Attacking & Defending Your Appraisal

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Attacking & Defending an Appraisal Model

The Appraiser (The Person)
- Ethics
- Competence
- Compared to Other Expert
- Presentation Skills
- Consistency

The Appraisal (The Process)
- USPAP Checklist
- Assumptions
- Scope
- Methodology & Techniques
- Support
- Judgment

The Appraisal Report (The Paper, Depo, File)
- USPAP Checklist
- Math Errors & Typos
- Assumptions Reported?
- Hypothetical Conditions
- Admissible?

Reviews & Consulting (The Peripheral)
- USPAP Checklist
- Is it a review?
- Is there an appraisal or appraisal consulting disguised as a review?
Four Areas of Knowledge You Need to Know to be a Valuation Consultant in Litigation

- Appraisal Theory
- The Law as Applicable to Real Estate, Procedure & Evidence
- Testifying & Other Communication Techniques
- Uniform Standards of Professional Appraisal Practice
Four Problem Areas for All Valuation Consultants

* The Correct Definitions – What is the proper definition to use & is the appraiser/methodology consistent with the definitions?

* Insufficient Data – Often the appraiser that is being the most objective has the least data. Appraisers can conclude to a highest & best use because of the number of sales within that use (even though the subject does not have the highest & best use of the sales). Often both sides have a lack of data. The lack of data does go to the reliability of the concluded value. (The better the data, the better our number).

* Applicable Theory – Given an understanding & use of definitions required for a case and sufficient data, the proper or generally accepted theories must be employed. The use of improper methods or proper methods being improperly employed could result in dismissal of an expert from a case.

* Competency & Ethics – Sometimes the appraiser understands the definitions required, has the data, employs proper methodology, but the result does not help the client. Creativity can then result.
“Paired Sales” Analysis

- When there are many differences between the two properties used to show the adjustment, then it is generally not mathematically possible to extract an adjustment.
- Even if there was a pair that only had the one difference, statistically it would be invalid because it would be a sample size of one.
- The adjustment would be different depending upon Highest & Best Use. In some uses an energy transmission easement would have little value impact, in others significant.
- The adjustment for property close to the easement would be different for property away from the easement.
Appraisers...

Do

- Take the time to know the problem...
  - 1. Date of appraisal
  - 2. Value definition
  - 3. Interest to be appraised
  - 4. Property
  - 5. Hypothetical conditions & extraordinary assumptions

Don’t

- Take the assignment if you are not the right appraiser...
  - 1. It is out of your area of expertise
  - 2. You do not have adequate time to complete the assignment properly
  - 3. You are a bad fit with the attorney
## What Are We Appraising?

> “Appraise a Problem Not a Property”

<table>
<thead>
<tr>
<th>Date</th>
<th>Value Definition</th>
<th>Property Interest</th>
<th>Other Assignment Conditions</th>
<th>The Property Land Building</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Most probable price Cash Willing buyer/seller No duress Reasonable exposure Well informed Typically motivated Fee Simple Leased Fee Leasehold Estate Partial Interest Easement Life Estate Hypotheticals Extraordinary Assumptions Before &amp; After In place/in use</td>
<td></td>
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</tbody>
</table>

**The Property**
- Land
- Building
Transferred Value

• To...
  – Another property
  – Within a property
  – To a person
  – To intangible value
  – To a community

• Quantifying transferred value...
  – Who or what property benefits?
  – Condemnation ramifications
  • General benefits
  • Special benefits
  • Functional obsolescence & TV to person
Business Enterprise Value

- Real property
- Personal property
- Intangible property

= Business Value

- The problem is not theory, but is data. How do we support the component values when there is no direct data.

- Because the problem is not theory, but data, the problem then becomes one of burden of proof. Who should have to carry the burden of proof of value?

- If the income to the entire business is negative, there can still be value in the real estate.

- If the income to the entire business is positive, the value of the real estate can still be negative or less than replacement cost.
Uniform Standards of Professional Appraisal Practice

Definitions

- **Appraisal** - the act or process of developing an opinion of value; an opinion of value

- **Appraisal Review** - the act or process of developing & communicating an opinion about the quality of another appraiser’s work
  - Comment: The subject of the review may be all or part of the report, workfile, or combination.

- **Appraisal Consulting** - the act or process of providing an analysis, recommendation, or opinion to solve a problem, where an opinion of value is a component of the analysis leading to the assignment results.

- **Report** - any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment

- **Self-contained report** - one that complies with SR 2-2(a) or 8-2(a)

- **Summary report** - one that complies with SR 2-2(b) or 8-2(b)

- **Restricted use report** - one that complies with SR 2-2(c), or 8-2(c), or 10-2(b)

- **Signature** – Evidence of completion. Must be affixed by personal control.
  - An appraiser must affix or authorize the use of the signature
  - Must not affix another’s signature without consent
  - Must exercise due care to prevent unauthorized use
Appraisers...

Do

- Understand the unities & their impact on value...
  - 1. Use
  - 2. Contiguity
  - 3. Ownership

- Large contiguous parcels with the same ownership should be split into two parcels or more if the use is different

Don’t

- Take your highest & best use from others
  - 1. The attorney
  - 2. Other experts

- If the case is a “complex” case where many experts contribute to determination of highest & best use, understand the various positions of the other experts & try to adopt the position, don’t just accept it.
Law versus Appraisal

“Appraisal,” the term is not descriptive

- The definition of value is a legal consideration
- The property interest to be appraised is a legal consideration
- The methodology to be used is the appraiser’s domain subject to legal admissibility
## Assumptions or Premises in an Appraisal Partial List

1. **General Assumptions**
   - Date of Value
   - Property Interest Appraised

2. **Extraordinary Assumptions**
   - Legal Instructions
   - Other Expert Reports

3. **Hypothetical Conditions**
   - Bias of the Appraiser
   - Are you a “conservative appraiser?”

4. **Market Value**
   - Willing Buyer & Seller
   - Neither Under Duress
   - Reasonable Exposure Time
   - Cash or Institutional Terms
   - Well Informed

- Highest & Best Use
Appraiser’s...

Do

- Be clear about the Scope of the assignment if you are asked to do a review
  - 1. Limit the scope of review until you are competent
  - 2. Communicate your scope clearly in any report & when testifying

- I had an appraiser disciplined for a review

Don’t

- Forget that you can get into a case without clear direction or scope
- This is most cases. However, clarify your scope in any report before you finalize a review report that is subject to discovery
Report Considerations

- It is not the appraisal!
- It is evidence of the appraisal
- Reports or workfiles are a legal requirement for appraisers before testifying (State certification laws)
- The report may be discoverable but not admissible
  - FRCP 26(b)(4)(a): Report to be provided before the deposition
  - State rules vary on above
  - Discovery dates as to trading documents has nothing to do with above
  - All reports are hearsay

- Two Kinds of Misleading - Standard 2 & the Conduct Provision of USPAP
- Be the only signature

Content Requirements

- Be complete, but short. See USPAP: Record Keeping & Std 2 (Attorney cannot tell you not to write)
- Yellow Book, etc.
- FRCP 26 six requirements
  - All opinions
  - Data & information
  - Exhibits
  - Qualifications - 10 years of publications
  - Compensation paid
  - Cases testified in for 4 years


Appraiser’s…

**Do**

- Verify all data used!
- If you obtain data from discovery that you believe is useful, then use the data if you can verify it.
- An expert can testify to “facts or data reasonably relied upon by experts in the field…” Make sure there is reasonable reliance & that it is of a type reasonably relied upon

**Don’t**

- Use stale data.
- Let the availability of sales drive your highest & best use.
- Use unverified data. It is arguable that this data is not of a type reasonably relied upon & subject to admissibility challenges.
Federal Rule 701 & 702

Opinion Testimony of Lay Witnesses & Testimony by Experts

• Rule 701: Lay Witnesses
  If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.

• Rule 702: Expert Witnesses
  If *scientific, technical, or other specialized knowledge* will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.
Federal Rule 703 & 704

Bases of Opinion Testimony by Experts & Opinion on Ultimate Issue

• Rule 703: Bases of Opinion Testimony by Experts

  The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing.

  If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

[(1) is the hearsay a fact or data, or is it an opinion? (2) is the reliance “reasonable”? (3) was the hearsay “relied” upon, or was the data merely “considered”?]
Appraiser’s…

Do

- Try to have only one signature on the appraisal
- If someone contributes to the appraisal, let it be ministerial and not “significant”
- Is someone does contribute significantly, name them in the certification

Don’t

- Fail to identify those who contribute significantly
- Try to use data supplied by another client and label it “source of data confidential” or “building in north Austin”
Valuation Process
It is more circular than linear!

Definition of the Problem & Scope
Definitions, Date of appraisal, Purpose
Function of appraisal, conditions & assumptions
Mostly supplied by legal requirements.

Data Selection & Collection
What does “verify” mean?
Must be appraiser’s choice subject to legal admissibility.
Is a mix of appraiser & legal considerations.

Highest & Best Use
Legal, physical, financially feasible & maximally productive use that results in the highest value.
The third party reports, legal definitions & assumptions and conditions can steer highest & best use.

Land Value Estimate
Six acceptable methods:
(1) sales comparison (2) allocation (3) extraction
(4) land residual (5) ground rent capitalization
(6) subdivision

Three Approaches to Value
Depends upon the highest & best use.
Often appraiser with little to no data is the one that is correct.

Reconciliation
Not very attackable if all else was done right.
May be a value range, then reconcile to a single number.
Use common sense hooks such as cost or bracketing.

Report
May be oral or comply with SR 2-2(a) self-contained, 2-2(b) summary, or 2-2(c) restricted. File must be at least to summary.

Post Reporting Corrections & Explanations
The process is not over at reporting.
Levels of an appraisal & review.

Final Report
Even if you insist on turning in “final reports”, you will have to change errors or sometimes rewrite for clarity.
Appraisers...

**Do**
- Have the proper certification or license to appraise in Condemnation cases

**Don’t**
- Travel to testify in Condemnation without checking with the state you will testify in without getting a temporary permit or the state’s certification
- Try to call the value a “consulting” assignment to try to get around the proper legal requirement.
### STEPS TO QUALIFYING AS AN “EXPERT”

#### Discovery Sanction

<table>
<thead>
<tr>
<th>Didn't Produce a Report as Required</th>
<th>Produced the Report but did not afford it to the Other side as required in a timely manner</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Expert</th>
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</table>

**Qualifications:**
1. Knowledge
2. Skill
3. Training
4. Experience
5. Education

- **Is Appraiser an expert?** (Scientific, technical or other specialized knowledge that would assist the trier of fact. This is a matter of law, not fact. In looking at non-exclusive factors...
  1. Area
  2. Property type

- **If not, don’t allow to testify.**
- **If is, then testify.**
  Report has nothing to do with this.

#### Acceptable Methodology

<table>
<thead>
<tr>
<th>Frye (IL &amp; others) or Daubert (Federal &amp; most states)</th>
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</table>

<table>
<thead>
<tr>
<th>Report has nothing to do with this except as evidence of the methodology used. This should be based upon a hearing if they object with the judge hearing testimony.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Was the methodology proper? He did the three approaches to value.</td>
</tr>
<tr>
<td>(2) Although the methodology is proper, was the methodology properly applied?</td>
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#### Credibility of the Expert

- Weight of the expert vs. the opposing expert. If no other expert, 100%.

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Appraisers...

**Do**

- Develop & communicate your value (See following)
  - Professionally
  - Independently
  - Without advocacy for the client
  - Objectively

- Advocate YOUR position that you reached professionally, independently, and objectively

**Don’t**

- Advocate for the cause of anyone in the case
- Go into the case with a “suggested” value
- However, don’t avoid legal instruction!!!
Testimony & Presentation Skills

“More people have a greater fear of public speaking than of dying.”

From Dilbert: “If that is true, then you would be doing someone a favor by killing them before they had to speak in public.”
Depositions – Strategy

- Show weaknesses of expert through questions when you want the case to settle
- Do not show your entire “hand” when you think the case may go to court
- Invoke “the rule” versus let all witnesses hear the testimony
- Nail down…
  - Data
  - Assumptions
  - Time-line
  - Theory, methods & techniques
  - Reporting
  - Previous experience in area & property
  - All discussions – Attorney, client, staff, other appraisers
  - Potential interests in property or clients
- Demeanor: Confrontational vs. pleasant
  - Push buttons of witness
  - Elicit all the testimony you can
Three Ways to Qualify an Expert

**Narrative** — “Tell the jury in your own words how great you are, and take your time.” The witness leads the testimony.

**Question & Answer** — Questions based upon (1) experience in the profession, (2) education, (3) professional associations, certifications, and designations, (4) in testifying, (5) experience in the specific property or area, (6) in employing methods or collecting data, (7) employment history, etc. It is attorney driven & witness responsive. The attorney may lead.

**“Weave” it into the Testimony** — Starts with a general introduction to the jury on who the expert is. Then qualifies during segments of the testimony. For example, “Tell the jury who you are & why you are here.” You said you did the income approach, why are you qualified to do an income approach?”...“You also mentioned using a cost approach, why are you qualified to do a cost approach?”...This is advantageous because it breaks up the qualification instead of front loading it (and putting the jury to sleep). It also allows for transitions from one approach or topic to another.

**Do not stipulate or allow a stipulation!**

**Exception: Bench trial**

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Testimony & Presentation Basics

- **Limit supplying emotions** to the case. All cases have emotions & reason to offer to the trier of fact woven into theme of a case. We offer the “3 to 5 reasons why” a juror or judge should believe the side we work on. Jury polls show most decide on the “gut level” then apply reasons a side should win. We provide the argument in the deliberations that help jurors persuade other jurors.

- **Group arguments** or data in sets of 3 to 5.

- **Use common sense hooks.**
  - Cost: You do not have to do a breakdown method.
  - An exhibit with a property clearly superior & one clearly inferior to the appraised property. Have a map as well as characteristics that show this. Explain that the two properties are not comparables, but you are bracketing the appraised property (but it is closer in characteristics to one than the other.)

- Understand the “**theme of the case**” and how you fit in. The theme of a case is the overall story line or plot.
  - The government is taking not just the **home**, but memories of when my child first played in the backyard.
  - The property owner is allowed the full market value of the **real estate**. We wouldn’t have it any other way. However, who likes to sit in traffic trying to get to a school function. Growth means progress, and to avoid sitting in traffic away from your families we need to expand roads. Therefore, we are promoting family values and time with your families instead of sitting on roadways that are too small. (Note the use of “home” & “real estate.”)

- **Understand all questions** before you answer & answer the question
  - Do you know what time it is? Answer: Yes
  - What time is it? Answer: 10:00
Testimony & Presentation Basics

- **Give your attorney time to object.** Do not speak when an objection is being made or ruled upon. Simply remain quiet. If possible, stop talking even in the middle of a sentence.

- **Look at the jury** when answering questions, but not all the time. Juries do not expect you to, nor does it look natural, to look at them after every short question to answer.

- Treat everyone in the courtroom with **respect** including...
  - Judge
  - Attorneys
  - Court Reporter
  - Bailiff
  - Parties

- **You will be stereotyped.** Dress appropriately. Do things one at a time. Go to the courtroom and practice. Practice by being videotaped. Take a teaching assignment. Ask your friends or spouse about your mannerisms or habits that may be annoying or distracting.
  - Clear throat
  - Cough
  - Cover your mouth
  - Turn red
  - Voice changes
  - Perspire
  - Have trouble focusing
  - Cover your face with your hands
  - Sit on your hands
  - Saying “To be honest”, “to be truthful”, or “actually”, (as opposed to the rest of your other testimony?)
Testimony & Presentation Basics

- **Do not** appeal to the “typical juror.” It is often said the average juror has the average intellect of a junior high age child. One definition of a juror is “one who is too stupid to get out of jury duty or one who serves for the money.” Even if the assertions were true, it would make no sense to appeal to an average juror. It is not likely the average would ever be in the box and all jurors should be targeted in the presentation, with some exception.

- **Do not** always try to appeal to all jurors. If you need to explain a complicated concept, you might succeed if only one juror understands the concept and can later explain the testimony to the others in deliberations.
  - For example, a CPA serving on the jury can explain discounted cash flows in deliberation to the rest of the jurors.

- If the trial is a **bench trial**, look at the judge when answering questions. Give the judge visual aids. They get bored also. A judge in a seminar stated that there are less visual aids in bench trials than jury trials, but this judge liked visual aids.

- **Do not** be distracted by the judge. The judge may be working on papers, doing a crossword puzzle, sleeping, working on a computer or looking at the transcript as it comes over a computer screen.

- Take the opportunity to **admit mistakes**. This often is how a case is won. If you admit mistakes, you may be perceived as trustworthy.
Testimony & Presentation Basics

- **Do not** talk down to the jury. However, use a small, nontechnical word if it will substitute for a technical term.
  - The subject property exhibits incurable functional obsolescence due to the appropriation of the right-of-way which affected both the accessibility of ingress/egress and the parking-to-building ratio.
  - The property will lose value because there will be less parking spaces and it will be harder to get in and out of the parking lot once the new road is constructed.

- **Use** the lottery example when testifying as to time value of money or discounting. Explain that the winner of the lottery can get more money over time, or opt to take a lump sum payment for less than the full amount.

- **One** professor said that if an expert talks long enough, sooner or later the jury will see the lips moving and hear sound come out, but the words will sound like “uggly boggly uggly boggly.” It is alright to answer with appraiser terms, but try to do it in response to a cross examiner and not to the attorney that is employing you and asking questions on direct examination. In other words, if you are going to bore them, do it on cross, not direct examination.

- **Avoid** “never”, “always”, or “conservative.”
  - “I am a conservative appraiser.”
  - “Are you a republican?” (12 jurors who belong to the democratic party now seem interested)
  - “No. I mean I don’t appraise high like unethical appraisers.”
  - “Well, is low good?” Appraiser answers “Yes”
  - Attorney asks, “Then why did you use a high cap rate, instead of a low one?”
Testimony & Presentation Basics

- **Use** familiar properties to provide examples & terms to explain
  - The property that is subject of the condemnation will lose value because of less parking spaces after the taking. The building will command less rent because it will be hard to park there during busy hours. It will be like the Food Giant store on Main Street or like the Health Clinic on First street. (Two jurors live near the two properties.)
  - If there is an accountant use “scheduled rents” & “collected rents” instead of “potential gross income” and “effective gross income”

- **Use** juror cards to obtain information about the jurors.
  - Find properties near where they live to give them examples of properties that exhibit what you are trying to show them.
  - Find out their occupations so you can tailor your presentation.
    - Suppose there is a construction worker. Give them the details of the cost approach so they can understand it.
    - Suppose you have a financial worker such as an insurance salesman, banker, accountant, etc. Get them to understand your income approach, but use their terminology.
    - If you have a juror that is involved in buying or selling, discuss the sales comparison approach in their terms.
    - Research to find out how to translate appraiser terms to educate and persuade the jury.

- Find out about their background from data services to get any other clues on how best to tailor your presentation. An attorney in Houston uses an overseas service to find out what primaries the juror votes in along with other information to tailor the argument to the background that is found. One attorney even hires handwriting experts to analyze handwriting from the cards.
Testimony & Presentation Basics

- **Avoid** humor. You may laugh at any natural humor in the courtroom, but do not try to be funny. The trial process is looked at as a serious process by jurors.
  - One appraiser taps his watch and looks at the jury pointing at the bench during a conference out of the hearing of the jury by the judge and attorneys. He endears the jury to him by showing them he doesn’t like the waste of time, but runs the risk of looking foolish to the jury and being in contempt from the judge.

- **Jury** polls show that the number one displeasure of the process to the juror is *waste of time* in the trial. Do not be the enemy. Move the presentation along during direct examination. Have the pieces timed and flowing with visual aids. Do not stall or be evasive during cross examination so that it looks like you are prolonging the trial. However, if the cross examiner wants to draw out the questions, or ask technical questions, them let them appear as the person to waste time.

- **Understand** the communication channels include...
  - 8% from the words you use
  - 37% from the way you say the words
  - 55% from body language
  - This means that all are very important, including the words you choose. Even though this represents only 8% of communication, a civil case is decided on the preponderance of the evidence. This means the side that the juror believes 51% wins the case.
**Testimony & Presentation Basics**

- **Mix** the following orientations of communication.
  - Audio - “I hear what you say.”
  - Visual - “I see what you mean.”
  - Kinesthetic - “I feel your pain.” Note: There is kinesthetic language that can be used to describe. (Maybe use samples of building products that can be held.)
  - Although people receive through sight, hearing and touch, we tend to be oriented more to one than another.
  - I have listened to many hours of lectures without visual aids (from college lectures). I am more audio oriented than the other two and more visual than kinesthetic. Therefore, I have to avoid making my presentations those that I would like to hear. It is better to mix the communication to appeal across the spectrum.
  - Visual aids such as photographs, charts and models help. Additionally, the juror can be given samples of building or other construction materials if the case allows.

- **Practical** differences between depositions, videotaped depositions, direct examination and cross examination
  - Depositions - Take your time & transcribe. It is like dictation.
  - Videotaped depositions - Is like live testimony.
  - Direct examination - You should know every question & time from one part to another part of testimony
  - Cross examination - You do not know the question. Do not be too different between direct and cross with demeanor and eye contact as well as use of words. However, the jury knows cross is different. Defend yourself under control and professionally.

- **Agree** to answering with “yes” or “no” at cross examination, then don’t necessarily answer without explaining yourself.
Testimony & Presentation Basics

- **Do** not read your testimony. However, refer to your notes or report if you need to refresh your memory. Get permission to do this.

- **Find** understandable ways to communicate technical concepts
  - Consider using a net income multiplier instead of a cap rate
  - Show how the adjustment process works. Discuss the direction of the adjustment & then the magnitude of an adjustment (break it down)

- **Credibility** is believability. The two elements of credibility are
  - Expertness - preparation and careful presentation of evidence
  - Trustworthiness - how fair and sincere you make your statements

- **Dress** appropriately
  - Clothes - wear what you would expect to see with a professional. Rule of thumb, dress like the attorneys dress, but do not wear the same color so you do not appear as one of the team.
  - Accessories - minimal. Avoid the Rolex watch with a low income jury.
  - Professional pins - I avoid. However, some say wear one, not more.
Cross Examination Basics

- Agree to answer with “yes”, “no”, or “I cannot answer the question with ‘yes’ or ‘no’.” A cross examiner has the right to ask the questions in any manner he or she chooses to.
- Do not answer “yes” or “no” if you must explain your answer. Tell the court that your answer would be misleading with a simple “yes” or “no.”
- Remember you are there to assist the trier of fact (jury or judge).
- May start out friendly to elicit favorable testimony, e.g. reputation of other appraiser or positive or negative features of property
- May switch to attack. (appraiser, appraisal, report, review, consulting)
Cross Examination Basics

- Defend yourself if attacked, but under control.
- Be under control & keep eye contact with the jury.
- Do not expect to be protected by your attorney.
- Be honest.
- Counteract nervousness with preparation.
- Give your attorney time to object.
- Do not try to do too much on cross, wait for redirect to clean up.
- Know your deposition!
Dealing With Hypothetical Questions - 3

Schools of Thought

- **Simply answer the question under the hypothetical.**
  - Advantage: It appears you are there to “assist the trier of fact” and have nothing to hide.
  - Disadvantage: It may show the value is sensitive to slight changes in inputs such as rates of return. You may be calculating the opposing appraiser’s value and reinforcing it to the jury. You may appear to have a value that is not a set number.

- **Refuse to answer the question under the hypothetical.**
  - “I took months to come up with a reasonable value and am not about to mislead the jury by providing an unreasonable value.”
  - “I am required by my ethics & standards to do a certain amount of work to appraise a property and cannot make a simple calculation that may mislead the process.”
  - Advantage: You do not calculate or reinforce the other side’s value.
  - Disadvantage: You may appear unable to calculate, or too rigid, or as having something to hide. The judge may direct you to answer the question.

- **Answer the question, but qualify the answer to avoid confusing or misleading the jury.**
  - Advantage: It appears you are there to “assist the trier of fact” and have nothing to hide and at the same time reinforce your value while doing it.
  - Disadvantage: You may still show sensitivity of the value and calculate the other appraiser’s value. Additionally, you may have trouble calculating a number on the stand.
Some Common Mistakes Made by Experts

- **Trying** to adopt another expert’s style.
  - The great attorneys of the 20th century had very unique styles.
  - Race Horse Haines, Percy Foreman, Melvin Belli, Jerry Spence, etc.

- **Forgetting** the role of the expert during trial.

- **Making a legal question a fact question.** Do not expect the lawyer to understand the difference between what is required by law and what is the appraiser’s domain. Get legal instructions related to definitions, etc.
  - Property interest to be appraised is a legal question
  - Date of value, market value definition are legal questions
  - Compensability issues, general and special benefits, damages
  - Construction of leases or other legal documents
  - Elements of damages

- **Not** taking legal instructions.
  - If asked in a deposition where you got the above, you can lean on the attorney.
  - If you cannot lean on the attorney, you are attackable because of your legal conclusions.

- **Talking** to the client. The conversations are not protected.
- **Arguing** with a cross examiner.
- **Not** defending against the attacks of a cross examiner.
- **Not** knowing or following USPAP
- **Not** writing a review of other appraiser’s report
- **Not** leaving the courtroom after testifying. Get out!
Contact Information

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