

Maintaining Your Professionalism As An Expert Witness

Practical And Ethical Guidelines

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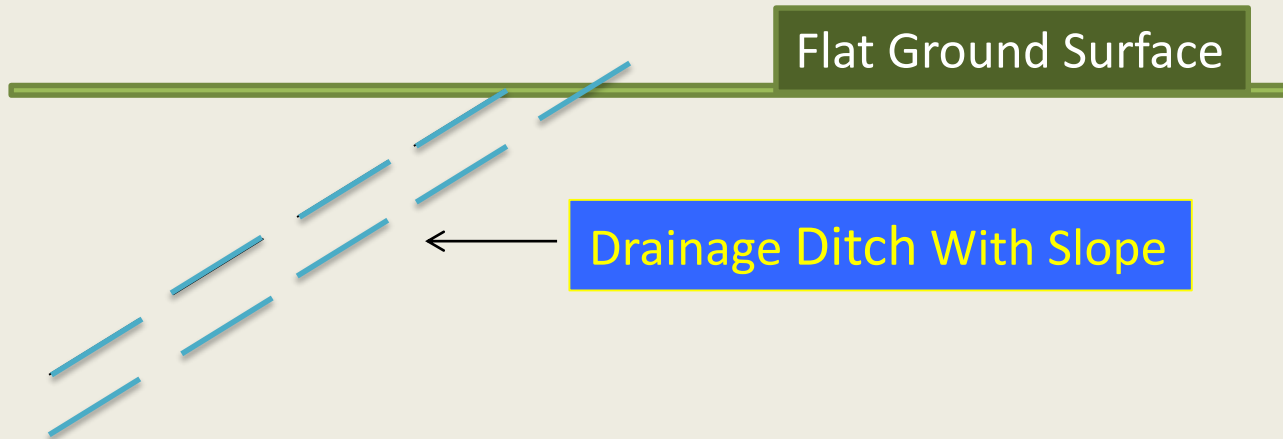
“I would go into a lawsuit with an objective, uncommitted, independent expert about as willingly as I would occupy a foxhole with a couple of noncombatant soldiers.”

Former President
American Bar Association

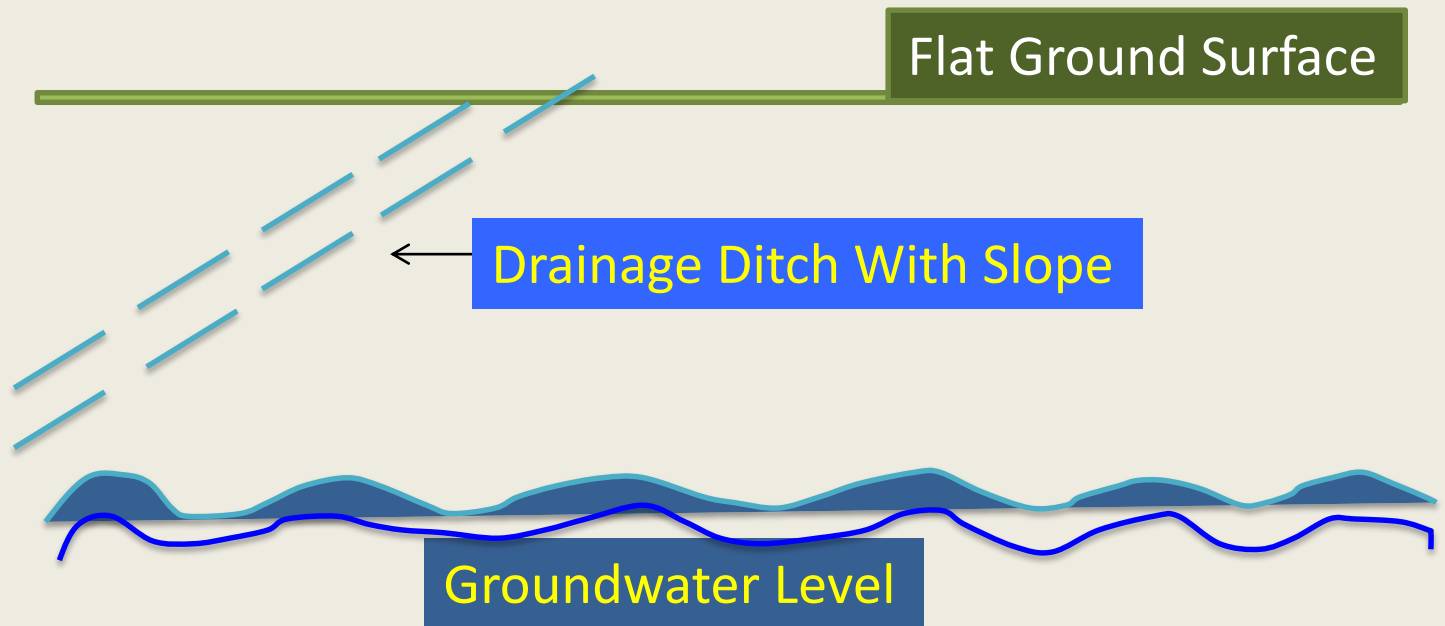
“You cannot drain a flat site because it has no slope.”

Geotechnical Engineer
Professional Opinion 2016

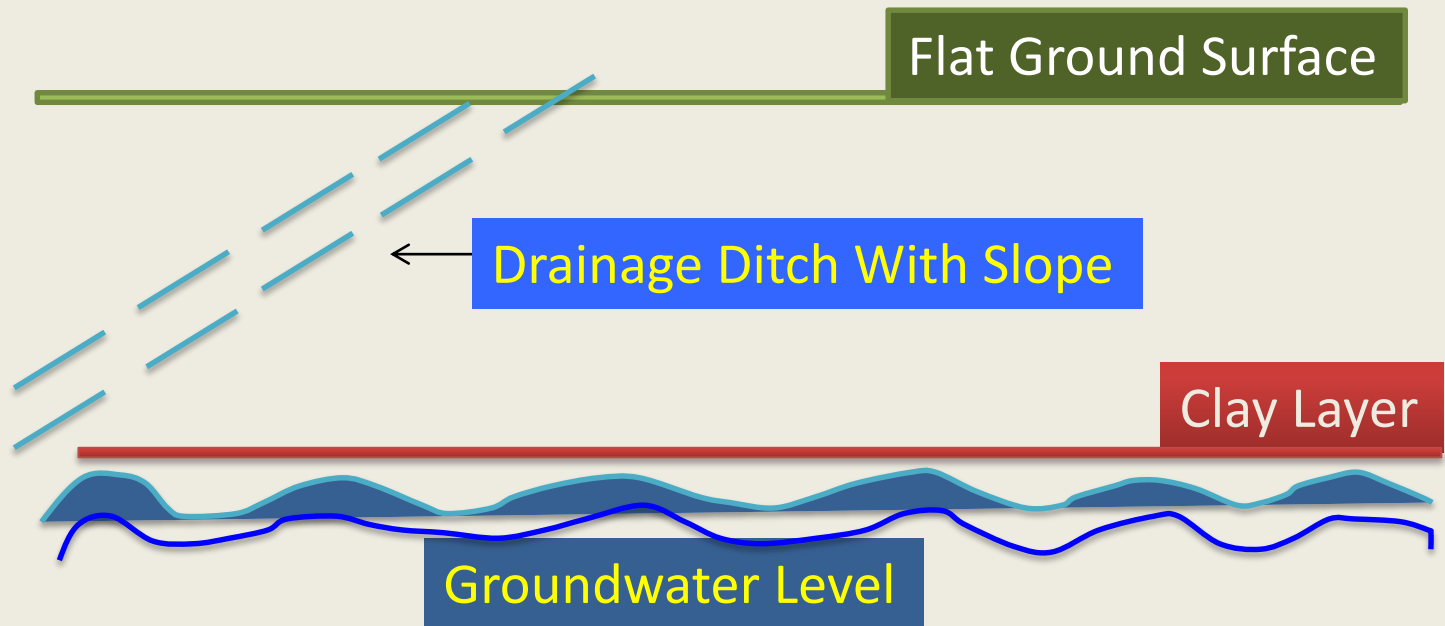
Draining a Flat Site



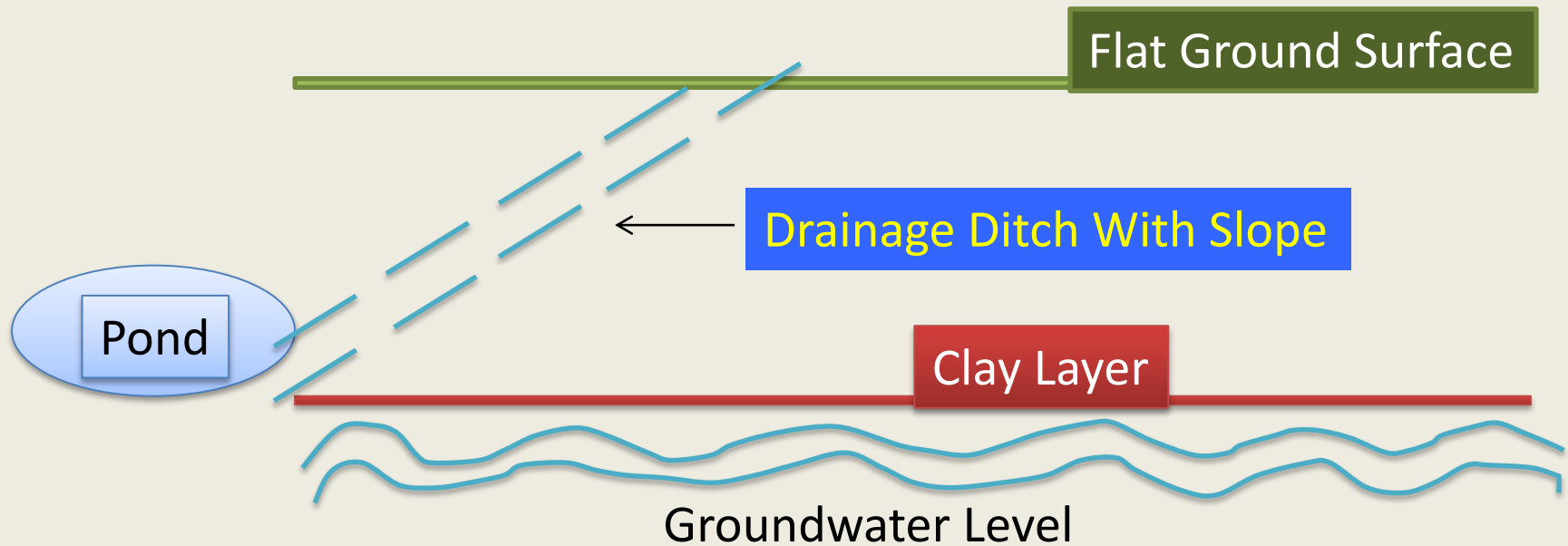
Draining a Flat Site



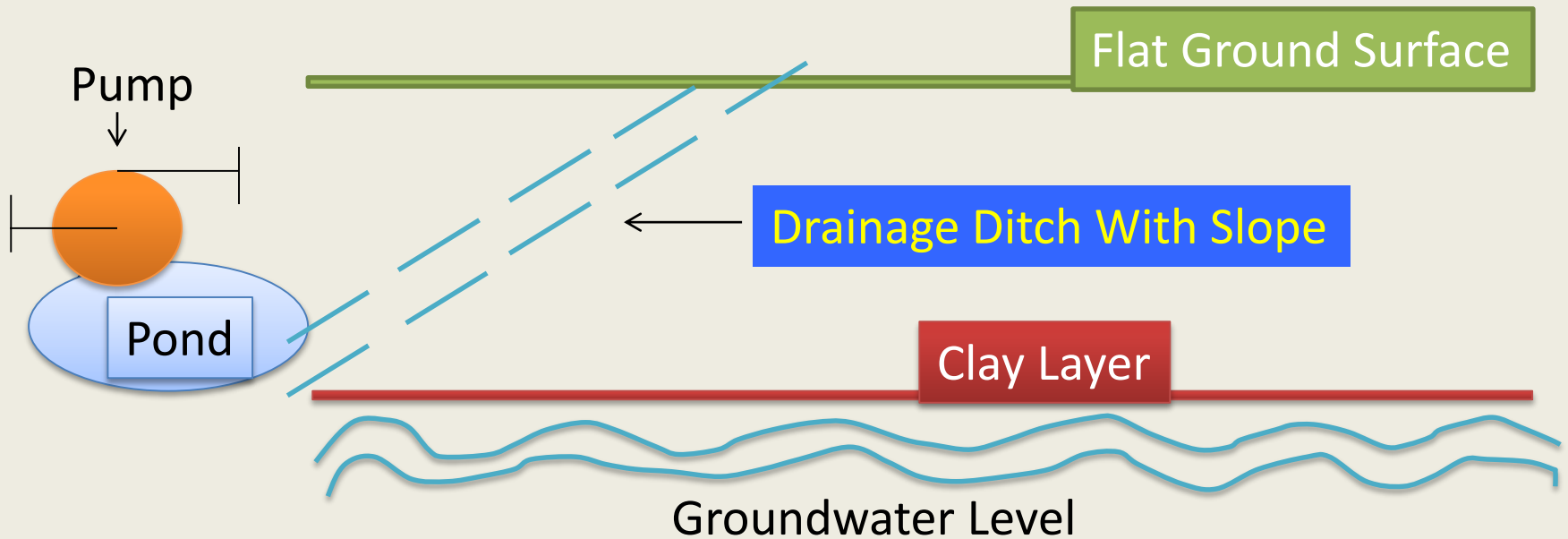
Draining a Flat Site



Draining a Flat Site



Draining a Flat Site



Poor Experts

- Increase Litigation Costs.
- Increase Insurance Costs
- Consumes Professional Resources

Claims Assistance

- Growing source of revenue.
- Well-prepared Experts:
 - Support Rational Results
 - Assist in Early Resolution
 - Support Client Relationships

“If I got myself an impartial witness,
I’d think I was wasting my money.”

Attorney Melvin Beli

FRAMEWORK

Why are expert opinions necessary?

- Negligence
- Speeding car
- Water puddle

Learned Professions



- Doctors
- Lawyers
- Engineers
- Architects
- Surveyors

EXPERT AS EDUCATOR



- Teach What Professional Does
- What's Reasonable, What's Not
- Why Professionals Do Certain Things
- Framework for Standard of Care

By Law, Expert Testimony Required
To Establish The Standard Of Care
For A Professional

A Geotechnical Engineer's "**Standard of Care**" is His Duty To Exercise Such

- (1) Reasonable Care, Technical Skill, Ability, and Diligence as is...
- (2) Ordinarily Practiced By Geotechnical Engineers...
- (3) At The Time And In The Community Where The Work Is Performed.

Standard of Care is a “Community” Standard

- Must Consult Other Professionals.
- “Community” Is Not Necessarily Geographic
- Highly Specialized Area –
 - Nuclear Engineering

- Personal Preferences Are Fine
- Perfection Is Not Required
- Test Is Reasonableness

A Mere Error in
Judgment is Not a
Breach of the
Standard of Care



**A Qualified Expert Witness May Testify In
The Form Of *An Opinion* If:**

- a) Helps The Judge Understand The Evidence;
- b) Based On Sufficient Facts Or Data;
- c) The Product Of Reliable Principles And Methods;
- a) The Principles And Methods Have Been Reliably Applied to the Facts of The Case.

Your Goal

- Independent and Professional Expert Opinion.
- Thoroughly Researched
 - Understand Facts
 - Understand Technical Issues
 - Understand the Opposing Views
- Within Scope of Your Expertise

Preliminary Questions:

- Who Do You Represent?
- Do Not Disclose Anything - -
- What Parties Are Involved?
- Other Geotechnical Experts?
- What Are The Alliances?



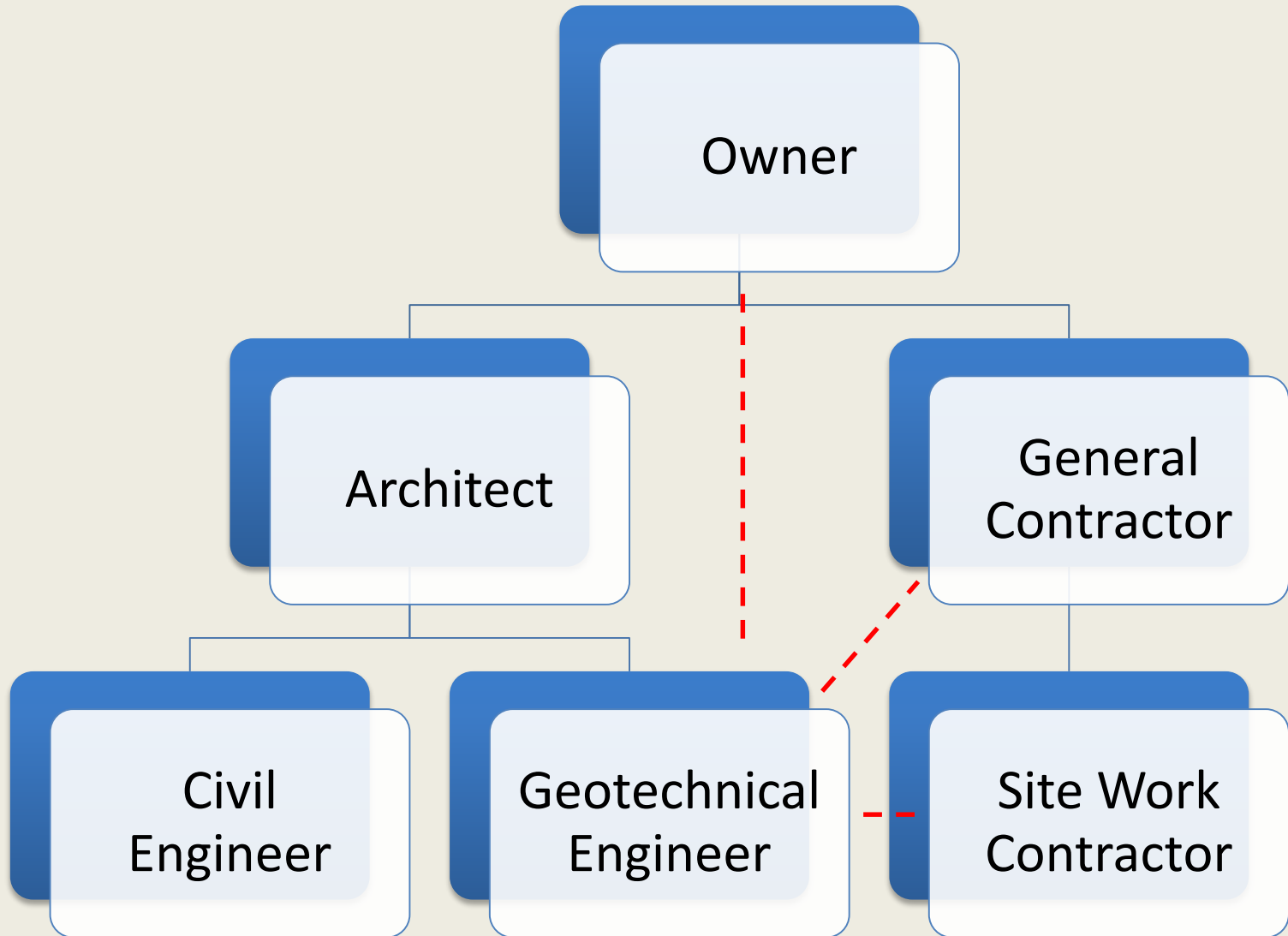
The Alleged Breach

- What is the Alleged Breach?
- Do All Parties Agree?
- Are There Other Theories?
- How did the problem arise?
- Repairs proposed or accomplished?
- Amount of Damages Alleged.

Understand Scope Assignment

- Consulting – Confidential
- Testifying – Disclosed
- Evaluate Proposed Fixes Or Repairs
- Develop Repairs Or Fixes
- Make Recommendations
- Cost Repairs Or Fixes
- Oversee Implementation Of Repairs

Relationships of Parties



COLLECTING INFORMATION

- Document Review.
 - Primary Source Of Information
- Prepare A List Of What You Want To See
 - Request In Writing.
- Document Log.
 - Received.
 - Reviewed.
 - Follow-up.
- Note Documents Not Available.

Other Sources of Information

- Depositions
- Fact witnesses
- Experts
- Expert Reports
- Interviews
- Site Visit

Not All Information Is Created Equal

- Relevant
- Reliable
- Unbiased
- Contemporaneous
- Written v. Verbal

Weigh the Information

- Conflicting Information
- Reasonable Inferences
- Source of Information
- Some evidence due more weight



Discern Professional's Thought Process

- Hindsight Is 20-20
- Review In Contemporaneous Time Frame
- Were All Alternatives Considered?
- The “WHY’S” Of The Decisions
- Role Of Cost Considerations.
- Role Of Owner Input.

.... Professionals Thought Process

- Anomaly In Geotechnical Investigation
 - How Was It Handled
 - Who Involved
- Risks Or Limitations Adequately Disclosed.
- The Users Of The Information
 - Sophisticated?
 - Familiar with Locality or Process?

INDUSTRY ACCEPTED METHODOLOGY

- Technically sound.
- Industry accepted.
- Factually supported.
- Peer reviewed.
- Approved by courts.

IDENTIFY LIMITS

- Gaps In Logic
- Analytical Flaws
- Less Than Perfect Documentation
- Moderate Assumptions
- Reconcile Conflicting Information
- Physical Possibility
- Reasonable Likelihood.

Standard Of Care Questions To Ponder

What Are The Hard And Fast Rules?

What Is A Judgment Call?

Are There Alternative Methodologies?

Do You Meet This Standard?

Not A Breach Of The Standard Of Care:

- Failure To Use Best Practices
- Failure To Make Optimal Design Choices
- Failure To Make Most Cost-effective Recommendations
- Error In Judgment

Maintain Independence

- You Are Not An Advocate
- Do Not Argue
- Do not Try To “Make The Case”
- Be Independent And Objective

Advocacy Often Backfires

- Unreasonable Opinions
- One-sided Opinions
- Unrealistic Standards
- Balanced opinion enhances credibility

Managing the Attorney

- Testify Only Within Scope Of Expertise..
- Do Not Stretch.
 - Civil Engineer
 - On-site Technician
 - Specialized Construction Technique—
Drilled Shafts Over Water.
 - Supervisory Experience.

- Is expertise limited by license.

Attorney may urge you beyond your comfort zone.

- Save money
- Eliminate possibility of disagreement.

THE STOCKHOLM SYNDROME

- Identifying With Client
 - Lawyer Dictates Opinion
 - Question Assumptions By Each Side
 - Devil's Advocate
-
- Reveal Adverse Opinions Immediately

RECENT GEOTECHNICAL MATTER – EXPERT REPORT

- Identified Numerous Issues With
 - Geotechnical Report.
 - Recommendations Made During Construction.

- Failure To Note Depth Of Topsoil
- Misclassification Of Soil Borings
- Inadequate Warning of Artesian Condition
- Inadequate Warning of Drainage Difficulty
- Civil Drawings Showed More Fill on Site
- Bridge Lifts Wrong Technique

To This Engineers Credit –

Only **One** Was

A Breach Of The Standard Care

PROTECTING YOUR PROFESSIONAL REPUTATION

- Can You Harm Your Professional Reputation
- – Or Your Professional Relationships.
 - Relationships If With Clients - Owner, Contractors, Architects.

Depends:

- Ostracized Or Criticized
- Lose Business Opportunities

On the Other Hand:

- ✓ Reasonable Testimony
- ✓ Not an Advocate
- ✓ Maintain Professional Demeanor
- ✓ Treat Role as Educator
- ✓ Acknowledge Weaknesses in Opinion

Bad Blood Will Be Temporary

Professionals Prefer True
Professionals

BE INFORMED

- Direct
- Honest
- Fair
- Independent
- Professional

The Only Thing You Really
Control Is Your
Professionalism And Credibility.
... Your Integrity

Are these opinions consistent with
Standard of Care:

Is it a violation of the standard of care for the geotechnical engineer to allow the owner to determine the number and location of soil borings?

It is the geotechnical engineers responsibility to design a drainage plan for the site during the construction phase.