

These Digests are issued in the interest of providing an early awareness of the research results emanating from projects in the NCHRP. By making these results known as they are developed and prior to publication of the project report in the regular NCHRP series, it is hoped that the potential users of the research findings will be encouraged toward their early implementation in operating practices. Persons wanting to pursue the project subject matter in greater depth may obtain, on a loan basis, an uncorrected draft copy of the agency's report by request to: NCHRP Program Director, Transportation Research Board, 2101 Constitution Ave., N.W., Washington, D.C. 20418

Continuing Project on Highway Right-of-Way and Legal Problems

An NCHRP staff digest of the progress and status of NCHRP Project 20-6, "Right-of-Way and Legal Problems Arising out of Highway Programs" for which the Transportation Research Board is the agency conducting the research. The Principal Investigator responsible for the project is John C. Vance, TRB Counsel for Legal Research, serving under the Special Technical Activities Division of the Board.

A major and continuing need of state highway and transportation departments involves the assembly, analysis, and evaluation of operating practices and the legal elements of special problems involving right-of-way acquisition and control and highway law in general. Individual State experiences need to be compared and made available for possible application nationally. Need exists with respect to both immediate and longer-range right-of-way and legal problems.

In spite of this critical need, there has been no mechanism capable of responding in time to be of practical assistance to highway agencies. The Right-of-Way and Legal Affairs Committee of the American Association of State Highway and Transportation Officials tried all of the known channels in an effort to initiate such research, but the response was negative for one reason or another.

Accordingly, state highway officials have agreed that an appropriate mechanism be maintained under which needed research of the type suggested can be undertaken and with dispatch. Prototypes of such a device may be found in the various AASHO and HRB road-test projects that have been undertaken and, perhaps more closely related, in the 1956-60 special HRB Highway Laws Project.

NCHRP Project 20-6 has been established to meet the aforementioned need and is a continuing study under the direction of the TRB legal staff involving research on a priority listing of topics selected by the cognizant NCHRP project committee.

To date some 46 topics in the right-of-way and legal areas have been researched under this project. These studies are carried out by TRB lawyers or by outside consultants for an average fee below \$10,000 each.

Output from this study has received wide distribution through the NCHRP Research Results Digest series. A list of Digests emanating from NCHRP Project 20-6 is given in Table 1. They are priced at \$1.00 each, and copies can be obtained from the Publications Office, Transportation Research Board, 2101 Constitution Avenue, NW, Washington, D. C. 20418.

In 1976, a new publication, *Selected Studies in Highway Law* was introduced by the Transportation Research Board as part of NCHRP Project 20-6. It is expected to be a significant contribution to the literature in the field.

It is well known that "highway law" is a generic term embracing many fields of law, including contracts, torts, eminent domain, evidence, taxation, and others too numerous to mention. Although many excellent texts treat these traditional branches of the law, nowhere in those texts is specialized treatment given to cases dealing with highways. No text has been written that is directed exclusively to the law of highways. This omission constitutes a vacuum in American legal literature, the best evidence of which is perhaps the fact that there exists in England a textbook entitled "The Law of Highways," first published in 1911, that has now reached its 21st edition.

The large body of case law relating to highways is of cardinal importance in that its impact goes to the heart of the administration and operation of the nation's highway systems. The purpose

Table 1

NCHRP Research Results Digests
Emanating from Project 20-6

<u>No.</u>	<u>Title</u>
3	Relocation Assistance Under Chapter Five of the 1968 Federal-Aid Highway Act
6	Standing to Sue for Purposes of Securing Judicial Review of Exercise of Administrative Discretion in Route Location of Federal-Aid Highways
19	Advance Acquisition Under the Federal-Aid Highway Act of 1968
22	Valuation in Eminent Domain as Affected by Zoning
25	Federal Environmental Legislation and Regulations as Affecting Highways
31	Proposed Legislation to Authorize Joint Development of Highway Rights-of-Way
32	Changes in Existing State Law Required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
39	Legal Effect of Representations as to Subsurface Conditions
40	Appeal Bodies for Highway Relocation Assistance
41	Trial Strategy and Techniques to Exclude Noncompensable Damages and Improper Valuation Methods in Eminent Domain Cases
42	Supplemental Condemnation: A Discussion of the Principles of Excess and Substitute Condemnation
45	Exclusion of Increase or Decrease in Value Caused by Public Improvement for Which Lands Are Condemned
47	Trial Strategy and Techniques Using the Comparable Sales Approach to Valuation
54	Trial Strategy and Techniques Using the Income Approach to Valuation
68	The Meaning of Highway Purpose
79	Personal Liability of State Highway Department Officers and Employees
80	Liability of State Highway Departments for Design, Construction, and Maintenance Defects
83	Liability of State and Local Governments for Snow and Ice Control
95	Legal Implications of Regulations Aimed at Reducing Wet-Weather Skidding Accidents on Highways

of this new publication is to fill the aforementioned void in American legal writing and furnish a reference that is directly and exclusively concerned with highways and the laws appertaining thereto. This work seeks to collect the cases dealing with highways and provide for the first time a clearing-house for analysis and discussion of the rules of law announced therein. To accomplish this purpose, critical problems in the highway law field were identified and research contracts were awarded by the Transportation Research Board to those experts deemed best qualified to render effective service. A publication format capable of expansion was developed in order to permit supplementation and the addition of new studies in this large field in the future.

This publication will consist of three volumes. The first two, now completed, deal principally with problems in the field of eminent domain. The third will be published during 1977 and deals with highway-related problems in the fields of contract law, environmental law, intergovernmental relations, and tort liability of state highway departments and their employees. Contents are given in Table 2.

Copies of the first two volumes have been sent free of charge to NCHRP sponsors, other offices of state and federal governments, and selected university and state law libraries. The officials receiving complimentary copies in each state are: the Attorney General, the Highway Department Chief Counsel, and the Right-of-Way Director. Beyond this initial distribution, the volumes will be sold through the publications office of the Transportation Research Board at a cost of \$30.00 each.

Papers published in *Selected Studies in Highway Law* are also issued as NCHRP Research Results Digests on a selective basis and undergo free distribution to TRB members and sponsors.

Future work in this continuing project will include research on new topics of current interest in both the right-of-way and legal fields. Updating and supplementing the text book will also be continued. NCHRP Project Committee SP20-6 meets periodically to select topics for study under Project 20-6. The membership of this committee is given in Table 3. The topics selected for possible study at the most recent meeting, in August 1976, are given in Table 4.

Candidate topics are suggested by members of the committee based on input from a variety of sources. State highway and transportation department personnel may submit suggestions for study topics directly to the NCHRP Program Director or, if desired, through their State TRB representative. Topics suggested must be accompanied by a brief scope statement or discussion of the problem.

The Principal Investigator for Project 20-6, John C. Vance, can be reached at (202) 389-6386 and the NCHRP Projects Engineer, Robert J. Reilly, at (202) 389-6741.

Table 2

Contents Of "Selected Studies in Highway Law"

Volume 1

Chapter I. Eminent Domain: Conceptual Foundations

Where Does Police Power End and Eminent Domain Begin?

Damnum Absque Injuria and the Concept of Just Compensation in
Eminent Domain

The Meaning of Highway Purpose

Eminent Domain: A Look at Current Problems and Future Developments

Chapter II. The Trial of a Highway Condemnation Case

- Overview of Rules of Compensability and Valuation Evidence for Highway Land Acquisition
- Trial Strategy and Techniques Using the Comparable Sales Approach to Valuation
- Trial Strategy and Techniques Using the Income Approach to Valuation
- Trial Strategy and Techniques Using the Cost Less Depreciation Approach to Valuation
- Trial Strategy and Techniques to Exclude Noncompensable Damages and Improper Valuation Methods in Eminent Domain
- Trial Aids in Highway Condemnation Cases
- Rules of Discovery and Disclosure in Highway Condemnation Proceedings

Chapter III. Valuation Problems in Condemnation

- Valuation and Condemnation of Special Purpose Properties

Volume 2

- Valuation and Condemnation of Advertising Signs and Related Property Interests Under the Highway Beautification Act
- Valuation and Condemnation Problems Involving Trade Fixtures
- Valuation in Eminent Domain as Affected by Recognition of Benefits to Remainder Property
- Valuation in Eminent Domain as Affected by Zoning
- Valuation Changes Resulting from Influence of Public Improvements

Chapter IV. Special Problems in Highway Land Acquisition and Use

- Supplemental Condemnation: A Discussion of the Principles of Excess and Substitute Condemnation
- Theory and Practice in Inverse Condemnation for Five Representative States
- Liability for Highway Drainage Damage
- Advance Acquisition of Highway Rights-of-Way

Chapter V. Multiple Use of Highway Corridors

- Valuation of Airspace
- Joint Development Under the Model Airspace Act

Volume 3

Chapter VI. Highway Contract Law

Licensing and Qualification of Bidders
Competitive Bidding and Award of Highway Construction Contracts
Bid Mistakes: A Practical Approach to the Problem
Indemnification and Suretyship in Highway Construction Contract Awards
Labor Standards in Federal-Aid Highway Construction Contracts
Control of Conflicts of Interest in Highway Contract Administration
Legal Problems Arising from Changes, Changed Conditions, and Disputes
Clauses in Highway Construction Contracts
Legal Effect of Representations as to Subsurface Conditions
Liability for Delay in Completion of Highway Construction Contracts
Trial Strategy and Techniques in Highway Contract Litigation

Chapter VII. Environmental Law

Environmental Litigation: Rights and Remedies
Trial Strategy and Techniques in Environmental Litigation

Chapter VIII. Tort Liability

Liability of State Highway Departments for Design, Construction, and Maintenance Defects
Personal Liability of State Highway Department Officers and Employees
Liability of State and Local Governments for Snow and Ice Control
Legal Implications of Regulations Aimed at Reducing Wet-Weather Skidding Accidents on Highways
Liability of State and Local Governments for Negligence Arising Out of Installation and Maintenance of Warning Signs, Traffic Lights, and Pavement Markings

Chapter IX. Intergovernmental Relations

The Federal-State Relationship in the Federal-Aid Highway Program

Table 3

NCHRP PROJECT COMMITTEE SP20-6

Chairman
Saul C. Corwin*
Wikler, Gottlieb, Taylor & Howard

Allen R. Austin
Illinois Department of Transportation

Robert W. Cunliffe
Pennsylvania Department of Transportation

Roger A. Cunningham
University of Michigan Law School

Philip K. Jones
Louisiana Department of Highways

Thomas Keltner
Oklahoma Department of Highways

David R. Levin
Federal Highway Administration

H. J. Lewis
Alabama State Highway Department

Harrison Lewis**
Airways Engineering Corporation

Daniel R. Mandelker
Washington University School of Law

Daniel R. McLeod
South Carolina Dept. of Highways and
Public Transportation

David E. Wells***
Wells Fargo Armored Service Corp.

Robert R. Wright
University of Arkansas School of Law

Ross D. Netherton
Federal Highway Administration

-
- * Formerly Assistant Commissioner for Legal Affairs, New York State Department of Transportation.
** Formerly Chief Counsel, North Carolina Department of Highways.
*** Formerly Chief Counsel, Federal Highway Administration.

Table 4
Additional Topics Approved for Study

<u>No.</u>	
45	Review of the One-Offer System of Right-of-Way Acquisition*
47	Supplementation: Trial Strategy and Techniques to Exclude Noncompensable Damages and Improper Valuation Methods in Eminent Domain; Trial Strategy and Techniques Using the Income Approach to Valuation; Trial Strategy and Techniques Using the Comparable Sales Approach to Valuation; Trial Strategy and Techniques Using the Cost Less Depreciation Approach to Valuation; and Valuation in Eminent Domain as Affected by Recognition of Benefits to Remainder Property.
48	Supplementation: Valuation Changes Resulting from Influence of Public Improvements; Advance Acquisition of Highway Rights-of-Way; and Valuation in Eminent Domain as Affected by Zoning.
49	Inverse Condemnation
50	Payment of Attorneys' Fees and Other Costs in Condemnation and Environmental Litigation
51	Appraisal of Property Damages Due to Highway Noise
52	The Use of Guarantee or Warranty Clauses in Highway Construction Contracts
53	Impact of Civil Rights Legislation and Regulation on State Highway and Transportation Department Activities
54	Outdoor Advertising Control and Acquisition
55	Legal Issues Arising out of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970
56	Evaluation of the Adequacy and Equitability of Relocation Assistance Payments
57	Legal Aspects of Access Control on Unlimited-Access Highways
58	Zoning Changes Adjacent to Highways as a Result of the Highway Beautification Act
59	The Effect of Federal and State Public Information Acts on Highway and Transportation Department Activities

* Research on Study No. 45 has been completed and copies of the final report have been distributed to NCHRP sponsors. Loan copies are available from the NCHRP Program Director.

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