



# PROPERTY TAX 2019

## SYMPOSIUM

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## **Expert Witness 101: The fundamentals of strategy, selection, and management of appraisers and other expert witnesses**

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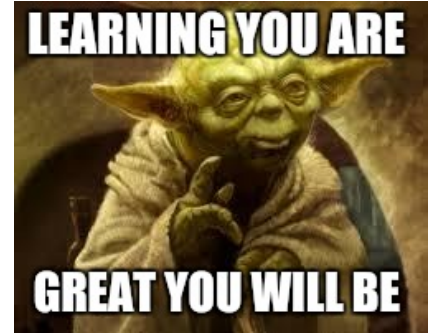
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# Learning Objectives

After attending this session, the attendee will be able to:

- Identify the experts best suited to add value to his or her case;
- Apply a communication strategy with the expert to ensure the client's interest is protected;
- Compare and select experts from various fields to give the client a strategic advantage at trial; and
- Minimize pitfalls that can harm your case or your expert's presentation.





# Litigating Property Taxes

## The Attorney:

- Crafts a compelling and persuasive story





# Litigating Property Taxes

## The Expert:

- Creates the foundation on which the story is built
- Translates complex math and concepts into language the tribunal can digest



# Litigating Property Taxes

## The Expert:

- Produces persuasive, reasoned, credible report
- Defensible
- No errors
- Analyst v. Advocate

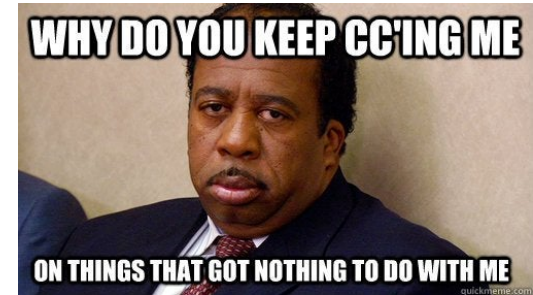




# The Basics – Expert Type

## Testifying Experts

- Show up and talk to the tribunal
- Anything said/given to expert is discoverable
- Assume you are cc'ing opposing counsel





# **The Basics – Expert Type**

## Consulting Experts

- Generally, work product not discoverable
- Unless opposing counsel can get information no other way
- Unless reviewed by testifying expert



# The Basics – Expert Type

## Review/Rebuttal Experts

- Review – commenting on technique and conclusions
- Rebuttal – hard in property tax – implies additional information not known by other side
- Most useful when other side uses a charlatan
- USPAP violations do not move the needle
- Review own appraisal?
- Using your appraiser indirectly as a review appraiser



# **The Basics – Impartiality**

- Avoid hired guns
- Don't overuse experts
- Best experts work for both taxing authorities and taxpayers



# The Basics – *Daubert*

To determine whether method is valid, factors may include:

- Can be or has been tested;
- Subjected to peer review and publication;
- Has a known or potential error rate;
- Standards controlling its operation;
- Widespread acceptance in relevant scientific community

My theories  
aren't generally  
accepted yet.



It's okay if your  
peers don't respect  
you, as long as the  
judge and jury do.



*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)



## Getting Creative

- Most only think of using appraisers
- Most cases, an appraiser and review appraiser are enough
- If there is enough money at issue, other experts may be worth the time and cost





# Getting Creative – Non-appraisers

- Can be used as separate experts
- Appraiser can rely on their contributions for her report (consulting expert)
- Can be independent and produce his own report/testify at trial (testifying expert)





# Getting Creative – Examples

## Engineer/Architect

- Rebut taxing authority's claim that corporate HQ can easily be converted to a successful multi-tenant office building



# Getting Creative – Examples

## Real Estate Expert

- Provide data and insight on the local commercial market to assist an out-of-town/out-of-state appraiser





# Getting Creative – Examples

## Architect

- Estimate the replacement cost new of a super-regional mall





# Getting Creative – Examples

## Environmental Engineer

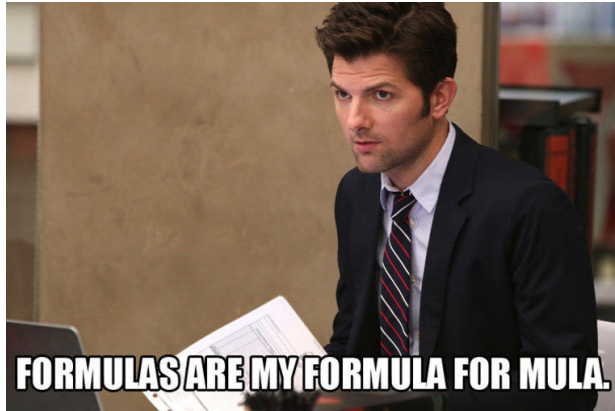
- Support a discount for damage due to failing granite exterior to 14,000 sq. ft. mansion





# Getting Creative – Examples

## Accountant



- Rebut crazy theories by taxing authorities about retailer's investment in personal property



# Getting Creative – Examples

## Site-Selection Team

- Statistically analyze the outrageous location adjustments of the expert retained by the taxing authority



# Getting Creative – Examples

## Realtor

- Testify about the likely purchaser of a mixed used corporate campus (having redeveloped abandoned campus before)





# Appraiser Issues - Timing

- Determining strategy early and engaging your expert
- Jurisdictional requirements
  - Designating experts
  - Producing reports

**TIMING**  
IS EVERYTHING





# Appraiser Issues - Certification

- MAI vs. Non-MAI
- MAI not absolutely necessary
- No guarantee of good report/witness
- Be aware of *Daubert*





# Appraiser Issues - Credibility

- Adverse court rulings: has your expert been excluded?
- Adverse testimony/reports: has your expert taken inconsistent positions?
- Disciplinary issues can be fatal: has your expert been investigated or reprimanded?



# Appraiser Issues - Approaches

- Communicate jurisdictional valuation requirements as that—not as preferences.





# Appraiser Issues - Reports

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- NEVER SEND EDITED REPORT TO EXPERT
  - Screen shares, not emails



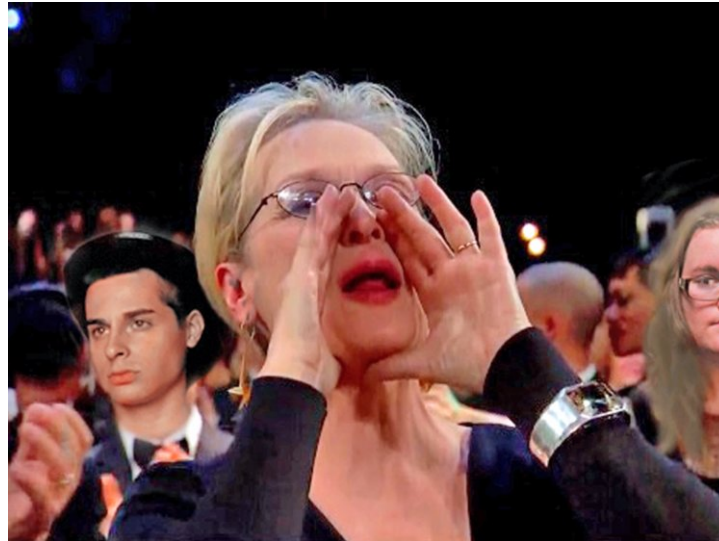
# Appraiser Issues - Reports

- Spend longer thinking about report than writing report
- Remember, every draft is discoverable



# Appraiser Issues - Reports

NEVER SEND EDITED REPORT TO EXPERT





# Appraiser Issues – Work Files

Understand the distinction between

USPAP Work file

**VS**

Actual Work File



# Appraiser Issues – Deposition/Trial

- PREPARATION IS KEY
- Persuasive and compelling testimony
- Look for inconsistencies
- Look for holes in methodology
- Mock cross using prior testimony and report





# Appraiser Issues – Deposition/Trial



- Say less – you never regret saying less, but you may regret saying more
- Simplify testimony for tribunal
- Use analogies to communicate complex concepts



# Appraiser Issues – Biases

- Avoid the appearance of the expert being on your team
- No notes from expert to attorney
- Expert does not sit with client
- Minimal interaction with expert in court







# Contact Information

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