

A Uniform Expert Valuation Testimony Act

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One of the difficulties which tends to make the process of evaluating condemned land confusing and uncertain is the disparity in estimates of different expert witnesses testifying to the value of a parcel of land. This situation might be improved by a statute which clearly sets forth the role of the expert witness; who could qualify as an expert; what he would testify about; how his testimony is to be presented; and how the jury should consider his testimony. Such an act could well promote a more orderly process of land acquisition which would in turn benefit the whole highway program.

● DURING a recent condemnation case, expert valuation witnesses differed in their estimates by an incredible 800 percent. If this were an unusual event it could be noted with little more than a raised eyebrow. Wide deviations of this magnitude, however, are being observed throughout the nation. The seriousness of such appraisal variations is spotlighted by the fact that an increase of only 10 percent in the cost of right-of-way for the Federal Interstate Highway Program will result in the additional expenditure of approximately two billion dollars.

How can the wide variations in the testimony of expert real estate valuation witnesses be reduced? There are two possible answers. One solution would be to eliminate the jury system of awarding damages in condemnation cases. A recent study has indicated that condemnation jurors have a pronounced tendency to arrive at a quotient verdict — that is, a verdict approximately midway between the amounts to which the expert valuation witnesses for each litigant have testified. Thus, the higher the testimony of the real estate appraisers representing the condemnee, the higher the probable verdict. Conversely, the lower the testimony of the witness for the condemnor, the lower the ultimate verdict. Obviously such a system leads to extreme bias or worse.

Unfortunately, the states which have adopted the tribunal system in lieu of the jury system have not eliminated the wide variations in appraisal testimony. The jury system for awarding damages may prompt bias or intellectual dishonesty but the elimination of the jury panel does not cure these moral diseases.

A second solution would be the establishment of uniform expert testimony acts. The term "uniform expert testimony act" now has a specific connotation in those states which have adopted such a statute. The act is an attempt to remove the paid partisan status of the expert witness. Its antecedents may be found on the European Continent where the expert witness is an officer of the court and not called by the parties.¹ In the states which utilize the expert testimony act, the expert is appointed by the court although he is not, technically, an officer of the court. The act does not pre-empt either or both parties from calling as many other expert witnesses as they may desire. As one authority explains the act:

The uniform expert testimony act provides, in brief, that when issues arise in a case where the court deems that expert evidence is desirable, the judge may appoint one or more experts of his own choosing who should make an examination of the....subject matter in controversy and report to the court their conclusions.^{2/}

^{1/} Orgel, Lewis, "Orgelon Valuation Under Eminent Domain." Second Edition, Charlottesville, The Michie Co., p. 249 (1953).

^{2/} Tracy, John Everts, "Handbook of the Law of Evidence." Prentice-Hall, Inc., New York, p. 217 (1952).

While such a uniform expert testimony act may eliminate bias on the part of witnesses, it should be strengthened to eliminate incompetence as well. A comprehensive analysis of 794 pages of transcripts from condemnation cases indicated that witnesses for the same litigant were also subject to wide variations in their opinions of value.³ Bias or intellectual dishonesty could not account for these variations. Only the inexact nature of real estate appraisal or the incompetence of some of the witnesses could be blamed for wide variations of opinions between experts representing the same party in a condemnation case. Let us first examine the question of incompetence and see how a uniform expert testimony act could reduce the number of incompetent appraisers who testify as expert valuation witnesses.

As a bare minimum, no witness should testify to real estate values who is not, or has not been, a licensed real estate broker. All but two of the states have real estate license laws but only a few states forbid an unlicensed person from rendering appraisals of real estate. Exceptions could be made to permit court testimony by officers of financial institutions or responsible employees of government agencies whose principal activity entails the appraisal of real property.

Above a certain minimum property value, such as the \$25,000 minimum set by the Bureau of Public Roads for two or more appraisals, all condemnation appraisals should be made only by members of accredited, professional appraisal societies. Members of the American Institute of Real Estate Appraisers and the International Society of Residential Appraisers have been qualified by age, experience, investigation, and examination to appraise certain types of real property. They should be used within their fields of experience.

If sole reliance upon existing appraisal societies would seem to deny appraisal practice to qualified non-members, courts could establish a series of comprehensive examinations for those who wished to testify in condemnation cases. Separate examinations could be provided, if desired, for residential, commercial, industrial, or agricultural appraisals.

Another valuable contribution to a uniform expert testimony act would be the requirement that all appraisal reports would be made available to the opposing attorneys and to the bench before trial, as well as to members of the jury during the course of the litigation. It is true that a requirement of this type would strengthen the position of the cross-examining attorney at the expense of the expert valuation witness. It is also probably true, however, that the submission of appraisal reports would result in the reduction of incompetent appraisers, the decline of biased testimony, and the thinning out of court dockets as more cases were settled.

With the myriad of condemnation statutes in use throughout the various states it is perhaps hopeless to expect a really uniform expert valuation testimony act to be enacted by all fifty states. Each state, however, should consider the enactment of laws which will provide for a greater degree of competence and a lesser opportunity for bias among expert valuation witnesses.

The Federal Bureau of Roads should take the initiative by demanding that all appraisers who testify in court actions involving the interstate highway system should meet minimum standards of competence and be removed, as fast as possible, from situations leading to bias, prejudice, or intellectual dishonesty.

The appraisal of real estate interests should not be expected to become an exact science. Real estate valuation has developed as a specialized practice only within the past three decades. Remember that with all of the strides made by medicine over the centuries, top rated physicians may hold diametrically opposed opinions when testifying as medical experts.

Too many real estate appraisers, however, are using the inexactitudes of valuation as a crutch to support variations in estimates which could only result from incompetence or dishonesty. A uniform expert testimony act should eliminate much of this abuse.

3/ Bonner, John T., Jr., "A Study of the Persuasion of Juries by Expert Witnesses in Condemnation Cases." Unpublished Ph.D. Dissertation, The Ohio State University, 174 pp. (1954).