

**REPORT**  
**OF**  
**PROPOSED RULE TO**  
**GOVERN CONDEMNATION CASES**  
**IN THE DISTRICT COURTS**  
**OF THE UNITED STATES**



*Prepared by the*  
**ADVISORY COMMITTEE ON RULES**  
**FOR CIVIL PROCEDURE**

**May 1948**

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UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1948

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## REPORT OF THE ADVISORY COMMITTEE

To the Honorable The CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Herewith we present to the Court for its consideration a proposed rule regulating the practice and procedure governing condemnation of property under the power of eminent domain.

In April, 1937, having attempted to draft such a rule at the request of the Attorney General of the United States, a preliminary draft was included in the edition of proposed rules of civil procedure which we then distributed to the bench and bar for comment and suggestion. The draft was not satisfactory and the Attorney General then withdrew his request to the Committee to prepare such a rule, and in the Committee's final report under date of November, 1937, the proposed rule, then numbered 74, was eliminated for the reasons then stated in a note found on page 46 of that report. Later, when the Advisory Committee was preparing proposed amendments to the rules of civil procedure, a preliminary draft of proposed amendments, which was printed and distributed to the profession for comment under date of May, 1944, contained as Rule 71A a draft of a proposed rule on condemnation proceedings. When we issued a second preliminary draft of proposed amendments under date of May, 1945, the proposed rule on condemnation of property for public use was omitted for the reasons stated at length in the note on page 80 of that second preliminary draft.

We had been unable to prepare a rule satisfactory to the Advisory Committee on condemnation cases, and then concluded to submit to the Court our re-

port on proposed amendments, which we did in June, 1946, without including in it a rule on condemnation cases. Since then the Advisory Committee has continued its efforts to draft a rule on the subject. A preliminary draft of such a rule was printed and widely distributed to the bench and bar under date of June, 1947. That was followed in April last by a mimeographed revision, distribution of which was limited to Government agencies interested and to those members of the bench and bar who had shown an interest in the subject by sending in comments on the previous draft. The rule proposed in this report represents the final conclusions of the Advisory Committee.

Our principal problem has been the constitution of the tribunal to award compensation. In other respects the formulation of the practice has not presented serious difficulties.

Respectfully submitted,  
WILLIAM D. MITCHELL, *Chairman.*  
GEORGE WHARTON PEPPER,  
*Vice Chairman.*

CHARLES E. CLARK, *Reporter.*  
WILBUR H. CHERRY,  
ARMISTEAD M. DOBIE,  
ROBERT G. DODGE,  
SAMUEL M. DRIVER,  
CLIFTON HILDEBRAND,  
MONTE M. LEMANN,  
SCOTT M. LOFTIN,  
EDMUND M. MORGAN,  
JOHN CARLISLE PRYOR,  
EDSON R. SUNDERLAND,

*Advisory Committee.*

May 17, 1948

**REPORT OF PROPOSED RULE TO GOVERN CONDEM-  
NATION CASES IN THE DISTRICT COURTS OF THE  
UNITED STATES**

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**Rule 71A. Condemnation of Property.**

1 (a) **APPLICABILITY OF OTHER RULES.** The  
2 Rules of Civil Procedure for the District Courts  
3 of the United States govern the procedure for  
4 the condemnation of real and personal property  
5 under the power of eminent domain, except as  
6 otherwise provided in this rule.

7 (b) **JOINDER OF PROPERTIES.** The plaintiff  
8 may join in the same action one or more  
9 separate pieces of property, whether in the  
10 same or different ownership and whether or  
11 not sought for the same use.

12 (c) **COMPLAINT.**

13 (1) *Caption.* The complaint shall con-  
14 tain a caption as provided in Rule 10 (a),  
15 except that the plaintiff shall name as  
16 defendants the property, designated gen-  
17 erally by kind, quantity, and location, and  
18 at least one of the owners of some part of  
19 or interest in the property.

20 (2) *Contents.* The complaint shall con-  
21 tain a short and plain statement of the au-  
22 thority for the taking, the use for which  
23 the property is to be taken, a description of  
24 the property sufficient for its identification,  
25 the interests to be acquired, and as to each  
26 separate piece of property a designation of  
27 the defendants who have been joined as  
28 owners thereof or of some interest therein.  
29 Upon the commencement of the action, the  
30 plaintiff need join as defendants only the

31 persons having or claiming an interest in the  
32 property whose names are then known, but  
33 prior to any hearing involving the compen-  
34 sation to be paid for a piece of property, the  
35 plaintiff shall add as defendants all persons  
36 having or claiming an interest in that prop-  
37 erty whose names can be ascertained by a  
38 search of the records to the extent com-  
39 monly made by competent searchers of title  
40 in the vicinity in light of the type and value  
41 of the property involved and also those  
42 whose names have otherwise been learned.  
43 All others may be made defendants under  
44 the designation "Unknown Owners." Proc-  
45 ess shall be served as provided in subdivi-  
46 sion (d) of this rule upon all defendants,  
47 whether named as defendants at the time of  
48 the commencement of the action or subse-  
49 quently added, and a defendant may  
50 answer as provided in subdivision (e) of  
51 this rule. The court meanwhile may order  
52 such distribution of a deposit as the facts  
53 warrant.

54 (3) *Filing.* In addition to filing the  
55 complaint with the court, the plaintiff  
56 shall furnish to the clerk at least one copy  
57 thereof for the use of the defendants and  
58 additional copies at the request of the  
59 clerk or of a defendant.

60 (d) PROCESS.

61 (1) *Notice; Delivery.* Upon the filing of  
62 the complaint the plaintiff shall forthwith  
63 deliver to the clerk joint or several notices  
64 directed to the defendants named or

65 designated in the complaint. Additional  
66 notices directed to defendants subsequently  
67 added shall be so delivered. The delivery  
68 of the notice and its service have the same  
69 effect as the delivery and service of the  
70 summons under Rule 4.

71 (2) *Same; Form.* Each notice shall state  
72 the court, the title of the action, the name  
73 of the defendant to whom it is directed,  
74 that the action is to condemn property, a  
75 description of his property sufficient for  
76 its identification, the interest to be taken,  
77 the authority for the taking, the uses for  
78 which the property is to be taken, that the  
79 defendant may serve upon the plaintiff's  
80 attorney an answer within 20 days after  
81 service of the notice, and that the failure  
82 so to serve an answer constitutes a consent  
83 to the taking and to the authority of the  
84 court to proceed to hear the action and to  
85 fix the compensation. The notice shall  
86 conclude with the name of the plaintiff's  
87 attorney and an address within the district  
88 in which action is brought where he may  
89 be served. The notice need contain a  
90 description of no other property than that  
91 to be taken from the defendants to whom  
92 it is directed.

93 (3) *Service of Notice.*

94 (i) *Personal Service.* Personal serv-  
95 ice of the notice (but without copies  
96 of the complaint) shall be made in ac-  
97 cordance with Rule 4 (c) and (d) upon  
98 a defendant who resides within the



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United States or its territories or insular possessions and whose residence is known. The provisions of Rule 4 (f) shall not be applicable.

(ii) *Service by Publication.* Upon the filing of a certificate of the plaintiff's attorney stating that he believes a defendant cannot be personally served because after diligent inquiry his place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this rule, service of the notice shall be made on this defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to "Unknown Owners."

Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plain-

133           tiff's attorney, to which shall be at-  
134           tached a printed copy of the pub-  
135           lished notice with the name and dates  
136           of the newspaper marked thereon.

137           (4) *Return; Amendment.* Proof of serv-  
138           ice of the notice shall be made and amend-  
139           ment of the notice or proof of its service  
140           allowed in the manner provided for the  
141           return and amendment of the summons  
142           under Rule 4 (g) and (h).

143           (e) APPEARANCE OR ANSWER. If a defend-  
144           ant has no objection or defense to the taking  
145           of his property, he may serve a notice of ap-  
146           pearance designating the property in which he  
147           claims to be interested. Thereafter he shall  
148           receive notice of all proceedings affecting it.  
149           If a defendant has any objection or defense to  
150           the taking of his property, he shall serve his  
151           answer within 20 days after the service of  
152           notice upon him. The answer shall identify  
153           the property in which he claims to have an  
154           interest, state the nature and extent of the  
155           interest claimed, and state all his objections  
156           and defenses to the taking of his property.  
157           A defendant waives all defenses and objections  
158           not so presented, but at the trial of the issue  
159           of just compensation, whether or not he has  
160           previously appeared or answered, he may pre-  
161           sent evidence as to the amount of the compen-  
162           sation to be paid for his property, and he may  
163           share in the distribution of the award. No  
164           other pleading or motion asserting any addi-  
165           tional defense or objection shall be allowed.

166           (f) AMENDMENT OF PLEADINGS. Without

167 leave of court, the plaintiff may amend the  
168 complaint at any time before the trial of the  
169 issue of compensation and as many times as  
170 desired, but no amendment shall be made  
171 which will result in a dismissal forbidden by sub-  
172 division (i) of this rule. The plaintiff need not  
173 serve a copy of an amendment, but shall serve  
174 notice of the filing, as provided in Rule 5 (b),  
175 upon any party affected thereby who has  
176 appeared and, in the manner provided in sub-  
177 division (d) of this rule, upon any party affected  
178 thereby who has not appeared. The plaintiff  
179 shall furnish to the clerk of the court for the  
180 use of the defendants at least one copy of each  
181 amendment, and he shall furnish additional  
182 copies on the request of the clerk or of a  
183 defendant. Within the time allowed by sub-  
184 division (e) of this rule a defendant may serve  
185 his answer to the amended pleading, in the form  
186 and manner and with the same effect as there  
187 provided.

188 (g) SUBSTITUTION OF PARTIES. If a defend-  
189 ant dies or becomes incompetent or transfers  
190 his interest after his joinder, the court may  
191 order substitution of the proper party upon  
192 motion and notice of hearing. If the motion  
193 and notice of hearing are to be served upon a  
194 person not already a party, service shall be  
195 made as provided in subdivision (d) (3) of this  
196 rule.

197 (h) TRIAL. If the action involves the exer-  
198 cise of the power of eminent domain under the  
199 law of the United States, any tribunal spec-  
200 ially constituted by an Act of Congress govern-

201 ing the case for the trial of the issue of just  
 202 compensation shall be the tribunal for the  
 203 determination of that issue; but if there is no  
 204 such specially constituted tribunal any party  
 205 may have a trial by jury of the issue of just  
 206 compensation by filing a demand therefor  
 207 within the time allowed for answer or within  
 208 such further time as the court may fix. Trial  
 209 of all issues shall otherwise be by the court.

210 (i) DISMISSAL OF ACTION.

211 (1) *As of Right.* If no hearing has begun  
 212 to determine the compensation to be paid  
 213 for a piece of property and the plaintiff has  
 214 not acquired the title or a lesser interest in  
 215 or taken possession, the plaintiff may dis-  
 216 miss the action as to that property, with-  
 217 out an order of the court, by filing a notice  
 218 of dismissal setting forth a brief descrip-  
 219 tion of the property as to which the action  
 220 is dismissed.

221 (2) *By Stipulation.* Before the entry of  
 222 any judgment vesting the plaintiff with  
 223 title or a lesser interest in or possession of  
 224 property, the action may be dismissed in  
 225 whole or in part, without an order of the  
 226 court, as to any property by filing a  
 227 stipulation of dismissal by the plaintiff  
 228 and the defendant affected thereby; and,  
 229 if the parties so stipulate, the court may  
 230 vacate any judgment that has been entered.

231 (3) *By Order of the Court.* At any time  
 232 before compensation for a piece of property  
 233 has been determined and paid and after  
 234 motion and hearing, the court may dismiss

235 the action as to that property, except that  
236 it shall not dismiss the action as to any  
237 part of the property of which the plaintiff  
238 has taken possession or in which the plain-  
239 tiff has taken title or a lesser interest,  
240 but shall award just compensation for the  
241 possession, title or lesser interest so taken.  
242 The court at any time may drop a defend-  
243 ant unnecessarily or improperly joined.

244 (4) *Effect.* Except as otherwise pro-  
245 vided in the notice, or stipulation of dis-  
246 missal, or order of the court, any dismissal  
247 is without prejudice.

248 (j) DEPOSIT AND ITS DISTRIBUTION. The  
249 plaintiff shall deposit with the court any money  
250 required by law as a condition to the exercise of  
251 the power of eminent domain; and, although  
252 not so required, may make a deposit when per-  
253 mitted by statute. In such cases the court and  
254 attorneys shall expedite the proceedings for the  
255 distribution of the money so deposited and for  
256 the ascertainment and payment of just com-  
257 pensation. If the compensation finally  
258 awarded to any defendant exceeds the amount  
259 which has been paid to him on distribution of  
260 the deposit, the court shall enter judgment  
261 against the plaintiff and in favor of that defend-  
262 ant for the deficiency. If the compensation  
263 finally awarded to any defendant is less than  
264 the amount which has been paid to him, the  
265 court shall enter judgment against him and in  
266 favor of the plaintiff for the overpayment.

267 (k) CONDEMNATION UNDER A STATE'S POWER  
268 OF EMINENT DOMAIN. If the action involves

269 the exercise of the power of eminent domain  
270 under the law of a state, the practice herein  
271 prescribed may be altered to the extent neces-  
272 sary to observe and enforce any condition  
273 affecting the substantial rights of a litigant  
274 attached by the state law to the exercise of the  
275 state's power of eminent domain.

276 (l) COSTS. Costs are not subject to Rule  
277 54 (d).

**Rule 81.—Applicability in General**

Amend Rule 81 (a) as follows:

Paragraph (7) of Rule 81 (a) is abrogated.

## APPENDIX OF FORMS

### Form 28.—NOTICE: CONDEMNATION

District Court of the United States for the Southern District  
of New York

Civil Action, File Number -----

UNITED STATES OF AMERICA,

PLAINTIFF

*v.*

1,000 ACRES OF LAND IN [here insert                      Notice.  
a general location as "City of-----  
-----" or "County of -----"],  
JOHN DOE, ET AL., AND UNKNOWN  
OWNERS,

DEFENDANTS

To (here insert the names of the defendants to whom the  
notice is directed):

You are hereby notified that a complaint in condemna-  
tion has heretofore been filed in the office of the clerk of the  
District Court of the United States for the Southern District  
of New York, in the United States Court House in New  
York City, New York, for the taking (here state the interest  
to be acquired, as "an estate in fee simple") for use (here  
state briefly the use, "as a site for a post-office building")  
of the following described property in which you have or  
claim an interest.

(Here insert brief description of the property in  
which the defendants, to whom the notice is directed,  
have or claim an interest.)

The authority for the taking is (here state briefly, as "the  
Act of -----, ----- Stat. -----, U. S. C., Title -----,  
§ -----".)<sup>1</sup>

You are further notified that if you desire to present any  
objection or defense to the taking of your property you are

<sup>1</sup> And where appropriate add a citation to any applicable Executive  
Order.



required to serve your answer on the plaintiff's attorney at the address herein designated within twenty days after

-----<sup>2</sup>  
 Your answer shall identify the property in which you claim to have an interest, state the nature and extent of the interest you claim, and state all of your objections and defenses to the taking of your property. All defenses and objections not so presented are waived. And in case of your failure so to answer the complaint, judgment of condemnation of that part of the above described property in which you have or claim an interest will be rendered.

But without answering, you may serve on the plaintiff's attorney a notice of appearance designating the property in which you claim to be interested. Thereafter you will receive notice of all proceedings affecting it. At the trial of the issue of just compensation, whether or not you have previously appeared or answered, you may present evidence as to the amount of the compensation to be paid for your property, and you may share in the distribution of the award.

-----  
*United States Attorney.*

Address:

(Here state an address within the district where the United States Attorney may be served, as "United States Court House, New York, N. Y.")

**Dated** -----

<sup>2</sup> Here insert the words "personal service of this notice upon you", if personal service is to be made pursuant to subdivision (d) (3) (i) of this rule; or, insert the date of the last publication of notice, if service by publication is to be made pursuant to subdivision (d) (3) (ii) of this rule.

**Form 29.—COMPLAINT: CONDEMNATION**

District Court of the United States for the Southern District  
of New York

Civil Action, File Number \_\_\_\_\_

UNITED STATES OF AMERICA,  
PLAINTIFF

v.

<p>1,000 ACRES OF LAND IN [here insert a general location as “City of _____” or “County of _____”], JOHN DOE, ET AL., AND UNKNOWN OWNERS, DEFENDANTS</p>	<p>Complaint.</p>
--	-------------------

1. This is an action of a civil nature brought by the United States of America for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.<sup>1</sup>

2. The authority for the taking is (here state briefly, as “the Act of \_\_\_\_\_, \_\_\_\_\_ Stat. \_\_\_\_\_, U. S. C., Title \_\_\_\_\_, § \_\_\_\_\_”).<sup>2</sup>

3. The use for which the property is to be taken is (here state briefly the use, “as a site for a post-office building”).

4. The interest to be acquired in the property is (here state the interest as “an estate in fee simple”).

The property so to be taken is (here set forth a description of the property sufficient for its identification) *or* (described in Exhibit A hereto attached and made a part hereof).

<sup>1</sup> If the plaintiff is not the United States, but is, for example, a corporation invoking the power of eminent domain delegated to it by the state, then this paragraph 1 of the complaint should be appropriately modified and should be preceded by a paragraph appropriately alleging federal jurisdiction for the action, such as diversity. See Note to Rule 71A under subdivision (k); and Form 2.

<sup>2</sup> And where appropriate add a citation to any applicable Executive Order.

6. The persons known to the plaintiff to have or claim an interest in the property <sup>3</sup> are:

(Here set forth the names of such persons and the interests claimed.)<sup>4</sup>

7. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the plaintiff and on diligent inquiry have not been ascertained. They are made parties to the action under the designation "Unknown Owners."

Wherefore the plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

-----  
*United States Attorney.*

Address: -----

(Here state an address within the district where the United States Attorney may be served, as "United States Court House, New York, N. Y.").

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<sup>3</sup> At the commencement of the action the plaintiff need name as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a particular piece of property the plaintiff must add as defendants all persons having or claiming an interest in that property whose names can be ascertained by an appropriate search of the records and also those whose names have otherwise been learned. See Rule 71A (c) (2).

<sup>4</sup> The plaintiff should designate, as to each separate piece of property, the defendants who have been joined as owners thereof or of some interest therein. See Rule 71A (c) (2).

## Effective Date

The following may be (a) included in the order of promulgation, or (b) added as subdivision (c) of Rule 86.

1       EFFECTIVE DATE. This Rule 71A and the  
2 amendment to Rule 81 (a) will take effect on  
3 the day which is three months subsequent to  
4 adjournment of the ----- reg-  
5 ular session of the ----- Congress,  
6 but if that day is prior to -----,  
7 then this Rule 71A and the amendment to  
8 Rule 81 (a) will take effect on -----.  
9 Rule 71A governs all proceedings in actions  
10 brought after it takes effect and also all further  
11 proceedings in actions then pending, except to  
12 the extent that in the opinion of the court its  
13 application in a particular action pending  
14 when the rule takes effect would not be feasible  
15 or would work injustice, in which event the  
16 former procedure applies.

## COMMITTEE NOTE TO RULE 71A

*General Statement. 1. Background.* When the Advisory Committee was formulating its recommendations to the Court concerning rules of procedure, which subsequently became the Federal Rules of 1938, the Committee concluded at an early stage not to fix the procedure in condemnation cases. This is a matter principally involving the exercise of the federal power of eminent domain, as very few condemnation cases involving the state's power reach the United States District Courts. The Committee's reasons at that time were that inasmuch as condemnation proceedings by the United States are governed by statutes of the United States, prescribing different procedure for various agencies and departments of the government, or, in the absence of such statutes, by local state practice under the Conformity Act, it would be extremely difficult to draft a uniform rule satisfactory to the various agencies and departments of the government and to private parties; and that there was no general demand for a uniform rule. The Committee continued in that belief until shortly before the preparation of the April 1937 Draft of the Rules, when the officials of the Department of Justice having to do with condemnation cases urgently requested the Committee to propose rules on this subject. The Committee undertook the task and drafted a Condemnation Rule which appeared for the first time as Rule 74 of the April 1937 Draft. After the publication and distribution of this initial draft many objections were urged against it by counsel for various governmental agencies, whose procedure in condemnation cases was prescribed by federal statutes. Some of these agencies wanted to be excepted in whole or in part from the operation of the uniform rule proposed in April, 1937. And the Department of Justice changed its position and stated that it preferred to have government condemnations conducted by local attorneys familiar with the state practice, which was applied under the Conformity Act where the Acts of Congress do not prescribe the practice; that it preferred to work under

the Conformity Act without a uniform rule of procedure. The profession generally showed little interest in the proposed uniform rule. For these reasons the Advisory Committee in its Final Report to the Court in November, 1937 proposed that all of Rule 74 be stricken and that the Federal Rules be made applicable only to appeals in condemnation cases. See note to Rule 74 of the Final Report.

Some six or seven years later when the Advisory Committee was considering the subject of amendments to the Federal Rules both government officials and the profession generally urged the adoption of some uniform procedure. This demand grew out of the volume of condemnation proceedings instituted during the war, and the general feeling of dissatisfaction with the diverse condemnation procedures that were applicable in the federal courts. A strongly held belief was that both the Sovereign's power to condemn and the property owner's right to compensation could be promoted by a simplified rule. As a consequence the Committee proposed a Rule 71A on the subject of condemnation in its Preliminary Draft of May 1944. In the Second Preliminary Draft of May 1945 this earlier proposed Rule 71A was, however, omitted. The Committee did not then feel that it had sufficient time to prepare a revised draft satisfactory to it which would meet legitimate objections made to the draft of May 1944. To avoid unduly delaying the proposed amendments to existing rules the Committee concluded to proceed in the regular way with the preparation of the amendments to these rules and deal with the question of a condemnation rule as an independent matter. As a consequence it made no recommendations to the Court on condemnation in its Final Report of Proposed Amendments of June 1946; and the amendments which the Court adopted in December, 1946 did not deal with condemnation. After concluding its task relative to amendments, the Committee returned to a consideration of eminent domain, its proposed Rule 71A of May 1944, the suggestions and criticisms that had been presented in the interim, and in June, 1947 prepared and distributed to the profession another draft of a proposed condemnation rule. This draft contained several alternative

provisions, specifically called attention to and asked for opinion relative to these matters, and in particular as to the constitution of the tribunal to award compensation. The present draft was based on the June, 1947 formulation, in light of the advice of the profession on both matters of substance and form.

2. *Statutory Provisions.* The need for a uniform condemnation rule in the federal courts arises from the fact that by various statutes Congress has prescribed diverse procedures for certain condemnation proceedings, and, in the absence of such statutes, has prescribed conformity to local state practice under 40 U. S. C. § 258. This general conformity adds to the diversity of procedure since in the United States there are multifarious methods of procedure in existence. Thus in 1931 it was said that there were 269 different methods of judicial procedure in different classes of condemnation cases and 56 methods of non-judicial or administrative procedure. *First Report of Judicial Council of Michigan* (1931) § 46, pp. 55-56. These numbers have not decreased. Consequently, the general requirement of conformity to state practice and procedure, particularly where the condemnor is the United States, leads to expense, delay and uncertainty. In advocacy of a uniform federal rule, see Armstrong, *Proposed Amendments to Federal Rules for Civil Procedure* (1944) 4 F. R. D. 124, 134; *id.*, *Report of the Advisory Committee on Federal Rules of Civil Procedure Recommending Amendments* (1946) 5 F. R. D. 339, 357.

There are a great variety of Acts of Congress authorizing the exercise of the power of eminent domain by the United States and its officers and agencies. These statutes for the most part do not specify the exact procedure to be followed, but where procedure is prescribed, it is by no means uniform.

The following are instances of Acts which merely authorize the exercise of the power without specific declaration as to the procedure:

U. S. C., Title 16:

§ 404c-11 (Mammoth Cave National Park; acquisition of lands, interests in lands or other property for park by the Secretary of the Interior).

§ 426d (Stones River National Park; acquisition of land for parks by the Secretary of War).

§ 450aa (George Washington Carver National Monument; acquisition of land by the Secretary of the Interior).

§ 517 (National forest reservations; title to lands to be acquired by the Secretary of Agriculture).

U. S. C., Title 42:

§§ 1805(b)(5), 1813(b) (Atomic Energy Act).

The following are instances of Acts which authorize condemnation and declare that the procedure is to conform with that of similar actions in state courts:

U. S. C., Title 16:

§ 423k (Richmond National Battlefield Park; acquisition of lands by the Secretary of the Interior).

§ 814 (Exercise by water power licensee of power of eminent domain).

U. S. C., Title 24:

§ 78 (Condemnation of land for the former National Home for Disabled Volunteer Soldiers).

U. S. C., Title 33:

§ 591 (Condemnation of lands and materials for river and harbor improvement by the Secretary of War).

U. S. C., Title 40:

§ 257 (Condemnation of realty for sites for public building and for other public uses by the Secretary of the Treasury authorized).

§ 258 (Same; procedure).

U. S. C., Title 50:

§ 171 (Acquisition of land by the Secretary of War for national defense).

§ 172 (Acquisition of property by the Secretary of War, etc., for production of lumber).

§ 632 App. (Second War Powers Act, 1942; acquisition of real property for war purposes by the Secretary of War, the Secretary of Navy and others).

The following are Acts in which a more or less complete



code of procedure is set forth in connection with the taking:

U. S. C., Title 16:

§831x (Condemnation by Tennessee Valley Authority).

U. S. C., Title 40:

§§361-386 (Acquisition of lands in District of Columbia for use of United States; condemnation).

3. *Adjustment of Rule to Statutory Provisions.* While it was apparent that the principle of uniformity should be the basis for a rule to replace the multiple diverse procedures set out above, there remained a serious question as to whether an exception could properly be made relative to the method of determining compensation. Where Congress had provided for conformity to state law the following were the general methods in use: an initial determination by commissioners, with appeal to a judge; an initial award, likewise made by commissioners, but with the appeal to a jury; and determination by a jury without a previous award by commissioners. In two situations Congress had specified the tribunal to determine the issue of compensation: condemnation by the Tennessee Valley Authority; and condemnation in the District of Columbia. Under the TVA procedure the initial determination of value is by three disinterested commissioners, appointed by the court, from a locality other than the one in which the land lies. Either party may except to the award of the commission; in that case the exceptions are to be heard by three district judges (unless the parties stipulate for a lesser number), with a right of appeal to the circuit court of appeals. The TVA is a regional agency. It is faced with the necessity of acquiring a very substantial acreage within a relatively small area, and charged with the task of carrying on within the Tennessee Valley and in cooperation with the local people a permanent program involving navigation and flood control, electric power, soil conservation, and general regional development. The success of this program is partially dependent upon the good will and cooperation of the people of the Tennessee Valley, and this in turn partially depends upon the land acquisition program. Disproportionate awards among landowners would create dissatisfaction and ill will. To secure uniformity in treatment Congress provided the rather unique procedure

of the three-judge court to review *de novo* the initial award of the commissioners. This procedure has worked to the satisfaction of the property owners and the TVA. A full statement of the TVA position and experience is set forth in Preliminary Draft of Proposed Rule to Govern Condemnation Cases (June, 1947) 15-19. A large majority of the district judges with experience under this procedure approve it, subject to some objection to the requirement for a three-judge district court to review commissioners' awards. A statutory three-judge requirement is, however, jurisdictional and must be strictly followed. *Stratton v. St. Louis, Southwestern Ry. Co.* (1930) 282 U. S. 10; *Ayrshire Collieries Corp. v. United States* (1947) 331 U. S. 132. Hence except insofar as the TVA statute itself authorizes the parties to stipulate for a court of less than three judges, the requirement must be followed, and would seem to be beyond alteration by court rule even if change were thought desirable. Accordingly the TVA procedure is retained for the determination of compensation in TVA condemnation cases. It was also thought desirable to retain the specific method Congress had prescribed for the District of Columbia, which is a so-called jury of five appointed by the court. This is a local matter and the specific treatment accorded by Congress has given local satisfaction.

Aside from the foregoing limited exceptions dealing with the TVA and the District of Columbia, the question was whether a uniform method for determining compensation should be a commission with appeal to a district judge, or a commission with appeal to a jury, or a jury without a commission. Experience with the commission on a nationwide basis, and in particular with the utilization of a commission followed by an appeal to a jury, has been that the commission is time consuming and expensive. Furthermore, it is largely a futile procedure where it is preparatory to jury trial. Since in the bulk of states a land owner is entitled eventually to a jury trial, since the jury is a traditional tribunal for the determination of questions of value, and since experience with juries has proved satisfactory to both government and land owner, the right to jury trial is adopted as the general rule. Condemnation involving the

TVA and the District of Columbia are the two exceptions. See Note to Subdivision (h), *infra*.

*Note to Subdivision (a)*. As originally promulgated the Federal Rules governed appeals in condemnation proceedings but were not otherwise applicable. Rule 81 (a) (7). Pre-appeal procedure, in the main, conformed to state procedure. See statutes and discussion, *supra*. The purpose of Rule 71A is to provide a uniform procedure for condemnation in the federal district courts, including the District of Columbia. To achieve this purpose Rule 71A prescribes such specialized procedure as is required by condemnation proceedings, otherwise it utilizes the general framework of the Federal Rules where specific detail is unnecessary. The adoption of Rule 71A, of course, renders paragraph (7) of Rule 81 (a) unnecessary.

The promulgation of a rule for condemnation procedure is within the rule-making power. The Enabling Act [Act of June 19, 1934, c. 651, §§ 1, 2 (48 Stat. 1064), 28 U. S. C. §§ 723b, 723c] gives the Supreme Court "the power to prescribe, by general rules . . . the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law." Such rules, however, must not abridge, enlarge or modify substantive rights. In *Kohl v. United States* (1875) 91 U. S. 367, a proceeding instituted by the United States to appropriate land for a post-office site under a statute enacted for such purpose, the Supreme Court held that "a proceeding to take land in virtue of the government's eminent domain, and determining the compensation to be made for it, is . . . a suit at common law, when initiated in a court." See also *Madisonville Traction Co. v. Saint Bernard Mining Co.* (1905) 196 U. S. 239, *infra*, under subdivision (k). And the Conformity Act, 40 U. S. C. § 258, which is superseded by Rule 71A, deals only with "practice, pleadings, forms and proceedings and not with matters of substantive law." *United States v. 243.22 Acres of Land in Village of Farmingdale, Town of Babylon, Suffolk County, N. Y.* (E. D. N. Y. 1942) 43 F. Supp. 561, *aff'd* (C. C. A. 2d, 1942) 129 F. (2d) 678, *cert. den.* (1943) 317 U. S. 698.

Rule 71A affords a uniform procedure for all cases of condemnation invoking the national power of eminent domain,

and, to the extent stated in subdivision (k), for cases invoking a state's power of eminent domain; and supplants all statutes prescribing a different procedure. While the almost exclusive utility of the rule is for the condemnation of real property, it also applies to the condemnation of personal property, either as an incident to real property or as the sole object of the proceeding, when permitted or required by statute. See 38 U. S. C. § 438j (World War Veterans' Relief Act); 42 U. S. C. §§ 1805, 1811, 1813 (Atomic Energy Act); 50 U. S. C. § 79 (Nitrates Act); 50 U. S. C. §§ 161-166 (Helium Gas Act). Requisitioning of personal property with the right in the owner to sue the United States, where the compensation cannot be agreed upon (see 42 U. S. C. § 1813, *supra*, for example) will continue to be the normal method for acquiring personal property and Rule 71A in no way interferes with or restricts any such right. Only where the law requires or permits the formal procedure of condemnation to be utilized will the rule have any applicability to the acquisition of personal property.

Rule 71A is not intended to and does not supersede the Act of February 26, 1931, c. 307, §§ 1-5 (46 Stat. 1421), 40 U. S. C. §§ 258a-258e, which is a supplementary condemnation statute, permissive in its nature and designed to permit the prompt acquisition of title by the United States, pending the condemnation proceeding, upon a deposit in court. See *United States v. 76,800 Acres, More or Less, of Land, in Bryan and Liberty Counties, Ga.* (S. D. Ga. 1942) 44 F. Supp. 653; *United States v. 17,280 Acres of Land, More or Less, Situated in Saunders County, Neb.* (D. Neb. 1942) 47 F. Supp. 267. The same is true insofar as the following or any other statutes authorize the acquisition of title or the taking of immediate possession:

U. S. C., Title 33:

§ 594 (When immediate possession of land may be taken; for a work of river and harbor improvements).

U. S. C., Title 42:

§ 1813 (b) (When immediate possession may be taken under Atomic Energy Act).

## U. S. C., Title 50:

§ 171 (Acquisition of land by the Secretary of War for national defense).

§ 632 App. (Second War Powers Act, 1942; acquisition of real property for war purposes by the Secretary of War, the Secretary of Navy, and others).

*Note to Subdivision (b).* This subdivision provides for broad joinder in accordance with the tenor of other rules such as Rule 18. To require separate condemnation proceedings for each piece of property separately owned would be unduly burdensome and would serve no useful purpose. And a restriction that only properties may be joined which are to be acquired for the same public use would also cause difficulty. For example, a unified project to widen a street, construct a bridge across a navigable river, and for the construction of approaches to the level of the bridge on both sides of the river might involve acquiring property for different public uses. Yet it is eminently desirable that the plaintiff may in one proceeding condemn all the property interests and rights necessary to carry out this project. Rule 21 which allows the court to sever and proceed separately with any claim against a party, and Rule 42 (b) giving the court broad discretion to order separate trials give adequate protection to all defendants in condemnation proceedings.

*Note to Subdivision (c).* Since a condemnation proceeding is in rem and since a great many property owners are often involved, paragraph (1) requires the property to be named and only one of the owners. In other respects the caption will contain the name of the court, the title of the action, file number, and a designation of the pleading as a complaint in accordance with Rule 10 (a).

Since the general standards of pleading are stated in other rules, paragraph (2) prescribes only the necessary detail for condemnation proceedings. Certain statutes allow the United States to acquire title or possession immediately upon commencement of an action. See the Act of February 26, 1931, c. 307 §§ 1-5 (46 Stat. 1421), 40 U. S. C. §§ 258a-258e, *supra*; and 33 U. S. C. § 594, 42 U. S. C. § 1813(b), 50 U. S. C. §§ 171, 632, *supra*. To carry out the purpose of such statutes

and to aid the condemnor in instituting the action even where title is not acquired at the outset, the plaintiff is initially required to join as defendants only the persons having or claiming an interest in the property whose names are then known. This in no way prejudices the property owner, who must eventually be joined as a defendant, served with process, and allowed to answer before there can be any hearing involving the compensation to be paid for his piece of property. The rule requires the plaintiff to name all persons having or claiming an interest in the property of whom the plaintiff has learned and, more importantly, those appearing of record. By charging the plaintiff with the necessity to make "a search of the records of the extent commonly made by competent searchers of title in the vicinity in light of the type and value of the property involved" both the plaintiff and property owner are protected. Where a short term interest in property of little value is involved, as a two or three year easement over vacant land for purposes of ingress and egress to other property, a search of the records covering a long period of time is not required. Where on the other hand fee simple title in valuable property is being condemned the search must necessarily cover a much longer period of time and be commensurate with the interests involved. But even here the search is related to the type made by competent title searchers in the vicinity. A search that extends back to the original patent may be feasible in some mid-western and western states and be proper under certain circumstances. In the Atlantic seaboard states such a search is normally not feasible nor desirable. There is a common sense business accommodation of what title searchers can and should do. For state statutes requiring persons appearing as owners or otherwise interested in the property to be named as defendants, see 3 Colo. Stat. Ann. (1935) c. 61 § 2; Ill. Ann. Stat. (Smith-Hurd) c. 47, § 2; 1 Iowa Code (1946) § 472.3; Kans. Stat. Ann. (1935) § 26-101; 2 Mass. Laws Ann. (1932) c. 80A, § 4; 7 Mich. Stat. Ann. (1936) § 8.2; 2 Minn. Stat. (Mason, 1927), § 6541; 20 N. J. Stat. Ann. (1939) § 1-2; 3 Wash. Revised Stat. (Remington, 1932) Title 6, § 891. For state provisions allowing persons whose names are not known to be designated under the descriptive term of "unknown

owner", see Hawaii Revised Laws (1945) c. 8, § 310 ("such [unknown] defendant may be joined in the petition under a fictitious name."); Ill. Ann. Stat. (Smith-Hurd) c. 47, § 2 ("Persons interested, whose names are unknown, may be made parties defendant by the description of the unknown owners; . . ."); Maryland Code Ann. (1939) Art. 33A, § 1 ("In case any owner or owners is or are not known, he or they may be described in such petition as the unknown owner or owners, or the unknown heir or heirs of a deceased owner."); 2 Mass. Laws Ann. (1932) c. 80A, § 4 ("Persons not in being, unascertained or unknown who may have an interest in any of such land shall be made parties respondent by such description as seems appropriate, . . ."); New Mex. Stat. Ann. (1941) § 25-901 ("the owners . . . shall be parties defendant, by name, if the names are known, and by description of the unknown owners of the land therein described, if their names are unknown."); Utah Code Ann. (1943) § 104-61-7 ("The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants").

The last sentence of paragraph (2) enables the court to expedite the distribution of a deposit, in whole or in part, as soon as pertinent facts of ownership, value and the like are established. See also subdivision (j).

The signing of the complaint is governed by Rule 11.

*Note to Subdivision (d).* In lieu of a summons, which is the initial process in other civil actions under Rule 4 (a), subdivision (d) provides for a notice which is to contain sufficient information so that the defendant in effect obtains the plaintiff's statement of his claim against the defendant to whom the notice is directed. Since the plaintiff's attorney is an officer of the court and to prevent unduly burdening the clerk of the court, paragraph (1) of subdivision (d) provides that plaintiff's attorney shall prepare and deliver a notice or notices to the clerk. Flexibility is provided by the provision for joint or several notices, and for additional notices. Where there are only a few defendants it may be convenient to prepare but one notice directed to all the defendants. In other cases where there are many defendants it will be more convenient to prepare two or more notices; but in any event

a notice must be directed to each named defendant. Paragraph (2) provides that the notice is to be signed by the plaintiff's attorney. Since the notice is to be delivered to the clerk, the issuance of the notice will appear of record in the court. The clerk should forthwith deliver the notice or notices for service to the marshal or to a person specially appointed to serve the notice. Rule 4 (a). The form of the notice is such that, in addition to informing the defendant of the plaintiff's statement of claim, it tells the defendant precisely what his rights are. Failure on the part of the defendant to serve an answer constitutes a consent to the taking and to the authority of the court to proceed to fix compensation therefor, but it does not preclude the defendant from presenting evidence as to the amount of compensation due him or in sharing the award of distribution. See subdivision (e); Form 28.

While under Rule 4 (f) the territorial limits of a summons are normally the territorial limits of the state in which the district court is held, the territorial limits for personal service of a notice under Rule 71A (d) (3) are those of the nation. This extension of process is here proper since the aim of the condemnation proceeding is not to enforce any personal liability and the property owner is helped, not imposed upon, by the best type of service possible. If personal service cannot be made either because the defendant's whereabouts cannot be ascertained, or, if ascertained, the defendant cannot be personally served, as where he resides in a foreign country such as Canada or Mexico, then service by publication is proper. The provisions for this type of service are set forth in the rule and are in no way governed by 28 U. S. C. § 118.

*Note to Subdivision (e).* Departing from the scheme of Rule 12, subdivision (e) requires all defenses and objections to be presented in an answer and does not authorize a preliminary motion. There is little need for the latter in condemnation proceedings. The general standard of pleading is governed by other rules, particularly Rule 8, and this subdivision (e) merely prescribes what matters the answer should set forth. Merely by appearing in the action a defendant can receive notice of all proceedings affecting him. And without the necessity of answering a defendant may



present evidence as to the amount of compensation due him, and he may share in the distribution of the award. See also subdivision (d) (2); Form 28.

*Note to Subdivision (f).* Due to the number of persons who may be interested in the property to be condemned, there is a likelihood that the plaintiff will need to amend his complaint, perhaps many times, to add new parties or state new issues. This subdivision recognizes that fact and does not burden the court with applications by the plaintiff for leave to amend. At the same time all defendants are adequately protected; and their need to amend the answer is adequately protected by Rule 15, which is applicable by virtue of subdivision (a) of this Rule 71A.

*Note to Subdivision (g).* A condemnation action is a proceeding in rem. Commencement of the action as against a defendant by virtue of his joinder pursuant to subdivision (c) (2) is the point of cutoff and there is no mandatory requirement for substitution because of a subsequent change of interest, although the court is given ample power to require substitution. Rule 25 is inconsistent with subdivision (g) and hence inapplicable. Accordingly, the time periods of Rule 25 do not govern to require dismissal nor to prevent substitution.

*Note to Subdivision (h).* This subdivision prescribes the method for determining the issue of just compensation in cases involving the federal power of eminent domain. The method of jury trial provided by subdivision (h) will normally apply in cases involving the state power by virtue of subdivision (k).

Congress has specially constituted a tribunal for the trial of the issue of just compensation in two instances: condemnation under the Tennessee Valley Authority Act; and condemnation in the District of Columbia. These tribunals are retained for reasons set forth in the *General Statement*.  
3. *Adjustment of Rule to Statutory Provisions, supra.* Subdivision (h) also has prospective application so that if Congress should create another special tribunal, that tribunal will determine the issue of just compensation. Subject to these exceptions the general method of trial of that issue is to be by jury if any party demands it, otherwise

that issue, as well as all other issues, are to be tried by the court.

As to the TVA procedure that is continued, U. S. C., Title 16, § 831x requires that three commissioners be appointed to fix the compensation; that exceptions to their award are to be heard by three district judges (unless the parties stipulate for a lesser number) and that the district judges try the question *de novo*; that an appeal to the circuit court of appeals may be taken within 30 days from the filing of the decision of the district judges; and that the circuit court of appeals shall on the record fix compensation "without regard to the awards of findings theretofore made by the commissioners or the district judges." The mode of fixing compensation in the District of Columbia, which is also continued, is prescribed in U. S. C., Title 40, §§ 361-386. Under § 371 the court is required in all cases to order the selection of a jury of five from among not less than 20 names, drawn "from the special box provided by law." They must have the usual qualifications of jurors and in addition must be freeholders of the district, and not in the service of the United States or the District. A special oath is administered to the chosen jurors. The trial proceeds in the ordinary way, except that the jury is allowed to separate after they have begun to consider their verdict.

There is no constitutional right to jury trial in a condemnation proceeding. *Bauman v. Ross* (1897) 167 U. S. 548. See also Hines, *Does the Seventh Amendment to the Constitution of the United States Require Jury Trials in all Condemnation Proceedings?* (1925) 11 Va. L. Rev. 505; Blair, *Federal Condemnation Proceedings and the Seventh Amendment* (1927) 41 Harv. L. Rev. 29; 3 *Moore's Federal Practice* (1938) 3007. Prior to Rule 71A, jury trial in federal condemnation proceedings was, however, enjoyed under the general conformity statute, 40 U. S. C. § 258, in states which provided for jury trial. See generally, 2 Lewis, *Eminent Domain* (3d ed. 1909) §§ 509, 510; 3 *Moore, op. cit. supra*. Since the general conformity statute is superseded by Rule 71A, see *supra* under subdivision (a), and since it was believed that the rule to be substituted should likewise give a right to jury trial, sub-

division (h) establishes that method as the general one for determining the issue of just compensation.

*Note to Subdivision (i).* Both the right of the plaintiff to dismiss by filing a notice of dismissal and the right of the court to permit a dismissal are circumscribed to the extent that where the plaintiff has acquired the title or a lesser interest or possession, viz., any property interest for which just compensation should be paid, the action may not be dismissed, without the defendant's consent, and the property owner remitted to another court, such as the Court of Claims, to recover just compensation for the property right taken. Circuity of action is thus prevented without increasing the liability of the plaintiff to pay just compensation for any interest that is taken. Freedom of dismissal is accorded, where both the condemnor and condemnee agree, up to the time of the entry of judgment vesting plaintiff with title. And power is given to the court, where the parties agree, to vacate the judgment and thus revest title in the property owner. In line with Rule 21, the court may at any time drop a defendant who has been unnecessarily or improperly joined as where it develops that he has no interest.

*Note to Subdivision (j).* Whatever the substantive law is concerning the necessity of making a deposit will continue to govern. For statutory provisions concerning deposit in court in condemnation proceedings by the United States, see U. S. C., Title 40, § 258a; U. S. C., Title 33, § 594—acquisition of title and possession statutes referred to in note to subdivision (a), *supra*. If the plaintiff is invoking the state's power of eminent domain the necessity of deposit will be governed by the state law. For discussion of such law, see 1 Nichols, *Eminent Domain* (2d ed. 1917) §§ 209–216. For discussion of the function of deposit and the power of the court to enter judgment in cases both of deficiency and overpayment, see *United States v. Miller* (1943) 317 U. S. 369 (judgment in favor of plaintiff for overpayment ordered).

The court is to make distribution of the deposit as promptly as the facts of the case warrant. See also subdivision (c) (2).

*Note to Subdivision (k).* While the overwhelming number

of cases that will be brought in the federal courts under this rule will be actions involving the federal power of eminent domain, a small percentage of cases may be instituted in the federal court or removed thereto on the basis of diversity or alienage which will involve the power of eminent domain under the law of a state. See *Boom Co. v. Patterson* (1878) 98 U. S. 403; *Searl v. School District No. 2* (1888) 124 U. S. 197; *Madisonville Traction Co. v. Saint Bernard Mining Co.* (1905) 196 U. S. 239. In the *Madisonville* case, and in cases cited therein, it has been held that condemnation actions brought by state corporations in the exercise of a power delegated by the state might be governed by procedure prescribed by the laws of the United States, whether the cases were begun in or removed to the federal courts. See also *Franzen v. Chicago, M. & St. P. Ry. Co.* (C. C. A. 7th, 1921) 278 Fed. 370, 372.

Any condition affecting the substantial right of a litigant attached by state law is to be observed and enforced, such as making a deposit in court where the power of eminent domain is conditioned upon so doing. (See also subdivision (j).) Subject to this qualification, subdivision (k) provides that in cases involving the state power of eminent domain, the practice prescribed by other subdivisions of Rule 71A shall govern.

*Note to Subdivision (l).* Since the condemnor will normally be the prevailing party and since he should not recover his costs against the property owner, Rule 54 (d), which provides generally that costs shall go to the prevailing party, is made inapplicable. Without attempting to state what the rule on costs is, the effect of subdivision (l) is that costs shall be awarded in accordance with the law that has developed in condemnation cases. This has been summarized as follows: "Costs of condemnation proceedings are not assessable against the condemnee, unless by stipulation he agrees to assume some or all of them. Such normal expenses of the proceeding as bills for publication of notice, commissioners' fees, the cost of transporting commissioners and jurors to take a view, fees for attorneys to represent defendants who have failed to answer, and witness' fees, are properly charged to the Government, though not taxed as costs. Similarly,

if it is necessary that a conveyance be executed by a commissioner, the United States pay his fees and those for recording the deed. However, the distribution of the award is a matter in which the United States has no legal interest. Expenses incurred in ascertaining the identity of distributees and deciding between conflicting claimants are properly chargeable against the award, not against the United States, although United States attorneys are expected to aid the court in such matters as *amici curiae*." Lands Division Manual 861. For other discussion and citation, see *Grand River Dam Authority v. Jarvis* (C. C. A. 10th, 1942) 124 F. (2d) 914. Costs may not be taxed against the United States except to the extent permitted by law. *United States v. 125.71 Acres of Land in Loyalhanna Tp., Westmoreland County, Pa.* (W. D. Pa. 1944) 54 F. Supp. 193; Lands Division Manual 859. Even if it were thought desirable to allow the property owner's costs to be taxed against the United States, this is a matter for legislation and not court rule.

#### COMMITTEE NOTE ON AMENDING RULE 81

Paragraph (7) of Rule 81 (a) provides: "In proceedings for condemnation of property under the power of eminent domain, these rules govern appeals but are not otherwise applicable." This excepting provision should be eliminated when a rule on condemnation is adopted, since the Federal Rules will then apply to condemnation proceedings, including appeals. See note to subdivision (a) of Rule 71A.

#### COMMITTEE NOTE ON EFFECTIVE DATE

*Effective Date.* The effective date of Rule 71A and the amendment to Rule 81 (a) is determined in a manner that follows the practice in promulgating and making effective the Federal Rules and the amendments thereto. Pursuant to that practice the Court would, after promulgating the rule on condemnation and the amendment to Rule 81 (a), transmit them to the Attorney General with the request that the rule and the amendment be reported by him to the Congress at the beginning of a regular session. The rule and the amendment would take effect three months subsequent to the adjournment of that regular session of Congress, or on a designated day, whichever date is later; and the rule would govern pending and subsequently instituted actions in a manner conforming to that stated in Rule 86 as originally promulgated and amended.