In the *Art of War*, the ancient Chinese military strategist Sun Tzu wrote, "Victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win." This would serve as an ideal mantra for litigating eminent domain cases where the parties are battling over the amount of just compensation.

As most just compensation trials come down to a clash of the experts, the key to convincing the jury of your position and winning the trial is defeating the opposing appraiser with a well-planned, meticulous cross-examination. The goal is to strategically position your case to win before stepping foot in the courtroom. If you find yourself strategizing for the

JUST COMPENSATION: THE ART OF WINNING

Tips and tricks that will resonate with the jury

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first time on the eve of trial, you have waited too long to be successful. In order to design a winning cross-examination, it is imperative to start preparing at the outset of your case. Fortunately, there are some tried and true ways to effectively plan and fully prepare to win your just compensation trial before it begins.

Perform Extensive Reconnaissance

Not all experts are created equal. Some real estate appraisers author thorough reports that can be difficult to attack, while others write reports that are riddled with typos and errors offering up simple ways to undermine their opinions. Some appraisers are compelling witnesses that easily connect with jurors, whereas others simply are not likeable and cannot figure out a way to make such a connection.

The first step is to get to know the opposing expert. You need to discover their strengths and weaknesses so that you can formulate an appropriate plan of attack. You can begin this work prior to even receiving a copy of the appraisal report. While this could require a significant amount of investigative work on your part, such due diligence will undoubtedly pay off. If the opposing appraiser is one that you aren't familiar with, start with a simple Google search. Find out whether this is an appraiser that regularly works for property owners or condemning agencies. You should collect as many appraisal reports previously written by the expert as you can—as well as deposition and trial transcripts. Reach out to other folks in the industry and gather whatever intel you can on the expert. You might be surprised how willing your cohorts will be to share these types of materials.

After you gather as much of the expert's former body of work as you are able, do a deep dive into any past appraisal work and testimony, paying specific attention to past appraisal methodologies. You should be looking for any inconsistencies, modifications of theories or appraisal techniques and untruths. There can be a virtual treasure trove for you to discover in the expert's past appraisal work.

Identify Opposing Strategies

In preparation, an essential requirement is to study the appraisal report carefully, as this is the outline for the property owner's attack. This is not a place to skimp. You must know this document inside and out. In other words, you will want to read every word and think critically about how the pieces fit together. Most importantly, you want to look for inconsistencies and errors. What seems like a small error can eventually unravel an entire case.

This is also the time to review the law and treatises cited within the report and confirm that it is all up to date. Many times, the law changes, but

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appraisers forget to modify their appraisal templates. This can be a particularly fertile area of attack. Fully understanding the appraiser's methodology is necessary so that you can identify where past appraisal work differed. The research you did on the appraisal expert's past work and testimony will not be useful unless you can explain to the jury why their current work is inconsistent with it.

Challenge Their Credibility

In the courtroom, an expert's ability to appear trustworthy and believable can make or break a case. Unfortunately, substance does not always reign supreme. Perception is what matters. Whether judge, jury or special panel, the trier of fact will find it difficult to find for a party whose expert they cannot trust. Simply put, credibility is paramount. It is, therefore, your job to gather information that can be used to challenge the opposing expert's ability to be convincing and believable.

At trial, the expert will have already testified prior to your cross-examination, so your goal is to make the jury question whether they can trust in what expert says. The process of undermining an expert's credibility should start early in the case and continue through to the trial testimony. While some credibility evidence can (and should) be collected early on, you will also rely significantly on the expert's deposition as some of these things you can only learn from the appraiser. At the outset of your search, cast a wide net. Early on, you will have no idea what may eventually be beneficial at trial.

After having tried many just compensation cases to jury verdicts, we have gained an understanding of the types of things that resonate with juries and can undermine an appraiser's credibility. Here are a few for your consideration:

Juries care whether an appraiser is truly independent. Find out whether the appraiser works for both condemning agencies and owners. If not, they could appear predisposed to take certain positions.

Determine if a bias exists. For example, how much money has the appraiser made working for property owners against condemning agencies? Have they gotten rich off taking absurd positions against utility companies condemning easements? This is an easy way to demonstrate bias.

Pay specific attention to the appraiser's resume. This is the manner in which the expert communicates their experience and qualifications with the public. Any embellishments or outright inaccuracies included on a resume can be devastating for an appraiser when they take the stand.

Invest time in learning which methodologies the appraiser has used in the past. This can be a goldmine for cross-examination fodder. If an expert has always appraised utility easements in a certain way, but for some reason is now applying a new methodology which just happens to be creating huge claims for the property owner, this is critically important to your case and can significantly undermine the expert's believability.

Fight the Battle to Win the War

This brings us to the deposition. This is by far the most crucial part of the process. The single most important goal of the deposition is to eliminate any surprises at trial. To accomplish this, it's best to employ a two-prong attack.

The goal is to strategically position your case to win before stepping foot in the courtroom—starting with a well-planned deposition.

First, you need to learn anything else about the appraiser and their valuation methodology that you have yet to uncover. This will likely be your last chance to get all of the answers that you need. Next, you want to box the appraiser in on every issue that may be important at trial. The purpose of doing this is so that you have distinct questions that only warrant a "yes" or "no" response. During the appraiser's cross-examination at trial, you will only want to ask those questions for which you have already established their answer. If the appraiser answers differently than in the deposition, you will be able to impeach them with their own testimony. This scores major points with the jury.

Ideally, you will go into the deposition already armed with inconsistencies from the appraiser's past work or errors in their current appraisal. This provides you the opportunity to get the appraiser to make contradictory statements during the deposition, assuming they are unaware of what you have. You can start by getting the appraiser to affirmatively state that they have never taken a particular position or that they confirmed a particular piece of information in their current appraisal. Then you can confront them with the evidence to the contrary. Doing so will give you ready-made impeachment for trial, as the appraiser will have already contradicted themselves.

Because of the extreme importance of this piece of the puzzle, you must be fully prepared to take this deposition. Outline your questions, know what points you want to make and do not conclude the deposition until you have "yes" or "no" answers on all the key issues. If you take a strong deposition, your cross-examination will write itself.

In Summary

Unlike the courtroom theatrics you see in Hollywood, real trials are not won by flashy speeches or lawyer's tricks in front of the jury. Real trials are won through months, or even years, of careful preparation before the trial ever begins.

To be prepared for victory at a just compensation trial, it is essential to know the opposing appraiser inside and out. Extensive research into an opposing appraiser is essential. Through the deposition, you can lock-in their testimony so that you will already know the answers to the questions you will ask at trial. When you know what the appraiser will testify to, you can build your own case around it, further strengthening your position. Once you are armed with that research and deposition testimony, preparing for cross-examination is simply a matter of identifying the key facts that will resonate with the jury and serve to undercut the credibility of the opposing appraiser. If you can do that, victory is all but assured. ✪

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