



# *People v. Sanchez:* Where Are We Now?

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# Summary of Presentation

- ▶ Introduction
- ▶ Professional Standards
- ▶ Code and Case Law
- ▶ Case Studies
- ▶ Questions and Comments

# *Why this Topic?*

# Why This Topic?

- ▶ Appraisers often rely, at least in part, on reports prepared by others (and/or their opinions).
- ▶ Reliance on the reports of others generally increases with appraisal problem complexity.
- ▶ Use of such reports may increase in the future.
- ▶ Appraisers providing more specialized services and will need more information to make decisions and develop appraisals.

# Why This Topic?

- ▶ Appraisal experts should understand what is permitted in litigation.
- ▶ The rules of hearsay evidence continues to evolve.
- ▶ Others' opinions (including value opinions) can impact many litigation scenarios, including
  - ▶ What agencies pay for property rights
  - ▶ Diminution in value analyses
  - ▶ Values to establish property taxes
  - ▶ And more!

# Case Study – Lake Tahoe

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- ▶ 40-Acre Site in Lake Tahoe Basin with decent views.



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# Case Study – Lake Tahoe

- ▶ Appraisals:
  - ▶ Agency's Preliminary Estimate:
    - ▶ \$10.5 million
  - ▶ Acquisition Appraisal One:
    - ▶ \$4 million
  - ▶ Acquisition Appraisal Two:
    - ▶ \$5 million
  - ▶ Trial Appraisal from Owner:
    - ▶ \$98 million

# Case Study – Lake Tahoe

- ▶ Judge's Opinion:
  - ▶ \$9 million
  - ▶ Based on judge making adjustments to \$5 million appraisal.
  - ▶ “Though not an opinion of value, the fact that the [Agency] at first believed that [the Subject Property] could fetch \$10.5 million supports the court's readjustment analysis.”



# Agency Burdens

- ▶ Gov't Code § 7267.2 (a)(1):
  - ▶ Prior to adopting a resolution of necessity, **the public entity shall establish an amount that it believes to be just compensation therefor**, and shall make an offer to the owner. . . .
- ▶ Agencies rely on appraisers, but...
  - ▶ Offer based on agency's belief.
  - ▶ That belief can be given (significant) weight.

*What Do Our Professional  
Standards Say?  
(Sorry Everyone, Time for USPAP)*

# USPAP Standards Rule 2-3

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- ▶ (c) When a signing appraiser has relied on work done by appraisers and others who do not sign the certification, the signing appraiser is responsible for the decision to rely on their work.
  - ▶ (i) The signing appraiser is required to have a reasonable basis for believing that those individuals performing the work are competent; and
  - ▶ (ii) The signing appraiser must have no reason to doubt that the work of those individuals is credible.

- ▶ General categories for “reports”:
  - ▶ General Information Reports
  - ▶ Reports Prepared by Licensed or Certified Non-Real Estate Appraisal Professionals
  - ▶ Reports Prepared by Other Non-Real Estate Appraisal Professionals
  - ▶ Other Reports

# Appraisal Institute Guide Note 4

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- ▶ Before relying upon reports prepared by others the appraiser must:
  - ▶ have a reasonable basis for believing the individuals preparing the report(s) are competent;
  - ▶ have no reason to doubt the credibility of the work of the work preparer(s);
  - ▶ consider the criteria under which the reports were prepared;

# Appraisal Institute Guide Note 4

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- ▶ Before relying upon reports prepared by others the appraiser must also:
  - ▶ consider the source and extent of the instructions given to the preparer of the reports;
  - ▶ determine how the appraiser might rely on this information in making decisions and preparing his or her report; and
  - ▶ determine the process and procedures used to evaluate the reports prepared by others.

# Evidence Code § 1200

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- ▶ (a) “Hearsay evidence” is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.
- ▶ (b) Except as provided by law, hearsay evidence is inadmissible.
- ▶ (c) This section shall be known and may be cited as the hearsay rule.

# Types of Hearsay Exceptions

- ▶ Admission
- ▶ Declaration Against Interest
- ▶ Prior Inconsistent Statement by Witness
- ▶ Prior Consistent Statement by Witness
- ▶ Past Recollection Recorded
- ▶ Business Records
- ▶ Official Records and Writings
- ▶ Other Reliable Writings



# Evidence Code § 801

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- ▶ If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:
  - ▶ (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and...

# Evidence Code § 801 (con't.)

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- ▶ (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

# Evidence Code § 814

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- ▶ “The opinion of a witness as to the value of property is limited to such an opinion as is based on matter perceived by or personally known to the witness or made known to the witness at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property, including but not limited to the matters listed in Sections 815 to 821, inclusive, unless a witness is precluded by law from using such matter as a basis for an opinion.”

# Evidence Code § 802

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- ▶ “A witness testifying in the form of an opinion may state on direct examination the reasons for his opinion and the matter (including, in the case of an expert, his special knowledge, skill, experience, training, and education) upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based.”

# Enter *Sanchez*

- ▶ *People v. Sanchez* (2016) 63 Cal.4th 665
- ▶ “What an expert cannot do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception.” (p. 686)

# Sanchez Limitation on Hearsay

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- ▶ Out-of-court statement of case-specific facts cannot be admitted unless:
  - ▶ Supported by independent proof / other evidence is offered to demonstrate their truth; or
  - ▶ A hearsay exception applies

- ▶ The Court identifies testimony about property valuation as one of the historical exceptions to the general rule barring disclosure of and reliance on otherwise inadmissible case-specific hearsay.

# Post-Sanchez Case Law

- ▶ *People v. Veamatahau* (2020) 9 Cal.5th 16
- ▶ “to support his opinion, an expert is permitted to relate to the jury background information that is technically hearsay, including general knowledge and ‘premises generally accepted in his field.’” (p. 21)
- ▶ Cannot relate as true case-specific facts asserted in hearsay unless independently proven or a hearsay exception applies



# Post-Sanchez

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- ▶ The key seems to be the distinction between general background information and case-specific facts

# Sanchez & Condemnation

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- ▶ No condemnation case addresses *Sanchez* yet
- ▶ What about:
  - ▶ CoStar?
  - ▶ Marshall & Swift?
  - ▶ *The Appraisal of Real Estate*?

# Case Study – Cost Estimates

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# *What About Relying on Other Appraisals or Value Opinions?*

# Sorry, More USPAP

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- ▶ FAQ 319 – When do Standards 3 and 4 apply?
  - ▶ Definition of Appraisal Review:
    - ▶ *(noun) the act or process of developing an opinion about the quality of another appraiser's work (i.e., a report, part of a report, a workfile, or some combination of these) 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.*

# Sorry, More USPAP

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- ▶ FAQ 319 – When do Standards 3 and 4 apply?
  - ▶ Assignments related to market data summaries and broker's price opinions are not appraisal reviews. Even when the work under examination was performed by an appraiser, evaluating these types of work is not part of an appraisal review.
  - ▶ However, even if the service is not an appraisal review, all services performed as part of appraisal practice must comply with USPAP.

# Case Study – Rails to Trails

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- ▶ Assignment involving abandoned railroad and the local municipality acquiring a trail use easement.
- ▶ Appraiser adjusted sales based on input from the assessor.
  - ▶ “...the sales price included a long-term cell tower lease, valued by the assessor at \$112,000 [emphasis added].”
  - ▶ \$112,000 deducted from sale price of comparable sale.

# Case Study – Tax Appraisal

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- ▶ Case law in Midwestern State :
  - ▶ “The factors... relevant to...market value include costs, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, amount of insurance carried, value asserted in a prospectus, and appraisals procured by the owner [emphasis added].”



# Case Study – Tax Appraisal

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- ▶ Review of Appraisal for Tax Purposes
  - ▶ Appraiser relied on an appraisal report prepared for lending purposes, citing case law.
  - ▶ Client was a bank (not “procured” by owner).
  - ▶ Assignment involved review of tax appraisal and lending appraisal.

# Case Study – Tax Appraisal

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- ▶ Appraisal used lending appraisal conclusions as support for:
  - ▶ Size of improvements
  - ▶ Market rent conclusion
    - ▶ According to the [Lending] Report, "Overall, the contract rents within the subject property are considered to be represent of market levels in general." This supports my opinion that the overall rents at the subject property are at market levels.

# Case Study – Tax Appraisal

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- ▶ Appraisal also used lending appraisal conclusions as support for:
  - ▶ Net operating income
  - ▶ Overall value conclusion of \$290,000,000
    - ▶ Had valued property at \$260 to \$270 million as of three dates.

# Case Study – Tax Appraisal

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<b>Category</b>	<b>Final Version</b>	
Date of Report:	August 11	
Market Rents:	ARE at Market	
Retail Sales Multiplier	1.50 to 1.75	
Capitalization Rate:	5.75 percent	
Discount Rate:	7.25 percent	
Value Conclusion:	\$290 million	
Insurable Replacement Cost	\$48.1 million	

# Case Study – Tax Appraisal

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<b>Category</b>	<b>Final Version</b>	<b>Draft Version</b>
Date of Report:	August 11	July 31
Market Rents:	ARE at Market	NOT at Market
Retail Sales Multiplier	1.50 to 1.75	0.75 to 1.25
Capitalization Rate:	5.75 percent	9.0 percent
Discount Rate:	7.25 percent	10.0 percent
Value Conclusion:	\$290 million	\$177.2 million
Insurable Replacement Cost	\$48.1 million	\$46 million

# Takeaways

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- ▶ Must have reasonable basis for relying on others.
  - ▶ Threshold is lower for licensed professionals.
  - ▶ Required for appraisers, should be adopted by agencies.
- ▶ Stay in your lane.
  - ▶ Okay to rely on experts, but make sure conclusions are supported.
  - ▶ Be careful with making conclusions you don't know your making (“agreeing” with values).

# Takeaways (con't.)

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- ▶ Understand the jurisdiction you're in.
  - ▶ Other's opinions may be permissible...or not.
  - ▶ Market data may be permissible...or not.
  - ▶ Other appraisals may be permissible...or not.
- ▶ Know what hearsay is allowed.
  - ▶ Literal interpretation of Sanchez – ex., before, experts could review reports and base his/her opinions on the hearsay contained therein.
  - ▶ Now, attorney may be forced to depose/subpoena each and every person contained in the report to make the statement admissible.

*People v. Sanchez:*  
Where Are We Now?

Thank you!

Questions/Comments?