

A Program of Highway Research at the University of Wisconsin

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Professor Beuscher: This is a description of highway research in progress and an outline of some future research hopes. We are not here reporting research findings; rather, we are focussing on research goals and methods.

I have fortified myself, in this presentation, with Messrs. Heaney, Vlasin and Covey, who are all researching on highway problems, at Madison, working closely with each other, benefiting from each other's suggestions. Mr. Heaney and Mr. Covey are lawyers and their research is being financed by the Automotive Safety Foundation. Mr. Vlasin is an agricultural economist in the employ of the U.S. Department of Agriculture. He is working under Professor Raymond J. Penn of our Agricultural Economics faculty.

As each of these men gives a description of the research he is attempting, note the ease with which we have crossed the departmental lines between law and economics. Notice, also, that the research of each man gives emphasis to empirical findings. In the Law School we call this "law-in-action" research.

How are appraisers actually applying the black letter rules of eminent domain evaluation law? What, in detail, is the process by which highways are planned and right-of-way acquired? What voice do local people and local governments have in the process? How can some of the adverse effects of highway development upon the farming business be reduced? How can we more effectively protect both public highway and private business investment by regulating land uses on land abutting our highways? These are some of the important questions Messrs. Heaney, Vlasin and Covey are attempting to answer. After each has briefly described his work and his goals, I shall try to outline briefly some of our future plans for highway research.

VALUATION PROCEDURES IN HIGHWAY LAND ACQUISITION

Mr. Heaney: My work is essentially a study of the operation of the valuation process as it functions in the acquisition of land for highway purposes. The objective is to discover how a value figure on property needed for highway use is determined. In other words, how is it decided to pay Farmer Brown \$5,000 for bisecting his pasture with a 300-ft swath of pavement or Merchant Green a like amount because customers can no longer reach his place of business so easily.

My point of view is that of a lawyer, but of a lawyer looking at the law from a slightly different angle than he normally does. I think whatever value this study may have will result from this somewhat different point of view. The focus is on what is happening, what is being done in right-of-way valuations, not just on what the governing statutes say, or what the case law on the subject is. These latter materials have already been treated at length, and probably little of value can be added in this vein beyond incorporating the latest cases and concepts as they emerge, a job which along with so many others David Levin has been doing so well. However, little, if anything, has been published of what happens to case law and statutory concepts when they are exposed to the everyday problems of the highway administrator in action.

After intensive study of the statutory and case law of eminent domain valuation, I am now turning from this "law in the books" to my field work. The method of field research I propose to use is simple to outline. It belongs more to the anthropologist than to the lawyer or the economist. Principally, it involves being on the scene, observing without intruding. The interview is, of course, useful too, but I expect better results from actual observation. The principal subjects of my law-in-action study are the

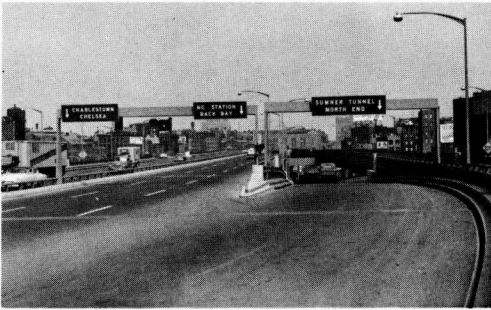


Figure 1. Fitzgerald Expressway, Boston, Massachusetts—Many considerations enter into the valuation process when right-of-way is acquired for highway purposes.

activities of appraisers, highway commission negotiators and the private bar as each functions in the process by which land is valued in highway condemnation. Also under study are the court hearings and trials (including jury trials) in matters of condemnation. In all of this I expect to continue to exchange information with Mr. Vlasin, an economist who is also observing land acquisition procedures. We have set up our studies from the beginning with this in mind. Already I have found his background useful in analyzing the economic aspects of my problem.

Anyone considering such a research activity will, of course, eventually ask "Why?" Why study the activities of highway admin-

istrators in the land valuation process? In answering I would say that you cannot learn the law, at least the effective law, any other way. For example, it is very fine to know that the Supreme Court of State A has said there should be no compensation for sentimental attachment to a given property, but if an appraiser makes his appraisals with some consideration of this factor or if a jury is usually willing to give an extra \$200 for this reason, then the Supreme Court's statement should be interpreted somewhat differently than it otherwise would be. This, I should hasten to add, is a hypothetical situation. A very practical value from this work may come in the form of suggested simplified statements of the announced valuation rules—statements that will be understood and not misinterpreted by non-lawyers.

A third possible value is some small contribution in understanding law generally—a jurisprudential value. If enough studies of law in action are made in enough fields, some insights into the changes laws undergo in their application to everyday events should result. This could, of course, have very direct application in a practical way in the drafting of legislation.

A HIGHWAY RESEARCH PROJECT IN AGRICULTURAL ECONOMICS

Mr. Vlasin: The present increase in the amount of land being acquired for highway construction will increase the impact that highway development will have on farm owners and operators. The nature and extent of this impact and possible means of reducing its adverse effects is the core of my study. Although this study is in the field of agricultural economics, it is vitally concerned with highway law.

The specific objectives of this study are as follows: the first objective is to determine the immediate economic impact of land acquisition and highway construction on farm owners and operators. Selected road projects will be reviewed to determine the effect of the roadway on farm layout, farm business, the tax load and market value.

A second objective is to carefully review procedures used by the highway agencies in planning and locating a roadway. A review will also be made of procedures used by the agencies in acquiring land. The review of existing statutes and the analysis of the valuation process by Mr. Heaney will be especially valuable in this instance. Instead of being concerned with the possible differences between existing statutes and agency procedures, I will be trying to determine what it is about the existing procedures used by the highway agencies that cause conflicts. I will consider such factors as notice of intended roadway construction, farmer participation in public hearings, devices by which individuals or groups can make suggestions to the agencies, and farmers' reactions to assessment and compensation procedures.

Therefore, a third objective is to determine the elements of conflict and agreement that occur between farm property owners and operators and the highway agencies. Interviews with farmers and highway officials, an evaluation of public hearings and a review of court cases will be used to detect the nature and reasons for these conflicts



Figure 2. Massachusetts Route 128—Highways such as this one have a pronounced economic effect upon surrounding lands.

Mr. Covey and Mr. Heaney will provide assistance in the interpretation of these cases.

A fourth objective is to analyze the procedures used by highway agencies in light of the elements of conflict. This analysis will indicate which conflicts can be minimized by changes in the procedure and which conflicts could only be reduced by changes in the existing statutes.

A comparison of the activities of these highway agencies will also be made with other public agencies having experience in land acquisition. Both state and federal agencies have been selected for this comparison. This comparison should indicate alternative ways of initiating and planning a project and of assessing and valuing farm property. In addition, it may indicate the consequences of alternative ways of acquiring farm property.

The final objective is to determine what adjustments in procedures used by highway agencies and what adjustments individual or group action by farmers might lessen the impact of highway development and at the same time help the highway agencies in deciding on the best location for a roadway. A review of existing statutes will be made to see if enabling legislation is needed to facilitate these adjustments. I will again seek the assistance of the Law Department in this review.

In order to make sound, workable suggestions to reduce conflicts between highway agencies and property owners and operators, we must consider not only the economic and social impact of the highway, but also the legal framework within which the highway agencies must operate.

COOPERATIVE RESEARCH IN HIGHWAY PROTECTION LAW

Mr. Covey: The genesis of my research project is the problem of providing efficient and economical protection for the state primary highway systems that will carry the eighty percent of American highway traffic that will not be carried by the Federal Interstate Highway system and that will act as feeder-roads to the Interstate Highway system. The research breaks down into two phases: (1) the relation between the states' police powers and their eminent domain powers in the control of access and roadside development, and (2) the intergovernmental relations involved in highway protection on the municipal-county-state levels.

To achieve the maximum protection possible for these state road systems within the framework of the available funds and statutory authorizations, recourse must be

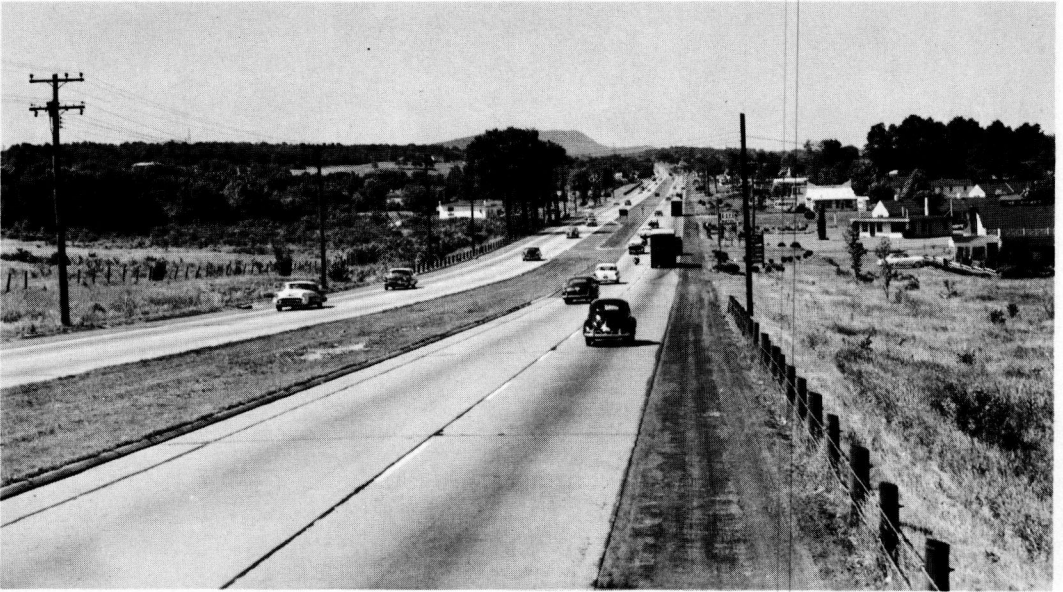


Figure 3. Berlin Turnpike in Connecticut—Adequate setback requirements give added protection to highways.

had to the states' police powers. This power to regulate the use of land in the public interest without the payment of compensation encompasses zoning, subdivision controls, set-back requirements, driveway regulations, and master planning. The research is not concerned solely with the direct control of access but includes the indirect control of access through the regulation of traffic generating land uses or development patterns.

Research into these police power protection devices requires the normal study of statutory authorizations, constitutional restrictions, administrative procedures, and court interpretations. In this phase of research, I have traced the historical development of the rights of abutting land owners from earliest times down to the most modern cases. Here, also I have tried to collect and correlate the appropriate cases and statutes on intergovernmental relations in the area of highway control and protection. The legal research has surveyed the developments in all the states but has concentrated on Illinois and Wisconsin. Thus far, the research has been "law in the books" research.

But in order to evaluate accurately the feasibility and practicality of such police power controls, more than legal research is needed. To answer the pressing questions—How does it work? Is it fair? By what level of government should it be imposed? and, Is it effective?—both factual studies and cooperative interdepartmental research are necessary. This further research seeks to determine how the law is administered and how successful it is in operation. These answers can only be provided by "law in action" research.

To illustrate the nature of the additional research in the area of access controls: Wisconsin has a subdivision control act which requires a subdivider to secure state highway commission approval of any plat filed for record. For approval, if the lots covered by the plat abut on a state trunk highway, the subdivider must provide service roads or otherwise lay out the lots so that there is a minimum of access points onto the highway.

The field research on the subdivision control act seeks to find out:

1. Are all the people coming under the statutory definition filing such approved plats or are they, for example, recording surveyor's maps or assessor's plats (which need

not be approved) or using multiple straw-man transactions to avoid coming within the statute? An on-the-spot study of plats filed for record and regional maps will be required to determine this.

2. Where the act is complied with, does it provide any substantial highway protection, that is, on a given stretch of highway, has it appreciably lessened the number of access points or the nature of the roadside development? Highway development studies and cooperation with the land economics people, like Mr. Vlasin, are needed to discover this.

3. Is the over-all operation of the act effective and fair? Highway surveys as well as cooperation with planners and land economists are needed to answer this.

To illustrate the nature of the additional research needed in the area of intergovernmental relations: the various political subdivisions of the state possess certain highway protection powers, for example, county zoning and municipal master planning; in addition the state has over-all highway protection powers.

The field research on intergovernmental relations seeks to find out how these protection devices are operating, to what extent they are integrated, and the role that they play in locating future highways. To provide these answers, I am studying segments of state highway in Illinois and Wisconsin that fall under the jurisdiction of several governmental units and I plan to evaluate the protection devices in use, their integration into a unified pattern, and their practical results. Here interviews with highway officials from the commissioners to the district officers and county and town officials will be supplemented with air photo and land use studies. The cooperation of the Illinois and Wisconsin State Highway Commissions has been invaluable.

This cooperative research has great potential value. It results in an accurate picture of the use being made of state enabling powers and the administration and effect of local ordinances. This gives us a sound basis on which to evaluate the effectiveness of the highway control devices that we are using and allows us realistically to plan and integrate future highway protection devices.

These research findings should be of help in an ultimate court challenge testing whether a control measure really does preserve and promote the public safety and general welfare and that the device used is reasonable in the light of that end.

FUTURE RESEARCH PLANS

Professor Beuscher: Now as to our future plans. First, we intend to continue technical legal research in highway law; we intend to continue to evaluate legal doctrine, particularly valuation rules against economic reality and we have hopes of furthering our economic impact studies as such and studies of the relation between highways and our valuable recreation industry. But our principal emphasis is going to be on highways and intergovernmental relations—federal, state and local. And, for reasons that I will outline presently, the local governments on which we will focus are those in metropolitan areas.

Past social science-law research on highways and other land uses at Wisconsin and the work that Messrs. Heaney, Vlasin and Covey are currently doing have fortified us in this set of guides for future social science-law highway research:

1. The work must continue freely to cross departmental lines. This apparently creates difficulties at some places; it has not at Wisconsin. As vehicles toward broader inter-departmental approach to highway problems, we intend to use both the newly organized committee on urban studies and the committee on our regional planning curriculum. The latter committee represents, for example, economics, sociology, geography, political science, education, engineering and law. Both the urban studies work and the regional planning activity are headed by Coleman Woodbury who came with us in September and who has expressed great interest in integrating highway research into a broad program of urban studies.

2. As I have indicated, we think we can make our greatest contribution by focussing upon intergovernmental aspects of (1) highway planning, (2) right-of-way acquisition (3) right-of-way protection and (4) highway construction and maintenance. We think

that experience in wrestling with intergovernmental problems in the forestry, land planning and other land use fields will stand us in good stead as we probe into comparable governmental relational problems in the highway field.

3. We intend to concentrate on intergovernmental problems in metropolitan areas, including both urbanized areas, rural non-farm areas and those farm areas in the path of urban expansion. This last includes a great deal of farm land. Consider these figures, guesses and facts:

- a. For the 6 years, 1950-56, the country grew by 14.7 million. Of this growth, 12.5 million (85 percent) is attributable to the 168 Standard Metropolitan Areas of the 1950 Census.
- b. This 12.5 million growth is spread out within the Standard Metros as follows:
 - 15.6 percent in the central cities
 - 27.2 percent in the suburbs (in census terms urban territory outside the central cities)
 - 41.5 percent in the fringe areas (largely rural non-farm in census terms)
- c. There are solid reasons to suppose that this is just the beginning. Projecting a guessed-at total population of 220 million in 1975, the increase attributable to metropolitan areas will be about 59.5 million. Let me try to give this astounding figure meaning by quoting Coleman Woodbury:

"The projected metropolitan growth for 25 years, therefore, is roughly equal to the 1950 populations of the metropolitan areas (not of their central cities alone) of New York-Northeastern New Jersey, Chicago, Los Angeles, Philadelphia, Detroit, Boston, San Francisco-Oakland, Pittsburgh, St. Louis, Cleveland, Washington, Baltimore, Minneapolis-St. Paul and Buffalo plus 15 million persons more."

- d. Governments in our metropolitan areas obviously perform functions vital to our way of life; they, more than any other tier of government give "quality" to our way of life. Growth since World War II and the staggering growth still to come pose problems for these governments on an unprecedented scale—problems of enormous capital investments, of inflexible revenue sources, of Balkanization of local government jurisdictions, of decaying central business districts, of growth that too often outraces provision for adequate open and breathing space. The impact of major highway planning upon metropolitan regions, their people and their governments will become increasingly important. Such planning can help alleviate some of the crushing problems I have enumerated and others that I do not have time to recount. Or such planning can make these problems infinitely more difficult.
- e. This means that social science-law investigations focussing on highways in metropolitan areas must be fitted into a broader pattern of urban research generally.
4. More specifically then, we intend to investigate such things as:
 - a. The process of planning as it is actually carried out for land planning in general and for highway planning in particular. How can we cut local people into this process without surrendering it to local interests or without delaying needed highways unduly?
 - b. Ways and means of organizing so that a planning judgment can be made on a region-wide basis by representatives of the people of the region and communicated to state level or federal level officials. This involves, of course, the whole complex problem of regionalizing government in our sprawling metros. It also involves trying to learn something of the effects of different kinds of highways in channeling population growth and economic development. This alone is a big order, in fact several big orders.
 - c. Urban, suburban and rural relations as they affect highway planning, location and development.

d. The impacts of highways on local governmental finances.

5. We intend, of course, to do much of our field research in Wisconsin metropolitan areas, but we also intend to send researchers into other states for comparative studies across state lines.

All of this may sound vague and general. I submit, however, that such a research program is eminently practical, and if properly executed will give greatly needed insights into how to mesh metropolitan planning with state level highway planning to the end that our rapidly growing metropolitan communities may be less chaotic and closer to those ideals of livability, of beauty and of open space which millions are seeking as they sprawl out into the country far beyond the limits of our central cities.