

# Analysis and Evaluation of Oregon Condemnation Cases

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•JURY VERDICTS returned in condemnation cases cannot really be accurately analyzed and evaluated. Certain observations and conclusions that may have some validity may be drawn, however, based on experience, knowledge of the area involved, the parties, the witnesses and the thinking of the times.

During the period between July 1955 and June 30, 1963, 635 condemnation actions were prosecuted in Oregon. Figure 1 shows the wide variation during that period in percentage of increase above the highest offer to settle made by the State.

A study of all cases tried during the period bears out certain conclusions that could be drawn in connection with the percentage of increase approach, which is that the greater increases occur when the offer is less than \$10,000. Experience shows that the average jury has little or no compunction about doubling a \$2,000 offer but is reluctant to double a \$200,000 offer. This phenomenon will always be present and, consequently, charts based on percentages of increase may vary 10 to 20 percent or more in any given year.

Another factor is the demand of the owner. For example, a well-known farmer, legislator and respected community worker was the owner of a beautiful farm. As so often happens, the right-of-way crossed the farm diagonally, but farm crossings were allowed. The offer to purchase was \$10,500, but the owner demanded \$100,000. The case was tried before a jury composed mostly of farmers, and the verdict returned was \$17,500. This was a healthy increase in percentage, but from the standpoint of the demands of the owner and the farm involved, it was not a disgraceful one.

This case was the subject of a GAO audit in 1960, and there was some criticism because the court award was considerably higher than the appraisal. For the benefit of all auditors it should be made clear that the spread between State appraisals and those of the landowner are frequently awesome to behold (Table 1). A jury, generally composed of a cross-section of the residents of the county, are people who have no special knowledge of appraising or of real estate values. Nor have they been briefed beforehand as to any auditing policies against bringing in verdicts in excess of State appraisals. Jurors have to make a decision as to value in a few hours based on the testimony of appraisers who appear on both sides and who, in most cases, have equal qualifications. It seems that most juries feel the correct answer lies somewhere between the State's highest appraisal and the landowner's lowest appraisal. In most cases, the juries have decided more in the State's favor than in the landowner's, even though it would be easier for them to identify themselves with the property owner.

It is, therefore, obvious to anyone who understands the law of eminent domain that a court trial transcends the field of auditing and that the auditor who attempts to apply his training to it is being thoroughly naive.

Charting the trials of cases from a percentage of increase basis may not always give a true picture of trends in jury verdicts. In fact, it can be very misleading, at least from the trial attorney's standpoint. However, there is one trend worth mentioning, and that derives from a comparison of a large metropolitan area with a predominately rural area.

A study of the cases indicates that since 1960 trials in Portland, Oregon's only large city, have been much more successful for the State than trials in rural areas. This is

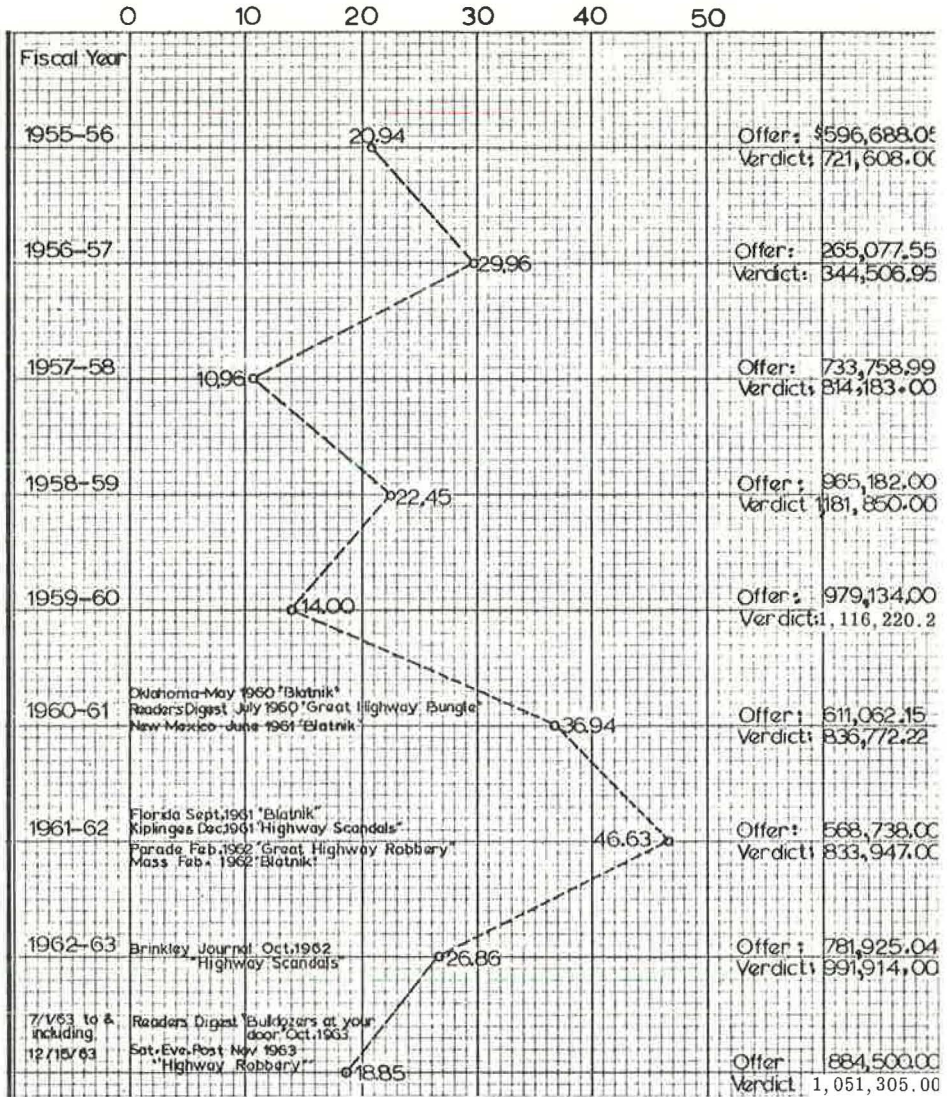


Figure 1. Percent of increase, verdicts in excess of State's highest proposal of settlement.

TABLE 1  
SUMMARY OF CONDEMNATION CASES IN OREGON

Date	Total Cases (No.)				Condemnation Cases Tried <sup>a</sup>					Negotiated Cases	
	Filed	Tried	Settled	Pending	No.	Offer (\$)	Demand (\$)	Verdict (\$)	Attorney Fees (\$)	No.	Consideration (\$)
7-1-55 - 6-30-56	203	67	61	189	49	596,688.85	1,218,236.30	721,608.00	70,041.00	966	3,410,955.00
7-1-56 - 6-30-57	232	84	109	283	69	265,077.55	635,506.95	344,506.95	36,434.00	1,066	3,874,499.00
7-1-57 - 6-30-58	257	98	152	288	77	737,758.99	2,342,086.00	814,183.00	76,962.50	789	3,124,083.00
7-1-58 - 6-30-59	330	124	157	338	110	965,182.00	1,962,306.40	1,181,850.00	88,035.00	999	7,597,656.00
7-1-59 - 6-30-60	122	104	153	203	96	979,134.00	2,645,732.75	1,116,220.27	96,815.00	829	5,740,527.00
7-1-60 - 6-30-61	307	98	190	222	77	611,062.15	1,447,734.52	836,772.25	42,036.00	1,215	6,436,631.00
7-1-61 - 6-30-62	333	91	204	260	71	568,738.50	1,714,878.00	833,947.00	57,505.00	1,175	6,467,288.00
7-1-62 - 6-30-63	261	112	175	234	86	781,263.00	1,677,606.00	991,914.00	76,815.00	795	7,673,311.00
<b>Total</b>	<b>2,045</b>	<b>778</b>	<b>1,201</b>		<b>635</b>	<b>5,504,925.04</b>	<b>13,644,086.92</b>	<b>6,841,001.47</b>	<b>534,643.50</b>		

<sup>a</sup>Verdicts above offers, \$1,336,076.13; demands above offers, \$8,139,161.83; demands above verdicts, \$6,803,085.45.

a reversal of the trend of the early 1950's. Verdicts in the Portland area since 1960 have averaged 5 to 10 percent greater than offers, whereas during the 1950's they averaged 17 to 20 percent greater than the offers. The change may be because the completion of the Banfield Expressway in Portland and Multnomah County (of which Portland is the county seat) rather vividly demonstrated to the populace at large that the nearness of this segment of the Interstate did not, in fact, reduce property values as then contended by every defense attorney. In fact, subsequent developments proved just the opposite. Eventually this fact found its way into the jury box and the oracles of doom lost a strong argument.

In all counties except one or two, which perhaps suffer a little from provincialism, there is very little or no appreciable trend either up or down. Even a knowledgeable and understanding jury will be influenced by their beliefs and prejudices. It appears that many of the adverse decisions are the result of wide dissemination of public information about highway departments, most of which has been derogatory, to say the least.

Whereas it may not be indicative, it is at least an unusual coincidence that the highest percentages of increase in verdicts occurred during the time of the unmerited degradation of the State highway departments through national publications. For instance, the percentage increase in verdicts was almost 37 percent during fiscal 1960-1, the period when the Blatnik Committee hearings on Oklahoma and New Mexico were made public and in which the Reader's Digest article on the "Great Highway Bungle", which had wide circulation, was published. Fiscal 1961-2 was even worse. It was during this period that the Blatnik Committee released its findings of the Florida and Massachusetts hearings. It was also during this period that the Kiplinger and the Parade magazine articles on highway scandals found their way into millions of homes throughout the land. The percentage of increase was then 46.6 percent, which is the highest they have ever been in the State's history. Presumably the juries' reaction was that if Highway Department employees were going to pay favored contractors for shoddy work, or split fees over fraudulent right-of-way deals, it would be best to give landowners more generous treatment.

The last fiscal period, 1962-3, saw a rather pronounced reduction in the trend even though it was during this period that the Brinkley Journal was televised. Since his disclosures in October 1962, the press and committee hearing results have been somewhat quiet and the increase over offers dropped to 26.8 percent. Perhaps Mr. Brinkley's Journal was a little anticlimatic and did not have the effect of the former writings. People tire of the sensational on a given subject after they have been saturated with it, unless it deals with a subject similar to the Christine Keeler exposé.

One conclusion that can definitely be drawn is that, for a while at least, improper or criminal activities on the part of highway officials and employees do find receptive ears and do find their way into the jury box.

Another factor, which most active trial attorneys recognize, concerns the jury panel as a group. Most juries can be categorized as a plaintiff or defendant jury. People, as a rule, are either conservative or liberal in their approach to a problem. The NACA is cognizant of this, as are its counterparts in defense of claims. Given a new jury panel and two or three emphatic verdicts, plaintiff or defendant, a rush to settle, or a pugnacious tightening up on the part of one or the other, can be seen. It has long ago been discovered that the State highway department fares much better before a defendant's than before a plaintiff's jury. In name, the State is the plaintiff, but in actuality, it is in the same position as the defendant.

A word about provincialism might not be amiss. One county in Oregon is rather remote and isolated from the other counties. The people appear to be clannish. Population is sparse and tillable land is at a premium. Many of these properties are still held by the same families who received the original grant or patent from the United States Government. Most people are acquainted with or know of each other and, consequently, it is almost impossible to secure a jury that does not know of, or have some opinion about, the highway department and the earlier condemnation cases. The new highway traverses a comparatively narrow area lying between the coast range mountains and the ocean.

The county took a dim view of the location because a rather large proportion of good

taxable land was taken from the tax rolls. This feeling found its way into the county's only weekly newspaper, whose editorials were not designed to popularize the highway. For 10 yr, the highway department has been endeavoring to convince juries of land values being testified to by competent and capable real estate appraisers brought in from neighboring counties because local appraisers could not be secured. Some of the local appraisers feel property values are considerably higher than the State thinks they are, and one or two others forthrightly say that to testify for the State would be detrimental from a business standpoint and they could not afford to accept the assignment.

A review of the cases tried in this county during the past 10 yr shows that increases over offers consistently hover between 50 and 150 percent. The problem has not yet been solved, but because construction is nearing an end in that area, perhaps the question will be moot for another decade or so.

Jury verdicts will never be constant. There are too many elements which seem to influence and sway juries in their deliberations. They may take a dislike to one of the parties, or his attorney. The witnesses on one side or the other may irritate them. They may be in a hurry to get home. They may have harvesting to do. They may not feel well. They may not fully understand the case. There may be any number of imponderables which will cause them to compromise in one direction or the other. These are matters that cannot be documented, but only conjectured.

In endeavoring to analyze or evaluate jury verdicts, it may be well to consider the thinking of Hugo Munsterberg on the subject. In "The Mind of the Jurymen," he suggests that the more persons work together, the less every single man can reach his highest level of thinking in the search for the truth. They become a mass with mass consciousness, a kind of a crowd in which each one becomes over-suggestible. He feels that in such a situation each person thinks less reliably, intelligently, and impartially than by himself alone; they are then like any other crowd that can be thrown into panic, or can rush into some foolish, violent action. When such happens, the individual is no longer judging for himself. He did have a good word for the ladies, however. He believes that the woman generally remains loyal to her instinctive opinion. This certainly contrasts with the general idea that a woman easily changes her mind. She may change it, but others cannot.

Mr. Munsterberg concludes that all results show it is really the argument in the jury room that brings cooperating groups nearer the truth rather than seeing how the other man votes. Perhaps this explains why the understanding jury will generally come up with the right answer and why there is shock when a jury runs wild.

**AUTHOR'S NOTE:**—Since preparation of this paper, another article has appeared in Reader's Digest (Oct. 1963), tantalizingly titled "Bulldozers at Your Door." It will be interesting to note which way the pendulum will swing this time, but perhaps no change will be noted.

The percentage figures of verdicts over offers have been brought up-to-date as follows:

July 1, 1963, to and including Oct. 31, 1963	
Highest proposal of settlement . . .	\$528,975
Verdicts . . . . .	<u>\$666,565</u>
Difference . . . . .	\$137,590

A slight reduction (about 1 percent) is indicated over fiscal 1962-3. This perhaps bears out the conclusions with respect to the effect the Brinkley report had, and only time will tell the effect of the latest article.