misleading. "Extraneous matter not reasonably calculated to affect the outcome does not render admission of the plat prejudicial error." The court even suggested that the plat might reasonably show the effect of the condemnation project on the other property, although there was no indication that the plat in the instant case contained such data.

The second plat contained indications of the possible use of the condemned property for subdivision purposes. While the court refused to consider the commission's objection that this inserted a false issue of damages by concluding that the objection could not be raised for the first time on appeal, the court did make some passing observations on the evidentiary aspects of the issue. A plat may be used to support testimony relating to highest and best use even though the plat does not directly establish such use. The court observed that this would certainly control the present situation.

In general, the case serves to highlight what is the prevailing judicial attitude on plats and maps - presumptive admissibility with defects cured by testimonial clarification. This is best explained by a consideration of the alternative. If a plat were not admitted, the same data would most probably have to be introduced through the unaided testimony of a surveyor. The degree of confusion which necessarily accompanies any attempt to orally depict physical boundaries is only magnified here. Consequently, the illustrative merit of a plat will carry the day so long as the other debilitating factors do not completely obscure that merit.

203-4 EVIDENCE OF UNCONSUMMATED SETTLEMENT MAY BE ADMITTED WHEN INTRODUCED BY THE CONDEMNEE. Nash v. D.C. Redevelopment Land Agency, 395 F.2d 571 (D.C. Cir. 1968).

The Redevelopment Land Agency condemned a large area in the District of Columbia for use in the construction of public housing. Included within this area was the claimant's parking lot and a junkyard owned by another individual some 100 feet away. At trial, the RLA had quoted a value of two dollars per square foot for the parking lot. The claimant sought to introduce a settlement negotiation based on a five dollar per square foot figure which was then under consideration for the junkyard property. The trial judge admitted the settlement evidence and the jury returned a verdict somewhere between two and five dollars per square foot. The RLA appealed.

The governing procedure for offers of landowners is to present the offer in the form of a stipulation. If the RLA has no objection, the offer is tendered to the Justice Department which has final approval in the matter. If the Government accepts, the stipulation is simply signed by the Justice Department. In the present situation, the stipulation had been signed by the owner of the junkyard but not by the Justice Department. However, the RLA attorney testified at trial that the five dollar figure was considered fair by his agency.

The United States Circuit Court of Appeals for the District of Columbia, in a per curiam opinion, affirmed the admission of the settlement figure. The court concluded that the finality of the settlement was merely a technical formality and all remaining points of contention related to removal of fixtures rather than the land value of the junkyard.

Judge Tamm dissented on the grounds that the settlement negotiations had not reached the degree of finality at which they could be fairly used against the Government in a separate proceeding. The main problem that Judge Tamm had with the majority's ruling was that the settlement offer, as introduced reflected only the terms of the landowner's opinion of value and did not indicate any of the alterations which were eventually made in that figure.

The Government then applied for a rehearing en banc which was denied. The order denying the rehearing was accompanied by an expansive concurrence by Judge McGowan which attempted to explain the basis for the denial and also state the governing law in the District of Columbia. The chief judge joined in this concurrence.

The substance of the concurrence greatly illuminates the theoretical backdrop of the rather terse initial decision. The major point of contention appears to have been whether the general rule preventing introduction of comparable sales consummated under coercion of condemnation applies with equal force to both the condemner and the condemnee. The appellate court, other than Judge Tamm, appeared little concerned with the stage of the settlement negotiations preferring instead to have the RLA testimony indicating the fairness of the price substantiate the trial judge's exercise of discretion in that regard.

As a general rule, a sale or an offer of sale will not be admitted into evidence on the issue of valuation unless the sale was made under voluntary circumstances. A sale or offer to sell made under threat of condemnation is not a voluntary sale for these purposes. The reason for the rule is to prevent a condemning authority from creating a forced sale by threat of eminent domain and then using that sale as the measure of damages for all other land involved in the condemnation. A landowner is entitled to compensation for the value his land would have under normal market conditions existing at the time of the appropriation.

There seems to be little support for applying this rule to instances where the condemnee seeks to rely on the valuation in the other sale since the condemner cannot be in a coerced position as to the offer, having a final resort to eminent domain. The decision in the instant case bears this out. Further, a court will not generally accept the argument that the condemner is under the coercion of further litigation and expense since the condemning authority is usually in command of adequate financial resources for this purpose. The Court of Appeals rejected this out of hand where the Justice Department is concerned.

Absent the normal coercive situation, there appears no reason to prevent use of such settlements if the condemnee is willing to accept that price. Any other result would permit the condemning authority to hide behind the coercive effect of its own power of eminent domain. As Judge McGowan clearly explained, the settlement will not be rejected, when introduced by the condemnee, "unless, looking at the whole record, the reviewing court is convinced that the jury did not have a reasonable opportunity to determine the question of fair market value and that its conclusion is patently an unjust product of an unjust proceeding."