

No. 33095 - *State of West Virginia Department of Transportation, Division of Highways, a public corporation, and Fred VanKirk, P.E., Secretary/Commissioner of Highways v. Honorable Donald H. Cookman, Judge of the Circuit Court of Hardy County*

**FILED**

**December 1, 2006**

**released at 10:00 a.m.**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

Starcher, J., concurring, in part, and dissenting, in part:

I concur in the new Syllabus Point 4 of the majority opinion, which correctly summarizes the requirements of the *West Virginia Rules of Civil Procedure*, Rule 26(b)(4)(B).

However, I dissent to the majority's method of application of this rule to the State of West Virginia as a litigant in the instant condemnation case.

In condemnation cases, the government is the proverbial 800-pound gorilla. It can take your property, period; and the only issue is how much the property is worth. In these lopsided circumstances, a property owner is entitled to *anything* that can help make the case for full compensation. These are inherently "exceptional circumstances."

Moreover, government is supposed to be transparent. Secrecy is the exception in the doing of governmental business. If people want to be private in conducting their business affairs, then they should stay out of government. Citizens have an absolute right to know how a government arrived at a suggested price for land, including advice that experts told the government – but that the government decided not to follow.

The Department of Transportation's "secrecy policy" on what other appraisers

told them suggests that the DOT thinks they are dealing with port security, instead of what a citizen is due for his property.

Accordingly, I concur, in part, and dissent, in part.