195-5 DISCOVERY -- A LANDOWNER DEFENDING FEDERAL CONDEMNATION IS ENTITLED TO TAKE PRETRIAL DEPOSITIONS OF THE GOVERNMENT'S EXPERT APPRAISERS AND TO INTERROGATE THEM ON THEIR OPINION OF THE LAND'S VALUE AND BEST USE

In July 1968 the U.S. Court of Appeals for the Ninth Circuit refused to extend the work product exception from discovery found in Hickman v. Taylor, 329 U.S. 495 (1947), holding that a landowner defending the Federal Government's condemnation proceedings is entitled to take depositions of the Government's expert appraisers and to interrogate them on their opinion of the land's value and the best use. The court found that discovery from the appraisers is not likely to produce the evils against which the Hickman case was directed, by holding that there is neither invasion of the privacy of the attorneys' files or thoughts nor direct interference with the attorneys' preparation for trial; the attorneys are not cast in the role of witnesses; no grave danger of inaccuracy of untrustworthiness is introduced, for in the main the appraisers testify to matters within their own knowledge, not to statements taken from others, and, in any event, if the appraisers have relied upon inaccurate data, that fact itself is highly relevant in evaluating the appraisers' opinion testimony. The Court further held that the threat of discovery will not lead attorneys to do the appraisers' work to the neglect of proper preparation for trial, since property appraisal is a distinct discipline and not simply part of the attorneys' duties that have been delegated to others; and it is unlikely that discovery will lead either party to refrain from using appraisers in condemnation cases since their testimony is usually essential and cannot be foregone simply to avoid discovery.

If a substantial possibility of these or other adverse consequences, such as undue interference with completion of the appraisers' work, appears to exist in a given case the Court held that the appropriate reaction would be a protective order drawn to prevent the abuse, not a broad foreclosure of discovery. (U.S. v. Meyer, 7/17/68).