



# Difficult economic valuations: household services

*Topics you need to cover with your economist to stay out of defense's "Dollar Value of a Day" trap*

BY NATHANIEL LEEDS

Put simply, many lawyers do not like math and numbers. But, we are not serving our clients if we are not mastering these skills and scrutinizing the numbers with the same precision that we examine a police officer's determination of fault.

## Household services

I have an ideological opposition to the idea that household services have a discernible market value; and I think that intellectual conceit more often leads to an undervaluation of our client's cases. My recommendation is to look for opportunities to recast any discussion about household service as a discussion of what it will *actually cost* to hire someone to provide the lost domestic services, and only resort to looking at the market rate for a particular services as a fallback position if you cannot easily describe the replacement costs.

## Ideological underpinnings of household services analysis

To understand why you should try to avoid characterizing damages as a loss of "household services" let me first offer a brief intellectual history of domestic economics.

Before the 20th century economists knew their place: the market. They focused their energies on bulk goods like wheat and wine whose value could be readily determined by market transactions.

Eventually, labor economists like Ronald Coase (Noble Prize, 1991) started focusing on the fact that in many

## Part 2: Did your Economist destroy your case?

This article is the second in a series of three articles that are designed as a reference for plaintiffs' attorneys who need to scrutinize an economist's report and do not feel comfortable with the impenetrable tables of numbers. See Plaintiff October 2015 for Part 1 which addressed topics of broad applicability to most cases: Present Value and Personal Consumption, including wage growth vs. inflation, and housing.

instances the cost of the transaction to contract for a service was as important as the value of the service itself. Or, in other words: sometimes it is easier to pay a salary instead of negotiating the value of everything a person does throughout the day. Coase's insight was that this was why we organize ourselves into what he called "firms" and pay salaries instead of bargaining over the value of every part of every person's job.

Just consider the hassle of paying your assistant a dollar for every phone call they answered – the bookkeeping alone would grind your practice to a halt. It is far better to hire the person by the hour, and forget about how to value each thing they do. And yet, defense counsel continually wants us to offer a detailed itemization of the value of each service our clients provided prior to their injury.

From the perspective of a theoretical economist, transaction costs are a market inefficiency that can result in price distortions and exploitation. When transaction

costs are high, barriers to entry prevent a free, competitive market for correctly valuing services. For rightwing free-market economists, transaction costs became a significant intellectual impediment in their attempts to dismantle programs and institutions that protect people from the ravages of an unregulated market.

What does an ideological right-wing economist do when faced with a fundamental problem that mandates government intervention in the market on behalf of the less powerful? Deny it to great acclaim. So was born a school of microeconomics championed by the likes of Milton Friedman's student, Gary Becker (Noble Prize, 1992), who believed that by finely parsing economic data about personal behavior we could uncover the market forces behind everything from drug addiction, to family composition, to racism. Once Becker had made a plausible argument that the market was functioning (even in these areas of life where no market transactions occurred) free-market absolutists were free to deny the notion that markets ever failed – or that worker protection was ever necessary.

## Picking your own nose

Why does all this matter? Because there are a variety of tools which many economists use that can lead you to results that are laughable to a jury, and do not adequately compensate your client for their loss. Underlying each of these tools is one very questionable assumption: that there is an accurate market price for the value of the services that people provide around the house.



I often ask myself: what would I need to pay someone to pick my nose? The answer is that there is no market price for nose-picking. Why? Because the transaction cost of getting someone to my house to pick my nose for five seconds is much higher than the value of the service. So, despite what free market purists will tell you, even very wealthy people succumb to the economic inefficiency of picking their own noses.

### Don't fall for the "Dollar Value of a Day" trap

One of the most problematic and widely-used publications that attempts to offer a market-based pricing for what occurs in the domestic sphere is a publication called the "Dollar Value of a Day" produced by ExpectancyData, Inc.

What the publishers of "Dollar Value of a Day" do is take a massive survey called the American Time Use Survey conducted by the Bureau of Labor Statistics ("BLS") in which the BLS asks people how they spend their time. The producers of "Dollar Value of a Day" then match up each of the categories of time with an average wage for a person doing similar work for pay. Or, as they describe it: "[t]he procedure used to assign value to each sub-group of time activity was to condense the entire list of [Occupational Employment Statistics] occupational wage data to a shorter list of occupations that correlate with activities that people perform for the benefit of themselves or their household members."

A quick glance through "Dollar Value of a Day" offers up interesting facts that belie the shortcomings of the approach. For example, "religious activities" are worth \$17.26 an hour according to "Dollar Value of a Day" – presumably because priests, ministers, rabbis, imams, pundits and pujaris are well compensated. But caring for my young son is only worth \$12.77 an hour. Sleeping is valued at \$13.97. Nosepicking likely falls under "grooming" which is valued at \$12.46 an hour.

Last night I elected to test the accuracy of "Dollar Value of a Day." To maximize my utility to my household I skipped my shower (\$12.46/hr), did not help get my 9-month-old son into bed (\$12.77/hr), and instead dedicated myself to quiet contemplation about the existence of a supreme being (\$17.26/hr) until I fell asleep (\$13.97/hr). If our house were a free market I would have benefited my household to the tune of about \$20. Spiritual utility aside, being a religious sloth was not of much economic value to anyone.

The problem with the "Dollar Value of a Day" study and methodology is the underlying fallacy I discussed in the previous section. Despite the beliefs of right-wing free-market purists, markets do not do a very good job of describing the value of various services, especially in the domestic sphere because (1) the services are often very different from similar services offered on the market and (2) the transaction costs distort the market value. When you attempt to value domestic activities at their market rate, you often end up with peculiar, apples-to-oranges comparisons that do not match up with reality.

### Hire an otolaryngologist, not a nosepicker

Thinking about nosepicking is not only amusing, but illustrative of the problem: there is no market rate for nosepicking, because there are no professional nosepickers. Very similarly, there are not many people who just come to your house to do your laundry or just help with your grooming.

Instead of falling for the "Dollar Value of a Day" trap, often the better approach is to actually price out what it would cost to provide the service your client needs in the real world. Life-care planners do this all the time. If, *arguendo*, your client's injury has really compromised their ability to pick their nose, they may need to see someone who is qualified to irrigate their nose on a regular basis, such as a nurse or possibly an

otolaryngologist; they may need to relocate to a housing arrangement where these people are readily available; or they may need to change their work habits so they can get the service.

Typically, these services are bundled so they cannot easily be separated, which is another reason to price in the real world, not the fictional world of "Dollar Value of a Day."

I was recently handling a case for three young girls who were orphaned when an unlicensed nurse killed their mother. The first economist report we received from the economist offered typical "Dollar Value of a Day" numbers for the services the mother was providing around the household. The "Dollar Value of a Day" value of "caring and helping" and "household production" was less than \$30,000 a year. Unsurprisingly, there are not many places where you can get 24/7 child care for three young children for \$30,000 a year. So, we looked at the prices of full-time nannies for when the children were asleep and awake, which was a much more reasonable assessment of what the girls would need to replace their mother's service in the household.

Another area where you should try and depart from the "Dollar Value of a Day" is when looking at disruptions to your client's sleep patterns, and utility while sleeping. I have a client with a vertebral fracture and some persistent back pain whose husband has cerebral palsy and limited mobility. Before she was injured, she was available to assist him in the evening if anything should happen; now she has trouble getting out of bed unassisted. It simply is not safe for them to sleep in the house any longer without a full-time assistant. Paying for that nocturnal assistance is a measure of household services.

The other advantage of looking at services that are actually available to replace what was lost is that you will price to the highest skilled service needed. This often comes into play when you are talking about the elderly who need a



range of services from the very affordable (yardwork) up through the very expensive (monitoring medications).

Defendants will try to break these services apart and claim they can get a discount by offering a parade of different people – in the real world you are often stuck paying a high-priced person to do low-skill work, because the converse is not an option, and hiring six different people is impossible.

### House flippers

A number of our clients have been people who repair the houses they live in, and then sell them and move to another house. I was recently at a deposition where my client said of her husband who would repair homes and then sell them, that “he kept selling my dream home.”

People who are actively involved in house flipping make a business of home repair. It may be a business they do on the weekends, and with family members, but it can still be a very profitable line of work. The better way to value the loss of such a person – or their reduced capacity – is to look at their track record buying and selling homes and factor that into the wage loss analysis.

Similarly, there are many people who buy extra houses, or larger houses and maintain them for elderly family members or children who they are trying to encourage to live more independently. That person is now offering property management services, albeit to their family. If you can drill down and learn everything that maintaining the extra properties involved, you can sometimes make a plausible argument that their household services should include their unpaid work as a property manager.

### When you are trapped by “Dollar Value of a Day”

There are some instances when you cannot reasonably price out replacement services because the jury is not going to believe that your client is going to go out and hire someone to “replace” their lost spouse. Here are some approaches to do your best with the “Dollar Value of a Day” methodology:

**(1) Peg the prices to those in the local community.** “Dollar Value of a Day” offers national statistics. You need to make sure that your economist factors in the higher cost of goods and services in California. Childcare might only cost an average of \$12.77/hr nationwide, but prices in California can be substantially higher. The California EDD reports that in San Francisco-San Mateo-Redwood City the average wage of a childcare worker is \$15.37/hr.

**(2) Peg the hours at various activities to your client’s actual activity level.** Although not always fruitful, there are some instances in which a person’s activity levels are not similar to those assumed by the “Dollar Value of a Day.” For example, the “Dollar Value of a Day” average married man with a child under 13 spends about 56.88 hours a week sleeping, 30.45 hours a week on leisure, and 6.83 hours a week on childcare. Many men are much more helpful around the house than these numbers suggest.

**(3) Time-shift valuation.** In some instances you can compare what the person is earning at work to what they are

doing at home. If a person has the opportunity to work more and earn money, but the family had decided that they are more valuable working in the home, that decision is a reflection on the value the family ascribes to the work done in the home. This scenario often comes up when women leave the workforce to provide childcare (and even in the progressive Bay Area this is overwhelmingly a female phenomenon). Although that decision can be emotional or sentimental, it can also be economically rational: comparable child care can cost more than the mother is earning outside of the home. If the mother was earning \$70,000 a year and leaves the workforce, that \$70,000 a year may be a defensible estimate of the economic value of what she was doing at the home when you consider the full range of services.



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