. The second is that the gain is taxable when the taxpayer substantially changes the nature of his investment; therefore, the condemnee should not be able to utilize the fortuity of condemnation to avoid a tax he would have paid absent a condemnation.<sup>173</sup>

There is at least one way in which the condemnee can escape the capital gains tax, but the escape passage is very narrow and the standard is quite rigid. In general terms if the condemnee uses the proceeds of the acquisition price to purchase replacement property which meets a certain standard of similarity, then the condemnee is deemed to have "restored himself to his pre-condemnation position."<sup>174</sup> As a result of meeting this standard, he is not taxable on any gain represented by the condemnation award. If the condemnee fails to meet this rigid standard of similarity,

. . . he is treated in accordance with the policy of the present law which taxes any gain at the time the taxpayer substantially changes the form of his investment. Since an ordinary taxpayer cannot sell property without being taxed on any gain, the condemnee can-

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<sup>171</sup> INT. REV. CODE OF 1954, § 1002 [hereinafter cited as IRC].

<sup>172</sup> IRC § 1014.

<sup>173</sup> Note, *Tax Treatment of Condemnation Proceeds: An Analysis and Some Proposals For Reform*, 4 HARV. J. LEGIS. 325, 328-29 (1966).

<sup>174</sup> *Id.* at 329.

not take advantage of the condemnation to make a tax-free change in the nature of his property. Therefore, he must pay a tax on any gain if he chooses to retain the proceeds of the condemnation award or invest them in property which, under the standard of similarity, is dissimilar to the condemned property.<sup>175</sup>

The Internal Revenue Code states the guidelines for allowing one to postpone the imposition of a gains tax as a result of government acquisition of his property.<sup>176</sup> The theory behind allowing these guidelines is that when they are met "the condemnee pays no tax and, in effect, transfers the unrecognized gain to the replacement property by reducing its 'cost' basis by the amount of unrecognized gain."<sup>177</sup> There are basically two situations in which no gain is recognized: first, "where property used in a trade or business or held for investment is replaced with the property of a like kind or second where a residence or property held for sale to customers is replaced with property 'similar or related in service or use.'"<sup>178</sup>

In attempting to clarify the meaning of the "similar or related in service or use" standard, the courts have developed at least four different approaches. It is not necessary here to differentiate the four approaches by explaining their contrasts and similarities. The disagreement in the courts in this area certainly doesn't aid the already confused and disgruntled landowner in trying to ascertain what replacement property will qualify under the tax standard. It is important to note that:

Until 1958, a tax free replacement of any type of condemned property was limited to that "similar or related in service or use;" in that year Congress acted to broaden the scope of possible re-investments. Now when property held for use in a trade or business or held for investment is disposed of under threat or imminence of condemnation, the condemnee qualifies for non-recognition of gain to the extent the proceeds are invested in property of a "like kind."<sup>179</sup>

Treasury Regulations define the "like kind" standard as having "reference to the nature or character of the property and not to its grade or quality. . . . The fact that any real estate involved is improved is not material, for that relates only to the grade or quality of the property and not to its kind or class."<sup>180</sup>

Despite this definition it is apparent that the Regulations "do not

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<sup>175</sup> *Id.*

<sup>176</sup> IRC § 1033.

<sup>177</sup> Note, *supra* note 173, at 332.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 334.

<sup>180</sup> Treas. Reg. § 1.1031(a)-1 (b).

give the condemnee a comprehensive statement as to what sort of property he can safely reinvest in.<sup>181</sup> However, "[t]he 'like kind' standard has been read by the few courts which have passed on the question to mean that condemned real estate need only be replaced by other real estate in order to qualify for non-recognition of gain."<sup>182</sup>

For purposes of our study the previous statement is very important. The residents of the Cave Run area are generally farm people by tradition. Most of them have been born and reared there and their roots go deep into the land. There is a scarcity of good farm land for sale, a scarcity of good, tillable land like that which was taken from them by the government. It is only human nature that these people would be resentful when something they own is taken away from them, despite the fact that they, at least legally, have received just compensation. They are intelligent and sensitive people and they partially understand their plight—but only partially. They understand that the acquisition of their lands was necessary for flood control, and, that in the long run, the project will probably be a great economic boon to the surrounding area. But they do not understand why they must incur economic losses as well as various non-economic hardships in order to aid progress. Why shouldn't they be compensated to such an extent as to put them, as nearly as possible, into their pre-condemnation position? Many of them have repurchased farms close to their old homes, and have thus been able to avoid a gains tax. Even in doing so many have had to pay more for less, not only in quality but also in quantity.<sup>183</sup> Others have found it impossible to buy farms of less than inferior quality with the proceeds of their awards from the Corps and as a result have rented houses in nearby towns and had to adjust to a new way of life. Most of these people were basically farmers with a number of them having part-time jobs to supplement their farm income. Their old lands were rich and their crop yields were high. Most of them have had few skills and little job training. As a result of this, plus the fact that the surrounding area has a low level of industrial activity, jobs have been difficult to find.<sup>184</sup> The point is that if these people from the Cave Run area cannot find replacement property, they will have to pay gain taxes, and the ones that do replace their old property with new lands find that their problems are only beginning. The latter are faced with farming land that is in-

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<sup>181</sup> Note, *supra* note 173, at 335.

<sup>182</sup> *Id.*

<sup>183</sup> According to statistics gathered during the Cave Run study, 63 responses showed that the mean cost of new property was \$20,555 while the mean selling price paid by the Corps. was only \$15,244. See App. C, No. 39.

<sup>184</sup> See App. B, § VI.

ferior in soil quality, inferior in crop yield and more costly to fertilize and maintain. So it is easy to say to them that the law allows you to avoid any tax if you replace your old property with property that meets the prescribed standard. But it is another story to show them where and how they can find adequate replacement property to meet their needs.

A third area of economic loss associated with the government acquisition process revolves around the condemnation proceedings which occur often since the landowner does not believe they are being treated fairly by governmental negotiators. It has been shown that the government's, and in many instances the Corps' negotiators often offer the landowner less than the actual market value of the person's land.<sup>185</sup> As a result of the often implied, and sometimes expressed, threat of condemnation and legal proceedings, the landowner will many times take one of those offers out of fear. Many of the residents of Cave Run expressed a fear of the attendant attorneys' fees and various other court costs which they would have to pay out of their condemnation award. That is because under present law, in most jurisdictions, the condemnee is only reimbursed by the jury's decision on the fair market value of his property taken. Therefore the landowner must pay to make the government give him the fair market value of his property alone. As one writer has stated:

Only four American jurisdictions [Florida, Iowa, North Dakota and Oregon] allow a condemnee to receive compensation for his attorneys' fees in completed condemnation actions, even though the award may be several times as great as the condemnor's last offer. . . . Factors such as attorneys' fees often make a substantial difference between just compensation on the one hand and what is equivalent to extortion on the other.<sup>186</sup>

Theoretically the resort to trial should be a weapon in the landowner's arsenal for arriving at a fair price for the acquisition of his property by the government. However, court dockets are generally full and often the condemnee cannot economically afford to risk the delay precedent to a trial. Thus the resort to trial becomes an even more potent weapon for the condemnor. "The prospect of going to

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<sup>185</sup> See Note, *supra* note 159, at 442-45. See also, *Hearings on Real Property Acquisition Practices and Adequacy of Compensation in Federal and Federally-Assisted Programs Before the Select Subcommittee on Real Property Acquisition of the House Committee on Public Works*, 88th Cong., 1st Sess., 368-81, 383-90 (1963); *Hearings on S. 1351 Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary*, 90th Cong., 2d Sess., 26, 37-38 (1968).

<sup>186</sup> Note, *Attorney's Fees in Condemnation Proceedings*, 20 HASTINGS L.J. 694, 715-16 (1969).

trial creates its own economic pressures, which are different from the kind engendered by delay. The condemnee must decide whether the likely gain is worth the attorney's fees, appraiser's fees and other costs that a trial would entail."<sup>187</sup>

In any condemnation case if the condemnee cannot recover attorney fees there is a built-in inequity. Since just compensation is defined as the jury's award, the required deduction therefrom means the condemnee is just that much short of recovering just compensation.

The fourth area of loss sustained by the landowner or tenant is evaluation. This is the area of loss caused by the social and psychological factors attendant to the acquisition of their land by the condemning authority. Of course at the present time the landowner is compensated only for economic losses. No allowance is made for non-economic losses. There is naturally loss sustained when one involuntarily gives up his home, friends, neighborhood and community. If the policy of the law is as it should be, *i.e.* to make the person whole, economic payment should be used to compensate for non-economic losses.

Another loss found in this fourth area is defined by Professor Michelman as the so-called "demoralization cost."<sup>188</sup> One writer has commented:

Michelman defines demoralization costs as including only disutilities arising from uncompensated financial losses *and other adverse effects of displacement*. Thus, by definition, demoralization costs disappear when financial losses are compensated *and displacement is otherwise made satisfactory to the displacees*.<sup>189</sup> [Emphasis added]

The displacee also suffers psychologically from his uprooting. The sense of familiarity in both physical and human surroundings, which inspires a feeling of belonging, is a powerful psychological force that fairly easy to comprehend but probably the most difficult loss to is often upset by removal from a familiar environment, and especially when this movement is involuntary. ". . . [B]reaking satisfying social and psychological relationships brings about no . . . measurable [economical] loss. The injury however is real."<sup>190</sup>

Of the landowners interviewed in the Cave Run study, it was found that sixty-eight percent had moved twenty-five miles or less

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<sup>187</sup> Note, *Allocating the Costs of Determining "Just Compensation,"* 21 STAN. L. REV. 693, 715 (1969).

<sup>188</sup> Note, *Property, Utility, and Fairness: Comments on the Ethical Foundations of Just Compensation Law*, 80 HARV. L. REV. 1165 (1967).

<sup>189</sup> Note, *supra* note 167, at 860.

<sup>190</sup> *Id.* at 861.

from their old residence.<sup>191</sup> The mean was fifteen to nineteen miles.<sup>192</sup> These uprooted people were asked a series of opinion questions as to how they weighed certain factors in moving to their new homes. Those results are as follows:<sup>193</sup>

*Factor*

- (1) Being near friends
- (2) Closeness to Cave Run area
- (3) Closeness to Fomer Work
- (4) Better Jobs
- (5) Closeness to Town
- (6) Closeness to Churches, Schools
- (7) Getting away from Country Life

*Weight Given by Displacees*

- (1) Very Important
- (2) Very Important
- (3) Moderate to Very Important
- (4) Moderately Important
- (5) Moderate to Very Important
- (6) Moderate to Very Important
- (7) Moderate to Little Importance

It is evident that physical proximity to their old homes and friends have been valued over other considerations.

Another cause of demoralization is "the realization by displacees that they will derive no benefits from the improvements that cause their displacement."<sup>194</sup> The helplessness and inevitability of their plight from the very first announcement of the Corps project seem to destroy their incentives, not only temporarily but also in some cases permanently. There is also the resentment factor caused by their belief that they have to bear a disproportionate share of the expense of the project than presently seems justified.

Most of the proposals for remedying or at least alleviating the problems discussed above are of fairly recent origin. In the early 1960's<sup>195</sup> a study was made by the Select Subcommittee on Real Property Acquisition of the Committee of Public Works of the Eighty-Eighth Congress in order to ascertain and give attention "to the various problems creating the inequities and injustices in condemnation acquisitions over a period of more than three years."<sup>196</sup> After the Com-

<sup>191</sup> See App. C, No. 39.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Note, *supra* note 167, at 860.

<sup>195</sup> See note 185 *supra*.

<sup>196</sup> See Note, *Inequities and Injustices of Condemnation Acquisitions*, 40 CONN. BAR J. 11, 18 (1966).



mittee's report was published, a bill was introduced entitled *Fair Compensation Act of 1965*,<sup>197</sup> and called, "A bill to provide for equitable acquisition practices, fair compensation, and effective relocation assistance in real property acquisitions for Federal and federally assisted programs, and for other purposes."<sup>198</sup> One writer expressed his opinion that "the most significant part of the Bill . . . is its declaration of policy,"<sup>199</sup> which was set out earlier.<sup>200</sup>

The *Fair Compensation Act* seemed to be a breakthrough for the displacees but it died in committee. Some of its more significant proposals in the area of moving, relocation and replacement costs were: (1) Section 105 which provided for reimbursement to the landowner, to the extent deemed fair and reasonable, the expenses incurred for (a) recording fees, transfer taxes, and similar expenses in conveying such real property to the United States; (b) penalty costs for prepayment of mortgage incident to such real property; and (c) the pro rata portion of real property taxes allocable to a period subsequent to the date of vesting title or the effective date of a court order of possession, whichever is the earlier; and (2) Section 107 which allowed alternative plans for compensating the landowner for his moving and related relocation expenses. One plan provided for fixed payments of up to \$200 for moving expenses, a similar amount for a dislocation allowance, an additional payment of \$300 if the displaced person owned the fee title or a life estate in the real property occupied, and up to a possible \$1,000 for a displaced person who discontinues a farm operation. The other plan allowed the landowner to elect compensation under policies and regulation to be made by the President.

Following the demise of H.R. 3421, Senator Edmund Muskie introduced a similar bill entitled: *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969* [hereinafter *Uniform Relocation Act*].<sup>201</sup> This bill, introduced in the Ninety-First Congress, was called "A bill to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and Federally-assisted programs and to establish uniform and equitable land acquisition policies for Federal and Federally-assisted programs." The bill's declaration of policy provided in part: ". . . [S]uch a policy shall be uniform as practicable as to (1) relocation payments, (2) advisory assistance, (3) assurance of availability of standard housing,

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<sup>197</sup> H.R. 3421, 89th Cong., 1st Sess. (1965).

<sup>198</sup> *Id.*

<sup>199</sup> Note, *supra* note 196, at 18.

<sup>200</sup> See text at note 148 *supra*.

<sup>201</sup> S. 1, 91st Cong., 1st Sess. (1969).

and (4) Federal reimbursement for relocation payments under Federally assisted programs.”

The bill introduced by Senator Muskie is similar to the earlier *Fair Compensation Act* in the House in that it allows a corresponding alternative plan for receiving relocation payments. The fixed sum for moving expense allowance is not to exceed \$200 and for dislocation allowance not over \$100.<sup>202</sup> In this bill the displaced person who discontinues or moves a farm operation also receives \$1,000.<sup>203</sup> The new and most significant aspect of the Senate bill is found in Sec. 211(e)(1) which provides:

In addition to amounts otherwise authorized by this section, the head of the Federal agency shall make a payment to the owner of real property which is improved by a single, two, or three-family dwelling actually owned and occupied by the owner for not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment, not to exceed \$5,000, shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a decent, safe, and sanitary dwelling of modest standards adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment. Such payment shall be made only to a displaced owner who purchases and occupies another dwelling within a year after the date on which he is required to move from the dwelling acquired for the project.

Also for those who had only occupied their dwelling for over 90 days but did not qualify for payments under Sec. 211(e)(1), the bill provided, in Sec. 211(f)(1) for payment to them of up to \$1,500.

The Committee on Condemnation Law of the Real Property, Probate and Trusts Section of the American Bar Association recently drafted the Model Eminent Domain Code.<sup>204</sup> If adopted, it would bring about a great deal of improvement and uniformity in the condemnation law of nearly all jurisdictions. The Model Code's Sections 601 to 616 provide for "Just Compensation and Measure of Damages." It proposes the use of fair market value as the standard to measure just compensation for the taking, injury or destruction of the landowner's property. It also allows considerable latitude and foresight in providing fixed payments to the displacees in this area of moving, relocation and replacement costs.<sup>205</sup>

All of the foregoing proposals are significant breakthroughs in the area of providing the displacee, as nearly as possible, with full in-

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<sup>202</sup> *Id.* at § 211.

<sup>203</sup> *Id.*

<sup>204</sup> 2 REAL PROPERTY, PROBATE AND TRUST JOURNAL 365 (1967).

<sup>205</sup> ABA MODEL EMINENT DOMAIN CODE (Preliminary Draft, 1967), in 2 REAL PROP., PROB. & TRUST J. 365 (1967).

demnity for his losses sustained as an incident to the Corps' acquisition of his land. However, as yet, none of the foregoing have been enacted into law. What is important is that the abuses have been discovered and remedies proposed.

We would alleviate this problem by defining replacement property to be "any interest in real property" and by making it clear in the statute that this definition includes leaseholds of any duration. This provision is necessary because the laws of some states treat a lease as personal property and a court might be tempted to look to state law to determine what is "an interest in real property."<sup>206</sup>

It should be pointed out that the *Fair Compensation Act* also contained a somewhat broader proposal for improving this area of the law. It defined replacement property to include: (1) any interest in real property; (2) any property used in the trade or business of the taxpayer; and (3) any property to be held by the taxpayer for investment.<sup>207</sup> In referring to the bill's proposals, one writer stated:

We rejected the idea of permitting replacement with "any property used in the trade or business of the taxpayer" or with "any property to be held by the taxpayer for investment" on the ground that the options proposed in this paper more effectively harmonize the policy of assuring fair treatment for all condemnees with the policy against tax-free changes of investment.<sup>208</sup>

In the *Uniform Relocation Act* no new attempt was made to amend the Internal Revenue Code regarding condemnation. Thus, as things stand, adequate and needed proposals have been made but not yet accepted by legislative enactment.

In 1967 Senator Wayne Morse introduced Senate Bill 1351,<sup>209</sup> a bill to provide for payment of a defendant's costs, including attorney's fees, involved in condemnation proceedings by the federal government.

As one writer pointed out:

The substantive provisions (1) allow expenses to the landowner if the court award exceeds the last pretrial offer of the condemnor, (2) allow the condemnee his expenses in the event of an abandonment, and (3) allow the condemnee his expenses in a successful action in inverse condemnation. . .<sup>210</sup>

<sup>206</sup> Note, *supra* note 173, at 339.

<sup>207</sup> See H.R. 3421, 89th Cong., 1st Sess. at § 201 (1965).

<sup>208</sup> Note, *supra* note 173, at 339.

<sup>209</sup> S. 1351, 90th Cong., 1st Sess. (1967). It should be pointed out that a similarly related bill was proposed in the House as H.R. 8541, 91st Cong., 1st Sess., (1969). Neither S. 1351 nor H.R. 8541 received the necessary congressional approval.

<sup>210</sup> Note, *supra* note 186, at 712-13.

The proposed bill in effect:

. . . allows the landowner all his reasonable expenses if he was not offered "just compensation" before being taken into court, but forced him to bear the burden of his expenses if it is found that he *was* tendered "just compensation" but refused to accept it.<sup>211</sup>

One of the major criticisms of this bill was that it would encourage frivolous litigation resulting in jury awards that would inevitably exceed "just compensation." Those in favor of the bill countered that argument by stating that, ". . . [t]he reason trial awards usually exceeded the condemnor's offer is that the government usually tries to purchase land for *less* than fair market value."<sup>212</sup> However, one matter of valid concern has been reported:

If attorneys' fees were allowed where there is only a nominal increase in the award over the offer, frivolous litigation might be encouraged. It was suggested that Senate Bill 1351 be amended, therefore, to require a one or two percent increase in the award over the offer before expenses would be allowed. *However, a more useful amendment would approach the problem directly and allow recovery of the condemnee's expenses as the court, in the interests of justice, would allow. This approach would permit the trial judge, who is aware of the facts, to allow or deny costs where he deems such actions appropriate.* Surely this flexible concept is more desirable, as it is more likely to lead to a fair result than is a mathematical formula.<sup>213</sup> [Emphasis added]

The proposed Model Eminent Domain Code in Sec. 504E provides:

All taxable costs, including filing fees, jury fees, statutory witness fees and mileage, expenses of preparing plans under Section 503(i), the expense of transporting the judge and jury to view the condemned property and such other costs as the Court in the interest of justice may allow shall be paid by the condemnor. Where the ultimate award is more than the offer of the condemnor, the Trial Judge shall have the authority to cause the condemnor to reimburse the condemnee's costs to appraise its property and for its attorney's fees and other reasonable expenses, but his authority shall exist only in those instances where the Trial Judge finds affirmatively that to do otherwise would invoke serious hardship on the condemnee. The condemnee shall be entitled to be reimbursed for all reasonable expenses actually expended when the condemnor withdraws therefrom.<sup>214</sup>

The undesirable portion of the foregoing section seems to be that provision which "requires an affirmative finding of 'serious hard-

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<sup>211</sup> *Id.*

<sup>212</sup> *Id.* at 714.

<sup>213</sup> *Id.* at 715.

<sup>214</sup> ABA MODEL EMINENT DOMAIN CODE, *supra* note 66, at § 504E.

ship' as a prerequisite to the allowance of attorneys' fees."<sup>215</sup> A better suggestion seems to be:

. . . to provide that if the award exceeds the condemnor's offer, the condemnor *shall* pay the condemnee's expenses of litigation, unless in the opinion of the court it would not be in the interests of justice to do so. If reworded in this manner, section 504E would not tend to defeat the very purpose for which it was created—to encourage the condemnor to make a fair offer to the condemnee before commencing litigation.<sup>216</sup>

Despite some flaws in draftsmanship, both the Model Code's provision and S. 1351 are both steps in the right direction. Nevertheless, as expressed by one writer, "Neither is all-inclusive, and both are doubtless years from enactment."<sup>217</sup>

The last area of financial and non-economic loss incident to eminent domain actions concerned those social and psychological losses incurred. Here evaluation of losses is difficult. However, as previously explained, in this particular area of concern the losses can be regulated by merely providing that the displacee is equitably and fairly treated in the other areas of loss. Professor Michelman best sums up this area:

. . . the only "test" for compensability which is "correct" in the sense of being directly responsive to society's purpose in engaging in a compensation practice is the *test of fairness*: is it fair to effectuate this social measure without granting this claim to compensation for private loss thereby inflicted?<sup>218</sup>

"Incidental losses are generally ignored in condemnation awards, at least in theory, unless they are directly associated with real property."<sup>219</sup> Even with the recent recognition of these losses by legislators and writers, there continues to be largely a piecemeal approach taken toward placing the displacee in his pre-condemnation position by allowing him full indemnity for his losses sustained. The *Uniform Relocation Act* and its predecessor, the *Fair Compensation Act*, offer a legitimate and sound basis for attacking the problems in this area of the law. They were not a panacea, but they certainly offered hope for improvement in condemnation law. But the ultimate responsibility for improvement and fairness in this area of the law lies with the public. As one writer concluded:

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<sup>215</sup> Note, *supra* note 186, at 710.

<sup>216</sup> *Id.* at 710-11.

<sup>217</sup> *Id.* at 716.

<sup>218</sup> Note, *supra* note 188, at 1171.

<sup>219</sup> Note, *supra* note 167, at 802.

. . . Ultimately, the public which benefits from improvements should bear the incidental losses occasioned by any condemnation for which just compensation is required; no reason appears for placing an inordinate burden on the individuals whose property is appropriated for the public benefit . . . Reform might be initiated either by courts or by legislatures . . . In the final analysis, however, the source of reform is not important—the fact of reform is.<sup>220</sup>

*E. Robert Goebel*  
*Donald K. James*  
*Lyle G. Robey*  
*Joel V. Williamson*

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<sup>220</sup> *Id.* at 876.

## APPENDIX A

## RESEARCH PROPOSAL TO THE AMERICAN BAR FOUNDATION

BY THE KENTUCKY LAW JOURNAL

## CASE STUDY: RURAL LAND CONDEMNATION

## I. THE PROBLEM

"... [N]or shall private property be taken for public use without just compensation." (U.S. CONST. amend. V). Certainly the government's right to condemn private property for public use is fundamental to the operation of our contemporary society. It is also the individual's right to receive just compensation when his land is condemned. However, in the modern era, sociological, psychological, economic and cultural forces have combined to compound the complexity of the issues involved. No longer does condemnation present merely the issue of adequate economic compensation. The dimensions of compensation are ever increasing to include not only monetary compensation for the land condemned, but relocation assistance and other aid to the displaced residents.

The ever increasing social significance of condemnation problems is evidenced by the great amount of legal research which has been devoted to the subject as well as the number and quality of various institutes, workshops, and meetings, including the American Bar Association's National Institute of September 20, 1968.

In an era of increasing dependence on government for services of all kinds and consequent increase in the scope of governmental power and activity, the government has the resultant burden of insuring that individual dignity and well-being is maintained. Federal, state and local governments, both alone and in concert are expanding their development programs aimed at revitalizing the economies of neighborhoods, districts, cities, and entire regions. While the goal is indeed worthy of increased effort and resources, accordant consideration must always be given to individual well being.

In most development projects undertaken by governmental units, condemnation of private land for public use is involved. This essentially means that individuals are immediately forced to move from their residence or place of business and relocate. Often entire communities are uprooted. The attendant problems are many and complex and constitute the basis for the proposed study.

One of the largest, continuous, federally sponsored programs has been the building of flood control dams. Beginning with the Tennessee Valley Authority projects, the dams have provided a source of power

and have been used for recreational activities. Many of these projects are planned and constructed by the United States Army Corps of Engineers.

The Corps has previously come under fire for its techniques and policies concerning land condemnation. In 1964 the House Select Subcommittee on Real Property Acquisition investigated land acquisition policies of various government agencies. The resulting publication, [HOUSE SELECT SUBCOMMITTEE ON REAL PROPERTY ACQUISITION, STUDY OF COMPENSATION AND ASSISTANCE FOR PERSONS AFFECTED BY REAL PROPERTY ACQUISITION IN FEDERAL AND FEDERALLY ASSISTED PROGRAMS, H. R. REP. No. 31, 88th Congress, 2d Session, (1964)], revealed, for example, that in nearly three-fourths of the acquisitions handled by the Corps, an initial offer was made to the landowners below the appraisal value which the Corps had placed on the land. The report made other important conclusions and recommended changes to improve acquisition procedures. The report concluded that many displaced persons incur substantial economic losses for which no present laws provide assistance.

The taking of an Appalachian resident's land can be an especially brutal experience. In this region, land is most often owned by inhabitants who are poor, uneducated, and heavily in debt. Often the compensation awarded for the taking is not sufficient to enable them to relocate and start anew after creditors, land speculators and others have become involved. The resentment is especially bitter in view of the fact that the land has often been owned by the same family for generations. Often, too, villages and communities are displaced when valleys are flooded and thus an entire social order must be relocated.

Certain reforms, through continued efforts by federal and state governments have been made in land acquisition procedures so that just compensation in the broadest sense of the term will be insured. Such improvements have included the right to jury trial and better highway relocation procedures, among others.

While improvements have been made, there is much evidence to indicate a need for continued improvement. Thus, the purpose of the proposed study will be to assess the process of condemnation in one specific case and to measure the success of present policies and procedures in light of the government's legitimate need to quickly acquire land for public use as well as the individual's right to adequate compensation.

The measure of decency in government is largely measured by the compassion it displays for the individual who is displaced by its act.



## II. STUDY HYPOTHESIS

- (1) Economic loss for the family unit tends to occur in periods of relocation:
  - a) Lack of moving costs and house location expenses;
  - b) Inflated land values in areas of intended migration;
  - c) Cost of refurbishing new residence;
  - d) Cost of moving chattels and livestock;
  - e) Loss of favorable interest rates on long term debt;
  - f) Loss on forced sale or disposition of personal property not usable after displacement;
  - g) Expenses incident to the transfer of title to real property required for public use, such as recording fees, transfer taxes, clerk fees, etc.; penalty costs for prepayment of mortgage incident to real property and, real property taxes paid to a taxing entity which are allocable to a period subsequent to the transfer;
  - h) Expenses in obtaining substitute real property, such as costs of appraisal, survey, necessary charges to obtain financing, title examination, and closing costs;
  - i) Loss of employment due to the discontinuance or relocation of a displaced business;
  - j) Loss of home ownership because of inability to obtain financing within the financial means of the displacee;
  - k) Increased cost of rent for substitute dwelling or property.
- (2) Individuals within the area of displacement are economically affected by their substandard economic status, minimal educational background, and general unawareness surrounding the purchase of their land and resettlement in other areas (internal forces):
  - a) Irresponsibility with compensation awards to the extent that money is spent before it is reinvested in new property;
  - b) Unawareness of legal rights which attend condemnation procedures;
  - c) Severance from life-long occupations (generally farming) coupled with urban migration leaves some individuals unable to compete in the labor market because of their lack of job skills;
  - d) Minimal organization among landowners, thus, resulting in

their having little or no influence upon all phases of removal and relocation.

- (3) Land acquisition procedures utilized by the Army Corps of Engineers tends to cause economic deprivation and stifle communal relocation efforts:
- a) The practice of purchasing land parcel by parcel (as opposed to purchasing large blocs) prevents neighbors and relatives who wish to resettle in units from doing so;
  - b) This same practice of buying gradually (often over a period of 10 years) inhibits those affected persons from moving (their land is virtually unmarketable) or making major improvements on their property;
  - c) Corps appraisal standards do not adequately reflect judicial and statutory standards of fair market value (it may be that judicial and statutory standards inadequately determine land values);
  - d) Negotiation techniques for purchasing land may be unfair. (It has been charged that the initial offer made by the Corps is less than the Corps determined appraised value of the land in 72% of the cases. . . . Study done by the House Select Subcommittee on Real Property Acquisition, 1964).

### III. THE STUDY PROJECT

The project to be studied is the Cave Run Reservoir, located near Morehead, on US 60, in the foothills of the Cumberland Plateau of Kentucky. Property has been condemned and work has begun by the Corps on the dam. Estimates by the Army Corps of Engineers show that there are 900 tracts of land to be condemned for the entire project. Approximately one-third of these have been condemned to date and more will undoubtedly be condemned by June 1, 1969, the date upon which field research will begin. The reservoir is scheduled to be completed by 1972. Extensive recreational facilities have been planned by the Forestry Department, and Midlands, a new town, has been planned below the dam to provide for the economic expansion and revitalization of the region. The area is a semi-poverty region and the facilities to be constructed are typical of other projects which have been completed or planned throughout Kentucky and the nation.

The *Kentucky Law Journal* proposes to undertake a study of land acquisition at the Cave Run Project. The study will be directed toward an analysis of the acquisition policies and procedures in terms of their effect upon the displaced landowner. It is important to note

that the study will not concern itself with the policy decision of whether such a facility is needed or is properly located. Nor will the research be concerned with the problems attendant on condemnation of land in general. Rather, the study will limit itself to data and problems concerning the study project. Empirical data will be collected and analyzed in view of the substantive law and procedures applicable to the study project. A final report will be written which will contain the empirical data collected, evaluations and recommendations for improvements. The *Journal* believes that such a study can make an important contribution to the knowledge in this area.

#### IV. METHODOLOGY

The *Kentucky Law Journal* will have responsibility for the study. Administrative facilities will be provided by the Kentucky Research Foundation which administers all research grants for the University of Kentucky.

The Editorial Board of the *Kentucky Law Journal* for 1969-70 will supervise the research and write the report. The Research Editor of the *Journal* will direct the study for the *Journal* through its completion at the end of 1969.

Three qualified senior law students from the staff of the *Journal* will be hired as Research Assistants to conduct the study during the summer of 1969, from June 1 through September 1. It is anticipated that the study will involve three phases.

##### *Phase I. Analysis of Applicable Law, Procedure, and Prior Studies*

- (1) Examination of other private and governmental studies which have dealt with similar problems in the Cave Run Reservoir area.
- (2) Survey of the substantive law and procedure applicable to the study project which will serve as a basis for the field research and final report.

##### *Phase II. Collection of Empirical Data*

- (1) Examination of public hearings and other public records to aid the answering of all problems outlined in the hypothesis.
- (2) Examination of court records in actual condemnation litigation to compare the Corps' appraisal value with their negotiated offers with the court's final award.

- (3) Interviews with displaced landowners and tenants to determine:
  - a) family background
    - 1) education
    - 2) economic status
    - 3) occupation
    - 4) family dependants
    - 5) etc.
  - b) procedures employed by the Corps in acquiring their land:
    - 1) notice
    - 2) negotiations with Corps officials
    - 3) whether condemnation was resorted to
    - 4) legal representation (if any)
    - 5) whether relocation assistance was offered or given, and form this assistance took
  - c) economic losses suffered by virtue of resettlement (refer to hypotheses, part (1) in particular)

In collecting this data, our consulting sociologist, Dr. John B. Stephenson, will prepare an extensive questionnaire designed to elicit the information in order that straight-line and cross-tabulation analyses may be computed and presented in the form of percentage tables. The questionnaire will not be open-end as indicated to us by Dr. Stephenson. Dr. Stephenson will supervise all data collection and will instruct all interviewers as to proper interviewing techniques.

- (4) Interviews with Corps officials to determine:
  - a) land appraisal standards, procedures, and techniques
  - b) land purchase negotiation techniques
  - c) types of relocation assistance (if any) employed
  - d) extent of statutory and policy powers and limitations while keeping a definite outline in mind, these interviews will be open-end. Much of the information obtained from the Corps will be used as a comparative base in determining the validity of responses from the landowners and tenants.
- (5) Interviews with all attorneys (if too many, a random selection will be made) representing clients within the affected area in condemnation proceedings to:
  - a) enlighten the over-all picture of Corps negotiation and appraisal procedures;
  - b) determine other legal consequences surrounding court pro-

ceedings in which the Corps and the private landowner is involved.

These latter interviews will generally be open-end with no view toward computer processing since the number of interviewees will be limited. The data collected here will be used as a comparative standard to test the validity of responses from the landowners and the Corps of Engineers.

- (6) No other interviews are specifically contemplated at this time; however, if our initial research indicates that other persons or institutions are able to shed light on our study, these interviews will be undertaken also, *e.g.*, state officials, local officials, other federal agencies, etc.

### *Phase III. Drafting of the Final Report*

This will be written by the Editorial Board and will contain an analysis of the empirical data collected in terms of the applicable law and will conclude with needed recommendations for improvement in the law and procedure of land acquisition.

## APPENDIX B

### OFFICE OF ECONOMIC OPPORTUNITY COMMUNITY PROFILE PROJECT\*

#### I. INTRODUCTION

The community profile project is designed to increase the scope, accessibility, accuracy and utility of information which supports the planning and evaluation of programs for community improvement.

An extensive inventory of current and historical data is maintained by the project which describes the social and economic characteristics of the United States at a local level.

Specifically, the system compiles these data for the 3,135 United States counties and county equivalents that subdivide each state into independently administered localities.

Data in this inventory are utilized in their original forms, or are converted into various statistical indices, summary measures, and

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\*This appendix is a compilation and summary of four separate studies done under the auspices of the Office of Economic Opportunity Community Profile Project in Bath, Menifee, Morgan and Rowan Counties, Kentucky

estimates of updated or unreported items. These series are then incorporated into textual reports.

The profiles that follow contain reports showing general poverty indicators, size and composition of the poor population, and selected aspects of the geography, demography, economy and social resources of Bath, Menifee, Morgan and Rowan counties in Kentucky.

## II. POVERTY INDICATORS

Poverty indicators show social and economic characteristics which vary with the nature and level of poverty.

The 3,135 counties of the United States have been compared on these characteristics in order to determine the normal or typical level of the indicator in question and the standing of each community relative to this norm.

*Magnitude of Poverty*—897 families in Bath County, 371 families in Menifee County, 854 families in Morgan County and 1,143 families in Rowan County received incomes below the Social Security Administration poverty cutoff level in 1966, as opposed to a national county norm of 1,221 families.

*Severity of Poverty*—41.7% of the families in Bath County, 43.4% of the families in Menifee County, 42.7% of the families in Morgan County and 38.3% of the families in Rowan County received incomes below the Social Security Administration poverty cut off level in 1966, compared to 22.6% of the families in the typical county.

*Economic Compensation*—Average first quarter earnings for employees in all industries were reported in 1964 in Bath County as \$621, in Menifee County as \$752, in Morgan County as \$824 and in Rowan County as \$793. The national county norm in 1964 was reported as \$906.

*Economic Activity*—In 1966 retail sales were transacted for each person living in Bath County in the amount of \$730, in Menifee County the amount of \$360, in Morgan County the amount of \$972 and in Rowan County the amount of \$1,118, contrasted to \$1,204 at the national norm in 1966.

*Family Resources*—In 1966 a median family income of \$3,025 was observed in Bath County, \$2,427 in Menifee County, \$2,820 in Morgan County and \$3,589 in Rowan County, as opposed to the United States county standard of \$4,630.

*Employment Conditions*—In 1960 unemployment stood at 5.7% of the labor force in Bath County, 7.6% in Menifee County, 5.8% in Morgan County and 8.5% in Rowan County, compared to 4.8% for the typical county.

*Educational Achievement*—In 1960 persons aged 25 and over had completed a median of 8.0 school years in Bath County, 7.9 years in Menifee County, 8.2 years in Morgan County and 8.3 years in Rowan County whereas the typical county showed 9.5 years of school completed.

*Functional Illiteracy*—In 1960 of the population of Bath County, 20.2% had failed to complete over four years of school, 24.9% of Menifee County, 19.0% of Morgan County and 18.2% of Rowan County, contrasted to the national norm of 7.8%

*Adequacy of Health Care*—In 1962 44.9 physicians per 100,000 population were practicing in Bath County, 23.8 in Menifee County, 56.5 in Morgan County and 54.7 in Rowan County, as opposed to 61.1 doctors per 100,000 population in the typical county.

*Health Status*—In 1964 847 infant deaths per 100,000 live births occurred in Menifee County, 769 in Morgan County and 2,046 in Rowan County, compared to a national norm of 1,700 infant deaths per 100,000 live births. (Bath County not reported.)

*Sufficiency of Housing*—In 1960 15.6% of the dwelling units in Bath County housed more than the national average of 1.01 persons per room, in Menifee County 24.1% more, in Morgan County 19.7% more and in Rowan County 17.2% more.

*Agricultural Prosperity*—In 1960 the value of the farmer level-of-living index stood at 63 for Bath County, 47 for Menifee County, 47 for Morgan County and 49 for Rowan County, contrasted to a value of 100 for the average county.

[Note—The values shown above for the typical county represent medians for the counties rather than national averages which are presented in the specific reports below.]

### III. PROFILE OF THE POOR

#### A. Definition of Poverty

An individual is considered poor if his personal income or the income of the family to which he belongs inadequately provides for his subsistence. The level of income necessary for surviving on a minimum diet with none of the amenities of prosperity has been determined by the Social Security Administration for families of varying size and rural/urban residence status. For example, an unrelated individual living on a farm was considered in poverty if his income was under \$1,065 in 1960 or \$1,085 in 1965. On the other hand, a family of seven members living in a non-farm area required \$4,985 in 1960 or \$5,090 in 1965 in order not to be in poverty.

Considering the relationship of family income to the family size and residence status in Bath County, the average income cutoff distinguishing poor from non-poor stood at \$2,512 in 1960 and \$2,562 in 1966; in Menifee County at \$1,985 in 1960 and \$2,025 in 1966; in Morgan County at \$2,341 in 1960 and \$2,398 in 1966 and in Rowan County at \$2,794 in 1960 and \$2,850 in 1966.

### *B. Level of Poverty*

Out of a total of 2,153 families, 897, or 41.7% were poor by the above criteria in 1966 in Bath County. Of 854 families, 371, or 43.4% were poor by the above criteria in 1966 in Menifee County. Of 1,998 families, 854, or 42.7% were poor by the above criteria in 1966 in Morgan County. And of 2,982 families, 1,143, or 38.3% were poor by the above criteria in 1966 in Rowan County. In the state of Kentucky as a whole at the same time, out of 827,600 families, 202,700 or 26.9% were poor. Poverty, therefore, affected the families in the above four counties more heavily than Kentucky overall. Moreover, the state showed a higher poverty rate than the nation in general, where 15.1% of all families were poor in 1966.

In the same year Bath County held 0.3% of all Kentucky families as opposed to 0.4% of the poor families in the state. For Menifee County the figures were 0.1% and 0.2% respectively; for Morgan County 0.3% and 0.4% respectively; and for Rowan County 0.4% and 0.6% respectively. The Bath County families in poverty represented 0.1% of all families in Kentucky in 1966; Menifee County families in poverty represented less than 0.1% and Morgan and Rowan County families in poverty both also represented 0.1% of all Kentucky families in 1966.

Kentucky, with 1.7% of all the families in the United States, held 2.3% of the poor families of the nation in 1966. These poor families residing in Kentucky accounted for 0.4% of the whole United States family population.

### *C. Changes in the Poverty Level*

In 1960, the total number of families in Bath County, 2,355, Menifee County, 1,049, and Morgan County, 2,593 all stood above the number estimated above for 1966. In 1960, the total number of families in Rowan County, 2,873, stood below the number estimated above for 1966. Of this earlier population in Bath County, 1,256, or 53.5% received incomes under the 1960 poverty cutoff; in Menifee County, 667, or 63.6% received incomes under the 1960 poverty cutoff; in



Morgan County, 1,483, or 57.2% received incomes under the 1960 poverty cutoff; and in Rowan County, 1,361, or 47.4% received incomes under the 1960 poverty cutoff. All of these figures show an amelioration of the poverty problem between 1960 and 1966 in these four counties.

The number of poor families in Bath County had decreased by 28.6% and the population of all families in the county also fell by 8.6% between 1960 and 1966. The figures for Menifee County are 44.4% and 18.6% respectively; for Morgan County, 42.4% and 22.9% respectively; and for Rowan County, the number of poor families decreased by 16.0% while the population of all families rose by 3.8% during the same period.

The family population of Bath County represented 0.3% of the 752,700 families residing in Kentucky in 1960; the family population of Menifee County represented 0.1% of the families residing in Kentucky in 1960; and the family population of Rowan County represented 0.4% of the families residing in Kentucky in 1960—all of these being an equal proportion to that observed in 1966. The family population of Morgan County represented 0.4% of the 752,700 families residing in Kentucky in 1960, a greater proportion than that observed in 1966. The poor families living in Bath County in 1960 accounted for 0.5% of the 252,800 families in poverty in the entire state at the same time; in Menifee County for 0.3%; in Morgan County for 0.6%; and in Rowan County for 0.5%. The share of Kentucky poverty in Bath, Menifee and Morgan counties, therefore can be seen to have decreased over the period 1960 - 1966. The share of Kentucky poverty present in Rowan County can be seen to have increased over the same period.

#### *D. Severity of Poverty*

Poverty was dramatically more severe in these four counties in 1966 than in the average United States county. In that year, ninety-five percent of the United States counties had a smaller proportion of families living on incomes below the poverty cutoff than Menifee County. The figure for Bath and Morgan counties was ninety-four per cent, and for Rowan County eighty-nine percent. This represented a worsening in the relative positions of Bath and Rowan counties from 1960 when ninety percent and eighty-three percent, respectively, of the counties of the nation ranked lower in severity of poverty. It represented an improvement in the relative positions of Menifee and Morgan counties from 1960 when ninety-eight per cent and ninety-five percent, respectively, of the counties of the nation ranked lower in severity of poverty.

### *E. Magnitude of Poverty*

The actual number of poor families, regardless of the proportion of total population they represent, is a measure of the magnitude of poverty in a locality. Large numbers of poor families residing in small areas are intrinsically worthy of attention.

Relative to the other counties in the nation, Bath County was afflicted with a moderately lower order of magnitude of poverty in 1966. At that time, sixty-three percent of the counties in the United States held poor populations of greater magnitude. This was a better relative position than Bath County held in 1960, when it stood lower than fifty-five percent of the counties in the nation.

Menifee County, relative to other United States counties, was afflicted with an unusually lower order of magnitude of poverty in 1966. At that time, eighty-seven percent of the counties in the United States held poor populations of greater magnitude. This was a better relative position than Menifee County held in 1960, when it stood lower than seventy-eight percent of the counties in the nation.

Relative to other counties, Morgan County was afflicted with a moderately lower order of magnitude of poverty in 1966. At that time, sixty-five percent of the counties in the United States held poor populations of greater magnitude. This was a better relative position than Morgan County held in 1960, when it stood higher than fifty-three percent of the counties in the nation.

Rowan County, in relation to other counties in the nation, was afflicted with a slightly lower order of magnitude of poverty in 1966. At that time, fifty-three percent of the counties in the United States held poor populations of greater magnitude. This was a better relative position than Roman County held in 1960, when it stood lower than fifty-two percent of the counties in the nation.

### *F. Characteristics of the Poor Population*

The causes and manifestations of poverty are varied and complex. Each community in the country has a unique configuration of them. However, the problems of economic and social life which cause poverty to occur and persist can be better explained and treated in the presence of information about the poor themselves. Eventually, the analysis in depth of such information will provide general means for evaluating both the enemies and the weapons in the war on poverty, regardless of their variety and complexity.

Rural/urban residence and race can be described for both the poor and non-poor populations of the four counties in 1960.

Among all the inhabitants of Bath and Rowan counties, the

largest proportion, considering race and residence status, were white residents of rural areas, though not living on farms. This segment of the populations comprised 53.6% of all families in Bath County in 1960, and 46.5% in Rowan County. Among all the residents of Menifee and Morgan counties, the largest proportion, considering again race and residence status, were white residents of rural areas living on farms. In Menifee County this segment of the population comprised 58.9% of all families in the county in 1960 and 56.0% in Morgan County.

Among the poor populations, the largest proportion of families, considering race and residence status, were, in Bath and Rowan counties, white residents of rural areas, through not occupying farms. In 1960, this category of poor families represented 59.8% of all poor families in Bath County, and 57.0% in Rowan County.

Among the poor population in Menifee and Morgan counties, the largest proportion of poor families, considering again race and residence status, were white residents of rural areas occupying farms. In 1962, this category of poor families represented 50.1% of all poor families in Menifee County and 51.3% in Morgan County.

A summary of the poor and non-poor by their race and residence status in 1960 in the four counties is presented in the Table Nos. 1-4.

TABLE NO. 1  
POOR AND NON-POOR BY RACE AND RESIDENCE STATUS  
BATH COUNTY—1960

Residence and Poverty Status	Percentage of County Population			Number of Families		
	R a c e			R a c e		
	White	Non- White	Total	White	Non- White	Total
<b>Urban:</b>						
Poor Families	0.0%	0.0%	0.0%	0	0	0
All Families	0.0%	0.0%	0.0%	0	0	0
<b>Rural Non-Farm:</b>						
Poor Families	31.9%	3.9%	35.8%	751	91	842
All Families	53.6%	4.3%	57.9%	1,262	101	1,363
<b>Rural Farm:</b>						
Poor Families	17.6%	0.0%	17.6%	414	0	414
All Families	41.9%	0.2%	42.1%	987	5	992
<b>Total:</b>						
Poor Families	49.5%	3.9%	53.3%	1,165	91	1,256
All Families	95.5%	4.5%	100.0%	2,249	106	2,355

TABLE NO. 2  
 POOR AND NON-POOR BY RACE AND RESIDENCE STATUS  
 MENIFEE COUNTY—1960

Residence and Poverty Status	Percentage of County Population			Number of Families		
	R a c e			R a c e		
	White	Non- White	Total	White	Non- White	Total
Urban:						
Poor Families	0.0%	0.0%	0.0%	0	0	0
All Families	0.0%	0.0%	0.0%	0	0	0
Rural Non-Farm:						
Poor Families	31.7%	0.0%	31.7%	333	0	333
All Families	41.1%	0.0%	41.1%	431	0	431
Rural Farm:						
Poor Families	31.8%	0.0%	31.8%	334	0	334
All Families	58.9%	0.0%	58.9%	618	0	618
Total:						
Poor Families	63.6%	0.0%	63.6%	667	0	667
All Families	100.0%	0.0%	100.0%	1,049	0	1,049

TABLE NO. 3  
 POOR AND NON-POOR BY RACE AND RESIDENCE STATUS  
 MORGAN COUNTY—1960

Residence and Poverty Status	Percentage of County Population			Number of Families		
	R a c e			R a c e		
	White	Non- White	Total	White	Non- White	Total
Urban:						
Poor Families	0.0%	0.0%	0.0%	0	0	0
All Families	0.0%	0.0%	0.0%	0	0	0
Rural Non-Farm:						
Poor Families	27.8%	0.0%	27.8%	722	0	722
All Families	44.0%	0.0%	44.0%	1,140	0	1,140
Rural Farm:						
Poor Families	29.3%	0.0%	29.3%	761	0	761
All Families	56.0%	0.0%	56.0%	1,453	0	1,453
Total:						
Poor Families	57.2%	0.0%	57.2%	1,483	0	1,483
All Families	100.0%	0.0%	100.0%	2,593	0	2,593

TABLE No. 4  
 POOR AND NON-POOR BY RACE AND RESIDENCE STATUS  
 ROWAN COUNTY—1960

Residence and Poverty Status	Percentage of County Population			Number of Families		
	Race			Race		
	White	Non- White	Total	White	Non- White	Total
<b>Urban:</b>						
Poor Families	9.1%	0.0%	9.1%	261	0	261
All Families	29.5%	0.0%	29.5%	848	0	848
<b>Rural Non-Farm:</b>						
Poor Families	27.0%	0.0%	27.0%	776	0	776
All Families	46.5%	0.0%	46.5%	1,335	0	1,335
<b>Rural Farm:</b>						
Poor Families	11.3%	0.0%	11.3%	324	0	324
All Families	24.0%	0.0%	24.0%	690	0	690
<b>Total:</b>						
Poor Families	47.4%	0.0%	47.4%	1,361	0	1,361
All Families	100.0%	0.0%	100.0%	2,873	0	2,873

#### IV. GEOGRAPHIC PROFILE

##### A. *Regional Characteristics*

Poverty is a regional phenomenon in the United States. Not only is it concentrated more heavily in specific sections of the country than others, but it also varies in kind, extent and intensity within these sections along with the characteristics of populations and uses of land which are unique by virtue of regional location.

The four counties concerned in this study lie in the northeast portion of Kentucky, of 120 counties in the state.

The Bureau of the Census has defined a general system of regional classification by subdividing the United States into four major regions and nine geographic divisions composed of groups of contiguous states. According to this system, the section of the country containing these four counties is characterized as the East South Central Division includes the states of Tennessee, Alabama and Mississippi.

In 1966, the population of the East South Central Division was estimated at 12,681,700 persons, 6.5% of the total population of the United States, ranking it seventh among the nine census divisions in total 1966 population. Of the four states in the East South Central Division, Kentucky stood third in number of inhabitants in 1966, with

3,038,000 persons, 1.7% of the total United States population. 0.3% of this state population, 8,800 persons, resided in Bath County in 1966. For Menifee County the figures were 0.1% and 4,100 persons; for Morgan County 0.4% and 9,200 persons; and for Rowan County 0.4% and 13,200 persons.

Of the 1966 population of the East South Central Division, 50.5% resided in urban areas, or places with 2,500 or more inhabitants. In the nation as a whole, 70.6% of the population was classified as urban in 1966. In Kentucky, 1,440,000 persons were living in urban areas in 1966, representing 1.1% of the total urban population of the nation. Of this state urban population none resided in Bath, Menifee or Morgan County. In Rowan County in 1966, 0.1% or 4,400 persons of the state's urban population resided.

Retail sales in the East South Central Division totalled \$14,441,696,000 in 1966, placing it eighth among the nine divisions in this indicator of economic activity. This amount represented 5.1% of the national total of \$281,743,122,000 in retail sales. Among the four states in the Division, Kentucky ranked third in 1966 retail sales.

Total disposable personal income earned in the East South Central Division, \$21,353,936,000, accounted for 4.6% of the \$461,955,175,000 earned in the entire United States. The East South Central Division ranked eighth among all divisions, while the state of Kentucky ranked third among the four states in the East South Central Division in 1966 in total disposable personal income.

Per capita disposable income in 1966 in the East South Central Division stood at \$1,684, the lowest of the nine divisions, and household disposable income in the division was estimated at \$6,091. At the same time, disposable personal income for the United States was estimated at \$2,367 per capita and \$7,989 per household. Per capita disposable personal income was, in 1966, \$1,062 in Bath County, \$907 in Menifee County, \$983 in Morgan County, and \$1,372 in Rowan County.

### *B. Regional Climate and Terrain*

The United States Bureau of the Census has also divided the nation into economic regions, sub-regions and state areas. These regions were designed to identify areas homogeneous in terrain, climate, economy and population for the purpose of indicating specific regional trends in units better differentiable than states. Bath County lies in the Kentucky Bluegrass Economic Sub-Region, and in the Outer Bluegrass State Economic Area. Menifee, Morgan and Rowan counties lie in the Southern Appalachian Coal Mining Economic Sub-Region, and in the Eastern Kentucky Hills State Economic Area.

The Kentucky Bluegrass Sub-Region is geologically a dome in the interior low plateau, worn down by erosion. In the center is a belt known as the Inner Bluegrass, a level to rolling country of fertile soils. Surrounding the Inner Bluegrass, is a district known as the Eden Shale Belt. Its topography is hilly, and due to the slope most of the land is not suitable for row crops. The soils are derived from shale and are not very fertile. Beyond the Eden Shale lies the Outer Bluegrass, a limestone area with thinner and less fertile soils than the Inner Bluegrass. The Outer Bluegrass is ringed on all sides except the north by a belt of rough country characterized by conical hills. Temperatures average forty degrees in winter and seventy-five degrees in summer, and the average annual rainfall is forty-one inches, indicating a moderately wet climate.

The Southern Appalachian Coal Mining Sub-Region includes all of the Appalachian Plateau country of Kentucky and Tennessee plus the Southern coal fields of West Virginia and Virginia. Except in the Tennessee portion there is little level land. The land is characteristically rough and broken, with innumerable ridges and narrow creek bottoms. The land is drained by major tributaries of the Ohio river, such as the Cumberland, the Kentucky, the Big Sandy, and the New-Kanawha rivers. The shallowness of the soil and the steepness of the slopes reduce farming to a subsistence level. Temperatures generally range from the mid-thirties in the winter to the mid-seventies in the summer months. The rainfall averages forty-two inches, indicating a moderately wet climate. Snow and sleet average twenty-two inches annually.

### *C. Regional Trading Areas*

Urban centers of economic activity have been defined by Rand McNally and Company to describe patterns of retail trade. The basic trading areas represent groups of localities consuming the transportation, merchandise, publications, communications and general economic products distributed from a common urban center. Major trading areas show the relationship of these basic units to an urban center of wider influence.

Lexington, Kentucky is the basic trading area serving all four counties. This area, in turn, is included within the major trading area of Louisville/Evansville.

### *D. Area*

Bath County occupies a land area of 287 square miles, Menifee County, 210 square miles Morgan County, 369 square miles, and Rowan County, 290 square miles, all unusually on the small side com-

pared to the other United States counties, whose median area is 620 square miles. Ninety-one percent of the 3,135 United States counties are larger than Bath County in land area; ninety-six per cent are larger than Menifee County; eighty-four percent are larger than Morgan County; and ninety-one percent are larger than Rowan County. The average land area of the 120 counties in the state of Kentucky is 332 square miles.

None of the land area of Bath, Menifee or Morgan counties is occupied by urban places containing populations of 2,500 or more persons. Of the land area of Rowan County, 0.7% is utilized by urban places, a total of 1.9 square miles. This entire space is occupied by Morehead, the largest city in 1960 population in the county.

## V. DEMOGRAPHIC PROFILE

The characteristics of individuals in poverty are reflected in the characteristics of their communities. Often the poor become visible only when described as an aggregate. Contrasts and similarities in the distribution, trends and levels of population characteristics are essential information, therefore, in identifying and combatting individual and community problems.

This section of the community profile describes the demographic characteristics of Bath, Menifee, Morgan and Rowan counties.

### A. *Distribution of Population*

In terms of the concentration of population in and around urban centers, Bath, Menifee and Morgan counties are classified as isolated rural areas in that they contain no urban places and are located neither in nor near a major aggregate of urban population. In 1966, the total population of Bath County was estimated at 8,800 persons, Menifee County at 4,100 persons and Morgan County at 9,200 persons, all consisting entirely of residents of rural areas.

In terms of the concentration of population in and around urban centers, Rowan County is classified as an isolated semi-rural area containing at least one incorporated place of 2,500 or more persons but neither included in nor adjacent to a standard metropolitan statistical area.

The total population of Rowan County was estimated at 13,200 persons in 1966, consisting mostly of residents of rural areas. Of these persons, 66.7%, numbering 8,800 persons, were living outside places with populations greater than 2,500 in 1966. In that year, Rowan County was more rural than the nation as a whole, where only 29.4% of the population were inhabitants of rural areas.



The proportion of United States population living in rural areas has been diminishing constantly over the last half-century. Recently, this proportion fell from 30.1% in 1960 to 29.4% in 1966. Following this national trend, the proportion rural has fallen within the county from a level of 67.4% in 1960 to its current estimated proportion of 66.7%

### *B. Population Density*

There were 30.7 persons per square mile in Bath County in 1966, a sparser concentration of population than fifty-one percent of the 3,135 counties in the United States. There were 19.5 persons per square mile in Menifee, a sparser concentration than sixty-six percent of the nation's counties; in Morgan, 24.9 persons per square mile, sparser than fifty-eight percent; and in Rowan, 45.5 persons per square mile, a heavier concentration than sixty-four percent of the counties in the nation. A rough measure of the change in urban-rural composition can be made by a comparison to 1960, when 32.0 persons, on the average, occupied each square mile in Bath County, a denser population than that of fifty-one percent of the counties in that year. In Menifee County in 1960, there were 20.0 persons per square mile, less dense than sixty-eight percent of the United States counties; in Morgan County, 30.0 persons per square mile, less dense than fifty-two percent; and in Rowan, 44.0 persons on the average, occupying each square mile, denser than sixty-two percent of the counties in the same year. A decade earlier, population density in Bath County was observed to be 36.0 persons per square mile; in Menifee, 23.0; in Morgan, 37.0; and in Rowan, 44.0. Thus it can be seen that the population density of Bath, Menifee and Morgan counties decreased steadily over the period 1950 to 1966. There was no consistent trend in the population density of Rowan County over the same period.

### *C. Population Change*

In 1950, the residents of Bath County numbered 10,410. This population fell to a total of 9,114 persons living in the area in 1960. From 1960 to 1966, the population continued to fall to a level of 8,800. This same trend can be seen in both Menifee and Morgan counties. The 1950 population of Menifee County was 4,798, 1960 was 4,276, and in 1966 the population was measured at 4,100. In Morgan County 1950 population stood at 13,624, 1960 at 11,056 and 1966 at 9,200. An opposite trend in population change took place in Rowan County during the same period. In 1950, the residents of Rowan County totaled 12,708. This total grew to 12,808 in 1960, and continued to grow to a level of 13,200 in 1966.

TABLE NO. 5  
POPULATION CHANGE 1940-1966

1940-1950	Bath	Loss of 9.1%
	Menifee	Loss of 15.7%
	Morgan	Loss of 19.0%
	Rowan	Loss of 0.2%
	United States	Gain of 14.5%
1950-1960	Bath	Loss of 12.4%
	Menifee	Loss of 10.9%
	Morgan	Loss of 18.8%
	Rowan	Gain of 0.8%
	United States	Gain of 18.5%
1960-1966	Bath	Loss of 3.4%
	Menifee	Loss of 4.1%
	Morgan	Loss of 16.8%
	Rowan	Gain of 3.1%
	United States	Gain of 8.8%

Bath County lost 1,296 persons from its total population during the period 1950-1960; Menifee County lost 522; Morgan County lost 2,568; and Rowan County gained 100. The population change in all of these counties consisted in part of a net loss due to migration amounting to 27.7% in Bath, 22.8% in Menifee, 34.9% in Morgan, and 14.2% in Rowan. Out-migrants outnumbered in-migrants over the decade by 2,886 persons in Bath County, 1,093 persons in Menifee County, 4,752 persons in Morgan County and 1,799 persons in Rowan County. This loss was offset by a natural increase in each county: in Bath an excess of 1,590 births over deaths or a rate of natural population growth of 15.3%; in Menifee an excess of 571 births over deaths or a rate of 11.9%; in Morgan an excess of 2,184 births over deaths or a rate of 16.0%; and in Rowan an excess of 1,899 births over deaths, or rate of natural population growth of 14.9%.

#### *D. Population Characteristics*

The racial components of the population of a community and its makeup in terms of age groups are two important demographic characteristics which describe types of population often afflicted by poverty. In particular, the percentage non-white and the percentages in the pre-school and retirement categories should be closely scrutinized.

In Bath County, in 1966, 5.7% of the population was non-white. All of this non-white population were Negroes. In relation to the rest of the country, Bath County had a higher percentage of non-white population than sixty-five percent of the 3,135 counties in the United

States. In 1960, the percentage of the population of Bath County which was non-white was lower than 1966, 5.2%, and in 1950 was the same as 1966. In Menifee, Morgan and Rowan counties in 1966, none of the population was non-white.

The median age in Bath County in 1966 was 28.0 years. In 1960 it was 30.0 years and in 1950 27.0. Median age in Menifee County in 1966 was 24.4 years, in 1960 26.2 years and in 1950 22.0. In Morgan County in 1966 the median age was 24.2, in 1960, 25.4 and in 1950 22.0. The 1966 median age in Rowan County was 24.8, in 1960, 22.9 and in 1950, 23.0.

## VI. ECONOMIC PROFILE

### A. *Business Establishments—Employees and Payrolls*

The United States Bureau of the Census, in cooperation with the Social Security Administration, compiles statistics from employment and payroll information reported by business establishments on Treasury Form 941 for the first quarter of the year. Information derived from these data is published for each county in the United States in the series entitled, *County Business Patterns*.

*County Business Patterns* provides a description of the kind, extent, and development of employment opportunities within a county, as well as descriptive information of the nature and value of local economic activity.

Not included in employment data in the *County Business Patterns* are farm workers, domestic workers reported separately, self-employed persons, members of the armed forces, federal civilian employees and employees of state and local governments.

For the United States as a whole, it is estimated that *County Business Patterns* includes about 65% of total paid employment and about 80% of all wage and salary employment.

Current series of the *County Business Patterns* show employment in Bath County reaching a level of 282 persons reported on the payrolls of business establishments in 1964 as compared with 382 in 1962. In Menifee County 133 persons were reported in 1964 as compared with 382 in 1962. Morgan County reported 609 persons in 1964 and 2,217 in 1962. The figures for Rowan County were 1,617 in 1964 and 2,217 in 1962.

Where a particular industry alone accounts for the majority of employment in a community, it is likely that a recession in this industry will create an economic problem that both disadvantages the poor and adds to their ranks.

For a closer examination of the distribution of employment in the

four counties, the ninety-seven major classifications have been searched to discover the three industries ranking highest in reported employment.

### *Bath County*

In 1964, units engaged in retail trade at automotive dealers and gas service stations reported the largest number of employees in Bath County, thirty-eight persons accounting for 13.5% of the total reported employment, and 14.0% of the total taxable first quarter payroll in the county.

Establishments showing the second largest employment in 1964 were engaged in the services of nonclassifiable establishments, and reported employing five persons, representing 1.8% of the total reported employment in Bath County. These figures include general estimates of unavailable data.

These two industries together accounted for forty-three employed persons, 15.3% of the reported employment in Bath County, in the first quarter of 1964.

### *Menifee County*

In 1962, units engaged in retail trade at automotive dealers and gas service stations reported the largest number of employees in Menifee County, forty persons, accounting for 10.5% of the total reported employment, and 11.5% of the total taxable first quarter payroll in the county.

Establishments showing the second largest employment in 1962 were engaged in retail trade of food, and reported employing thirty-two persons, representing 8.4% of the total reported employment and 6.0% of the total first quarter taxable payroll in Menifee County.

Establishments classified as engaging in the services of non-classifiable establishments were the third largest employers in Menifee County in 1962. Enterprises so classified reported employing two persons, 0.5% of total reported employment. Unreported establishments are estimated in this figure.

These three industries together accounted for seventy-four employed persons, 19.4% of the reported employment in Menifee County.

### *Morgan County*

In 1964, units engaged in the production of lumber and wood products, except furniture reported the largest number of employees in Morgan County, eighty-nine persons, accounting for 14.6% of the total reported employment in the county. Included in this figure are

general estimates of the employment of units present but not reported due to non-disclosure rules.

Establishments showing the second largest employment in 1964 were engaged in retail trade as automotive dealers and gas service stations, and reported employing sixty-nine persons, representing 11.3% of the total reported employment and 10.2% of the total first quarter taxable payroll in Morgan County.

Establishments classified as engaging in retail trade at miscellaneous retail stores were the third largest employers in Morgan County in 1964. Enterprises so classified reported employing 25 persons, 4.1% of the total reported employment, contributing 3.9% to the total taxable first quarter payroll in the county.

These three industries together accounted for 183 employed persons, 30.0% of the reported employment in Morgan County, in the first quarter of 1964.

#### *Rowan County*

In 1964, units engaged in the production of lumber and wood products, except furniture reported the largest number of employees in Rowan County, 240 persons, accounting for 14.8% of the total reported employment, and 12.0% of the total taxable first quarter payroll in the county.

Establishments showing the second largest employment in 1964 were engaged in the production of stone, clay and glass products, and reported employing 172 persons, representing 10.6% of the total reported employment in Rowan County. These figures include general estimates of unavailable data.

Establishments classified as engaging in the production of apparel and other finished fabric products were the third largest employers in Rowan in 1964. Enterprises so classified reported employing 155 persons, 9.6% of the total reported employment. Unreported establishments are estimated in this figure.

These three industries together accounted for 567 employed persons, 35.0% of the reported employment in Rowan County in the first quarter of 1964.

The total taxable payroll paid out in the first quarter of 1964 by all classes of establishments in Bath County was \$175,000, in Menifee County, \$100,000, in Morgan County, \$502,000 and in Rowan County, \$1,282,000, representing a downward trend in all four counties from the 1962 level which was \$226,000 in Bath and Menifee, \$1,557,000 in Morgan and Rowan. Based upon these totals and upon aggregate employment, the average first quarter gross earnings per employee in Bath County rose to \$621 in 1964 from \$592 in 1962, Menifee County

rose to \$752 in 1964 from \$592 in 1962, Morgan County rose to \$824 in 1964 from \$702 in 1962 and Rowan County rose to \$793 in 1964 from \$702 in 1962.

Compared to the nation as a whole, all four counties had a smaller total first quarter, 1964, taxable payroll reported by all classes of industry. In Bath County the total taxable payroll was smaller than ninety-four percent of the 3,135 counties in the country; in Menifee smaller than eighty-two percent; and in Rowan County smaller than sixty-two percent.

From 1962 to 1964, Bath, Menifee and Morgan counties experienced a decline in their national rank on total reported first quarter payroll. Rowan was the only one of the four to move upward in national rank from 1962 to 1964.

Considering the average rather than the total wages paid, Bath County reported a lower average first quarter wage in 1964 per employee in all of its industries combined than ninety-six percent of all counties in the nation; Menifee was lower than eighty percent of all counties; Morgan lower than sixty-six percent; and Rowan lower than seventy-two percent.

The first quarter taxable payrolls of business establishments are occasionally expressed in division and major classification totals in the County Business Patterns series where non-disclosure rules have been exercised. The data shown in Table No. 6 are, therefore, based only on the establishments reported, since, unlike establishment employment, no reliable estimate of unreported payrolls can be computed on a local basis.

### *B. Characteristics of the Labor Force*

The civilian labor force consists of employed and unemployed persons fourteen years old and over, excluding the members of the armed forces. The employed are those persons who were engaged in any work for pay or profit, worked on a family farm or in a family business, or who held a job from which they were temporarily absent.

From the most recent complete count available, 1960, the civilian labor force totaled 2,991 persons in Bath County of which 2,821 were employed and 170 unemployed; in Morgan County the total was 2,840 in the labor force of which 2,674 were employed and 166 unemployed; and in Rowan County out of a labor force of 3,724, 3,406 were employed and 318 unemployed. [Figures for Menifee County were unavailable.]

While population decreased in Bath and Morgan counties from 1950 to 1960 by 12.4% and 18.8%, respectively, the labor force also declined by 9.2% in the former and 23.6% in the latter. In Rowan

TABLE No. 6  
 AVERAGE REPORTED GROSS EARNINGS PER EMPLOYEE  
 FIRST QUARTER—1964

Classification	County Average First Quarter Gross Earnings				Percent of Total County Employment				U.S. Average First Quarter Gross Earnings
	Bath	Menifee	Morgan	Rowan	Bath	Menifee	Morgan	Rowan	
Agricultural Services, Forestry & Fisheries	\$0	\$0	NR	\$0	0%	0%	Less Than 1%	0%	\$ 826
Mining	\$0	NR	NR	NR	0%	10%	6%	Less Than 1%	\$1,535
Contract Construction	\$714	NR	NR	NR	2%	1%	3%	3%	\$1,439
Manufacturing	NR	\$1,222	\$980	\$841	32%	7%	33%	42%	\$1,472
Transportation, Utilities, and Sanitary Services	\$727	NR	\$1,081	\$992	4%	9%	12%	8%	\$1,514
Wholesale Trade	NR	\$0	\$1,029	\$1,161	Less Than 1%	Less Than 0%	6%	7%	\$1,512
Retail Trade	\$531	\$407	\$656	\$612	45%	2%	26%	24%	\$ 868
Finance, Insurance and Real Estate	\$742	\$0	NR	\$1,000	11%	0%	2%	4%	\$1,264
Services	\$565	\$614	\$473	\$555	8%	43%	12%	10%	\$ 947

NR—No Report

County, population increased by 0.8% during the same period and the labor force also grew, rising by 3.4% over the decade.

The unemployed, an important component of the population of persons in poverty, represented 5.7% of the total civilian labor force in Bath County in 1960, 5.8% in Morgan County and 8.5% in Rowan County, all somewhat higher than the national unemployment rate in 1960 of 5.6%. Ranked against the rest of the country, Bath County had a higher rate of unemployment than sixty-six percent of the nation's counties; Morgan higher than sixty-eight percent; and Rowan higher than ninety-one percent. Ten years earlier, in 1950, when the national rate of unemployment was 5.3%, all three counties had lower rates: Bath—1.8%, Morgan—1.1% and Rowan—3.2%. [Figures for Menifee County were unavailable.]

Among characteristics of the labor force which are also related to poverty is the proportion of workers holding jobs in skilled and highly paid positions. In communities where the educational and hence economic opportunities are limited, this proportion tends to be low, implying underemployment of skills and the existence of underdeveloped human resources.

Among the employed in Bath County in 1960, 16.4% were occupying white-collar jobs; in Menifee County, 21.1%; in Morgan County, 24.3%; and in Rowan County, 34.7%. White collar occupations, as defined by the Bureau of the Census, include professional and technical workers, managers, officials and proprietors, and clerical and sales workers. In 1960, 41.1% of all employed persons in the United States occupied white collar jobs, a proportion larger than that which existed in any of these counties at that time.

Taking the proportion occupying blue-collar jobs as the complement of the proportion working in white-collar occupations, ninety-nine percent of all the counties in the United States showed a lesser percentage of employed persons in the blue-collar category than Bath County; ninety-three percent lesser than Menifee County; eighty-one percent lesser than Morgan County; and seventy-two percent of all counties showed a *greater* percentage of employed persons in the blue-collar category than Rowan County. No direct inference can be made, however, that a locality is poor because the level of blue-collar workers is comparatively high. Further qualifications would be necessary to show the existence within the labor force of a predominance of unskilled, domestic, and low-paid service workers.

Another relevant aspect of the labor force is its proportion of males, which rose in all four of these counties from 1950 to 1960. In Bath County it rose to 78.5% from 77.1%; in Menifee 76.8% from



76.0%; in Morgan 82.6% from 75.0%; and in Rowan 73.0% from 68.4%. In the United States as a whole, the proportion of males in the labor force dropped, moving from 78.7% in 1950 to 67.2% in 1960. A continuing increase in the proportion of women in the population and of women working contributed to this national trend. More currently, as of March, 1966, only 64.3% of the nation's labor force was male. It is interesting to note an opposite trend in these four counties.

In 1960, 11.6% of employed persons residing in Bath County worked outside the county, in Menifee County 7.7%, in Morgan County 5.2% and in Rowan County 9.1%, all lower proportions than the comparable nationwide figure of 13.9% for all persons working outside their county in the same year.

### *C. Agriculture*

A farm is defined by the United States Census Bureau as a place comprising at least ten acres of land devoted to farming or selling at least fifty dollars worth of agricultural products annually.

According to this definition, 1,337 farms were enumerated in Bath County in 1959, 617 in Menifee, 1,586 in Morgan and 785 in Rowan. The number of farms remained the same between 1954 and 1959 in Bath and Morgan counties. In Menifee the number fell and in Rowan the number rose during the same period.

Small farms, those places selling more than fifty dollars of agricultural products a year, yet comprising less than ten acres of farmland accounted for 14.5% of all farms in Bath County in 1959, 7.1% in Menifee, 6.3% in Morgan and 5.0% in Rowan County. In comparison, the proportion of small farms to all farms in the United States in 1959 was 6.5%.

Farm size in Bath County averaged 100 acres in 1959; in Menifee 109 acres; in Morgan, 110 acres and in Rowan, 120 acres, all showing places considerably smaller than the average farm in the United States, which measured 303 acres in 1959.

In the United States over the last twenty years, there has been a continuing downward trend in the total population residing on farms and in the percentage of land devoted to farming. At the same time, the average acreage and value of farms has risen. These trends are important components of the increase in urban and semi-rural poor populations following displacement of the small farmer by large scale operations and the economic hardship wrought thereby.

The proportion of land in farms in the United States decreased from 51.0% in 1954 to 49.5% in 1959. 72.5% of the land in Bath County was farmland in 1959, an increase of 0.39% from the proportion

of land in farms in the county in 1954. 50.0% of the land in Menifee County was farmland in 1959, a decrease of 0.95% from the 1954 level. 73.7% of the land in Morgan County was farmland in 1959, a decrease from the 1954 proportion of 0.17%. 50.9% of the land in Rowan County was farmland in 1959, an increase of 1.90% from the proportion of land in farms in 1954.

Thus while the proportion of all land in farmland in Bath and Rowan counties in 1959 was higher than the national proportion at the same time, the farmland in the counties had increased rather than diminished as opposed to the national trend during the five years from 1954 to 1959. While the proportion of all land in farmland in Menifee and Morgan counties in 1959 was also higher than the national proportion, the farmland in the counties also diminished, in the same direction as the national trend during the 1954 to 1959 period.

Of all counties in the United States in 1959, fifty-six percent had a smaller proportion of land in farms than Bath County and fifty-seven percent had a smaller proportion than Morgan County. Sixty-eight percent of United States counties had a greater proportion of land in farms than Menifee County and sixty-seven percent had a greater proportion than Rowan County.

A commercial farm, as defined by the Census Bureau, produces agricultural products in a given year whose value exceeds the combined annual income of the farmer and his family. In addition, the farm operator must work off the farm no more than one hundred days within the year.

In Bath County, in 1959, there were 1,004 commercial farms; in Menifee, 360; in Morgan, 854 and in Rowan, 325. Considering the economic class of these enterprises, in Bath County 23.0% were farms with annual sales less than \$2,500; in Menifee County, 51.4%; in Morgan County, 65.0% and in Rowan County, 51.1%. The combined income from the sale of agricultural products and any other enterprises of the farmer and his family on such farms cannot exceed \$5,000. Since the resources and needs of these farms are not taken into account, the entire class cannot be termed poor. It usually comprises, nevertheless, a substantial number of the farmers in poverty. In the United States as a whole, the proportion of all farms in this lowest economic class in 1959, 14.4%, was exceeded by all four of these counties, as noted above.

The total value of farm products sold in Bath County in 1959 was \$5,270,000; in Menifee County, \$1,106,000; in Morgan County \$2,503,000; and in Rowan \$1,199,000.

The farm operator family level-of-living index is a general measure of the economic well-being of the farm population in a county. It is based on the average value of land and buildings, average value of agricultural products sold, and percent of farms with automobiles, home freezers, and telephones. The index is constructed such that the average of all counties in the United States in 1959 provides a base index of 100.

The farm-operator family level-of-living index in Bath County in 1959 was 63. Compared to the rest of the nation, the farm families in this county had a lower level-of-living index in 1959 than seventy-five percent of the 3,135 United States counties. The 1959 index level in Menifee County was 47. Menifee had a lower level-of-living index than eighty-one percent of the nation's counties. The index level in Morgan County in 1959 was also 47. In Rowan County the 1959 level-of-living index stood at 49 placing it also lower than eighty-one percent of the counties in the country.

TABLE NO. 7  
FARM LEVEL OF LIVING—COMPARATIVE ATTRIBUTES—1959

Percentage of farms with telephones:		
Bath County	28.7%	United States 65.0%
Menifee County	25.2%	
Morgan County	26.8%	
Rowan County	26.1%	
Percentage of farms with tractors:		
Bath County	28.7%	United States 72.3%
Menifee County	25.2%	
Morgan County	20.5%	
Rowan County	40.0%	
Percentage of farms with motor trucks:		
Bath County	43.7%	United States 58.7%
Menifee County	46.4%	
Morgan County	32.5%	
Rowan County	46.3%	

#### D. Retail Trade

Total retail sales for 1966 in Bath County have been estimated at \$6,425,000. Using population projected to 1966, \$730 of per capita retail sales were observed in the county. The respective figures for Menifee County were \$1,475,000 and \$360; for Morgan County, \$8,943,000 and \$972; and for Rowan County, \$14,764,000 and \$1,118. 1966 per capita retail sales in this locality, therefore, lagged behind the national average of \$1,443 per capita retail sales.

Eighty-seven percent of all counties in the United States are estimated to have had 1966 per capita retail sales higher than Bath County; ninety-seven percent higher than Menifee County; seventy-two percent higher than Morgan County; and fifty-nine percent higher than Rowan County.

### *E. Manufacturing*

#### *Bath County*

There were five manufacturing establishments in Bath County in 1958, employing fifty-one persons and disbursing a total payroll of \$58,000. Production workers accounted for 94.1% of all manufacturing employees in the county, and their wages were 94.8% of the total manufacturing payroll. New capital expenditures in Bath County amounted to \$23,000 in 1958.

#### *Menifee County*

There were five manufacturing establishments in Menifee County in 1958, employing nineteen persons and disbursing a total payroll of \$20,000. Production workers accounted for 84.2% of all manufacturing employees in the county, and their wages in 1958 were 85.0% of the total manufacturing payroll.

#### *Morgan County*

There were five manufacturing establishments in Morgan County in 1958, employing seventy-two persons and disbursing a total payroll of \$152,000. Production workers accounted for 87.5% of all manufacturing employees in the county, and their wages were 90.1% of the total manufacturing payroll in 1958.

#### *Rowan County*

There were twenty-four manufacturing establishments in Rowan County in 1958, employing 559 persons and disbursing a total payroll of \$1,549,000. Production workers accounted for 86.9% of all manufacturing employees in the county, and their wages in 1958 were 78.2% of the total manufacturing payroll. New capital expenditures in Rowan County amounted to \$118,000 in 1958.

A measure of the difference between the cost of production and materials, and the value received for finished goods, adjusted by the value of work in process, is described by economists as the adjusted dollar value added by manufacture. In 1958, in Bath County, this value was measured at \$9,000, in Menifee County at \$52,000, in Morgan County at \$17,000 and in Rowan County at \$2,820,000, compared to the United States county average of \$45,112,000 added by manufacture.

Eighty-three percent of all counties in the United States had a higher 1958 dollar value added by manufacture than Bath County; eighty-two percent higher than Menifee County; eighty-three percent higher than Morgan County; and fifty-one percent higher than Rowan County.

#### *F. Mineral Industries*

Only two of the four counties, Morgan and Rowan, had any mineral industry.

##### *Morgan County*

Five establishments were engaged in mineral industries in Morgan County in 1958, with fifty-four employees and a payroll of \$170,000. These data may include figures for separately reported central offices and related facilities.

Dollar value of shipments and receipts for mineral industries in the county during 1958 was \$385,000. This value stood lower than the United States county average of \$5,779,000.

Dollar value of mineral shipments and receipts per employee in Morgan County in 1958 was \$7,130, compared to the national average of \$24,675 value per employee. Fifty-six percent of all counties in the United States had a lower 1958 dollar value of mineral shipments and receipts per employee.

##### *Rowan County*

Four establishments were engaged in mineral industries in Rowan County in 1958, with twenty-seven employees and a payroll of \$79,000. These data may include figures for separately reported central offices and related facilities.

Dollar value of shipments and receipts for mineral industries in the county during 1958 was \$320,000. This value stood lower than the United States county average of \$5,779,000.

In 1954, the dollar value of mineral shipments and receipts in Rowan County totaled \$200,000, showing an increase of 60.0% between 1954 and 1958.

Dollar value of mineral shipments and receipts per employee in Rowan County in 1958 was \$11,850, compared to the national average of \$24,675 value per employee. Sixty-seven percent of all counties in the United States had a lower 1958 dollar value of mineral shipments and receipts per employee.

#### *G. Personal Finance*

Bath County had an estimated 1966 population of 8,800 people. The per capita disposable income of this population in 1966 has been

estimated at \$1,062. Comparable figure for the other three counties are: Menifee, 4,100 population and \$907 per capita disposable income; Morgan, 9,200 population and \$983 per capita disposable income; and Rowan, 13,200 population and \$1,372 per capita disposable income, all below the estimate of national per capita disposable income of \$2,367 for the same year.

Ninety-four percent of all counties in the country had a higher per capita disposable income than Bath County in 1966; ninety-seven percent higher than Menifee County; ninety-six percent higher than Morgan County; and seventy-seven percent higher than Rowan County.

A percentage distribution of family income in the four counties for 1966 is shown in Table No. 8, along with comparable percentages for the United States.

TABLE NO. 8  
DISTRIBUTION OF FAMILY INCOME—1966

Family Income	Bath	Menifee	Morgan	Rowan	United States
\$ 0 to 2,499	41%	52%	45%	33%	13%
\$2,500 to 3,999	26%	24%	25%	24%	15%
\$4,000 to 6,999	22%	17%	21%	27%	31%
\$7,000 to 9,999	6%	4%	6%	9%	17%
\$10,000 and over	5%	3%	3%	7%	24%

In 1959, Bath County had a median family income of \$2,326. In 1966, the estimated median family income rose to \$3,025. The figures for Menifee County were \$1,733 in 1959 and \$2,427 in 1966; for Morgan, \$1,976 in 1959 and \$2,820 in 1966; and for Rowan, \$2,913 in 1959 and \$3,589 in 1966.

Compared to the rest of the nation in 1959, Bath County had a lower median family income than ninety-two percent of all the United States counties; Menifee ranked lower than ninety-nine percent; Morgan, lower than ninety-seven percent; and Rowan, lower than eighty-one percent. The relative standing of Bath County fell in 1966, when its median family income ranked lower than ninety-five percent of the nation's counties. The relative standing of Menifee County increased in the same period as it ranked lower than ninety-eight percent of all counties in 1966. Both Morgan and Rowan remained at the same level compared to the rest of the nation.

Of the total net dollar income in Bath County in 1966, 11.7% was available to the 40.5% of families with less than \$2,500 income, while 28.5% of the net dollar income was available to the 4.5% of families

with incomes of \$10,000 and over. In Menifee County 14.8% was available to the 51.5% of families with less than \$2,500 income, while 37.4% of the net dollar income was available to the 2.7% of families with incomes of \$10,000 and over. In Morgan County 12.3% was available to the 44.6% of families with less than \$2,500 income, while 33.0% of the net dollar income was available to the 3.1% of families with incomes of \$10,000 and over. Of the total net dollar income in Rowan County in 1966, 6.8% was available to the 32.8% of families with less than \$2,500 income, while 44.1% was available to the 7.1% of families with incomes of \$10,000 and over.

In 1966, sixty-three percent of all counties in the United States had more families with incomes under \$2,500 than the 873 such families in Bath County; eighty-three percent had more than the 440 such families in Menifee County; sixty-two percent had more than the 892 such families in Morgan; and fifty-eight percent had more than the 979 such families in Rowan County. Viewing these low-income families as a percentage of all families, however, ninety-six percent of all counties in the nation had a lower percentage of low-income families than Rowan County in 1966.

#### *H. Commercial Finance*

##### *Bath County*

In 1960 in Bath County, bank deposits of individuals, partnerships and corporations, consisted of \$4,069,000 in demand deposits. Total deposits, including interbank and governmental funds, amounted to \$4,407,000 in the same year. Bath County showed lower total bank deposits in 1960 than eighty-one percent of all counties in the United States. In 1956, total bank deposits in the county were 15.6% lower than in 1960, or \$3,812,000. In 1950, bank deposits stood at a level of \$3,844,000. An increase of 14.6% took place in the total bank deposits between 1950 and 1960.

##### *Menifee County*

[Statistics unavailable]

##### *Morgan County*

In 1960 in Morgan County, bank deposits of individuals, partnerships and corporations, consisted of \$2,185,000 in demand deposits and \$1,618,000 in time deposits. Total deposits, including interbank and governmental funds, amounted to \$4,384,000 in the same year. Morgan County showed lower total bank deposits in 1960 than eighty-one percent of all counties in the United States. In 1956, total bank deposits in the county were 25.0% lower than in 1960, or \$3,506,000. In

1950, bank deposits stood at a level of \$2,644,000. An increase of 65.8% took place in the total bank deposits between 1950 and 1960.

### *Rowan County*

In 1960 in Rowan County, bank deposits of individuals, partnerships and corporations, consisted of \$3,069,000 in demand deposits and \$2,791,000 in time deposits. Total deposits, including interbank and governmental funds, amounted to \$7,332,000 in the same year. Rowan County showed lower total bank deposits in 1960 than sixty-six percent of all counties in the nation. In 1956, total bank deposits in the county were 44.5% lower than in 1960, or \$5,075,000. In 1950, bank deposits stood at a level of \$3,676,000. An increase of 99.5% took place in the total bank deposits between 1950 and 1960.

### *I. Government Finance, Revenues and Expenditures*

In the following discussion of local government finance, local governments within a given county are comprised of municipalities, townships, school districts and special districts. Local government expenditures include inter-government expenditure data.

Total local government revenue in Bath County in 1962 amounted to \$742,000 and local government expenditures in that year totaled \$902,000, leaving a deficit of \$167,000 in local government funds in Bath County. In Menifee County total revenue in 1962 amounted to \$428,000 and expenditures were \$394,000, leaving a surplus of \$34,000. The total revenue in Morgan County in 1962 was \$915,000 and total expenditures were \$836,000, leaving a surplus of \$80,000. And in Rowan County total revenue amounted to \$1,106,000 and expenditures equaled \$1,100,000, leaving a surplus of \$6,000 in local government funds.

In Bath County revenues amounted to \$81 per capita and expenditures to \$100 per capita based on 1962 population. Respective figures for the other counties were: Menifee, \$100 and \$92; Morgan, \$83 and \$76; and Rowan, \$86 and \$86. Comparable local government figures for all United States counties in 1962 were \$206 general revenue per capita and \$216 general expenditure per capita. Eighty-eight percent of all counties in the country had per capita expenditures in 1962 which were higher than Bath County. Ninety-one percent had higher expenditures per capita than Menifee County; ninety-six percent higher than Morgan County and Rowan County.

The long term debt of Bath County local governments at the end of 1962 was \$377,000, showing a decline of \$35,240 from the close of 1961; of Menifee County local governments, \$181,000, showing a de-



cline of \$7,000; of Morgan County local governments, \$549,000, showing a decline of \$31,500; and of Rowan County local governments, \$1,669,000, showing a decline of \$53,415.

Total per capita debt for Bath County areas was \$11 at the end of 1962; for Menifee County, \$42; for Morgan County, \$27; and for Rowan County \$133. Comparatively, the per capita general debt outstanding taken over all United States local governments at the same time was \$259.

## VII. SOCIAL PROFILE

### A. *Community Health Facilities and Manpower*

The comparative status of health facilities and manpower in a community may indicate a problem both for poor and non-poor. Where the area is known to have a substantial or persistent number of people living in poverty, however, a relatively low standing in the adequacy of health services will disproportionately affect these people. The poor generally utilize health services less frequently than higher income persons due to their lack of funds allocatable for medical care. A tendency exists, therefore, for health services to be comparatively lacking in areas with a high saturation of poverty.

To give perspective to the following material on the status of health services in these counties, it can be seen that while individual economic resources averaged higher for the nation than the state, the residents of these four counties averaged less than both the United States and Kentucky in per capita income. [See § VI, G *supra*.]

A direct measure of the adequacy of health care can be derived from data gathered in 1962 by the Department of Health, Education and Welfare on the numbers of various types of health personnel in the United States counties.

Practicing in Bath County during the period of reference were four physicians; in Menifee County, one; in Morgan County, six and in Rowan County, seven. This is equivalent to 44.9 doctors for every 100,000 persons in Bath, 23.8 in Menifee, 56.5 in Morgan, and 54.7 in Rowan. This represents less medical care available to residents of these counties per unit population than to the residents of Kentucky, where the ratio stood at 100.1 physicians per 100,000 persons. In comparison, the doctor-patient ratio for the entire United States at the same time was 142.9 doctors per 100,000 persons. In doctors per capita, Bath County ranked lower than seventy-one percent of all the counties in the United States; Menifee ranked lower than eighty-five percent; Morgan County ranked lower than fifty-six percent; and Rowan ranked lower than fifty-eight percent.

A reflection of the comprehensiveness of medical care is often provided by the extent of dental health services in a community, since a high level of such services does not ordinarily occur in the absence of good general medical care. In Bath County there were 11.2 dentists per 100,000 persons; in Menifee, none; in Morgan, 28.2, and in Rowan, 30.2, in comparison to 37.4 for Kentucky and 54.1 for the nation.

The general status of health services is also correlated to the number of licensed pharmacists in the community. Bath County had 11.2 per 100,000; Menifee, none; Morgan, 9.4; and Rowan, 23.4, as opposed to 52.5 for the state and 66.7 for the entire country.

In the area of health facilities, there were no hospital beds available in Bath County in 1962; there were 15 available in Menifee County representing 357.1 beds per 100,000 population; there were 37 available in Morgan County representing 349.0 per 100,000; and there were 41 hospital beds available in Rowan County representing 320.3 per 100,000 population. This compared to the state rate of 328.7 and the United States rate of 380.0 beds per 100,000 population. Ranked against the rest of the counties in the nation, Bath County had fewer hospital beds per capita than seventy-five percent of the counties. Menifee County had more hospital beds per capita than sixty-five percent of the counties; Morgan had more than sixty-four percent and Rowan had more than fifty-eight percent.

The total number of nurses registered in Bath County in 1962 was nine, with, however, no hospital beds located in the county at that time. The total number of nurses in Menifee was 4, providing 26.6 nurses for every 100 hospital beds; in Morgan there was one nurse providing 5.4 nurses for every 100 beds; and in Rowan there were twelve nurses providing 29.2 nurses per 100 hospital beds. In the state, there were 80.0 nurses for every 100 beds and in the United States there were 118.0.

In the auxiliary health manpower occupation of sanitary engineer, all four counties, with none reported, lagged behind the United States ratio of 3.0 per 100,000 persons.

### *B. Housing*

The conditions and characteristics of housing are associated with the incidence and degree of poverty in a community. Data showing the properties of housing are, therefore, included here to aid in evaluating the level of living in these counties.

A basic indicator of housing adequacy for any given area is the percentage of dwelling units which are not dilapidated or deteriorated

and contain plumbing facilities. In 1960, 74.0% of all dwelling units in the United States met these conditions, an improvement over the 63.6% which met them in 1950.

In Bath County in 1960, 21.8% of all dwelling units were sound and contained plumbing, as opposed to 11.0% met the requisites for soundness. Corresponding percentages for Menifee County were 15.4% and 4.0%; for Morgan County, 23.0% and 7.0%; and for Rowan County, 40.9% and 25.0%. All showed worse housing conditions than the United States in both 1950 and 1960.

The number of persons per room in a dwelling unit is another valuable indicator of adequacy of housing. In 1960, over the United States as a whole, 11.5% of all dwelling units were inhabited with more than one person per room. The percentage of crowded dwelling units in 1960 in Bath County stood at 15.6%; in Menifee, at 24.1%; in Morgan, at 19.7%; and in Rowan, at 17.2%, all above that for the nation.

The number of persons occupying each unit is also an indicator of crowded housing conditions associated with poverty. For the United States as a whole, the average population per dwelling unit in 1960 was 3.3. At the same time, in Bath County, the number of persons living in each dwelling unit, on the average, rose to 4.0 in 1960 from 3.0 in 1950. In Menifee, Morgan and Rowan counties, the figures was 4.0 persons per dwelling unit in both 1950 and 1960.

In 1960, 27.5% of all structures in the United States had been built in 1950 or later. The percentage of structures existing in 1960 which were built in 1950 or later in Bath County was 14.2%; in Menifee County, 24.3%; in Morgan County, 19.1%; and in Rowan County, 20.2%, all revealing a higher proportion of older housing than the nation.

To further assess the status of housing in these counties, several indicators of household prosperity are contrasted in Table No. 9 to comparable figures for the United States as a whole.

### C. *Education*

The level of educational achievement and facilities in a community is a reliable indicator of its socio-economic status. Counties with a high incidence of families with incomes below the poverty cut-off are likely to be the counties with a poorly educated population.

The median school years completed by persons in Bath County aged twenty-five years and over were 8.1 in 1960. In Menifee County the median school years completed were 7.9; in Morgan County, 8.2; and in Rowan County, 8.4. These counties had, therefore, a level of

TABLE NO. 9  
INDICATORS OF HOUSEHOLD PROSPERITY—1960

1960 Percentage of Occupied Dwellings With	County	United States	
Washing machines	Bath	76.9%	73.7%
	Menifee	93.2%	
	Morgan	84.2%	
	Rowan	82.3%	
Food freezers	Bath	24.7%	18.4%
	Menifee	15.7%	
	Morgan	14.7%	
	Rowan	22.1%	
Air conditioners	Bath	2.8%	12.4%
	Menifee	1.8%	
	Morgan	0.7%	
	Rowan	2.9%	
Television sets	Bath	58.8%	87.3%
	Menifee	58.6%	
	Morgan	59.2%	
	Rowan	68.4%	
Telephones	Bath	32.1%	78.5%
	Menifee	32.3%	
	Morgan	29.8%	
	Rowan	43.4%	
One car	Bath	57.1%	56.9%
	Menifee	46.4%	
	Morgan	38.9%	
	Rowan	59.2%	
Two or more cars	Bath	12.5%	21.5%
	Menifee	17.4%	
	Morgan	9.8%	
	Rowan	13.4%	

educational achievement lower than the nation as a whole where the median school years completed in 1960 stood at 10.6. Ten years earlier in 1950, the United States median school years completed by the population twenty-five years and older were 9.3. At this time, median school years completed in Bath County were 8.0; in Menifee County, 7.0; in Morgan County, 8.0; and in Rowan County, 8.0. While the counties followed the national trend of an increase from 1950 to 1960 in median school years completed, they, nevertheless, stood lower than the United States in both 1950 and 1960 on this measure of sufficiency of education.

The extent of functional illiteracy in a community can be measured by the number of persons twenty-five years of age or more who have completed less than five years of school. In 1960, 8.4% of the United

States population aged twenty-five or over had not finished more than four years of school, a better showing than that of any of these counties. In Bath County in 1960, 20.2% of the adult population had not gone beyond four school years; in Menifee, 24.9%; in Morgan, 19.0%; and in Rowan, 18.2%. In the same age group, 41.1% of the population of the nation had completed at least a secondary level of education compared to the lower proportion of 17.2% in Bath County, 11.2% in Menifee County, 13.8% in Morgan County, and 25.2% in Rowan County.

In 1960, eighty-three percent of all counties in the United States had a lower percentage of population twenty-five years and over completing less than five years of school than Bath County; ninety-one percent had a lower percentage than Menifee County; eighty-one percent were lower than Morgan County; and seventy-nine percent lower than Rowan County.

The percentage of local government expenditures utilized for education is often a good indicator of the emphasis placed on education by a community. An expenditure of \$654,480 was allotted to education in Bath County in 1962, seventy-two percent of total expenditures. Based on 1962 county population, this amounts to \$73 per capita. In Menifee County an expenditure of \$295,000 was allotted to education, seventy-five percent of total expenditures and \$70 per capita; in Morgan County \$718,600 was spent on education, eighty-six percent of all expenditures and \$67 per capita; in Rowan County \$715,000 was allotted to education, sixty-five percent of the total and \$55 per capita. This compares to the national average of \$100 per capita.

## APPENDIX C

### SURVEY QUESTIONNAIRE

The questionnaire which was used in the field research portion of the study is reproduced below. There were ninety-six subjects [landowners whose property had been purchased or condemned by the Corps] interviewed. Their responses to the questions are included as a numerical and/or percentage figure. Due to the difficulty the interviewers faced in attempting to elicit responses from landowners who were somewhat suspicious of "outsiders" after their experiences with the Corps, few of the questions have ninety-six responses indicated. For many of the questions, the number of responses was so small as

to be statistically insignificant and the responses thus have not been included. However the entire questionnaire has been reproduced to indicate what questions were asked.

The "68%" figure which is used in the description of the responses to several of the questions is the percentage of the population encompassed in one standard deviation in both directions from the mean.

1. Did you own the land on which you lived at the time it was purchased, or were you a tenant (or renter)?

- \_\_\_\_\_1. owner  
 \_\_\_\_\_2. renter

*There were 94 responses to this question. All 94 indicated that they were owners of the property at the time it was purchased.*

2. (If owner) How long had this property been owned by you or your family?

- \_\_\_\_\_1. purchased by me in (what year?) \_\_\_\_\_  
 \_\_\_\_\_2(a) inherited from (give relationship of person from whom inherited) \_\_\_\_\_ in (year) \_\_\_\_\_.  
 \_\_\_\_\_2(b) land had been in the family \_\_\_\_\_ years.  
 \_\_\_\_\_3. Given by (please give relationship of person who gave property) \_\_\_\_\_ in (year) \_\_\_\_\_.

*There were 77 responses to this question. The mean length of ownership indicated was in the 16-20 year category. 68% of the respondents had owned the property from the 6-15 year category to the 31-45 year category.*

3. How long had you lived there?

- \_\_\_\_\_1. Less than one year  
 \_\_\_\_\_2. one or two years  
 \_\_\_\_\_3. three or four years  
 \_\_\_\_\_4. five to ten years  
 \_\_\_\_\_5. more than ten years but not all your life  
 \_\_\_\_\_6. all your life

*There were 68 responses to this question. The mean length of residence was 10 years. 68% of the respondents resided there from the 5-10 year category to all their life.*

4. If you had lived there five years or less, from where did you move to that location?

- \_\_\_\_\_1. nearby, same section of the county
- \_\_\_\_\_2. different community or section of the county
- \_\_\_\_\_3. different county
- \_\_\_\_\_4. different state

5. In the five years prior to your relocation, how many times had you moved (changed houses)?

- \_\_\_\_\_1. did not move
- \_\_\_\_\_2. moved (specify number) \_\_\_\_\_ times.

6. How many months has it been since you moved from the old property? \_\_\_\_\_

7. What was the acreage of property purchased from you by the Corps? \_\_\_\_\_ Acres.

*There were 96 responses to this question. The mean acreage purchased by the Corps was 95-105 acres. 68% of purchased acreage ranged from the 0-24 acre category to the 200-249 acre category.*

8. Regarding the appraisal of your property by the Corps, were you given notice by them that your property would be appraised?

- \_\_\_\_\_1. Yes
- \_\_\_\_\_2. No

*There were 88 responses to this question. 72 of 88 replied NO and 16 of 88 said YES.* .....

9. Was this a public notice (in the newspaper, on the radio or TV, or posted publicly, for example) or an individual notice (personal phone call, letter, or visit, for example)?

- \_\_\_\_\_1. public
- \_\_\_\_\_2. individual

10. Were you told a specific day and time that the Corps would come to appraise your property?

- \_\_\_\_\_1. Yes
- \_\_\_\_\_2. No

11. Were you, or someone representing you, individually asked or invited by the Corps to accompany the Corps appraiser?

- \_\_\_\_\_1. Yes
- \_\_\_\_\_2. No

*There were 93 responses to this question. 76 said NO. 17 said YES.*

12. Did you, or someone representing you, actually accompany the appraiser when he appraised your property?

- \_\_\_\_\_ 1. Yes, I accompanied him.  
 \_\_\_\_\_ 2. Yes, someone representing me accompanied him.  
 (Who? \_\_\_\_\_)

13. If no, was there any particular reason why you were unable to accompany the Corps appraiser? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. How long (in hours or days) did the appraiser spend in appraising your property.

- \_\_\_\_\_ 1. \_\_\_\_\_ (hours, days)  
 \_\_\_\_\_ 2. Don't know

*There were 60 responses to this question. The mean time spent by the appraiser was 31-60 minutes. 68% of those who responded stated that the appraiser spent 10-120 minutes.*

15. What did the appraiser do? Did he:

- \_\_\_\_\_ 1. walk around the property?  
 \_\_\_\_\_ 2. take pictures?  
 \_\_\_\_\_ 3. make measurements?  
 \_\_\_\_\_ 4. inspect house and buildings?  
 \_\_\_\_\_ 5. ask you questions about improvements made to the property, or other questions about things that would make the land more valuable? \_\_\_\_\_  
 \_\_\_\_\_ 6. other \_\_\_\_\_

*There were only 26 responses to this question which limits its validity somewhat. However the responses which were made indicate that 75%-80% of the appraisers did each act (i.e. parts 1-4). But 75%-80 of the appraisers did not ask of any improvements made to the property (i.e. part 5).*

16. Were any other appraisals made by the Corps?

- \_\_\_\_\_ 1. Yes  
 \_\_\_\_\_ 2. No

*There were 79 responses to this question. 36 (45%) said YES. 43 (55%) said NO.*

17. If yes, was he a different appraiser? \_\_\_\_\_

A. Did you accompany the Corps appraiser on these appraisals?

- \_\_\_\_\_ 1. Yes \_\_\_\_\_ 2. No



B. How long did the appraiser spend on these times?

\_\_\_\_\_ Don't know: \_\_\_\_\_

C. What did the appraiser do at these appraisals? Did he:

\_\_\_\_\_1. walk around the property?

\_\_\_\_\_2. take pictures?

\_\_\_\_\_3. make measurements?

\_\_\_\_\_4. inspect house and buildings?

\_\_\_\_\_5. ask you questions about improvements, etc. ? \_\_\_\_\_

\_\_\_\_\_6. Other \_\_\_\_\_

18. Did you have your property appraised independently; that is, did you have someone else besides the Corps of Engineers make an appraisal of your property?

*There were 93 responses to this question. 36 (37%) said YES. 57 (63%) said NO.*

19. If yes,

A. Who did the appraisal for you? \_\_\_\_\_

B. What did it cost to have this done? \_\_\_\_\_

C. How much time did he spend? \_\_\_\_\_

D. At what amount was your property appraised by him? \_\_\_\_\_

*There were 30 responses to part D. The mean amount of the independent appraisal was \$40,966.*

20. What was the amount of the offer made to you by the Corps?

*This question referred to the first offer made by the Corps. There were 90 responses. The mean amount of the first offer was \$15,244. 68% of the offers were \$33,000 and under.*

21. Did you accept this offer?

\_\_\_\_\_1. Yes

\_\_\_\_\_2. No

*There were 94 responses to this question. 89 (94%) said NO. 5 (6%) said YES.*

22. If yes, do you feel that this amount was fair?

\_\_\_\_\_1. Yes

\_\_\_\_\_2. No

23. If you did not accept the first offer, were other offers made to you by the Corps?

1. Yes (Amount of second offer: \_\_\_\_\_)  
 2. Yes (Amount of third offer, if any: \_\_\_\_\_)  
 3. Yes (Amount of fourth offer, if any: \_\_\_\_\_)  
 4. no other offers were made; legal proceedings were begun by the Corps to take the property after the first offer.

Part 1—*There were 85 responses. Another offer was made in each case. The mean number of additional offers to those who rejected the initial offer was slightly less than 2. The mean amount of the second offer was \$19,717.*

Part 2—*The mean amount of the third offer was \$18,349. There were 43 responses to this question.*

Part 3—*There were 11 responses here. The mean amount of the fourth offer was \$26,636.*

24. Was this offer (or any of these offers) accepted by you?

1. Yes, I accepted the offer of \_\_\_\_\_ dollars.  
 2. No

*There were 79 responses to this question. 62 said YES, i.e. they did accept one of the offers. Of those 62, 68% accepted the first, second or third offer.*

25. If you accepted an offer at that time did you feel that this amount was fair?

- (a)
1. Yes  
 2. No

Do you now feel that this amount was fair?

- (b)
1. Yes  
 2. No

Part (a)—*There were 59 responses. 46 (78%) said NO. 13 (22%) said YES.*

Part (b)—*There were 57 responses to this part. 48 (84%) said NO. 9 (16%) said YES.*

26. (Assuming no offers were acceptable and condemnation proceedings were begun.) Did you hire a lawyer to represent you at the condemnation proceedings?

1. Yes  
 2. No

There were 35 responses to this question. 23 (66%) said YES. 12 (34%) said NO.

27. If yes:

- A. Who was the lawyer? \_\_\_\_\_
- B. What did it cost to hire the lawyer? \_\_\_\_\_  
Contingency fee (explain)? \_\_\_\_\_
- C. Was the trial by jury? \_\_\_\_\_ 1. Yes. \_\_\_\_\_ 2. No.
- D. How much were the court costs? \_\_\_\_\_
- E. If it was trial by jury, what was the jury's award? \_\_\_\_\_

Part C.—17 indicated that there was a trial by jury.

Part E.—There were 14 responses here. The mean amount of the jury award was \$16,571.

28. If you did not hire a lawyer:

- A. Was there any particular reason why you did not hire a lawyer to represent you?  
\_\_\_\_\_  
\_\_\_\_\_

- B. What was the amount of the settlement reached? \_\_\_\_\_

29. Within five years before negotiations with the Corps started about your land, had you had any offers from private persons? If yes, what was the highest amount offered?

- \_\_\_\_\_ 1. Yes The highest amount offered was \$ \_\_\_\_\_
- \_\_\_\_\_ 2. No

There were 89 responses to this question. 69 (78%) said NO.

30. Were any offers made by private persons after negotiations with the Corps began? If yes, what was the highest amount offered?

- \_\_\_\_\_ 1. Yes The highest amount offered was \$ \_\_\_\_\_
- \_\_\_\_\_ 2. No

There were 81 responses. 78 (96%) said NO. 3 (4%) said YES.

31. In what month and year did you reach agreement or settlement about a price with the Corps? \_\_\_\_\_

32. How long after the time you reached a settlement did you actually move? \_\_\_\_\_ months.

(a)

On your old property did you get an extra crop year in?

- \_\_\_\_\_ 1. Yes (Income \_\_\_\_\_)
- \_\_\_\_\_ 2. No

(b)

Did you rent any property back from the Corps (Before you moved)?

\_\_\_\_\_1. Yes (Amount \_\_\_\_\_)

(c)

Were you farming any newly acquired property and your old property at the same time?

\_\_\_\_\_1. Yes (Income from crops on new property \_\_\_\_\_)

\_\_\_\_\_2. No

*Of the time between reaching a settlement and moving, there were 56 responses of which the mean time was 5-6 months.*

Part (b)—*There were 79 responses. 15 said YES (19%). 64 said NO (81%).*

33. Did the Corps acquire all of your land, or only part of it?

\_\_\_\_\_1. All of it

\_\_\_\_\_2. Part of it

*There were 90 responses to this question. 78 said ALL (87%). 12 said PART (13%).*

34. If only part was acquired, what proportion or percent was brought? \_\_\_\_\_

When only part of the land was purchased, the mean percentage purchased by the Corps was 50.6%

35. If only part was acquired, did that fact lower the value or the usefulness of the remaining property to you in any way?

\_\_\_\_\_1. Yes, the remaining property was made less valuable. (Please explain) \_\_\_\_\_

\_\_\_\_\_

Did the Corp pay you for this loss? \_\_\_\_\_

\_\_\_\_\_2. No, the value of the remaining property was not lowered, but remained about the same.

\_\_\_\_\_3. The value of the remainder actually increased. (Please explain.) \_\_\_\_\_

36. Could you have continued living on the remaining land not purchased by the Corps?

\_\_\_\_\_1. Yes

\_\_\_\_\_2. No (Why not? \_\_\_\_\_)

\_\_\_\_\_

37. If you could have stayed, why did you decide to relocate?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

38. If you have settled with the Corps regarding the price of your land, have you reinvested any or all of the money in new property?

- \_\_\_\_\_ 1. Yes
- \_\_\_\_\_ 2. No

*There were 79 responses to this. 68 (86%) said YES. 11 (14%) said NO.*

39. If you have reinvested:

A. In what community, county, and state did you relocate?

\_\_\_\_\_

B. How many miles is this from your former home? \_\_\_\_\_

C. Briefly describe the new property compared to the old property:

FARM	NEW PROPERTY			OLD PROPERTY		
	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
acres						
% tillable						
bottom or hill?						
use of land?						
tobacco base size						
<b>RESIDENCE</b>						
No. rooms						
apt., house, trailer, etc.?						
type of construction						
<b>BUSINESS</b>						
general description						

D. What was the cost of the new property?

#1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_

E. We are interested in learning what influenced you to choose this location to live in. I will list some things that people sometimes consider when choosing a place to live. I will ask you to tell me whether these things were very important to you, of some importance to you, or not very important to you in choosing this place to relocate in.

	Very Impt.	Of Moderate Imptce.	Not Very Impt.
1. being near friends and relatives			
2. being close to a physical place to which you are attached.			
3. staying close to the work you did.			
4. going to a place where there were better jobs.			
5. being closer to a city or town			
6. being close to churches, schools, and so forth.			
7. being in a place where you feel "at home".			
8. getting away from life in the country			
9. any other reason not mentioned?			

Part B.—*There were 62 responses to this question. The mean moving distance was 15–19 miles from the former home. 68% moved 25 miles or less to their new home.*

Part D.—*There were 63 responses. The mean purchase price of the new property was \$20,555. 68% of those purchasing new property paid \$41,334 or less.*

Part E.—*The majority of those responding to this part ranked the categories in the following degree of importance:*

1. *Very Important*
2. *Very Important*
3. *Moderate to Very Important*
4. *Of Moderate Importance*
5. *Moderate to Very Important*
6. *Moderate to Very Important*
7. *Very Important*
8. *Moderate to Not Very Important*

40. If you have not reinvested the payment or award money in new property:

A. In what community, county, and state, have you relocated or

do you plan to permanently relocate in?

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B. How many miles is this from your former home? \_\_\_\_\_

C. If you plan to reinvest in some property, what kind of place do you want compared to your old property?

Farm

acreage	
% tillable	
use of land?	
tobacco base size	

Residence

No. rooms	
apt., house, trailer, etc.?	
type of construction?	

Business

general description	
---------------------	--

D. What do you think this new property will cost? \_\_\_\_\_

E. We are interested in learning what kinds of things will influence your choice of a location to live in. I will list some things that people sometimes consider when choosing a place to live. I will ask you to tell me whether these things would be very important to you, of some importance to you, or not very important to you in choosing a place to relocate in.

Very Impt.	Of Moderate Imptce.	Not Very Impt.
------------	---------------------	----------------

1. being near friends and relatives		
2. being close to a physical place to which you are attached		
3. staying close to your work		
4. going to a place where there were better jobs		
5. being closer to a city or town		
6. being close to churches, schools, and so forth		
7. being in a place where you feel "at home"		
8. getting away from life in the country		
9. any other reason not mentioned?		

41. Did you need assistance or advice in relocating (other than moving expenses)? 1. Yes\_\_\_ (what help\_\_\_\_\_ ) 2. No\_\_\_

- \_\_\_1. Yes
- \_\_\_2. No

42. Did you ask for or apply for assistance (other than financial)?

- \_\_\_1. Yes
- \_\_\_2. No

43. Would you briefly tell what kind of assistance this was?

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44. Do you feel that the Corps of Engineers gave you enough assistance and advice in meeting the problems of relocation?

- \_\_\_1. Yes
- \_\_\_2. No (Please indicate what advisory assistance you feel the Corps could have given you.) \_\_\_\_\_

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45. Did you join together with any other landowners or tenants in the area to try to face the problems of acquisition and relocation together? For example:

- \_\_\_1. Have you talked with others about their problems
- \_\_\_2. Did you join with a group or organization specifically created around problems caused by the coming of the reservoir?
- \_\_\_3. Did you retain a lawyer jointly with anyone else?
- \_\_\_4. Other (please describe) \_\_\_\_\_

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45. Did you repurchase your old house or other buildings from the Corps?

- \_\_\_1. Yes
- \_\_\_2. No

47. If yes, what did you pay (if anything) to repurchase the house or buildings?

- \_\_\_1. Amount: \_\_\_\_\_
- \_\_\_2. Nothing

48. Some people find that relocation changes their lives a great deal,



while others notice little change in their lives as a result of relocating. For example, some people find that their families spend more time together, or less time together, while others can find no difference in the amount of time their families are together. As I go down this list, I would like for you to tell me whether each of these things occurs more, the same, or less, than before relocation.

For example:

	More	The Same	Less
1. visits with friends			
2. memberships in clubs and organizations			
3. active participation in clubs and orgs.			
4. visiting relatives			
5. family outings: picnics, drives, shopping, etc.			
6. church attendance			
7. disagreements among family members			
8. family members working together on the job			
9. involvement in politics			
10. family being at home together			
11. family members getting along with each other			

49. In general, how well do you think you have adjusted to the changes brought about by relocation?

- \_\_\_\_\_ 1. Adjusted very well
- \_\_\_\_\_ 2. Adjusted fairly well
- \_\_\_\_\_ 3. Have not adjusted too well
- \_\_\_\_\_ 4. Have not adjusted well at all

50. (If appropriate) In general, how well do you think your wife has adjusted to the changes brought about by relocation?

- \_\_\_\_\_ 1. She has adjusted very well
- \_\_\_\_\_ 2. She has adjusted fairly well
- \_\_\_\_\_ 3. She has not adjusted too well
- \_\_\_\_\_ 4. She has not adjusted well at all

51. (If appropriate) Generally, how well do you think your children have adjusted to relocation and the changes it has brought?

- \_\_\_\_\_ 1. Very well
- \_\_\_\_\_ 2. Fairly well
- \_\_\_\_\_ 3. Not too well
- \_\_\_\_\_ 4. Not well at all

52. (If appropriate) Concerning your wife:

	Easier	More Diff.	Same
A. Has it been easier or harder for her to make friends here?			
B. If she worked, has it been easier or harder for her to find work here?			
C. Has she found it any easier or harder to do her shopping?			
D. Has she had any greater, or lesser problems handling household expenses?			

53. (If appropriate) Concerning your children:

	Yes	No
1. Are they adjusted in school as well as they were before relocation?		
2. Have any of your children dropped out of school since relocation?		
3. Have your children been able to make friends as well here as before relocation?		
4. Do you find it as easy to control your children now?		
5. Is relocation for the children as available now?		

54. Did you know anyone in this new location before you moved here?

- \_\_\_\_\_ 1. Yes (How many families) \_\_\_\_\_
- \_\_\_\_\_ 2. No

Have any of your old neighbors and friends resettled in the same neighborhood?

- \_\_\_\_\_ 1. Yes
- \_\_\_\_\_ 2. No

55. Did you move here with a group of families?

- \_\_\_\_\_ 1. Yes (How many families \_\_\_\_\_) (On purpose or accidental? \_\_\_\_\_)
- \_\_\_\_\_ 2. No

56. Looking back, do you think you would have moved from your old location anyway?

- \_\_\_\_\_ 1. Definitely
- \_\_\_\_\_ 2. Possibly (more likely than not)
- \_\_\_\_\_ 3. Probably not
- \_\_\_\_\_ 4. Definitely not

57. Age (as of last birthday) \_\_\_\_\_.

*The mean age was indicated as 50-55 years old.*

58. How many years of school have you completed?

- \_\_\_\_\_1. 1-4th grade
- \_\_\_\_\_2. 5-7th grade
- \_\_\_\_\_3. 8th grade
- \_\_\_\_\_4. 1-3 years high school
- \_\_\_\_\_5. some high school plus trade or professional school
- \_\_\_\_\_6. finished high school
- \_\_\_\_\_7. finished high school plus trade or prof. school
- \_\_\_\_\_8. 1-3 years college
- \_\_\_\_\_9. finished college or beyond

*68% of those interviewed had less than a high school diploma.*

59. Now I would like to ask about the kind of work you do at the present:

Job (describe as fully as possible)	Length of time held	Weekly or monthly income
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

60. Since moving from the land acquired by the Corps of Engineers, have you had any other jobs other than this (these)?

- \_\_\_\_\_1. Yes
- \_\_\_\_\_2. No

61. Would you list that job (those jobs), tell how long you held it (them), and indicate the weekly or monthly income (for each):

Job (describe as fully as possible)	Length of time held	Weekly or monthly income
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

62. At the time you moved from the land acquired by the Corps of Engineers, what kind of work did you do?

Job (describe as fully as possible)	Length of time held	Weekly or monthly income
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

63. Would you list the jobs you held before that time, if any, starting with the most recent:

Job (describe as fully as possible)	Length of time held	Weekly or monthly income
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

64. Many people have other sources of income besides their regular employment. What are your other sources of income besides your job(s) at the present time?

Source	Amount per mo., yr.
_____ 1. Payments received from any federal, state or local agency (such as Social Security, Old Age Assistance, Unemployment Compensation, Aid for Dependent Children, Workman's Compensation, etc.)	_____
_____ 2. Rent received from property	_____
_____ 3. Income from stocks, bonds, annuities	_____
_____ 4. Retirement income	_____
_____ 5. Income from other members of the household, or from family members not living at home	_____
_____ 6. Other (please describe) _____	_____
_____	_____
_____	_____

65. What were your other sources of income (besides your regular job or jobs) before you relocated?

Source	Amount per mo., yr.
_____ 1. Payments received from any federal, state, or local agency (same examples as above)	_____
_____ 2. Rent received from property	_____
_____ 3. Income from stocks, bonds, annuities	_____
_____ 4. Retirement income	_____
_____ 5. Income from other members of the household, or from family members not living at home	_____
_____ 6. Other (please describe) _____	_____
_____	_____
_____	_____

66. Who besides yourself is living in your household at the present time?

Relationship to you, Age, Employment, if any, Income per wk., mo., if any:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

*There were 85 responses to this question. The mean size of the household was 2.87 persons.*

67. Who besides yourself lived in your household at the time the land on which you were living was purchased?

Relationship to you, Age, Employment, if any, Income per wk., mo., if any:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

*There were 82 responses here. The mean size of the household was 2.97 persons.*

68. Relocating in a new place often brings extra expenses. It isn't unusual that a family has to borrow money to help pay for these costs. I have a list of kinds of costs that are often incurred by relocation, and I want to read off each item and ask you to estimate how much this particular item cost you, and whether you borrowed any money to help pay for the expense.

For example:

	Item	Cost Incurred
A.	moving household goods and other movable items from old property	
B.	moving livestock and farm equipment	
C.	moving house or other buildings	
D.	loss on sale or abandonment of useless property (not worth cost of moving)	
E.	dismantling or taking down fixtures (such as household appliances)	
F.	(If tenant) cost of cleaning or forfeit of prepaid cleaning fee or deposit	
G.	loss of money for time taken off to supervise or help with moving	
H.	expense of adapting household items to new site (such as cutting draperies, rugs to fit new site)	
I.	personal injuries caused during moving	

J.	interest on loans (except those taken out for moving costs)	
K.	costs incurred in transferring old property to the Corps of Engineers:	
	1. recording fees for deed	
	2. transfer taxes	
	3. clerk fees	
	4. penalty costs for prepayment of mortgages	
	5. real property taxes allocable to period after transfer to Corps	
L.	costs incurred in purchase of new property:	
	1. land appraisal	
	2. survey	
	3. title examination	
	4. closing costs	
	5. charges to obtain financing	
	6. broker's fee	
	7. loss of money for time taken to find new place to live	
	8. purchase of new furnishings	
	9. (If tenant) first month's rent in advance	
M.	Other	

69. How much money did you borrow if any to meet your moving expenses? \_\_\_\_\_

70. How much money did the Corps give you as re-imbusement for your moving expenses? \_\_\_\_\_

*80% of those responding to this question indicated that they had been reimbursed.*

71. If you have borrowed money for the purchase of new property, has the interest rate for the purchase of the new property increased over the interest rate you were paying on the old mortgage, if any?

- \_\_\_\_\_ 1. Yes I was paying \_\_\_\_\_%, and now paying \_\_\_\_\_%  
 \_\_\_\_\_ 2. No

72. Did you hold the same job (or jobs) after relocation as you did before?

- \_\_\_\_\_ 1. Yes  
 \_\_\_\_\_ 2. No

*There were 59 responses to this question. 44 (74%) said YES. 15 (26%) said NO.*

73. If no, were you forced to leave the former job as a result of relocation, or did you leave that job voluntarily?

\_\_\_\_\_1. Forced to leave the job. (Please explain) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_2. Left the job voluntarily. (Was there any particular reason why you left that job?) \_\_\_\_\_

\_\_\_\_\_

*There were 13 responses to this question. 8 (62%) were forced to leave their jobs. 5 (38%) left voluntarily.*

74. After relocation, was the distance to your:

	Greater	Less	The Same
A. job	_____	_____	_____
B. church	_____	_____	_____
C. stores	_____	_____	_____
D. medical facilities	_____	_____	_____
E. school	_____	_____	_____

75. Would you say your transportation costs in general are greater, less, or about the same as before relocation?

\_\_\_\_\_1. greater (Could you estimate how much?) \_\_\_\_\_

\_\_\_\_\_2. less (Could you estimate how much?) \_\_\_\_\_

\_\_\_\_\_3. about the same

76. Did any of your property become useless or less valuable to you as a result of relocation (farm equipment, household goods, etc.)? If yes, on what items did you lose money, and what was the amount of the loss?

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

Were you paid for these losses? \_\_\_\_\_ (How much? \_\_\_\_\_)

77. After first hearing that a reservoir would be built in the area, did you postpone or drop plans for property improvement or main-

tenance (such as house repairs and painting, fertilizing fields, fencing, improving cropland, adding room to buildings, etc.)?

\_\_\_\_1. Yes (please describe)

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\_\_\_\_2. No

*There were 75 responses to this question. 57 (76%) said YES. 18 (24%) said NO.*