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GOVERNMENT
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HEARING

BEFORE THE

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 1637

TO AMEND THE TENNESSEE VALLEY AUTHORITY ACT OF 1933 TO PROVIDE THAT THE ISSUE OF JUST COMPENSATION MAY BE TRIED BY A JURY IN ANY CASE INVOLVING THE CONDEMNATION OF REAL PROPERTY BY THE TENNESSEE VALLEY AUTHORITY

OCTOBER 10, 1967

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HEARING
COMMITTEE ON PUBLIC WORKS
UNITED STATES SENATE
NINETEENTH CONGRESS
FIRST SESSION

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TENNESSEE VALLEY AUTHORITY

TUESDAY, OCTOBER 10, 1967

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 4200, New Senate Office Building, Senator Jennings Randolph, chairman, presiding.

Present: Senators Randolph, Young, Gruening, Jordan of North Carolina, Spong, Cooper, Fong, and Baker.

Also present: Barry Meyer, counsel; Bailey Guard, assistant chief clerk (minority); Joseph F. van Vladriken, and J. B. Huyett, Jr., professional staff members.

The CHAIRMAN. Good morning, ladies and gentlemen.

This morning we consider a bill introduced by our committee colleague, the able Senator from Tennessee, Mr. Baker. This proposal concerns certain land acquisition procedures in the Tennessee Valley Authority.

So, without objection, I will place in the record at this point a copy of Senate 1637, this bill having been introduced by Senator Baker on April 26, 1967. I will also, without objection, place a copy of letters of comment that the committee has received from the various agencies of government.

[S. 1637, 90th Cong., 1st sess.]

A BILL To amend the Tennessee Valley Authority Act of 1933 to provide that the issue of just compensation may be tried by a jury in any case involving the condemnation of real property by the Tennessee Valley Authority

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 25 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831x) is amended to read as follows:

"Sec. 25. (a) The Corporation may cause proceedings to be instituted for the acquisition by condemnation of any lands, easements, or rights-of-way which, in the opinion of the Corporation, are necessary to carry out the provisions of this Act. The proceedings shall be instituted in the United States district court for the district in which the land, easement, right-of-way, or other interest, or any part thereof, is located, and such court shall have full jurisdiction to divest the complete title to the property sought to be acquired out of all persons or claimants and vest the same in the United States in fee simple, and to enter a decree quieting the title thereto in the United States of America. Any party to such proceedings shall have a trial by jury of the issue of just compensation if a demand therefor is filed within the time allowed for answer or within such further time as the court may fix.

"(b) Upon (1) acceptance of an award by the owner of any property herein provided to be appropriated, and the payment of the money awarded, or (2) payment of the compensation finally awarded into the registry of the court by the Corporation, the title to said property and the right to the possession thereof shall pass to the United States, and the United States shall be entitled to a writ in the same proceedings to dispossess the former owner of said property,

(1) The commission procedure is much more convenient for the landowner as well as for the government. Since the cases are not on the jury docket, they can be

and all lessees, agents, and attorneys of such former owner, and to put the United States, by its corporate creature and agent, the Corporation, into possession of said property."

SEC. 2. The amendment made by the first section of this Act shall apply only with respect to condemnation proceedings instituted by the Tennessee Valley Authority on and after the _____ day after the date of its enactment.

TENNESSEE VALLEY AUTHORITY,
OFFICE OF THE BOARD OF DIRECTORS,
Knoxville, Tenn., May 11, 1967.

HON. JENNINGS RANDOLPH,
Chairman, Committee on Public Works,
U.S. Senate,
Washington, D.C.

DEAR SENATOR RANDOLPH: This is in response to your request for our views on S. 1637, a bill "To amend the Tennessee Valley Authority Act of 1933 to provide that the issue of just compensation may be tried by a jury in any case involving the condemnation of real property by the Tennessee Valley Authority."

Section 25 of the TVA Act provides for the determination of the issue of just compensation by three commissioners who "shall not be selected from the locality in which the land sought to be condemned lies," and "who shall be disinterested persons and who shall take and subscribe an oath that they do not own any lands, or interest or easement in any lands, which it may be desirable for the United States to acquire in the furtherance of said project." Appeals may be taken from the award of the commission to a three-judge federal court, but by agreement of the parties the three-judge court is usually waived and the appeals are heard by a single federal judge. The statute provides for a further appeal to the court of appeals.

S. 1637 would abolish this procedure and permit a party to have the issue of just compensation tried by a jury by simply filing a demand for a jury.

We believe that the enactment of this bill would not be in the public interest and we strongly urge that it not be reported favorably. We believe that experience with the existing procedure has demonstrated that it is particularly well adapted to condemnation by an agency such as TVA which is engaged in a comprehensive program for the development of the resources of a region which requires substantial acquisitions of land and land rights.

Most of the courts which handle TVA cases appoint standing commissions to hear all TVA cases arising in that court. The courts have uniformly appointed an attorney to serve as chairman and the other two members are usually men with knowledge of real estate values, often a realtor or a farmer experienced in land transactions. Thus, the commissioners are generally better qualified than most jurors would be to evaluate evidence of sales and land values. This is especially important in condemnation cases where the evidence as to compensation consists chiefly of opinion testimony. Moreover, since the commissioners view the land and other properties which have sold recently, something which juries rarely if ever do, they are in a far better position to understand and evaluate the testimony.

Since the same commission tries all of the cases in an area, its awards tend to be consistent. This means that landowners obtain a price which is not only fair in terms of the value of their property but also consistent with the awards received by their neighbors. Where cases are tried by different juries, verdicts can vary widely. In fact, substantial variance can occur in verdicts of the same jury since jurors ordinarily have no opportunity to view the property condemned or to compare one tract with another. Inequality of awards can be productive of widespread discontent and can seriously hamper a regional agency in carrying out its responsibilities.

The commission system also reduces the amount of litigation. The amount of a jury verdict is always a gamble and the possibility of the landowner's receiving a large award, no matter how remote, can generate a great deal of marginal litigation at great expense to all concerned. Commissions tend to be generous to the landowner but our experience over many years has shown that commission awards, while never unfairly low, are seldom unconscionably high. The incentive to litigate therefore is greatly reduced.

The commission procedure is much more convenient for the landowner as well as for the government. Since the cases are not on the jury docket, they can be

tried at times and places to suit the convenience of the parties. This makes it possible to have prompt trials at places convenient to the landowner's residence. In addition, the courts benefit by not having their already crowded trial dockets further congested by TVA condemnations. At the present time TVA has over 200 condemnation cases pending in the federal courts. If these cases were added to existing trial dockets, the workload of the district judges would be greatly increased and the delays encountered in disposing of cases would be multiplied many times.

The question of whether TVA cases should be tried by a commission or by a jury was considered thoroughly by the Supreme Court Advisory Committee and by the Supreme Court itself in connection with the promulgation of Rule 71A of the Federal Rules of Civil Procedure. The Advisory Committee made an extensive study of the experience under the TVA statute and, as part of this study, it wrote to every federal judge who had had experience with the TVA procedure, asking his view as to whether a jury system would be preferable. Of the 21 judges who replied, 17 expressed a preference for the commission system, while only three expressed a preference for the jury system. One judge failed to comment on this question.

This study persuaded both the Advisory Committee and the Supreme Court that the TVA statutory procedure should be retained and that a similar procedure should be made available for other large governmental projects. This is the reason Rule 71A (h) retains the existing procedure in TVA condemnation cases and permits the court in its discretion to require that the issue of just compensation be determined by a three-man commission in other cases. A copy of the portion of the March 1951 report of the Advisory Committee which discusses the question is attached.

We believe that the reasons which persuaded the Supreme Court Advisory Committee and the Supreme Court in 1951 to retain the commission system are equally valid today. The commission procedure established by the TVA Act has served the ends of justice well for over 30 years. It has proved fair and workable and we believe it should be continued.

The Bureau of the Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

AUBREY J. WAGNER, *Chairman.*

SUPPLEMENTARY REPORT OF THE ADVISORY COMMITTEE

MARCH 1951.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

In May 1948, the Advisory Committee submitted to the Court a report containing a proposed rule to govern condemnation cases. The Court kept that report under consideration until December 2, 1948, when it held an informal conference on the proposed rule, at which three members of the Advisory Committee were present by invitation. As a result of that conference, and on December 23, 1948, the Court returned the May, 1948, draft of the rule to the Advisory Committee "for further consideration." (See letter of December 23, 1948, from the Chief Justice to Chairman Mitchell.) Since then the Advisory Committee has given further consideration to the proposed rule, and at a meeting of the Committee held at Washington April 6, 1950, and thereafter it adopted a number of amendments to the 1948 draft and now presents the revised draft to the Court with the recommendation that it be adopted. In presenting this revision we have used the 1948 print (appended hereto) as a basis, in which we have noted the recent alterations in the 1948 draft as this will enable the court at a glance to see what the alterations are.¹ No change has been made in the notes contained in the May 1948 print.

The Court will remember that at its conference on December 2, 1948, the discussion was confined to subdivision (h) of the rule (pp. 6-7 of the 1948 print, appended hereto), the particular question being whether the tribunal to award compensation should be a commission or a jury in cases where the Congress has not made specific provision on the subject. The Advisory Committee was agreed from the outset that a rule should not be promulgated which would overturn the

¹ See pages v, 1, 2, 4, 7, 9, 10, 13, 15 and 17 of the appended 1948 print where the changes now recommended appear in the text, new matter being shown by italics and matter to be omitted being lined through.

decision of the Congress as to the kind of tribunal to fix compensation, provided that the system established by Congress was found to be working well. We found two instances where the Congress had specified the kind of tribunal to fix compensation. One case was the District of Columbia (U.S.C., Title 40, §§ 361-386) where a rather unique system exists under which the court is required in all cases to order the selection of a "jury" of five from among not less than twenty names drawn from "the special box provided by law." They must have the usual qualifications of jurors and in addition must be freeholders of the District and not in the service of the United States or the District. That system has been in effect for many years, and our inquiry revealed that it works well under the conditions prevailing in the District, and is satisfactory to the courts of the District, the legal profession and to property owners.

The other instance is that of the Tennessee Valley Authority, where the act of Congress (U.S.C., Title 16, § 831x) provides that compensation is fixed by three disinterested commissioners appointed by the court, whose award goes before the District Court for confirmation or modification. The Advisory Committee made a thorough inquiry into the practical operation of the TVA commission system. We obtained from counsel for the TVA the results of their experience, which afforded convincing proof that the commission system is preferable under the conditions affecting TVA and that the jury system would not work satisfactorily. We then, under date of February 6, 1947, wrote every Federal judge who had ever sat in a TVA condemnation case, asking his views as to whether the commission system is satisfactory and whether a jury system should be preferred. Of 21 responses from the judges 17 approved the commission system and opposed the substitution of a jury system for the TVA. Many of the judges went further and opposed the use of juries in any condemnation case. Three of the judges preferred the jury system, and one dealt only with the TVA provision for a three judge district court. The Advisory Committee has not considered abolition of the three judge requirement of the TVA Act, because it seemed to raise a question of jurisdiction, which cannot be altered by rule. Nevertheless the Department of Justice continued its advocacy of the jury system for its asserted expedition and economy; and others favored a uniform procedure. In consequence of these divided counsels the Advisory Committee was itself divided, but in its May 1948 Report to the Court recommended the following rule as approved by a majority (pp. 6-7, printed report, appended hereto):

"(h) TRIAL. If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix. Trial of all issues shall otherwise be by the court."

The effect of this was to preserve the existing systems in the District of Columbia and in TVA cases, but to provide for a jury to fix compensation in all other cases.

Before the Court's conference of December 2, 1948, the Chief Justice informed the Committee that the Court was particularly interested in the views expressed by Judge John Paul, judge of the United States District Court for the Western District of Virginia, in a letter from him to the chairman of the Advisory Committee, dated February 13, 1947. Copies of all the letters from judges who had sat in TVA cases had been made available to the Court, and this letter from Judge Paul is one of them. Judge Paul strongly opposed jury trials and recommended the commission system in large projects like the TVA, and his views seemed to have impressed the Court and to have been the occasion for the conference.

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

1. The TVA condemns large areas of land of similar kind, involving many owners. Uniformity in awards is essential. The commission system tends to prevent discrimination and provide for uniformity in compensation. The jury system tends to lack of uniformity. Once a reasonable and uniform standard of values for the area has been settled by a commission, litigation ends and settlements result.

2. Where large areas are involved many small landowners reside at great distances from the place where a court sits. It is a great hardship on humble people to have to travel long distances to attend a jury trial. A commission may travel around and receive the evidence of the owner near his home.

3. It is impracticable to take juries long distances to view the premises.

4. If the cases are tried by juries the burden on the time of the courts is excessive.

These considerations are the very ones Judge Paul stressed in his letter. He pointed out that they applied not only to the TVA but to other large governmental projects, such as flood control, hydroelectric power, reclamation, national forests, and others. So when the representatives of the Advisory Committee appeared at the Court's conference December 2, 1948, they found it difficult to justify the proposed provision in subdivision (h) of the rule that a jury should be used to fix compensation in all cases where Congress had not specified the tribunal. If our reasons for preserving the TVA system were sound, provision for a jury in similar projects of like magnitude seemed unsound.

Aware of the apparent inconsistency between the acceptance of the TVA system and the provision for a jury in all other cases, the members of the Committee attending the conference of December 2, 1948, then suggested that in the other cases the choice of jury or commission be left to the discretion of the District Court, going back to a suggestion previously made by Committee members and reported at page 15 of the Preliminary Draft of June 1947. They called the attention of the Court to the fact that the entire Advisory Committee had not been consulted about this suggestion and proposed that the draft be returned to the Committee for further consideration, and that was done.

The proposal we now make for subdivision (h) is as follows:

"(h) TRIAL. If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or without such further time as the court may fix, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court."

In the 1948 draft the Committee had been almost evenly divided as between jury or commission and that made it easy for us to agree on the present draft. It would be difficult to state in a rule the various conditions to control the District Court in its choice and we have merely stated generally the matters which should be considered by the District Court.

The rule as now drafted seems to meet Judge Paul's objection. In large projects like the TVA the court may decide to use a commission. In a great number of cases involving only sites for buildings or other small areas, where use of a jury is appropriate, a jury may be chosen. The District Court's discretion may also be influenced by local preference or habit, and the preference of the Department of Justice and the reasons for its preference will doubtless be given weight. The Committee are convinced that there are some types of cases in which use of a commission is preferable and others in which a jury may be appropriately used, and that it would be a mistake to provide that the same kind of tribunal should be used in all cases. We think the available evidence clearly leads to that conclusion.

When this suggestion was made at the conference of December 2, 1948, representatives of the Department of Justice opposed it, expressing opposition to the use of a commission in any case. Their principal ground for opposition to commissions was then based on the assertion that the commission system is too expensive because courts allow commissioners too large compensation. The obvious answer to that is that the compensation of commissioners ought to be

fixed or limited by law, as was done in the TVA Act, and the agency dealing with appropriations—either the Administrative Office or some other interested department of the government—should correct that evil, if evil there be, by obtaining such legislation. Authority to promulgate rules of procedures does not include power to fix compensation of government employees. The Advisory Committee is not convinced that even without such legislation the commission system is more expensive than the jury system. The expense of jury trials includes not only the per diem and mileage of the jurors impaneled for a case but like items for the entire venire. In computing cost of jury trials, the salaries of court officials, judges, clerks, marshals and deputies must be considered. No figures have been given to the Committee to establish that the cost of the commission system is the greater.

We earnestly recommend the rule as now drafted for promulgation by the Court, in the public interest.

The Advisory Committee have given more time to this rule, including time required for conferences with the Department of Justice to hear statements of its representatives, than has been required by any other rule. The rule may not be perfect but if faults develop in practice they may be promptly cured. Certainly the present conformity system is atrocious.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., October 6, 1967.

HON. JENNINGS RANDOLPH,
Chairman, Committee on Public Works,
U.S. Senate, Washington, D.C.

DEAR MR. RANDOLPH: This is in response to your request for the views of the Department of Justice on S. 1637, a bill "To amend the Tennessee Valley Authority Act of 1933 to provide that the issue of just compensation may be tried by a jury in any case involving the condemnation of real property by the Tennessee Valley Authority."

This bill would amend section 25 of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831x). The section now provides a means for determination of the issue of just compensation in TVA land condemnation cases which is different from that involved in the condemnation of land for the requirements of any other agency of the United States. In all TVA cases the issue is tried by three commissioners, appointed by the District Court, with provision for appeal from their determination. No jury trial is available. The bill would abolish the special TVA commissioner procedure and would provide for a jury trial upon demand of any party. Absent demand for jury trial, the issue of just compensation would be for trial by the District Court (Judge), without jury or commissioners. A trial of the issue of compensation by a commission would not be available in any TVA condemnation case.

The Department of Justice has every confidence in the jury system, for the determination of the issue of just compensation in land condemnation cases as well as for other purposes. The Department's long experience with both the jury system and the commissioner system in condemnation cases indicates a preponderance of advantages in the use of the jury system.

This Department desires to point out that its major experience in condemnation cases has for many years been under Rule 71A (h) of the Federal Rules of Civil Procedure. Under the rule the issue of just compensation is for determination by the Court, or by a jury upon request of either party, except that in the latter case the Court in its discretion may order that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interests of justice, the issue be determined by a commission of three persons appointed by it. The present bill would not affect this rule. The Department does not conduct condemnation litigation for the TVA or under the TVA procedure, nor would it under the bill. Consequently, the Department of Justice makes no recommendation as to whether the bill should be enacted.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

The CHAIRMAN. We are delighted that the sponsor of the bill, Senator Baker, is present this morning. The cosponsor of the legislation is the Honorable Thruston Morton, who serves from Kentucky with our own distinguished member of this committee, Senator Cooper.

Now, it is my understanding, Senator Cooper, that Senator Morton is not able to be with us today, but will submit a statement.

The pending legislation provides for jury trials in land condemnation cases involving the Tennessee Valley Authority.

It is my understanding that under the provisions of the Tennessee Valley Authority Act relating to the condemnation of real property, appeal is available to the property owner if he is not satisfied with the compensation offered for his property.

This appeal is first made to a three-man commission. Appeal from this body is then taken to a three-judge Federal court panel. Further appeal is made to the court of appeals.

This is a brief explanation of the situation. Others here today will provide the committee with more detailed information on the subject.

We have received several statements regarding this bill, including one from the Honorable Dan Kuykendall, Ninth District of Tennessee, which, without objection, I will place in the record following Senator Morton's statement which will appear here.

(The statements referred to follow :)

STATEMENT OF HON. THRUSTON B. MORTON, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Mr. Chairman, I am privileged to have this opportunity to register my strongest possible endorsement of the equity proposed by my Colleague from Tennessee (Mr. Baker) in S. 1637, which would require that the determination of just compensation in land condemnation cases involving the Tennessee Valley Authority be decided by a jury. I am further privileged to have joined as a co-sponsor of the bill.

Section 25 of the TVA enabling legislation leaves the issue of just compensation in land condemnations to the discretion of three commissioners appointed by the federal court of jurisdiction. A landowner may appeal the commissioners' determined price to the court, and provision is made for further appeal. He does not have the right to a jury trial.

The Tennessee Valley Authority possesses a singular prerogative not accorded to any other federal agency whose activities are national in scope and whose authorities include land acquisition. I see absolutely no reason why any landowner should be denied his basic right to a jury determination simply because he is dealing with TVA, nor can I understand TVA's opposition to a citizen's having this right.

My basic interest in S. 1637 has been sharpened by a constant stream of complaints concerning TVA's policies and attitudes in acquiring land for the Between-the-Lakes recreation area project in Western Kentucky. Although I felt that Congress should have authorized the Department of the Interior to develop the project as a "national recreation area," assignment of this work as a "demonstration" project to TVA by the late President Kennedy met with my approval. However, I must say that I have been disappointed with TVA's land acquisition program.

Permit me to point out that in authorizing development of various national recreation areas in recent years, Delaware Gap, Whiskeytown-Shasta and Spruce Knob-Seneca Rocks, for instance, the Congress has authorized the developing agency to acquire land, as an alternative to donation, exchange, purchase, etc., by such other method deemed to be in the public interest. This to me means only one thing—a condemnation action with right to jury trial.

I see little justice in denying a particular set of property owners the protection given to others because one group is dealing with an agency different from the other. Amending Section 25 in line with S. 1637 may not be in the interest of

TVA, but I believe that it assuredly would be in the best interests of the property owners who must deal with the agency. I know the Committee will give its close attention to the bill, and I hope that it will be reported favorably to the Senate without delay.

STATEMENT OF HON. DAN KUYKENDALL, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TENNESSEE

RIGHT TO TRIAL BY JURY IN TVA CONDEMNATIONS

Mr. Chairman, there is no freedom in America more blessed than the ownership of private property. Our beloved nation was founded on this guiding principle and it has become the cornerstone of our competitive free enterprise system which has made America the wealthiest country in the world. A man's property is cherished next to life itself and it surely should be afforded a corresponding degree of protection under the law.

The right of the government and its agencies, such as the Tennessee Valley Authority, to acquire lands through proper condemnation proceedings is a well recognized constitutional right and it is not disputed. It is paramount, however, that the property owner is adequately protected in these proceedings to insure that there is a just and fair determination of the compensation to which he is entitled.

Under the Tennessee Valley Authority Act of 1933, the property owners whose land is confiscated by the Tennessee Valley Authority under the powers of eminent domain are not granted the safeguards of a jury trial at any stage of the proceedings. In fact, the Act prohibits the use of a jury in such cases. The land owner has no choice but to accept whatever evaluation TVA's appraisers may place upon his land. If the land owner disagrees with the price tag placed on his land, his only recourse is to appeal to a three-man commission named by a federal judge. This is indeed a rather restricted right of appeal and a rather unique application of the law of eminent domain because it is well recognized that the right to demand a trial by jury in such cases is generally available under the laws of the United States and the State of Tennessee.

The people in the Tennessee Valley should be afforded the same protection granted other property owners in ordinary condemnation procedures, and there is no legitimate reason for denying them this privilege. The jury trial is a very essential and significant part of the American system of jurisprudence and from our beginning, the judgment of one's peers in judicial proceedings has been considered the individual's greatest bulwark of freedom against oppression and injustices. I do not mean to infer that the Tennessee Valley Authority has always been an unreasonable tyrant in its exercise of eminent domain powers, but I do know that there is wide spread dissatisfaction with its condemnation procedures. What is determined as just compensation by the TVA appraisers or the appointed commission may not be adjudged fair and reasonable by the land owner or his neighbors.

For these reasons, Mr. Chairman, I join in voicing my opposition to the existing condemnation procedures under the Tennessee Valley Authority Act and urge your favorable consideration of S. 1637, which is designed to rectify this inequitable situation. I, along with several of my distinguished colleagues, have introduced an identical bill in the other body. This proposal authorizes jury trials (upon appeal from condemnation proceedings) for land owners who have had their property condemned by the Tennessee Valley Authority. Certainly, these people deserve the right of an appeal to a jury trial and the passage of appropriate legislation granting them this right is long overdue.

STATEMENT OF HON. RICHARD H. FULTON, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TENNESSEE

Mr. Chairman: May I begin by expressing my appreciation to you and the Members of the Public Works Committee of the United States Senate for allowing me this opportunity to appear on this occasion and speak in behalf of S 1637. As you are no doubt aware, I am co-sponsoring identical legislation in the House.

Let me say at the very beginning, that my sponsorship of the legislation is in no way a criticism of the Tennessee Valley Authority, nor should it be so con-

strued. The TVA, over the past three and a half decades, has contributed to the development and enrichment of the Tennessee Valley as no other instrument or authority. For this, our Nation can be proud and the people of the Tennessee Valley, rightfully grateful and appreciative.

Let me say, also, that I am not an attorney, but that I do appreciate the extensive legal labor and thought which went into the preparation of the present commission system whereby compensation in condemnation cases involving the TVA is awarded.

Nonetheless, for some time, I have felt that in government condemnation cases, the property owner of the land to be taken is being more and more removed from the seat of equity, the jury box.

The Tennessee Valley Authority is unique in this respect, I believe, for where the commission system is applicable in condemnation proceedings involving other Federal agencies, the actual determination is left to the presiding Judge. He determines whether or not the issue shall be settled by a commission or by a jury. In cases under the TVA Act, only the commission system is used.

The commission serves to expedite condemnation cases, and assures a speedier settlement for the property owner. It, also, avoids costly delays to the Federal government during which time project schedules may be disrupted and costs increased.

By and large, this system has worked well and, I believe, to the advantage of the property owner and the Federal Government.

However, today we are faced with a problem of rising land costs which, in certain cases, could deny the property owner equity under the commission system.

There is already a degree of inequity in Federal land-taking whether it be by the TVA, the Corps of Engineers, Urban Renewal or whatever Federal agency.

Prices offered are offered on the basis of "fair market value". In many instances, this sum may provide the property owner with enough compensation to relocate in if not identical, at least similar surroundings. But, for the individual who does not wish to give up his property, and is unable to relocate in similar surroundings, the price offered may not be just, though it is a "fair market" price.

In other words, in too many cases, "fair market" compensation does not satisfy the relocation needs of the property owner.

We realize the many problems which arise when we enter this field, and we do not contest the right of the Federal government or any State or Local government to act in the name of the people by exercising the right of public domain.

When the Tennessee Valley Act was written, in fact, when the commission system was adopted, replacement land for property owners was much more readily available at "fair market" prices than it is today. Indeed, we need only to look at the suburbs surrounding Washington, D.C. to verify this. We read that in some adjacent areas in our Nation's Capitol, land values have increased 400% within the last half decade.

It seems to me, therefore, that the property owner should be given the right of a trial by jury if he so desires.

Again, let me stress that my support of this legislation is in no way intended to be viewed as a criticism of the Tennessee Valley Authority, which, I firmly believe, has carried out its duty, and fulfilled its public trust in an exemplary manner throughout its productive history.

The CHAIRMAN. Now we will be pleased to hear from the sponsor of this legislation, our colleague, Senator Baker.

Are you agreeable to the procedure as we have outlined it?

**STATEMENT OF HON. HOWARD H. BAKER, JR., A U.S. SENATOR
FROM THE STATE OF TENNESSEE**

Senator BAKER. Yes, Mr. Chairman. I am deeply grateful for having the opportunity to sit with you today.

First, I want to make clear, as I have since introducing S. 1637, that the prime mover behind this legislation is Representative Bill Brock, of Tennessee's Third District, who will be the first witness today.

Congressman Brock had a similar measure pending in the House long before I came to the Senate, and I have worked closely with him in our planning for this hearing.

I will keep my remarks brief at this time, Mr. Chairman, so that Congressman Brock may—as is proper—develop more fully the background of the bill and the reasons why we feel our proposal to be both justified and necessary.

Second in importance only to my debt to Congressman Brock in this matter is my admiration for and, indeed, devotion to the Tennessee Valley Authority. More than any single agent TVA is responsible for bringing heightened prosperity to the region in which it operates.

I have emphasized repeatedly, at the time that I introduced the bill in the Senate and in the months thereafter, that this is in no wise conceived as an “anti-TVA” measure. I know, and have worked with, the men that administer TVA. They are immensely capable, knowledgeable, devoted public servants. And I have no doubt as to their absolute integrity.

As I said in April on the floor of the Senate, when I introduced S. 1637, the TVA land condemnation cases in which equity has not been achieved are probably quite rare. I cannot point with certainty to even one such case, Mr. Chairman. I want you to know, and the other members to know, and Mr. Wagner to know, and the people of my State to know, that I am a lifelong supporter of the Tennessee Valley Authority and in no way intend to impugn the integrity and fairness of those who administer it.

The TVA Act of 1933 made specific and detailed provision for how the issue of just compensation was to be determined in cases of land condemnation arising from the indisputable authority of TVA to exercise eminent domain in carrying out the visionary purposes of the act. Briefly, the procedure is this: The condemnee may appeal the original offer of TVA to a commission of three persons appointed by the U.S. district court of the district in which the condemned land lies.

The award of these commissioners may be appealed by either party to a panel of three U.S. district judges—although provision is made for waiving the panel in favor of one judge—who try the issue *de novo*. Appeal from this decision may be made by either party to the U.S. court of appeals. At no time is either party given the option of demanding a trial by jury on the issue of just compensation.

All other Federal condemnation cases, with the exception of the District of Columbia's unique procedure, are governed by rule 71A of the Rules for Civil Procedure. Subsection (h) of this rule, which became effective in 1951, and about which much will be said later this morning, provides that either party may have a trial by jury of the issue of just compensation unless, and I quote, “the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of just compensation shall be determined by a commission of three persons appointed by it.”

Mr. Chairman, there was a great deal of controversy at the time that rule 71A was written, and the TVA Act played an important part in that controversy. I will say no more about this particular item now, for I feel certain that it will dominate the remainder of the hearings.

It was against the background of the TVA Act and rule 71A that Congressman Brock and I considered what would be the most appropriate course to take in implementing our conviction that the option of a trial by jury should be a part of the TVA procedure.

There were, we felt, three alternatives. The first would be to provide the absolute right to a jury trial and eliminate the commission entirely. This approach is embodied in S. 1637 and H.R. 4846 as introduced.

The second alternative was to repeal section 831x of title 16—the section of the TVA Act setting out condemnation procedures—thereby bringing TVA under the provisions of rule 71A. This was a course that we seriously considered.

The third alternative was to provide an option similar to that in rule 71A, but with the critical distinction that the option would be left to the parties and not to the court.

This, Mr. Chairman, is the course on which Congressman Brock and I have settled. We have prepared language that I intend to introduce as a substitute to the bill as now written in executive session of the subcommittee. I hope that we will have the opportunity to discuss this approach as well as the present language, with the witnesses this morning.

I will leave it to Congressman Brock to develop the reasons for our sponsorship of this measure. Suffice it to say that we are well aware that there is no constitutional question involved, that there is no absolute right to trial by jury. We are aware that there are compelling and logical reasons why the commission system may be viewed as efficient and productive of consistent awards. We are aware of factors which tend to distinguish TVA land condemnations from most others, such as the size of the area involved and the volume of parcels condemned annually.

But we feel that more compelling arguments can be reasonably mounted in favor of a trial by jury upon demand. The determination of the issue of just compensation is the heart of the land condemnation process. Vitally involved in this process is each man's right to own and control the disposition of private property, a right which is the essence of his individualism. Confidence in public officials and in the judicial system itself is at issue.

Whether a jury would award greater compensation is not the issue; that is unknowable and irrelevant.

What is at issue is the confidence of the people in the process. And there is ample evidence that this confidence is bitterly low at the present time. And the belief of our people in the fairness of a jury of their peers—an avenue to justice that recedes into times before the history of man and civilizations was written down—is, finally, what we consider here today.

The CHAIRMAN. Senator Baker, proceed then to present your colleague from the House.

Senator BAKER. Without further ado, Mr. Chairman, I would like to present to the committee as our first witness the Honorable William Brock of Chattanooga, Representative from the Third Congressional District of Tennessee.

The CHAIRMAN. Good morning, Representative Brock. The members of our committee are pleased to have you present this statement and

enter into such colloquy as might be appropriate with members of the committee. Please feel free to go ahead. We are delighted that you are on this side of the Capitol this morning.

**STATEMENT OF HON. WILLIAM E. BROCK, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE**

Mr. BROCK. It is nice to be over here, Senator. Mr. Chairman, I am delighted to appear before you today in behalf of S. 1637 which would repeal section 25 of the Tennessee Valley Authority Act of 1933. The purpose of this legislation is to permit appeal, in TVA land condemnation proceedings, by either the landowner or the TVA, from the appraisers' award, to a jury trial or a three-man commission.

Under the present system, a landowner has no recourse to trial by jury, but must submit to the jurisdiction of a special three-man commission appointed by the Federal court.

If the landowner appeals the commissioners' report, he can take his case to the Federal district court to be tried by one or three judges, but he still cannot demand a jury trial. He must pay for appraisers' fees, a written transcript of the proceedings before the commissioners, employ an attorney, and travel at his own expense to the courthouse—while the entire bill incurred by the TVA is footed by the taxpayer.

Obviously, these costs place the landowner, especially those with smaller land holdings, at a tremendous disadvantage.

Even if the landowner wins his case, he must pay a substantial sum out of the value of his property which has been taken from him—despite the fact that he is in no way at fault and the situation is not of his making.

In fiscal 1967, the TVA acquired 45,367 additional acres of land and 404 miles of transmission line easements. A significant portion of this property was acquired from small farmers whose life earnings are invested in and whose sole source of income is derived from this land.

Conservative estimates for the volume of land to be acquired by the TVA in fiscal 1968 far exceed the 1967 figures, and concern over the lack of appeal to jury trial by landowners who question the fairness of the price awarded for these lands is growing at a proportionate rate.

Jury trial is basic to our legal system, and I feel the people in the Tennessee Valley should be afforded the same protection as that granted in ordinary condemnation procedures.

Why is the Tennessee Valley Authority the only Federal condemnation agency, with one minor exception, which expressly prohibits an appeal to a trial by jury? (The only exception, aside from the TVA, is the District of Columbia which, under the District Code, is permitted to conduct condemnations before a five-man tribunal—and even here, the five must be drawn from a panel whose members have the usual qualifications of jurors, are freeholders in the District, and are not in the service of the United States or the District.)

It is contended that determination of land values requires expert analysis—that the awards of the TVA Commissioners, most of whom

have served in this capacity over a number of years, are superior by virtue of being more uniform in their judgments.

Would this argument not extend to all the other Federal agencies as well? And, could not this argument be extended to its logical conclusion by requiring that tax lawyers adjudicate estate settlements—or that a team of medical practitioners determine questions of insanity?

I would contend that landowners are equally, if not more, qualified to determine the value of neighboring lands than commissioners brought in from another area whose judgments are necessarily reliant on the TVA appraisers' initial recommendations.

Further, I believe the fair administration of justice requires a degree of responsiveness to individual circumstances—a principle which is, to some extent, compromised by the commission system's inclination toward uniformity.

Since the introduction in May 1965 of my TVA jury trial bill, I have received a tremendous volume of mail from private citizens and organizations throughout the Tennessee Valley pleading that action be taken on the measure—including the Tennessee State Legislature and Governor Ellington, the Quarterly Court of Loudon, the National Milk Producers Association, the American Farm Bureau, and the American Trials Association.

The House Appropriations Committee, in the 1966 public works bill report, contended that the TVA should review its present condemnation proceedings, and the Department of Justice has twice tried to persuade the Congress that juries shall be used in all condemnation cases.

I believe that the enactment of this legislation would be beneficial not only to landowners who feel they have legitimate grounds for contention in condemnation proceedings, but also to the Authority through promoting increased good will through mutual respect between the Federal Government and private citizens.

I feel this a high-priority legislation for all the citizens of the Tennessee Valley, and I urge you to take immediate action to favorably report this bill.

Thank you very much.

If it is permissible, I have endorsements from several groups and two or three letters I would like to submit with your consent for the record.

The CHAIRMAN. The material which includes correspondence and support for the bill also will be made a part of the record.

(The insertions referred to follow:)

MINUTES OF THE MEETING OF THE STATE COMMITTEEMEN OF THE AMERICAN TRIAL LAWYERS ASSOCIATION

Held at the Roosevelt Hotel, New Orleans, Louisiana, February 9, 1967, Richard M. Markus, Esq., Chairman, presiding; Edward B. Willing, Esq., Secretary

* * * * *

6. H. Calvin Walter, Esq. of Tennessee moved that the Board of Governors go on record as guaranteeing trial by jury in eminent domain matters. This motion was seconded by Tom H. Davis, Esq. of Texas and carried, after comments by Frank G. Schubert, Esq. of Illinois, Seymour Horwitz, Esq. of Virginia, and Richard S. Fleisher, Esq. of Illinois.

KNOXVILLE, TENN., May 8, 1967.

Hon. W. E. Brock,
House of Representatives,
Washington, D.C.

DEAR SIR: As Tennessee Chairman of the American Trial Lawyers Association, I hereby wish to go on record as supporting any legislation for providing jury trials in condemnation cases involving the Tennessee Valley Authority.

Yours very truly,

CALVIN WALTER.

STATEMENT OF THE TENNESSEE FARM BUREAU FEDERATION

We appreciate the privilege of submitting a statement to this committee and respectfully request your earnest consideration of our views on the subject of "Providing for Trial by Jury in TVA Land Condemnation Cases."

For many years members of the Tennessee Farm Bureau and other farmers have had their farms and homes taken by TVA through condemnation. This process continues today as the TVA expands its programs along tributaries of the Tennessee River. Regardless of what you may hear to the contrary, farmers of today whose lands are being condemned and taken do not like it any better than did those of former years.

When a farmer is faced with loss of his farm and home through condemnation he is often faced with long periods of uncertainty, sometimes lasting for several years. This uncertainty is something he must live with from the time the dam is first proposed through debate and approval and often until construction is well underway. When the decision to build has been made, construction underway and waters begin to impound, the farmer is faced with locating a new farm and a new home. He is faced with the search for satisfactory replacement lands for those he has lost and at a time when land values are so inflated as to place a real hardship on him. The feeling is widespread among farmers that those who wish to take the issue of just compensation to court should have the long standing "American Right" to do so and to have the issue go before a jury of their peers, who can see the witness and hear cross examination in open court.

The right to trial by jury is a precious and guarded right of the American people. It is a right that is understood and accepted as being the fair and just way to settle differences. It is generally understood that other agencies, whether federal, state or local, exercising condemnation authority must grant the right of trial by jury to the individual if he so desires. Farmers, particularly those whose farms and homes are being taken against their will, see no reason for making an exception of this right to the Tennessee Valley Authority, should the farmer desire to go to court with his individual case.

We sincerely urge this committee's recommendation and the Congress adoption of legislation to so provide for trial by jury in TVA land condemnation cases in which the individual affected might so desire it.

TENNESSEE BAR ASSOCIATION,
Nashville, Tenn., May 3, 1967.

Hon. W. E. Brock,
Washington, D.C.

DEAR CONGRESSMAN BROCK: It was brought to my attention that you had introduced a bill, H.R. 8336, which is an amendment to the Tennessee Valley Authority Act, guaranteeing to property owners the right to demand a jury in T.V.A. condemnation cases. Every lawyer with whom I have talked has expressed the strongest interest in the passage of this legislation. As a matter of fact, many lawyers who handle no condemnation proceedings were utterly amazed to learn that the landowner has no right to demand a jury in any stage of the proceedings, and that, as a matter of fact, he has no voice in the selection of the arbitrators or commissioners.

The Board of Governors of the Tennessee Bar Association considered this matter at its meeting on April 30, 1966, and has adopted a resolution favoring the passage of legislation which would amend the T.V.A. Act so as to guarantee property owners the right to demand a jury in condemnation cases involving the T.V.A.

We hope that you will be successful in insuring the passage of this amendatory legislation.

If we can be of assistance to you in connection with this matter, please advise us.

With kindest personal regards, I am

Sincerely yours,

ROBERT KIRK WALKER, *President.*

JUNE 30, 1967.

Hon. WILLIAM R. ANDERSON,
United States House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN ANDERSON: We have recently had a portion of our family farm condemned via the right of eminent domain by the Tennessee Valley Authority. The homeplace farm is located in the 2nd Civil District of Maury County, Tennessee. This area of Maury County and Middle Tennessee is very valuable farm and phosphate land, in addition to its immeasurable value to the independent and individual landowners, 51.73 acres in fee simple absolute are being taken by the Tennessee Valley Authority from the heart and center of our land which will include one primary stock pond, that portion where our tobacco is raised and a part of the most cultivatable section. Further, there is being condemned a permanent easement consisting of approximately 1.97 acres, an additional permanent easement 350 ft. wide with a net distance of 1,170.8 ft. in length and another 350 ft. wide permanent easement for a net distance of 1,641.2 ft. in length. The Tennessee Valley Authority has offered \$16,575.00 of record for this entire taking. The land is situated less than 2 miles from the City of Columbia and is in the direction of Nashville and I-65 and has railroad frontage.

Land values in Maury County, and particularly this Civil District, have for several years been extremely high and are constantly increasing. The amount offered by the Tennessee Valley Authority and the manner and methods which it employed were offensive to us as native Maury County farmers and landowners. For example, one Tennessee Valley Authority representative informed us that we would either accept their offer without question or we would all have to go to Nashville (a Federal Court exists in Maury County), hire a lawyer, both ourselves and our wives spend many days from work and still get less money. He further stated that there were three ways of taking land—(1) the right way, (2) the wrong way, and (3) the TVA way. Next, after we had employed an attorney to represent us, another representative told us that if we would accept this figure it would be more than any lawyers could get for us and that we would save the legal expenses involved.

None of us question the constitutional right of the government in acquiring land via eminent domain proceedings. All of us are aware of the constant needs of our government and the Tennessee Valley Authority for land in the interest of progress and the welfare of all our citizens. We, therefore, are not against the Tennessee Valley Authority and the many good things which it has provided the people of Tennessee. However, we are all under the impression that when land is taken through eminent domain proceedings that just compensation must be given and, then, only after due process of law. We are informed that the current methods employed by the Tennessee Valley Authority have been recognized as not violating due process of law. We do not understand it, however, since we believe that a jury of our peers, that is to say fellow Maury Countians, would be a more fair and equitable tribunal to determine land values here in Maury County.

We fail to comprehend how a Court composed of two City attorneys and one DeKalb County farmer appointed by the Federal Court as a TVA Board can make a fair and impartial finding of fact which would be equitable to the individual landowner being deprived of the use of his land.

Since the Tennessee Gas and Transmission Company and other privately owned corporations, who enjoy the right of eminent domain when the interest of the public is involved, are forced to condemn land only after a jury trial where the land is situated it is incomprehensible how the Tennessee Valley Authority as an arm of the Federal Government can condemn through its own special procedures with its own group of three judges and travelling appraisers. This would appear to be especially true in view of TVA's policy of being self-supporting and in competition with private industry.

Further, as the population in this Country increases and the needs of Government become greater as a result of the needs of the people, for recreational facilities, flood control, electrical power and industrial uses, we are sure the Government of the United States will feel an increasing need to take private property from its people. Therefore, we believe the individual should have his property rights protected by being able to request and receive a jury composed of his peers to determine the issue of just compensation.

For the above stated reasons, we, the undersigned, respectfully urge you to seriously consider and support Bill HR 4846 and its companion Senate Bill. We realize the sponsors of both bills are Republicans. We are Democrats and Republicans and some of us are either and neither and all of us feel that this is not party political legislation but rather is needed legislation for the protection of individual landowners.

We sincerely hope the voices of individuals have not been completely suppressed and forgotten or overshadowed by massive, demonstrative groups and vociferous minorities.

We remain,

Respectfully yours,

J. B. WEST, et al.¹

RESOLUTION OF THE TENNESSEE STATE LEGISLATURE

A RESOLUTION petitioning and memorializing the United States Congress to amend Tennessee Valley Authority Act of 1933 to provide that either party, in cases involving the condemnation of land by the TVA, may demand a jury to try the issue of just compensation

A Resolution petitioning and memorializing the Congress of the United States to enact legislation amending the Tennessee Valley Authority Act of 1933 to provide that the issue of just compensation may be tried by a jury in any case involving the condemnation of the real property, by the Tennessee Valley Authority, and that the Congress give consideration to the passage of H.R. 4846, on this subject.

Whereas, The principle of trial by jury is a cherished part of the system of jurisprudence of the American people and has, since the birth of the Republic, been considered as the individual's greatest bulwark of freedom; and

Whereas, In practically every statute providing for the condemnation of private property under the laws of eminent domain, the land owner is entitled to have a jury trial for the determination of the compensation to which the property owner may be entitled for the taking of the land by condemnation proceedings; and

Whereas, The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831x), is unique in that it provides for the taking of land under the powers of eminent domain by the Tennessee Valley Authority without granting to the property owner the safeguard of a jury trial, and in fact prohibits the use of a jury in such cases; and

Whereas, Under the procedure now in effect under the TVA Act the only appeal is to a three Judge federal court, or upon waiver to a one Judge federal court, where the case is tried upon the written testimony adduced before the Commissioner appointed under the Act to award damages; and

Whereas, This procedure is expensive and cumbersome and may impose undue hardship and expense upon the property owner, who in many instances may not be able to withstand such expense; and

Whereas, Legislation has been introduced in the Congress of the United States by H.R. 4846, proposing to amend said Tennessee Valley Authority Act to provide that either party to such condemnation suits may demand a jury: Now, therefore, be it

Resolved by the House of Representatives of the Eighty-fifth General Assembly of the State of Tennessee, the Senate concurring, That we reiterate our belief in the principle of trial by jury, and that we memorialize and petition the Congress of the United States to give consideration to H.R. 4846, being a bill to amend the Tennessee Valley Authority Act of 1933 to provide that the issue of just compensation may be tried by a jury in any case involving the condemnation of real property by the Tennessee Valley Authority; and be it further

¹ The foregoing letter was subscribed to by 49 additional signatures.

Resolved, That the Congress of the United States is hereby petitioned to enact into legislation a law which will guarantee to the property owner whose land is being taken by condemnation proceedings by the Tennessee Valley Authority the right to trial de novo before a jury, when the demand for a jury is made within the time and in the manner provided by law ; and be it further

Resolved, That a copy of this Resolution be furnished to each member of Senate and the House of Representatives of the United States.

RESOLUTION OF THE MARION COUNTY BAR ASSOCIATION

Whereas in 1933 Section 25 of the Tennessee Valley Authority Act provided that right of ways, land acquired by the Tennessee Valley Authority should be handled by commission appointed by the Federal District Court in the district wherein the said land was to be acquired, etc. ;

And whereas most governmental agencies today who acquire land under Eminent Domain are normally afforded a right of trial by jury to the individual whose property is being condemned ;

And whereas trial by jury has been a traditional American concept in this nation since its inception and the beginning of the common law and the use of the common law in this nation ;

And whereas there is now pending before the United States Senate Senate Bill 1637 and now pending before the House of Representatives House Bill 4846 which are identical bills for the purposes of granting right to trial by jury in Eminent Domain proceedings involving the Tennessee Valley Authority.

Now therefore we the undersigned members of the Marion County Bar Association practicing in Marion County, Tennessee within the limits of the Tennessee Valley Authority area do hereby endorse said bill above mentioned and urge the Congress to pass and permit the use of a jury in Eminent Domain proceedings involving the Tennessee Valley Authority.

RESOLUTION OF THE FRANKLIN COUNTY QUARTERLY COURT

Whereas, the Tennessee Valley Authority is currently constructing Tim's Ford Dam and reservoir in Franklin County, Tennessee, and

Whereas, said project will result in the condemnation of real estate belonging to many of the good citizens of Franklin County, Tennessee, which real estate in most cases represents the life long efforts of its owners, and

Whereas, the Franklin County Quarterly Court realizes that the Tims Ford Project will greatly benefit the people of Franklin County and this area, and contribute to its economic development, but this Court further believes that citizens and landowners of Franklin County, Tennessee, are entitled to be justly and reasonably compensated for their real estate taken by the Tennessee Valley Authority for the construction of this project, and that these landowners should not be made to suffer for the benefit of the remaining citizens of this county, and

Whereas, due to the high land costs in Franklin County, Tennessee, and the surrounding area, most of the persons displaced by the aforesaid project are finding it difficult or impossible to replace their property taken by the said project at any price near what they are being paid by the Tennessee Valley Authority, and

Whereas, all local and state government authorities in the State of Tennessee can condemn real estate only through the legal process of a jury trial, but such is not the case with the Tennessee Valley Authority : Now, therefore, be it

Resolved by the Quarterly Court, That this Court is strongly in favor of the Tennessee Valley Authority being required by the Congress of the United States of America, to undergo a jury trial in order to condemn real estate for its various projects including the Tims Ford Project in Franklin County, Tennessee, and the Franklin County Quarterly Court sees no valid reason why the Tennessee Valley Authority should be given preferential treatment in this respect, in comparison with other governmental agencies, and

RESOLUTION OF THE LOUDON COUNTY QUARTERLY COURT

Whereas, it appearing that in condemnation proceedings of the Tennessee Valley Authority, the value of the land so condemned is determined by a three (3) man board appointed by the condemning authority; and

Whereas, it appearing that Congressman William E. Brock of the Third Congressional District of Tennessee, has introduced a bill in Congress to provide that a twelve (12) man jury will be empaneled to determine land values in such condemnation proceedings; and

Whereas, it is believed that the contemplated change in condemnation proceedings is equitable and proper, be it therefore

Resolved, That at its October Term, 1966, the Quarterly County Court for Loudon County, Tennessee, approve the passage of the aforementioned bill by the adoption of the within Resolution, a copy of which shall be forwarded to Congressman William E. Brock.

RUTHERFORD COUNTY FARM BUREAU,
Murfreesboro, Tenn., May 30, 1967.

Congressman WILLIAM BROCK III,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN BROCK: We would like to take this opportunity to thank you for introducing Bill H.R. 4846 in the House of Representatives.

We feel this bill will be very beneficial to farmers and other property owners. We feel that property owners should always have the right to ask for a jury trial where their land has been condemned.

If we can be of service to you in helping to get this bill passed, please feel free to call on us.

Very truly yours,

JAMES B. HAYNES, *President.*

CHEATHAM COUNTY FARM BUREAU,
Ashland City, Tenn., June 16, 1967.

HON. HOWARD BAKER,
Washington, D.C.

DEAR SENATOR BAKER: The Board of Directors of Cheatham County Farm Bureau request your support for the bill which would permit a hearing by jury in regard to land condemnation for TVA purposes.

We feel this is necessary in order to fairly protect and preserve the valuable farm land remaining in our State.

Sincerely,

MARVIS ELLIS, *President.*

[From the Knoxville Journal, Feb. 8, 1967]

JURY TRIALS A SOLUTION

Last week Rep. William E. Brock, of the Third Congressional District, re-introduced a bill which would require jury trials in land condemnation cases involving the Tennessee Valley Authority. Representative Brock introduced this same bill in the last session of Congress but it was not enacted.

Under the existing law, as represented by the original TVA Act, any landowner whose property is to be acquired by TVA does not, according to the record, have much choice other than to accept whatever evaluation TVA's appraisers may place upon it. The only place that the seller may go on appeal is to a three-man commission named by a federal judge. This commission has more times than not affirmed TVA's original appraisal.

It was this restriction of appeal action by landowners which resulted in a rash of charges, during the years in which land in the Tennessee Valley was being acquired by the authority, creating the conviction that individual citizens were being mistreated.

The feeling among those who had their land taken at what they considered less than real value was that the commission was a creature, in effect, of TVA and thus the authority was suspect of being in the dubious position of acting as prosecutor, judge and jury, in passing on prices paid to landowners.

In a nutshell, the Brock bill would require TVA, if it decided upon condemnation proceedings to acquire a citizen's land, to bring action in the US district court for the district in which the land, easement, right-of-way or other interest or any part thereof is located. The court, of course, is also given the right to divest the property owner of his property and to place it in the name of the United States.

This bill is in no sense an anti-TVA measure. The truth of it is that, if Brock could get his amendment enacted, many of the headaches of the agency's land acquisition division would be eliminated.

The Brock bill is pertinent to the current situation because the authority faces the necessity of acquiring thousands of acres in both the Tims Ford and Tellico Dam reservoirs. Certainly the percentage of necessary condemnations is likely to be greater at this time than it was when the authority originally undertook its land acquisition program in the early 1930s. It would seem to us that TVA would welcome, rather than oppose, the passage of this measure.

MAURY COUNTY FARM BUREAU,
Columbia, Tenn., June 28, 1967.

HON. HOWARD H. BAKER, JR.,
United States Senate,
Washington, D.C.

DEAR SENATOR BAKER: We are very much interested in your Senate bill which will permit a land owner a trial by jury where TVA may condemn land.

As you know TVA is planning a dam on Duck River in Maury County and we certainly appreciate your interest in the land owner and trust you will be able to get this bill passed.

The board of directors also would like to ask you to oppose H.R. 4769 extending the National Relations Act to Agriculture, also the proposed rules announced by U.S. Labor Department in limiting things young farm workers may do while working on the farm.

With best regards,

MANSON MORROW, *President.*

FEDERAL LAND BANK ASSOCIATION OF WINCHESTER,
Winchester, Tenn., September 27, 1967.

HON. BILL BROCK,
Washington, D.C.

DEAR CONGRESSMAN BROCK: I note with much interest the hearing by the "Senate Public Works Committee" on the T.V.A. land Condemnation Bill.

You might recall previous correspondence relative to the taking of an easement by T.V.A. across my farm in Marion County. This writing will bring you up to date on recent occurrences that bears out further unfairness to land owners on T.V.A.'s acquisition of properties.

T.V.A. is taking a two hundred foot right of way to construct a transmission line across my farm.

This easement runs parallel with a fifty foot easement condemned by East Tennessee Natural Gas Co. for the laying of a pipe line, eighteen years ago. A jury in the Circuit Court of Marion County awarded me \$2,000.00 for the taking of the fifty foot easement. I have been notified by letter from T.V.A. that condemnation proceedings were being instituted on the taking of the two hundred foot right of way offering me \$925.00 for the easement.

I have contacted three different attorneys in an attempt to set up a defense in the proceedings, each have told me that any efforts to defend the case would be worthless, and advised me to take what was offered, despite the fact that I have three very reliable men that would testify to the fact that my property would be damaged by the taking, at least \$3,000.00.

I trust that the bill will get favorable action by the Congress, as it is indeed a very bad situation when property can be taken for public use under the present T.V.A. law, that has been badly abused by T.V.A. to the extent that people are not able to employ council in condemnation proceedings.

Thanking you for your interest in this and other matters pertaining to the welfare of the people.

Very truly,

C. S. SHELTON.

WHITWELL, TENN., May 24, 1967.

Congressman WILLIAM E. BROCK,
Washington, D.C.

DEAR SIR: I wish to express my appreciation for you introducing the bill in Congress which will permit a person to have the right for a jury trial in condemnation cases involving the Tennessee Valley Authority.

T.V.A. is now in the process of taking a 200 ft. right of way through my farm. They have informed me that they make one offer and if I don't like it, they will take it anyway. They are making a circle through good farm land to avoid going across the mountain.

They say that they will pay damages, but I received damages from another power line through my property approximately 5 years ago. I reported it to them and they told me that they would check my claim. They never showed up in the 5 years. When they started taking right of way for the new line, I asked them about it. They sent a man out to check. He told me that he realized I had been damaged, but it had been so long that they could not pay damages.

This is the kind of dealings most people are having with the Tennessee Valley Authority.

Your truly,

JOHN H. PRIGMORE.

FIRST NATIONAL BANK,
Lenoir City, Tenn., April 22, 1967.

Mr. AUBREY J. WAGNER,
Chairman, Tennessee Valley Authority,
Knoxville, Tenn.

DEAR MR. WAGNER: I am most distressed to have to write you a letter of this nature.

On December 3, 1965, I entered into a contract and purchased six acres of land on which were a small dwelling house and other improvements, this property being located approximately one-tenth mile south of Fort Loudoun Dam and situated about one hundred yards west of new state highway 95. My purchase price was \$6,000.00.

None of T.V.A.'s appraisers has approached nor contacted me about buying this land for the Tellico Project. Last Thursday a Mr. Woodard, a land buyer for T.V.A., came to my office and offered me \$4,100.00 for the above mentioned property.

Mr. Wagner, my experience in the purchases and sales of several dozen pieces of property on the south side of Fort Loudoun Dam during the past eight years shows this appraisal is not commensurate with the fair market value of property in this immediate area. I am not referring to lot values in the four area subdivisions (Fort Loudoun Estates) but rather using comparable property sales.

I talked with Mr. Woodard about three hours concerning TVA's land acquiring procedure. And what really disturbs me is Mr. Woodard's inference that TVA does not use the market value approach; but, bases it's valuation on what their appraiser feels the value should be and not what the market will pay for the property. He said much emphasis was placed on soil types and indicated that very little consideration was given to location. He told me that there was practically no value at all to my buildings that I could move the buildings myself if I choose; but that TVA would give me \$50.00 more if I chose to let them have the buildings. You see, I consider my house and other buildings to be part and parcel of this real estate in question. Mr. Woodard further said that people's chances are better if they take TVA's first and only offer rather than coming to your three-man review commission to contest their offer. He said that about 70% of the cases appealed get less money. Mr. Wagner, I feel that TVA is too clean of an agency to peddle this type dope.

I sat in your office over a year ago as a director in the Tellico Tri-County Development Association and heard you, in effect, say the taking of land for the Tellico Project will be a forced sale and TVA will see that the land owners connected will get a fair price for their property if this project is approved.

I do not intend this to be a censure, but I would appreciate your immediate review of this aspect of your operation; and I will, in the interest of better community understanding, be happy to talk with you further in person about this matter if you will grant me the time.

Your very truly,

WILL A. HILDRETH.

MARYVILLE, TENN., May 24, 1967.

DEAR MR. BROCK: The T.V.A. brought our contract for our property Monday. We can not relocate our dairy on their price. Their price is \$73,700.00 for our 117 acres, which is located real well on the Ol Nile Ferry Highway just off 411 Highway. The L.N. railroad is between the two Highways. They say our soil is real soil. We feed 68 head of dairy cattle on it. They say our buildings are real good buildings. Two big barns, one 12 cow milk barn, 5 room tenant house, our house is a modern home with furnace heat and it has 8 rooms and granary, and three other buldings that isn't as big as these. We ask them to relocate us for that price and they said we can't do it.

They said they hoped we signed the contract for if we had to go before the three judges they would be mighty cold toward us.

Mr. Brock, is there a law that they can take our land that way? I don't believe the railroad will be put through our place like they staked it off for they just quit beside the farm joining ours they just want the right of way from it. The T.V.A. surveyors said there wasn't any water that would be on us. Can you tell us what we can do? We have no one to turn but you.

Yours truly,

BOB FALLENT.

P.S. I forgot two big silos are on the farm too. They ask us \$1,000 per acre for places that doesn't look near as good as ours.

CHATTANOOGA BAR ASSOCIATION,
Chattanooga, Tenn., July 24, 1967.

HON. BILL BROCK,
Washington, D.C.

DEAR CONGRESSMAN BROCK: On June 27, 1967, the Board of Governors of the Chattanooga Bar Association unanimously passed a Resolution endorsing H.R. 4846, a certified copy of which is enclosed herewith.

A copy of this letter together with a certified copy of our Resolution is being mailed to each member of the House and Senate Committees on Public Works.

We hope that you will be successful in having H.R. 4846 passed in the House and that Senator Howard H. Baker, Jr., will be successful in having his identical Bill passed in the Senate.

Very truly yours,

H. THEODORE MILBURN,
Secretary and Treasurer.

RESOLUTION OF THE BOARD OF GOVERNORS, CHATTANOOGA BAR ASSOCIATION

A resolution endorsing H.R. 4846, being a bill to amend the Tennessee Valley Authority Act of 1933 to provide that the right to trial by jury on the issue of just compensation may be invoked by either party in any case involving the condemnation of real property by the Tennessee Valley Authority

Whereas, the principle of trial by jury is a cherished part of the system of jurisprudence of the American people and has, since the founding of the Republic, been considered the greatest bulwark of freedom of the individual; and

Whereas, the right to demand a trial by jury is generally available under the laws of eminent domain of the State of Tennessee and of the United States of America; and

Whereas, the Tennessee Valley Authority Act of 1933 is unique in that it provides for the taking of private property under the powers of eminent domain by the Tennessee Valley Authority without granting to the property owner the safeguard of a jury trial, and in fact prohibits the use of a jury in such cases; and

Whereas, under the procedure now in effect under the Tennessee Valley Authority Act the compensation which the landowner will receive in such cases is determined by a three-man commission, with no right of appeal to a jury trial at any time; and

Whereas, it has been recognized in the federal courts that, aside from other objections, referring condemnation cases to a commission "tends unduly to prolong the proceedings, thereby causing vexation to all concerned and additional expense;" and

Whereas, legislation has been introduced in the Congress of the United States in the form of H.R. 4846, now pending before the Committee on Public Works, proposing to amend said Tennessee Valley Authority Act to provide that either party to such condemnation proceedings may demand a jury to determine the compensation to which the landowner may be entitled for the taking of his land; Now, therefore, be it

Resolved by the Board of Governors of the Chattanooga Bar Association, in regular meeting duly assembled, That we reaffirm our belief in the principle of trial by jury, and that we hereby accordingly endorse H.R. 4846; and be it further

Resolved, That a copy of this Resolution be furnished to each member of the Committee on Public Works of the United States House of Representatives.

HOUSE OF REPRESENTATIVES,
STATE OF TENNESSEE,
Nashville, August 3, 1967.

HON. JENNINGS RANDOLPH,
Washington, D.C.

DEAR SENATOR RANDOLPH: This letter does not deal with my usual subject of Public Lands Highways Funds, but rather with legislation now pending before the sub-committee of the Public Works Committee which would amend the TVA Act to permit a trial de novo before a jury upon appeal, by either party, from the Commissioners' award in TVA condemnation cases. This is the only instance, of which I am aware, where an agency or branch of government can condemn a land owner's home, farm or business without allowing him the traditional right of Americans to a trial by a jury of his peers.

The Legislature of this state by unanimous action, the Bar Association of this state, the Farm Bureau of this state, and many other organizations in Tennessee have passed strong resolutions urging the enactment of such legislation and, if necessary, also urging that a public hearing be had in the Tennessee Valley. I was the author of the Resolution in the Tennessee Legislature, a copy of which is enclosed, and all of us would appreciate your help in bringing this wholesome legislation to the floor and passing it.

I remember with pleasure and pride my appearances before your committee, and your very great assistance in increasing the Public Lands Highways Fund for certain approved projects, one of which was the Tellico Plains-Robbinsville Road connecting Tennessee and North Carolina. We have not yet been advised of allocations to continue this project, but I am hoping that Mr. Turner, of the Bureau, can soon make this allocation.

Sincerely yours,

W. E. MICHAEL.

WOOD RIVER, ILL., October 2, 1967.

HON. JENNINGS RANDOLPH,
Washington, D.C.

DEAR SIR: Please use your influence and your vote to promote *early* passage of the Baker-Brock legislation (H.R. 4846) which provides that the issue of just compensation may be tried by a jury in any case involving the condemnation of real property by the Tennessee Valley Authority.

This legislation is urgently needed *now* to protect the resident land owners in the Land Between The Lakes in Kentucky who are now receiving condemnation orders. These people have no opportunity to litigate in seeking just compensation but are forced to accept whatever representatives of TVA may offer. Few people are offered compensation for their land within range of current real estate prices in the area but are obliged to relocate their homes at a loss.

Many of the people involved are living on limited or fixed incomes. Sir, they are widows, veterans, retired farmers and retired and aged citizens from adjacent states who have purchased retirement homesites from TVA in the 40's. Most of the people who are native of the area have already moved their homes as many as five times in the past twenty-eight years because of land acquisition by the Department of Interior, the Corps of Engineers, and by the Tennessee Valley Authority. The area of land remaining in private ownership represents all

that remains of a life of hard work to many of these people. They had invested in land with hope that they could live in their home, independent and self-supporting in their twilight years. With each project of the government agencies involved the land has been taken leaving less available for replacement. The bit that is yet held is highly revered. Sir, not for speculation but because these people love the seclusion of the area, the wildlife, the songbirds which feed from their window sills and the awe inspiring forested hills which mean America and home to them.

If they must be evicted to make way for the so called "experiment in recreational area development" *please, please* see that they are compensated in a manner through which they can relocate in surroundings which are as comfortable as those from which they are removed. Under present TVA land acquisition policies these people are not compensated adequately in many cases for a home, and meadows and forested acreage to buy a very shabby house on a fifty foot lot in a village. They are unable physically or financially to plead their case before Congressional Committee yet they are being forced to leave the area and into debt to accommodate the recreational needs of campers and paying guests of the area under the auspices of TVA.

Sir, may I ask, will these people be allowed to return to visit the cemeteries of the area without paying an entrance fee or will the graves be removed to the communal cemetery in another county as in the past? I do not mean to sound presumptuous or disrespectful but these are some of the matters which bear heavily upon the aged people who are involved.

Your kind consideration will be appreciated.

Very sincerely yours,

JEWELL RAMEY DOLES.

Mr. BROCK. Thank you very much. To summarize, I would like to point out very simply that in my opinion the right to a jury trial is so basic to our legal system in a free society that its exemption in this one instance almost has to be a case of inadvertence on our part.

We have a situation where virtually every Government agency in this land uses a normal jury trial procedure with the exception of the Tennessee Valley Authority. The problem that is created by the commission system which is now used is that it, in many cases, places an intolerable burden upon the small property owner.

If he wants to appeal the commission's report he can take his case to the Federal district court and be tried by one to three judges, but he still can't demand a jury trial. He must pay for appraisers' fees, a written transcript of the proceedings before the commissioners, employ an attorney, and travel at his own expense to the courthouse, while the entire bill incurred by the TVA is paid by the taxpayer.

Obviously, these costs placed on a small property owner place him at a tremendous disadvantage. This fiscal year of 1967, TVA acquired 45,000 acres. The estimates are that the acquisitions will be considerably larger than that next year. Why is it the TVA is the only Federal condemnation agency, with one minor exception, which expressly prohibits an appeal to a trial by jury?

The only exception is the District of Columbia, which, under the District Code, is permitted to conduct condemnations before a five-man tribunal—and even here the five must be drawn from a panel whose members have the usual qualifications of jurors, are freeholders in the District, and are not in the service of the United States or District.

It seems to me that this legislation is basic not only in the sense of protecting the small property owner, but in the sense of protecting the public relations of the Tennessee Valley Authority itself in their dealings with the people of our valley.

Senator, I will conclude with that summary, if I may, and be delighted to answer any questions you might have.

The CHAIRMAN. Thank you, Representative Brock. I would like to speak for two Senators at this point. As you know, a Senator should be very careful about speaking for another, but Senator Young of Ohio and the chairman of this committee voted for the Tennessee Valley Authority in 1933.

There are perhaps only 10, not more than 12, Members of the Congress now serving either in the House or the Senate who were here on Capitol Hill in 1933. That would be a matter of documentation, Senator Baker, but it won't be over a dozen Members who were here then to support this legislation.

I felt that it was a good vote. Steve, did you think it was?

Senator YOUNG. One of the best I ever made, and I made a lot of them.

Mr. BROCK. If I might comment, Senator, my grandfather was in the U.S. Senate from 1929 to 1932 and a member of your party and, I believe, that he introduced the precursor of the first TVA Act, a \$35 million bill for dam construction on the Tennessee River. I commend you for this support. We are very grateful to you in the Tennessee Valley.

The CHAIRMAN. I believe in programs of these types. This is evidenced by my interest in the Appalachian Regional Development Act and other legislation which seems to strike directly at the problems of certain areas and provide for those areas opportunity to participate more fully in the developing economy of our Nation.

It is in that spirit that I voted at that time to strengthen the Tennessee Valley through this act.

Senator BAKER. Mr. Chairman, in that connection, if I might be permitted to exhibit my own credentials in this respect, and since Congressman Brock pointed out with some pride, and properly so, that his grandfather was in the U.S. Senate in your party, Mr. Chairman, at the time of the genesis and beginnings of TVA, I would like to take some comfort from the proposition initially that Congressman Brock and his grandfather of the other party, I think, symbolize the bipartisan support that TVA has grown to receive over the years and to also point with pride to my own father's contribution in the matter of the enactment of a TVA self-financing bill in the 1950's. So I might make it very clear, as you already know, Mr. Chairman, that the purpose of this bill has nothing to do with our evaluation of the relative merits or desirability of the Tennessee Valley Authority.

We all subscribe to the theory. We are all proud of the accomplishment. We are all prideful of the idea that the concept of coherent regional development has taken root in other forms such as the various regional commissions pioneered by the Appalachian Commission under your leadership, Mr. Chairman.

The CHAIRMAN. Thank you. Senator, we wish to note the presence of other Senators this morning. There are Senator Young and, of course, Senator Cooper, and Senator Spong, and Senator Jordan of North Carolina, and we have others who hope to join us to hear the discussion of this subject.

Senator Cooper, I know you have a commitment that you must keep and we would like to accommodate you at this time with such comment that you desire.

Senator COOPER. I will comment, and perhaps my comments will lead to some questions, and answers by our distinguished witnesses.

I must leave here at 20 minutes to 11. However, I wanted to attend this hearing not only because the TVA is an agency in which my State has a great interest, but because I think this is a very important and interesting question.

I would like to take the opportunity of introducing to the committee, before I go, three witnesses from Kentucky who will testify. First, I will introduce, as I should, Mrs. Corinne Whitehead, who lives in the area and who has previously testified before our committee. Then the Honorable Shelby McCallum, who is speaker of the House of Representatives in Kentucky. I don't think I need tell you we are not of the same political faith, but, nevertheless, I don't know of anyone in Kentucky for whom I have higher regard—for the speaker's ability, character, and citizenship. Third, Mr. James Story, who is county attorney of Lyon County, Ky., one of the counties in Kentucky which is in the TVA area.

We are very happy to have you. Before I do leave I want to pose some issues which I hope you will have the opportunity to speak to, and which I hope also the committee will develop.

I think I am correct in saying, as Congressman Brock has just said, that with respect to the procedures followed in the taking of land, the procedure of the TVA differs from that used by every other Federal agency.

Mr. BROCK. That is correct, sir.

Senator COOPER. The usual procedure for Federal agencies, in Rule 71A, with which all of you are familiar, does give to the person whose interest in land is being acquired the right to ask for a jury trial, to be decided by a court. The court could appoint commissioners, but the point is that the one whose interest in the land is being taken can ask for a trial by jury.

I think there is another distinction between the procedure used by TVA and that followed by all other agencies. That is in the choice of appraisers. The Federal court in any other taking can establish criteria for the appointment of the appraisers who visit the land and make a valuation of the land, but under the TVA Act, it is required that those appraisers or commissioners shall be from outside the locality.

One of the questions I would like to direct to those who represent the TVA, and which I hope will be directed if I don't have the chance, is to give their views of the relative importance of having appraisers who live outside the area and those within the area—or to put it another way, the value of depending upon the testimony of witnesses within the area who know land values there.

It has been argued of course that, if appraisers come from outside the area, they will be more independent, more impartial. But again, I go back to the point that in all cases except this, we depend upon the judgment of witnesses within the area.

Finally I would like to know what it is about a trial by jury which is considered repugnant—what is it that requires TVA to insist, as it is insisting, upon procedures which are different from those used by every other agency of the Federal Government?

The Corps of Engineers, the Department of the Interior, and the Department of Agriculture acquire land for river development, for reclamation, parks, and national forests. They use the procedure which gives the defendant the right to ask for a trial by jury.

I remember in the 1930's the Department of Agriculture, through its Forest Service, took hundreds of thousands of acres in Kentucky to create the Cumberland National Forest, now called the Daniel Boone Forest.

My own thinking about this—and I don't want to prejudge the issue, but I don't think it is going to be upset—is that every person whose interest in land is taken ought to have the right to ask for a determination by a jury of his own peers to establish the land valuation. I will cite another reason which leads me to this belief.

I think one of the greatest necessities, in the contact between the ordinary citizen and the Government, is that he must feel that he has his day in court. I do not mean to imply by that that the TVA or any other agency would misuse its power. But whether or not it does misuse it, it is essential in my view that the ordinary citizen believe it has not misused it and that he is not the subject of the power of the Government. So I must say I think I have already decided my position. I have decided it. I want the TVA to use the same procedure that every other agency of the Government uses.

Today, if the TVA has any reason why it insists upon maintaining a separate procedure, I would like to hear the argument which leads them to that insistence. I have to leave soon, but I wanted to give my views in the hope that this that would be of some help in examining the witnesses.

Senator YOUNG (presiding). Thank you, Senator. May I make an observation now because I must leave for another meeting shortly.

Very definitely I have an open mind on this and my mind will continue to be kept open. I want to hear all of the witnesses, and those that I do not hear I intend to read the testimony of, and I will be present later when we on the committee discuss this.

I feel that the TVA is one of the great legislative landmarks in the history of our country. It is one of the achievements of the administration of Franklin D. Roosevelt that will endure forever to his credit. I am very proud that I not only voted for it at its inception, but throughout all the time I was serving as Congressman at large from Ohio I invariably voted in support of all the appropriations and all legislation which was helpful to the operations of the TVA.

I am much impressed, I may say, by the testimony of our colleague, Senator Baker from Tennessee, and I noted that while he is the author of this proposal, he very frankly stated that the TVA land condemnation cases in which equity has not been achieved are probably quite rare and that he cannot point with certainty to even one case.

At the outset my mind is entirely open. I have some misgivings about this and I am going to weigh them very carefully. To be sure, the right of a trial by jury is one of the most sacred rights in our laws. I can say that as a fellow who practiced law and was a trial lawyer, not a corporation lawyer, but a trial lawyer, in my State of Ohio or more than 40 years. I was chief criminal prosecuting attorney of Cuyahoga County. I have participated in many, many condemnation cases, and TVA in taking land over I assume in many instances acquires tremendous tracts of land.

It isn't taking some little farm and so forth. A great advantage of the trial by jury in an ordinary case, and ordinary civil damage suit, is that the jurors have the opportunity of seeing the witnesses and judging from their appearance and their manner of testifying, what credibility they will give to the testimony of those witnesses.

It is extremely important in criminal cases, of course, where there must be unanimity on the part of jurors in reaching what we consider a just verdict.

Now, I assume it will be somewhat the same here. If this bill is enacted into law we are going to have some law firms handle cases, and my law firm handled cases where we were fighting condemnation, wanting to get all the money we could for the clients we represented, and we had our expert witnesses who would testify right along for our side of the case. That is obviously going to happen here. The personal lawyer of the little landowner will probably in the end secure some knowledgeable law firm with experience in this field to participate and have their appraisers and so forth come in and testify to get all they can. That is all right. I want every property owner to be dealt with fairly.

On the other hand, I want this great agency of which we are so proud to also be accorded proper treatment, and we like to feel that U.S. judges, who are nominated by a President, and confirmed in the Senate, are very outstanding lawyers and become jurists of absolute integrity.

There may be something wrong with the present procedure. That is why I want to hear all the testimony and not just make a blanket statement on this highly technical matter.

While I have the utmost faith in the right of a trial by a jury and it is a sacred right, there may be some aspects of it that we ought to take into consideration, and I have some skepticism about the necessity of this legislative proposal.

I have read the procedures here and I want to hear testimony, if there is testimony available, why the present procedure is not good and should be supplanted. That is all I have to say, except over the years I have found that change is not necessarily reform, and, therefore, I will want to know in this case whether change is really reform.

I know that my colleague feels very strongly in favor of this proposal. He made a fine statement here and I don't want to be unfair by picking out one spot in it. However, if under the present system

of condemnation, equity has been achieved in practically all the cases, in all that he knows of, I am not sure that equity will be achieved in reality by having 12 persons picked up as jurors and selected to pass on it.

So I will take an inquisitive attitude at the present time and keep my mind open.

Thank you.

The CHAIRMAN. Thank you, Senator Young.

Senator Jordan.

Senator JORDAN of North Carolina. I have no questions.

The CHAIRMAN. Senator Spong?

Senator SPONG. I would like to ask just a few.

Congressman Brock, I am sorry I wasn't here when you spoke earlier. Perhaps this has been covered either by you or Senator Baker. With respect to the selection of the three commissioners who initially hear the person who is not satisfied with the price offered, how are they appointed? Is there a list in which counsel for the landowner participates? Does counsel participate in the formulation of that list before they are selected?

Mr. BROCK. Not to my knowledge, Senator. They are appointed by the district court and serve for an extended period of time. There is no option insofar as the landowner is concerned.

Senator SPONG. Is there any uniform procedure among the district courts involved? Do they have a standard list from which three commissioners are chosen?

In other words, you don't have the same three commissioners hearing all these cases, do you?

Mr. BROCK. Yes, sir; as far as I know the three commissioners have been serving for quite a time.

Senator SPONG. They appoint three people to hear all these cases?

Mr. BROCK. That is correct.

Senator BAKER. Mr. Chairman, if I may interrupt, and if the Senator from Virginia will yield, it is my understanding that, unlike the provisions for condemnation for the District of Columbia where there are five jurors, so to speak, chosen from a special box at random, that is not the case in the TVA commissioner system, but rather the three commissioners are appointed by the court and do in fact hear all of the cases.

Senator SPONG. Hear all of the cases. I am grateful for that information. May I ask one other question?

Among the State agencies in Tennessee; for example, the highway department, what is the procedure for condemnation there? Is there a trial by a jury for eminent domain proceedings in Tennessee for a highway take?

Mr. BROCK. Insofar as I know that is the case in every instance. I don't know of any exception.

Senator COOPER. In the taking for highway purposes in the State, I believe you have a different situation. It is done by the State itself rather than the Federal Government, you see, because the funds are made available to the State. I know in my State, the State highway

department files suit and the county court appoints appraisers. These appraisers, fix a valuation, and then if either party disagrees they can appeal it to the circuit court where there is a trial by jury.

Senator SPONG. I know that there are some distinctions, but I am interested in the general procedures in the State of Tennessee.

Senator BAKER. Mr. Chairman, I can answer that point if you will forgive me for letting the lawyer in me come out. In Tennessee there are a variety of statutes under which the State highway department or the State itself can condemn and take. In a situation involving highways there are two that are most frequently involving highways there are two that are most frequently used. One is the eminent domain procedure of long standing in Tennessee in which there is first a five-man jury of view, but the jurors are selected at random and appointed by the judge of initial jurisdiction, ordinarily the circuit judge.

An appeal lies from that five-man jury of view to a 12-man jury for trial, "in the usual way." That is de novo before a 12-man jury. In a more recently enacted statute, primarily to accommodate the requirements of the Interstate Highway System, there is a provision for initial appraisal by the highway department, the tender of the appraised value of the property sought to be taken to the clerk of the court, the issuance of a writ of possession, and then a trial before a 12-man jury in the ordinary course of affairs.

So in each instance I believe I can say with complete accuracy under the various eminent domain statutes in Tennessee involving public service corporations or the State itself that there is access to a jury trial.

Senator SPONG. Thank you very much. That is all.

The CHAIRMAN. Thank you, Senator Spong and Senator Baker. Thank you, Senator Cooper. I know you have to go to another committee assignment.

Is there further testimony, Representative Brock, that you would desire to present to the committee?

Mr. BROCK. No. Thank you very much, Senator. Again I would like to express my gratitude as at the outset of this hearing, and I am very appreciative of your consideration.

The CHAIRMAN. Senator Young.

Senator YOUNG. Congressman—and if you can't answer this question we have a lawyer here who can—when a U.S. district judge appoints these three commissioners, do they serve at the pleasure of the judge, or for certain terms, or what is the custom? How long do they remain in active service as a rule?

Senator BAKER. Mr. Chairman, I must say I am not certain. It is my impression that they serve at the pleasure of the U.S. district judge, but I confess I have not examined that particular point.

Senator YOUNG. And have you personal knowledge of complaints against the judgment of those commissioners? Of course we lawyers always find fault.

Senator BAKER. As Justice Holmes said one time, and while I have great respect for Justice Holmes, I respectfully disagree with this comment, "Lawyers spend their time shoveling smoke."

The CHAIRMAN. He was talking about the air pollution problem. Senator BAKER. He was talking about other laws, but in answer to your question, I asked my staff to review our files for letters that were in no way solicited by us with reference to this procedure.

I have received more than 100 letters from people in Tennessee who are dissatisfied with the present procedure.

I have selected about 20 from that group that are not duplicates of those placed in the record by Congressman Brock.

These are letters which are spontaneous and to the authors of which we have given no advice, nor had any previous contact with them, dealing with alleged unhappiness with the commissioner system in TVA land acquisitions programs.

Now, I would say this, Mr. Chairman. Some of these letters, a few, run to the emotional side and some of them make allegations which in my judgment are not sound, and I introduce them only with the full understanding that I do not share the views expressed in these letters in every instance.

I offer them only in response to the Senator's question as to whether we have heard of discontent with the commissioner system in the TVA land acquisition programs so with that understanding, Mr. Chairman, and if there is no objection, I will offer these letters en bloc.

The CHAIRMAN. Yes, we would want to study the correspondence because it would be, regardless of its approach, a cross section of thought of your constituency.

(The letters ordered printed are as follows:)

JOHNSON CITY, TENN., *October 6, 1967.*

HON. HOWARD BAKER, JR.,
U.S. Senate,
Washington, D.C.

MY DEAR MR. BAKER: My family and I live on our farm that is located approximately three miles Northeast of Johnson City.

Recently, the Tennessee Valley Authority chose to condemn a transmission line right-of-way across this property. I am sure that you are familiar with the procedures, and authority that the TVA has at its disposal to acquire privately owned property. It has come to our attention that you have introduced legislation to help protect the property owner. We believe this to be a step in the right direction and commend you for this.

Several people who have viewed the situation here are in agreement. They believe the TVA's actions pertaining to this right-of-way crossing our property are completely unreasonable, and a display of injustice.

On the day before yesterday, a person approached me and stated that the TVA was going to build another transmission line across our property (our property is already burdened with four TVA transmission lines and rights-of-way). "Would I grant permission for them to come on the property to make surveys?" After questioning this individual about the proposed transmission line, I could not grant the requested permission.

Honorable Sir, we are only ordinary folk. We believe that the Congress does not intend for the authority it has granted unto the TVA to be used in the abusive manner that it is being used, and we invite your able assistance in rectifying the wrongs that have been done. I will greatly appreciate the opportunity of explaining our situation in more detail.

Sincerely,

J. L. ALLISON.

SOUTH PITTSBURG, TENN., *April 29, 1967.*

HON. HOWARD H. BAKER, JR.,
Senate Office Building,
Washington, D.C.

DEAR HOWARD: I note with great pleasure in the morning paper that you have introduced a companion bill to Bill Brock's to allow us trial by jury for TVA. I am wondering at what time during this session we might reasonably anticipate its passage. We are currently deeply involved here with their transmission lines and taking of property in Marion County and a lot of people have expressed a lot of interest in this bill.

I have had several very good Democrat friends call me today and asked about the transmission lines and when I mentioned that we have our two Republicans pushing to give us a break they are all for it and for you and Bill. Please give me some estimate if you might when we might anticipate passage so that we can know how to stall or what we have to do to hold TVA in abeyance until such time as we can get twelve men to set our values.

I think you are doing a mighty fine job up there and all reports locally are favorable. Keep up the good work, as I remain,

Very truly yours,

WILLIAM M. ABLES, JR.

CATE REALTY CO., INC.,
Knoxville, Tenn., *May 7, 1967.*

Senator HOWARD H. BAKER,
Washington, D.C.

DEAR SENATOR BAKER: Thanks very much for your letter to me May 1. You and Representative Brock can do a great service for the people of the Valley by seeing that the T.V.A. Act is changed. The previous three-man commission served T.V.A. for more than twenty years. Many of the appraisers used by T.V.A. likewise served T.V.A. for many years. The power T.V.A. has held over the commission and appraisers is unbelievable. Up until recently, all cases were heard in the conference room of one of the T.V.A. buildings on Union Avenue and there was an atmosphere of fraternalization.

T.V.A. has boasted of the many cases it has been able to settle out of court. The true reason for this, of course, has been due to injured parties feeling the T.V.A. had the cases "sewed up" and there was no use in hiring a lawyer. As a matter of fact, quite a few lawyers have turned down T.V.A. cases feeling it was wasted effort to go before the Commission. When a case has been appealed to three Federal Judges, it has in most cases been "rubber stamped" and the cost of carrying the case to Cincinnati is prohibitive. Lawyers for T.V.A. deliberately build up briefs which discourage final appeal.

As you probably know, I have been engaged in the real estate business in the East Tennessee area for the past forty years and have spent the past twenty-five years in professional appraising. Shortly after the last case I participated in against T.V.A. I decided to put the agency to a test so I facetiously wrote Mr. Wagner a letter that we had a saying in East Tennessee that "if you couldn't beat 'em, jine 'em", that I was sending him a copy of my qualifications and would like the opportunity of doing some appraising for T.V.A. My efforts were to no avail—the implication being I was not qualified.

Very truly yours,

P. D. CATE,

Senior Member Society of Residential Appraisers, Member American Society of Appraisers, Member American Right of Way Association.

FORT LOUDOUN ASSOCIATION,
Lookout Mountain, Tenn., *May 19, 1967.*

Senator HOWARD BAKER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BAKER: It is indeed enheartening to read of your introduction of this bill for jury trial involving land condemnation by the Tennessee Valley Au-

thority. People of Tennessee have waited many dams and many years for some relief from the TVA "system."

We are hoping that further appropriations for the uneconomic, needless construction of Tellico Dam will be withheld. There is widespread resentment and disapproval of this dam and has been since Mr. Wagner, in September, 1964 presented the matter to the citizens of the community Sept. 1964. TVA's persistence in this unwanted, unsought unconstruction will do nothing to enhance their program and much to disaffect further the few who remain to evaluate their program.

The copy of TVA form letters on land procedure matters is attached for your information.

We sincerely hope the Tennessee delegation will support this bill and other measures to bring our economy in balance and desist from ruthless "pork-barrel" expenditures and appropriations.

Thank you again for your leadership.

Sincerely yours,

ALICE W. MILTON, *President.*

CHATTANOOGA, TENN., *February 10, 1967.*

Senator ROBERT BAKER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BAKER: On account of past associations, I supported Senator Clement in the recent election, nevertheless, I wish to extend to you sincere congratulations and very best wishes. I am writing to you with regard to a situation that I feel should be corrected.

I am advised that Congressman Bill Brock has introduced a Bill permitting Jury trials in condemnation suits brought by the Tennessee Valley Authority. Please do not understand that my remarks are critical of the Authority but that they are intended to be constructive.

Since 1959, I have represented the State in almost all condemnation suits brought in this area. During World War II, I was Special Counsel for the Department of Justice representing the Government in various projects in East Tennessee. In addition to this, over the years I have participated in many suits brought by the Authority representing the landowners. I mention these facts only to suggest that I have had experience in this field.

I have always felt and am very much of the opinion that property owners should have a right to a Jury in condemnation suits. I have seen a good many instances where there have been injustices suffered by landowners for this reason. I will not attempt to give specific instances in this regard but I can cite them.

In conclusion both Federal and State Constitutions preserve the right to trial by Jury. There is no good reason why there should be an exception in the case of the Tennessee Valley Authority.

With best regards and all good wishes, I am

Sincerely,

ROBERT C. HUNT.

KINGSTON, TENN., *February 14, 1967.*

Hon. HOWARD BAKER,
U.S. Senate,
Washington, D.C.

DEAR HOWARD: Please forward to me a brief run-down on pending legislation that may result in more equitable treatment for land owners involved in property condemnation. Specifically, I am interested in changes that may occur in TVA land acquisition policy. TVA does not pay full fee value for land even though in some instances it is rendered useless for the owner's purposes, *forever*. Also the price TVA pays is decided for the most part by a three-man commission—*supposedly impartial?*—Yet each commissioner is paid \$30 per day by TVA for acting on a case. Property owners are being taken advantage of. They should

be afforded the privilege of judge and jury, especially if you consider the security a man is able to provide for his family may be determined by his property holdings.

We only have nine acres and TVA plans to use 2.4 acres of it for a power line easement. If their first offer is any indication of what the final settlement will be, then we cannot expect a reasonable settlement and have little recourse to pursue a just settlement.

In passing, allow me to mention also that much land now being held by States and Federal agencies could become productive, provide tax revenue, and become a livelihood for many families if only people could acquire it.

Thank you for your time and trouble. Please accept our congratulations on a fine campaign and very impressive election.

Sincerely,

Mr. and Mrs. JACK D. ELKINS and Sons.

HOLLADAY, TENN., *May 10, 1967.*

Senator HOWARD BAKER, Jr.,
Washington, D.C.

MY DEAR SENATOR BAKER: I read in the Nashville Tennessean paper about the Bill you introduced to provide jury trial in any case involving land condemnation by the Tennessee Valley Authority, and you said the 1933 TVA Act provides for appeals in land condemnation proceedings but that nowhere in the course of appeals does the plaintiff have access to a jury trial, and I want to write and tell you how proud we are of you and congratulate you for looking after what people are due, and being denied of their justice and rights, and this is one of the greatest things you've done since being there, and a number of people here are saying the same as I am, and we pray you will push this Bill through, and succeed with it, for it's a very important Bill. Wishing you success and please let me know if you get this Bill through. I remain,

Very Sincerely, your Friend, and Supporter,

ED WHITFIELD.

CLARKSVILLE, TENN., *September 26, 1967.*

HON. HOWARD BAKER,
Washington, D.C.

DEAR SIR: My husband and I are the owners of a lot and a cottage on Ky Lake (Land in between the Lakes). We bought the lot (1 acre), cut the trees, built the house on weekends. We had a big cistern dug, bathroom and kitchen sink put in. It consists of 1 large living room, 2 bedrooms, kitchen, bathroom, storage room and boathouse built onto the main house, a big screened in front porch with concrete floor.

It took us 6 years to build it and now that we have it all finished, for our weekends and vacation, to enjoy in our older years, along comes T.V.A. to take it.

We were so surprised when the T.V.A. man came to our house and told us what they would give us for it. It is not near as much as it cost. We couldn't go and buy a lot for that. Besides building another cottage.

Some of the places around us got lots more than they offered us. We can't understand it.

We haven't signed with them, to take their price, and we can't afford to take it to too much court. Especially if it's in front of a 3-man jury and Judge in Nashville, like the T.V.A. man told us it would be.

We'd rather for a Jury of 12 to tell us what it's worth and if they say that's all it's worth, of course, we'll go on and sign and take what they offered us.

We spent 4 days vacation there September 14 through September 17-67. and enjoyed it.

Someone has broke into it, so many times we don't have much left. (We didn't even have a pillow to sleep on, or a piece of silver left, no table lamps, or lawn chairs, but we had a good time.)

We sure hate to lose it but we have no course, but I do think they could treat us right in the price.

Hoping your bill for a (12) man jury goes on thru.

Yours truly,

Mrs. J. W. PRICE.

HOUSE OF REPRESENTATIVES,
STATE OF TENNESSEE,
Nashville, May 9, 1967.

Hon. HOWARD H. BAKER, Jr.,
U.S. Senate,
Washington, D.C.

DEAR HOWARD: I received your letter and excerpt from the Congressional Record, which reached me at my desk in Nashville.

I showed this to many of my friends, of both political parties, and they were highly pleased with your sponsoring this legislation in the Senate. The Farm Bureau and many others, in fact almost everybody, is keenly interested in the enactment of this legislation. Mr. Pat Lynch, one of the Democratic floor leaders in the General Assembly, was so interested in it that he told me that he was going to talk by telephone to Congressman Bill Brock about it. Mr. Lynch is an able lawyer and a lifelong Democrat. I mention this only to show that the interest in this legislation is purely bipartisan. It is not anti-TVA but is certainly overwhelmingly in favor of the jury system.

Kindest personal regards.

Yours very truly,

W. E. MICHAEL.

NATIONAL ASSOCIATION OF RETIRED CIVIL EMPLOYEES,
JOHN SEVIER CHAPTER No. 324,
Johnson City, Tenn., August 17, 1967.

Hon. HOWARD BAKER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I am writing to thank you for the Bill you introduced in the Senate to compel the T.V.A. to have their condemnation suits before a jury in the county where the land lies they are getting the easements.

That is the only recourse to stop their gestapo methods now employed.

Won't you please take the time to read the enclosed letter that appeared recently in our local press, and judging from comments received many agree with the writer.

It's much too late to help me but for the sake of future potential victims I trust you will use all of your influence to enact your Bill into law.

Again I thank you.

Respectfully yours,

RAY A. METTETAL.

MARTIN, TENN., September 27, 1967.

Senator HOWARD H. BAKER, Jr.,
U.S. Senate,
Washington, D.C.

SIR: The bill that would require jury trials in the TVA land condemnation cases is to come before the Senate Public Works Committee hearing on October 3, 1967.

I would like to urge your support of the passage of this bill. I am an owner of land to be condemned in the "Land between the Lakes" project now being developed by TVA. My property has just recently been appraised and the contract the TVA has brought to me is, without a doubt, unjust. The project is now in its final stages and I feel that the appraisal's that are being made in these final months of this project are discriminating against the persons involved in these appraisals of the later part of this project.

I therefore ask for your help and your support of a bill that would allow an owner a right to demand that a jury decide if he is receiving an equitable price. As it now stands how much of a chance do you believe a person would have in a case against a *federal agency* tried in a *federal district court*.

Mr. Baker this property means a lot to me and until this forced action of the federal government in their "Barkley Dam" and "Between the Laked" projects came in to be being, there would have never been a time when this property would have been for sale. Me, my father, and his father before him worked and developed this property and if I have to give it up, I feel that it should be purchased at a price of its worth.

Thanking you for any support and any help you can give me in my efforts to get a fair and just price for this land that cannot be replaced with the same type property anywhere in this area.

Yours very truly,

C. D. JONES.

SEVIERVILLE, TENN., *September 28, 1967.*

HON. HOWARD BAKER,
Washington, D.C.

MY DEAR SENATOR: I am informed by the press that The Senate Committee on Public Works will open hearings on your bill to provide jury trials on condemnation cases by the Tennessee Valley Authority. I feel that passage of such a law is long overdue. It seems inconceivable to me that Congress in the TVA Act intended to confer on TVA practically confiscatory powers to condemn land for its projects. I fully agree with you that TVA's condemnation procedures constitute the "big sore spot" in TVA's relations with the people.

It is my sincere hope that you can get a thorough and favorable hearing from the Committee and the quickest passage of the legislation necessary to correct this serious fault. I wish it were possible for the committee or someone representing it to come to Sevierville and get a first-hand look at some of the unfairness perpetrated on some property holders involved in carrying out Sevierville's recent flood control project. This applies particularly to a few farmers whose holdings lie below the location of the city. We have had relatively large areas of our most productive land seized without compensation and other areas covered with "spoil" which has changed fertile land into not much more than gullied, weed-covered, rock piles. One just has to see what has been done to believe it.

Again may I wish for you the greatest possible success at the hearing and the quickest possible translation of that success into a law fair to all concerned.

I am enclosing a clipping from the Knoxville Journal¹ which gives some idea of how some other folks are feeling about TVA's condemnations practices.

Sincerely yours,

MARK S. GRIM.

KNOXVILLE, TENN.,
April 26, 1967.

HON. HOWARD BAKER, JR.,
U.S. Senate,
Washington, D.C.

DEAR MR. SENATOR: I am glad to know that you are supporting Representative Brock's bill H.R. 4846.

I believe this is very important legislation. It will put a curb on agencies with condemnation power to keep them from buying more land than the public welfare aspects of a project warrants, and selling this land for a profit, at a later date, to defray the cost of the project.

If this precedent is allowed any such agency can use this method to help finance its projects and the fundamental right to hold property will be in great jeopardy.

Yours sincerely,

BAILUS O. BEE.

¹ Filed with the committee.

TULLAHOMA, TENN., *September 19, 1967.*

DEAR SENATOR BAKER: The T.V.A. practically stole the best part of my little farm. They lied, swore to lies and hired unethical testimony and did everything but act like humans and gentlemen. Their lawyer was the cheapest man I ever faced. I was robbed and for my experience, I have no faith in trust or respect for any phase of the T.V.A. I hope there is enough statesmanship in Washington to do something worthy. I'm an ex-teacher. It seems the T.V.A. and the Government are the worst enemies I have had. I can't afford to be robbed. My income is small. Do you suppose I could get into a better poverty program than my present one?

I'm for a new president, too.

Sincerely,

H. C. EVANS.

BOMOSEEN, VT., *September 11, 1967.*

Hon. HOWARD BAKER,
U.S. Senate,
Washington, D.C.

MY DEAR SIR: Earlier this year you introduced a bill providing for jury trial where land owners felt they were not adequately compensated for land condemned by TVA. I think you did a fine thing. Compensation for condemned land by TVA and later by AEC has been too close to a sort of flat rate per acre basis whereby thrifty farmers who took good care of their lands and buildings received very little more than those who had let their land and property go to pot.

There are presumably some advantages to, "Big Government" but also some real worries—that it may infringe unduly on peoples' liberties and rights. In this respect I have been greatly concerned of late by tactics of some internal revenue agents. So far, perhaps by luck, I have no *personal* complaint. However, one hears many stories, some pretty grisly of tactics used to extract, or in some cases one might even say *extort*, money from taxpayers. This summer I chanced to witness something firsthand which, although not so grim as many others, was surely most uncalled for; and rather serious in that the victim was a man 84 years old and bedridden by a nervous disorder. His doctor's opinion is that his recovery has been inhibited to some extent by his altercation with IRS agents.

This man, my father, is *extremely* conscientious about paying his bills, taxes and otherwise. Last spring he paid his own and his wife's tax with two checks. Later he received a dun from the IRS people who claimed he had never paid and that now he owed interest on both as well. He carefully looked up the cancelled checks, copied down all the appropriate information on them and sent all this to the agents. A few weeks later he received a second and nastier letter from IRS (his letter to them was ignored). One can understand the IRS agents making a mistake but what possible excuse can there be for ignoring his detailed letter?

Father had another bad experience with these people. For several years running he overpaid his income tax by including life insurance dividends as taxable income, whereas they are in fact exempt. By the time he found his error he had paid some \$500 too much tax. His application for refund was turned down! How can this be called anything but dishonest?

It is a matter of grave concern when people in powerful positions (and the IRS people certainly are in that position today) operate on such a low ethical plane. The people at the head of that agency can hardly be very honorable. Don't you think it is high time they had their wings clipped by having some of their power taken away? If you know of anyone in Congress currently interested in this matter please do send my letter along to them, or let me know who they are.

I might add that my father was afraid to complain to higher authority for fear the local IRS agents would hear of it and be out for revenge! The matter has not been settled yet, but a friend who is a bit of a lawyer is helping out.

My home is Kingston, Tenn., but I shall be at the Vermont address till about the first of December. Thanking you for your consideration, I remain,

Respectfully yours,

RICHARD LAMPHERE.

MAY 15, 1967.

HON. HOWARD H. BAKER, JR.,
HON. WILLIAM BROCK,
Washington, D.C.

GENTLEMEN: We, the undersigned, have read with great interest and much satisfaction that you as our United States Senator and Member of the House of Representatives have introduced in Congress a bill providing for a trial by jury in condemnation suits in which the Tennessee Valley Authority is the condemner.

The right of trial by jury was established in the mother country of England 752 years ago and was won by bloodshed in a battle with the forces of a tyrannical King.

It was grafted in the Constitution of the United States of America and in every Constitution of every State in the Union. Over three centuries of experience have taught us that it is the last great bulwark of defense against oppression or injustice and that it is the one great safeguard of the rights of the people where life, liberty or property is concerned. No reasonable substitute for it has ever been found.

Hundreds of landowners in the Oak Ridge area enjoyed the right of trial by jury in the appraisal of their property taken by the Federal government. In all condemnation suits brought for the purpose of a forced sale of a landowners home or farm instituted by any government, Federal, state, county, city or public utility, and for whatever purpose, the right of trial by jury is guaranteed with the lone exception of the Tennessee Valley Authority. Just why this particular governmental agency is given preferential treatment over other branches of the government we do not understand and this exemption of the Tennessee Valley Authority from this fundamental law of the land tends to weaken our faith and confidence in the Courts of the land.

We, the undersigned, urgently exhort you to use your power and influence in the Congress of the United States to the end that we as owners of land on the shorelines of the Little Tennessee River may have the same treatment as is accorded others whose homes or lands are being condemned for public purposes.

Respectfully submitted.

_____¹

CHATTANOOGA, TENN., February 24, 1967.

HON. HOWARD H. BAKER, JR.,
United States Senate,
Washington, D.C.

DEAR SENATOR BAKER: I appreciate your letter of February 21st and I am delighted to hear that you plan to introduce the Bill providing for Jury trials in TVA condemnation suits in the Senate. In spite of the tremendous advantages of TVA, there are areas within it where its administrators become autocratic. You will find that the Commission for hearing condemnation suits has had few changes in membership since the passage of the Act. Even a Jury of twelve would become set in its thinking.

If you and Congressman Brock can pass this Act, you will have performed a service to the people in this area.

Sincerely,

ROBERT C. HUNT.

ATHENS, TENN., April 12, 1967.

DEAR SENATOR BAKER: If you are not aware of the recent resolution by the Tenn. State Legislature *unanimously* supporting Congressman Bill Brock's T.V.A. Jury Bill.

Many people feel this is a great piece of legislation to which the people are entitled. I have for some time been talking to people about T.V.A.'s exemption from jury trial in land condemnations. Never have I had a person tell me the T.V.A. system was a good system unless he worked for T.V.A.

¹ The above letter was subscribed to by 56 citizens.

The people are entitled to a jury trial if they so desire. I hope you will support and use your influence in the Senate to pass such a bill.

Just a few days ago I noticed that T.V.A. had increased the request on the Tellico Dam Project by seven million dollars over the original estimated cost and the request of Congress last year. If they can't figure cost closer than this I believe they could make a mistake on land values. The increase on Tellico Dam is about 18%. This sure is a large increase. If we misfigured in our business by this amount it would be a disaster. Such an increase must upset the cost benefit ratio.

Let me hear from you regarding this jury trial bill.

Kindest regards.

C. SCOTT MAYFIELD.

NASHVILLE TENN., May 7, 1967.

Senator HOWARD H. BAKER, Jr.,
Washington, D.C.

DEAR SIR: We have noticed that you are trying to get the passage of a bill for a jury to try condemnation cases of TVA.

We think this is a good thing, rather than to be tried by a judge, and we would like also to see this passed also for condemnation suits to be tried for the Corps of Engineers.

Our property was condemned and taken by the Corps of Engineers for the Percy Priest Dam. It has not yet been brought up. Mr. Carmack Cochran is our lawyer.

We would appreciate anything you can do about this.

A copy of this letter is also being sent to Congressman Brock, and Senator Fulton. We need and will appreciate your help.

Thanks.

Sincerely,

WM. FLETCHER COOK.

HUNTSVILLE, ALA., October 4, 1967.

Hon. JOHN SPARKMAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR SPARKMAN: An article appearing in the September 26, 1967 issue of The Huntsville Times has announced the opening of public hearings tomorrow in the Public Works Committee on Senator Baker's bill on the question of the right to trial by jury in Tennessee Valley Authority Land condemnation cases. I urge your consideration and favorable action on Senator Baker's bill.

Few people in Huntsville have benefited more than I, both directly and indirectly, from the advent of TVA. It was my good fortune to be among those who first saw Norris Dam and I have been awed by the good works of TVA ever since; however, I am disturbed at the public image which this model government agency is creating in more recent years. For example, while many of us in Huntsville have read Dr. Lilienthal's book, I believe there is a fair chance that an equal or greater number have read Mr. Dean Russell's book. I would be glad to expand on that statement if you desire.

Would you please give me your views on Senator Baker's bill?

Sincerely,

ROBERT F. SHANKS.

CORINTH, MISS., September 27, 1967.

Hon. HOWARD H. BAKER,
Washington, D.C.

DEAR SENATOR: I read an article in the Commercial Appeal last night stating a hearing would start Oct. 3 relative to TVA and their victims, on the nefarious method of acquisition of anything in their wake they desire.

I am one of their victims and not in either middle or East Tenn. They, TVA taken 250 A. of my land and I only have 6 court orders to show for it. Henderson

Co. where I resided is still charging me tax on this land, just to show you how dirty it is.

A group of us sued to stop this ruthless onslaught of farms and homes. We hired a lawyer at the sum of \$5000.00 in 1964, we haven't brought them to trial yet. They even boasted then they would be through and gone before there was any trial. Of course a trial now would be like giving a corpse a dose of castor oil after the funeral to save his life with a bad case of constipation.

Here's hoping you can do something to save some home yet somewhere. I am sincerely yours

WILLIAM O. HARRIS.

P.S. I'm sorry I forgot to mention the TVA jerked me in court Aug. 8 & 9 not giving me time to prepare for trial. However, I presume they considered I was offered 40¢ per A. more for the land they stole off me. If every Senator knew what I do I think something would be done.

Wm. O. H.

GALLATIN, TENN., April 27, 1967.

Senator HOWARD BAKER, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BAKER: I noticed that you have introduced a bill to provide jury trials for cases where land is condemned by the Tennessee Valley Authority. We have had considerable experience in handling cases of this kind and we certainly feel that it would be to the best interest of Tennessee Valley Authority as well as the landowners whose properties are being taken that the matter be passed upon by a jury where the parties are unable to reach a settlement out of court.

As you are of course aware it is only in TVA cases that the property owners are denied the right to have their damages fixed by a jury and in fairness to both the landowner and the condemning authority, we feel that the law in condemnation cases should be uniform in regard to all effected parties being entitled to a trial before a jury. We find from experience that when a case has been passed upon by a jury that even though the award may not be what the property owner feels it should be, he feels that he has had his day in Court and is better satisfied with the result than if determined by commissioners.

We want to commend you for introducing this bill and hope that you will be successful in getting it passed.

With very best regards.

Yours very truly,

R. H. HARSH.

UNCLE JOE'S DISCOUNT STORE,
Dover, Tenn., April 3, 1967.

Senator HOWARD BAKER,
Washington, D.C.

DEAR SENATOR BAKER: I would like to congratulate you on introducing a Bill in the Senate, to give land owners who are condemned a jury trial. I am a victim of T.V.A. "Land Between The Lakes" project, having all my land taken and business at a very low price. I am soon going into a condemnation suit.

Again thanking you.

Respectively,

JOE DILL.

KNOXVILLE, TENN., April 26, 1967.

Senator HOWARD H. BAKER, Jr.,
Washington, D.C.:

In the introduction of your bill to the Senate today requiring TVA to use trial by jury in land acquisition, stress the fact that under the present setup the three man commission acts as judge, jury, and appraiser.

P. D. CATE.

CLARKSVILLE, TENN., July 3, 1967.

HON. GEORGE H. FALLON,
*Chairman, Committee on Public Works,
 House of Representatives, Washington, D.C.*

DEAR MR. FALLON: I am very interested in H.R. 4846, action to provide for jury trials in TVA condemnation cases. I would also be very pleased should Congress take action to provide jury trials in other federal condemnation cases, such as the acquisition of land by the Department of Engineers, etc.

I dislike having to find myself in opposition to Mr. Wagner, but I seriously question the correctness of what I understood was his statement that the procedure followed by TVA has served the ends of justice and has proved fair. No doubt there are isolated instances where such a statement would be correct, but I think that by and large justice has been thwarted in the instances where there were commission hearings as opposed to jury trials. I have represented people across whose land TVA has taken rights-of-way and have not found the dealings to be satisfactory, at all.

It would be my hope that before letting the bill be bottled up in committee, if there is any such possibility, hearings would be held in the Tennessee Valley, where people, lawyers and laymen, have had personal experiences and can come before members of your committee so that your members might receive first hand testimony along these lines.

Also, I would point out for your consideration, that in this day and time there are many persons who distrust certain actions of government, particularly the federal government. I do not know whether this is right or wrong, but I do know that the distrust exists. In my opinion, Congress would do a great service to pass legislation providing for trials by jury which most laymen believe they are entitled to receive, anyway.

Any action you can take to see to it that this bill comes out of committee and passes, would be most appreciated, and I feel that the vast majority of the lawyers in the Tennessee Valley Authority area would be in agreement with me, as would the vast majority of the people in this area. I believe that Senator Baker and Representative Brock are to be commended for their outstanding efforts in trying to pass such legislation.

Very truly,

FRANK J. RUNYON.

SWEETWATER, TENN., July 16, 1967.

Senator HOWARD BAKER,
*U.S. Senate,
 Washington, D.C.*

DEAR SENATOR BAKER: Since I am Justice of the Peace of the second district of Monroe County, the citizens of this community are complaining to me about the way the TVA is purchasing property throughout this area for the Tellico Dam Project.

We feel that the TVA is purchasing much more land than is needed for both reservoir and industrial purposes; it is believed that they are buying land to sell at a profit. We do not feel this is fair to the people. We would like to know if ground not needed for reservoir purposes can legally be purchased.

We also wonder what has become of the bill proposed by Congressman Bill Brock asking for a jury trial concerning land condemned by TVA.

Please let us hear for you soon. Thank you.

Sincerely,

RALPH LOVIN.

LENOIR CITY, TENN., May 2, 1967.

Senator HOWARD BAKER,
*United States Senate,
 Washington, D.C.*

DEAR SENATOR BAKER: We are writing regarding a pending bill which provides that Tennessee Valley Authority condemnation suits be tried before a twelve-man jury.

We live in the area in which the Tellico Dam is being built. Although our property has not yet been appraised, we have been informed that we will have to give up our home. Naturally we are reluctant to leave; however, what is most distressing is the low value at which land in this area is being assessed. Many of our neighbors have received the final assessment of their property. The Tennessee Valley Authority is not allowing these individuals a fair price. They simply are unable to relocate unless they put additional funds with the amount paid them. The T.V.A. appraisers seem to be assessing property on the basis of land prices of twenty or twenty-five years ago. Since the Tennessee Valley Authority tries all condemnation cases before a T.V.A. three-man committee, these people have little recourse but to accept the unfair offer.

We would like to emphasize that this letter is in no way an attack on the Tennessee Valley Authority. We are proud of T.V.A. and what it has done for our area. However, we would very much like to see the present bill go through Congress. It is our belief that a twelve-man jury should decide what a citizen's home is truly worth.

Yours very truly,

Mr. and Mrs. GUY HAMMONTREE.

SEVIERVILLE, TENN., *February 17, 1967.*

HON. HOWARD H. BAKER,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: I am quite sure that you are busy man and have many calls for all kinds of services.

We, several of us farmers and property owners who are having property condemned by the TVA in carrying out the Sevierville Flood Control Project, have a very real problem. In a number of cases TVA has literally seized considerable areas they call "easements" which they are excavating to widen the river channel. They are dumping the "spoil" on other areas of the farms without regard to the damage they are doing to the property owners. The only remuneration they are offering for the seized property is the sum of one dollar regardless the amounts land seized.

Naturally most of us did not sign the contracts they brought us and our land has been condemned. As you are quite aware, property owners do not now have the benefit of having their cases tried by jury. According to press reports during your recent election campaign you spoke in favor of settling these disputes by trial by jury.

Press reports say that Representative Brock recently introduced a bill to provide jury trials instead of having disputes decided by a court-appointed commission.

May we hope that you will give this bill your support if it passes the House or even that you will introduce a Senate bill to provide for the same thing. We will greatly appreciate anything you may be able to do for us in this matter.

Very respectfully yours,

MARK S. GRIM.

MANCHESTER, TENN., *June 6, 1967.*

HON. HOWARD BAKER,
U.S. Senate.

DEAR SIR: I want to commend you on introducing the bill (H.R. 4846) in the Senate which would provide for jury trials in cases of appeal on just compensation determinations by the TVA. I sincerely hope this bill will be passed. A landowner is much more likely to get a fair deal in negotiations if he can have a jury trial in case he later goes to court.

This part of the county is where they are considering building a dam on Duck River (The Normandy site).

Thanking you, I remain,

Yours Truly,

Mrs. H. B. BANKS.

Chairman of Coffee County Farm Bureau Women.

WINCHESTER, TENN., May 20, 1967.

HON. HOWARD BAKER,
Washington, D.C.

DEAR SIR: I am writing concerning the price TVA is paying for a farm that my brother and I own, that they are taking to build the Tim's Ford Dam and lake. Our farm consists of three hundred fifty-four acres, around one hundred eighty-seven which could be cultivated now. There is around eighty-seven in timber which we have tried to care for and have used the State Forester to tell us which trees to cut and which to save. There is also about eighty acres in river bottomland.

The TVA has offered me only \$174 an acre and the farm can't be bought back at this price. All the places we have looked at, want from \$300 to \$500 an acre. A good bit of this land will not be covered by water and it is being taken anyway.

We had a private appraiser to reappraise the farm and he appraised it much higher. We have talked to several lawyers including Lewis Pope of Nashville, Tenn. They have all said we didn't get enough to buy it back and we should go to court.

The TVA tries to scare people about going to court by telling them that the land would be reappraised and might be lowered quite a bit.

We feel that the farmer is being treated unfairly by not allowing him to have a trial by jury. I am 53 years old and feel that I ought to have enough to buy back a farm something like the one I have.

All places around us got more than we did. The man just above us got \$326 an acre. He didn't have enough water to water his cattle and we were letting him use one of our springs. This farm consisted of 73 acres. Our farm is well watered which makes it a good stock farm. It seems they are paying much less per acre for larger farm.

Sincerely yours,

THOMAS J. FARRIS.

FEDERAL LAND BANK ASSOCIATION OF WINCHESTER,
Winchester, Tenn., May 8, 1967.

HON. HOWARD BAKER,
Washington, D.C.

DEAR SENATOR BAKER: I note with much interest your pending bill to revise the TVA law to where they will be required when condemning property to have a hearing before Circuit Judges and a 12-man jury as other public service institutions are required to do.

In the six counties we serve in making Federal Land Bank loans, we have occasions to view, with much interest, the prices paid for right-of-way easements and other properties. Our most recent observation is the purchase of right-of-ways for what is reported to be the highest voltage transmission line through Marion County, that was ever erected. The lines runs parallel with a 50-foot right-of-way acquired by East Tennessee Natural Gas Company in 1950. TVA is using this right-of-way as a part of the 200-foot right-of-way they are acquiring, it runs across my farm in Marion County parallel with East Tennessee Gas Company 50-foot easement.

The right-of-way across my farm and some other property nearby was condemned by the Gas Company in 1950, the 12-man jury in the Circuit Court allowed \$2,000 for the right-of-way across my property, which litigation was tried in the Circuit Court with a 12-man jury. I have a neighbor nearby, whose property was condemned by the Gas Company in 1950 also, the jury allowed him \$5900 for damages for the 50-foot right-of-way at that time. TVA is now offering him \$2300 for a 200-foot right-of-way taking 12.6 acres of his property. They have, as of yet, not made an offer to me, but they are asking that we sign a 6-month option for a stipulated price on the easement, which I am hesitating to do until some disposition is made of your bill by the Congress.

Under the present law, it is difficult to get an attorney to take condemnation cases by the TVA. My attorney has already informed me, it would, no doubt, be useless to hold out until condemnation proceedings were instituted, as my case would be heard before a 3-man TVA Commission.

Should you be interested in knowing the amount they offer me for a 200-foot right-of-way in comparison with the 50-foot right-of-way acquired by the Gas Company in 1950, I shall be glad to inform you, if and when an offer is made to me.

We appreciate deeply your interest in our behalf and will cooperate any way possible in helping with the pending bill.

Very truly,

C. S. SHELTON.

GRAND RIVERS, KY., *October 8, 1967.*

HON. HOWARD H. BAKER, JR.,
U.S. Senate, Washington, D.C.

DEAR SENATOR BAKER: This is to thank you and to wish you well in all your efforts on behalf of "We the People" to safeguard our rights as guaranteed in the Constitution of the United States.

We refer specifically to the legislation that you have introduced in Congress that will require trial by jury in land condemnation cases sought by the Tennessee Valley Authority.

You too may have found Achilles heel—TVA's, that is. We hope so and that you hit your mark!

In so doing we see possibilities for the "lid to come off of" a lot of TVA's goings-on that result in turmoil and torment for the people and stem from "projects" way off-base from the original intent of the Act of '33. The primary purpose of some of these projects seems to be the perpetuation of TVA's overriding use of its power. Expediency is no excuse for the out-and-out socialistic behavior of TVA.

If private industry attempted what TVA so ruthlessly undertakes in its unbridled power-thrusts against a, too-often, unsuspecting public, the provisions of the Sherman law and the Clayton act would have been invoked long ago.

It seems that even TVA decided they needed a change as evidenced by their Beech and Elk Rivers plans for handling sale of acquired lands through a "third party". We bought lots, nearby and adjacent to the 4½ acres on which our home stands, when TVA offered them for sale at auction in 1958 and 1959. Even at that early date, we have learned since, TVA was already planning Land Between the Lakes—a "unique experiment" and "public venture" in recreation resource development—leading to the repossession and forced sale of our property, if they have their way. We have not submitted to survey and appraisal which is the first fatal step of their landbuying "(nontrading)" formula devised in 1946 to speed up land purchases for the Kentucky Lake reservoir. Selling us land at auction, while planning for its taking, is, in our book, an act of bad faith.

Are you familiar with the work of TVIC (Tennessee Valley Industrial Committee)? We learned about their program when two of their members were interviewed on a locally-aired public service program—WPSD-TV "ACCENT". Their revelations were most illuminating. We have TVIC Information Kit and names we'll be glad to pass on to you, if you think they'd be useful to you. TVIC raised issues that have gone unanswered by TVA.

Yes, along with hundreds of other families and up and down the valley, we feel that TVA should play according to the rules and abide by the basic right of trial by jury as guaranteed in the Constitution.

There are lots of changes in "the Valley"! One of them is that people are daring to ask questions and learning how to seek help in the solution of their problems. Many thanks for your help!

With kindest regards and best wishes for the success of S. 1637 and its companion bill in the House.

Very sincerely,

HAROLD E. SNIPE,
JUANITA L. SNIPE.

Senator YOUNG. May I ask did you receive a few letters expressing satisfaction?

Senator BAKER. One. I solicited that letter, however. I asked for the views and opinions of lawyers, associations, and groups who would have a logical interest in this matter and the one letter, as I recall, to which I refer was from a man for whom I have very great esteem, the former dean of the College of Law at the University of Tennessee, my alma mater, Dean Wicker, who is here as a witness. And I must say parenthetically that the fact that he disagrees with my viewpoint in this case in no way diminishes my respect for him, and it is not entirely incompatible with the grades I used to get at the University of Tennessee.

Senator SPONG. May I ask a question?

The CHAIRMAN. Yes, Senator Spong. I will leave at this point if you will go forward, Senator Spong.

Senator SPONG. Thank you. I just have one question, Congressman Brock or Senator Baker. Congressman, you are not a lawyer?

Mr. BROCK. That is correct.

Senator SPONG. There are many people who would congratulate you upon that. I wanted to know if there was any direction in the statute guiding the district judge in the type of commissioners that should be appointed?

Senator BAKER. May I respond, Mr. Chairman?

Senator YOUNG (presiding). Yes, indeed.

Senator BAKER. Section 831(x) of title 16 of the United States Code, which is the TVA Act, provides in part—

Upon the filing of a petition for condemnation and for the purpose of ascertaining the value of the property to be acquired and assessing the compensation to be paid the court shall appoint three commissioners—

And the qualifications are—

who shall be disinterested persons and who shall take and subscribe an oath that they do not own any lands, or interest, or easement in any lands which it may be desirable for the United States to acquire in the furtherance of said project and such commissioners shall not be selected from the locality wherein the land sought to be condemned lies.

This is the extent of the qualification or prohibition on service as far as I can ascertain in the body of the TVA Act or elsewhere in the United States Code.

Senator SPONG. There is no special requirement with regard to knowledge of land value?

Senator BAKER. Not to my knowledge. However, I must say, based on a reading of statements previously submitted by the opponents to enactment, I understand that the point will be made.

Senator SPONG. Thank you.

Mr. BROCK. May I respond, Senator Young, to your question of Senator Baker also?

Senator YOUNG. Yes.

Mr. BROCK. I have several hundred letters. I did not submit them for the record because of the volume. I have three or four which are somewhat typical, but as Senator Baker has pointed out, some are emotional and I don't think they would add much to your interest in the case.

However, a great percent of them do feel that they were inadequately compensated. We have a case where a lady wrote that she received \$350 for her house, and it was a full house with electric heat, water, lights, and so forth. She felt that this was inadequate because the house was only 7 years old.

There are many, many cases like this and the point is that I think Senator Baker and I both feel that in the vast majority of cases the settlement was fully equitable, but there may be some in which it was not and the point is that in its relationships with the people of the Tennessee Valley the TVA must at all times carry the respect of the people if it is going to have an efficient operation and if it is going to serve the people.

If we can come up with a device which will enhance its public relations, the respect of the community for the TVA and vice versa, I think we will have done a service to the Authority.

Senator YOUNG. Congressman, you made a very interesting and a very convincing statement and we thank you for it.

Regarding the letters, I assume that your experience is the same as I think Senator Baker's and my experience is. Invariably the great weight of our mail is from people who are against a proposal. They are mad at something or somebody or they are opposed to something. When our constituents are satisfied with the way things are going they are not so prone to write as they are when they are having a feeling of outrage like the lady who got a pittance for a house that was obviously worth more. Sometimes I think that if our constituents want a Congressman or a Senator who votes according to the weight of his mail they might as well elect a butcher's helper who could weigh the mail instead of suffering the election of someone like you who is skilled and experienced in the science of government.

Mr. BROCK. I fully understand your point, sir. I would say only that several hundred letters are in support. I have received two in opposition to the bill—from existing commissioners.

Senator YOUNG. Thank you very much.

Senator BAKER. Mr. Chairman, if I may, at this point, thank Congressman Brock. I understand that you have a committee meeting you have to go to, so I take it the Congressman is excused, Mr. Chairman.

Senator YOUNG. Yes, indeed. They are about as busy as we are.

Senator BAKER. Mr. Chairman, at this point, as we were speaking of exhibits to the record, just to make sure that there is included in the record, and the chairman made reference, I am sure, to include these at the beginning, I would like to call attention to and verify that the record includes a letter from the Department of Justice dated October 6, 1967, addressed to the distinguished chairman of the full committee, Mr. Randolph, which does not make a recommendation in this particular case because the Justice doesn't try TVA's cases, but does say on page 2—

The Department of Justice has every confidence in the jury system, for the determination of the issue of just compensation in land condemnation cases as well as for other purposes. The Department's long experience with both the jury system and the commissioner system in condemnation cases indicates a preponderance of advantages in the use of the jury system.

Senator YOUNG. The Chair is advised that that is already in the record.

Senator BAKER. Thank you very much.

Senator YOUNG. And these other letters that the Senator referred to, they will be received in the record.

Senator BAKER. Very good, sir. I have here another letter I would like to have included in the record from Senator Ervin, dated September 12, 1967, and which Senator Ervin has given me permission to include, from which I quote one paragraph—"I believe strongly in the right of trial by jury in all condemnation proceedings."

Without objection, I would like to include that in the record.

Senator YOUNG. That will be received.

(The letter referred to follows:)

U.S. SENATE,
Washington, D.C., September 12, 1967.

Hon. HOWARD H. BAKER, Jr.
U.S. Senate, Washington, D.C.

DEAR HOWARD: This is to thank you for your letter of September 1, 1967, regarding your bill, S. 1637, which would provide for trial by jury of the issue of just compensation in land condemnation cases involving the Tennessee Valley Authority.

I believe strongly in the right of trial by jury in all condemnation proceedings.

With all good wishes, I am

Sincerely yours,

SAM J. ERVIN, JR.

Senator YOUNG. Congressman James H. Quillen.

Senator BAKER. Mr. Chairman, I have been advised that Congressman Quillen is on his way from Tennessee, that he was delayed in Roanoke, Va., and that he expects to be here momentarily.

If we could pass over Congressman Quillen and proceed with the next witness I am sure he would be grateful.

Senator YOUNG. Yes. Congressman Quillen has been good enough to leave with the committee a statement he made and the statement will be admitted, so the chair places his statement in the record.

(The statement referred to follows:)

STATEMENT OF HON. JAMES H. QUILLEN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TENNESSEE

Mr. Chairman: I am deeply grateful for the opportunity to appear before members of this Subcommittee today in support of legislation introduced by my fellow Tennessean, Senator Howard Baker, to provide for trial by jury of cases involving condemnation of real property by the Tennessee Valley Authority. As you probably know, I have introduced an identical bill in the House of Representatives, H.R. 11269, a copy of which is attached.

I want to take this opportunity to congratulate my colleague and friend, Senator Howard Baker, for his outstanding work on this measure in the Senate. I am happy to appear in behalf of his bill, which has received such widespread support throughout the TVA area.

The benefits to our own state of Tennessee and to other areas in the Tennessee Valley resulting from the magnificent Tennessee Valley Authority System are immeasurable, and this legislation in no manner should be construed as criticism of TVA. It is intended, instead, as a means of fully protecting the interests of those landowners whose property is flooded as a result of TVA's necessary development and over whose lands TVA's transmission lines necessarily must be constructed.

Trial by jury is basic to our American system of law, and it is inconsistent with our system that proceedings involving an individual and an agency of the United States Government—which cannot be settled through negotiation by the parties concerned—should not be permitted to be presented to juries.

The Federal Government presently owns more than a third of the nation's total land area. In the past fiscal year, the TVA acquired 45,367 acres of land and easements for 404 miles of transmission lines. The Authority reportedly will acquire more land and additional easements during the present fiscal year.

It is only reasonable to assume that in the vast number of negotiations required to acquire such a large land area and such extensive easements, there doubtless have been—and will be—inequities in determination of the fair market value of the land required by the TVA. And, inequities doubtless would result even if all condemnation cases went to juries. But the fact remains that our American system provides for no sounder or fairer method of determining what is equitable to all parties involved than trial by jury.

Since introducing my own bill in the House, I have received hundreds of letters from landowners in my District expressing their support for this proposal. Quite naturally, some of these communications have come from individuals dissatisfied with payments already made or decided upon in TVA land condemnation proceedings. But, many letters came from people who have not been involved in any manner with TVA in land acquisitions.

They are individuals who feel compelled to make known their view that jury trials are a fundamental part of the American Judicial system and that legal controversies over the value of real property should not be handled in a different manner.

The widespread interest in enactment of this legislation is further evidenced by the fact that it has been endorsed in a joint resolution of the Tennessee General Assembly, which was signed by Governor Ellington, and by the Board of Governors of the Tennessee Bar Association.

I respectfully recommend that this Subcommittee favorably report Senator Baker's bill, S. 1637, and I sincerely hope that it will be enacted promptly by the Senate.

Senator BAKER. Mr. Chairman, if I may burden the committee with one further thing to make sure the record is complete, I have offered and I believe there has now been included in the record a resolution of the Tennessee General Assembly signed by the Governor unanimously endorsing this principle.

Senator YOUNG. That has been received.

Senator BAKER. As well as endorsements by the American Trial Lawyers Association, the Tennessee Farm Bureau, the Tennessee Bar Association, the Marion County Tennessee Bar Association, the

Loudon County (Tenn.) court, Rutherford County Farm Bureau, Chattanooga Bar Association, Cheatham County Farm Bureau, Maury County Farm Bureau, Knoxville Journal, and Franklin County quarterly court?

Senator YOUNG. All those statements, the Chair is advised, are in the record. If not, they will be placed in the record.

Senator BAKER. Thank you.

Senator YOUNG. Then the next witness is Mr. Walker, past president of the Tennessee Bar Association. Will you come forward please?

You have a prepared statement, have you, sir?

**STATEMENT OF ROBERT KIRK WALKER, PAST PRESIDENT,
TENNESSEE BAR ASSOCIATION**

Mr. WALKER. Yes, Mr. Chairman.

Senator YOUNG. The Chair will be glad to hear it.

Mr. WALKER. I was born and have been a lifelong resident in the heart of the great Tennessee Valley Authority which has been and is a tremendous asset not only to our region, but to the strength of our Nation.

At the time of the creation of the Tennessee Valley Authority I was a boy of 8 years of age, so the Tennessee Valley Authority and I have more or less grown up together and I have witnessed the great service that has been and is being rendered to the citizens of this country by this agency.

For almost 19 years I have been a practicing attorney in Chattanooga and in 1965-66 it was my privilege and honor to serve as President of the Tennessee Bar Association. It was during the course of my service in this capacity that it was brought to my attention in February of 1966 that Hon. Bill Brock, Congressman from the Third District of Tennessee, had introduced H.R. 8336 which provided for the amendment of the Tennessee Valley Authority Act so that landowners would be guaranteed the right to demand a jury in cases where land was to be condemned by the Tennessee Valley Authority.

Thereafter many lawyers who are, as I am, strong and ardent supporters of the objectives of the Tennessee Valley Authority, expressed the belief and the conviction that this legislation was needed and would be exceedingly beneficial.

As this matter was discussed in some depth, many lawyers who handle no condemnation cases were utterly amazed to learn that a landowner had no right to demand a trial by jury at any stage of such eminent domain proceedings where the land was being taken by the Tennessee Valley Authority. As a matter of fact, such land owner has no right to express an opinion or have any voice in the selection of the commissioners who were to sit in the matter.

Every lawyer with whom I have talked, and the number has been considerable, has expressed the strongest interest in the passage of this legislation.

The board of governors of the Tennessee Bar Association considered this matter on April 30, 1966, and unanimously adopted a policy favoring the passage of legislation which would guarantee to property own-

ers the right to demand a jury trial in condemnation cases involving the Tennessee Valley Authority.

Mr. Chairman and gentlemen of the committee, I am here today to voice my conviction and support of Senate bill 1637, which I believe is also House bill 4846. These bills, as we know, provide for a jury trial in the Tennessee Valley Authority land condemnation proceedings.

It is my understanding that an amendment has been offered to the original bill to provide that either the landowner or the Tennessee Valley Authority can appeal directly from the appraiser's findings to either a jury trial at the district court level or to the three-man commission.

Thus, the three-man commission would not be entirely eliminated, nor is the landowner restricted, as at the present, to the taking of exceptions from the commissioners' award which must then be appealed and tried by a three-judge Federal court or by a single judge by mutual consent. The critically important point to me is the right of election to a trial by jury in such proceedings.

In going to the root of this matter, I feel that the right of a trial by jury runs as a scarlet thread through the tapestry of the American way of life and it is most fundamental to our governmental system.

Blackstone, in his Commentaries, recognized three absolute rights possessed by all individuals in a free society, and those three rights were, first, the right of personal security, second, the right of personal liberty, and third, the right of private property.

This holy trinity of individual rights is interrelated and interdependent and, when individuals in a free society do not have confidence that such rights are being preserved, the genius of our system of government is weakened.

This learned commentator further observed that the individual's absolute right of property consists in the "free use, enjoyment, and disposal of all of his acquisitions, without any control or diminution, save only by the laws of the land."

The Magna Carta provides that—

No man shall be dis-seized or divested of his freehold * * *, but by the judgment of his peers or by the law of the land—

And by numerous ancient laws, it was enacted—

that no man's land or goods shall be seized into the king's hands, against the great Charter and the law of the land; and that no man should be disinherited, not put out of his franchise or freehold, unless he be duly brought to answer and be forejudged by course of law; and if anything be done to the contrary, it shall be redressed and holden for none.

We know that eminent domain is an attribute of sovereignty and is as old as political society itself. The right and the necessity for the Tennessee Valley Authority, like other governmental agencies and the various States, to acquire land through condemnation, is not questioned.

However, in the case of all other Federal agencies and the various States, with the immense amount of land that must be taken through condemnation for public uses, a jury trial is accorded to the private citizen at some stage of the proceedings. It appears that the Tennessee Valley Authority Act is unique in this respect in that it provides for

the taking of private property under the power of eminent domain without granting to the property owner the safeguard of a jury trial, and in fact prohibits the use of a jury in such cases.

I realize that the right to a trial by jury as provided by the U.S. Constitution is restricted to those suits brought at common law where the value in controversy exceeds \$20; further, that the taking of private property for public use by the Tennessee Valley Authority is a statutory proceeding, and that in the case of *Welch v. Tennessee Valley Authority*, which was a case of first impression involving the right of trial by jury under the Tennessee Valley Authority Act of 1939, the court determined that the constitutional guarantee of a trial by jury is not applicable to such statutory proceedings.

However, I submit that the principle of trial by jury is a cherished part of our system of jurisprudence of the American people and it has, since the birth of our Republic, been considered as the individual's greatest bulwark of freedom and safeguard from oppression, whether it be individual or governmental.

This bill is in no sense an anti-TVA measure. The truth of it is that if the amendment is enacted many of the headaches of the agency's land acquisition division should be eliminated or dramatically reduced.

As the Tennessee Valley Authority is even now faced with the necessity of acquiring considerable acreage for new reservoirs, the need for this change becomes even more pertinent than it has in the past.

Fortunately or unfortunately, depending upon one's point of view, my clients have not had any land that the Tennessee Valley Authority has had the need to acquire.

Therefore, I have not been involved personally in any condemnation proceedings with the Tennessee Valley Authority. My support of this bill is not, therefore, motivated by any personal disappointment or any dissatisfaction with any awards and it is not intended as any criticism of those charged with administering the present law. It is offered as criticism of the existing procedures which do not make possible the right to demand a jury trial.

Based upon the strong support of and response from many Tennessee lawyers of this legislation, and until today without knowledge of dissent from a single lawyer, it is evident that there has been and is considerable dissatisfaction with the system of taking of land under the Tennessee Valley Authority Act which prohibits the use of a jury.

I think it can be fairly stated that lawyers are known to disagree at times. Therefore, unanimity of support of this legislation, without knowledge of dissent, is significant in and of itself. Lawyers generally are not retiring; they are not reticent about expressing their objections; and as the resolutions were adopted by the board of governors of the Tennessee Bar Association, which has 20 members representing a cross section of the bar from throughout the State, by the Chattanooga Bar Association in the very heart of the Tennessee Valley Authority, the Marion County Bar Association, and the other interested groups, it is significant to note that no dissent had been expressed to me until today when I learned that it had been voiced by two commissioners, both of them distinguished gentlemen for whom I have the highest regard and respect.

In this day when rioting plagues our Nation, our laws are disrespected, and crime is rampant and growing, it is imperative that we

take all possible steps to better insure the confidence of and the respect by our people of our courts and our governmental system.

I am convinced that this legislation would reduce concern and ill feelings, would more fully attain the ends of justice, and would produce a greater sense of respect and good will between the Federal Government and the private citizen. It is for these reasons that I voice my support of this legislation.

I appreciate the opportunity of appearing before this distinguished committee and if there are questions I will undertake to answer them.

Senator JORDAN of North Carolina (presiding). Thank you very much, Mr. Walker. Do you have any questions, Senator?

Senator SPONG. Yes, I have a few. I might say to you, Mr. Walker, I am an attorney myself and I am impressed with the unanimous endorsement that you have received.

As I understand it, the TVA law with regard to taking is different from all other Federal proceedings in that the commissioner system is mandatory and there is no option in the court to give the landowner the right to a trial by a jury; is that correct?

Mr. WALKER. That is correct, sir.

Senator SPONG. In most Federal procedures, under rule 71A I believe, it is within the power of the court to determine, once the petition is filed, whether or not commissioners will be appointed or whether there will be a trial by jury.

Mr. WALKER. That is correct. I believe that under rule 71A the court can in a given case, where the court feels that the matters are of such complex nature, assign the matter to a commissioner. Otherwise the right of jury trial exists.

Senator SPONG. I suppose that initially when the Bar Association of Chattanooga and the governors of the Tennessee bar considered this matter they were thinking in terms of a bill that has been introduced which would guarantee the right to trial by a jury and eliminate the commissioner hearing all together; is that correct?

Mr. WALKER. The policy decision was in favor of the right of election to a trial by jury. It was the feeling of the board as expressed in that policy that there should be the right of election in private citizens at some stage of the proceedings where they might have the issues determined by a jury of their peers.

Senator SPONG. And your position here today and for any group for which you might speak is that you are in agreement with the amendment that Senator Baker's opening statement speaks of, his third alternative—I think you listed three—wherein the landowner rather than the district court would have the determination of whether he wanted a commission hearing or that by a jury?

Mr. WALKER. Senator Spong, I appear today as an individual citizen and as a past president of the Tennessee Bar Association. In reciting this policy—this was adopted during my tenure as president of the Tennessee Bar Association—I do not undertake to appear in any representative capacity today before the committee. The resolutions have been submitted to both Senator Baker and to Congressman Brock and I believe that they have been introduced into this record.

Senator SPONG. Yes.

Mr. WALKER. I think that the position that has been taken in the amendment is consonant with the policy that was heretofore adopted

by both the Tennessee Bar Association board of governors at the time the initial bill was introduced and also the Chattanooga Bar Association which was adopted subsequent to the reintroduction of the bill this past spring.

The bar association's conviction and belief in each instance was that there is need of the right of election in the private citizen to have the issue determined by a jury where land is being taken. They did not address themselves to the specific mechanics under which that right would operate.

Senator SPONG. Thank you very much, Mr. Walker. I have no further questions.

Senator JORDAN of North Carolina. Mr. Baker.

Senator BAKER. Mr. Chairman, I have no questions. I would like to commend Mr. Walker for the depth and understanding that he gave us in his statement and express our appreciation for his coming to the hearing today.

Senator JORDAN of North Carolina. Thank you very much, Mr. Walker. We are glad to have you, sir.

Senator SPONG. Let me ask one more question.

Senator JORDAN of North Carolina. Yes, indeed, Senator Spong. You proceed as you like.

Senator SPONG. I inferred from your reply to me that that was the case, but suppose TVA were placed in the same position as all other Federal condemnors and the court still had the determination of whether a commission was preferable to a trial by jury. What is your reaction to that?

Mr. WALKER. If I might digress for just a moment, in Tennessee, as Senator Baker has heretofore very ably outlined, there is the right to have the matters determined by a jury of view and thereafter if there is dissatisfaction an appeal taken and a trial by a jury can be had as in the usual cases.

This system has worked very well. I do not feel that there have been glaring inequities under this system. The court has ultimate discretion to correct errors if they creep in.

I think that the right of a jury trial, should exist in these cases. I do not take issue with the procedure under 71A wherein in the normal case there is this right of the private citizen whose property is being condemned to have a trial by jury with ultimate discretion in the court to assign it to the commissioners.

If you had a situation where the cases were invariably getting back into the commission's hands, I do not think that this would be very effective.

Senator BAKER. Mr. Chairman, will the Senator yield for a comment in that respect?

Senator SPONG. Yes, indeed.

Senator BAKER. As far as I am personally concerned I would be perfectly happy to have rule 71A applicable to TVA. Although the representatives of TVA are here and will speak for themselves, it is my impression that of the various options TVA would rather not have a straight 71A application.

Hence, the proposed amendment to which I refer in my statement is really a hybrid of the present system and of 71A. I would like to make it clear that I do not object to a variation of this theme even to

the point of a straight application of 71A. That is not my preference, but if that is the will of the committee I will be perfectly happy with it.

Senator SPONG. Thank you.

Mr. WALKER. I might comment that I share the feelings of Senator Baker. I think that the proposed amendment which gives both the TVA and the private citizen this right of election is the preferable course over 71A, but rule 71A would be a dramatic improvement over the present situation.

Senator SPONG. Thank you. That is all, Mr. Chairman.

Senator JORDAN of North Carolina. Senator Fong, I appreciate your coming in. You were tied up earlier and couldn't get here sooner. Do you have any questions you would like to ask the witness?

Senator FONG. No; I have no questions, Mr. Chairman. I will read the statement and if I do have I will contact the witness.

Senator JORDAN of North Carolina. Thank you, sir. We appreciate your being here.

Thank you, Mr. Walker.

Mr. WALKER. Thank you.

Senator JORDAN of North Carolina. We will next hear from Mr. Aubrey J. Wagner, Chairman of the Tennessee Valley Authority.

I believe you are accompanied by Mr. Marquis. We are glad to have both of you and you may proceed as you wish.

Senator BAKER. I might note, Mr. Chairman, that Mr. Wagner is also accompanied by Mr. Tom Pedersen, of the legal staff of the Tennessee Valley Authority, who is an old and valued associate of mine. We tried law suits both winning and losing, at one time in the distant past and I have a high admiration for him as I do for the entire legal staff and for the Chairman of the Tennessee Valley Authority.

We welcome them.

Senator JORDAN of North Carolina. We are glad to have you also and if you have any others you wish to present we will be glad to hear them. You may proceed as you wish.

**STATEMENT OF A. J. WAGNER, CHAIRMAN, TENNESSEE VALLEY
AUTHORITY BOARD OF DIRECTORS, ACCOMPANIED BY ROBERT
H. MARQUIS, GENERAL COUNSEL, AND THOMAS A. PEDERSEN,
ASSISTANT GENERAL COUNSEL**

Mr. WAGNER. Thank you very much, Mr. Chairman, and gentlemen of the committee. We appreciate the expressions of approval that TVA's work has had from the committee members and witnesses. We have been operating under an act passed by the Congress for about a third of a century now, and we have tried during that period to carry out the wishes of Congress as expressed in that act and I can assure you that that is what we will continue to do. We feel that we have a responsibility to report to you from time to time, as we do, about the functioning under the act and it is in that spirit that we are here this morning to testify on S. 1637, and we do very much appreciate the opportunity to give you our views on this bill which is now before you, and on the basic questions with which it is concerned.

I should like, Mr. Chairman, at the outset, to make two points very clear.

First, TVA fully recognizes the desirability of jury trials in the ordinary type of case; and in the ordinary type of case anyone suing TVA is entitled to a jury trial on the same basis as if the suit were against a private party.

Second, our belief that this bill should not be passed is based on a conviction that our condemnations represent a special kind of case in which our present commission procedure produces more equitable results, for landowners and TVA alike, than would be produced by jury trials.

From TVA's inception we have been concerned with the need for treating landowners generously and for treating them alike. This concern has been reflected in the development of our appraisal and land-buying programs.

Our policies from the beginning have recognized that in most cases the purchase of private property for a reservoir or a steamplant involves an involuntary sale by the owner. All TVA personnel who deal with landowners are instructed and trained to deal with them in friendly and considerate terms and to meet so far as possible their wishes and needs. Occupants of land are allowed to remain on it and to carry on farming and other operations until possession of it is actually needed for project use.

In the meantime, they are paid for the land in order that they can use the funds in relocating. If they need assistance in finding suitable new locations, we endeavor to help provide it.

As regards the question of price, we attempt to be both objective and generous. In preparation for the appraisal of individual tracts to be acquired for each of its projects, TVA makes a thorough background study of the current real estate market in the area, including an analysis of all recent sales. For each individual tract which must be acquired or over which rights must be acquired, a member of TVA's appraisal staff makes a careful field investigation, during which the landowner is invited to accompany him.

After this investigation is completed, a reviewing appraiser makes a second field inspection to assure that no element of value has been overlooked. The price then offered to the landowner on the basis of these appraisals is a liberal one. Where the amount of land taken is such that the landowners will be required to relocate, it is our objective to offer a price which will result in their being as well off after they have relocated as they were before.

Once the amount of the offer has been determined, it is not changed unless it appears that some element of value has been overlooked or improperly assessed. TVA follows a strict no-price-trading policy, since trading would inevitably lead to paying different prices for similar land, which would be unfair to those who accept our offers, and would create justified antagonism and resentment.

These policies and practices have had overwhelming acceptance. Approximately 93 percent of our offers have been accepted; less than 4 percent have resulted in condemnation cases because of disagreements to price, while the remainder have gone to condemnation only because titles were unclear, some of the defendants were minors, or for other similar reasons. We believe that this is a highly successful record.

We also believe that the condemnation procedures which were written into our act by Congress when the act was passed in 1933 have been equally successful. We think that the generation of experience which

we have had with these procedures demonstrates that they are as fair and equitable a means as can be devised for resolving disagreements on price which may arise.

I would like to add, Mr. Chairman, that TVA is in a somewhat different position from most Federal agencies with respect to this whole matter. In carrying on its program, TVA must acquire very substantial quantities of land. Unlike many agencies which acquire occasional sites for a post office building, a defense plant, or the like, TVA must pursue an acquisition program in a relatively small geographical area on a continuing basis and on a large scale.

Prices paid by TVA for land are generally well known to numerous other landowners, and it is highly important that such prices be both equitable and consistent. Fair and uniform treatment of all landowners is a basic TVA objective. We are convinced that our present condemnation procedures accord fully with that objective and that it would be most unwise to change them.

As has been indicated, with me this morning are our General Counsel, Robert H. Marquis, and our Assistant General Counsel who is in immediate charge of our litigation, Mr. Thomas A. Pedersen. With the committee's permission, Mr. Chairman, I should like to ask Mr. Marquis to discuss for you in greater detail our views on this proposed legislation.

Senator JORDAN of North Carolina. You may proceed, sir.

STATEMENT OF ROBERT H. MARQUIS, GENERAL COUNSEL, TENNESSEE VALLEY AUTHORITY

Mr. MARQUIS. Thank you, Mr. Chairman. As Mr. Wagner has indicated, we recognize fully the desirability of a right to a jury trial in the ordinary type of case in which TVA is involved. Land condemnation cases, however, seem to us a very different matter.

At common law, and from the earliest times, they have been regarded as a special type of proceeding. Mr. Walker indicated quite correctly that the constitutionality of our procedure was upheld in the case of *Welch v. Tennessee Valley Authority*. That was a decision of the sixth circuit, with certiorari denied by the Supreme Court.

I must disagree with him, however, that the question involved was one of first impression. As long ago as 1897 the U.S. Supreme Court in the case of *Bauman v. Ross*, 167 U.S. 548, said this:

By the Constitution of the United States, the estimate of the just compensation for property taken for the public use, under the right of eminent domain is not required to be made by a jury; but may be entrusted by Congress to commissioners appointed by a court or by the executive, or to an inquest consisting of more or fewer men than an ordinary jury.

It is our conviction that the present TVA commission system established by section 25 of the TVA Act produces more equitable and just results for all concerned than would result from jury trials.

This section was included in the original TVA Act when it was enacted in 1933, and has remained unchanged except for minor increases in the compensation and allowances of the commissioners. Under its provisions, the value of land or land rights condemned by TVA is determined by three disinterested commissioners appointed by the U.S. district court.

It is the practice of nearly all of the courts to appoint standing commissions to hear all TVA cases arising in a given district, division, or other area. The chairman is almost always a lawyer, and the other two members are usually businessmen or farmers.

Before making their determinations as to value, the commissioners of course hear the evidence presented by the parties. But in addition—and I would like to stress this point—they actually view the property involved and also other properties which have recently been sold and as to which evidence of sales prices has been introduced at the hearing.

Either the landowner or TVA may file exceptions if dissatisfied with the commission's award. Such exceptions are heard by a special three-judge district court unless, as is nearly always the case, the parties stipulate to a hearing before a single judge.

The court passes *de novo* upon the record made before the commissioners; may take additional evidence; may view the property; and then makes its own award without being in any way bound by the determination of the commissioners. Either party can appeal the district court's award to the court of appeals.

This procedure was established by Congress—we think very wisely—to fit the special needs of the TVA program. TVA, as Mr. Wagner has pointed out, is faced with the necessity of conducting on a continuing basis an acquisition program which involves large numbers of tracts in a relatively confined geographical area. Fair and consistent treatment of landowners, who inevitably will compare the prices they receive with those received by their neighbors, seems to us essential if the people of the area are to have confidence in TVA and in the courts.

In the circumstances surrounding TVA acquisitions, we believe the commission system has great advantages over jury trials. We are not alone in this view. In the 1940's and early 1950's, the distinguished group of lawyers, judges, and legal scholars who comprised the Supreme Court's Advisory Committee on Rules for Civil Procedure made an exhaustive study of condemnation problems as a basis for formulating what has become rule 71A of the Federal Rules of Civil Procedure.

That rule—which also had the endorsement of the American Bar Association—expressly preserves the commission system in TVA cases and the somewhat similar system in effect in the District of Columbia; and it also gives the Federal district courts discretion, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, to refer the issue of just compensation to commissioners instead of juries in other cases as well.

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

... wrote every federal judge who had ever sat in a TVA condemnation case, asking his views as to whether the commission system is satisfactory and whether a jury system should be preferred. Of 21 responses from the judges 17 approved the commission system and opposed the substitution of a jury system for the TVA. Many of the judges went further and opposed the use of juries in any condemnation case. Three of the judges preferred the jury system, and one dealt only with the TVA provision for a three judge district court (p. 3).

The committee then went on to state:

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

1. The TVA condemns large areas of land of similar kind, involving many owners. Uniformity in awards is essential. The commission system tends to prevent

discrimination and provide for uniformity in compensation. The jury system tends to lack of uniformity. Once a reasonable and uniform standard of values for the area has been settled by a commission, litigation ends and settlements result.

2. Where large areas are involved many small land owners reside at great distances from the place where a court sits. It is a great hardship on humble people to have to travel long distances to attend a jury trial. A commission may travel around and receive the evidence of the owner near his home.

3. It is impracticable to take juries long distances to view the premises.

4. If the cases are tried by juries the burden on the time of the courts is excessive (pp. 4-5).

I would like to add a few comments on some of these points.

First, a word on the matter of uniformity, which seems to us to lie at the very heart of this matter. A standing commission such as the courts ordinarily appoint in TVA cases, hearing all cases in a given area, inspecting every tract involved as well as comparable tracts which have recently been sold, quickly develops a knowledge of land values which leads to a consistent pattern of awards.

Jurors are in no position to produce similar results. They are properly selected to represent a cross section of the community—office-workers, housewives, and so on—who are without special knowledge of land values. They ordinarily sit in only a few cases.

In a condemnation case they are likely to hear two groups of expert witnesses who present widely differing estimates of value, generally based on sales prices of other tracts which each group claims are comparable to the tract being condemned.

The obvious and best way in which to test the relative reliability of the two groups of experts would be for the triers of the case to view the property condemned, the community in which it is located, and the other tracts claimed to be comparable. The jurors ordinarily have no such opportunity. Yet they must reach a unanimous determination as to value, based on acceptance of the estimates of one or the other group of experts or on some kind of compromise between them. Such a procedure obviously is not likely to produce consistency in results.

As stated in 1958 by Judge John Paul, who served for 27 years as Federal district judge for the western district of Virginia:

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

Second, jury trials in condemnation cases would place a very heavy burden on the already crowded dockets of the Federal courts in the area and would lead to considerable delays in getting cases disposed of.

In this connection, I should like to quote from Judge William E. Miller of the middle district of Tennessee, who has had a great deal of experience in this field. In an article published in 1961 in the *Vanderbilt Law Review*, he expressed his views as follows:

I have in my files copies of letters from twenty-three district judges who expressed their views during recent congressional consideration of appropriation acts. Twenty-two of those judges favor the use of commissioners in appropriate cases. The data contained in these letters and the conclusions stated therein are interesting. For instance, one judge, speaking of a single project in his district

comprising 3000 tracts, observed that "with a small percentage of settlements out of court, a judge spending all of his time trying these tracts to a jury would devote approximately ten years of his judicial life to the disposition of cases in just this one project. There would, by necessity, be a long delay in the disposition of these cases. Land owners would be required to wait several years at least before receiving all of their money which would be a great injustice."

Another judge, citing the acquisition of property for a single project comprising 86,000 acres of land involving 10,000 separate ownerships, stated; "Literally, if the question of each of those was tried to a jury, it would have completely consumed the time of the four judges of this District for a great many years."

The consensus of the judges who have appointed commissioners under rule 71A(h) is the (1) the commission method is more expeditious and less expensive to all parties than jury trials, and (2) that commission awards are generally consistent, thus eliminating the wide disparity often found in jury verdicts (Miller, *Federal and State Condemnation Proceedings—Procedure and Statutory Background*, 14 V- and L. Rev. 1085, 1093-94 (1961)).

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

With further regard to the matter of expeditious trials, we have reviewed statistics for the last 5 years on the time elapsed between the filing of our condemnation cases and the commission awards.

The average for all cases was approximately 1 year. This average was distorted by a number of cases in which commission hearings were postponed for a considerable period because of factors which were beyond the control of the commission—as, for example, the resolution of a point of law in a similar case. The median figure was less than 9 months.

Third, commission hearings in TVA cases are not only expeditious but convenient. The commissions have more flexible schedules than the courts; and they can and do hold hearings near the landowner's home instead of only at the relatively few locations where the Federal courts sit.

This has particular importance for a landowner with a relatively small case—and there are many such cases, involving the acquisition of a small portion of a tract, or of a transmission line easement across a small portion of a tract. Again I would like to quote Judge Paul:

The cry of the "right to trial by jury" has, unfortunately, made an appeal to those having little experience with condemnation cases and who believe . . . that there is something inherent in a jury trial which assures a result fair to everyone concerned.

What the advocates of jury trials do not realize, or ignore, is that by far the greater number of the separate pieces of property condemned by the federal government are properties of comparatively small value . . . The entire project may involve many square miles of land but most of the individual properties making up this aggregate are usually of such small value that no land owner can afford to employ counsel and proceed to a place of holding court which may be several hundred miles from his home, for the purpose of trying the valuation of land which, at most, is worth only a few hundred dollars . . . Thus where the landowner cannot afford to appear in court the government obtains the land at its own valuation (43 Iowa L. Rev. at 236-37).

Fourth, and this, again, is directly related to the problems of the small landowner—the TVA commission procedure is extremely informal. A landowner who wishes to contest a case does not have to file a pleading, or even employ a lawyer or produce outside witnesses; he need only appear himself before the commission and state his views. We have had a number of cases in which commissions, in just such situations, have handed down awards in excess of the amount of our

appraisal, based on their conference with the landowner and their viewing of his property.

Commissions have also rendered awards in excess of the appraisal in cases where the landowner did not even appear at the hearings; there were four such cases in 1966.

I would like now to turn to the specific provisions of S. 1637, that is, the original bill; I have not seen any amendment. The effect of the bill, as I read it, would be to give either party—the landowner or TVA—an absolute right to a jury trial on the question of value. If neither party demanded a jury, the issue would be tried by the court sitting without a jury.

In Federal condemnations other than those involving TVA or the District of Columbia, rule 71A, as I have already mentioned, gives a Federal district court discretion to order a hearing before commissioners instead of before a jury.

The extent of that discretion is a matter on which the courts of appeals do not appear to be completely in accord. But the one type of case which all courts appear to regard as appropriate to be tried by commissioners instead of a jury is what the courts describe as the "TVA type of case."

For example, the Court of Appeals for the Fifth Circuit is one which has taken a relatively narrow view of the extent of the discretion conferred on district courts under the rule. In *United States v. Buhler*, 254 F. 2d 876 (5th Cir. 1958) the court said this:

To justify denial of a timely demand for jury trial, it is essential that the exercise of the court's discretion be based upon some exceptional reasons in the interest of justice, such as the character, location, or quantity of the property to be condemned.

. . . The cases in which denial of a timely demand for jury trial are justified certainly include those similar to TVA cases . . . that it, where large areas held by many small land owners, or property too distant for a jury to view the premises are involved. In such cases, the court's discretion is exercised because of the location or quantity of the property to be condemned (p. 880).

Similarly, in *United States v. 186.82 Acres of Land, Etc.*, 207 F. Supp. 395 (W.D. Pa. 1962), the court stated:

. . . In the report of the Advisory Committee at the time this Rule was formulated, mention was made of the use of commissioners instead of juries in Tennessee Valley Authority cases. What is there mentioned, found after the text in 28 U.S.C.A., Rule 71A, has applicability in this instance. The majority of the parcels of lands condemned are situate in the village of Kinzua which in turn is situate along the banks of the river. "In these small properties it seems essential that uniformity in awards is most desirable. I think the members of this court have found that we have better uniformity under the commission system than are found with juries. Notoriously, jury trials in many instances, not only in negligence cases but also in land cases, result in verdicts, one of which has little relation to any other verdict . . . As in the TVA condemnations, it is impractical to take a jury from Erie to Kinzua in each trial involving a separate owner and a separate parcel of land (p. 397).

What is true of reservoir properties is equally true of rights taken for electric powerlines. In *United States v. Certain Land Situation in Ripley, Stoddard and Butler Counties, State of Missouri*, 109 F. Supp. 618 (E.D. Mo. 1952), involving rights-of-way for a powerline crossing a number of farms, the court, in upholding an award by commissioners, commented:

What a sad commentary it would have been upon economical administration of justice to have held jury trials as to each tract (p. 620).

The point we make is this: The advantages of the TVA commission procedure so impressed those who formulated rule 71A that they not only left the TVA procedure intact, but authorized the courts to use similar commissions in non-TVA cases in which juries had been demanded by one or both of the parties.

Non-TVA cases in which the courts can and do use commissions are precisely those cases in which the circumstances are most nearly like those encountered in condemnations by TVA.

We should also like to point out, however, that the TVA commission system has what we believe to be certain definite advantages over the commission procedure under rule 71A. Some of these are:

1. Under the TVA procedure the commissioners are not required to make detailed findings and conclusions but may simply report their determinations as to the value of the property. Under rule 71A, the commissioners must file a report containing detailed findings and conclusions. In order to do this, they must wait until all of the record has been transcribed—a costly and time-consuming procedure.

2. Under the TVA procedure, any party can obtain a *de novo* review by the court of the complete record of the commission hearing, after which the court renders its own award without regard to that of the commission. Under the rule 71A procedure the court must accept the commission's award unless it is clearly erroneous.

3. Under the TVA procedure, it is known in advance that all cases will be heard by a commission, and the court will therefore normally appoint a standing commission to hear all cases arising in a particular area.

Standing commissions have the best opportunity to develop the detailed knowledge as to land values which results in awards that are not only fair but consistent.

In conclusion, we should like to say that in our opinion the procedure which the Congress adopted in the TVA Act is the fairest, simplest, and most expeditious system yet devised for the determination of land values in TVA-type condemnation cases, and we urge that it be retained in its present form.

Senator SPONG (presiding). Thank you very much, gentlemen. I wonder if we might now ask you to address yourself to the question I put to Mr. Walker and to his response and to Senator Baker's response and in this I would welcome the comments of all three of you gentlemen. I gather from your statement that you are opposed to any change.

Mr. MARQUIS. That is correct.

Senator SPONG. But I would, nevertheless, ask you to comment not upon the bill as introduced, but upon (1) the proposed amendment to the bill as introduced. I know you don't have the exact language, but I think we all understand the principle of what Senator Baker and Congressman Brock advocate; and (2) my question to Mr. Walker about putting TVA in the same position as all other Federal condemnors or under 71A. Would you mind doing that?

Mr. MARQUIS. I would be glad to, sir.

Senator SPONG. Thank you so much.

Mr. MARQUIS. Let me emphasize one thing first, Senator. The kinds of cases which under rule 71A the courts customarily refer to commissions are the TVA type of case. Virtually all of TVA's condemnations involve certain specific things.

In the first place, we are condemning on a large scale a large number of properties. We are doing it on a continuing basis and we are doing it nearly all of the time in rural areas. We are not talking here about post office sites. We are not talking about urban renewal slum clearance or the like.

Now, the courts have said time after time in applying rule 71A it is just that type of case to which commissioners should and will be appointed, so that from that standpoint we are not so different.

It is simply a situation where virtually all of our condemnations are the very type that would be referred to commissions under rule 71A. That being true, I think it would be most undesirable to have them handled other than in a uniform manner, as they are at the present time.

If we are going to get the kind of consistency in awards that is desirable, if we are going to do equity among different parties, seeing that they get uniform treatment, then it is desirable that all of those cases be referred to commissioners. I would also say that I think the procedure under our act is most desirable. It is simpler. It is more expeditious. It is more economical for everybody concerned than the procedure under rule 71A.

Senator BAKER. Mr. Chairman, would the Senator yield so that I might ask the witness a question along these same lines?

Senator SPONG. Yes, Senator.

Senator BAKER. I don't mean to put you on the spot by a hypothetical question, but since there is a difference in the commissioner system under 71A and the commissioner system under the TVA Act, does TVA have a preference as to whether they would rather have their present commissioner system or the 71A commissioner procedure if there is to be an alteration in the procedure?

Mr. MARQUIS. As I have said, Senator, we do prefer our present commissioner system to the 71A procedure. Now, we hope, of course, that that will be left intact as it now stands, and I haven't had a chance at all to even think about it in the context of what I understand now to be proposed.

Senator BAKER. All right, now let's assume just for the moment, that there was the addition of a jury demand privilege coupled with either the 71A commissioner system or the existing TVA commissioner system. Which would TVA prefer?

Mr. MARQUIS. I am sorry, Senator, I didn't get that.

Senator BAKER. Assume that the TVA Act is amended so that there is a right to a jury demand, and that there is a discretionary right, as in 71A, for the judge to submit the matter to a commission in certain instances as 71A now provides.

Would TVA prefer their present commissioner system in those cases, or the 71A commissioner system in those cases?

Mr. MARQUIS. I am in some difficulty—

Mr. WAGNER. I will answer it. Senator Baker, I think on the basis of our experience it is clear that we would prefer our present system. I think as against S. 1637 as it was introduced, rule 71A, with the court determining whether the trial shall be before a commissioner or before a jury, would be preferable. We believe it would, however, in instances where juries might be used, result in a disparity, in an inconsistency, of awards in the same area which would give rise to

more dissatisfaction and more complaints among landowners than we now experience.

Any time you buy land where the seller is an unwilling seller, you are bound to have complaints no matter what the procedure is. We honestly believe on the basis of our knowledge of what goes on in the field generally that we have fewer complaints in the TVA area, considering the number of tracts that we buy, than are generally registered where other systems are used. We believe that the system that was provided in the TVA Act has worked well and we would like to see it continued.

Senator BAKER. Assume for the moment that there was legislation to alter the TVA Act to permit a jury demand. Would the Tennessee Valley Authority have a preference for the 71A procedure for a jury demand coupled with their present commissioner system, that is, if there is demand for jury there would be a jury trial.

If there was not a jury demand it would revert to provisions as now stated in the TVA Act.

Mr. WAGNER. Well, let me say that we haven't discussed that alternative at all. This is the first I had heard it proposed as between rule 71A as it stands and the TVA Act commission procedure with the landowner having an absolute right to a jury trial whether the court thought there should be one or not, my immediate reaction as between the two choices is that the 71A procedure as it stands would be preferable. As between rule 71A and the TVA Act commission procedure coupled with discretion in the court to grant a demand for a jury trial or refer the matter to commissioners; we would prefer the TVA Act procedure. Obviously, we think the TVA Act just as it stands is preferable to any of these alternatives.

Senator BAKER. That is like the fellow who was asked if he wanted the court to appoint a lawyer to represent him. He said, no, he would represent himself. The judge said, "All right, what will we do about this case?" He said, "Judge, Your Honor, if it is all right with you let's drop it."

Mr. MARQUIS. The name that has occurred to me in the last moment or two, and I can't get it out of my mind, is that of Hobson.

Senator SPONG. Hobson's choice?

Mr. MARQUIS. That is right.

Senator BAKER. Thank you.

Senator SPONG. If I may carry along, I want to assure you that I understood you. I want to commend you for your statement. It is excellently researched and a very good one. You came here expecting to bat against one pitch and we shifted pitchers with this amendment.

Now, I did understand you to say in response to my question that all TVA cases, or almost all, fall within the category in which the court under 71A, if 71A were in force, hypothetically, would end up with a commission.

Mr. MARQUIS. I think that nearly all of them would, Senator, yes, and that I think raises one of the difficulties. Some few might not, and this would result in unequal treatment.

Senator SPONG. But that also raises a question I am compelled to ask. If that is the case, why are you gentlemen obdurate in your position here today with regard to 71A?

Mr. MARQUIS. Of the 21 judges who were polled by the Advisory Committee, 17 favored the commission system; three favored jury trials. I would suppose that something of the same sort might happen here. I would assume that in most areas we would get the commission system, while in a few we might get the jury system. That would make, it seems to me, for lack of uniformity of treatment and that is the one thing that we think would be most undesirable.

Senator SPONG. I see.

Senator JORDAN of North Carolina (presiding). Senator Baker?

Senator BAKER. Mr. Chairman, I do have some questions I would like to ask in this vein and on one or two other subjects. Before I get to those questions, though, I would like to put a more general one. There has been considerable reference to uniformity of awards and procedures. Very frankly, the concept of uniformity as it relates to equity is disturbing to me because I very much doubt that uniformity is synonymous with equity.

Mr. MARQUIS. Perhaps the better word to use would be "consistency," Senator.

Senator BAKER. But by the same token your statement, as I understood it, implied that, once a few cases are tried and determined by commissioners, land values are more or less fixed and that this uniformity of valuation tends to lead to compromise and settlement.

Did I misunderstand you?

Mr. MARQUIS. No.

Senator BAKER. Then I very much doubt that this is in the interest of free judicial determination of land values, because we have then established a pattern of compensation by a permanent or quasi-permanent three-man board of commissioners which tends to spill over to every other case and by the very nature of things prohibits determination of the merits of each case on those merits.

Mr. MARQUIS. Well, I certainly did not mean to suggest that the commissioners would not consider each case on its own merits.

Senator BAKER. But you did imply that once a few cases are tried it tends to establish a pattern of established land values, and that causes more settlements than trials.

Mr. MARQUIS. Yes, sir; and the Advisory Committee of course expressed their view that that was one of the very great advantages of the system.

Mr. WAGNER. Senator Baker, if I may comment just briefly, this level of values is established in the case of the commissions by three men who have generally by their appointment by the court some qualification in the field and it is established only after they have been out and seen the land on the ground and also they have looked at other tracts which had their selling price established in the free market, so that our hope and our belief is that not only is there uniformity but there is also equity established at the same time by this procedure.

Senator BAKER. I would like to say that I have a philosophical disagreement with you on the value of having experts make these determinations as distinguished from a jury of your peers. I think jury trial is inherent in the fabric of the common law and the American judicial system.

I would like to touch one other thing briefly.

There has been considerable reference in Mr. Marquis' statements to the Advisory Committee report. I take it you are speaking of the supplementary report filed in 1951.

Mr. MARQUIS. The 1951 report; yes, sir.

Senator BAKER. Which goes back to the 1948 report. But to clarify the listing of advantages of the TVA commission system in the report I would point out that it is my understanding from a reading of it that the listing you gave us is in effect a restatement of Judge Paul's contentions with respect to the merits of the commissioner system.

Mr. MARQUIS. Those were in effect, however, adopted by the advisory committee, Senator, which expressed its agreement with them.

Senator BAKER. Well, now that is the point I wanted to make. At page 4 of the print I have of the 1951 supplementary report, it outlines the four points made by Judge Paul and then continues with the proposition that Judge Paul believed that these same factors should apply to all condemnation cases. Now, the advisory committee, and the Supreme Court in its rulemaking capacity, rejected that contention and came up with a compromise which is now rule 71 and they specifically based their rationale for compromise on the proposition that the rule now met the objections by Judge Paul and then went on to say, on page 7—

"In large projects like the TVA the court may decide to use a commission. In a great number of cases involving only sites" and whatnot, "they may choose to use a jury."

So in effect the advisory committee took note of Judge Paul's contentions, rejected the proposition of Judge Paul that they should have universal application to all eminent domain proceedings, adopted a compromise rule which gave discretion to the trial judge, and said that in cases similar to TVA the court may use the commission system.

Well, if that is a fair reading of the intent of the advisory committee and the rule as finally promulgated by the court, it seems to me that the word "may" is of unusual significance because it implies an element of discretion, that that element of discretion is missing in the TVA Act, and that the purpose of the legislation now proposed and under consideration is to supply the degree of discretion and flexibility which is needed to accommodate the term "may." Does this accord with your reading of the advisory committee's report?

Mr. MARQUIS. No, not quite, Senator. I now have here the report to which you referred and the four reasons which I mentioned are reasons which the advisory committee stated had convinced it that the use of commissioners instead of juries is desirable in TVA cases.

They then went on to say that those considerations had also been stressed by Judge Paul. The committee also examined at length the history of the situation as to TVA condemnations, and decided on the basis of their examination—and it lasted over a period of several years—that the TVA condemnation system had worked very well, and should be left exactly as it was.

They thought that an option should be given for cases somewhat similar to TVA—and of course no situation is exactly the same; there is no other regional agency such as TVA—while recommending that the TVA system be left exactly as it was and is.

Senator BAKER. Mr. Chairman, just for the sake of convenience, might I ask that the record include a copy of the supplementary report

of the advisory committee to the Chief Justice and the Associate Justices of the Supreme Court dated March 1951.

Senator JORDAN of North Carolina. I am informed by the staff that it is already in the record as part of TVA's views on S. 1637.

Senator BAKER. Thank you. I have no further questions, Mr Chairman.

Senator JORDAN of North Carolina. It is so ordered. It will be included in the record. Do you have any further questions?

Senator BAKER. May I have just one moment?

Senator JORDAN of North Carolina. Yes, indeed.

Senator BAKER. Mr. Chairman, if I might, I would also request permission to include for the record an excerpt from the amendments to the Rules of Civil Procedure which has been handed me by the staff which is cited as 5-FRD 358, which makes comments by the advisory committee in 1946 to the effect that the TVA system is probably the most cumbersome and expensive condemnation system yet devised.

Obviously this was not the view of the 1948 and 1951 committees, but for the sake of developing a history of the evolution of this rule I would like that included in the record as well.

Senator JORDAN of North Carolina. It is so ordered. It will be included at this point.

(The excerpt referred to follows:)

EXCERPT FROM 5 FRD 358

The answer, of course, is that if this is the best procedure, it should be generally adopted.

The Committee gave as the reason for the exclusion of the TVA procedure: "In the first place, the TVA authorities, well satisfied with their procedure, vigorously protest any change." First Draft, page 96. In fact, the elimination of the procedure provided by the TVA Act is an additional reason for the adoption of a uniform Rule. That procedure is probably the most cumbersome and expensive condemnation procedure yet devised. Under the Act three commissioners fix the compensation, three district judges pass de novo on their report, the Circuit Court of Appeals on the record fixes the compensation "without regard to the awards or findings theretofore made by the commissioners or the district judges." 16 U.S.C.A. § 831 et seq. One district court has an admirable record for keeping abreast of its docket in the trial of all cases except TVA condemnation suits. It is impossible to expedite these cases because of the necessity of three district judges. Recently an attempt was made to clear the docket of these cases. However, the attendance of only two district judges could be procured, and only those cases could be tried where the parties consented to a trial by two instead of three judges. The result was that a substantial number of the cases were continued.

Senator BAKER. I have nothing further, thank you.

Senator JORDAN of North Carolina. Mr. Pedersen, do you have anything to add?

Mr. PEDERSEN. No; I do not.

Senator JORDAN of North Carolina. Senator Cooper from Kentucky who had to leave asked that I ask these questions for the record, please, sir.

He said will TVA discuss for the committee its views of the relative advantage of appraisers being outside the area of taking and appraisers within the area having knowledge of the values of the area in which they operate?

Mr. MARQUIS. The courts, Mr. Chairman, have applied the TVA Act in a way that results in commissioners certainly being from the general area in which the land is taken, very often from the same county.

They have construed "not being from the same locality" as meaning not being from the immediate neighborhood. They have gone no further than that, so that I don't believe the question really arises.

Senator JORDAN of North Carolina. Another question he has is this: Does TVA consider that insistence on the present system causes resentment against the TVA? I presume he is talking about the landowners in the area against the system you are using.

Mr. MARQUIS. No; I don't think so, Mr. Chairman, and I might point out in that connection that a few years ago a select House subcommittee studying Federal land acquisition practices generally held hearings within our area. They invited people who had had difficulties with TVA, or I believe anyone else, to appear before them and only a very few people did appear before them. I think there is undoubtedly a situation where some landowners may not have been satisfied with commission awards that have been handed down. I think that that would be true under any system, but I do not think that there is any general dissatisfaction with the TVA system of hearings by commissions.

Senator JORDAN of North Carolina. Thank you very much. Senator Baker, do you have any further questions?

Senator BAKER. I have no further questions.

Senator JORDAN of North Carolina. Thank you very much for your testimony.

Mr. WAGNER. Thank you, Mr. Chairman.

Mr. MARQUIS. Thank you.

Senator JORDAN of North Carolina. The Honorable Shelby McCallum, speaker of the House of Representatives of the State of Kentucky.

How much of a statement do you have? I am not going to hurry you, but our time is running out pretty rapidly.

STATEMENT OF HON. SHELBY McCALLUM, SPEAKER, HOUSE OF REPRESENTATIVES, STATE OF KENTUCKY

Mr. McCALLUM. I realize that and I have brought a copy of the resolution which was adopted by the Kentucky Legislative Research Commission which you have.

Senator JORDAN of North Carolina. Yes, sir.

Mr. McCALLUM. And if permissible I would like to make a few comments.

Senator JORDAN of North Carolina. Yes. The resolution will be included in the record in its entirety. You may comment on it as you wish, sir.

(The resolution submitted is as follows:)

RESOLUTION OF THE KENTUCKY LEGISLATIVE RESEARCH COMMISSION

A resolution endorsing Federal legislation permitting jury trials in land condemnation cases brought by the Tennessee Valley Authority.

Whereas, it is the duty of the Commonwealth of Kentucky to give equal protection to its citizens; and

Whereas, the Kentucky General Assembly in statutes providing for the necessary condemnation of property for public purposes has given the landowner the right to take his cause before a jury; and

Whereas, the Constitution of the Commonwealth of Kentucky guarantees the right to a jury determination of damages resulting from condemnation; and

Whereas, the Tennessee Valley Authority presently is taking land by condemnation for the Land Between the Lakes national recreation project without a jury fixing of damages and values; and

Whereas, this Tennessee Valley Authority policy runs contrary to the public policy of the Commonwealth set forth in our successive Constitutions since 1792; and

Whereas, legislation has been introduced in the United States Congress to amend the existing law so as to permit jury trials in any condemnation of private property by the Tennessee Valley Authority.

Now, therefore, *Be it resolved by the Legislative Research Commission, an agency of the General Assembly of the Commonwealth of Kentucky:*

Section 1. That the Legislative Research Commission endorses the legislation introduced in the United States Congress by Senator Howard Baker, Jr. and Representative William Brock of Tennessee, which legislation would amend the existing law governing the operation of the Tennessee Valley Authority so as to permit jury trial in any condemnation of private property.

Section 2. That the Legislative Research Commission believes that the rights of private property can best be protected by jury trial in condemnation cases.

Section 3. That the age-old right to jury trial in condemnation cases has been the set policy of the Commonwealth since its admittance to the Union on June 1, 1792, and that this policy has not resulted in any delay in the proper acquisition of private property for public purposes.

Section 4. That the Director of the Legislative Research Commission shall submit a copy of this resolution to the Governor of the Commonwealth, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Kentucky delegation in the Congress of the United States.

Mr. McCALLUM. I thank you very much. I might first say that it is a great pleasure to be here and I appreciate the fact that the distinguished witnesses that have preceded me and the members of the committee have preempted anything that I might have had to say so I will be very brief, but first I would like to join those of you who came not to bury TVA but to praise it by pointing out that we are very appreciative of the many benefits it has brought to our area.

Our county before TVA arrived was ranked 95th in the economy of Kentucky and now according to recent reports it ranks first in per capita income and first in weekly industrial wages, so we certainly do appreciate the TVA and its many benefits.

The Kentucky Legislature has many times endorsed TVA projects, but we do feel that the public has come to expect and accept condemnation by a jury trial when requested and we feel that any other method is contrary to Kentucky Commonwealth public policy as outlined in all five our constitutions that we have lived under, so, therefore, we did adopt a resolution urging the passage of the Baker bill.

I think that part of the problem that has caused considerable discontent in our area is the fact that both TVA and the Corps of Engineers have condemned large areas of land in the immediate vicinity and of course under the Corps of Engineers a jury trial was accepted and under TVA it was not.

I won't repeat many of the statements that have been made by my predecessor because I realize that time is of the essence, but again I appreciate the opportunity of appearing before you.

Senator JORDAN of North Carolina. Thank you very much. Senator Baker, do you have any questions?

Senator BAKER. Mr. Chairman, I have no questions. I would like to express my gratitude to the witness for coming to Washington to testify.

Mr. McCALLUM. Thank you.

Senator JORDAN of North Carolina. Thank you very much. I am sorry the Senate went in session at noon today because we are going to have to get through or carry over until tomorrow.

Mr. James Story, county attorney for Lyon County, Ky. Mr. Story, we are still in the same fix we were a few minutes ago with regard to time. Any statement that you have will be included in the record in its entirety. Any resolution that you wish to put in will be included and we will be glad to hear any remarks you have, sir.

**STATEMENT OF JAMES STORY, COUNTY ATTORNEY,
LYON COUNTY, KY.**

Mr. STORY. All right, sir, I will make it as brief as I can, Senator.

Thank you for giving me the opportunity to appear. I will try to state some facts which I think should be brought out and not get on the philosophy of the matter which has been well represented by Senator Baker and Senator Spong.

I agree with their philosophy on the right of trial by jury.

I am James E. Story, Lyon County attorney, which is the county that was affected by the Kentucky Dam and by the Barkley Dam. Both of them are all partly in Lyon County, Ky.

I think, first, that the 71A rule is not involved in this bill and shouldn't be confused with this bill. I think the bill is drawn exactly as the committee should consider it. The people back home want us to bring a bill to them allowing the right of trial by jury, period. I might say that the 71A rule was held up in the committee for about 3 years and initially the committee indicated that they wanted to do away with the commission form of procedure, but that they realized that they had no authority to change an act of Congress and they came up with the rule 71A.

I think the bill should be maintained and insisted upon, which is the pulse of our people in that area, to allow a trial by jury. There are so many things that I wanted to say. I might just say that in my office as county attorney in a county that is directly affected by this I do have so many people that are amazed that they cannot go into court and have a trial by jury.

This is brought out clearly today by the fact that the TVA has not presented any testimony or statements of any individual person other than the 17 judges which were mentioned that advocate taking land by the commission form of government.

On the other hand, the past president of the Kentucky-Tennessee Bar Association has shown that oh so many groups including the General Assembly of Kentucky, and the General Assembly of Tennessee, and the State bar associations, have uniformly advocated this bill that Senator Baker has introduced, and the TVA takes refuge in the 17 judges, the only refuge that they have, it seems, in response to the 17 judges back in 1948 which didn't have this particular problem up, so I might say this: That people of this area are just not satisfied with the commission procedure. They mentioned that it is more convenient and that they can try the cases at different places and summon witnesses at different places and this, in itself, adds suspicion and takes

away from the dignity of the usual and customary procedure of right to trial by jury.

They would have us maintain the present form over having a panel of 18 jurors selected and finally questioned, sworn, tested, and accepted, on the one hand, and the judge appear to keep the evidence within the bounds of the rules of evidence, and then have each party with its witnesses in the adversary system of each attorney expressing his views and the excessively large verdict, or the excessively low verdict, is further scrutinized by your appeals, and if this has been good enough, gentlemen of the committee, for the cities, and the counties, and the railroads, and the quarries, and the port and harbor authorities, and the States, and the Federal Government in all other areas, it has been good enough for us in those areas.

I just think that it is good enough for these particular cases. One more point and then I will cease.

This has become a point of importance in this land between the lakes area, which I am for, and I think maybe they bought a little too much land, but I have accepted that fact. They are buying approximately 200,000 acres of land between the rivers. Now it is between the lakes.

Mr. Pedersen would have you believe, it seems, that there would be a great load of cases that the courts could not handle. They have already bought, I would say, over 80 percent of that land and presumably the people that sold are satisfied.

Then there is not going to be over 20 percent of those cases tried at the most and I think I can safely say that less than half of that would be tried because so many of them are title problems, and so as an answer to that question Barkley Dam was built just a mile from Kentucky Dam by the Corps of Engineers and they acquired the land through the Federal courts as everybody else has, and he said that history has shown that only 8 percent of the TVA cases have been tried by the commissioners.

I would say that in Barkley Dam, which I am very familiar with, living within 10 minutes driving distance, less than 4 percent of those cases went to Federal court, and in some of those cases a landowner got an increase and in some cases they got a decrease, but the important thing is, gentlemen, that they had their day in court. They had something to do with saying where the case was going to be tried. It was going to be tried in Federal court. They had something to do with selecting the people that were going to try the ultimate issue.

They can ask them some questions and there is no point in me extolling the virtues of the jury to this distinguished committee and I will not try to do that.

I will just sum up by saying it has been good enough for our forefathers and now even going back to England, the Magna Carta, it has been good enough for them, and I think it is good enough for us. I am testifying for the Tennessee Valley Authority. I think it behooves us who advocate the TVA to permit a trial by jury.

I have an article here from the Lyon County Herald which I would like to have included in the record.

Senator JORDAN of North Carolina. It will be inserted in the record.
(The article referred to is as follows:)

LYON COUNTY HERALD

The Senate Public Works Committee will hold hearings on Senate Bill 1637 October 10, in Washington and Senator John Sherman Cooper has invited a group of local people to testify.

County Attorney James E. Story, Senator Richard Frymire, Representative Shelby McCallum, and Mrs. Corrine Whitehead were invited from Lyon County. Attorney Ed Johnstone and Grayson Harrolson from Caldwell County will also attend in favor of the bill.

Senate Bill 1637 was introduced by Senator Howard H. Baker of Tennessee, who seeks "to amend the Tennessee Valley Authority Act of 1933 to provide that the issue of just compensation may be tried by a jury in any case involving the condemnation of real property by the Tennessee Valley Authority."

Section 25 of the TVA Act provides for the determination of the issue of just compensation by three commissioners. Appeals may be taken from the award of the commission to a three-judge federal court, but by agreement of the parties the three judge court is usually waived and the appeals are heard by a single federal judge. The statute provides for further appeal to the court of appeals.

Senate Bill 1637 would abolish this procedure and permit a party to have the issue of just compensation tried by a jury by simply filing a demand for a jury.

TVA is opposing the bill and has filed objections to it over the signature of its chairman, Aubrey Wagoner. The opposition falls generally into the following categories:

- (1) Commissioners are better qualified to judge price of land than jurors.
- (2) Since the same commissioners try all cases in an area, its awards tend to be more consistent, while jury verdicts may vary widely, causing discontent among landowners and seriously hamper TVA in carrying out its land buying transactions.
- (3) Jury verdicts are always a gamble and there is a possibility of landowners receiving a large award.
- (4) That the commission trial is more convenient for the landowner and alleviates crowded court dockets.
- (5) That a Supreme Court Advisory Committee approved the commission procedures in 1951.

County Attorney Story took issue with TVA opposition in a interview and offered rebuttals to the several opposition points.

He stated that he feels that the right to trial by jury is guaranteed by the 14th amendment to the constitution and has been enjoyed by free men every where since King John of England was forced to sign the Magna Carta in 1248—over 700 years ago—until the TVA Act of 1933 nullified it.

In direct rebuttal to TVA's opposition, Story took them one by one. He contends:

- (1) That commissioners are not better qualified to judge land prices than jurors, because TVA picks and pays the commissioners, thus exerts undue influence and renders an impartial verdict unlikely.
- (2) That consistent prices are not necessarily fair prices, and that mere expedition of TVA land acquisition does not in itself override the question of justice in any litigation; further, TVA's statement clearly shows the commissioners tend to become stereotyped and will do their utmost to keep all land prices level regardless of the fair market value of the tracts considered, in an attempt to appease previous sellers.
- (3) "Really," Story pointed out, "TVA let the cat out of the bag here when they stated 'the danger of jury trials could seriously hamper the agency in carrying out its responsibilities.' It is apparent that TVA clearly places their programs above individual rights in the name of expediency."
- (4) As to the crowded court dockets, taxpayers already provide for the procedure of trial by jury—why set up a separate system heretofore unknown in this country?

(5) Story said this committee was reporting on rules of procedure and stated in their report that they had no authority to change an act of Congress, and did not therefore consider the abolition of the commission procedure.

"Massive land acquisition of 170,000 acres in L.B.L. has revived memories of the case of Louis Vogel during the acquisition of land by TVA for Kentucky Lake during the 1940's," Story continued, "and has raised serious doubts in the present L.B.L. landholders' minds of the possibility of getting justice under the commission form of trial."

Vogel refused a TVA appraisal of approximately \$24,000 for his farm, which contained a limestone quarry, saying TVA was allowing nothing for his quarry—but merely appraising his land.

TVA admitted this, saying mineral rights had no value to them and the commission awarded Vogel only \$15,500, cutting \$8,500 off the price TVA offered!

Facts later reveal that much of the Kentucky Dam concrete and miles and miles of rip-rap rock were furnished by Vogel quarry after TVA acquired it—for nothing.

Story said it is apparent, in retrospect, why TVA now contends the commission procedure to be more suited to their needs.

"The fact that TVA brags about the large percentage of the court-free buying does not prove that this policy is fair—on the contrary, it proves that the landowners do not feel that they can get justice under the commission procedure and that any attempt would be costly—they remember the Vogel case," Story pointed out, "and we intend to so inform the Public Works Committee on October 10th and attempt to regain the right to trial by jury that has been denied three generations of Lyon Countians."

Mr. STORY. Thank you, Senator.

(A second exhibit placed in the record by Mr. Story is a letter from George S. Vogle, of Allensville, Ky. It was subsequently read by Mrs. Corinne Whitehead and appears with her testimony.)

Senator JORDAN of North Carolina. Thank you very much.

Senator Baker, do you have any questions?

Senator BAKER. No. I do, however, thank the witness.

Senator JORDAN of North Carolina. Thank you very much for your testimony and for being with us today.

Mr. STORY. Thank you.

Senator JORDAN of North Carolina. Mr. Charles Thompson. Mr. Thompson is with the Landowners Protective Association.

Do you have a prepared statement, Mr. Thompson?

STATEMENT OF CHARLES THOMPSON, LEGISLATIVE DIRECTOR, LANDOWNERS PROTECTIVE ASSOCIATION

Mr. THOMPSON. I will read it and then reiterate some of the highlights.

As director of the Landowners Protective Association, I am happy to appear here today on behalf of those anxious landowners whose holdings are directly affected by the bill under discussion at this hearing and for those sympathetic landowners who watch from other areas of our Nation to see if justice shall, indeed, prevail.

It is most appropriate that the Landowners Protective Association should take special interest in these proceedings since, in reality, a certain portion of the right to private property is on trial here.

Laws relating to the individual may be seen to pertain either to his person or to his property. In law relating to the person the right to a jury in important matters is not contested. It is a firm part of the fabric of our law, jealously guarded by all. Where this right is denied, and this is the complaint of our members in TVA land, simply because the subject is property, not person, it seems to us a gaping hole in our legal bulwark. The landowner is unprotected in court if he is denied this

right. The condemning authority cannot be expected to be sympathetic when it has its own interests in mind. Nor can the court be expected to move to the side of the landowner in that same paternal manner as it was expected to act in juvenile matters. Indeed it is the function of the court to move in neither direction but rather to consider impartially the merits of both sides as presented and then instruct a jury. If the court is to be a referee, who shall be concerned with the landowner? Only a jury composed of individual private citizens can be called peers and only this jury can be expected to identify sufficiently with the landowner to balance the proceedings and guarantee justice. In giving to juveniles the right to counsel the Supreme Court effectively decided that the court must be a third party holding scales equally balanced as to power, with the facts of the matter tipping the scales in favor of the proper party.

If the facts of the case tip the scales it can make a great difference just who weighs these facts. Only a jury can offer the proper guarantee, be it a matter of property or person. It is a wonder that the jury is not as firmly entrenched a guarantee of the right to property as it is of personal liberty seeing that the latter is a meaningless thing without the former.

Was this not the lesson learned by the barons of England who sought to secure personal liberty through the Magna Carta. In spite of the great victory they won there the barons found their sovereigns still guilty of abuses and ratification after ratification of the great charter was exacted from their kings. Thirty-seven such ratifications were not enough to halt the abuses for the king could still get to the person through his property. Not until Edward I confirmed the charter in a manner which gave to property the same guarantees which the charter had given to the person were the abuses effectively halted. Thus this great Confirmation Cartarum may be called a prime document in property rights.

The concept of private property runs with the advancement of society. Private ownership and its guarantees were not often features of primitive societies. Apart from the fact that it takes a certain level of government to guarantee and enforce the guarantees of such rights, it may also be seen that communal ownership was an easier method since it effectively precluded the existence of forceful wills contrary to the concept of the commonweal as envisioned by the reigning authorities. Now it would be incorrect to state that advanced societies admitted private ownership because they could afford to do so. Indeed the exigencies of nature had been made milder. Not so much effort needed to be placed upon the preservation of society itself. A more difficult type of government could be tried. But this is not how it happened. Private property was inherent in the development of society. Societies discovered that individual property ownership unlocked the door to that treasure trove of activity and production which arise from personal ambition.

The State did not demand the right to own all the land in the name of the people but rather acted to guarantee that individuals could own it and improve it in a manner friendly to the public welfare. Thus it was the very concept and the practice of individual ownership which advanced societies. The riches derived from this system far outweighed the problems which arose when individual desires ran counter to the

public welfare. And in those cases where private property was needed for public use the transfer was handled in such a manner as to be as equitable as possible—for to endanger the right to private ownership would be to strike at a basic pillar of our legal system—a blow which must endanger and undermine the whole foundation of our law. Thus did the State act very much as a boxer out of the fight ring, refusing to use his fists in a street fight because his station and training make his first lethal weapons. This very restraint marks the advanced State—possessed of the power but disdaining to use it for fear of the more ultimate dangers inherent in the unjust use of might. In this restraint the State showed its willingness to permit a difference of wills. The State became great because it chose not to use its greatness to overpower the private citizen. We must agree with Leibnitz who stated that that is the greatest order which can tolerate within itself the greatest disorder.

The precept that private ownership of property is essential to any concept of personal liberty is firmly established within our tradition. A most recent restatement of the position of the church in this matter is found in a letter issued by the bishops of ecumenical council. Ownership and other forms of control over material goods contribute to the expression of personality, moreover they furnish men with the occasion for exercising their role in society and in the economy. Hence it is most important to facilitate the access of both individuals and communities to some control over material goods. Private ownership or some other kind of dominion over goods provides everyone with the whole necessary area of independence and should be regarded as an extension of human freedom. Finally, since it adds incentive for carrying on one's function and duty, it constitutes a kind of prerequisite for civil liberties.

The church has constantly upheld the divine right of private ownership. Leo XIII stated: "Nature, rather the Creator himself has given man the right of private ownership so that individuals might provide for themselves and their families."

But now we are told that man's needs require that vast acreages be transferred to public ownership. Private ownership has spoiled nature, polluted our waters, and darkened our skies. We are told that private initiative must fail if it tries to meet the growing recreational needs of our nation. The landowner is now a vicious spoiler, a money-mad speculator and a heartless entrepreneur unmindful of the public good. Indeed, we are told that man's desire to own private property is the greatest danger to nature and his own aspirations. In the desire to acquire land as quickly as possible before it reaches a higher stage of development every possible expediency is resorted to. These criminal landowners must be brought to justice, their property wrested from them as quickly and inexpensively as possible so that it may be brought under the paternal protection of public authority. Where personal ambition has failed, there the communal ambition will succeed. The lesson of history is just this: Communal ownership as a policy works only in sincere religious communities—politically it is always a failure.

What other attitude can we take than that which we represent here—that eliminating a jury from these considerations is a most dangerous concession to expediency. For in this area the TVA may do what the Sovereign State of Maryland may not do—condemn without a jury.

In determining the correct method for taking private property for the public use we must keep clearly in mind the twofold character of the rights to and of private ownership. First we mention the individual, private character which we have here established as ordained by the Creator Himself, and secondly the public, social character of private ownership which dictates that the property shall not be used in a manner injurious to the commonweal and that it concede itself to the public use where necessary. Here we may clearly see the distinction between the right to private property which is divine and the rights of private property which are subject to certain social limitations.

At this point we are mindful of the admonition of that great social churchman Leo XIII: "Accordingly twin rocks of shipwreck must be avoided, for as one is wrecked upon or comes close to what is known as individualism, by denying or minimizing the social and public character of the right of property: so by rejecting or minimizing the private or individual character of this same right, one inevitably runs into collectivism or at least closely approaches its tenets."

Our critics will say that the rights of private property are not under discussion here today—that they are not endangered by a concession made in one small part of our Nation. "This is a special matter," they will say, "it must be discussed apart from the whole picture—this exception is necessary because special conditions are at work here." To accept this type of thinking would be to give the wolf his own special place to drag and devour his prey. Grant him this immunity and no sheep is free of fear. Leave this one hole in the fence and the stock will surely find it. The rest of the fence will be useless.

By failing to approve this bill or some measure like it we must all accept the evil consequences which arise where personal liberty falls prey to the expediency of "special conditions." In favoring this bill you are giving those landowners no gift, but rather restoring to them what is theirs by right. I speak for landowners nationally; for our members in Montana along the Kootenai River whose banks are in danger of losing their private character; for our members in the Adirondack Mountains who face large scale nationalization of lands there; for our California members who have been told that fee title acquisition of their redwood lands is the only method of protecting the common good in that area; for anxious property owners, our members in the Potomac Valley who have been informed that due to the oversight of planners in the suburban counties in not allowing for the recreational needs of the great cities which they serve, that this great valley must drop its former land-use patterns and accommodate itself to being a great playground; but most directly for our members in Kentucky and Tennessee who have too long lived under undue restriction of their personal and property rights. All of these say to you through me: Restore to them what is theirs.

Mr. THOMPSON. That completes my prepared statement. I will now confine my remarks, due to the limitation on time, to some very few comments on the recent testimony given by Mr. Wagner and associates.

Representing landowners I should like to thank the Tennessee Valley Authority for its great solicitude in considering these humble landowners who must travel great distances to a jury trial, who must bear great expenses, but do they not have the right to choose to travel these distances and to bear these expenses?

If they are subject to delays because a jury trial is chosen rather than a commission system, do they not have the right then to choose these delays? We have been told that the commissioners can see the land involved. The jury cannot. In this age of electronics I find this hard to believe. If Mohammed cannot come to the mountain, then, in this day and age, the mountain can indeed come to Mohammed.

We have films, television tapes. They can see the land. We are told that the commission system is preferable because the jury trial would tie up the courts. Indeed the best way to clean up court schedules would be to limit the number of cases which ever get to the court, but is this justice?

We have heard the words convenience, expediency, uniformity, economy. I don't find that they have that great a place in American law. We are warned about variations in jury decisions and yet we are told that the commissioners themselves have made certain awards in excess. We don't wish to play with the words consistency and uniformity, but we have the feeling that the Tennessee Valley Authority really wants consistent uniformity in a system which has been set up and operated by three commissioners for these many years.

And we end by saying this: We favor open doors, a choice of alternatives. Let these landowners choose to bear the burdens which may come with the jury system, and finally in light of the tremendous clamor brought out today by landowners, by bar associations, by people concerned with the issue, that the Tennessee Valley Authority can state that they cannot hear any general dissatisfaction with the system does not indicate that there is no dissatisfaction.

Rather it indicates that they are hard of hearing and in this great authority that represents a tremendous danger.

Gentlemen, I thank you.

Senator JORDAN of North Carolina. Senator Baker, do you have any questions?

Senator BAKER. No, Mr. Chairman. Thank you.

Senator JORDAN of North Carolina. Thank you very much. We appreciate your being with us and testifying.

(The following letter was received and ordered printed:)

SUPPLEMENTAL STATEMENT OF CHARLES P. THOMPSON, EXECUTIVE DIRECTOR, LAND-OWNERS PROTECTIVE ASSOCIATION

Mr. Chairman, I have been asked by the Tennessee Valley Authority to identify myself and to explain just why my association has an interest in these proceedings. This is a reasonable request and I am pleased to comply. I have been so enthusiastic in the defense of these injured landowners that I have forgotten to identify myself and the association I represent.

I am Charles P. Thompson, a citizen of the United States, resident of the State of Maryland, and landowner in the county of Washington. I reside in Samples Manor—since we are served by a West Virginia Postman my mailing address is: Box 294 Rt #1 Harpers Ferry, West Virginia 25425. I live in a house built entirely of Cedar Logs—built by my own hands on land I cleared myself. I love this land—none of it is posted—it is open for the enjoyment of all good people.

On October 1, 1966 I saw a poster in the general store which advertised a public meeting to discuss a book of maps. That book showed the proposed taking lines for a Potomac Valley Park. I went to the meeting on Oct. 6th and was astonished to hear that many of us faced loss of our lands in order that a national recreation area of vast proportion might be established. I made a few comments that evening and was forthwith elected temporary chairman to orga-

nize a county association to protect our interests. That evening on October 6th, 1966 in Sharpsburg, Maryland was born the Landowners Protective Association.

We soon began to get mail from all over. Other landowners were fighting different battles, but it was the same war. We saw that everywhere Air & Water Pollution, destruction of natural resources and lack of open spaces were being used as the pretext to transfer more and more land from private to public ownership. While the Interior Department, the Corps of Engineers and the Conservation groups differed as to how to cope with these recognized problems—those with a very great stake in the outcome had no voice in the matter. Landowners were not united—their outcry was weak and sporadic. He needed then and needs now a national Landowners Association. Until such an Association is a reality—our association will have to do. Our chapter at large has members in Maryland, Virginia, West Virginia, New York, Pennsylvania, Kentucky, Tennessee, California, Montana, Washington State and the District of Columbia.

In March 1967 I was elected Executive Director and given authority to speak for the Association in all matters affecting its membership. I am here today for just that reason—a matter is being discussed that affects our members in Kentucky and Tennessee. Now our stake is this: anytime a landowner feels unjustly treated he may complain and we shall take up his cause so long as it be just. In addition to those specific problems facing our members, we face a general problem of great proportion. The concept of private ownership of land is declining. Every where the solution to domestic resource problems seems to be “extensive public control over the system.” (The Potomac—A Report) Many officials believe that “Man’s urge to possess a piece of land has become one of the greatest threats to nature and to his own aspirations.” (op. cit.) Three great things are in danger if this thinking gains the upper hand—private ownership of land, agriculture and Sylviculture. They must not be damaged!

Senator JORDAN of North Carolina. We have a statement from Mr. J. Wiley Bowers, executive director of the Tennessee Valley Public Power Association. That will appear in the record at this point.

(The statement is as follows:)

STATEMENT OF J. WILEY BOWERS, EXECUTIVE DIRECTOR, TENNESSEE VALLEY PUBLIC POWER ASSOCIATION, CHATTANOOGA, TENN.

My name is J. Wiley Bowers. I am Executive Director of the Tennessee Valley Public Power Association, a regional association of municipally and cooperatively owned electric distribution systems in the Tennessee Valley. The Association’s headquarters office is in the Pioneer Building, 801 Broad Street, Chattanooga, Tennessee.

The municipal electric systems and rural electric cooperatives which make up the Tennessee Valley Public Power Association purchase their entire wholesale power requirements from the Tennessee Valley Authority (TVA). These locally-owned, locally-managed electric utilities distribute TVA-generated power at retail to more than 1,500,000 consumers in parts of seven States. Therefore, these 106 municipal power systems and 51 rural electric cooperatives have a direct interest in Federal legislation affecting TVA’s ability to provide an adequate supply of low-cost wholesale power for the Tennessee Valley region.

Two witnesses representing this Association have appeared before your Committee. Prof. William H. Wicker, now Professor in the Drake University School of Law, Des Moines, Iowa, served as Dean of the University of Tennessee College of Law for 17 years, and has served as Chairman of a three-member Condemnation Commission in TVA land acquisition cases, Mr. A. J. Foster, a businessman from Aberdeen, Miss., has served as a member of a three-member commission to hear TVA land condemnation cases in Mississippi.

From personal experience, they have testified that the present method of handling TVA land condemnation cases is excellent, and should not be changed. As Dean Wicker stated: “It is my sincere opinion, based on a reasonable amount of thought, experience and investigation, that TVA’s experiences over a third of a century indicate clearly that the drafting of the condemnation provisions in the original TVA Act was something in the nature of either a stroke or luck or genius, on the part of the session of Congress that passed that Act. These provisions provide procedure that is cheap, efficient, speedy and fair, both to the landowner and the government.”

As purchasers of wholesale power from TVA, our member utility systems feel that the present method of handling TVA land condemnation cases has these important results:

(1) It settles the cases with relative speed, thus permitting TVA to carry on its construction program in an orderly, efficient and economical manner, and enabling the landowner to obtain compensation promptly. Trial by jury would cause considerable delay in deciding on compensation to the landowner.

(2) It results in awards that are, generally speaking, equitable to the landowner and to TVA. Trial by jury, on the other hand, may result not only in unduly high awards, but also in awards that are inconsistent as between adjacent landowners, thus undermining confidence in jury trial.

(3) It results in an award to the landowner based on an actual visit to the properties by the commissioners, an unlikely occurrence in the case of a jury trial.

Therefore, we respectfully urge that your Committee leave the TVA Act, Section 25, as it has stood for the past 34 years, to preserve a procedure that has worked well.

Senator Baker testified that he could not "point with certainty to even one such case" where "equity has not been achieved" in TVA land condemnation cases; therefore, we see no overwhelming reason to change a procedure that is admirably fitted to the circumstances in the Tennessee Valley area.

As a part of my testimony I wish to include a copy of a letter sent to me on October 6, 1967 by the Vice President of the Tennessee Valley Public Power Association, Mr. Hershel Apple, Jr., General Manager of the Duck River Electric Membership Corporation, Shelbyville, Tennessee.

DUCK RIVER ELECTRIC MEMBERSHIP CORP.,
Shelbyville, Tenn., October 6, 1967.

Mr. J. WILEY BOWERS,
Executive Director,
Tennessee Valley Public Power Association,
Chattanooga, Tenn.

DEAR MR. BOWERS: In response to your letter concerning the change in TVA's land purchasing practices, I am very much against such a change and recommend that the Association do everything possible to help defeat this bill.

In more than twenty years in the electric power business, I have only had one experience of property condemnation which was initiated about eighteen months ago and is still not completely settled. The Jury of View has acted, however, and I think that this is a good example of what might happen to TVA if they are required to follow this procedure.

I am enclosing a print¹ showing 2.24 acres to be purchased for a substation and approximately 3.5 acres of right-of-way that was condemned under this procedure. The substation site had been appraised at \$2,240 which is \$1,000 an acre, and \$400 for the right-of-way. Most all of the right-of-way was flooded each year and therefore unsuitable for buildings. We felt that our offer of \$2,640 was high according to the sale of land in this proximity; however, we agreed to this figure. As this was not satisfactory to the land owner, it was submitted to a Jury of View and they awarded the property owner \$4,000 for the land plus \$5,200 incidental damages (whatever that is).

This property is fifteen miles from the nearest incorporated town and might, at the most, sell for from \$100 to \$200 per acre.

I give you this information to substantiate some bitterness on my part and to illustrate my desire that the TVA's land purchasing practices remain as they are. Actions such as those displayed by this Jury of View are little, if any, less than legalized extortions by the property owner's friends and neighbors on the property owner's behalf.

Yours truly,

HERSHEL APPLE, JR.,
General Manager.

Senator JORDAN of North Carolina. Professor Wicker, professor of law at Drake University, Des Moines, Iowa, is representing the Tennessee Valley Public Power Association.

¹ Not received.

We are glad to have you with us, sir, and I see you do have a prepared statement. I would appreciate your skimming through your remarks, sir, as quickly as possible.

Senator BAKER. Mr. Chairman, before the witness starts I might add to his long list of accomplishments. Not only is he now a visiting professor of law at Drake University, but he was formerly dean of the College of Law at the University of Tennessee, which is the institution that gave me what little legal training I was able to acquire in the course of my attendance at that institution while this witness was the dean.

We are glad to have him.

Senator JORDAN of North Carolina. I think that speaks real well of him, getting you out of a law school. We are glad to have him in the Senate, Professor Wicker. He is a good Senator.

We are delighted to have you.

**STATEMENT OF PROF. WILLIAM H. WICKER, PROFESSOR OF LAW,
DRAKE UNIVERSITY, DES MOINES, IOWA, REPRESENTING THE
TENNESSEE VALLEY PUBLIC POWER ASSOCIATION**

Mr. WICKER. Thank you, Senator Baker, for that generous introduction. I have watched your career with great interest, and I take what I hope is a pardonable pride in feeling that I have had some small part in helping to lay a foundation for your professional and political success. I concur 100 percent in Senator Jordan's opinion that you are a good Senator, and it is my belief that you have the potential for becoming an outstanding statesman.

I am William H. Wicker. My present address is 3827 Carpenter Avenue, Des Moines, Iowa. I have the following degrees: A.B., Newberry College, LL.B., Yale University, and LL.M., Harvard University. I have taught law for many years in the State universities of South Carolina, North Carolina, and Tennessee. I was the dean of the University of Tennessee College of Law for 19 years and upon reaching the compulsory retirement age for staff members of that university, was retired in August 1967 with the title professor of law and dean emeritus. Since September 1, 1967, I have been a professor in the Drake University School of Law, Des Moines, Iowa.

During 17 of my years at the University of Tennessee, I served also as a Federal jury commissioner, and about 2 years ago when I gave up that job, the U.S. district judge for the eastern district of Tennessee, Hon. Robert L. Taylor, appointed me as the chairman of a three-man condemnation commission in TVA cases. I served in that capacity up to the time I left the Tennessee Valley region to accept a professorship at Drake University, Des Moines, Iowa.

On October 4, 1967, I received a long-distance telephone call from the Tennessee Public Power Association, asking me to appear on October 10 at a hearing of the U.S. Senate Public Works Committee and to prepare a statement for use on a bill which, if enacted, would substitute juries for commissioners in TVA condemnation cases.

I accepted the appointment, although at the time I had as much work as I could do, as a newcomer to Iowa, in orienting myself for teaching Iowa law students. The chief reason I accepted this inconvenient assignment is the feeling that since I have spent more years than

I like to mention urging law students to do always everything they can to improve the administration of justice, I would be a delinquent myself if I did not take advantage of this opportunity to try to prevent the Congress from runing a system of condemnation procedure which is ideally suited to the needs of TVA's land acquisition program.

It is in fact the best condemnation procedure in existence and should be adopted by other governmental agencies.

Over a period of several centuries of its development, common law trial by jury was extravagantly praised, as a panacea for every defect in judicial administration. It is true that it was an improvement over the earlier methods of trying issues of fact.

However, trial by jury was never used at common law in condemnation cases, and as applied to the issue of just compensation in TVA condemnation cases tried in the second half of the 20th century, jury trial would be a retrogressive step.

TVA is a regional agency of long duration that carries out an integrated program, involving navigation improvement, electric power generation, soil conservation, and the promotion of the region's general economic development.

Its land acquisition program is a continuing one on a large scale, and the fact that the percentage of condemnation cases to the total number of tracts acquired is the smallest percentage of any governmental agency is pertinent evidence of the fairness of TVA's land acquisition policies and procedures.

This remarkable record is due in part to the commission system of trying issues as to the amount which constitutes just compensation for land taken. In cases where that type of issue is determined by a jury, the award in one case is no indication of what the award of a different jury will be in the next case, and no matter how high a price a landowner has been offered, there is always the possibility that a jury will award him a great deal more and many landowners have psychological inclination to gamble.

Jury trial is therefore an invitation to the landowner to negotiate. Although commission hearings in the majority of cases results in awards higher than the amount offered by TVA for the property, the awards have a degree of uniformity, and it rarely happens that an award is extremely high.

This uniformity in commission awards is brought about by a number of factors. The commissioners have knowledge of land values superior to that of the ordinary juror to begin with, and they soon develop a high degree of competency, both in knowledge of land values and ability to weigh the testimony of witnesses.

They always inspect the subject property prior to the hearing, and often also inspect other properties recently sold in the community. They hear all of the cases within a district and thus are in a position to test the market value of the subject property by comparing it with other land being acquired for the same project.

This inspection of subject property greatly increases the ability of the commissioners to make a fair and acknowledgeable evaluation, to the end that the award will be an amount which is both just to the property owner and to the Government, and is consistent with awards obtained by his neighbors.

There are a number of reasons why it is not feasible for a Federal jury to view the subject property. Such a view is too expensive, too time consuming, and too disruptive of the court's docket. A different jury is selected for each case from a panel of about 60 members. Some members of every panel live in each county of the judicial division and the subject property may be in any one of the dozen or more counties, comprising the division of that district.

TVA cases are often clustered in the same community like grapes on a bunch. The three commissioners, riding in the same automobile, can often inspect on a single day's trip tracts of land which are the subject matters of different cases.

The subject of TVA condemnations is limited to land. There are vast differences between moveable chattels and land. Every tract of land is unique, and its value is dependent on its locality, topography, geologic type of soil, and the sales prices for similar tracts in the same community. No reasonably prudent man will buy land without taking a look at it. No competent real estate appraiser will appraise land he has never seen.

A view by the commission is especially important to the landowner in the small case, and to the Government in the big case. In the small case, and the commission hears many cases where the amount in controversy is only several hundred dollars, there is not enough involved for the landowner's attorney to go to the expense of obtaining the type of demonstrative evidence which the Government will offer as its exhibits.

If the factfinding tribunal has not seen the land it will usually have to accept as the true picture the Government's exhibits. In the big case, if the factfinding tribunal has not viewed the land, there is danger that it will accept at face value the landowner's exhibits of photographs of the best parts that have been blown up to the point of no resemblance to reality.

A view by the commission does not leave much room for exaggeration and perjury. When the commission has had its view and the case is such that it is obvious that the witnesses on one side or the other are committing perjury, the commission knows which witnesses are doing the lying.

Some months ago a University of Tennessee professor who was a juror in a condemnation case brought by the State of Tennessee, told me that his experience as a juror in that case caused him to lose confidence in Tennessee's judicial administration of justice in condemnation cases. His conclusion was that jurors who have had no opportunity to see the property cannot fix a valuation that is fair to the Government and the property owner.

The plain truth seems to me to be that a determination of the value of an interest in land by 12 men who have never seen it and who have no prior experience in appraising land, is just a leap in the dark.

Our Federal courts are places for the administration of justice, according to the principles and standards of our substantive law, and they should not be required to render judgments by a method which is essentially the same as the rule used by the gambling joints of Las Vegas.

Another advantage of the commission over the jury system is that the commission is usually able to afford the parties a speedier trial.

The commission is not limited to the periods of time that coincide with the court terms for jury trials. The commission has its own docket. It is a relatively small docket which can be, and often is, adjusted to accommodate the convenience of the parties and their attorneys.

The claim has occasionally been made that the present TVA condemnation procedure is so expensive that it imposes an undue hardship on the landowner. The truth is that it is just about as inexpensive as it is possible to make it, and comply with the requirements of procedural due process.

The landowner need not prepare or file any sort of a paper in order to raise the issue, as to whether or not TVA's offer is just compensation. All he needs to do is to refuse the offer and appear at the hearing, and he will then be permitted to state his own valuation and may testify in narrative form, rather than on a question and answer basis.

The simplicity of this procedure can be illustrated by two transmission line easement cases heard by the writer and his two cocommissioners. The landowner did not employ or use a lawyer in either of these cases. One was the claim of George K. Peters of Knox County.

On the afternoon of September 6, 1966, the commissioners went over the transmission line easement which was the subject of the controversy with Mr. Peters. On the following day the case was tried, and the only evaluation evidence offered on behalf of Mr. Peters was his own testimony.

TVA had paid in court \$14,700 as compensation for the easement. The commission awarded Mr. Peters was \$16,400. The other claim was the Morgan County case of Emily and Hugh D. Faust, Jr. On November 28, 1966, the commissioners went over the transmission line easement with Mr. Faust, and the case was tried the following day. The only evidence offered on behalf of Mr. and Mrs. Faust was the testimony of Mr. Faust and one of his employees. TVA had filed in court \$1,650. The commission's award was \$2,500.

In both of the cases mentioned, in accordance with its usual practice, TVA paid the court reporter for making a record of the testimony of both sides.

The TVA Commission system is much cheaper in time and money for both the Government and the landowner than a trial by judge and jury. The cost of jury trials include the salaries of judges, clerks, marshals, deputies, and secretaries, and the per diem and mileage fees for the entire jury panel.

The number of persons in a Federal jury panel is usually 50 or more, and the panel contains members from all the counties, comprising the judicial division of the district in which the court sits. This usually means that a considerable number of the panel members live 50 or more miles from the Federal courthouse.

For the cases for which they make awards, the three Commissioners perform most of the functions which would otherwise be performed by the persons just mentioned. The TVA Act limits the pay of Commissioners to \$30 a day. That may have been adequate compensation at the time the Congress passed the original TVA Act. That act was passed in the depression days of the early 1930's, at a time when dollars had more "cents." This is certainly one respect in which the TVA Act should be amended. If the Commissioners' per diem amount is changed to \$100, the TVA Commission system will still be the cheap-

est method in the entire Federal courts system of adjudicating contested claims of litigants.

In 1951 the U.S. Supreme Court's Advisory Committee on Federal Rules of Civil Procedure completed its detailed study of TVA's condemnation procedure. It will be recalled that this committee was composed of men of high ranking national reputations, as judges, legislators, lawyers, and scholars.

The overall conclusion of this distinguished committee, as set forth in its 1951 report at page 3, was that TVA's experience "afforded convincing proof that the commission system is preferable under the conditions affecting TVA and that the jury system would not work satisfactorily."

The report also mentions that the committee wrote every Federal judge who ever sat on a TVA Commission case to get his view as to whether the commission system was satisfactory or whether a jury system would be preferred, and found that of the 21 responses received from the judges, 17 approved of the commission system and only three preferred the jury system.

More recently the U.S. District Judge for the Middle District of Tennessee, the Honorable William E. Miller, in a comment on Federal condemnation actions published in a 1961 issue of the *Vanderbilt Law Review* said:

I have in my files copies of letters from 23 district judges who expressed their views during recent congressional consideration of appropriation acts. Twenty-two of those judges favor the use of commissioners.

Some landowners seem always to be able to find something to fret and fuss about with the men whom they have elected to the Congress. However, the total number of complaints about TVA takings seems to be very small, in view of the thousands of TVA condemnation cases that have been filed, and the fact that condemnation necessarily means a taking of an owner's land without his consent.

I have taught law for many years and within the last 2 years have served as the chairman of a condemnation commission in a number of TVA cases. I now have no connection with any court, "no ax to grind" and as a lawyer, a law teacher and a man, I am near the tail end of my career, and I just want it put on the record that it is my sincere opinion, based on a reasonable amount of thought, experience and investigation that TVA's experiences over a third of a century indicate clearly that the drafting of the condemnation provisions in the original TVA Act was something in the nature of either a stroke of luck or genius, on the part of the session of the Congress that passed that act.

These provisions provide a procedure that is cheap, efficient, speedy, and fair, both to the landowner and the Government. It is my sincere hope that the fairness, the promptness, the economy, the utility and the practicality which are features of this procedure will not be destroyed by providing for jury trial.

I appreciate the opportunity of being permitted to make this rather lengthy statement toward the tail end of this hearing.

Senator JORDAN of North Carolina. Thank you very much, Professor Wicker. You made a very fine statement. We are glad to have it in the record. I am sorry that we are pressed for time, but you have been hearing the buzzers go off and one is going to catch us all in a minute and we will take off like birds off a roof some place.

Senator Baker, do you have any questions?

Senator BAKER. Mr. Chairman, I have no questions. I thank Dean Wicker for his appearance and reiterate my high regard and respect for him. I might say this. I made some passing reference a moment ago to the fact that the Dean had made a valiant and not altogether effective effort to instruct me in the law. I have here a letter from Mr. John C. Baugh, who is also one of my former professors at the University of Tennessee, who is now general counsel for the University of Tennessee, and who takes a somewhat different view of this matter.

Senator JORDAN of North Carolina. It will be included at this point. (The letter referred to follows:)

KNOXVILLE, TENN., *September 29, 1967.*

HON. HOWARD H. BAKER, JR.
U.S. Senator,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR BAKER: I am writing to let you know that I strongly favor the proposed legislation to give either party, upon demand, the absolute right to a trial by jury on the issue of just compensation in eminent domain proceedings filed on behalf of the Tennessee Valley Authority.

My strong feeling on this question is founded on the firm belief that a twelve-man jury is the proper body to determine just compensation. My belief has developed from experience, study, and teaching over a long period of time. My experience has been gained from private law practice with a law firm, from four years of active duty in World War II during which time I was a Naval officer assigned to land acquisition, from many years of teaching civil procedure and trial practice, and from my duties as legal counsel for an educational institution since 1947. Practically all my legal practice in eminent domain has been on the side of the condemnor, and I suppose that so long as I remain active in the practice of law I will continue to be on the side of the condemnor in the eminent domain litigation in which I participate.

Please do not think that I would ever question the integrity of the members the three-man panel, or question their desire to be completely fair to all all parties. Since 1937 I have known the men who have sat on the panel in TVA condemnation cases, and I have the highest regard for them.

However, I am convinced that there is no equally satisfactory substitute for the twelve-man jury in the determination of just compensation, or for the determination of fact issues in all kinds of litigation.

With kindest personal regards, I am

Sincerely yours,

JOHN C. BAUGH.

Senator JORDAN of North Carolina. Thank you very much Mr. Wicker. We are glad to have you with us.

Mr. Foster from Aberdeen, Miss., representing the Tennessee Valley Public Power Association. Mr. Foster, you do have a statement, and I would appreciate your skimming through it and giving us any comments you wish to make on it because we may have to leave any minute.

**STATEMENT OF A. J. FOSTER, ABERDEEN, MISS., REPRESENTING
THE TENNESSEE VALLEY PUBLIC POWER ASSOCIATION**

Mr. FOSTER. Mr. Chairman, my statement is short, and I will be to the point and move along. I certainly appreciate the opportunity to be here. I appreciate TVA. I was one one of the first recipients of their service in northern Mississippi.

My name is A. J. Foster. I am 60 years old and I reside at Aberdeen, Miss., where I have lived for over 40 years. I was born at Atmore, Ala.,

and moved to Mississippi in 1916. I was born and raised on a farm, and have owned approximately 2,000 acres of land during my lifetime. I have had 15 years experience as a cotton gin operator and I also owned a small rural grocery store for 30 years.

In 1964 I was elected State senator from Monroe County, and was reelected in 1967 representing Monroe, Chickasaw, Calhoun, and Clay Counties which have a population of some 85,000 people.

In addition to my senatorial duties, I am serving as director of the Monroe Banking & Trust Co., in Aberdeen, and also trustee for the Aberdeen-Monroe County Hill-Burton Hospital.

At the request of the State agricultural commissioner, I am presently serving on a statewide agricultural committee selected to study the problems of the small farmer in Mississippi.

In 1956, U.S. District Judge Claude Clayton appointed me to serve as a member of the three-man commission to hear the TVA condemnation cases in Monroe Lowndes, and Clay Counties. In this capacity I have heard about 12 cases all of which involved rights-of-way for electric power transmission lines. On occasion I have also served on various juries.

From my experience it is my humble conviction that the commission system used on the TVA land condemnation cases is far more satisfactory and just to all than the jury system for the following reasons:

Our commission has been able to hold each hearing in the county in which the land was located instead of traveling to Aberdeen where the Federal court sits. Some of our cases were tried in Columbus, some at West Point and some at Aberdeen. We thought this was helpful and convenient to the landowners as well as the witnesses.

In addition, our type of commission can give the parties a speedy, convenient, and informal trial. I understand that our court dockets are so crowded that it would take perhaps 4 or 5 years to have some of these cases tried by a jury.

Our commission also has considerable knowledge of land values and understands the uses to which various kinds of land can be put and I think this helps to reach a fair result. The chairman of my commission is Mr. George Howell who is mayor of Aberdeen, also a lawyer, and the other commissioner is Mr. French Early, who is a local dairy farmer and owns about 1,000 acres of land.

One of the most important things about our commission system is the informality of the entire proceeding. The landowners are not required to be represented by counsel but can speak for themselves. It has been our uniform practice to look at the property accompanied by the landowner before we hear any of the testimony.

In some cases we go back and take a second look during or after the hearing. When recent sales of other properties in the locality have been discussed by the witnesses and used by them in making their appraisals, we go out and look at these properties and see how they compare with the land that is being condemned.

This view of the land and of other properties which have been sold in the local neighborhood is very helpful to us in deciding the true value of the property and also in deciding who is telling the truth and who is not. I also strongly feel that nobody would want to buy land for himself without actually looking at the property and the community in which it is located.

Many, if not most, of the landowners appear without counsel because the amounts involved are usually too small to go to that expense. In some of the cases we have heard we awarded more than TVA had appraised it at and in some we gave less, but we always tried to do what we thought was fair and equal according to the merits of each case.

We always based our award on what we thought the property was worth without regard to who the owner was. It is my understanding that none of the cases we decided was ever appealed by either party.

When we were appointed on this commission we were instructed by the judge to advise the people that they had the right of appeal and review by a three-judge court with the opportunity to present additional evidence at that time.

I think this system is the fairest system and that more justice will be rendered to the landowner than by a jury system, and I strongly urge that it be retained.

In my area, so far as I know, the commission system has never been criticized and our people seem to be satisfied with it.

Senator JORDAN of North Carolina. Thank you very much, Mr. Foster, for your statement. We appreciate having it. We appreciate your bringing it here and presenting it. Senator Baker?

Senator BAKER. I have no questions, Mr. Chairman.

Senator JORDAN of North Carolina. Thank you, sir.

Mr. FOSTER. Thank you, sir.

Senator JORDAN of North Carolina. Is Mrs. Corinne Whitehead here? Mrs. Whitehead is from the Lyon County fiscal court. We are glad to have you with us this morning. We will be glad to hear you.

STATEMENT OF MRS. CORINNE WHITEHEAD ON BEHALF OF THE LYON COUNTY FISCAL COURT

Mrs. WHITEHEAD. Thank you.

Mr. Chairman, I am Corinne Whitehead. I have been authorized by County Judge Robert A. White and the Lyon County fiscal court to present a statement and a resolution on their behalf. First may I make a short statement of my own?

In 1964 I appeared before a committee of the House of Representatives with respect to the TVA appropriation for the Land Between the Lakes project. When I made the statement, "We are denied trial by jury in cases of condemnation," I was severely criticized for giving inaccurate testimony.

I am glad that at last congressional attention through the Baker-Brock bills has been focused on the denial of this inherent American right to the people of the Tennessee Valley.

The arguments made against the proposed legislation by TVA are impressive as well as the report of the Supreme Court Advisory Committee in 1951. The fact that every Federal judge was contacted who had had experience with TVA procedure indicates a sincere effort to make a fair decision.

May I respectfully suggest that everyone has been consulted except those who are most vitally affected. I mean by that the people involved. Let me assure you that had the individual property owners been consulted, asked for their views, and given a choice, the vote would be overwhelming for trial by jury.

I will hazard the guess that not one of the Federal judges or the representatives of the Department of Justice has been in the unenviable position of giving up their home to TVA.

Admittedly the commission system is more workable for TVA and admittedly the Federal judges are spared the extra workload. I am sure the prices awarded may be consistent but are any of these reasons a yardstick for justice?

I live in the Land Between the Lakes and along with many of my neighbors, I am awaiting condemnation procedures by TVA. At this point TVA has acquired slightly over one-half of the total number of acres in the area to be acquired so that indicates that there still are a great many acres to be acquired.

I can assure you that when the humble landowner gets down to the brass tacks of the TVA taking, he feels totally betrayed upon learning the trial by jury is denied to him under the TVA Act.

Much has been written about the unlimited power of the TVA Board over the lives and destiny of the people of the valley. May I quote from Dr. Donald Davidson's book?

Dr. Davidson was formerly with Vanderbilt University.

All that anybody could do was to hope and pray that Mr. Clapp (former TVA Board Chairman) would be a good king and would behave kindly toward his subjects. If he should turn out to be a bad king, there still was not much anybody could do. In other days, if you were discontented with a power company, you could appeal to the government. If you were discontented with TVA, to whom do you appeal? TVA is the government. In the Tennessee Valley there was nothing above it.

Gentlemen, we are appealing to you. We pray that from this time forward the people in the Tennessee Valley who give up their homes and lands to TVA will at least be assured of the right to trial by jury.

The following statement and the resolution is presented for the Lyon County fiscal court.

Under the constitution of the Commonwealth of Kentucky no governmental agency or private agency is entitled to condemn property without right of trial before a jury as to the damages. The American people obviously think that this is a right which is most valuable to the citizenry of our country; 45 of the 50 States have such a provision.

Congress, at the inception of TVA, provided that in condemnation procedures TVA has a right to condemn but that the landowner must submit to the jurisdiction of the three-man commission appointed by the judge of the Federal district court in which the property is located.

Generally speaking, landowners think of these commissioners as employees of TVA rather than unbiased and unprejudiced appointees of the Federal judge.

With the increased scope of activities on the part of the TVA, which was never envisioned by the sponsors of the original TVA Act, there is a growing feeling among the general public that TVA is all powerful and that anything TVA wants to do, they will do.

The image of TVA has been seriously marred by their policies in recent years. Their action in the Land Between the Lakes area will, if continued, practically bankrupt the counties of Trigg and Lyon in Kentucky and has done much to make the average citizen lose confidence in the integrity of TVA and its officials.

Such statements, as one made by a Director of TVA, that one of the reasons that they are taking all of the land in between the lakes in Kentucky was to prevent the tourists from climbing over the farmers fences, points out the danger of uncontrolled bureaucracy.

It is important that the image of TVA be improved and the enactment of this legislation providing for trial by jury in condemnation at least would do much to restore some faith that has been lost in their governmental procedures. It would seem that if the officials of TVA would only open their eyes and ears to what the public is saying and feeling in regard to TVA, they would welcome this opportunity to restore some confidence in the public's mind.

We are sure that TVA will file condemnation action in the taking of the county's roads and land and this body certainly would like to be entitled to trial by jury rather than to be tried in their court by their jury with taxpayers' money.

This body's attention has been directed to a condemnation action filed by TVA on September 11, 1967. In this particular action TVA offered the landowner \$18,300 which presumably was the reasonable market value of the real estate. In the filing of the condemnation procedure TVA has deposited the sum of \$12,900 as representing the reasonable market value of the property.

In this particular instance, this landowner had sold part of his land to the United States of America for the purpose of construction of the Barkley Dam project. Representatives of the Federal Government repeatedly assured landowners who complained of low prices that the construction of the project would make the remaining property more valuable. This man is now faced with the acquisition of all of his lands by TVA. The good faith of the Federal Government could be seriously questioned in the dealing with this landowner, in the light of the statement made by the chief planner for TVA, that planning on the Land Between the Lakes project began in either late December 1958 or early January 1959.

This body recognizes that we are representatives of rural America and that the power of this body is negligible as compared to the power enjoyed by TVA which now envelops most of Southeastern United States.

However, we would like to point out to this committee that even sociologists are now recognizing that the backbone and the secret to the American way of life is found in the rural areas and small communities. This legislation provides additional safeguards for each individual by authorizing a jury trial which is basic to our legal system.

It is our sincere desire that somehow, or some way, the attention of the Congress might be directed to the plight of our people and our county as a result of the actions of TVA in their experiment in recreation here.

One experiment conducted up to now and publicized has consisted of the expenditure of \$17,500 in probing the sociological factors in the displacement of the white-footed field mice in the Land Between the Lakes area.

It is our opinion that the only demonstration that will result from the acquisition of these lands will be to once again demonstrate that TVA has roamed far afield from the intent of the Congress in the creation of this agency.

Senator JORDAN of North Carolina. Mrs. Whitehead, we appreciate your statement.

Mrs. WHITEHEAD. Mr. Chairman, I have just received a copy of a statement from a gentleman on whose property was located the rock quarry and the agricultural land that was taken and was used in construction of Kentucky Dam. This man's name is Mr. George S. Vogle, route 1, Allensville, Ky., and he has this witnessed and asked that it be used. Also a letter from Mr. and Mrs. Snipes of Grand Rivers, Ky.

Senator JORDAN of North Carolina. Thank you, Madam. They will be included in the committee record. I notice you also have other statements.

Mrs. WHITEHEAD. I have some more if you have the time.

Senator JORDAN of North Carolina. We are not going to have time to hear them, but they will be received for the record.

Mrs. WHITEHEAD. Mr. Chairman, may I include this in the record, too. I have a little folder here.

Senator JORDAN of North Carolina. The folder also will be received for committee use.

Mrs. WHITEHEAD. Thank you very kindly for listening.

(The letters and a resolution that were ordered printed are as follows:)

ALLENSVILLE, KY., *October 6, 1967.*

To Whom It May Concern:

I am George S. Vogle. I am the son of Louis A. Vogle who was deceased in 1947. We owned between 400-500 acres of land in Lyon County, Ky., between the rivers at Star Lime Works, Ky. My grandfather and father had developed the Star Lime Works in the 1800rds. Our rock quarry and the lime works was the principle source of employment of residents between the rivers aside from their farming for many years.

When TVA built the Kentucky Dam project all of the riprap, concrete filler and rock material for the dam the project was taken out of our property. Plus hundreds of thousands of tons of agriculture lime was donated to farmers by TVA through out Western Kentucky which came from our property.

Our lands and the quarry property was condemned by TVA. First a three man commission picked and paid for by them cut the TVA price offer from \$20,000 odd thousand dollars to about \$15,000. The hearing was published in every news paper in Kentucky and Tennessee. Then TVA had but little trouble buying all of the other lands in the reservoir project. Owners realized they were helpless.

At the beginning a TVA lawyer came to our home and read just enough of a contract to tell us that TVA was giving us \$20,000 odd thousand dollars for all of our possessions. He put the contract back in his brief case and my father asked him for a copy of the contract—The TVA man said there was no contract for my father and it didn't make any difference, that "TVA had plenty of lawyers on a straight salary and plenty of money and they would keep it in court for ten years if necessary".

Real soon after this we were condemned and the money put in some Federal Bank with no interest. We were tried before their three man commission and cut to about \$15,000 dollars. We refused the offer and in about a year TVA brought us back into court before 2 Federal Judges. They confirmed the Commission price. In another year or so TVA had closed all of the land deals up and down the lake. They came back and paid us the first offer with no interest and made us move off the home place. We moved to our adjacent farm which they also took and we paid TVA rent on it until we could buy here in Todd County, Ky. where we live now. When TVA took our property we were told to be very peacable or they would put us both under a peace bond.

They gave the other landowners their buildings and fencing back. They kept all of ours and used our home for an office at the quarry for six years and then sold the house.

Our family cemetery was in the vicinity of our home. TVA told us we could pick a spot and they would move the bodies to it. We chose Eddyville Ken-

tucky. They moved the bodies in a panel truck not an ambulance. They broke some of the tombstones and there was nothing we could do about any of the arrangements.

I know this is what happened and I could write a book on other things TVA has done down there in that area.

Kentucky Dam was built out of our property and we still have not been paid for anything except the 400-500 acres of land.

Yours,

GEORGE S. VOGLE.

To: Members of the Committee on Public Works, U.S. Senate, Jennings Randolph, chairman.

From: Mr. and Mrs. Harold E. Snipe, Wee Bit O'Heaven, Grand River, Ky.

Re: S. 1637.

Date: October 10, 1967.

Mr. Chairman and Members of the Committee on Public Works, it is indeed gratifying to realize that your in-depth consideration of the land acquisition methods of the Tennessee Valley Authority is taking place.

We speak as residents of the Land Between the Lakes where our property and home "will be required", we were told by TVA in their form-letter mandate dated March 31, 1964—for what TVA has described as a "unique experiment" and "public venture" in recreation resource development . . . notwithstanding the fact that there was already 100,000 acres in federal ownership and boundaries had been agreed upon earlier which honored populated areas.

We challenge TVA's right to take our land for their stated reasons and are unwilling to sell to them. However, should we have to face condemnation proceedings we would hope that, at least, we would have the right of trial by jury.

The guarantee of trial by jury is a built-in bulwark of our democratic form of government, as incorporated into the Bill of Rights and a part of the Constitution since 1791.

We view with alarm and suspicion the increasing use of executive order and administrative law and the inroads they are making into the rules established by our Founding Fathers for the separation of legislative, judicial and executive branches of our government. It is time for sorting out these separate responsibilities and setting the rules straight!

We are a Republic, to be sure, but we are not a Socialistic Republic. Any manipulation of judicial practices that countermanded the inherent right to trial by jury for purposes of expediency is to be deplored and eliminated. It is highly unacceptable that special dispensations have been made for a government corporation. We think that the Tennessee Valley Authority should be required to permit trial by jury instead of the use of the 3-man commission hearing now a part of their "nontrading" land-buying formula, devised in 1946 to speed up land purchases for the Kentucky Lake reservoir requirements.

We respectfully beseech that the right to trial by jury be restored to the people of the Tennessee Valley and that they no longer be divested of their constitutional right in matters of land condemnation by the Tennessee Valley Authority. We urge that S. 1637 be accepted favorably by your committee . . . and thank you, kindly.

RESOLUTION OF THE LYON COUNTY FISCAL COURT

Whereas, Lyon County's population loss since 1940 has reduced the county by one half. This U.S. Census figure was prior to TVA's mass removal of our property owners in the Land Between the Lakes project. The critical drop in population is due exclusively to federal acquisition of land in the county. Retail sales have steadily dropped. The latest figures show a 16 percent decline. Enough time has elapsed to disprove TVA's selling points on the LBL project. It is assuredly not a gold mine in the sky or a financial bonanza to the remaining portion of the county.

Lyon County has lost over 53 percent of its most valuable and taxable property to federal acquisition. In the third district between the lakes the most valuable industrial and recreational land is being dedicated irrevocably to non-productive use by TVA. Land owners in the third district came from 35 states. In nearly

every instance these people are so indignant at TVA and the acquisition policies of the agency, that they are leaving Kentucky and returning home to reinvest. Our remaining property owners are forced to bear a 20% tax increase.

TVA has placed Lyon County in the embarrassing and untenable position of being at the mercy of the STATE in order to survive on in-lieu-of-tax payments. It is conceivable that for some reason a future State administration would refuse to forward any in-lieu-of-tax monies to the county.

In the Land Between the Lakes project, 8,600 acres of land was excluded from purchase by TVA in Stewart County, Tennessee. Valuable highway frontage from Dover, Tennessee to about half way to Paris Landing was excluded. North of highway 79 highway frontage along 453 well into the LBL project to Bear Creek was left in private ownership. In the interest of fair play and simple justice TVA should treat every county alike with respect to exclusions and boundary deviations.

Now, therefore, be it resolved by the Lyon County Fiscal Court: We respectfully urge the Senate Public Works Committee to use its good offices with the Congress to take steps to prevent the Tennessee Valley Authority from the further acquisition of land from unwilling sellers in the Land Between the Lakes project in Lyon County, Kentucky.

Senator JORDAN of North Carolina. We were supposed to close at 12 o'clock and I agreed to stay on because I didn't have another committee to go to and I am delighted I could stay and hear your testimony and also the rest of the witnesses.

Senator Baker, do you have any questions?

Senator BAKER. I do not, Mr. Chairman. I have two very brief matters, one I would like to include in the record a letter from Mr. John T. Henniss, of Chattanooga, dated August 21, 1967, and a letter from the American Farm Bureau Federation dated October 9.

Senator JORDAN of North Carolina. They will be included in the record at this time.

(The letters are as follows:)

LAW OFFICES, WITT, GAITHER, ABERNATHY & WILSON,
Chattanooga, Tenn., August 21, 1967.

Re TVA Jury Trial Bill (H.R. 4846).

Senator HOWARD H. BAKER, JR.,
New Senate Office Building, Washington, D.C.

DEAR SENATOR BAKER: Ted Milburn tells me that you have taken an interest in the above Bill from the Senate side of the Congress, and I am delighted to hear it. I believe this is very important and much-needed legislation, and wish you every success.

As the author of the Resolution in support of this Bill recently adopted by the Board of Governors of the Chattanooga Bar Association, Ted has asked me to reply to your inquiry concerning the authority for the following language in the Resolution:

"Whereas, it has been recognized in the federal courts that, aside from other objections, referring condemnation cases to a commission 'tends unduly to prolong the proceedings, thereby causing vexation to all concerned and additional expenses,'"

Please be advised that the quoted language was taken from the opinion of the Third Circuit Court of Appeals in the case of *United States v. Lackawanna & Western Railroad Company*, 264 F. 2d 112, 115 (1959).

That case involved the same kind of three-man commission that is presently mandatory in TVA condemnations, although the commission there was appointed pursuant to Rule 71A of the Federal Rules of Civil Procedure rather than the Tennessee Valley Authority Act. As you know, Rule 71A allows the District Courts a limited discretion to employ a three-man commission rather than a jury in condemnation cases where exceptional circumstances may make a commission desirable. Unfortunately the TVA act allows the courts no discretion whatever in this matter, and requires a commission in all TVA condemnations, from those involving a few hundred dollars, to those involving hundreds of thousands of dollars.

Parenthetically, I should add that we are fortunate in having unusually fine commissioners in Chattanooga at present. Our objections are directed to the commission system, and not to any particular commission member here or elsewhere.

Ted also said that he was certain you would be glad to receive any additional comments or information we might have concerning this matter, so I am talking the liberty of writing you at some length. Let me say that this firm has had substantial experience in TVA condemnation cases, representing not only landowners but the TVA as well, one member of the firm having previously been employed in TVA's condemnation division. We hope that our views and experience, much of which we have previously related to Congressman Bill Brock, may be of some help to you.

Specifically on the matter of jury trials, we fully realize that the TVA makes a very polished and highly convincing case in support of the exclusive use of commissions rather than juries in its condemnations, but we would submit to you our view that these arguments are essentially specious.

One of the principal arguments advanced by the TVA in this regard relates to the likelihood that the awards of commissions will be more "uniform"—that is, more "correct" in TVA's view—than the awards of juries. Undoubtedly this is true, but just as clearly this argument is unacceptable as a reason for dispensing with the right of trial by jury. The fact is that the same agreement would support the use of panels of specialists to determine issues that are now tried by juries in all other cases. Without question the sanity or insanity of defendants in criminal cases could be determined much more "uniformly" and "correctly" by a panel of psychiatrists than by a jury of laymen. And the value of personal injuries and human lives could likewise be established with great "uniformity" by a panel of actuaries, as opposed to a petit jury. The point is, of course, that the institution of trial by jury is designed not alone to arrive at "uniformity" and "correctness," but much more importantly to assure that the administration of justice remains in some degree responsive (and therefore acceptable) to the community as a whole.

The TVA also argues that it may be inconvenient for landowners to travel to where the court sits in order to have a jury trial. Thus in 1951 the TVA on this point persuaded the then Advisory Committee on the Federal Rules of Civil Procedure to adopt the TVA's view as follows:

"Where large areas are involved, many small landowners reside at great distances from the place where the court sits. It is a great hardship and humble people to have to travel long distances to attend a jury trial. A commission may travel around and receive the evidence of the owner near his home."

We can assure you that these noble sentiments are greatly misplaced, as are all other arguments against jury trials based, purportedly, on solicitousness for the landowner. From the experience of this office, "humble people" whose lands are taken by the TVA would gladly sacrifice much more than traveling "great distances," if thereby they could obtain the protection of a jury trial. Moreover we strongly suspect that instances in which the commissioners "receive the evidence of the owner near his home," or at any other place than the very city in which the local District Court (and its jury) sits, are rare indeed.

The TVA further argues that if its condemnation cases were tried by juries, the burden of time on the courts would be excessive. Undoubtedly there would be some additional burden on the courts, but this, again, is an argument which could equally well justify dispensing with jury trials in all cases. Moreover, it should be observed that permitting trial by jury in TVA cases would also *relieve* some of the present burden of the courts, because it would obviate convening three-judge panels to hear appeals from commissions. This appellate procedure—obviously the result of a compromise with the proponents of jury trials at the time of the enactment of the TVA Act—is somewhat akin to swatting flies with a baseball bat, and is clearly burdensome on the two judges who must leave their own courts for at least one full day to travel to and from the city in which the appeals are to be heard. In any event, we repeat that the matter of court convenience on the one hand should weigh lightly in the balance against the denial of the right to trial by jury on the other.

But the most compelling and, we think, conclusive refutation of all the arguments against the use of juries in TVA condemnations is the fact that those arguments are equally applicable to condemnations by other agencies, and yet, with one minor exception, all other condemning agencies of the federal government conduct their condemnations under Rule 71A—that is, before a jury, in

the absence of unusual circumstances. (The only exception, aside from the TVA, is the District of Columbia which, under the District Code, is permitted to conduct condemnations before a five-man tribunal—and even there the five must be drawn from a panel whose members have the usual qualifications of jurors, are freeholders in the District, and are not in the service of the United States or the District. 3 Barron & Holtzoff, Federal Practice & Procedure, Section 1525.) The States also rarely deny landowners the right to trial by jury in condemnation cases. Thus the Second Circuit Court of Appeals after noting that “Unwarranted use of commissioners, like similar use of masters, is an ‘effective way of putting a case to sleep for an indefinite period,’” has correctly characterized the use of commissions in condemnation cases as “a course substantially repudiated in both the state and federal procedure.” *United States v. Bobinski*, 244 F. 2d 299, 301 (1957).

We feel that practicing attorneys throughout the Tennessee Valley, like the Board of Governors of the Chattanooga Bar Association, would be virtually unanimous in supporting legislation designed to require jury trials in TVA condemnations. And let us emphasize that, contrary to what TVA may argue, this sentiment generally has nothing to do with hostility against the TVA on the whole. Most lawyers, we think, are fully appreciate of the great value and benefit of the TVA not only to this region but to the entire nation. These feelings are also thoroughly bipartisan. The writer happened to manage President Johnson's 1964 campaign in Hamilton County, and gleefully reminded voters of Senator Goldwater's apparent hostility toward the TVA. I was also, incidentally, President of the Hamilton County Young Democrats while Ted Milburn was President of the Hamilton County Young Republicans.

What is disturbing about TVA condemnations to practicing attorneys generally is the fact that the TVA, though charged under the Constitution with the responsibility of paying “just compensation” for the property it condemns, nevertheless in practice conducts its acquisitions through agents who sometimes employ tactics which are at best thoroughgoing exploitation of the superior resources and advantages of the TVA, and at worst constitute entirely improper economic bludgeoning of small landowners. We think most lawyers would agree that requiring jury trials in TVA condemnations, with the attendant accountability to a cross-section of the community as a whole, is the first step that should be taken to correct this situation.

Unfortunately, however, this will not alone be sufficient to overcome the tactics and advantages so well exploited by the TVA. To illustrate these matters and to make our point more forcefully, let us describe for you briefly our experience in connection with the TVA's recent acquisition of land for the new Nick-A-Jack Dam and reservoir in this area, which, incidentally, can be documented by transcripts of sworn testimony on file in the District Court here in Chattanooga.

After the TVA determined to construct Nick-A-Jack Dam, it made a survey of the reservoir area and its Board of Directors made a determination of the acreage to be acquired. Since the TVA was to acquire all of the property that would be flooded and a considerable amount of the surrounding property, it had its own appraisers make a very thorough, costly and time-consuming appraisal to arrive at what it considered to be the “going price” of the typical land to be acquired. We have sworn testimony of one of the TVA's appraisers to the effect that in arriving at this going price, they disregarded sales which did not fit into their predetermined “pattern” as to values because they were too high.

Having determined what it considered the various types of land in the reservoir to be worth, and having picked out sales to substantiate these values, the TVA's employed appraisers took non-employed appraisers into the area and showed them what they considered to be typical sales, giving them the prices and descriptions. These typical sales were naturally those sales which fitted into the TVA “pattern” and which tended to justify the price that the TVA had determined it would use in attempting to buy the property. After having thus been properly conditioned, the non-employed appraisers were shown the particular piece of property to be acquired and were asked to give a preliminary appraisal on the spot, being furnished with a form for this purpose.

For such preliminary appraisals, the appraiser is generally paid \$100.00. Many appraisers are embarrassingly cooperative under these circumstances since the TVA is very obviously the best potential user of their services. If the preliminary appraisal fits into the TVA's “pattern” the appraiser is then asked to give further study to the property, the “comparable” property to which he has been referred, and is used as a witness at the hearing before the commission. If his preliminary appraisal is too high, he receives his \$100.00 and is not called but

is, under the rules of most of the reputable real estate appraisal organizations, precluded from thereafter appraising the same property as a witness for the landowner. By this method, the TVA eliminates as potential witnesses for the landowner those appraisers who have higher estimates of land values, while at the same time sifting out the low value appraisers to use as witnesses.

This process is obviously expensive, and can be coped with only by very large landowners. To give you some idea of the cost, we received a bill for one appraisal of the property on which a portion of the Dam itself was to be located for \$17,395.10. Although this is a great deal of money, it was necessary for this appraiser to do a great deal of work—substantially as much as if he were going to testify in many cases, which is true for the TVA appraisers. Unfortunately, landowners usually are isolated independent individuals generally employing different attorneys and, therefore, are not able to get together on using a single appraiser in many cases.

Having determined its idea of the value of the property to be acquired, the TVA through its land buyers employs every known high-pressure selling device to get the landowners to sign a contract to sell at the TVA's figure. Among the methods used are the following:

1. Assurances that the price offered by the TVA has been arrived at after a very careful consideration and will be the maximum possible price that the landowner can hope to get.

2. Promises that if the landowner will sign the contract he will be permitted to stay on the property as long as it is not actually needed by the TVA, without any rental payments, and with as little interference by the TVA as the nature of the work in the area will permit.

3. Assurances that when he does have to vacate the property, he can remove from it not only his personal property but also anything that has become part of the real estate, such as water pumps, gates, fences, and even the buildings themselves, without any payment to the TVA.

4. He is told that if the TVA is forced to condemn the property, it will be condemned at a price lower than that being offered.

5. He is told that if condemnation proceedings are instituted, he will be required to vacate the property immediately or in the alternative to obtain a lease from the TVA.

6. He is told that he will not be privileged to remove anything from the property which can be classified as part of the real estate.

7. He is told that he will be put to expense and delay in attempting to obtain the price which he considers to be fair, without any reasonable hope of success.

8. He is threatened with exposure of his federal income tax returns at the commission hearing, and is told that he will be questioned about any items appearing on the returns relating to the property in question (and this, in fact, is done, even though the taxpayer has made no effort to establish the value of the land by the method of showing the income it has produced).

Unfortunately, all of the above statements except 1 and 7 are true, and even these are true in the case of the small landowner who cannot get competent legal representation, and who does not have enough involved to justify the necessary expense of obtaining professional witnesses and presenting his case to the commission. Under the circumstances, you can see why, with this type of pressure from a branch of the federal government, a high percentage of landowners are willing to sell their property to the TVA, even though they are thoroughly convinced that the price offered is not fair.

To illustrate the situation further, let us describe to you our experience in one of the Nick-A-Jack cases which was tried by this firm, and which we think well illustrates the problems faced by the landowner. In this particular case, the farm to be condemned was a river-bottom farm of approximately 107 acres. When the TVA was unable to purchase this property by agreement, condemnation proceedings were instituted and \$29,750.00 was deposited in court as the TVA's estimate of the fair market value of the property, this being approximately ten per cent less than the amount offered. (Such reductions are standard practice in TVA condemnations, although the amount of the reduction may vary, and these reductions are effected by reducing not only the amount *offered* the landowner, but also the officially approved *appraisals* upon which the offer was based. In another case recently tried by this office, we obtained sworn admissions that two TVA employee-appraisers had previously appraised the property in question at fifty per cent more than the value testified to at the trial, and had reduced their

appraisals three or four weeks before the trial, not because the appraisals were in any respect erroneous, but *solely because the landowner had declined to accept the original offer.*)

Returning to the Nick-A-Jack farm condemnation, after all of the pressure tactics outlined above had been exhausted, the TVA wrote the landowner a letter which stated in part:

"We have had the property examined and appraised by persons familiar with real estate values in the locality in order to determine the amount of money to deposit in court as estimated just compensation for the property and to have witnesses available to appear before the condemnation commission. As a result of this review, we shall deposit in court the sum of \$29,750.00. This is a lesser amount than was last offered but we believe this amount can be supported in the court action."

The landowner was permitted, this property not being immediately needed, to lease the property temporarily upon payment to the TVA of \$125.00, under a lease containing a five-day cancellation clause.

The case was tried before the commission appointed by the federal District Court, and the landowner was awarded \$37,450.00, an increase of approximately thirty per cent above the TVA deposit. In our opinion, this award represented the approximate fair market value of land, and if the landowner could have received \$37,450.00, we would have no quarrel with the existing procedures. It is necessary, however, to compare his situation after having proved to the satisfaction of the commission that his land was worth thirty per cent more than the TVA offer, and his position had he accepted the TVA's inadequate offer. Had he accepted the original offer, in the approximate amount of \$32,500.00, he would have received this sum of money immediately, could have stayed on the property without the payment of rental, and could have sold all of the buildings and fences at a substantial salvage value. If all of the improvements had conservatively brought only \$1,500.00, he would have received \$34,000.00 net to him. After the trial, however, and after having proved the TVA offer inadequate by a substantial amount, this is his situation:

Commission award-----		\$37,450
Out-of-pocket cost of preparation for trial, including appraisers' fees, etc-----	\$1,700	
Legal fees, 1/3 of increase over the deposit-----	2,500	
Rental paid to TVA-----	125	
Loss of interest on 10 percent of deposit not disbursed—estimated-----	300	
		<u>4,625</u>
Balance-----		32,825

It is immediately apparent that the landowner, having proved he was right and was offered a substantially lesser amount than fair market value for his property, received a net amount of \$1,175.00 less than had he accepted the TVA's inadequate offer. As for the legal fee, an accurate record of hours spent on the case was maintained, and the fee of \$2,500.00 is approximately one-half the fee that he would normally have been charged under the minimum fee schedule of the Chattanooga Bar Association. And this fee does not take into consideration the fact that this case was subsequently appealed by the TVA primarily, in our opinion, because such an increase over the TVA offer had put a severe crimp in the TVA's buying program in the area, and the pendency of the appeal permitted the TVA to contend that this landowner had not yet, in fact, received any money in excess of the TVA offer. In addition, when such an appeal is taken, the landowner is put to substantial expense in obtaining a copy of the transcript of the testimony before the commission. As it happened, the commission award in this case was easily affirmed by the three-judge court to which it was appealed.

In this case, incidentally, copies of the landowner's tax returns were produced by the TVA at the hearing, in what was obviously an attempt to harass and embarrass him, since he had at no time attempted to establish the value of his property by the income-production method. This action was particularly deplorable because the landowner had recently suffered a severe stroke, and at the time of the hearing it was necessary for him to attend in a wheel chair.

You might also be interested to know that almost exactly two and one-half years elapsed between the formal commencement of that suit upon March 4, 1964, and the affirming of the commission award upon August 29, 1966. As only a minor portion of this delay was attributable to the illness of the landowner, we feel

that this is an illuminating commentary on the TVA's contention that the commission procedure is expeditious.

In a case such as the one just described, the landowner can obtain competent appraisal and legal services because of the substantial value of such a good river-bottom farm of over 100 acres, but in a case involving a tract of 75 acres or 50 acres, or a larger tract of less valuable land, it is readily apparent that the landowner will be severely hampered in attempting to obtain the fair market value of the property taken. He will be absolutely unable to obtain adequate legal representation because lawyers, like everyone else, have to earn money to maintain their practice, and a case involving any less money than that illustrated would not result in a fee sufficient to obtain adequate legal services. Additional expense must be incurred to obtain the services of competent professional appraisers. The landowner thus has no choice but to accept whatever offer the TVA may make. The TVA land buyers, being acutely aware of this situation, and being zealous to "save the government money" and at the same time improve their own status by obtaining land at the lowest possible price, exploit the situation to the fullest, as evidenced by the fact that the offers made by the TVA in the experience of this office is familiar with them, have generally run twenty-five per cent to thirty-five per cent low on large tracts of land.

What applies with regard to the acquisition of the fee in large tracts applies with many times the same impact to the acquisition of an easement for transmission line construction. Although the same time is consumed in the trial of the case and the same problems in obtaining appraisers are encountered, the amount of money involved is so much less that unless a lawyer will accept the case because of his personal feeling of obligation to the client, it is utterly impossible for the landowner to protect his rights. An examination of the offers and ultimate awards in condemnation cases tried by competent counsel would, we feel, indicate that whereas the percentage increases when the fee is condemned may be between twenty-five per cent and thirty-five per cent, the increase in condemnation cases involving transmission line easements is frequently several hundred per cent. Several years ago this office tried a case in which the landowner had been offered \$50.00 as compensation for an easement across a portion of his property. The commission award was \$1,500.00. Obviously at a financial loss to itself, the TVA appealed this award to a three-judge court which reduced the award to \$750.00. Except for the fact that the landowner had this firm on a retainer, it would not have been possible for him to contest the TVA's original offer of \$50.00.

As indicated by the foregoing, the TVA has made exhaustive and very expensive investigations of land values in the area before it first approaches the landowner and offers to buy the property from him. On the other hand, the landowner, without the benefit of such services, in many cases honestly does not know whether the price offered is a fair one or not. He must either blindly trust the TVA, or spend money for an appraisal, and often the advice of an attorney, before knowledgeably accepting or rejecting the offer. Although the situation is not of his making and he is in no way at fault, this expense, unless he wishes to proceed blindly, is thrust upon him. Moreover, the money spent by the TVA for the advice of its attorneys and all of its appraisers is, of course, at public expense, so that in effect the landowner is sharing through taxes in the cost of the TVA's appraisers and legal counsel, and at the same time bearing the cost of his own appraiser and attorney himself.

If the appraiser and attorney tell the landowner after studying the matter that the TVA's offer is reasonable, or although inadequate, is not so low that there would be a reasonable chance of netting any more after paying the expenses of litigation, the landowner must shoulder this expense without reimbursement. Even if the landowner proceeds to trial and wins his case, he must pay, *out of the value of his property that has been taken from him*, very substantial appraisal and attorney's fees. He does not receive "just compensation" or the "fair market value" of his property. It merely passes through his hands.

All of this suggests that three things should be done in addition to providing for trials by jury in TVA condemnation cases. First, the TVA should not be permitted to offer or deposit substantially less than the average of the qualified appraisals it has obtained. In the case of State road projects involving federal money, the federal government has, we believe, recently imposed a requirement of this nature, which seems eminently fair and reasonable.

Secondly, we believe the landowner should be given, at the expense of the TVA, a reasonable allowance for an appraiser and an attorney to check up on whether or not the offer is fair.

Thirdly, we would suggest that whenever the TVA undertakes to condemn property by depositing an amount so grossly inadequate as not to come within ten per cent of the amount finally awarded, the TVA should be required to pay the entire reasonable expense incurred by the landowner in defending the suit.

These are by no means novel propositions. It has been part of the law of a number of states for many years, either by statute, court decision or a combination of both, that appraisers' fees and/or attorneys' fees may be allowed as part of the cost of the proceedings against the condemnor. The Florida statute, 73.091, for example, expressly provides that a reasonable attorney's fee shall be paid by the condemnor, to be assessed by the Court. The actual practice in Florida is also, we understand, to allow reasonable appraiser's fees. Nichols, *Eminent Domain*, 3d, at pp. 697, 703 and 706 indicates that at least in certain situations the following jurisdiction, in addition to Florida, allow attorneys' fees and/or appraisers' fees:

California	Iowa	New York
Colorado	Louisiana	Pennsylvania
Connecticut	Massachusetts	Wisconsin
District of Columbia	Michigan	
Illinois	Missouri	

Nichols, at page 706, gives the following quotation from a New York case, showing why it is only fair and proper to make such a provision:

"The Constitution (Article 1, Section 6) requires that private property shall not be taken for public purposes except on the payment of 'just compensation,' and a man who is forced into court, where he owes no obligation to the party moving against him, cannot be said to have received 'just compensation' for his property if he is put to an expense appreciably important to establish the value of his property. He does not want to sell. The property is taken from him through the exercise of the high powers of the state, and the spirit of the Constitution clearly requires that he shall not be thus compelled to part with what belongs to him without the payment, not alone of the abstract value of the property, but of all the necessary expenses incurred in fixing that value. This would seem to be dictated by sound morals, as well as by the spirit of the Constitution, and it will not be presumed that the Legislature has intended to deprive the owner of the property of the full protection which belongs to him as a matter of right."

The foregoing recommendations have also been made to the Legislative Council Committee of the Tennessee Legislature, which has undertaken a rewriting of the various condemnation statutes in Tennessee, with a view to making procedures uniform throughout the State in much the same manner that federal condemnations are uniform throughout the nation—except for proceedings by the District of Columbia and by the TVA.

We hope that these comments may be of some assistance to you, and that you will give consideration to the three proposals suggested in addition to requiring trial by jury in TVA condemnation cases. All of these matters, it seems to us, are essential if persons whose property is taken by the TVA are in fact to receive "just compensation" for their property.

Yours very truly,

JOHN T. HENNISS.

AMERICAN FARM BUREAU FEDERATION,
October 9, 1967.

HON. STEPHEN M. YOUNG,
Chairman, Rivers and Harbors Subcommittee of the Senate Committee on Public Works, Washington, D.C.

DEAR SENATOR YOUNG: The American Farm Bureau Federation has noted with much interest the announcement of your Subcommittee's hearings on October 10 on S. 1637 which provides for jury trials of cases involving compensation for real property condemned by the Tennessee Valley Authority. The Farm Bureau is composed of more than 1,700,000 dues-paying member families in more than 2,770 County Farm Bureaus in 49 States and Puerto Rico.

The matter of trials by jury in litigation involving equitable payment for land required by the TVA as a result of construction of generating facilities and for

its transmission lines is of real importance to hundreds of Farm Bureau families—particularly those residing in the TVA area. Consequently, at its most recent meeting the AFBF Board of Directors voted to support the bill, S. 1637, introduced by Senator Howard Baker of Tennessee and similar legislation introduced in the House of Representatives.

The primary purpose of the legislation now under consideration is to make available to landowners whose property is essential to TVA's development a time-tested mechanism for determining fair and equitable compensation for their property.

Submission to duly constituted juries of disputes between litigants is fundamental to the American legal system, and denying the right of jury trials to landowners who may be involved in legal proceedings with an agency of the Federal Government is not in keeping with that system.

The Tennessee Valley Authority during the past fiscal year acquired more than 45,000 acres of land and easements for more than 400 miles of transmission lines. It is anticipated that more acreage and additional easements will be needed during the current fiscal year.

In the many negotiations required in the acquisition of acreage and easements of such magnitude, it is only natural that there have been inequities in determining the fair value of the property involved.

There doubtless would have been some inequities even if every case which could not be settled by direct negotiations had been accorded a jury trial. However, no fairer means has been developed for determining what is equitable to both parties involved in a land condemnation suit than trial by jury.

We respectfully recommend that the Subcommittee favorably report S. 1637, and we request that this letter be made a part of the record of the hearing.

Sincerely,

JOHN C. LYNN,
Legislative Director.

Senator JORDAN of North Carolina. Thank you very much all the witnesses and the spectators here this morning. We are glad to have you.

This will adjourn this hearing of the committee.

Thank you very much.

(Subsequently the following communication and enclosures were received:)

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C., October 13, 1967.

HON. JENNINGS RANDOLPH,
*Chairman, Committee on Public Works,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I had received earlier this year a resolution by the Trigg County Fiscal Court in support of S. 1637.

I had also been in touch with Mr. Grayson Harralson of Princeton, Kentucky, who was unable to attend the hearing but prepared a statement for the consideration of the Committee.

I would like to ask that there be included in the hearing record the letter to me from the County Judge of Trigg County, the Honorable James E. Mathis, together with the resolution of the Trigg County Fiscal Court; the letter to me from Mr. Grayson Harralson, together with his prepared statement; and the letter which I have received from Mr. and Mrs. H. J. Smith.

In 1964 the Public Works Subcommittee of the Senate Committee on Appropriations received testimony from a number of witnesses who raised objections to the land acquisition procedures of the TVA in the "Between the Lakes Recreation Area." Following questions directed to the TVA at that time, the House and Senate Committees in effect directed the TVA to improve its procedures. I think it would be appropriate to include in the record also the attached excerpts from the Committee reports.

With best regards, I am,

Sincerely yours,

JOHN SHERMAN COOPER.

CADIZ, KY., August 11, 1967.

Hon. JOHN SHERMAN COOPER,
Senate Office Building,
Washington, D.C.

DEAR SIR: Find enclosed a Resolution passed by the Trigg County Fiscal Court at their regular meeting on the 16th day of May, 1967.

We would appreciate any consideration that you could give to this Resolution.

Very truly yours,

JAMES E. MATHIS,
Judge, Trigg County Court.

Whereas, Howard Baker, Jr., Senator of Tennessee has introduced legislation in the Senate of the United States and William Brock, Congressman of Tennessee has introduced legislation in the U.S. House of Representatives whereby jury trial would be permitted in case of condemnation of private property by the Tennessee Valley Authority, and

Whereas, the people and property owners of Trigg County, Kentucky have been deprived of this inherent American right of trial by jury by the Tennessee Valley Authority in the acquisition of property, now

Therefore, be it resolved, that the Trigg County Fiscal Court hereby goes on record endorsing Senator Baker's proposed legislation and Congressman Brock's proposed legislation, and

Be it further resolved, That a copy of this endorsement be sent to each of the following: Senator Thruston B. Morton, Senator John Sherman Cooper and Congressman Frank A. Stubblefield, together with the request that they use their good offices in support of this legislation, the enactment of which will restore to the people their right of trial by jury which is now denied to them by the Tennessee Valley Authority.

Dated: May 16, 1967.

PRINCETON HOSIERY MILLS, INC.,
Princeton, Ky., October 6, 1967.

Senator JOHN SHERMAN COOPER,
Washington, D.C.

DEAR SENATOR COOPER: Thank you for making arrangements for me to testify before the Senate Public Works Committee on Senator Baker's Bill 1637.

Due to my schedule and the shortness of time expected to be spent on Tuesday, I decided it was an unwise trip.

Senator Baker's office told me today the meeting would probably be over by 11:30 A.M. My plane was due to arrive National Airport at 10:55 A.M.

Enclosed is my brief, and I sincerely hope you will support Bill 1637.

Sincerely yours,

GRAYSON HARRALSON.

STATEMENT OF GRAYSON HARRALSON, PRESIDENT OF PRINCETON HOSIERY MILLS,
PRINCETON, KY.

Mr. Chairman and distinguished members of the committee, I am grateful to you and the committee for extending to me this kind invitation to present my views with reference to Senate Bill 1637. So that you and the committee will know something about me, I will give you a brief résumé.

I was born in Princeton, Caldwell County, Kentucky, in July, 1913. I have lived in our county all of my life. My father, who was an attorney and County Judge, was also born in Caldwell County. My grandmother, Sally Harralson, was also born in Caldwell County in 1846. She died in Caldwell County at the age of 106. We are natives of this fine county.

I graduated from my local high school, and attended Duke University. Later, I transferred to Cumberland University in Lebanon, Tennessee, where I received a law degree in 1934. After receiving my degree, I became associated with my father who was then President, and who was one of the founders of the Princeton Hosiery Mills. Our company was originated in 1918, and next year we will celebrate our Golden Anniversary. Let me say at the outset that in our manufacturing business we enjoy the benefits of low cost TVA power.

My activities have been varied in the good life of our community. Senator Cooper, Senator Morton, Congressman Stubblefield, Congressman Evins and Congressman Everetts of Tennessee can answer any questions you may have

regarding my character. Perhaps your own Senator Jordan knows something of my business activities. I believe our companies transacted business prior to the time he was elected to his honored position.

MY PURPOSE OF MEETING WITH YOU

My purpose in traveling to Washington, at my own expense, is not to fight with TVA. As I said before, our company enjoys its low rates. Rather, it is my purpose to bring to the attention of this distinguished committee an inequities which has long existed in the TVA system. I speak of the power given to the TVA to deny citizens the traditional right to trial by jury when their homes and farms are taken from them.

MY CASE BEFORE THE COMMISSIONERS

In December, 1965, a representative from TVA visited one of my sons in our Princeton Hosiery Mills plant. He asked us to sign "Right of Easement Papers" and, at the same time, told us we would be sorry if we did not sign and accept their offer when made. I am sorry I did not get the man's name, but I made it very clear that we would not sign and we would take it to Court. I had no idea it would be a TVA controlled commission. I assumed that we could not be deprived our property without a trial by jury.

After the original conference with the TVA representative, we went to our lawyer, Mr. Edward H. Johnstone, in Princeton. He made a preliminary investigation of the matter and advised us that the TVA was seeking to take a broad easement through the middle of lands we owned and where we were in the process of establishing a high class residential sub-division. He realized the seriousness of our problem when we advised him that TVA had offered us only \$775.00 as damages. Upon his recommendation, we employed Mr. William Scent to handle the case for us.

Mr. Scent was United States Attorney for the Western District of Kentucky from September, 1963 to March, 1965. He had many varied duties, including the institution and prosecution of condemnation proceeding in the District Court. Mr. Scent had experience in condemnation of lands for Post Offices and the Department of Interior involving U.S. Army Corps of Engineers projects, such as Barkley Lake and Rough River Reservoir. All of these proceedings were by jury trial. We found that several other land owners in the area had contacted their lawyers in an effort to receive a just price for the land that TVA sought to take for the purpose of building the line. Most of our neighbors, including widows and plain farmers, found that it was just too expensive to fight the TVA Condemnation Monster. They found that their cases would be decided by three commissioners; men who, and I say this without disrespect, had become stereotyped in their decisions and thinking. They found that if they disagreed with these men, they had to appeal the decision to the United States District Court in Paducah, Kentucky. They found that they, their lawyer and their witnesses had to travel many miles to the place where the commissioners held the hearings. They found that TVA employed high-priced appraisers, who regularly appeared before the same commissioners. They found that for a widow or a person of ordinary means, it was financially impossible to fight the Giant.

It is commonly believed in our area, where TVA has taken a lot of land, that the Commission and TVA appraisers tend to go along with the hand that feeds them. This creates uniformity in awards by surprising awards.

Our attorneys would not make a recommendation to us until they were satisfied that the \$775.00 offer made by TVA was unjust. To that end, we secured the services of Mr. E. A. Cave, Jr., one of the most reputable and experienced real estate appraisers in our area. He traveled from Paducah to Princeton on several occasions. He made a thorough inspection of our property. He searched the records for comparable sales of land in our county. As a result of this study, his estimate as to a difference of the "before" and "after" value of our property was in excess of \$10,000.00.

By this time, TVA was cutting down dozens of beautiful trees and a transmission line was being constructed through our sub-division area which adjoins the Princeton Golf and Country Club. A much needed development for our city was to be severed by power lines. I requested TVA to let me pay the difference between their method of construction and underground construction. (All of our other utilities were underground). They refused.

My sons and I had a conference. We agreed that, as Americans citizens, we would fight for our rights, *win, lose or draw*.

I will outline our experiences, chronologically, before the Commission in order to show this Committee that the system presently used is, as a matter of fact, detrimental to both TVA and the public.

(1) In December, 1965 we had the visit already mentioned with the TVA representative.

(2) In December, 1965 we employed our attorneys to resist the suit which had been filed against us. From December, 1965 to June 2, 1966 our attorney, Mr. Scent, and our appraisers spent many hours studying the property and preparing the case for presentation to the Commission.

(3) On, or about, June 2, 1966, at the hearing before the commissioners, a controversy developed as to whether or not the lands involved could be valued as a unit by the appraisers in giving their opinions as to before and after values. Mr. John Lovett, Benton, Kentucky, the TVA counsel, contended that his appraisal witnesses had valued the lands on the basis of two separate takings from the back ends of two farms; that there was no unity of ownership, and, since there must be both unity of use and ownership, unit value testimony was incompetent. We, of course, contended that there was both unity of ownership and use; that the taking involved "cutting the heart out" of a single piece of valuable residential property. Mr. Lovett then announced that his appraisers were not prepared to testify on a single unit basis and, since the differences in the two valuation approaches could be material, asked for a ruling of the TVA commissioners on that issue. It was finally agreed that the TVA commissioners would certify the question to the U.S. District Court for its decision to be based on a stipulation of facts submitted to the Court by counsel.

(4) On March 22, 1967, the District Judge announced he was sustaining our position and an order to that effect was forthwith entered.

(5) Trial before the TVA commissioners was reset for August 2, 1967. On August 1, 1967, Mr. Scent accompanied the TVA commissioners and the TVA counsel on an inspection tour of our property. My sons and I spent several valuable hours preparing the next day's case. Later in the day, Mr. Cave and Mr. Scent worked several hours on the case.

(6) Trial commenced on August 2, 1967 and ended at noon on August 3, 1967.

(7) After all of the controversy and delay caused by TVA's contention that the subject properties could not be properly valued (before and after the taking) on an unit basis, each of the TVA appraisal witnesses testified that he arrived at the same amount of damages using the single-unit method as he did valuing the properties separately.

(8) The commissioners awarded \$2,150.00 compensation, an amount that we believed was most inadequate in view of competent testimony that the difference was \$12,500.00.

We were shocked and astounded at the small award. We were amazed to hear a TVA witness insinuate that the transmission lines would be an asset to an otherwise beautiful sub-division. We realize that, under the commission system, the cards were stacked.

We do not imply dishonesty, but we do say that the routine created by the TVA system is certain to effect the outcome of their cases. This unjust routine can be broken by the time-honored and tested jury system.

(9) My sons and I are good Americans. We saw that we were beaten and agreed to take our beating and quit. We would take the \$2,150.00 and apply it to the cost of the litigation, and charge the rest to experience. Then came our great surprise.

(10) *TVA filed exceptions to the award.* I will never understand the decision of Mr. John Lovett, TVA counsel, to make this move. Perhaps, it was to perpetuate himself or the commission system. Perhaps TVA places uniformity and stereotyped decisions above ordinary justice. It would be enlightening, if this Committee would require TVA to make a full disclosure of the money they have spent in this small case. The figure would be startling and would help establish that the jury system should prevail.

(11) My family and I are now forced to fight the mighty TVA and again try this case in the United States District Court. This repetition would not have occurred had a jury trial been employed in the first place.

THE GENERAL LAW

Section 242 of the Kentucky Constitution guarantees to every person (corporate or individual), who is proceeded against in State Courts by any public or private corporation or agency having the right of eminent domain, a trial by jury on the issue of just compensation. Every other agency and utility are bound by the jury system.

The TVA Act (embodying the commission system of acquiring property through eminent domain without a jury trial) is the most unfair law that we have in America.

The TVA says its system has served justice. It has, rather than justice, served to browbeat, intimidate and suppress the rights of humble people. We believe, for these reasons, Senate Bill 1637 should be favorably reported.

SUMMARY

I. The writer, with his three sons, owned, and were developing one of the most beautiful sub-division sites in our area.

II. By combining power tactics and the Commission System, the TVA obliterated an essential part of our sub-division.

III. A trial in a Commission System is much more expensive and inequitable to a land owner than it would be before a jury of twelve men.

IV. The Commission System requires two trials before a case can be settled by an United States District Court rather than one trial as required in the Jury System.

V. The Commission System brings uniformity into its awards at the expense of common justice.

VI. The Commission System has reduced litigation with TVA in this area, but, in like proportion, has increased the inequities forced upon the people of this area.

VII. It is recommended that this Committee investigate the amount of money poured into the prosecution of the case under discussion.

VIII. It is further recommended that a Sub-committee be dispatched to Eddyville, Kentucky or Cadiz, Kentucky to hold a hearing to enable hundreds of little people who have been suppressed by TVA to express their views on this Senate Bill 1637.

CONCLUSION

Finally, I tell you gentlemen that our company has enjoyed low cost power from TVA. The ax has already fallen on us so far as our land is concerned, but we would be glad to pay more for our power to prevent the injustices that have fallen upon us from falling on our fellow Americans.

EDDYVILLE, KY.

HON. JOHN SHERMAN COOPER,
U.S. Senate, Washington, D.C.

DEAR SENATOR COOPER: We are a family who has had to already move two times to give up land for government projects. First, by the Tennessee Valley Authority for Kentucky Lake reservoir and, second, by the U.S. Corps of Engineers for the Barkley Lake reservoir and replacement of 37 acres for the Wildlife Refuge.

We accepted this, on the whole, as something we had to endure because our land, except for the 37 acres, was necessary for the lake formations.

When we learned that present Land Between the Lakes project was announced by TVA as an "experiment in recreation development" and that our land is again among that which TVA threatens to take—we were flabbergasted—because our understanding was that boundaries had been agreed upon which honored the populated communities and that would still leave 100,000 acres for campers, tourists, etc.

We notice in the papers that TVA is advertising, since last year, land here Between the Lakes for rent for farming purposes. We think they should use it for recreation, if, as they say, that is the reason they are here and not take our land. We figure that it is not necessary for them to have our land and we don't want to sell to them at all!

Because of the above and for many other reasons, too numerous to mention at this time, we want to tell you we agree with you and appreciate very much

your statement, "I have for some time been concerned about the land acquisition practices followed by the TVA, and I will support Senator Baker's proposal." This sounds good to us and we hope that S. 1637 will pass so that TVA will have to handle land condemnation cases according to the rules laid down in our United States Constitution.

Very sincerely yours,

H. J. SMITH.
NADINE SMITH.
RETHA A. SMITH.

EXCERPT FROM SENATE REPORT NO. 1326, SENATE COMMITTEE ON APPROPRIATIONS, PUBLIC WORKS APPROPRIATION BILL FOR FISCAL 1965, H.R. 11579, ORDERED REPORTED AUGUST 5, 1964

In agreeing to the amount of \$5 million appropriated to the "Land Between the Lakes" demonstration program, the committee also agrees with the House in expecting the TVA to use all possible care to maintain good public relations in the land acquisition program.

The committee feels that the acquisition of the land should proceed with due care. Some questions have been raised, however, as to how the recreation and park areas should be administered, and the committee requests that at the hearings on the 1966 budget full information be supplied as to how the area will be developed, the agency that will operate, and the detailed legal authority for all phases of the project.

EXCERPT FROM HOUSE REPORT NO. 1479 BY THE HOUSE COMMITTEE ON APPROPRIATIONS, PUBLIC WORKS APPROPRIATION BILL FOR FISCAL 1965, H.R. 11579, ORDERED REPORTED JUNE 11, 1964

The reduction made by the Committee in this program includes \$1,000,000 of the \$6,000,000 budgeted for the "Between the Lakes Recreation Area." The Committee expects the TVA to use all possible care to maintain good public relations in the land acquisition program. A general reduction of \$2,000,000 has also been made which should be readily offset by unobligated balances at the end of the current fiscal year.

(Whereupon, at 1 p.m., the committee was adjourned, subject to call.)