SIMULATING A CONDEMNATION TRIAL

Mock jury establishes the value of the taking and location of the easement

Conducting the mock trial included from left, Gary Kent, PS, Doug Herendeen, PS, Greg Eveslage, PS, Laura Scott, Esq, C. David Mathews, MAI, CRE, SRA, Brian Haggard, PS, Christopher Wischer, Esq. and DeeDee Alspaugh, SR/WA.

BY GARY KENT

We've all heard the saying that a picture is worth a thousand words. So when it comes to emphasizing the key points to consider in a condemnation battle, a show and tell approach will definitely hold your audience's attention.

Last October, a mock trial was held at the historic Old Vanderburgh County Courthouse in Evansville, Indiana. Presented by IRWA Chapter 10, the full day educational event was pre-approved for education credits and attracted 40 professionals.

The Case Unfolds

The trial revolved around two primary issues. First was the condemnation of an area needed for a pipeline station site and installation of a second pipeline within an existing easement. The second was a disagreement over the location of the existing pipeline easement.

The fictitious C.C.C. Pipeline Company had a pipeline within a 66-foot easement running through and pre-dating the Autumn Leaf Estates subdivision. The company intended on exercising its right to install a second pipeline within the easement. As such, the easement had been surveyed and cleared. However, the owner of Lot 4 in Autumn Leaf Estates claimed that C.C.C. Pipeline substantially misrepresented the easement's location to his detriment. His surveyor adamantly disagreed with where the pipeline company's surveyor had marked the easement lines. In addition, C.C.C. Pipeline intended on constructing a regulator station on the owner's lot. The owner had rejected all of the pipeline company's offers for the necessary 400-square foot easement and in fact, had an appraisal that placed the land's value at about five times the pipeline company's offer.

The case hinged on the proper interpretation of the written easement description, determining which evidence was the most appropriate for establishing where the easement lines truly sit on the ground, and the true value of the regulator station easement.

Preparing for Trial

At roughly 100 pages in length, the script I wrote included speaking roles for a presiding judge, attorneys for the plaintiff and defendant, an appraiser, two surveyors, the plaintiff and the defendant. With help from various chapter members, we were able to recruit three attorneys to play the roles of the two attorneys and the judge, an

Members of the audience were able to question the witnesses before being divided into juries for deliberation.

appraiser to take on the appraiser role, and two surveyors to play the surveyors.

The exhibits introduced included actual drawings representing the two surveys. The testimony referred to other exhibits, including an appraisal, pipeline map, the original grant of easement, a computer rendering of the station site, the subdivision plat showing the easement (which was in disagreement with the easement description in the original grant of easement) and property tax bills.

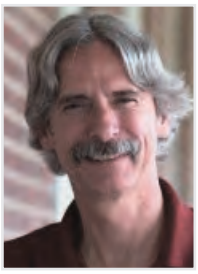
The audience was allowed to ask questions of each witness upon completion of their testimony and at the end of the trial. Once the trial ended, the audience was divided into juries of about six persons each and tasked with deliberating on its own. For reference, a jury ballot was provided that summarized the testimony and directed each jury to vote on two issues—the value of the taking and the location of the easement. After deliberations, the results were tabulated and reported, and each jury selected a representative to explain the rationale behind their vote.

The Educational Value

Following deliberations and jury reports, I presented a program on being an expert witness. The presentation addressed how experts are retained, what to expect in a deposition, how to prepare for being an expert witness, considerations when serving as a consultant or expert witness, preparing an expert report, as well as actual testimony.

Given the extensive nature of the content presented, the program was approved for recertification credits by IRWA. We also obtained approval by the Indiana Real Estate Commission for continuing education credits for realtors and by the Indiana Commission for Continuing Legal Education for continuing education for attorneys. The program also met the continuing education requirements for Indiana professional surveyors.

By all accounts, the education program was a resounding success thanks to all of the volunteer participants, including Laura Scott Esq., Christopher Wischer Esq., C. David Matthews, MAI, CRE, SRA, Doug Herendeen, PS, Brian Haggard, PS, Dee Dee Alspaugh, SR/WA and Greg Eveslage, PS. A special thanks goes out to the many members who worked behind the scenes to help with registration, publicity, collateral and venue logistics. ✪



Gary is Integrated Services Director for The Schneider Corporation. He is Vice Chairman of the Indiana State Board of Registration for Land Surveyors and has served as an expert witness in numerous cases.