

# ARM E-Journal™



OFFICIAL PUBLICATION

ASA Appraisal Review &  
Management Discipline

## FEATURED ARTICLES

**Expert Deposition Testimony:  
Ten Commandments**

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**Appraisal Review: What It  
Is, What It's Not and Why It  
Matters**

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**Impeachable Ad Valorem  
Appraisal Reports**

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**The Role of Asset Life  
Expectancy in Arriving at  
Credible Results**

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**Five Mistakes in Appraising  
Premodern Chinese Paintings**

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## Appraising Problems, Not Stuff

— [\*page 14\*](#)

## Spotlighting Appraisal Review



Appraisal Review and USPAP is now officially in print and available for lawyers to reference with LexisNexis. Thanks to the generosity of J. Mark Penny, G.

Adrian Gonzalez, Jr., ASA, MRICS, Richard Berkemeier ASA, Robert B. Morrison, ASA BV/IA, and Lee Hackett FASA, ASA was able to fund a stipend to professor Chad Pomeroy of St. Mary's School of Law to write an article for attorneys on the importance of USPAP and appraisal review. The law review journal article is included in this issue. Many people helped with this project and special thanks to Barry Shea, ASA, for his important editing, The Appraisal Foundation for their cooperation, and ASA staff Joe Noselli, CPA, and John Russell for their encouragement and assistance.

### Technical Topics

This month we have several solid articles from well-known ASA members:

**Rick Ellsworth, ASA, MTS Educ. Chair**

*The Role of Asset Life Expectancy in Arriving at Credible Results*

Asset life expectancy – a foundational element in the appraisal process for many assets – may exert significant influence on asset valuation results and the development process of that element can therefore be a critical aspect of the appraisal review process.

**Brian Brinig, ASA, CPA, JD**

*Expert Deposition Testimony: Ten Commandments*

Because of liberal discovery rules, almost any question can be asked during the deposition. Expert witnesses should not underestimate their important role during this process. These ten commandments provide will help you deliver effective testimony.

**Jack West, ASA**

*Impeachable Ad Valorem Appraisal Reports*

An appraisal review can be the critical document that provides either the confirmation of an appraisal's conformance to the appropriate standard of care or identification of significant issues of non-compliance.

**Wei Yang, Ph.D., ASA, ARM-PP**

*Five Mistakes in Appraising Premodern Chinese Paintings*

Chinese art includes many forms, from traditional painting and calligraphy to ceramics, jade, bronzes, decorative art, and contemporary art. What significant insights apply to the appraisal of all forms of Chinese art in particular and art appraisal in general?

*Jack Young*

Jack Young, ASA, ARM-MTS, CPA,  
ARM Publication Chair

# ARM E-Journal™

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## What's Next for ARM?



During April, I was pleased to co-present ASA's *AR202–Appraisal Review and Management–Litigation Services* course. We met interactively with students from three

countries on Mondays and Fridays over a three week period. Lively class sessions were augmented by webinar presentations and interactivity through use of the Google learning platform. Thanks to Jack Young for doing the heavy lifting on course development. After round one, we will be adding and modifying this course based on our experience and feedback. If you are interested in developing your litigation services practice, please consider this course for your professional enrichment.

Next up is ASA's *AR203–Managing Multifaceted Assignments* course, which will be offered in September. You can register for this on the ASA website.

Immediately following will be ASA's *AR204–Appraisal Review and Management Application* course, which will be offered in a hybrid format on October 20-22, just prior to the *2021 ASA International Conference*. The in-class option will be held in Las Vegas, making it convenient for those planning to go to the conference.

Early-bird registration is available for the conference through September 7. Personally, I look forward to a post-quarantine in-person

gathering with my appraisal peers. Our conference chair Terri Lastovka has compiled a great set of ARM programs that should be attractive to practitioners from all disciplines.

We are always looking for interesting and relevant webinar topics. So far, our litigation-focused webinars have been very well received and attended. If you have ideas or have seen a good speaker at another venue, let us know. Our audience is thirsty for knowledge.

The ARM committee recently approved a streamlined candidate examination advancement process. If you have been thinking about going after the ARM designation, now is the time! We offer the two-course, discipline-specific ARM credential, which is ready and waiting for you! Soon, we will have a path to a “Four ARM” designation as well.

The opportunity to work with a group of seasoned professionals from all disciplines is one of the great benefits of ARM membership. Please encourage your ASA colleagues to get a strong ARM credential through the ASA! We want to see the ARM discipline numbers continue our recent growth trend!

**J. Mark Penny, ASA, ARM-BV, ARM Discipline Chair**

# Meet Your ARM Committee

**1. J. Mark Penny, ASA, ARM-BV**  
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**2. Matt Kaufman, ASA, ARM-MTS**  
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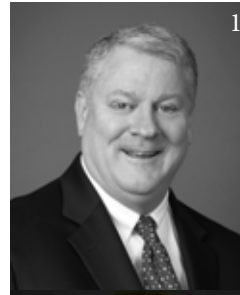
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**10. Charlie Dixon, ASA, ARM-MTS**  
ARM Board of Examiners Reviewer  
ARM Publication Reviewer  
AQB Certified USPAP Instructor





# It's sum-sum-summer time...and time for a new ARM!

# 2021 ARM Education Offerings



The Appraisal Review & Management Committee is now offering all four POV courses to members and prospective members, to accredit with all new “FourARM”.

This new program is achieved by completing AR201, AR202, AR203 and AR204, all with exams and one final review report.

The two-course accreditation is still available to ASAs who would like to accomplish an additional accreditation of ARM by taking the AR201 and AR204 courses only (201 is the pre-requisite for 204), with exams and a review report.

Non-ASA professionals are also still able to achieve the ARM Certificate of Completion by successfully participating in the AR201 and AR204 courses (with exams and a draft review report).

And...anyone wanting to complete reaccreditation hours in fun, interesting, and energetic courses can take any ARM Principles of Valuation classes any time!

- AR201–Appraisal Review & Management–Overview & Development
- AR202–NEW! Appraisal Review & Management–Litigation Services

- AR203–NEW! Appraisal Review & Management–Managing Multifaceted Assignments
- AR204–Appraisal Review & Management–Application & Report Writing

## 2021 ASA ARM Schedule:

- AR203 Webinar Series, Sept. 13, 15, 17, 20, 22, 24
- AR204 at IC in Vegas, baby! Oct.20-22

Check postings for more course offerings and webinars. Register at [appraisers.org](http://appraisers.org); and also, at the Houston chapter website for AR201, AR203 and AR204 offerings in the coming year at [HoustonAppraisers.org](http://HoustonAppraisers.org).

Have a group of professionals who are ready to take classes, but need different dates? Contact Stephanie Paratore at ASA and discuss scheduling to accommodate your group or contact me about a Houston Chapter sponsored course at (713) 306-7966 or [melanie@modicafineart.com](mailto:melanie@modicafineart.com).

***Plan now for YOUR new ARM designation!  
The new ARM...it's got legs!***

*Melanie Modica*

Melanie Modica, ASA, ARM, CFLC, ARM Education Subcommittee Chair

## NEW! AR202: Litigation Services



This class was offered in April and May of this year and was a huge success! AR202 is written for appraisers, lending professionals, CPAs, auditors and tax assessors, appraisal review professionals in the insurance industry, the IRS, and everyone interested in learning more about litigation and review services. This course provides litigation support education for any kind of valuation work. Because appraisers are obligated to follow specific, ethical standards of USPAP and appraisal organizations, this class addresses how those considerations apply in the legal system. Regardless of the difference in valuation training and ethical regulations, or the specifics of a particular situation, the mechanics of being a litigation support professional remains generally the same. This curriculum assumes that all participants have a working knowledge of appraisal review practice and are experienced in report writing.

> Classes forming now, call (800) 272-8258 to reserve your space.

## NEW! AR203: Managing Multifaceted Assignments



Focused on managing a variety of multifaceted appraisal assignments, this course will apply methodology for coordinating, supervising, and directing a group of professionals. Complex assignments require a lead professional for planning oversight, various directives, multiple perspectives, and considerations. Course content includes ethics, competency, assessments, scopes of work, contracts, certifications, and case studies for organizing professionals in multiple appraisal disciplines, and multiple specialties within a discipline. This course will demonstrate common practices and standards of care when managing a team of appraisers, appraisal reviewers, or a combination of professionals in assignments of various capacities. Participants will conclude the class with information and tools for understanding the proper and professional coordination of a team on assignments that include multifaceted components.

> Register for the September 13 class [online](#) or by calling (800) 272-8258.



## Welcome Our Latest ASA-ARM Member



**Thomas Keesey, ASA, ARM-MTS**

Thomas works for Suncorp Valuations and has been an ASA since 2016, specializing in appraisals for insurance purposes. He has recently returned to Edmonton, Alberta, Canada. He enjoys playing hockey, biking, golfing and travelling.

**Connect with Thomas at:**

[thomas.keesey@suncorpvaluations.com](mailto:thomas.keesey@suncorpvaluations.com)

<https://suncorpvaluations.com>

<https://www.linkedin.com/in/thomas-keesey-17b5aa19>



## Michael Morgan, CPA, ABV, ASA, ARM-BV



Michael Morgan has always had an interest in finance and economics. After working as an internal auditor at an energy company for several years, he became aware of opportunities

in the field of valuation when his employer posted a position for an economist with responsibilities to evaluate E&P investments for possible acquisition.

Looking “under the hood” of some of the most attractive and risky E&P opportunities was a dream role for Michael who played a significant part in the process of screening acquisition targets. Over the past 25 years, he has consulted buyers and sellers in several industries interested in buying or selling businesses.

As E&P activity slowed in 2015, he established his own appraisal practice, *Houston Valuation & Advisory LLC*, and began valuing businesses for various purposes and advising investors of all sizes. He has also supported litigation efforts and completed ASA and ARM designations. The value of his relationships with appraisal professionals, who have been generous in helping to sharpen his skills, is priceless.



Cycling is a passion of Michael’s, which started about 25 years ago when he joined a group of friends on a biking excursion at one of Houston’s mountain biking trails, not deterred by the obvious oxymoron of mountains trails in Houston, which is only about 50 feet above sea level and mostly flat. He’s ridden most of the Houston area trails.

About 15 years ago, Michael expanded his cycling to long-range road cycling, including an annual two-day 180-mile ride from Houston to Austin, which he has ridden six times. His daughter and son-in-law, Heather and Bethel, have joined him on a couple of those rides. On national and international travel, Michael and wife Tina try to include cycling and hiking wherever they go.

Connect with Michael at [michael@houstonvaluation.com](mailto:michael@houstonvaluation.com) or <https://www.linkedin.com/in/michaeljmorgan7/>.

## New Year – New ARM Possibilities



July marks the start of ASA's new fiscal year. It's a time filled with anticipation, excitement and energy, as new elected leaders take office, volunteers begin their appointments and

staff get to work with numbers of new faces. This change brings many new ideas and opportunities and continues to help move our Society forward. I would like to thank in advance all of our ARM leaders and volunteers for your time and efforts to be made this next year. Myself and staff are eager to see what great things we will accomplish together. I would also like to thank all of the members that are at the end of their terms. Thank you very much for your services.

Here's some exciting ASA ARM news to report:

### ARM Publishes Law Review Journal Article

Key ARM discipline volunteers worked to publish an article entitled *Appraising Problems, Not Stuff* in the **St. Mary's Law Journal**. The article discussed an example of oversimplification, USPAP and expert testimony and recommendations for lawyers, and is now available for reference with Lexis/Nexis. It is also included in this issue for your reference.

### ARM to Represent ASA at Largest Event for Assessors

ASA's ARM and Real Property disciplines will partner to represent ASA at the upcoming *2021 IAAO Annual Conference*, August 29- September 1 in Chicago, IL. Primary outreach for this event will focus on promoting ASA's educational, credentialing and membership programs, including ARM's specialty designation program, of which IAAO members could be eligible for through ASA's Professional Education Equivalency Certification Program (PEECP).

### ARM's Newly Updated AR203 Course to Debut

ARM's newly updated AR203 course has been scheduled for September 13-24, 2021 and will be presented online via Zoom by a live instructor. Focused on managing a variety of multifaceted appraisal assignments, AR203 applies methodology for coordinating, supervising, and directing a group of professionals. Complex assignments require lead professionals for planning, oversight, various directives, multiple perspectives, and considerations. Guest speakers from different disciplines and professions will enhance the course lecture and presentation in a unique manner, within a dialogic education platform.



## ARM Session Schedule Released

The *2021 ASA International Conference* ARM session schedule has been released. Here's a sneak peek:

- *Mock Trial* featuring Jeffrey Brend, Craig Capilla, Mark Munizzo, Genice Lee, Meighan Harmon and Teri Brossmer
- *Trends in Real Estate Centered Businesses & Going Concern Properties* featuring Robert Schlegel
- *AR204—Unexpected Common Errors in Review Reports* featuring Melanie Modica
- *Competing Appraisals in Litigation* featuring Edward Kainen
- *Cannabis: Business Valuation and Real Estate Appraisal* featuring Vanita Spaulding and Christopher Garlick
- *How About a New ARM?* featuring Melanie Modica and Jack Young
- *How are the Standard of Value, Premise of Value and Methodology Impacted by the Intended Use* featuring Jay Fishman
- *Five Recent Appraisal Professional Liability Claims* featuring Peter Christensen
- *Risk Management—Insurance & Engagement Letters* featuring Sheri Thome

Register early to save at [www.appraisers.org/asaic21](http://www.appraisers.org/asaic21).

## ARM Publication Archives

Missed an issue of the monthly ARM Valuer E-Newsletter or quarterly ARM E-Journal? Visit their respective archives for back issues filled with important and insightful content.

## Call for Articles

Interested in publishing an article in the ARM E-Journal? For more information contact Jack Young, ASA, editor at [jack@norcalvaluation.com](mailto:jack@norcalvaluation.com) or (530) 795-5536.

## Stay in Touch

As you can see there are a lot of exciting ASA ARM initiatives underway. To help stay on top of the latest developments be sure to view our [monthly ARM Valuer newsletter](#), participate in conversations at [arm-discussion@list.appraisers.org](mailto:arm-discussion@list.appraisers.org) or [opt in](#) to ARM's Members Only Discussion Forum.

Johnnie White, MBA, CAE, CMP, CEO/EVP





# Better Manage Client's Risk Through Appraisal Review

Nobody understands the value and risks of your client's assets better than ASA. Which is why more appraisers, assessors, CPAs, bankers, attorneys, departments of governments or other users of appraisal services are turning to ASA for appraisal review support. ASA offers three pathways to mastering this critical differentiator. From a comprehensive credentialing or specialty designation program for practitioners to a certificate of completion program for allied professionals, ASA offers the advanced training, credentialing and membership opportunities you need now!

***Get started today!***

***For more information visit [www.appraisers.org/ARM](http://www.appraisers.org/ARM), or  
contact [asainfo@appraisers.org](mailto:asainfo@appraisers.org) or (800) 272-8258.***



The background is a vibrant blue with various white and yellow icons including gears, arrows, a target, a wheel, and a percentage sign. At the bottom, there are three stylized faces in profile, colored brown, yellow, and white, all wearing dark suits and ties.

# Appraising Problems, Not Stuff

By Chad J. Pomeroy, JD

**Abstract:** This article, published in **St. Mary's Law Journal** (Vol 52, No 2, 2021) seeks to make it plain to lawyers that retaining an expert to discern (and perhaps testify to) value is not the endpoint for an attorney. It seeks to do that by explaining what appraisals are, who is qualified to do them, and how they work. It further provides several recommendations to help you navigate this process and demonstrates how these suggestions can aid lawyers as they pursue their ever-extant fight over value.

*The author thanks St. Mary's University and the American Society of Appraisers, both, for providing support and help to him as he wrote this article.*



## Part I: Introduction

If you are a lawyer, you will deal with value. “Value,” here, means the valuation of something.

And all lawyers must concern themselves with this, in some way, at some point (or, for many of us, over and over again). Business lawyers, of course, help clients craft business plans, transactional strategies, and documents. Essentially, these are entirely directed to exchanges of value. Litigation lawyers, too, are effectively always contesting matters of value—lawsuits turn on the value of goods, opportunities, injuries, or any number of things. Family lawyers, government lawyers, criminal lawyers—all lawyers must deal with items or things of value at some point.

And when I say, “deal with value,” what I mean is that you will disagree with someone else about the value of some item or thing and have to convince them (or a third-party arbitrator) that you are correct. This is maybe most obvious when it comes to litigation over value. As an example, assume you are a lawyer representing a client whose property has been condemned by the city. The city offers a “market value” of \$100,000, but you (your client) insist the value is actually \$500,000. This is contention over value, very clearly. But, again, this arises for all lawyers, virtually continuously. Your client wants to purchase a business but thinks its goodwill is only

worth \$2,000,000, while the seller believes it is worth \$3,000,000. Your client is divorcing her husband, and he believes her dental practice (a community property asset) is worth \$1,000,000, but you (she) insist it is only worth \$250,000. You are a prosecuting attorney and are sure the defendant caused \$10,000 of damage, which pushes his crime from a misdemeanor to a felony; of course, he (his attorney) believes the damage is minor, no more than \$2,500.

Value, then, is all around we lawyers. So how do we deal with this? Of course, many times, we simply press our point, negotiate, and reach a reasoned settlement with our counterparty—we meet them in the middle on the value of the goodwill or agree that the practice can be valued at more than we think if the house can be valued at less than he thinks.

Other times, though, we rely on an expert. It is tempting to think of “relying on an expert” as a generalized strategy that covers a whole area of concern. Need to put on evidence of medical malpractice? Put on an expert. Need to have a complex machine explained to the court? Put on an expert. Need to value some property? Put on an expert. That, however, is far too simple. Or, at least, it is far too simple when it comes to value.

Putting on an expert to discern (and perhaps testify to) value is not the endpoint for an attorney—it is merely an option that, in and of itself, requires a significant amount of thought, understanding, and work. Too often, lawyers simply find someone who has

some experience—maybe in the right field, maybe just in any field—and asks them what something is worth. This is not good lawyering. This Article seeks to make that plain by explaining what appraisals are, who is qualified to do them, and how they work. It further provides several recommendations to help you navigate this process and demonstrates how these suggestions can aid lawyers as they pursue their ever-extant fight over value.

Part II starts this process by providing a real-world example of an appraisal gone wrong—a situation where an appraisal was done improperly—along with an explanation as to what mischief this can cause. Part III pivots to an explanation of the standards that guide appraisers and that lawyers must be familiar with if they are to engage with appraisers properly. Particularly, it introduces the Uniform Standards of Professional Appraisal Practice (USPAP) and walks through some of the key, core elements therein. Part IV places this within the context of expert testimony, generally, and follows up on this by building the information from USPAP into a simple recommendation for lawyers, seeking to guide attorneys to pick the right appraisers, review reports intelligently, and use and understand appraisals properly.

## II. An Example of Oversimplification

Let us—in order to drive home what a valuation dispute looks like and where one can go wrong—look at a real-life example. The initial appraisal at issue purported to appraise the value of the commercial equipment of a business entity and to have arrived at an “estimated replacement value” of \$21,690,078, using two approaches—a “cost approach” and a “sales comparison

approach.”<sup>1</sup> Note that this is precisely the kind of appraisal that you, as a lawyer, might get in any of the circumstances discussed above. If you are not prepared— or at least passably knowledgeable in this area—then you will either have little ammunition against such an appraisal or be relegated to simply getting your “own” expert and hoping for a “better” result. However, a more educated view can lead to a more educated response. In this particular case, the initial appraisal report did not adequately address its scope of work. It did note that it was intended to be used by the recipient to determine a given value at a given point in time, but that generalized description is effectively meaningless, as it could be used to describe any appraisal at any time. As the opinion on the report (the OOR) points out, USPAP requires a much more specific statement of intent.

“Because personal property can trade in many different markets on any one day and may or may not be sold as part of the going concern, and may or may not be installed, it is critical that the appraisal clearly state the intended use of the appraisal in order for the [intended user] to know if the requirements of the appraisal have been met.”<sup>2</sup> In other words, the value of property varies depending on what the property is being used for. Without specifying the context of the appraisal, the valuation reached is essentially—or, at least, potentially—arbitrary. Consider the following analogy. Assume that you are an executive in the National Basketball Association, and you are attempting to put a value on a particular player. The player—we will call him Player A—at issue is an incredible shooter, with

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<sup>1</sup> NorCal Valuation, Inc., Appraisal Review Report 3 (Dec. 19, 2019) (unpublished appraisal review report) (on file with author) [hereinafter Appraisal Review Report]. This example is an anonymized one, drawn from an independent opinion on an actual appraisal report prepared in 2018, which is hereafter relied upon, without further attribution.

<sup>2</sup> Id. at 10.



great range and the ability to get his shot off in very little space. He changes the court every time he touches the ball on offense because every opposing player has to be aware of where he is and the likelihood that he could hit a three-pointer any time he gets the ball. On the other hand, he is a very poor defender and always has to guard the other team's slowest player. What is the value of that player? Should you pay him \$25,000,000 per year or only \$10,000,000 per year? The answer obviously depends both on your goal and on the current composition of your team. If the goal is to win games, and your current team has a number of solid defenders, then Player A can absolutely help you win games and is perhaps worth the higher number. If the goal is to win, but your current team has no good defenders and is already well-stocked with shooters, then Player A may not make much of a difference and is perhaps only worth the lower number. Or if the goal is to entertain your fan base and score a lot of points—whatever the outcome ends up being in total wins—then, again, perhaps Player A should get paid the maximum amount.

This is the idea identified in the OOR, which early on cites to USPAP Standard 8. This Standard requires that an appraisal report has to be consistent with the intended use of the appraisal and also has to have enough information to enable an intended user of the appraisal to understand the report (within that given context and intended use).<sup>3</sup> The report at issue—which, recall, settled on a precise valuation of \$21,690,078—contained insufficient information regarding the analytic methods utilized, meaning that

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<sup>3</sup> See generally, APPRAISAL STANDARDS BD., UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE 49 (The Appraisal Found., 2018–2019 ed.), [www.uspap.org](http://www.uspap.org) [hereinafter APPRAISAL STANDARDS BD., USPAP] (providing an overview for how an appraiser should address “the content and level of information required in a report”).

neither the intended user nor a subsequent reviewer could be sure whether the valuation actually matched up to the intended use.

For instance, the report claimed broadly to have used “the cost approach,” but it had no discussion of the validity of cost data used,<sup>4</sup> of the trending index used,<sup>5</sup> or of what effect depreciation had on the analysis.<sup>6</sup> This means that the report—though broadly appealing to most casual reviewers (including lawyers)—simply did not have enough data to validate that it was saying what the user was asking for.<sup>7</sup> Back to our analogy, the general manager got a report that the player was a “shooter,” but there was no indication as to why the evaluator was stating that (individualized stats, historical assessments, year-to-year comparisons, etc.). The report was not really telling the general manager what he needed to know to decide whether the player was a good fit.

Similarly, the report also claimed broadly to have used the “sales comparison/sales comparison approach,” but—again—failed to do so in a way susceptible of proper analysis and validation. As noted in the OOR, a Sales Comparison Approach is the most reliable for appraising equipment and

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<sup>4</sup> Cost data explains everything built into the costs being used for comparison. For example, are installation costs accounted for, are repairs capitalized, etc.?

<sup>5</sup> A trending index, in this context, reflects cost that measures varying costs over time.

<sup>6</sup> Was the property depreciated? If so, over what lifespan? Were functional and economic obsolescence analyzed?

<sup>7</sup> The content of USPAP will be discussed more below, but this kind of weakness is anticipated by USPAP 7-4(b). See APPRAISAL STANDARDS BD., USPAP 46, [www.uspap.org](http://www.uspap.org) (indicating any appraiser utilizing a cost approach must analyze available comparable cost data to estimate (1) the cost new of the property, and (2) the difference between cost new and the present worth of the property (i.e., to account for depreciation)).

*“...all lawyers must deal with items or things of value at some point....”*

machinery<sup>8</sup> when there is an active market that provides enough sales of comparable property. In the report at issue, though, the appraiser did not provide nearly enough information about comparable sales—he did not detail how the comparables were chosen (or adjusted) or specify the dealers/manufacturers/professionals who were interviewed or polled in determining comparable sales numbers.<sup>9</sup> This was particularly troubling because the property at issue involved a lot of installation cost and so was rarely traded openly prior to it approaching the end of its normal, useful life. That underscores the importance of seeing the underlying “data” to determine just how comparable the sales were.<sup>10</sup> Failing to do so was underscored by the report’s apparent confusion of market value with “highest and best” use. In the end, the report simply did not provide any confidence that its comparable sales were actually comparable.

These are problems with methodology but largely growing from a lack of direction. Again, an appraisal must be directed to a particular problem. It must be intended to arrive at the value called for in the context. The report at issue simply said it was to be used to determine value “at that point in time.”<sup>11</sup> That is not specific enough to draw any intelligent conclusions. Returning to our basketball analogy, it is like the general manager’s report assures him that the

<sup>8</sup> It is itself the kind of thing that an intelligent consumer/reviewer of an appraisal would be well-served to know.

<sup>9</sup> Instead of specifics, the report simply stated that the opinion was “the result of a thorough professional analysis of a vast quantity of data.”

<sup>10</sup> Again, USPAP is instructive here. Standard 7-3 requires an appraiser to “define and analyze the appropriate market” and to analyze the underlying economic conditions that affect valuation, including the condition of the property and the supply and demand thereof. APPRAISAL STANDARDS BD., USPAP, *supra* note 3, at 46.

<sup>11</sup> Appraisal Review Report, *supra* note 1, at 4, 10.

subject player is “an excellent shooter” who is worth \$25,000,000 on the open market because “many other excellent shooters have gone for a similar amount.”<sup>12</sup> Think about getting that kind of an analysis. No discussion of who the comparable players were, what point they were at in their career, or what their statistics were—simply saying that “a bunch of other similar players went for this much.” That is the kind of analogy you, as a lawyer, need to be thinking through when faced with a report like this.

And the problems did not stop there. The report ultimately found the current value (as of the date of the report) was more than \$700,000 higher than the cost basis (that is, the value of the equipment when purchased).<sup>13</sup> That seems unlikely but was perhaps not entirely out of character with some of the other elements of the report, including the claim that all of the assets were inspected (remembering that the total appraised value was over \$20,000,000) and that all of the relevant data was thoroughly analyzed on a single day. Similarly, the report described itself as a “Summary Appraisal Report,” but that term was an antiquated appraisal term of art, indicating that the report was not carefully drafted,<sup>14</sup> and it simply did not state the source for the

<sup>12</sup> See *id.* at 10 (“Because personal property can trade in many different markets on any one day and may or may not be sold as part of the going concern, and may or may not be installed, it is critical that the appraisal clearly state the intended use of the appraisal . . .”).

<sup>13</sup> That is on top of the fact that the precise estimate of \$21,690,078 is a specific, non-rounded number and so implies an unreasonable level of accuracy. See *id.* at 11 (“[A] specific, non-rounded amount is generally considered to reflect an unreasonable level of accuracy, especially for a value that [is referred] to as ‘estimated.’”)

<sup>14</sup> This is in addition to a number of other outdated and misused terms. See generally *id.* at 10–12 (noting throughout the review various terms that are no longer used in general practice).

report's determination of replacement cost (a concept that is not generally relevant to purchase price allocations, in any event).

In the end, the report did not comply with a number of USPAP principles or rules. These failures—and the attendant weakness of the report—mean the report was essentially unsupported by evidence, at least as assessed by an expert in the field applying expert criteria.<sup>15</sup>

This is the kind of analysis that a lawyer should be able to do, or at least to understand. Of course, a careful reading of this narrative indicates that being able to do so is tethered to the underlying standards governing professionally performed appraisals. USPAP embodies those standards and is taken up in a detailed fashion in the next section.

### III. USPAP

As indicated above, USPAP is really the key to understanding appraisals and, ultimately, disputed valuations. USPAP is an attempted summation of the standard of care for how appraisals are prepared, prepared, and ultimately analyzed. A lengthy, weighty attempt to centralize professional standards—in a variety of different settings and circumstances—into one tome, USPAP cannot be summarized completely, nor would it be helpful to attempt to do so.<sup>16</sup> It is

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<sup>15</sup> See *id.* at 12 (concluding the previous report failed to comply with USPAP ethics, work of scope, and competency rules as well as being incomplete in critical areas leaving the value opinion unsupported).

<sup>16</sup> Nor would it ultimately be sufficient, in some circumstances. There are other, non-USPAP standards that may need to be considered, depending on the kind of appraisal at issue. An appraisal done for a tax filing, for instance, needs to comply with relevant IRS guidelines; appraisals involving machinery and equipment may be governed by the American Society of Appraiser's book *Valuing Machinery and Equipment*; and financial porting appraisals

possible, though, to get a sense of the scope of the standards and of the relevant concepts that should provide structure to any attempt to assess and critique an appraisal.<sup>17</sup> Indeed, perhaps one of the primary benefits of a baseline level understanding of USPAP would be an awareness of when to reach out to an appraisal expert (and to whom to reach out).

USPAP has multiple sections—a preamble, definitions, rules, and the standards themselves—and is over 300 pages long. The five rules that it contains relate to all appraisal areas—ethics, record keeping, competency, scope of work, and jurisdictional exception. And USPAP Standards (ten of them) regulate appraisals relating to property types (real property, personal property, and business property) and appraisal types (mass appraisal and appraisal review).

#### A. A “Real” Appraisal

As is generally the case in any systematic attempt to understand a subject, the place to start is with the definitions of the words used.<sup>18</sup> And starting with the definition of “appraisal” makes still more sense.

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must comply with Generally Accepted Accounting Principles. However, the structure of USPAP—and the concept of an appraisal structure, in and of itself—is a useful starting point.

<sup>17</sup> The balance of this section is drawn from USPAP, with references where necessary for clarity. USPAP is updated periodically and has been updated since the drafting of this Article. The newest version is the 2020 edition. However, this Article was written based on the 2018 edition. References should be made to the 2018–19 version of the USPAP.

<sup>18</sup> I once worked with a seasoned transactional attorney who could generally understand the scope of a transaction, and the likely deal points to be negotiated, solely by reviewing the definitions of a given document. Any structural understanding of a topic will be built upon the concepts inherent in the building blocks thereof, which, in turn, depend on the meaning of those building blocks.



Under USPAP, an appraisal, when used as a noun, is “the act or process of developing an opinion of value; an opinion of value.”<sup>19</sup> When used as an adjective, appraisal is defined as, “of or pertaining to appraising and related functions such as an appraisal practice or appraisal services.”<sup>20</sup> So it is developing an opinion of value, which is straightforward, but it is done in the context of an “appraisal practice or appraisal services.”

Appraisal practice, in turn, is the collection of “valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.”<sup>21</sup> The comment thereto notes that such a practice “is provided only by appraisers, while valuation services are provided by a variety of professionals and others.”<sup>22</sup> Valuation services are pretty generic—these are “services pertaining to aspects of property value”<sup>23</sup>—and can be conducted by appraisers or by others.

What this means is that, while other professionals (sales agent or auctioneer) might provide a valuation opinion, the designation of “appraiser” stands apart.<sup>24</sup> These individuals, by USPAP mandate, “expected to perform valuation services competently and in a manner that is independent, impartial, and objective.”<sup>25</sup>

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<sup>19</sup> APPRAISAL STANDARDS BD., USPAP, supra note 3, at 3

<sup>20</sup> The comment thereto notes that “[a]n appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous opinion or numerical benchmark.” Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id. at 6. 8

<sup>24</sup> “Value” is, of course, a critical concept in a variety of circumstances and is susceptible of many interpretations. See, e.g., *In re TOUSA, Inc.*, 680 F.3d 1298, 1310–11 (11th Cir. 2012) (showing judicial disagreement about how to assess value in fraudulent conveyance controversy).

<sup>25</sup> APPRAISAL STANDARDS BD., USPAP, supra

Competence and ethical behavior are explicitly defined. “Competency requires . . . the ability to properly identify the problem to be addressed; the knowledge and experience to complete the assignment competently; and recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.”<sup>26</sup> Of course, one would like to believe that anyone offering an opinion on value would be competent, but that is by no means certain, and USPAP underscores the importance of this by providing that if an “assignment cannot be completed competently, the appraiser must decline or withdraw from the assignment.”<sup>27</sup> Ethical guidelines are also emphasized. “An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.”<sup>28</sup> This means that “[a]n appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.”<sup>29</sup>

One of the more critical aspects of USPAP to lawyers is the scope of work rule. As is discussed below, USPAP standards provide

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note 3, at 3.

<sup>26</sup> Id. at 11.

<sup>27</sup> Id.

<sup>28</sup> Id. at 7.

<sup>29</sup> There is also the “Record Keeping Rule,” which provides that appraisers “must prepare a workfile for each appraisal or appraisal review assignment.” Id. at 10. Such file must include, among other things, the name of the client; true copies of all written reports; summaries of all oral reports or testimony; and all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP. Id. Similarly, there is a scope of work rule, which requires the appraiser—for every appraisal and appraisal review assignment—to identify the problem to be solved, determine and perform the work needed to develop a credible result, and disclose the scope of work in the report. Id. at 12. Doing this requires performing the research and analyses necessary to develop credible results and to not permit work limitations or assignment restrictions to limit the appraiser or her professional competence. Id. at 13.

context and guiderails to an appraisal (and thus serve as an access point for lawyers and opposing appraisers in understanding and critiquing an appraisal), but scope of work is what provides the structure of the appraisal.

This rule is broken down into two parts—defining the appraisal problem and planning to solve the problem. This is key. An appraisal—like a legal argument—is only useful if it pertains to the actual issue at hand. As lawyers, that should be obvious. You would never try to convince a judge that an opposing party is liable for trespass by citing to laws negligence. Similarly, an appraisal must be addressed to, and accurately account for, the actual object of the appraisal. The scope of work is where an attorney can ensure that it does so. A report’s discussion of the appraisal problem should include a few important elements, which are easily identifiable by attorneys. These elements are essentially what the appraiser is retained to address, and each should align with the client’s appraisal needs, given the actual problem to be assessed. They include the client and any intended user, other than the client. Appraisers have a responsibility to ensure that these parties are able to use the appraisal and understanding the scope of work. They also include the intended use. The purpose of an appraisal is always to arrive at a value opinion, and the intended use must indicate how that opinion of value will be used. An appraisal is put together for a specific use, and, if that use changes, so must the appraisal itself.<sup>30</sup> The elements also

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<sup>30</sup>USPAP Advisory Opinion 36 gives an example of this. Therein, a residential home appraisal is done differently, and means different things, depending on whether it is done for a homeowner who wants to know how much home equity he has, a bank that is evaluating an equity loan, or a lawyer representing one of the owners in a divorce. Depending on the intended use, the appraisal may provide a range of value or a specific estimate. It may involve a detailed inspection or a “drive-by” assessment. It may depend

include a definition of value, which can vary significantly and which is often based on the intended use;<sup>31</sup> an effective date, which is usually tied to an extrinsic fact (the date of inspection, the date of a loss); the relevant characteristics that affect the property’s value or marketability; and the assignment conditions, which include assumptions that are relevant to value conclusions.

The extent to which an appraisal addresses these elements says much more about the usefulness and competence of the exercise than does the appraiser’s resume. This part of a report should not be filled with boilerplate or meaningless jargon, and lawyers can gather important context and information here by carefully reading and evaluating the manner in which the appraisal was put together, as shaped (or not) by its purpose.<sup>32</sup> As the title of the Article implies, this is the first step for attorneys—understanding that appraisals are tools that address specific problems and then assessing the extent to which they usefully do so.

All that said, appraisal professionals must ground their opinion in USPAP definitions and standards, must—in other words—follow the correct guidelines in order to assess the problem at hand. One such operative—and enormously important—definition is that of

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on comparable sales or relate to replacement costs.

<sup>31</sup>The definition of value—that is, the property identified, the nature of any inspection, the data gathered, and the analysis applied—will vary depending on the intended use. Contrast an appraisal for an estate tax return, for instance, with one done for a bank in connection with a loan, with one for financial accounting purposes. Depending on the level of technicality involved, a reviewer may be particularly helpful to an attorney with respect to this issue.

<sup>32</sup>Note that USPAP does not dictate the form of an appraisal, and a scope of work section is not required. As such, the absence of one—or a difficult to understand or unduly technical one—is a clear suggestion that an appraisal is not well-crafted in the context of the problem at hand.

“market value.” This is “a type of value, stated as an opinion, that presumes the transfer of a property . . . as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal.”<sup>33</sup> The comment thereto goes on to note that, while “[f]orming an opinion of market value is the purpose of many real property appraisal assignments . . . [t]he conditions included in market value definitions establish market perspectives for development of the opinion.”<sup>34</sup> This means that market value is not a pat, standard number that can be reached by anyone.<sup>35</sup> It is responsive to the context of the hypothetical sale establishing that value, which depends on a variety of circumstances and conditions (including the motivation of the selling and purchasing parties, the terms of sale, and the nature of the sale).<sup>36</sup>

More broadly, these definitions and rules ensure that an “appraisal” performed by an

“appraiser” is a delimited result performed pursuant to articulable standards and guidelines. This means that lawyers can do quite a lot to assess both the qualifications of the individual offering an opinion on value (or an assessment of such an opinion) and the opinion itself. The fact that USPAP creates a galaxy of standards that set forth how value assessments should be credibly and properly performed means that lawyers who understand those standards can independently assess (and criticize) the results of any resultant analysis. Clearly, then, it is important to understand the standards, which are explained in detail in the next section.

## B. USPAP Standards

Given the emphasis on USPAP, above, this Article posits that the Standards are important to properly assess and analyze an appraisal.<sup>37</sup> As such, here follows a basic

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<sup>33</sup> Id. at 5.

<sup>34</sup> Id.

<sup>35</sup> Compare this standard-based approach with that identified in the case of *Estate of Richmond v. Comm’r of Internal Revenue*, 107 T.C.M (CCH) 1135, at 16–17 (2014) (discussing a number of technical valuation issues and ultimately holding that having an appraisal performed by an individual with some appraisal experience but without any credentials or certifications exposed the party utilizing the expert to a statutory penalty tied to unreasonableness and lack of good faith). See also *Zaffarkhan v. Domesek*, No. G054604, 2018 WL 2296346 1, 3–7 (Cal. Ct. App., May 18, 2018) (setting aside an unopposed expert’s valuation due to lack of experience, misunderstanding and misstating of basic facts, and a general lack of basis for ultimate valuation opinion); *Estate of Jones v. Comm’r of Internal Revenue*, 118 T.C.M (CCH) 143, at 9 (2019) (assessing an experts competence by noting his experience in something as narrow as business valuations “of sawmills and timber product companies”).

<sup>36</sup> APPRAISAL STANDARDS BD., USPAP, supra note 3, at 5 (providing an extensive list of physical, economic, and psychological factors that influence perceived value compared to listed price).

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<sup>37</sup> Given the importance of USPAP, and for ease of reference, a complete rendition of USPAP is set forth in Appendix A, attached hereto. As above, the following material is generally taken from USPAP, so sentence-by-sentence citations are not provided. For an example of the extent to which these standards are relied upon, see KAN. STAT. ANN. §§ 79-505, 79-506 (2014) (requiring property tax appraisals to be performed pursuant to USPAP standard, though noting that Kansas-specific standards can take effect, instead). See also *Saline Cnty. Bd. of Cnty. Comm’rs v. Jensen*, 88 P.3d 242, 246 (Kan. App. 2004) (indicating that a failure of the Board of Tax Appeals to adhere to USPAP might amount to “a deviation from a prescribed procedure or an error of law”). It is worth noting, however, that USPAP standards are useful simply because they are standards. That is, they provide a systematic way to approach an expert opinion that is transparent and comprehensible to lawyers. This would be like having a set of standards that govern medical doctors in giving expert medical opinions—it would not enable lawyers to directly offer a contrary opinion, of course, but it would allow lawyers to understand the substantive and procedural rules by which those opinions are governed and to craft an appropriate legal strategy in response (or relation) thereto. In other words, lawyers do not have

discussion of the standards and how they govern appraisals and valuations.

There are multiple kinds of appraisals addressed by the standards: real property, mass, personal property, and business appraisals. In addition, there are also USPAP appraisal reviews. With respect to each, it sets forth standards for development (that is, how to go about forming the relevant appraisal or review) and reporting (that is, how to go about properly cataloguing and representing the results thereof). These standards are essentially guidelines as to how this work must be done—and therefore provide a structure as to how to understand, process, and critique this kind of work.

To start, let us examine real property appraisals under USPAP Standard 1. The overarching dictate is that an appraisal must identify the problem to be solved, assess the correct scope of work, and properly complete the research and analysis necessary to do credible work.<sup>38</sup> These concepts change, and USPAP Standard 1 specifically requires appraisers to understand what they are assessing, why they are conducting the assessment in this specific manner, and to be able to demonstrate that their knowledge and methodology is contemporary and up-to-date.<sup>39</sup> The process also involves making sure that there are no errors by omission.<sup>40</sup> This provides an opportunity for criticism (constructive or otherwise) by soliciting not-included relevant data from other appraisers and eliciting a concrete, clear explanation from an appraiser as to why any data was not included.

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to simply rely on “experts” and try to find one that comes up with the “right” response.

<sup>38</sup> See APPRAISAL STANDARDS BD., USPAP, *supra* note 3, at 15 (illustrating Rule 1-1 specifically outlines the concepts and factors that an appraiser must use in addition to conditions, data and other information that would have a significant effect on credibility).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

More holistically, USPAP Standard 1 requires an appraiser to specifically identify all intended users and the intended use of the opinion or conclusion.<sup>41</sup> Recall from above the relevance of ensuring that the appraisal is addressing the relevant problem or issue (not just any problem or issue). It must also “identify the type and definition of value.”<sup>42</sup> Often, that will be market value—but an appraiser cannot simply stop at that. Appraisers must determine whether the market value will be the most probable price in terms of cash, financing, or some other terms—in other words, market value is a multi-variable equation, which depends on the circumstances (including, but not limited to, the nature of the contemplated sale).<sup>43</sup>

All of this must be set forth as a specific date and must be supported by a clear articulation of the nature of the real property to be appraised—the location of the property, the nature of the interest, any accompanying personal property, and any extent to which the property deviates from a prototypical fee simple.<sup>44</sup> All of this must come from reliable sources—inspections, surveys, title searches, etc. The reliability of any of those sources is, then, open for examination and study. If these circumstances are not sufficient on their own, an appraiser must affirmatively identify any extraordinary assumptions or hypothetical conditions (and justify the same) that may affect or alter value.

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<sup>41</sup> See *id.* at 15 (discussing what an appraiser must include in developing a real property appraisal).

<sup>42</sup> See *id.* at 16 (listing the various components an appraiser must identify in their appraisals).

<sup>43</sup> *Id.*

<sup>44</sup> For instance, easements, restrictions, assessments, and zoning restrictions are all relevant to value. As is whether the interest is a fractional or partial one. Among other things, this perhaps indicates that an appraiser cannot do a complete job in performing an appraisal (nor can a lawyer do so in evaluating one) without a clear title search and history.



USPAP 1 also specifically requires an appraiser to account for relevant zoning restrictions and potential market trends and must do so while understanding the highest and best use of the property.<sup>45</sup> The appraiser must also perform their analysis in terms of a sales comparison approach, a cost approach, or an income approach, ensuring that the inputs into any such analysis (i.e., comparable sales,<sup>46</sup> cost of construction, depreciation, earnings, operating expenses, etc.) are contemporary, relevant, and comparable.<sup>47</sup>

Once that is completed, the appraiser must report the appraisal in a way that is not misleading.<sup>48</sup> That means the report must contain enough information to allow its intended users to understand but not so much that it becomes incomprehensible to a non-expert.<sup>49</sup> It also must clearly state any assumptions, hypothetical conditions, or limiting conditions so that any corresponding limitation is clear and does not require a counter-expert to identify and critique. Further, USPAP 2 (setting forth the standards for reporting the real property appraisals described in USPAP 1) requires all appraisers to set forth any written opinion in either an “Appraisal Report”

or a “Restricted Appraisal Report.”<sup>50</sup> The former is required when the intended users include parties other than the client, while the latter can be used if the intended users do not extend beyond the client.<sup>51</sup> The difference between the two is the amount of information provided. An Appraisal Report is broader and must include, among other things, the identity of the client (unless the client has specifically requested otherwise), the identity of intended users, the intended use of the property, the property interest appraised, and the type and definition of value.<sup>52</sup> It also must adequately summarize the information analyzed and properly (and accurately) defend the techniques utilized and conclusion reached.<sup>53</sup> A restricted appraisal report is narrower. It should (if possible) state the identity of the client and identify any use restrictions that limit the use of the report.<sup>54</sup> It should also warn the reader that the report may not be properly understood without the information in the appraiser’s workfile.<sup>55</sup> Moreover, it identifies the property, but in lesser detail, and does not provide as much background or detail regarding the appraisal methods or techniques used or the rationale for the appraiser’s opinions and conclusions.

Finally, all reports have to include a certification from the appraiser as to a number of things.<sup>56</sup> Among other

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<sup>45</sup> See APPRAISAL STANDARDS BD., USPAP, supra note 3, at 17–18 (stating what is necessary for credible assignment results).

<sup>46</sup> Though not a “comparable” sale, this includes any sales (or potential sales) involving the property itself, going back at least three years. See APPRAISAL STANDARDS BD., USPAP, supra note 3, at 17–18 (“In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.”).

<sup>47</sup> See APPRAISAL STANDARDS BD., USPAP, supra note 3, at 17–18 (“In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.”).

<sup>48</sup> See id. at 20 (addressing the requirements of submitting an appraisal report).

<sup>49</sup> Id.

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<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> See id. at 20–21 (examining what appraisal reports must include and the exceptions to these requirements).

<sup>53</sup> See id. at 22 (“An Appraisal Report must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1.”).

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> See id. at 24 (“In an assignment that includes only assignment results developed by the real property appraiser(s), any appraiser(s) who signs a certification accepts full responsibility for all elements of the certification, for the assignment results, and for the

attestations, appraisers must state that, to the best of their knowledge and belief: (1) the facts therein are true; (2) the opinions are unbiased; and (3) the appraisal is the result of her work.<sup>57</sup> The certification is key, and one that does not conform to USPAP is a good and easy indication that the appraiser did not conform to USPAP.<sup>58</sup>

The formatting for a mass appraisal, personal property, and business appraisal is similar to that outlined above. Mass appraisals are addressed in USPAP 5 (development) and USPAP 6 (reporting). Mass appraisals can be technical and difficult to understand, and a full explanation is beyond the parameters of this Article. However, USPAP 5 does for this topic the same thing it does for other appraisal topics: sets forth standards that must be followed and effectively provide a roadmap for any lawyer looking to understand the same. In particular, USPAP 5 requires an appraiser to be clear on the recognized methods and techniques required to produce a credible mass appraisal.<sup>59</sup> This requires identifying the properties to be appraised, defining the relevant market area of consistent behavior applicable to those properties, and identifying the characteristics that affect the creation of value in that area.<sup>60</sup> From there, an appraiser has to develop a model that incorporates those characteristics and that is calibrated sufficiently to accurately reflect mass valuations.<sup>61</sup>

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contents of the appraisal report

<sup>57</sup> Id.

<sup>58</sup> The USPAP does contemplate the possibility of an oral real property appraisal, but it is difficult to see how one could adequately conform to the standards described herein.

<sup>59</sup> See APPRAISAL STANDARDS BD., USPAP, supra note 3, at 34 (“STANDARD 5 is directed toward the substantive aspects of developing credible analyses, opinions, and conclusions in the mass appraisal of properties.”).

<sup>60</sup> Id.

<sup>61</sup> Id.

Again, the nature of a mass appraisal is more technical than a normal appraisal. The USPAP requires modeling that results in estimates of value allowing for statistical review and analysis.<sup>62</sup> This means that lawyers may desire to consult with statisticians or other experts, in addition to appraisers, in understanding, assessing, and critiquing these models. It also means that appraisers are expressly required to stay abreast of new methods and techniques, which lawyers should be able to probe and explore.

Much of the rest of USPAP 6 is similar to USPAP 2, explored above, in that it requires an articulation of the client, identified user, and the type and definition of value. It is more specific (as one would imagine) in terms of how to group properties and value them based upon group characteristics (including location, legal, and economic characteristics).<sup>63</sup> All of this must be considered in the context of the relevant economic conditions existing

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<sup>62</sup> The comment following Standards Rule 5-4(b) and (c) states: The formal development of a model in a statement or equation is called model specification. Mass appraisers must develop mathematical models that, with reasonable accuracy, represent the relationship between property value and supply and demand factors, as represented by quantitative and qualitative property characteristics. Models are the vehicle, and they may build upon cost, sales comparison, or income appraisals. “The specification format may be tabular, mathematical, linear, nonlinear, or any other structure suitable for representing . . . observable property characteristics.” Models must be properly calibrated. “Calibration refers to the process of analyzing sets of property and market data to determine the specific parameters of a model . . . Models must be calibrated using recognized techniques, including, but not limited to, multiple linear regression, nonlinear regression, and adaptive estimation.” APPRAISAL STANDARDS BD., USPAP, supra note 3, at 37.

<sup>63</sup> Ad valorem tax appraisals are a subset of mass appraisals.

as of the time of valuation,<sup>64</sup> and—as always—the scope of work must be clear and govern the appraisal.<sup>65</sup>

USPAP 7 is similar to these, as well, in that it governs the substantive development of an appraisal—in this case, a personal property appraisal.<sup>66</sup> As stated before, the key is to identify the problem to be solved and determine the scope of work necessary to do so. An appraiser must be aware, of course, of the relevant personal property practices affecting value. This includes how such property is acquired, marketed, and used. It also includes the physical and economic conditions of the property, such as condition, style, quality, obsolescence, and a host of other factors.<sup>67</sup> These must factor into value, which will itself depend on whether such property is to be valued in terms of cash, cash equivalents, or some other defined terms.<sup>68</sup>

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<sup>64</sup> Significantly adding to the burden associated with mass appraisals, appraisers must ensure the quantity and quality of the underlying factual data are sufficient to produce credible appraisals.

<sup>65</sup> USPAP 6 sets forth the reporting requirements for mass appraisals. This looks similar to the reporting requirements of USPAP 2, with an emphasis on clarity and a need to present enough background and data to ensure the appraisal is not misleading. This includes providing “a summary of the rationale for each model, the calibration techniques to be used, and the performance measures to be used.” It should also summarize any calibration methods considered but not chosen. In particular, the nature of mass appraisal should be explained and explicitly contrasted with the sales comparison, cost, and income approaches. The appraiser must also state any assistance she received in preparing the appraisal. As before, this must be signed and certified. See APPRAISAL STANDARDS BD., USPAP, *supra* note 3, at 40–43 (providing requirements for mass appraisal reporting).

<sup>66</sup> See *id.* at 44 (detailing the development of a personal property appraisal and what requirements must be met).

<sup>67</sup> Such information can come from “any combination of a property inspection and documents or other resources to identify the relevant characteristics of the subject property.” *Id.* at 45.

<sup>68</sup> For instance, if the value is to be based on

And, as with real property, the appraiser must explain and defend her valuation approach—whether a sales comparison approach, a cost approach, or an income approach.<sup>69</sup>

And USPAP 9 and 10 address business appraisal. These standards provide guidelines as to how appraisers are to value an interest in a business enterprise or intangible asset. Perhaps more clearly here than in other contexts, the ability of an appraiser to identify the problem and solve that particular problem is key here. The intended user and the intended use clearly have significant effect on how one goes about valuing a business interest, and the characteristics of the property to be valued (the nature of the interest, any associated buy-sell agreements or other purchase restrictions, majority or minority status,

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some kind of bespoke financing, “the terms of such financing must be clearly identified and the appraiser’s opinion of their . . . influence on value must be developed by analysis of relevant market data.” *Id.* at 45. Also, an appraiser must understand and “analyze the property’s current use and alternative uses” that are relevant to value and identify the relevant market defining valuation (i.e., “a wholesale level of trade, retail level of trade, or . . . various auction conditions”). *Id.* at 37. And, in that context, an appraiser must analyze the whole of what is before her—she must analyze what is there as a whole and “must refrain from valuing the whole solely by adding together the individual values of the various component parts.” *Id.* at 18.

<sup>69</sup> As with real property and mass appraisals, there is a standard—USPAP 8—that governs reporting a personal property appraisal. This looks similar to the others, requiring the appraiser to communicate their opinion clearly and ultimately, not misleading. See *id.* at 49–54 (addressing “the content and level of information required in a report that communicates the results of a personal property appraisal”). It must set forth enough information so that the users can understand the report properly, and—as with real property appraisals—appraisers are permitted to provide full reports or restricted appraisal reports. As always, the content of the report needs to be consistent with the intended use of the appraisal report and include a certification by the appraiser.

liquidity, etc.) are all key. Understanding the extent to which an appraiser thought through, and accounted for, these issues will guide one in determining whether that appraisal is accurate or the extent to which it is material and convincing. Any business appraisal report must account for these issues and must be clear and understandable to its intended users.

Finally, USPAP also includes standards governing how an appraiser should go about reviewing another's appraisal report. USPAP 3 sets forth the manner in which an appraiser must develop an appraisal review, so this is an important standard if you are evaluating your expert's critique of another appraiser, or if you are cross-examining another's expert regarding their critique of your side's appraisal. And, again, the scope of work is key. In many ways, this work often mimics the work of an original appraiser in that a reviewer must make their own independent judgments about the methods and techniques required to answer the issue at hand. In doing so—as we have already seen—the reviewer must diligently and competently assess the problem at hand and then prepare a review that is neither biased nor apt to be misused by the client. This does not necessarily involve the development of an independent opinion of value. That is one possible route, though lawyers may note how doing so opens the reviewer up to many of the same kinds of criticisms and lines of questioning as the original appraiser.<sup>70</sup> Another route is to simply deconstruct the appraisal under review, noting the scope of work involved and assessing whether the methodologies, assumptions, or hypothetical conditions utilized were appropriate and accurate.<sup>71</sup>

<sup>70</sup> See APPRAISAL STANDARDS BD., USPAP, supra note 3, at 28 (“When the assignment includes the reviewer developing his or her opinion of value or review opinion, the [relevant USPAP standards apply.]”).

<sup>71</sup> Id. (“Information that should have been considered by the original appraiser can be used by the

USPAP 4 follows on USPAP 3 and dictates the manner of reporting an appraisal review.<sup>72</sup> The review report is to be separate from the work under review and must be clear and accurate. Additionally, it must be sufficiently detailed to permit the intended user to understand the work under review and the reviewer's opinion, which must be clearly stated. Of course, the reviewer's opinions and conclusions, and any reasons for disagreement, must be spelled out and clear. Finally, a review, like an appraisal, must be certified.

### C. The Importance of USPAP

A number of cases make it clear how critical USPAP Standards can be in the context of legal maneuverings and litigation. Kansas is an example of a state that takes these standards very seriously. Indeed, “Kansas law requires all appraisals to be prepared in accordance with USPAP standards.”<sup>73</sup> A failure, then, to adhere to USPAP standards summarized herein may be in and of itself enough for a court to hold an appraisal non-persuasive.<sup>74</sup> Similarly, in Missouri, “[s]tate-certified appraisers, state-licensed real estate appraisers, and state-licensed appraiser trainees shall comply with the [USPAP] promulgated by the appraisal standards board of the appraisal foundation.”<sup>75</sup> This means, according to Missouri courts, an

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reviewer....” Similarly, “[i]nformation that was not available to the original appraiser...may also be used by the reviewer.”)

<sup>72</sup> See id. at 40 (acknowledging “the content and level of information required in a report that communicates the results of an appraisal review”).

<sup>73</sup> In re Equalization Appeal of Target Corp., 410P.3d939, 942 (Kan. Ct. App.2017).

<sup>74</sup> See In re Ruffin Woodlands, LLC, No. 120,705,2020WL3579798, at \*6 (Kan. Ct. App. July 2, 2020) (applying this in the context of a tax appraisal and decision by the Kansas Board of Tax Appeals).

<sup>75</sup> Dwiggin v. Mo. Real Estate Appraisers Comm'n, 515 S.W.3d 765, 767 (Mo. Ct. App. 2017) (quoting MO. REV. STAT. § 339.535 (2020)).



appraiser's failure to comply with USPAP is cause for discipline.<sup>76</sup>

Kansas and Missouri are relatively extreme examples, statutorily requiring ad valorem appraisals to conform to these standards, but its courts are far from the only ones to take note of USPAP. In South Dakota, for example, the Supreme Court of South Dakota has assessed appraiser competence against compliance with USPAP, per administrative rule, and in Colorado, the Colorado Court of Appeals held that USPAP is evidence of the standard of care applicable to appraisers.<sup>77</sup>

Reading these cases is instructive in that it demonstrates how some courts use USPAP like a governing standard, against which appraisals must be measured.<sup>78</sup> Again, the key point here

is that lawyers should be aware of the USPAP and utilize it the way they utilize common law principles, statutes, and controlling regulations and rules: as a guidepost that informs and gives structure to appraisals and valuations. Too often, lawyers mentally consign "appraisal" to the realm of an expert, artlessly reading their own experts' opinions and simply relying on the same to assess and critique those of opposing experts. But USPAP provides important context and, while not removing appraisal and valuation from the realm of expert authority, it can help lawyers do their jobs better, as is discussed further in Section IV, below.

## IV. USPAP as Expert Testimony and Recommendations for Lawyers

Before turning to a more concrete examination of how USPAP can positively affect a lawyer's approach to a case, it is helpful to, even briefly, articulate that these series of standards, in aggregate, as interpreted and applied by appraisers, is expert evidence, as traditionally understood. It differs from traditional expert opinion in that "a witness who is to give expert opinion about the standard of care within a particular licensed profession must be licensed in that same profession," whereas courts will receive valuation information from non-licensed individuals.<sup>79</sup> It is also the case that lawyers probably generally have more flexibility as to whether to call an appraisal expert. Even if not strictly necessary, though, "it can strengthen the proponent's case by adding an aura of authoritative and objectivity to the presentation."<sup>80</sup>

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are not 'materially detrimental' to an appraiser's overall opinion of value are not fatal") (quoting *In re Equalization Proceeding of Amoco Production Co.*, 102 P.3d 1176, 1184 (Kan. Ct. App. 2004)).

<sup>79</sup> 3 Tex. Prac. Guide Torts § 13:41 (2020).

<sup>80</sup> 2 Examination of Witnesses § 12:6 (2020). "For example, where the value of land is in issue . . . the

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<sup>76</sup> See *id.*

<sup>77</sup> See *In re Klein*, 670N.W.2d367, 369–70 (S.D.2003) (noting an appraiser's failure to adhere to Standards Rule 1-1 may result in a declaration "that the appraisal was incompetent"); *Hice v. Lott*, 223 P.3d 139, 145 (Col. Ct. App. 2009) ("USPAP standards, adopted as part of an administrative regulatory scheme, may be used as evidence of the standard of care . . ."); see also *Thomas Ctr. Owners Ass'n. v. The Robert E. Thomas Tr.*, 2020 WL 6036828, at \*4, 6 (stating use of USPAP in an appraisal shows a decision was not reached through an "arbitrary or capricious action").

<sup>78</sup> See *Ruffin*, 2020 WL 3579798, at \*6 (noting that Standard 6-3(a) requires an appraiser to analyze the effect on use and value of the highest and best use of the property and then determining validity of appraisal based on whether the appraisal did so); *In re Johnson Cnty. Appraiser*, 283 P.3d 823, 834 (Kan. Ct. App. 2012) (asking whether the relevant appraisal was "invalid because it did not comply with Standards 1 and 2 of the USPAP"); *In re Protests of City of Hutchinson*, 221 P.3d 598, 606 (Kan. Ct. App. 2009) (finding a taxpayer's proposed appraisal violated USPAP and was therefore "contaminated" and "of no utility in valuing th[e] property"); *In re Equalization Appeal of Kan. Star Casino, LLC*, 362 P.3d 1109, 1120 (Kan. Ct. App. 2017) (holding the Board of Tax Appeals "may not rely on an approach to value that is expressly prohibited by USPAP," though noting "USPAP violations that

And, as is the norm for all expert evidence, the “touchstone for expert [appraisal] testimony is helpfulness.”<sup>81</sup> The dominant method for establishing valuation (clearly in the case of real estate, but with respect to other objects of value, as well) is valuation by a professional appraiser, via opinion evidence.<sup>82</sup>

Given that this a traditional form of evidence utilized by lawyers, and given the standing attempt of this Article to place it within the grasp and use of lawyers in their practice, the primary recommendation here is simple but powerful: be aware. Appraisers give ultimately subjective opinions of value, and it is certainly possible to understand and critique these opinions. Errors in data sources and errors in selection and adjustment of comparable sales are possible, of course.<sup>83</sup> But here, the real value is knowing appraisers are governed by objective standards—and knowing what those standards are— makes lawyers immeasurably better-prepared to understand when they need an expert, to understand and criticize adversarial appraisals, and to interact with and prepare same-side appraisals. Given the existence of USPAP, a widely adopted and well-respected set of guidelines, there is no need to be at

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owner of the property, even though not an expert in valuation, may ordinarily testify as to his opinion of its value. The problem with such testimony is that the witness, being an interested party to the lawsuit, is easily impeached on that basis.” Id.

<sup>81</sup> Id.

<sup>82</sup> See John F. Shampton, *Statistical Evidence of Real Estate Valuation: Establishing Value Without Appraisers*, 21 S. ILL. U. L.J. 113, 116–18 (1996) (noting valuation of real estate as being the mere “subjective opinion of an expert” that is just as susceptible to critique).

<sup>83</sup> See id. at 130 (discussing other, non-opinion centric methods out there such as, “[m]athematically, the Hedonic Pricing Function [which] is an equation relating the value of a property (the so-called dependent variable) to a set of variables representing attributes which influence that value (the independent variables)”).

a loss when dealing with valuations and assessments.<sup>84</sup> In particular, a knowledgeable lawyer should be well-positioned to prepare good discovery and to prepare their own appraiser for adversarial interactions. This does not mean that a lawyer must become an expert in USPAP any more than an appraiser must become intimately aware of the Rules of Procedure or of Evidence.<sup>85</sup> But it does mean that some level of examination, analysis, and evaluation is possible and necessary in order to assess any legal issues or cases that turn upon an appraisal.

And, in that context, the first logistical recommendation is to prepare good discovery. Good discovery will give you the information you need to know regarding the appraiser, the appraiser’s credentials, and the basis of the appraiser’s report.<sup>86</sup> The USPAP is essentially a roadmap for how to prepare appraisals of all stripes, so it is also a roadmap for how to question an appraiser about their opinion. There is no need for generic “expert questions”—you should come at the issue from the standpoint of the governing standards to see how closely the report conforms to it and to assess whether

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<sup>84</sup> Robert P. Schweihs, *The Relationship between the Attorney and the Valuation Analyst*, FORENSIC ANALYSIS INSIGHTS (2012), [<https://perma.cc/AD83-AZCT>] (setting forth practical aspects of the relationship between a valuation analyst, the USPAP, and an attorney).

<sup>85</sup> Indeed, lawyers should strongly consider retaining qualified appraisal experts in many settings where appraisals are at issue, including for the purposes of preparing for discovery, as discussed *infra*.

<sup>86</sup> See *infra* Appendix B (providing an example of potential discovery requests). These are, of course, merely illustrative. Every situation is different, and discovery must always be narrowly tailored to meet the particular situation. That said, it is hoped that these will serve as a helpful baseline for some of the kinds of information you can elicit from adversarial appraisers. These are direct requests to opposing parties, as well as subpoena requests and deposition-style questions for the appraisers themselves.

the opinion is based on appropriate analyses and methodologies.

Similarly, on the other side of the coin, you can prepare your appraisers. You can do this by carefully reviewing their appraisals with them to ensure that you understand their opinions in the context of USPAP.<sup>87</sup> You can also make sure your appraisers are prepared for discovery and, particularly, depositions. Walking through a report in the context of the operable standards, and the underlying opinion in the context of appropriate analyses and methodologies, should ensure that your appraiser is ready for adversarial questioning.

## V. Conclusion

In sum, appraisals are technical, specific opinions. They arise in virtually every area of the practice of law, but their technical nature does not have to stymie lawyers as they advocate for their clients. Indeed, appraisals are particularly accessible by laypeople in that they are governed by relatively clear and straightforward standards. Lawyers who understand these standards can assess whether purported appraisers are qualified, utilize proper experts, and ensure their clients' interests are protected. This Article seeks to demystify this part of the law by setting forth those standards, explaining how they work (and do not work), and making a number of recommendations for lawyers who find themselves dealing with appraisals. ■

## Appendices

For Appendix A and Appendix B, see the original publication at <https://bit.ly/3k0Qf5t>.

### About the Author

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<sup>87</sup> And, of course, to ensure the appraisal was properly informed.

# Appraisal Review: What It Is, What It's Not and Why It Matters

By Jack Young, ASA, ARM-MTS, CPA

**Abstract:** This article, published in the *Business Valuation Review*® (Vol 37, Issue 4, 2018) intends to clarify what Appraisal Review is and is not, according to USPAP Standards 3 and 4, and how Appraisal Review education can be of benefit to appraisers and ultimately benefit the users of the appraisals. Further discussion includes the qualities that determine credibility of an appraisal, the importance of focusing on the review and critique of a specific appraisal report rather than the appraiser, and the importance of Appraisal Review education for appraisers who perform review. The American Society of Appraisers offers an accreditation in Appraisal Review that is of benefit to both the appraisal profession and the public at large.





The most important part of Appraisal Review is its contribution to determining the credibility of appraisals, which underlies its other contributions to the appraisal profession:

Appraisal Review supports the appraisal profession by increasing public trust in the profession and also encourages more professionally researched and communicated appraisal reports. This article will explain what Appraisal Review is, what it isn't, and what makes it important for appraisers and the appraisal profession.

First, USPAP (Uniform Standards of Professional Appraisal Practice) defines Appraisal Review simply as *“the act or process of developing an opinion about the quality of another appraiser’s work that was performed as part of an appraisal or appraisal review assignment; (adjective) of or pertaining to an opinion about the quality of another appraiser’s work that was performed as part of an appraisal or appraisal review assignment.”*<sup>1</sup> In Standard 3, USPAP provides guidance toward developing that opinion through assessing the qualities of completeness, accuracy, adequacy, relevance, and reasonableness. Standard 4 addresses required content for the reporting of that opinion.

Second, the term Appraisal Review is used to indicate the work that reviewers perform:

the hands-on process and methodology from accepting a review assignment to submitting a final review report.

Third is the area of Appraisal Review education. Foremost in the field, and limited to real property appraisals, the Appraisal Institute has done much to regulate appraisal review, offering excellent books and courses.

The American Society of Appraisers continues to lead the area of Appraisal Review development and education for all appraisal disciplines. A fairly recent innovation is offering ARM 201 and ARM 204 to current ASA appraisers who are interested in reviewing appraisals in their own disciplines. Eliminating the need for ARM 202 and 203, which were required for the original ARM designation, streamlines the process of accreditation for experienced appraisers and provides appraisal users with accredited appraisal review experts in specific appraisal disciplines.

In the field of business and intangible asset valuations, the Certified in Entity and Intangible Valuations (CEIV)<sup>2</sup> designation, first awarded in 2017, shortly after CEIV education and tests became available earlier that year, depends heavily upon the Mandatory Performance Framework (MPF) and Application of the Mandatory Performance Framework (AMPF), documents intended as a resource for the valuation review process. The CEIV designation includes a periodic practice review component in order to retain the designation.

<sup>1</sup> USPAP 2018-2019, p. 3, Appraisal Review

<sup>2</sup> <https://ceiv-credential.org/>

The Importance of Appraisal Review  
Appraisal Review is, first and foremost, a standardized process that provides guidelines for adjudging the overall quality of an appraisal relative to applicable standards, while concurrently addressing the degree to which that appraisal is credible, logical and persuasive. It is a critical component of USPAP's pervasive principle: to support public trust in the appraisal profession. Much like the accounting profession, the appraisal profession is largely self-regulating, real estate being the exception. Appraisal Review is one of the important quasi policing methods by which the appraisal profession conscientiously guides and regulates its members.

Appraisal education generally focuses on the appraisal process itself with little or no guidance in communicating that process to the intended users. Unfortunately, this too often results in intended users being unable to thoroughly understand the appraisal report they've received. They may not be able to follow the analytical methodology, the basis for key assumptions, the value reconciliation process or the logical flow supporting the conclusion of value. Appraisal Review addresses that problem directly, providing a standardized methodology that can be used to address flaws or errors in the appraisal process and in appraisal reports. Like the CEIV and the MPF, ASA's ARM 201 & 204, are intended to improve valuation quality.

At least two factors contribute to that improvement. The first is immediate: By understanding and practicing proper Appraisal Review methodology, appraisers become more skilled in both appraisal processes and in appraisal report writing. Appraisers who have taken ARM education courses understand and apply the necessary qualities and factors of effective report writing. Analyzing reports of other appraisers

illustrates what to include and excludes in reports and increases appraisal competency. A more long-term benefit to be gained from an appraisal review practice is increased and regular exposure to a variety of appraisal report formats – many of which may inspire fresh and perhaps unexpected ways of understanding the appraisal process. And, of course, accredited reviewers are a position to help other appraisers develop increased skill as well, should that be appropriate.

Standardized Appraisal Review methodology strongly supports USPAP's goal of developing increased public trust by providing increased confidence for appraisal users overall.

## Performing and Presenting an Appraisal Review

One confusing comment heard from appraisers is that they don't need to follow Appraisal Review methodology because reviewing only a portion of an appraisal or just one important calculation isn't a "real" Standard 3 review. It's true that the subject of an appraisal review can be very specific or quite broad: as specific as checking a discount rate, verifying the analytical methods used to value one item, verifying market rents, confirming proper choice of index used, or checking adjustments made to one comp; or as broad as the entire report, the entire workfile, an inspection of the subject(s) of the work under review, or providing an opinion of value.

USPAP, however, defines appraisal review quite broadly: *"the act or process of developing an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment; (adjective) of or pertaining to an opinion about the quality of another appraiser's work that*

*was performed as part of an appraisal or appraisal review assignment.”<sup>3</sup>*

USPAP further states that the subject of an appraisal review assignment may be “*all or part of a report, workfile, or a combination of these*” and adds that “*Reviewers have broad flexibility and significant responsibility in determining the appropriate scope of work in an appraisal review assignment.*”<sup>4</sup>

Given the range of what USPAP declares Appraisal Review includes, it’s difficult to rationalize that there may be *any kind* of appraisal review for a client or intended user – no matter how narrow or limited – that is not subject to standardized Appraisal Review methodology. Standardized methodology would not, of course, be required, for reviews not performed for clients or intended users, such as “internal reviews” done by an internal valuation professional for audit review of a purchase price allocation or the collegial reviews that appraisers often perform for each other as a professional courtesy.

Since ASA members must always comply with USPAP, any appraisal review service that involves “*an opinion of another appraiser’s work*” must conform to Standards 3 and 4. This would even apply to an ASA member reviewing a report prepared under different appraisal standards such as IVS, SSVS or other appraisal standards. The only situation in which the Appraisal Review standards might not apply would be an assignment in which a reviewer is only hired to verify factual data within another report and offer no opinion on anything. Standards 3 & 4 provide reviewers a great deal of flexibility and structure in meeting the needs of the appraisal review’s intended user when “developing an opinion about the

quality of another appraiser’s work.” The structure is provided for both phases of an appraisal review: Developing an Opinion of Credibility and Developing a Review Report.

## Developing an Opinion of Credibility: Standard 3

Standard 3 presents the core concept of Appraisal Review: Consistent with the reviewer’s scope of work, the reviewer is required to develop an opinion as to the completeness, accuracy, adequacy, relevance, and reasonableness of the report, given law, regulations, or intended user requirements applicable to that work. These qualities of completeness, accuracy, adequacy, relevance, and reasonableness provide the reviewer with a robust and standardized way of reviewing appraisals. An assessment of whether or not these qualities are present in the work under review illuminates the credibility of the appraisal work and, subsequently, the appraisal report being reviewed.

A recent article in the *Business Valuation Review*<sup>5</sup> states that valuation quality can be impacted by factors including

- Advocacy—lack of independence
- Insufficient technical competence (for example, inadequate knowledge of guidance impacting valuation or insufficient technical skills)
- Negligence (for example, inadequate valuation procedures or inadequate quality control).

Each of these factors can be addressed within the context of USPAP’s Standard 3. ARM classes involve vigorous and lengthy discussions about these qualities. While the list is collectively exhaustive, the individual

<sup>3</sup> USPAP 2018-2019, p. 3

<sup>4</sup> Ibid.

<sup>5</sup> CEIV: *Advancing the Quality of Valuations*, Business Valuation Review®, Vol 36, No 2, 2017

*“Appraisal Review is critical for maintaining the public trust and improving appraisal report quality for all appraisers”*



elements themselves are not mutually exclusive – in fact, they overlap to provide an effective and comprehensive basis for appraisal review. For example: boilerplate may create problems with relevance and adequacy; improper use of analytical procedures may create problems related to accuracy and reasonableness; inadequate asset descriptions may demonstrate a lack of knowledge regarding the subject assets and can indicate significant problems with the valuation analysis.

Applying the filter of these qualities to the appraisal allows the reviewer to make objective and comprehensive determinations regarding its credibility. Of course, because Standard 3 stipulates that the credibility of assignment results is always measured in the context of the intended use and that the (appraisal) report must contain sufficient information to allow intended users to understand the scope of work performed, a critical part of the reviewer’s job is essentially to step into the shoes of the intended users of that appraisal and determine – in light of the intended use – whether or not the report meets the requirements of those intended users.

## Work under Review: Scope of Work

Analyzing the original appraisal’s Scope of Work is an important step in understanding the context of intended use. Scope of Work problems often foreshadow a problematic appraisal. These early warnings often appear as a vaguely defined appraisal problem. This is a critical point because as we often say in the appraisal discipline, “A problem well put is half-solved.”<sup>6</sup> If the scope of work appears inadequate for an assignment, that

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<sup>6</sup> John Dewey, (1859–1952) American philosopher, psychologist and educational reformer

inadequacy might well indicate a problem with report credibility.

Scope of Work of the original report should include the seven key elements of the appraisal problem: Client, Intended User, Intended Use, Definition of Value, Relevant Characteristics, Effective Date of Value, and Assignment Conditions including assumptions and hypothetical conditions. Depending on the Intended Users requirements, these two items can have great bearing on the report’s credibility. For example, in appraising damaged or destroyed assets for insurance loss claims, all assumptions made regarding descriptions and conditions must be listed, documented, and explained.

With the Scope of Work in place, the appraiser develops the four points of investigation necessary to solve the problem: identification of subject property, inspection, data research and appropriate analysis. The reviewer will want to analyze each of the seven elements and each of the four points of investigation for the qualities of *completeness, accuracy, adequacy, relevance, and reasonableness.*

## Developing a Review Report: Standard 4

An important part of developing a review report is focusing the reader’s attention on the most significant issues – in light of the intended users’ requirements – rather than making a list of minor errors. Of course, distinguishing between significant issues and minor errors is an important aspect of the reviewer’s responsibility. A preponderance of minor errors is often a cause for alarm and calculation errors rightly disconcert experienced appraisers. Focusing on misspellings, however, when

a report under review contains inadequate asset description that influences market research errors, benefits neither the reviewer nor the intended user. The review report must contain “reasons for disagreement” with issues identified. These reasons need to be fully supported by a logical flow of facts, analysis and conclusions using an objective tone. In the ARM classes we teach syllogistic writing based upon deductive reasoning, as traditionally taught to first year law school students. Although not required by USPAP, syllogistic writing is an effective tool for writing both appraisal reports and review reports.

In the end, reviewers only point out issues uncovered in the areas of *completeness*, *accuracy*, *adequacy*, *relevance*, and *reasonableness* and/or non-compliance with USPAP Standards. Decisions as to whether any of the issues at hand constitute a “violation” of USPAP is not the responsibility of the reviewer; such determinations are the responsibility of a trier of fact, regulatory body, or some other entity with the authority to do so.

### The Dark Side: What Appraisal Review is Not

While developing an opinion about the quality of another appraiser’s work seems pretty straight forward, a couple of important points need to be made: Appraisal Review is not a review of the appraiser or a determination of whether or not an appraiser is competent. An Appraisal Review focuses directly on the appraisal itself, leaving any conclusions about an appraiser’s competency pertaining to the specific assignment or in general to the user of the Appraisal Review.

### Don’t Review the Appraiser

Appraisal Review is not an opinion of the appraiser who performed the work; it’s an opinion about the work performed by the appraiser, aka the work under review. While this seems obvious, it’s often not: review reports that cross the line and focus on the author of the report rather than the report itself are all-too common.

In focusing on the appraiser, the reviewer can easily venture onto the thin ice of defamation and inadvertently make ad hominem attacks. A skilled litigator can all too easily transform a reviewer’s direct attacks on another appraiser’s “competency” as defamation and press charges against the reviewer. Such litigation could be quite unpleasant and time consuming regardless of the final decision. As a Southern attorney thoughtfully drawled at a litigation conference, “Anytime your name appears before or after the letter “v” ... you lose.”

Best practice is to completely avoid referencing the appraiser, and while this may seem difficult—especially when the work under review has glaring problems that call into question the competency of the report’s author—it’s important to keep the focus of the review on the report rather than the appraiser. Standards Rule 3-2 (d) (iii) requires the reviewer to identify “the appraiser(s) who completed the work under review, unless the identity is withheld by the client.” This information is located in the Scope of Work and should very well be the only place the appraiser(s)’ name(s) are listed in the entire report. Even if the reviewer has past history or experience with the appraiser, the reviewer must focus steadfastly on the work under review and not the appraiser. This is an important aspect of impartiality and independence. Reframe any personal observations to focus on the report rather

than the report's author and trust that the user of the Appraisal Review will be able to draw the obvious conclusion about the author's competency based on the reviewer's objective observations about the information provided in the work under review.

Another related issue is reviewing a colleague's work. Since many appraisers know each other, a reviewer may be asked to review a report written by a colleague. In such cases, a critical determination in accepting the assignment is whether or not an objective review is possible – a review not favorably or unfavorably influenced by previous experience of the report's author. If the author is a well-respected senior appraiser or an acknowledged expert appraiser, might the reviewer be inclined to overlook discrepancies or errors? On the other hand, if the author has a reputation as an uneducated slapdash ne'er-do-well, would the reviewer be able to put that opinion aside and give the report an objective analysis? The important point here is that it is more prudent for a reviewer to decline an assignment than to risk creating a review that is mired in unconscious bias.

### **Don't Declare Competency or Incompetency of the Appraiser**

This is similar to the edict above and yet it is worth its own discussion since there is considerable confusion regarding the issue of competency. USPAP provides guidelines for judging competency only by how the appraisal work is performed, not by whether the appraiser is competent or not. Reviewers often erroneously attempt to judge an appraiser's competency based on what is included or omitted in a curriculum vitae (CV), résumé, or statement of qualifications that may be attached to an appraisal, the appraiser's education or professional association membership.

USPAP does not, in most cases, require an appraisal report to include a CV, résumé, or other statement of qualifications. (See FAQ #300). And USPAP review methodology clearly demands that determining whether an appraisal is credible depends solely on how the work was performed and how that work is communicated to the intended user, specifically in the areas of Intended Use, Market, Asset Type, Geographic Issues, Rules & Regulations, and Analytical Methods. Continue reading to find out how reviewers analyze these areas using five basic qualities – completeness, accuracy, adequacy, reasonableness, and relevance – as discussed in USPAP Comments regarding Standards Rule 3-3(a).

Another reason to avoid the "C" word of competency is similar to the defamation warning in the previous section. Section 5.1 of the ASA Code of Ethics states, "*The Society declares that it is unethical for an appraiser to injure, or attempt to injure, by false or malicious statements or by innuendo the professional reputation or prospects of any appraiser.*" Calling an appraiser incompetent could certainly be construed as an unethical act regardless of how justified a reviewer might believe that label to be. A safer and more professional course of action is focusing on the elements of competency and allowing readers of a review report draw their own conclusions.

### **Appraisal Review and an Opinion of Value**

Depending upon the requirements of an intended user, appraisal review can be completed with or without an opinion of value. In some cases, an appraisal review may be requested to include an opinion of value for a different effective date or making different assumptions than the work under review.

The important point here is to be clear about what is considered an opinion of value within the appraisal review methodology. One common error occurs when a statement regarding the reviewer's agreement or disagreement with the opinion of value – even when engaged to perform a review *without* an opinion of value. An Appraisal Review that concurs or disagrees with a report's opinion of value is in fact providing an opinion of value. To avoid this situation, the review might more appropriately express that the opinion of value stated in the original report is (or is not) properly supported.

In cases wherein a reviewer is requested to provide an opinion of value and determines that the opinion of value in the original report is not properly supported, the reviewer will need to provide a properly supported opinion of value – either with an entirely separate appraisal report or by including the opinion of value within the review report. *“Those items in the work under review that the reviewer concludes are credible can be extended to the reviewer's development process on the basis of an extraordinary assumption,”* per Comment to Standard 3 (c). Do note that under Standard 3-3 c (i) only the requirements of Standards 1, 5, 7, or 9 apply and not Standards 2, 6, 8 or 10. It is up to the reviewer to decide whether to create a separate report with specific assumptions or if the user's requirement may best be served with an appraisal review that includes an opinion of value.

Regarding an opinion of value, a reviewer might even be asked to review an appraisal report of a subject property previously appraised by that reviewer acting as an appraiser. USPAP does not discuss this situation; this is a case where unconscious bias must be carefully considered. Will the reviewer be able to focus exclusively on objectively reviewing only the appraisal

report and process without bias even if it is markedly different from his or her own previous appraisal? If not, the appropriate choice may be to decline this kind of assignment. It's worth repeating that USPAP allows reviewers *“broad flexibility and significant responsibility in determining the appropriate scope of work in an appraisal review assignment.”* In some instances, that may include no scope of work.

## Appraisal Review Education

More and more, Appraisal Review is a vital part of the appraisal profession. While the Appraisal Institute has done much to regulate review in the real estate market, ASA continues to lead the area of Appraisal Review development and education for other appraisal disciplines. A fairly recent innovation that's proving popular with ASA appraisers is that ARM 201 and ARM 204 are now offered in an advanced, breaking-edge format to already accredited appraisers who are interested in reviewing appraisals in their own disciplines. This streamlines the process of accreditation for experienced appraisers and provides appraisal users with accredited appraisal review experts in specific appraisal disciplines. To learn more about the ARM Specialty Designation or upcoming ARM classes, visit [ASA online](#) or call (800) 272-8258.

Appraisal Review is critical for maintaining the public trust and improving appraisal report quality for all appraisers. Fortunately, USPAP standards provide a reliable, flexible and coherent foundation for Appraisal Review and education and accreditation opportunities are available for interested appraisal professionals. ■



## Acknowledgements & Appreciation

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### About the Author

Jack Young, ASA, ARM-MTS, CPA, ARM Publication Chair, is owner and primary appraiser at NorCal Valuation in northern California. He served as Chapter President of the Northern California Chapter of the American Society of Appraisers and as Chair of the International Appraisal Review & Management (ARM) subcommittee of the American Society of Appraisers. He currently serves the ASA on the Board of Examiners and as editor of the Appraisal Review e-journal and locally as ARM Director on the Northern California Chapter Board.

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# The Role of Asset Life Expectancy in Arriving at Credible Results

Richard K. Ellsworth, PE, ASA, CFA, CCP

**Abstract:** The development of asset life expectancy frequently plays an important role in developing an opinion of value concerning an asset. Because appraisal reviews provide an opinion about the quality of the work under review (WUR), the examination of asset life expectancy and the support for its development is an important element when reviewing an appraisal report. This article discusses asset life expectancy in the context of appraisal review.



## Asset Life Expectancy

Asset life expectancy – a foundational element in the appraisal process for many assets – may

exert significant influence on asset valuation results and the development process of that element can therefore be a critical aspect of the appraisal review process. Appraisal reports frequently fail to explain the development of asset life expectancy, which is appropriately developed from a variety of statistical and analytical techniques; the techniques used are largely dependent on the availability of information from which to perform the analysis.

USPAP appraisal review Standards 3 & 4 focus on the five (5) CAARR elements of Completeness, Accuracy, Adequacy, Relevance, and Reasonableness. A lack of discussion regarding life expectancy development can be addressed as *Completeness or Reasonableness*. The level of completeness in a report can be assessed by asking: After reading the report, does the intended user have lingering questions about the work performed or the appraisal results? In assessing Reasonableness, a reviewer might ask: Does the work performed and/or conclusions reached make sense given the issue at hand relative to the standard of care? Without an understanding of how asset lives were developed, it could be difficult for an intended user –or a reviewer– to feel satisfied with the work performed.

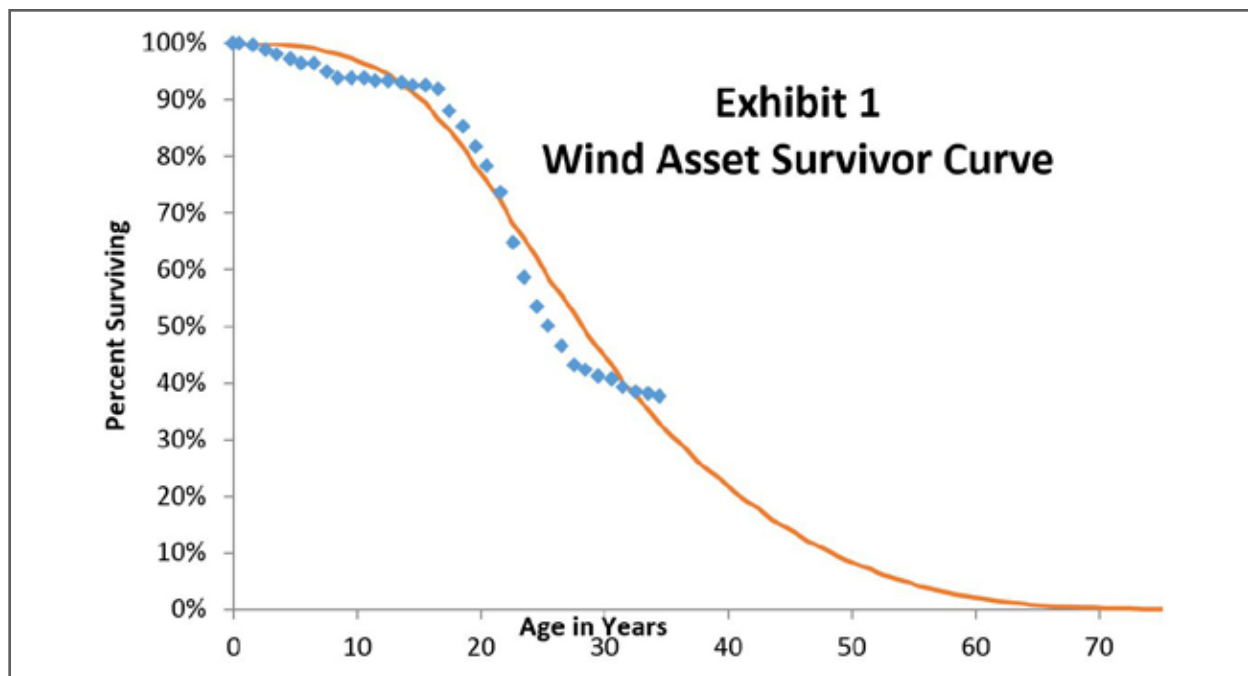
One of the most important aspects of asset life expectancy is that it must be based upon objective evidence and not the unsupported personal opinion of the author of the appraisal report. Development may depend upon various sources that provide reliable and objective support for the selected asset life expectancy used in an appraisal report. Fixed asset life is impacted by factors such as design specifications, operational intensity, and the maintenance and repair policy applied to the asset. Asset life expectancy is typically based on the consideration of these factors as well as historic experience with the equipment or similar assets.

Various methodologies and resources may be used in developing life expectancy and while not all appraisers will consistently agree on these resources or methodology, the critical part of review is to determine if in fact the WUR explains the analysis and cites the sources. Some avenues of analysis include the retirement rate method, based on studies of asset placed in service and retirement data; the financial statements of companies that operate the same or similar assets for financial reporting purposes; and publications that provide general industry indexes and asset useful life rates, such as ASA's *Estimated Normal Useful Life Study (2010)*.

### Retirement Rate Method

The retirement rate method is often used to develop life expectancies of physical assets. This method, which depends upon





the availability of placed-in-service date and retirement date information, is used in conjunction with survivor curves (much like the mortality curves that insurance companies developed for human populations); Iowa-type curves are perhaps the most commonly used for this purpose as they were created based on the study of retirement behavior patterns for physical assets.

The retirement rate method considers placed-in-service dates for operating assets and placed-in-service dates and retirement dates for retired assets to construct an observed survivor curve that details the relationship between the asset population percent surviving and asset age.

A comparison with the Iowa-type curves is used to provide a complete illustration of the retirement profile. This statistically based methodology provides a framework from which to develop a survivorship profile, resulting in an asset survivor curve that supports an objective estimate of asset life expectancy.

For example, Exhibit 1 presents the least squares curve-fitting process<sup>1</sup> for wind assets that minimizes the squared differences with the observed survivor curve and yields an Iowa L2 survivor curve with a 30-year life as the best fitting survivor curve.

### Financial Statements

Financial statements are another source of asset life expectancy information. Notes to the financial statements may provide indications of the length of time that an asset is being depreciated for financial reporting purposes. While this may not be correlated to useful life, it does provide information regarding management's perspective with respect to asset life expectancy. In addition, such records can indicate major overhauls or replacements that can be considered in estimated asset life, albeit with less statistical effort than the retirement rate method.

<sup>1</sup> The least squares method provides the overall rationale for the placement of the line of best fit among the data points being studied. <https://www.investopedia.com/terms/l/least-squares-method.asp>



For instance, 2018 financial statements of a wind project operator indicated a 20-year depreciation for wind project constructions begun *before* 2011, and a 25-to-30-year depreciation for projects begun *after* 2011. Financial statements of another wind project operator showed a 25-to-35-year depreciation. Why the difference? Based on an industry review suggesting that the lives of certain wind project equipment were expected to be longer than those previously estimated for depreciation purposes, the second wind project operator changed the estimated useful lives of certain wind project equipment from 30 years to 35 years to better reflect the period during which these assets were expected to remain in service.

## Reliable Publications

In cases where retirement rate data is not available and the depreciation schedules are not helpful, an appraisal should use an objective source for asset life expectancies used to develop values. Publications providing general asset life information are a staple resource for many appraisers.

### *Industry Publications*

General industry publications can be a source of guidance with respect to the expectations of market participants concerning the asset lives. For instance, a survey of wind project developers, sponsors, financiers, and consultants conducted by Lawrence Berkeley National Laboratory<sup>2</sup> concerning expectations for wind project life expectancy, indicated an average expectancy of 29.6-years. The survey also showed that wind

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<sup>2</sup> Wisner, R. and Bolinger, M., “Benchmarking Anticipated Wind Project Lifetimes: Results from a Survey of U.S. Wind Industry Professionals”, Lawrence Berkeley National Laboratory, September 2019. Available at <https://emp.lbl.gov/publications/benchmarking-anticipated-wind-project>.

project useful life expectations have increased over time from 20 years in the early 2000s to 25 years in the mid-2010s and most recently to 30 years. These results indicate that wind project life expectancy has increased as the industry technology has matured and there is an improved understanding of asset performance. Information such as this can be incorporated into a report’s discussion of asset life analysis.

### *Useful Life Publications*

Publications dedicated to asset useful life data provide another source of information regarding indications of life expectancy. These publications contain life expectancy guidelines presented in a format that includes information categorized by industry group and further classified into subgroups in certain instances. Examples of useful life publications include the Marshall Valuation Service (published by Marshall & Swift-CoreLogic) that presents useful life information by industry for a broad spectrum of asset types; Internal Revenue Service *Bulletin F* that provides a compilation of useful lives for thousands of assets grouped by industry; and the *Estimated Normal Useful Life Study* published by the American Society of Appraisers (2010) that provides life expectancy estimates for a wide variety of assets. Although these publications present useful life by industry for many industries and asset types, not all industries are included: information regarding wind projects, for example, was unavailable from these sources.

## Conclusion

The preparation of asset life expectancy estimates should reflect information based upon objective verifiable evidence that can be confirmed by the appraisal reviewer. Some common and dependable evidence

*“The presence of objective verifiable evidence as support for the selected asset life expectancy improves the quality and reliability of an appraisal report.”*

an appraiser might use would include the retirement rate method, company financial statements, industry specific publications and asset useful life publications. These analytical techniques and information sources, when used to develop estimates of asset life expectancy, support the WUR's opinion of value when dependent upon asset life expectancy. The presence of objective verifiable evidence as support for the selected asset life expectancy improves the quality and reliability of an appraisal report.

As an appraisal reviewer examines an appraisal report with attention to inputs, support, and methodology used to arrive at the opinions, it may be important to also consider how asset life expectancy is developed and discussed in developing asset value. ■

#### About the Author

[Richard K. Ellsworth, PE, ASA, CFA, CCP](#), has over 30 years of global experience in the valuation of power, renewable energy, and infrastructure assets. Rick has also performed asset life expectancy and depreciation studies using lowa-type survivor curves for a variety of tangible assets along with performing appraisal review services. He is a licensed Professional Engineer (PE), an Accredited Senior Appraiser (ASA), a Chartered Financial Analyst (CFA), and a Certified Cost Professional (CCP). He can be reached at [rickkellsworth@gmail.com](mailto:rickkellsworth@gmail.com).

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# Expert Deposition Testimony: Ten Commandments

Brian Peter Brinig, JD, CPA, ASA

**Abstract:** Although depositions appear to be informal, they are often the most important event during litigation because most cases settle before trial based on the opposing lawyer's evaluation of testimony and the demeanor of witnesses. Because of liberal discovery rules, almost any question can be asked during the deposition: they are formal discovery procedures with significant consequences to the litigation and expert witnesses should not underestimate their important role during the deposition discovery procedure.





## Ten Commandments of Expert Deposition

A deposition upon oral examination is a pretrial discovery procedure used to obtain facts relevant to the litigation. The witness is asked questions under oath by an examining lawyer. The questions and answers are transcribed by a court reporter verbatim. If testimony at trial is different from the deposition testimony, the witness can be impeached with the deposition transcript at trial.

Depositions and other discovery procedures are governed by Federal Rules of Civil Procedure 26-37 and state statutes. Because of liberal discovery rules, almost any question can be asked during the deposition. The deposition is often the most important event during the course of litigation because most cases settle before trial based on the opposing lawyer's evaluation of testimony and the demeanor of witnesses.

Expert witnesses play an important role in deposition discovery procedure. Before the expert deposition, the expert should assist the lawyer for his or her party in preparing for the deposition of the opponent's expert.

The expert should provide the lawyer with background information about the education, experience and reputation of the opponent's expert. The expert should advise

the lawyer where to probe for weaknesses in the methodology and analysis used by the opponent's expert in reaching his opinion. For example, the opponent's expert may have skipped some steps in his analysis or failed to review financial records which would affect his conclusions. The expert should suggest deposition questions to her party's lawyer and, if possible, attend the deposition of opponent's expert.

The expert must prepare for and give an effective deposition. The expert should complete her analysis before the deposition. However, the expert should not prepare a report or reduce her conclusions to writing unless asked to do so by her party's lawyer. The expert should insist on a detailed briefing with her party's lawyer before the deposition to discuss the expert testimony. It is also advisable to conduct a rehearsal with mock cross-examination to ferret out potential weaknesses in testimony, but such a practice session is not a privileged communication.

Although depositions appear to be informal, they are formal discovery procedures with significant consequences to the litigation. Expert witnesses should be particularly mindful of the importance of the deposition procedure and are advised to follow these "Ten Commandments" for effective deposition testimony.

1. Tell the truth but answer only the question which is asked. Do not volunteer information and avoid long,

*“...designated expert witnesses must be aware that virtually no privileges apply to communications or work they perform in litigation matters.”*



narrative answers. The more topics that you bring up in your answer, the more questions the examining lawyer will ask. The deposition is an opportunity for the opponent to obtain information, it is not the trial.

2. Think about the question before answering it. This will give you the time to formulate an appropriate response. It will also give your party's lawyer time to analyze the question and interpose any objections. Remember that the examining lawyer will attempt to develop an informal, but rapid conversation to elicit from you as much information as possible. Watch out for an examiner who attempts to catch you off-guard with a casual friendly manner or flattering questions.
3. Do not answer a question unless you understand it. If a question is unclear, ask the examining lawyer to repeat or rephrase the question or have the court reporter read the question back.
4. Do not guess or speculate. If you do not know the answer to the question, say so. If you are not sure, qualify your answer by saying "approximately" and the like. Beware of hypothetical questions. Before answering a hypothetical, make sure that all essential facts or assumptions are included. Remember that at trial, a portion of the deposition may be taken out of context and used to impeach you.
5. Do not bring notes, diagrams, books, or other written material to the deposition unless they are required by a subpoena or unless you have been instructed by your party's lawyer to bring them. If asked to testify regarding documents or other exhibits, take the time to review them carefully before answering questions about them.
6. Listen carefully to objections made by your party's lawyer. The objection may be intended to alert you to a trick question or some other problem with the question. If your party's lawyer instructs you not to answer a question, follow his instructions, even if the examining lawyer threatens you with court sanctions.
7. Do not argue or become angry or hostile with the examining lawyer. Such a reaction will communicate to the examining lawyer a lack of confidence that will be exploited at trial. It may also alert the examining lawyer to weaknesses in your theories or conclusions.
8. Even if the question calls for a "yes" or "no" answer, ask to explain your answer briefly if a qualification or explanation is necessary. However, do not be concerned if your answer does not apply all information which would be required for a complete understanding of the topic. Your party's lawyer will decide whether to obtain a more complete explanation during the deposition or at trial.
9. Watch out for questions which involve absolute terms, such as "have you identified all of the documents which you have reviewed" or "are there any other facts that you have relied upon." If possible, provide a qualified answer in the event that you inadvertently omitted to identify a pertinent document or fact.
10. Do not memorize your answers in advance of the deposition. Provide a direct and factual response to the questions.

## Expert Deposition Testimony: Ten Commandments

In addition to familiarity with deposition procedures, designated expert witnesses must be aware that virtually no privileges apply to communications or work they perform in litigation matters.

All communications between expert and lawyer should be phrased in a manner consistent with the evidence and theory of the case. Even the fee or engagement letter may be discovered by the opponent. All documents prepared by an expert witness related to the matter are also discoverable. Although an expert may be required to prepare some documents in connection with her studies and analysis, she should be careful not to commit tentative conclusions or speculations to writing. If discovered, such conclusions or speculations can result in impeachment at trial.

Expert appraisers play an important role in litigation and the administration of justice in the United States. In addition to providing competent substantive opinions and conclusions, competent experts must be aware of the procedural pitfalls of the litigation process. Following the Ten Commandments for Effective Expert Depositions will help you in your next expert deposition. ■

### About the Author

[Brian Peter Brinig, JD, CPA, ASA](#), is an Accredited Senior Appraiser of the American Society of Appraisers and a certified public accountant. He is a Managing Director of CBIZ Brinig Taylor Zimmer, a forensic accounting and valuation firm in San Diego, California. He is Adjunct Professor of Law and the University of San Diego School of Law.

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# Impeachable Ad Valorem Appraisal Reports

Jack West, ASA

**Abstract:** Jack West has been involved in Ad Valorem cases for over thirty years as a consultant, appraiser, Special Magistrate, and interested stakeholder. This article discusses the level of scrutiny and challenge to appraisal work and reputations that experienced appraisers are familiar with in that arena. After all, the appraisal is the central document from which the outcome of value rests. While many administrative hearings are presided over by appraisers, judicial proceedings are often presided over by judges not experienced with appraisal methodology. Credentials and qualifications of the appraiser are important; however, judges need persuasive and understandable reports that are credible and supported by accepted appraisal practice to assist in their decision making. The intentions established by the Uniform Standards of Professional Appraisal Practice (USPAP) were to provide minimum appraisal standards for the development and reporting of professional appraisals. An appraisal review of an appraisal can be the critical document that provides either the confirmation of an appraisal's conformance to these high standards intended by USPAP or identification of significant issues of non-compliance. It can assist in answering the most important question: Is the report properly prepared and can it be relied on?





In many Ad Valorem cases, Special Magistrates or judges are presented with opposing appraisal documents or rebuttals. Complication has often been the norm, and sometimes even used

as a defense. Assessors would often hire independent appraisers to provide valuation reports in support of their assessment valuation. Which appraiser or valuation report was more credible?

When I first began in the Ad Valorem area in the 90's, "Ipse Dixit" (because I said so) was often sufficient. The appraiser's credentials would often win the day. For example:

"I'm not required by my association to provide the level of backup you say is insufficient in my appraisal."

"My backup is in my database or files at my office."

"You may not understand how I arrived at my value, but my credentials and experience should give you confidence that I know that the values are correct."

"I don't have to be in compliance with all of USPAP."

And I would often see appraisers attacking not only each other's work, but often, each other.

More recently, I have experienced the "Ad Populum" or "Dogma" appraisal defense in the Ad Valorem arena: "There are over "x" counties in this state and "x" in this country that use this method of assessing, therefore this method must be correct." A few years ago, a client presented me with the assessor's evidence package for his upcoming Florida Value Adjustment Board hearing. The package's principal evidence was a list of twenty counties in Florida and ten other states in the South that used the identical Economic Life tables for their appraisal methodology. I was asked by my client to review and comment. My comment was brief: As a former Special Magistrate, my responsibility was to hear the evidence presented by both parties, determine the most persuasive evidence that conforms to the hearing rules and meets the State of Florida definition of Fair Market Value (cash price a willing buyer-willing seller would agree to ...). What other assessors in other counties use for their methodology and present at their hearings was irrelevant to my duties. At the hearing, a respected Ad Valorem attorney for assessors in the state presented this list of my proposed responsibilities and argued that "everyone has it wrong and Mr. West has it right."

What surprised me in that situation was that instead of attempting to defend the valuation methodology that the county was using and then use the twenty other counties and ten other states as support for the methodology, the attorney went directly to the "Ad Populum" defense. The appeal

was denied by the Special Magistrate citing overwhelming evidence of the twenty counties and other states.

Without resource to Appraisal Review specialists, Special Magistrates or judges would often have to find their own answers to many critical components and arguments of the appraisal. Is the assessor's claim valid that since many assessors across the country use the same methodology, it must be appropriate? Are someone's credentials sufficient to not have to provide a high level of support? And if support is required, what is a sufficient level? What other issues are important and or relevant? Is there a rule that addresses the issue? Are all the mistakes pointed out by the opposing group compelling or insignificant? Do all USPAP regulations need to be followed for a report to comply?

The Appraisal Review discipline was created to answer the many questions that stakeholders in appraisal reports need to confirm credibility of the value conclusions. It can identify the issues, provide the USPAP rules that apply to the issues, explain whether the issues comply, and conclude their importance to the outcome of value.

You may ask yourself where does it end? If the original report is subject to an appraisal review report, is the appraisal review report also subject to an appraisal review? I suppose the answer is yes; however, an appraisal review report that is clearly and professionally written, well organized, supported by irrefutable facts, and demonstrating objectivity should be difficult to impeach and can significantly assist in settling the essential question: Is the original appraisal report credible and can it be relied on? ■

### About the Author

[Jack West, ASA](#), is principal of Property Valuation and Consulting, Inc. He has been involved in equipment valuations since 1993. An Accredited Senior Appraiser, MTS with the American Society of Appraisers since 2003, he earned his ARM accreditation in 2021. He has served as a Special Magistrate for Tangible Tax hearings before Value Adjustment Boards in Florida and is recognized as an expert appraisal witness by the Federal Bankruptcy court in Florida. He was a guest speaker on Ad Valorem valuation issues at the 2014 American Society of Appraisers Annual International conference and has written articles on Ad Valorem valuation for the ASA's MTS Journal, IPT and Valuation Strategies magazines. He is also a member of the Institute of Professionals in Taxation (IPT). He has a BA in Business Management from Eckerd College.



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# Five Mistakes in Appraising Premodern Chinese Paintings

Wei Yang, Ph.D., ASA, ARM-PP

**Abstract:** At first, I was stumped when Jack Young invited me to share my thoughts about the appraisal of Chinese art. As everybody knows, the auction market for Chinese art was topsy-turvy even before the pandemic, and Chinese art includes many forms, from traditional painting and calligraphy to ceramics, jade, bronzes, decorative art, and contemporary art. Where to begin? How could any significant insight apply to the appraisal of all forms of Chinese art? I solved the puzzle after realizing that my original framing of the assignment was mistaken. Rather than cover the whole field, I should use what I know best. Although my Ph.D. degree is in Art History and I am Accredited Senior Appraiser in what ASA calls “Asian Art,” most of my work focuses on Chinese painting and calligraphy, ceramics, and jade. During my 40 years of experience as an educator, researcher, consultant, appraiser, and expert witness, I have learned how to discuss the complexities of traditional Chinese painting and how to appraise it using language that non-specialists can understand. Once I settled on a title, the words flowed. Below I outline the five most serious errors in assessing the value of traditional Chinese paintings. Some of these problems are particular to Chinese painting, but most crop up in other forms of valuation.





## **Mistake #1: Misunderstanding Physical Features and Style**

For important assignments I always insist on inspecting the art work in person. What do I look for? I begin with the material aspects of the painting and its style.

Judging whether the material and stylistic features of a painting are appropriate or not is a complicated process but is a skill that can be learned. Knowing the history of materials and the evolution of painting styles is important. Take, for instance, an old painting on silk. As anyone who's been to Hangzhou or Varanasi knows, not all silks are created equal. Silk used for paintings in the seventh century was made from single raw threads, produced in panels around 80 cm in length and 53 cm in width. In the tenth century, rough silk with 1 warp thread and 2 woof threads was woven, producing an uneven feel and appearance; 2 or 3 of these panels were often joined to enable monumental-sized landscape paintings. By the twelfth century, court artists selected silk of the highest quality woven from double warp and double woof threads. Paper, which later emerged as the most favored material, has its own evolution, as do the types of water-based inks used over the long history of Chinese painting.

Another crucial part of the inspection is forming a judgment about the painter's style. What type of pointed brush was used: large

or small, sharply pointed or more blunt? How is ink applied to the surface: an ink splash method interweaving heavy with light portions, using less ink for a spottier effect, employing leftover, drier ink for thickness, or using diluted ink for a lighter tone? What shading techniques are used to add volume: hooking, rubbing, dyeing, or dotting? Art critics during the Qing dynasty (1644-1912) went so far as to analyze eighteen styles of line, with evocative names like Floating Cloud, Flowing Water Line, and Date Pit Line.

And yes—anyone can learn how to identify these lines via websites, courses, books, and carefully studying paintings. This is the most important step, and skipping it is the biggest mistake.

Some illustrations of these techniques are provided at the end of this article.

## **Mistake #2: Ignoring Inscriptions**

Most traditional Chinese paintings contain words as well as images. Inscriptions written in ink with the same fine brush used for painting include the title of the painting and the artist's signature, a related poem, lines on the circumstances inspiring the painting, such as location, time of year, specific day, seasonal events, and the person to whom the painting is gifted. Other words on paintings represent the opinions of later connoisseurs—who (of course!) tend to love the paintings they collect. In addition, both the original creator and later owners typically

affix their names or nicknames to the painting using a seal, usually in red ink and utilizing archaic forms of Chinese characters.

Above we saw that painting style and the physical features of traditional Chinese art are complex and tell a story, and that it's the appraiser's job to understand the story and judge its quality and truthfulness. The same holds true for inscriptions on the pictorial surface. The appraiser needs to ask: Are the dates correct? Do the nicknames match those used by the artist during this period of time? Do the geographical references and other language fit the time and place?

I once appraised a painting in a private collection bearing the signature and name seals of one of the most famous painters of the Ming Dynasty (1368-1644), Tang Yin (1470-1523). I began the assignment by examining the materials, composition, and style of the painting (see Mistake #1). So far, so good: the style matched that of the time and the materials and execution were convincing and high-quality. But I caught the forger when I researched the inscription. Most of the inscription checked out. It referred to "Peach Blossom Studio," where Tang Yin indeed painted many pieces. The name of the town (Sutai, in Jiangsu Province) was also correct, and the nicknames used in three name seals were all attested in other works by the artist. But the dates were impossible—the artist clearly had a lot of artistic talent, but his aptitude for history was seriously challenged. The problem was the year of composition given in the Chinese system of sixty years (sexagenary cycle): It would have placed the painting in the year Tang Yin was born (1470) or seven years after he died (1530).

### Mistake #3: Failing to Rank the Overall Quality

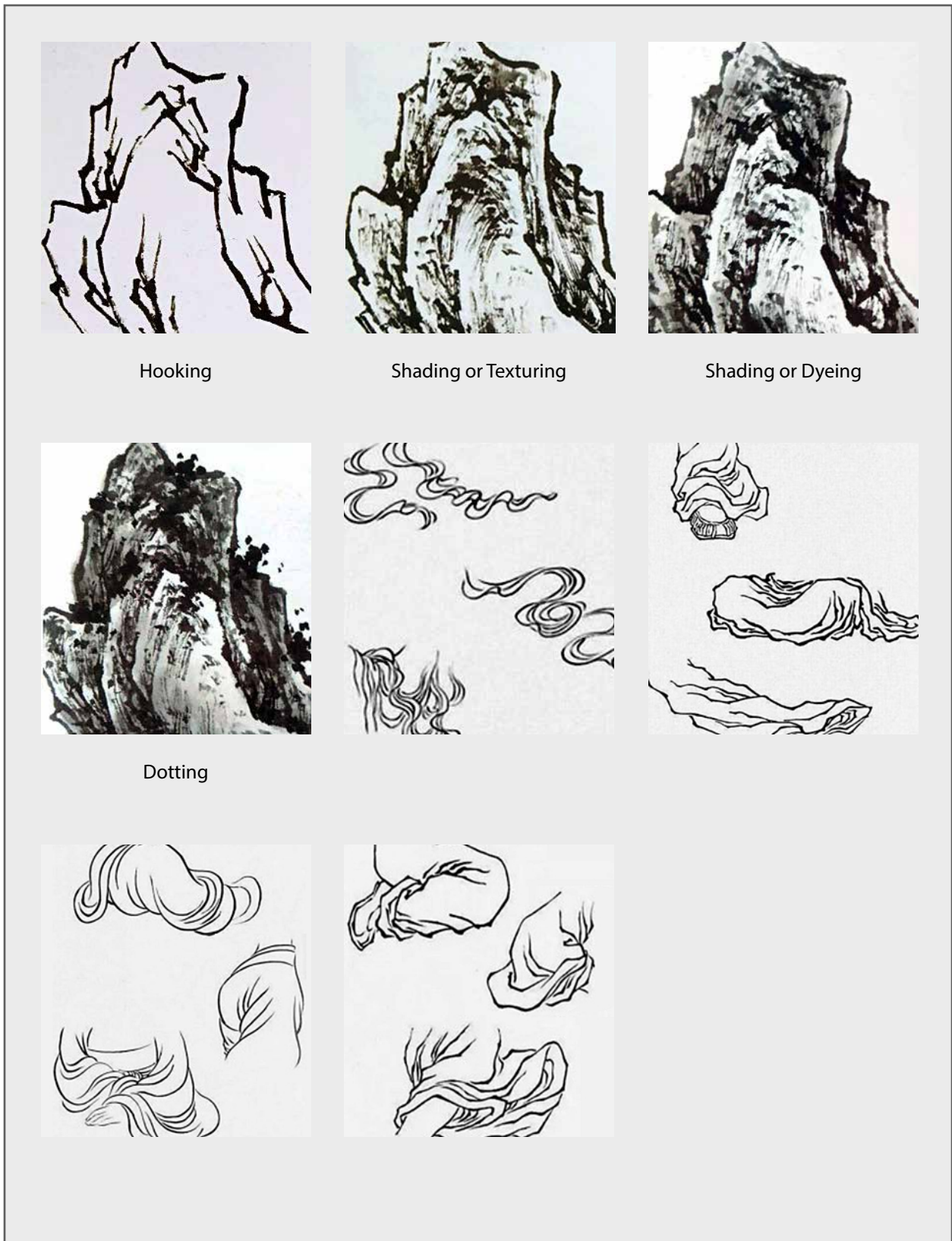
Since earning ASA's designation in Appraisal Review & Management—Personal Property, I've been asked to review my fair share of sub-par appraisals of Chinese art. One of their common mistakes is incorrectly comparing works of high quality to works of low quality. Usually, that's because the valuation report fails to scrutinize the quality of the subject property. A mediocre work by a great artist would obviously be lower in value than an excellent work by the same artist. But how do you judge quality, and how do you compare, say, an inspired work by a second-class artist to a perfunctory work by a famous artist?

This is where the connoisseur's judgment is relevant—and Chinese critics, theorists, and connoisseurs have been writing about art for more than two thousand years. Some knowledge of traditional standards of aesthetic judgment is therefore important for the appraiser. Early Chinese discussions invoke the concept of energy or spirit (qi) in ranking paintings and painters. Other criticism evaluates brushwork, iconography, and the biographical basis of an artist's style.

Appraisers also need to draw on modern criteria in judging overall quality. These include dynastic style and personal style, publication history, celebrity ownership, provenance, sales history, and so on.

The result of learning these different standards of judgment is, hopefully, a balanced judgment of the overall quality of a Chinese painting that functions much like an algorithm in ranking and weighing the significance of the different value features. I often use a system that assesses how a single painting





Hooking

Shading or Texturing

Shading or Dyeing

Dotting

Figure 1

fulfills each of eight criteria: originality, date, authorship, rarity, craftsmanship, visual appeal, condition, and provenance.

This step also helps avoid the fourth and fifth most common mistakes.

### Mistake #4: Using Unqualified Comparables

Especially in fields not well known in North America, some appraisal reports compare apples to oranges or fresh apples to rotten apples. Using a consistent, objective method to weigh the overall quality of art work is a solid foundation for finding qualified comparables.

After the quality of the work is assessed and works of similar quality are found, however, issues about the art market need to be addressed. For traditional Chinese paintings, further questions include the sales venue (International, national, or regional? First-tier, second-tier, or online? Auction house, gallery, or private?) and the condition of the art market at time of sale (Market trends in general? For the particular artist, genre, or period?).

### Mistake #5: Cloaking Value Adjustments

I'm often surprised (in a bad way—too often) to come to the end of otherwise solid appraisal reports and fail to see a narrative that takes me through the steps of the appraiser's reasoning process in weighing and ranking the differences between qualified comparables. Even strong reports—based on good knowledge of Chinese aesthetics, offering appropriate ranking of a painting's quality, including comparative charts—can fail at this crucial step. If you don't explain in words the data in the chart and why it's

arranged the way it is, you won't establish your value conclusion.

## Conclusion

Articles in the genre of “Mistakes” usually have the same conclusion: Don't make these mistakes! But in addition, I've tried to demonstrate good methods for avoiding them in the first place. Some of the problems and their solutions may be unique to premodern Chinese painting, and I hope this article makes this field of art more approachable. At the same time, some mistakes are endemic to the appraisal of personal property in general and the solutions offered here may be of help to appraisers or appraisal reviewers with specialties other than my own. ■

### About the Author

[Wei Yang, Ph.D., ASA, ARM-PP](#) is the owner of Wei Yang Art, LLC, founded in 2005 in Princeton, New Jersey. She is a consultant, appraiser, expert witness, and reviewer of appraisals. Her professional life is dedicated to the study of Asian art. She earned a B.A. and M.A. from Smith College and a Ph.D. from Northwestern University, all in Art History. Designated as an ASA in Asian Art, she concentrates on China, especially painting and calligraphy, but also ceramics, Buddhist art, jade, and decorative art. Her publications in the field include *Wei Yang's Guide to Chinese Painting and Calligraphy (Premodern)* (2 volumes, Nankai University Press, forthcoming later in 2021, which will be available on Amazon), and she is completing similar guides to Chinese ceramics and Chinese jade. She recently published a memoir in Chinese, *Desert Bloom* (Beijing Publishing Company 2021).



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