I. Attacking the Government’s Case from an Owner’s Perspective

A. Steps in initially being retained to represent an owner in a Roadway Taking case.

1. The attorney should review the initial offer with the client;
2. Review the written appraisal accompanying the offer;
3. Review any engineering opinions, the parcel plat, the nature of the take, and highway plans;
4. Interview the owner and understand the owner’s concerns;
5. Tell the owner the type of experts needed to make a defense and the projected costs;
6. Explain the process and the timing;
7. Explain quick-take;
8. Explain the type of issues that harm a property but are not compensable if at issue;
9. Usually calm the owner that the case is not a personal vendetta against the owner by the government;
10. Explain the very limited traverse and motion to dismiss options available: the chance of success and the limited relief;
11. The negotiator for the government is a key person to work with the owner’s attorney;
12. Almost always let the government’s appraiser inspect the property;
13. Prepare documents to give to the government appraiser or engineers that help explain the owners concerns.
14. As the attorney when can you tell an owner to settle before a complaint is filed.

II. Traverse on Motion to Dismiss

A. Against a highway taking:
   a. The only effect even if successful is delay;
   b. Judiciary has limited review of highway take;
   c. Bona fide attempt to agree can be reviewed;
   d. If successful it only delays the take without much benefit to the owner.
III. Selecting Experts

A. Type of expertise needed

1. A valuation witness who understands partial takings;
   a. For a full take or a large acreage take:
      - A broker can be a great valuation witness but they cannot address damage to the remainder or easement value.
   b. Local experience; experience for the government and owner;
   c. Fees of the expert and the size of the case.

2. Engineering expert:
   a. Access
   b. Parking
   c. Reviewing the government plans
   d. Drainage

3. Land Planner
   a. Highest and Best use (large vacant mostly)
   b. Change of Highest and Best use
   c. Reasonable probability of rezoning

4. After experts are selected there must be communication the appraisers need to know what the engineer’s opinions; give your witnesses everything.

IV. Trial Pointers

A. KISS Theory.

B. The jury view is often very interesting.

C. Should the owner testify at all; should the owner give an opinion of value.

D. Mistakes are okay but presenting evidence that is clearly false is a disaster especially for the government.

E. Owners do not exaggerate values.

F. Make sure your valuation witness is on the same page as your engineer.

G. Make sure everyone has seen the property and sales.