The following article is to be presented at the Eminent Domain Conference, CLE International; August 12-13, 1999, Austin, Texas.

The Attorney/Appraiser Relationship in the Eminent Domain Process

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Let's face it. Most condemnation attorneys who have been doing this for awhile fancy themselves pseudo-MAI's, with occasional flashes of inspirational theoretical brilliance in the science of real estate appraisal rivaled only by those of the late, great Pete Ellwood. Left to their own devices, they would happily take the stand on their client's behalf, waxing eloquently on the finer points of comparable data, discount rates, present values, and (of course) ultimate compensation. Appraisers, on the other hand, generally view *themselves* as the master composers of the case, orchestrating and primarily starring in the presentation of the evidence, their tolerance of the often-bothersome inevitable attorney necessitated only by the appraiser's lack of that fairly insignificant but technically-required formality known as a law license.

In short, attorneys are from Mars and appraisers are from Venus.

Nevertheless, the two find themselves having to work together in almost every single condemnation case. Here is the essential dilemma: a lawyer is a sworn advocate for his client; an appraiser is prohibited from being an advocate for his client. Yet, in the eminent domain process these two professionals with often clashing ethical responsibilities must find a way to mesh their positions in the way that best benefits their mutual client. An awareness of some of these inherent differences is helpful to both the attorney and appraiser when approaching the attorney/appraiser relationship.

This paper examines some major aspects of the appraiser/attorney relationship in the eminent domain process and endeavors to explore them from both perspectives.

The Fee Contract

Who is the client? The threshold issue in the attorney/appraiser relationship is who the appraiser is actually working for, the attorney or the client. In almost all instances the appraiser is working for the client (landowner or condemning entity) and so the appraiser's written fee arrangement should be with the client. An exception, of course, would be when an appraiser has been retained by an attorney to act in a purely consulting role. In this case, it is acceptable for the appraiser to contract with either the party-client or the attorney.

Prior to accepting employment, however, the appraiser has the duty and obligation to clarify several potential issues, including at least the following:

- Any conflicts of interest which would prevent the appraiser's certification as required

by the Uniform Standards of Professional Appraisal Practice;

- Define the appraisal problem (to the extent of the available information);
- Determine from the attorney if he has already made preliminary representations to the client about the value of the client's case;
- Determine the amount of information which will be available (surveys, plats, operating statements, etc.);
- Inform the attorney about the duties and obligations of an appraiser; and
- Discuss the appraiser's expected role.

Professional recommendations. Attorneys are often requested (or indeed expected) to recommend the appraiser-expert for their client. There are generally no ethical concerns attached to this process, except when the attorney may be personally aware of prior professional misconduct or just plain old bad performance on the part of the appraiser he would otherwise prefer to recommend. In that instance, the attorney should apprise the client of his concerns and explain why the attorney wishes to use the appraiser anyway.

Another potential problem is when the appraiser "brings" the case to the lawyer. Occasionally, a client will contact the appraisal professional first and seek his advice about which attorney to hire. This works fine unless the recommended attorney doubts the professional competence of the recommending appraiser. Although somewhat awkward, in this circumstance the attorney has an absolute ethical duty to advise the client that in the attorney's opinion another expert witness would better serve the case.

Inexperienced counsel. Perhaps a far more common occurrence, however, is when an experienced litigation appraiser finds himself retained by a hopelessly inexperienced attorney, and the appraiser can detect from prior experience that the case is not being handled from the legal end in the most effective way. Unlike the attorney, not only is it *not* the appraiser's ethical responsibility to inform the client the case may be getting fouled up but it would be manifestly improper for the appraiser to do so. However, it does not behoove the appraiser to leave his head in the sand either, because ultimately it will be opposing counsel that will come chop it off.

A potential compromise: suggest to the attorney helpful anecdotes from other cases the appraiser has been involved with that were handled by more experienced condemnation counsel. Perhaps the appraiser may even recommend in a friendly way that the less experienced attorney contact the trial counsel in those other cases for some general guidance.

Fee Contract Document. The relationship between the client and the appraiser should generally be documented in a written fee agreement prior to the appraiser beginning any substantive work on the project. Failure to formalize the agreement up front may lead to problems later for both the attorney and the appraiser. Whether it is a misunderstanding of the scope of services that were to be performed, "sticker shock" at the ultimate invoice, or dissatisfaction with the outcome of the litigation, there are few good results from not having a formal written fee agreement.

The contract should not only formalize the amount to be charged, but also explicitly set out the USPAP reporting option for the appraisal report (Self-Contained, Summary, or Restricted Use)[1] and any other services to be performed in addition to the appraisal. An appraiser should specifically include language in the fee agreement for services not strictly related to the appraisal report. For example, the appraiser may be asked to assist the attorney in the preparation of exhibits, to obtain and confirm raw data that will be used in cross-examination, or other tasks. If the appraisal fee agreement does not contain a provision for these "extra" services, the potential for disagreement arises.

Above all, the contract should make explicit that the appraiser's compensation for completing the assignment is not contingent upon any predetermined result.

Attorney's role. The attorney should avoid becoming an outright party to the appraiser/client relationship. As a practical matter, however, the attorney is often called upon by the client to clarify the fee agreement, to detail the breadth and scope of a litigation assignment, and to explain why the fee in a condemnation case is usually a good deal higher than a conventional "bank" appraisal. The attorney should not, of course, urge the client to hire a particular appraiser at any cost. If push comes to shove and the attorney finds himself presented with a fee-related question that is truly only best answered by the appraiser, then the attorney should suggest the client call the appraiser and see if there is any middle ground concerning the fee. The reality of litigation appraising, however, is that it *is* a good deal more time-consuming and demanding than conventional appraisal work, necessitating a larger fee, and the attorney consequently often finds himself acting as something of a cautious mediator on the issue.

Communications Between the Attorney and the Appraiser

It benefits both the attorney and the appraiser to have open lines of communication throughout the litigation. Since virtually all written communications are subject to discovery, however, it is wise to limit those things you choose to say to your witness in a letter, fax, e-mail, or other "hard-copy" format. Generally, if communications involve somewhat sensitive areas such as potential comparable sales, disagreements about capitalization rates, accumulated depreciation, or in fact any substantive matter about the appraisal or litigation itself, telephones and face-to-face meetings remain the most effective way to communicate. Such non-written exchanges are usually documented, if at all, only in calendar entries or day-timer notations. The resulting inherent ambiguity of what precisely transpired or was said at these meetings or conversations generally works to the client's benefit later when answering discovery or during the appraiser's deposition.

"Get it in writing." To avoid subsequent heartache, there are some things which absolutely must be communicated to the appraiser in writing. At minimum, the attorney should write the witness early on after his engagement and make explicit the expected due date for the appraisal, any existing discovery deadlines, the date for the special commissioners' hearing or trial, and any other date that is critical for the expert to know when scheduling his workload. Should the attorney be providing the expert with legal instructions to utilize in the formation of his opinions, both common sense and USPAP require these to be explicit and written. In addition, the appraiser should be provided with at least the following items at the outset of the assignment:

- Current live petition;
- Survey of whole property or at least a detailed description;

[1] Uniform Standards of Professional Appraisal Practice, 1999 Edition. Appraisal Standards Board of the Appraisal Foundation. (Hereafter "USPAP"). Standard 2.

- If property is income-producing, copies of current rent roll and expenses; and
- Plans and specifications for improvements, if present.

If the case involves a partial taking, the attorney must also of course provide the appraiser with a right-of-way schematic showing the land taken and remainder, as well as construction documents showing the proposed public improvements planned for the part taken.

From the appraiser's perspective, information received from any source, including the attorney, should be as complete as possible. If the information is in any way subjective, such as the details of a particular comparable transaction or information about the subject property itself, the appraiser should independently investigate and verify the details. In the case of legal instruction, it is improper for an Appraisal Institute member to accept without question a hypothetical condition, and any such hypothetical condition must be plainly disclosed in the body of the report.[1] As one authoritative source has said:

> Instructions by the attorney to the appraiser on a matter of law are certainly a proper element to be expressed in the attorney-appraiser relationship, but instructions to the appraiser on valuation are another matter. The appraiser has the choice of accepting or rejecting the attorney's premise. *Once accepted without reservation, the premise becomes the appraiser's responsibility.*[2]

Before using information from other expert witnesses provided to the appraiser, such as land planners, cost estimators and the like, the appraiser must consider among other things the criteria under which the other expert information was prepared, and the process used by the appraiser to evaluate the information provided by the other expert.[3]

What's privileged and what's not? While you must provide your appraiser with the raw data and instructions he needs to begin and complete his appraisal, the attorney should exercise extreme caution to protect against giving the expert something the attorney does not want the other side to see. The conservative approach is not to share *anything* with your appraiser which may come back and bite. That way, the question of whether or not a piece of disclosed data is privileged never comes into play.

One hapless local attorney several years ago made the unfortunate error of copying his appraiser with an internal case analysis memorandum exploring the strengths and weaknesses of their mutual client's case. During the appraiser's deposition, much to his delight opposing counsel discovered the tell-tale memo when examining the appraiser's working file. While the following exchange never made it into Buchmeyer's Et Cetera column, it may be helpful to recount it here (some names have been changed to protect the guilty):

Q. Exhibit No. 8 came out of your file. It appears to be a review of the special commissioners' hearing?

A. Yes.

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[1] Code of Professional Ethics of the Appraisal Institute, Canon 3, E.R. 3-5.

[2] Eaton, J.D., MAI, SRA. Real Estate Valuation in Litigation, Second Edition. Appraisal Institute, Chicago, Illinois (1995). P. 540.

[3] Guide Notes to the Standards of Professional Appraisal Practice of the Appraisal Institute, Guide Note 6.

Q. By the [Unfortunate Lawyer's] office?

A. Yes.

Q. And it includes an analysis of this case and –

UNFORTUNATE LAWYER: Jesus Christ, I can't believe you left that in your f****** file!

THE WITNESS: I can't purge my file.

Q. A memo written by Unfortunate Lawyer; is that correct?

A. Yes.

Q. These materials were supplied to you by [Unfortunate Lawyer's client]?

A. This came to my office from the [Unfortunate Lawyer's] office, yes.

Even under the new rules of civil procedure, an attorney could not recover from a gaffe like the one here illustrated because the new rules only protect accidental disclosure of those documents which are *privileged*[1] Since counsel in the above example had already shared the internal memo with his appraiser, any privilege attached to it was forever lost, along with in all probability a bit of Unfortunate Lawyer's trial strategy.

Client communications. Obviously, the appraiser must communicate directly with the client at the outset and during the appraisal assignment. Many times, the appraiser will need information about the subject property uniquely in the client's possession: rent rolls, size of the property, recent renovations, and similar materials. It may also be helpful for the appraiser to talk to the client about the client's ideas of value, and the bases for those ideas. While the appraiser must form his own independent conclusions about value, there is nothing wrong with the appraiser discussing valuation with his client during preparation of the appraisal report.

Whole forests of trees are sometimes felled for a single condemnation case. Typically, during the appraisal process the appraiser will accumulate reams of documents such as comparable sale data, notes, maps, plats, general property information, pleadings, amended pleadings, discovery requests, deposition notices, correspondence and the like. Prior to the attorney's receipt of document production requests, the appraiser should retain all these materials as a matter of good business; after the attorney receives document production requests, usually the appraiser *must* retain them. Modern discovery is quite broad and generally includes everything an appraiser looked at or considered in the formation of his opinions.[2]

It is potentially thorny when an attorney – whether by accident or design – shares certain written information with the appraiser which the attorney later determines may be harmful if discovered by his opponent. The attorney's duty is to figure out a way to prevent disclosure to the other side, if legally possible. The appraiser's duty is to steadfastly maintain his objectivity and integrity. Ethically, once opposing counsel has requested production of the appraiser's file materials, the appraiser must keep his file intact. The best practice to avoid future misunderstanding is to make

[1] TEX. R. CIV. P. 193.3(d).
[2] TEX. R. CIV. P. 194.2(f)(4), 192.3(e).

the attorney aware from the outset that the appraiser intends to keep *everything*.

Attorney-client communications. Generally, attorney-client communications should remain exactly that. The Texas rule that privileges these communications makes no allowance for an expert witness to be present.[3] No matter how tempting it might be for the attorney to include the appraiser in on otherwise-privileged strategy sessions with the client, it is a bad idea. First, anything said in front of the appraiser cannot be privileged as a matter of law. Second, should the client mention something during the course of the discussion that conflicts with a conclusion made by or an assumption relied upon by the expert, ethically speaking the appraiser may have to reanalyze his opinions in light of the new data. In any event, the appraiser may certainly end up being deposed or cross-examined concerning sensitive conversations to which he was a party.

Preparing for Hearings or Trial

Independent expert or consultant? Given the close working relationship that attorneys and appraisers find themselves in during preparation of most eminent domain cases, it is natural that the attorney sometimes begins to rely upon the appraiser as a trial consultant as well as an objective, unbiased expert witness. For instance, it is not at all uncommon for counsel to ask the appraiser to re-verify the details of market transactions used by the other side's witness, or perhaps to obtain development permitting documents concerning this sale or that.

This practice, however, can easily imperil the objectivity and credibility of the appraiser if taken too far. Many attorneys ask that the appraiser attend hearings, depositions, meetings and other functions for the purposes of assisting the attorney in roles other than presentation of the appraiser's own opinions. These kinds of functions are not typically considered part of the appraisal process and dilute the appraiser's apparent objectivity.

USPAP demands that an appraiser preparing an appraisal for litigation or otherwise be strictly objective. That requirement is embodied in Standard 2-3, which contains a number of mandatory reporting certifications, including the following:

C I have no (or the specified) present or prospective interest in the property that is the subject of this report, and no (or the specified) personal interest with respect to the parties involved [in the litigation].

[3] TEX. R. CIV. EVID. 503(B)(1).

C I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.[1]

Consider now the hypothetical example of an appraiser who has just completed giving his testimony at a Special Commissioner's Hearing and then takes a seat next to "his" attorney and promptly commences whispering cross-examination hints, passing notes, and otherwise demonstrating an obvious preference for the proceeding's outcome. In the authors' opinion, this conduct not only smacks of advocacy on the appraiser's part but also constitutes violation of the two above-cited certifications. From the point-of-view of the finder of fact, this type of conduct may also make the attorney seem inexperienced or incompetent.

Again, a conflict here exists between the attorney and the appraiser. As the client's sworn advocate, the attorney naturally attempts to employ all readily-available resources in the prosecution (or defense) of his client's case. Although it is not an ethical breach, the attorney does however make at least a tactical error when he compromises his appraiser's credibility by asking him to go too far in assisting with aspects of the case beyond presentation of the expert's own opinion. Conversely, an appraiser *is* arguably ethically prohibited from participating in the case as anything other than an advocate for his own opinion. Ideally, the appraiser should make it plain from the outset that he is not free to "consult" in any way that calls into question his own objectivity.

[1] USPAP Standard 2-3.

Standard 3 issues. A related subject is a testifying expert's review of the opposing appraiser's report. USPAP defines *review* as "the act or process of critically studying a report prepared by another."[1] The USPAP requirements for conducting an appraisal review contained in Standard 3 are fairly extensive and departure from *any* of the requirements is not permitted.[2]

If an attorney sends his opponent's appraisal report to his own appraiser and requests he look the opposing appraisal over and advise the attorney as to what is wrong with it, does that constitute a USPAP review? You bet it does. The problem arises in that Standard 3, just like Standard 2, requires that the *reviewing appraiser* certify that he has no personal bias or interest with regard to the property or persons involved in the case.[3] If the "reviewing" appraiser has already formulated his own opinions of value, he is plainly not free to believe that the opposing appraiser has done the assignment correctly if the appraisal conclusions are different. In other words, once the appraiser completes his assignment, he *does* have a bias with regard to the property; that bias is his opinion of value.

After the appraiser makes the required Standard 2 certification, he becomes an advocate, but only of his *own* opinion. It is unreasonable to assume that he can then complete an unbiased review of a competing appraisal reaching a (usually widely) different conclusion. In the authors' opinion, an appraiser who has already formed an opinion of value is ethically constrained from performing a review of a competing appraisal in the same case.

Standard 3 does not prevent the appraiser from assisting the attorney in some other ways. For instance, purely factual inquiries such as the details of market transactions, zoning requirements, physical characteristics of properties, or the textbook technique of one appraisal approach or another would not cross the line. Reconstructing another appraiser's income approach or discounted cash flow analysis by substituting different assumptions, on the other hand, *is* obviously one example of the "critical studying of a report prepared by another" and thus ostensibly prohibited by USPAP where the reviewing appraiser has already formulated a competing value opinion.

The solution to this conflict is that if the attorney truly needs an appraisal consultant, then he should hire one and keep his testifying expert's integrity intact. According to Real Estate Valuation In Litigation:

> Attorneys should consider retaining a consultant under four circumstances. First, if the attorney has very little condemnation experience, the consultant can be of invaluable assistance. Second, a consultant may be useful in a complex case because the appraiser who is preparing for his own portion of the trial may not have enough time to assist the attorney in preparing other portions or elements of the trial. Third, if the case involves very technical appraisal methodology, even a seasoned condemnation lawyer may need assistance in preparing for and conducting the trial. Finally, a consulting appraiser can be very useful in jurisdictions in which *the rule* is typically invoked.[4]

The appraiser should neither accept nor allow the attorney to coerce him into the ethically irreconcilable dual roles of objective expert and consultant-advocate.

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[1] USPAP Definitions.
[2] USPAP Standard 3-1, 3-2.
[3] USPAP Standard 3-2.
[4] Eaton, J.D., MAI, SRA. Real Estate Valuation in Litigation, Second Edition. Appraisal Institute, Chicago, Illinois (1995), p. 459.

Draft reports. Another area of potential conflict between attorneys and appraisers is the preparation and sharing of "draft reports." As the person ultimately responsible for marshaling and presentation of the case evidence, attorneys sometimes slip into thinking of the appraisal report as just another exhibit to be manufactured and refined as trial approaches. Such thinking is a grave error for both the attorney and the appraiser.

Of course, the attorney has a legitimate need to know ahead of time where the appraiser is going with his theories, his data and – yes – his conclusions. However, the general thrust of the appraisal and its bases can generally be gleaned through meetings and telephone calls without requiring the appraiser to provide the attorney a draft.

There is no ethical problem with the appraiser sitting down with the attorney before completion of the report and discussing its direction in a way that fully informs the attorney. There is an ethical problem for the both the attorney and the appraiser, however, in "losing" a draft report otherwise subject to discovery that contains potentially harmful material that would make great cross-examination fodder.

Appraisal data and theories: legal issues. During preparation of the report, the attorney and appraiser should work closely to ensure that the final product will be legally admissible. If the appraiser determines early on that he needs to employ somewhat unconventional data or methodology because of special circumstances, he should discuss that fact with the attorney immediately and get appropriate legal instructions or give the attorney an opportunity to secure a favorable ruling from the court.

For example, if the appraiser is analyzing a special use property and is only able to locate comparable data in a distant county, that fact needs to be shared with the attorney. That way, both can decide whether it makes sense to complete the appraisal on that basis or whether a preliminary ruling would be wise.

Coordination with other experts. It is the attorney's responsibility to ensure that all of the experts are coordinated and understand one another's roles. For instance, if land planning witnesses are involved, they must be unequivocally advised that early completion of their opinions is a prerequisite for completion of the appraisal opinions. Appraisers who are members of the Appraisal Institute must adhere to Guide Note 6 in reliance on reports prepared by others.[5] If true consulting experts are a part of the case, attorneys must take care to totally insulate the work product of the consultants from the testifying experts so that the privilege associated with the consulting experts is preserved.[6]

Preparing the Appraiser to Testify

This is obviously a very important aspect of the attorney-appraiser relationship. No matter how experienced the attorney or appraiser is, or how many times they have worked together on different matters, a failure to thoroughly prepare the appraiser to give testimony at a commissioner's hearing, deposition, or trial is always a fatal mistake.

Preparation of Exhibits. Well before the appraiser is to give sworn testimony at a hearing

[5] Standards of Professional Appraisal Practice of the Appraisal Institute, Guide Note 6.
[6] TEX. R. CIV. P. 192.3(e).

or trial, he and the attorney should coordinate on the exhibits that each believes would be helpful to the presentation of the appraiser's testimony. Generally, this process begins with an examination of the appraisal report and an enlargement of certain pages or images that tend to accentuate the testimony. The appraiser's role in this process is to help the attorney separate the wheat from the chaff; the attorney's role is to ensure that no potential trial exhibit gets created that contains either outright inadmissible information (i.e.; a listing rather than a comparable sale) or one that contains information that may be otherwise harmful to the case. One note: the appraisal report itself in its entirely is generally *not* a good exhibit. Apart from the fact that it constitutes absolute hearsay, most appraisals contain information that would be either confusing or outright boring to the finder of fact. Just hit the high points.

Commissioner's Hearings. Amendment of the Property Code in 1995 to provide for mutual disclosure of appraisal reports in Texas prior to the hearing[7] has rendered Commissioner's Hearings in this jurisdiction something less than the Wild West shows they used to be. Undoubtedly, though, enforcement of the rules of evidence and procedure remain typically much more relaxed in these hearings as opposed to trials. However, the appraiser must still be prepared to fully present his opinions, rationales and – unlike a jury trial – also be prepared to answer not only cross-examination questions from opposing counsel but also the sometimes more difficult to answer spontaneous questions from Special Commissioners. It goes without saying that both the attorney and the appraiser should be intimately familiar with all the data expected to be presented from both sides. It is sometimes helpful a day or so before the hearing for both to reinspect all the data and discuss presentation of the appraiser's opinions.

Depositions. In most reasonably complex modern eminent domain cases, the appraiser's deposition is not the first one taken. For instance, in cases where land use regulations have become a key issue, land planners are often involved and the course of discovery finds their depositions being taken first. In preparing the appraiser for his deposition, it is perfectly appropriate (and indeed desirable) for the attorney to discuss with the appraiser the course the case seems to be taking without suggesting direct testimony for the appraiser to give. Similarly, should potential logical errors, factual errors, or inconsistencies in the appraiser's report come to light in earlier depositions, the attorney should make the appraiser aware of those facts. The appraiser should have an opportunity to either correct the errors or have ready explanations for why the appraisal analysis was done correctly.

In discussing with the appraiser the character of his deposition responses, he should of course be advised to always answer truthfully but not to volunteer anything. The appraiser is retained to fully and convincingly explain his value conclusions to the finder of fact, *not* opposing counsel. Sometimes appraisers feel compelled during depositions to launch into "Appraisal 101," explaining the rudiments of capitalization rates or cost approach theory to some seemingly ignorant deposing attorney, only to have textbook inconsistencies read back to them at trial.

Defending depositions has become much simpler under the new rules. The only allowed objections to questions are "objection, form" and "objection, leading;" to testimony, the only objection is now "objection, nonresponsive."[8] With those two exceptions, the non-deposing attorney is generally obliged to not interrupt unless under very limited circumstances.[9] The appraiser should be made well aware of the defending attorney's new restrictions against frivolously interrupting the deposition to "break the examiner's flow" and be accordingly wary.

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[7] TEX. PROP. CODE. ANN. Sec. 21.0111 (Vernon 1995).

[8] TEX. R. CIV. P. 199.5(e).

[9] **Tex. R. Civ. P. 199.5(f).**

Trial testimony. From the appraiser's viewpoint, the process of preparing for trial should be rather simple if adequate preparation has preceded the actual trial. The appraisal report should, at this point, have withstood the scrutiny of both attorneys, probably a review appraiser (whether or not a formal review has been made), discovery, and deposition(s). The appraiser should be generally aware of the attorney's trial strategy because, usually, other expert witnesses will testify and now is the time to discuss any potential for conflicting testimony. Rulings by the court, motions in limine, and any specific rulings special to the case should be thoroughly understood by the appraiser before he takes the stand.

Direct testimony is the apex of attorney-appraiser relationship. The questions and answers should not of course be orchestrated to the extent that the exchange seems rehearsed. However, a clumsy, ill-prepared presentation renders the testimony ineffective. The obvious solution is thorough preparation by both the attorney and appraiser. It is important for the attorney to remember during preparation of his direct examination and of the appraiser that the appraiser – not the lawyer – should be in the spotlight during direct examination.

Introduction of exhibits should be straightforward with no drama. However, if the attorney has not carefully thought out his evidentiary predicate or –worst of all – can not easily lay his hands on the desired exhibit, what should be a smooth demonstration of the attorney's competence and the witness's credibility rapidly degenerates into chaos. The attorney should make sure the appraiser knows ahead of time not only what exhibits the attorney intends to introduce through him but also the necessary predicates that must be laid.

Cross-examination. Much to his usual chagrin, the appraiser cannot ask the questions, only answer them. The nature of the system puts the appraiser at a substantial disadvantage while on the witness stand. The relationship between the attorney and appraiser breaks down, if, on cross-examination, the attorney does not defend the appraiser when possible if questioning becomes abusive or veers into a clearly inappropriate area. While the appraiser is obviously somewhat on his own during cross-examination, he is also not free to lodge objections like "relevance" and "badgering the witness" when such are occurring. That is the lawyer's job. While too much interfering by the lawyer may affect the appraiser's believability, a jury generally will not punish a witness for the sponsoring attorney putting a stop to a cross-examination that has gotten out of hand.

Conclusion

If the attorney is the quarterback in an eminent domain case, then the appraiser is the running back (well, in all honesty, sometimes more like the wide receiver). It is the lawyer's job to get the ball as far down the field as he possibly can; the appraiser's job is to carry that ball but to stay within the sidelines set up by USPAP, case law, and the appraiser's own unique set of ethical responsibilities. If both professionals remain aware and respectful of one another's sometimes competing goals and responsibilities, a successful relationship that best benefits their mutual client will result.