

Condemnation from a Judicial Viewpoint

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● **MANY** appropriation cases, by their very nature, bore the judge, jury, and even the parties and lawyers. Unless they are mathematicians, figures will not capture and hold their interest too long.

Thus, one of the necessary elements of an appropriation case is to get and hold the interest of the judge and jury so that no part of the evidence is ignored, forgotten or overlooked.

It is the author's opinion that the conduct of a successful appropriation case involves three elements: first, appraisers whose credibility is accepted by the jury; second, demonstration to make clear the various facets of the evidence to the jury; and third, dramatization, to impress the jury with the sincerity of the presentation and leave an impression on their minds.

The most important part of an appropriation case is the credibility of the appraisers who are called to place a value on the property taken.

Most appraisers are colorless in their presentation and maintain a remoteness in their conduct.

The end to be achieved is true market value, thus the appraiser becomes an educator and teacher to teach the jury the basis for true judgment. To do this, he must simplify the basis of his testimony, explaining in such a way that the jury can easily follow him as he goes from the simple to the complex and finally sums it up in his opinion. He should carefully explain each step which he used so that the jury will not miss any essential evidence needed to form a judgment of the true value.

Thus, an appraiser must first teach.

To convince a jury that he is right, an appraiser must convince them that though he is hired by one side he would honestly appraise the property the same for the other side.

In a case presented for the condemnation of a filling station on the northwest corner of a street, the state's appraiser had appraised the property on the southeast corner. He used a different method of appraisal in each case. On cross-examination he was discredited by being unable to explain why the difference.

The appraiser must be honest.

He must convince the jury that he has the background to be an expert — educated in appraisals, experienced in sales of all kinds of real estate, knowledge of sales, use, progress and expansion of property and neighborhood.

He must thoroughly investigate and view the premises to be taken.

In one case, for example, the property owner's appraiser had thoroughly gone through the plant and investigated its operation before and afterward. The state's appraisers had not done so. This was one of the elements which caused the jury to believe the property owner's appraiser and not the state's appraiser, and resulted in a verdict for the property owner of almost \$100,000 more than the state's appraisal.

The appraiser must also be able to paint word pictures for the jury with understandable language.

Thus to be accepted by the jury, the appraiser must be fair, honest, thorough, educated, trained, personable, and able to create in the jurors' minds a belief in his integrity and ability.

The second element is demonstration. Too often the case is presented to the jury on maps and oral testimony. Experience has shown that people remember more details longer when presented to them by models, more than pictures, pictures more than maps, maps more than testimony.

In a case presented to the author, the company had a packing house located on 4.3 acres of ground in the middle of Columbus, fronting on West Mound Street. The state

took 1.3 acres off the front for an interchange. This 1.3 acres did not touch the main buildings. It took the millwright and paint shop, garage, yard office and filling station, scale house and tip, men's locker room, ladies' locker room, and office. These last three were old houses which had been remodeled.

The attorney for the property owner had a full scale model made whereby he could detach the part taken as well as the separate buildings. He detached them at various intervals during the trial and when the amount taken, or the building was separated, from the main building, it demonstrated to the jury how the operation would be curtailed after the taking.

This was one of the elements which caused the jury to bring in a verdict for the property owner of almost \$100,000 more than the state's appraisers had set as market value of the part taken and the damage to residue.

The author has passed this area many times since the taking and the building of the interchange and feels that if the state had made a model showing the operation and location of this plant after the interchange was built, they might have reduced the amount of the verdict.

The third element is dramatization. The intrinsic, sentimental values wrapped up in property taken, or the public use to which the state is going to put it are too often forgotten.

The intrinsic, sentimental value is wrapped up in location, use, advantage of ownership, family inheritance, home, vicinity, transportation and other elements.

The intrinsic, sentimental values from the appropriating authority are: ease of travel, vacation, safety, pleasure, food, clothing, ambulances, doctors and others.

These values are those which impress and stick with a jury.

The juries have been conditioned by television, radio, motion pictures, newspapers and magazines and have come to appreciate the dramatic. The dramatic also tends to more thoroughly impress the facts on the juries' minds.

The use of drama was brought home in a very mundane case, involving an appropriation of a filling station. The oil company admitted that the station was not a top-notch producer, but that it had advertising and training value, so all through the trial the attorney kept before the jury the word "prestige". This is "a prestige station". It must have impressed the jury, because it was one of the elements which brought the property owner a verdict of almost \$140,000 more than the state's appraisal.

In another case where the state was taking the chicken houses and front of a veteran's chicken farm, leaving him no direct outlet on the highway, the attorney subtly dramatized a veteran in the trenches dreaming of his own business, and now, he was willing for progress to take his farm — but, what was left!

The purpose of appropriation is not to cheat either side, but to arrive at true market value. The author has tried to show that the elements going to make up true market value are human elements. Thus, to impress or convince the jury of and receive true market value the evidence has to be presented demonstratively and dramatically with honest performers, relying on the integrity of the jury-audience to bring back a fair and impartial verdict.

If both sides are thorough, true value will always be the result.

Every lawyer, in preparation, should ask himself: first, how can I best present my witnesses that the jury will be convinced of their honesty and integrity?

Second, how can I demonstrate my facts to create in the jury's minds the picture of the whole transaction to warrant a verdict?

Third, how can I dramatize my case so that I can maintain the jury's interest?