

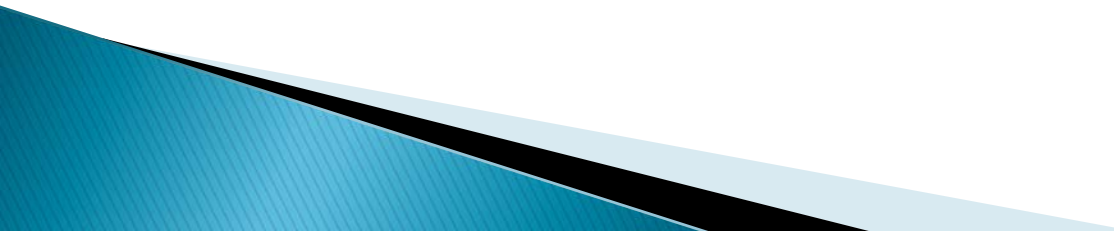
Acting As An Expert Witness

Patrick Alesandrini, CAE, MAI, SRA

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Acting As An Expert Witness Outline

- ▶ **A. TESTIMONY – FIRST THINGS FIRST**
 - ▶ **B. PRETRIAL OR PREHEARING INVESTIGATION**
 - ▶ **C. TRIAL DATE: PERFORMING AS AN EXPERT WITNESS**
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TESTIMONY – FIRST THINGS FIRST

To Go or Not To Go

- ▶ First decision to make is, whether or not you really need to contest this complaint. Are the following statements true or false, with regard to you
 - I do not have the evidence to support my position
 - The other party has better data than me
 - My estimate of value is incorrect or may be in doubt
 - I do not have the knowledge and/or experience to support and explain my position
 - It's not the value, but the principle of the thing, they make me mad
 - If you answered true to these statements, don't go

TESTIMONY – FIRST THINGS FIRST

- ▶ The secret to winning lots of cases is to not take ones that you are sure are going to lose
- ▶ The appeal should be significant enough to warrant your time and energies
 - Money is a major concern and large appeals take lots of time, money, and energy
 - Do you have the resources to fight the appeal
 - Is this appeal worth it, or are resources better used elsewhere

TESTIMONY – FIRST THINGS FIRST

- ▶ Keep your emotions in check (you will read and hear this often)
 - Don't say something you will regret later
 - Don't promise something you are not willing or capable of backing up
 - I'll see you in court!
 - I'll shove those words down your throat!
 - I'll prove to you how wrong you are!
 - When emotions take control, the brain typically goes into park or into stupid mode

TESTIMONY – FIRST THINGS FIRST

- ▶ If you don't have the knowledge or experience to support and explain your position, don't give up – get help
 - Contact the professionals who can help you
 - Be aware of USPAP requirements of the appraisal you are performing

PRETRIAL OR PREHEARING INVESTIGATION

Define the Basis for the Appeal

- Defining the appeal will direct the investigation or scope of work
- This is the most time consuming part of the appeal process

PRETRIAL OR PREHEARING INVESTIGATION

Equity appeal

- Perform a market search for similar properties
- Stay in the same jurisdiction
 - Don't allow the taxpayer or rep to bring in data from another jurisdiction – it isn't applicable
- Be certain of property characteristics that impact value
 - Only those items that impact value, positively or negatively should be considered
 - Don't go off on rabbit trails – color of the home or building is, most likely, not important
- Only allow the comparison of similar properties
 - Consider the highest and best use of the properties in question

PRETRIAL OR PREHEARING INVESTIGATION

Value appeal

- Review the evidence provided or have it reviewed
 - Look at the evidence as objectively as possible
 - Don't get caught up in nit-picking
 - Review as you would like to be reviewed
 - If you don't have the expertise to perform the review, get help
- Perform a market search for similar properties
- When the task is market value (when market and use are the same), it is OK to search for data outside the jurisdiction
 - This differs from the equity search because market buyers are not limited to any one area, whereas the assessor's actions are limited to only their jurisdiction
 - Be certain of any differences between the locations and be prepared to support your adjustment for those differences

PRETRIAL OR PREHEARING INVESTIGATION

- It is always best to combat an appraisal with an appraisal – in some form
 - Don't count on just providing some property record cards and assume that is enough.
 - It can be a mass appraisal, including all supporting statistical evidence
 - Remember to be certain that the appraisal evidence you present is USPAP compliant, even if you are not required to do so.

PRETRIAL OR PREHEARING INVESTIGATION

- A great “one, two” punch is to have a review done that meets USPAP (Uniform Standards of Professional Appraisal Practice) and also an appraisal that is strong, especially in the evidences weaknesses.
 - When performing an individual appraisal for an appeal, you are now performing single property appraisal. The attorney for the other side will most likely attack your evidence by utilizing USPAP, more specifically by the Scope of Work Rule, Competency Rule, and Standards Rule 1 and 2.
 - It is possible to “hit” the taxpayer’s evidence by thoroughly explaining your appraisal or evidence that is weak in the taxpayer’s data
 - USPAP does not allow the appraiser to be an advocate for any party, so be aware of this in preparation of the appraisal and in your testimony.

PRETRIAL OR PREHEARING INVESTIGATION

Discrepancy of opinion(s)

- The type of discrepancy will dictate the amount of research performed and support evidence created
- Factual data – easiest to check
 - Square footage
 - Lot size
 - Eave height
 - Type of construction
 - Any units of measure


PRETRIAL OR PREHEARING INVESTIGATION

- ▶ Subjective data – harder to check
 - Matters of opinion
 - Floor plan
 - Building design
 - Effective age
 - Functional utility (usability)
 - Depreciation
- ▶ Interpretive data – middle of the road
 - Data that is a mixture of factual and subjective data
 - Improvements built in phases
 - Buildable area of a site
 - Tillable area of a farm

PRETRIAL OR PREHEARING INVESTIGATION

Initial Preparation

Get going on your own

- ▶ Review your evidence with someone knowledgeable, someone who has experience in appeals
 - ▶ Cover all the bases that you would with an attorney
 - ▶ This preliminary analysis should help you understand what additional data you will need to get
 - ▶ Set up another meeting
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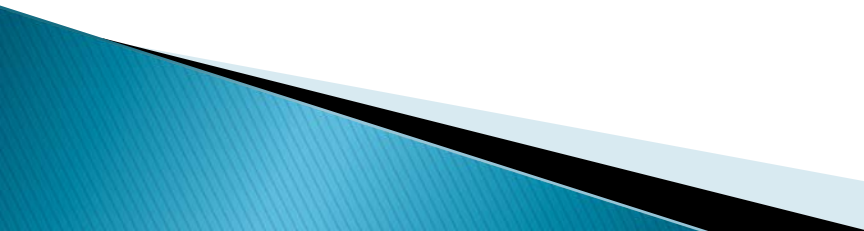
PRETRIAL OR PREHEARING INVESTIGATION

Meet with your attorney or person who will represent you in the hearing or trial

- Get on the same page as soon as possible
 - Let them know the evidence you have
 - Let him or her know the weaknesses of your evidence
 - Tell them the weaknesses of the taxpayer's evidence
 - Tell them how you feel it would be best to attack those weaknesses
 - Set up the next meeting

PRETRIAL OR PREHEARING INVESTIGATION

Discovery

- You provide all of your written evidence to the taxpayer and they provide all of their evidence to you
 - You now re-investigate all of the information provided and assist your attorney in preparing rebuttal to the taxpayers evidence.
 - Assist your attorney in preparing questions that you would like to be asked of the taxpayer or their representative
 - Think, based on the evidence provided, of questions that they may ask you concerning your evidence.
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PRETRIAL OR PREHEARING INVESTIGATION

Testimony Preparation

Meet with your attorney and go over data for the second time

- Provide him or her with any new ideas or concerns you have, if any
- Provide him or her with your ideas of questions to ask the other side
- Find out if the attorney has any specific questions of you
- On your own, go back to your knowledgeable friend and duplicate this process

PRETRIAL OR PREHEARING INVESTIGATION

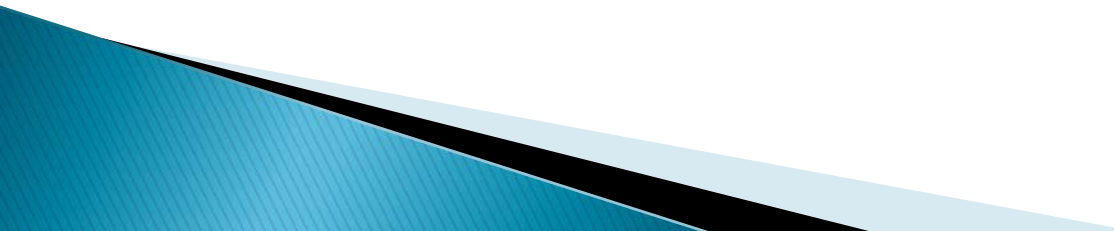
Have your attorney take you through a practice direct examination

- Have it be as real as possible
- Consider what he or she is saying
- It is inexcusable to be confused by your own attorney
 - You should never be surprised by a question or direction the questioning is taking
 - You are a team, to think alike, you must know the same information and direction of questioning
- Assist them with questions, but the attorney understands the flow he or she wants the process to take
- Help with clarification of terms and questions
- TRUST your council – they are on your side
- On your own, duplicate this process with your friend

PRETRIAL OR PREHEARING INVESTIGATION

- ▶ Have your attorney take you through a practice cross examination
 - Make this as real as possible
 - Take your time and listen to what is it being said
 - Have your attorney explain why he or she is asking a particular question or line of questions
 - Learn from the answers that you give, which your attorney feels are improper
 - You want to be asked tough questions now so that it won't be so bad in the actual hearing

PRETRIAL OR PREHEARING INVESTIGATION

- Have your attorney “lean” on you
 - Feel the pressure and get used to it
 - Learn to take mental notes
 - Try to understand where the line of questioning is taking you
 - Take your time with answers.
 - Above all, keep your cool. Your emotions must stay under control
 - On your own, duplicate this process with a friend
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TRIAL DATE: PERFORMING AS AN EXPERT WITNESS

Giving Expert Testimony

Ready for Battle

- Be rested
 - Enough sleep
 - Enough nutrition
 - Enough exercise – this is a tough sport
- Look professional
 - Shorts and sandals will not cut it
 - As soon as you enter the room, you are testifying
 - Coat and tie, without the three stooges on it
 - Neat and kempt appearance is necessary
 - Clothes pressed and clean

TRIAL DATE: PERFORMING AS AN EXPERT WITNESS

- Act professional
 - Speak confidently
 - Don't use slang
 - Don't slouch
 - Be on time
 - Have all of your documents and evidence with you
 - Bring a calculator to check or recheck math
 - Bring a pen and paper along with your work file
 - Don't have a work file, bring a folder with papers in it

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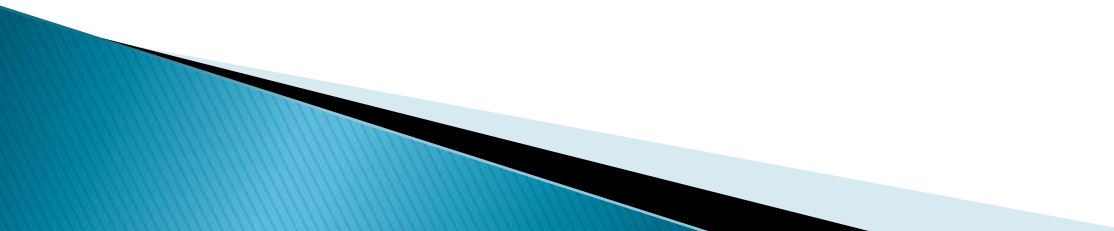
Acting as a witness

- Speak so the judge and court reporter can hear you
 - No one wants to have to strain to hear you speak
 - It can be perceived by some as a sign of weakness
 - It can also be perceived as you being unsure of yourself
- Look at people when you speak and don't ignore the judge or hearing officer
 - This shows sincerity and intimacy
 - It can indicate confidence
 - It gives you a chance to read their eyes – are you boring them or are they keenly interested in your explanation

TRIAL DATE: PERFORMING AS AN EXPERT WITNESS

- Stay alert
 - The opposing attorney will try and trip you up
 - Remember your training with your attorney in pre-trial
 - Listen to the question asked
 - Consider the question and the direction it may be leading you
 - If you need time to think, ask to refer to your notes.
 - Formulate your answer, before it comes out of your mouth
 - Don't answer more than the question.

TRIAL DATE: PERFORMING AS AN EXPERT WITNESS

- Always tell the truth, but don't blab
 - If you don't know the answer, just say so
 - Don't give value estimates that are not part of evidence already – don't shoot from the hip
 - Remember – if you provide a value estimate of any kind, you have provided an appraisal and must have a work file to back it up (this includes estimates of market value, rent estimates, or even stating that you agree or disagree with someone else's value opinion)
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TRIAL DATE: PERFORMING AS AN EXPERT WITNESS

- Keep your emotions in check
 - A little bit of butterflies is OK, probably good
 - Sick to your stomach is not good
 - You are not on trial here, an estimate of value is
 - If you find yourself getting nervous, take a few deep breaths or ask for a drink of water
 - Think of this as a game that you are getting paid to play
 - Remember, you are the professional appraiser here, not the opposing attorney

TRIAL DATE: PERFORMING AS AN EXPERT WITNESS

- General rules of thumb
 - Never take the trial or hearing personal
 - The opposing attorney's job is to trip you up and your job is to not get tripped up
 - Think of the trial as a game, for which you are well prepared. You have done all of your workouts, you know the game plan, and you are ready for battle. Everyone will feel sorry for your opponent, the opposing attorney because you are so good

TRIAL DATE: PERFORMING AS AN EXPERT WITNESS

- Your attorney is there to protect you from any undue abuse, which is more than you have at your counter in the office
 - The judge will also protect you, to some degree
 - If possible, go on the offensive. If you understand where the attorney is going, head him or her off at the pass
 - Play to your strengths. Remember YOU are the professional in appraisal and the attorney is the professional at law.
 - Have fun
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