

**Business Valuation Resources  
Webinar  
April 7, 2022**



**Forensic &  
Valuation  
Services, PLC**

*So You Want to Testify as a  
Financial Expert Witness?*

*Testimony Tips, Traps and Video Demonstrations  
From the Trenches*



Presented by:  
**Robert Vance, CPA, ABV, CFF, CVA, CFP**



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# Wise Words from Mark Twain



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“If you tell the truth you don’t have to remember anything”

“You want to be very careful about lying; otherwise you are nearly sure to get caught. Once caught, you can never again be in the eyes to the good and the pure, what you were before.”

# Disclaimer



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*The content in this seminar will not apply in all situations or in all jurisdictions*

*Examples are for illustration only*

*Different facts often require different assumptions*

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# Speaker



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- **Robert Vance, CPA, ABV, CFF, CVA, CFP**
- **Certified Public Accountant (CPA)**
- **Accredited in Business Valuation (ABV)**
- **Certified in Financial Forensics (CFF)**
- **Certified Valuation Analyst (CVA)**
- **Accredited in Business Valuation (ABV)**

# Speaker



Forensic &  
Valuation  
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- Full time forensic CPA, forensic economist & business valuation analyst
- Forensic & Valuation Services, PLC in Memphis and Chattanooga, Tennessee
- Affiliated with HHM, CPAs in Chattanooga & Memphis
- Testified in 54 Courts / Jurisdictions
- 155 trial/hearing testimonies, 30 before a jury
- FINRA Arbitrator
- Special Master
- 130th Presentation

# Types of Testimony



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- Deposition
  - Discovery
  - Evidentiary
- Trial
  - Direct examination
  - Cross examination
  - Re-direct
  - Re-cross
  - Rebuttal

# Setup



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- Video clips of me are from an evidentiary deposition I gave in a personal injury case for a plaintiff client named Malone
- I estimated loss of earning capacity and incorporated medical expenses from a life care planner named Zimmerman
- The male voice is the attorney that hired me and is asking questions on direct
- The female voice is the opposing attorney and is asking questions on cross examination
- Other clips are illustrative (and humorous I hope)



# Skills Required to be an Expert Witness



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- Clear communication in non-CPA speak
- Recall facts quickly
- Perform under pressure
- Clear focus and power of concentration
- Endure mental and physical challenges of testifying
- Non-Advocacy [Video]



# *Curriculum Vitae*



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- [Vance CV]
- Always keep it up to date
- Comply with the Federal Rules of Evidence
  - Include 10 years of publications and presentations
  - Include 4 years of testimony (trial and deposition); I use 5 years, but have a full list separate from the CV

# Curriculum Vitae



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- My testimony format:  
2016 - *Jill S. Lucchesi v. Eugene A. Lucchesi, Jr.*, No. CT-004818-13, Circuit Court of TN at Memphis, Div. IV, divorce, value of business at date of marriage, husband's true income for support, failure to preserve marital estate [Video]



# Engagement Letter Tips



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- Discuss few case details until it is signed to avoid the conflict if you are not engaged
  - Have an expiration period for this reason
- Disclaimers:
  - We will not audit, review or compile...
  - Our engagement cannot be relied on to disclose errors, fraud, or other illegal acts...
  - We assume no responsibility for either party to the case to obtain a value, settlement or final judgment from the values and figures as discussed or proposed...
- Hold us harmless...

# Engagement Letter Tips



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- If for any reason, in our sole discretion, we are unable to complete the engagement for unforeseen circumstances...
- We will have no liability...for failure to pay...
- Remind client of discoverability of all communications, workpapers and conversations
- You must inform me of a *Daubert* Challenge...
- Your attorney will more than likely directly ask us to perform professional services for this engagement without your prior knowledge...
- Include attorney's fees, court costs and interest

# Be Prepared for a *Daubert* Challenge During *Voir Dire*



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- Usually 1 of 3 Outcomes:
  - a. The witness's qualifications are accepted and the witness is declared to be an expert
  - b. In a jury trial, the witness is not allowed to offer expert testimony
  - c. In a bench trial, if the witness's qualifications are weak, the judge may allow the witness to testify but attach little weight [Video]



# Be Prepared for a *Daubert* Challenge



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- Many times you will not hear the words “I qualify Mr. Smith as an expert in forensic accounting...”
- You will hear this [Video]



# Subpoenas and Notices of Deposition



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- Ask before you go if not received directly
- Do not bring entire file, invoices, communications, etc. unless compelled to, but know how much you have charged
- No internal drafts or unnecessary docs
- Do not bring your computer unless you are prepared to turn it on and retrieve some document
- Find out if the Deposition is being video recorded
  - always have a coat and tie in your car
- Document what you turn over [Subpoena Docs]



# Depositions are Used to Accomplish a Number of Goals



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- Find out as much as possible about the expert and the expert's positions and supporting evidence before going to court
- Lock in the expert as specifically as possible to his or her positions and supporting evidence
- Seek contradictions that may tend to discredit the expert such as differences between your position in the current case relative to prior writings or testimony, or differences between your deposition testimony and court testimony

# Depositions are Used to Accomplish a Number of Goals



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- To confirm the expert's and the case's strengths in order to help achieve a favorable settlement; will require strategizing with your attorney beforehand
- To expose an expert's weaknesses in order to help achieve a favorable settlement; so have good answers [Video]



# Answering Questions at Deposition



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- Address any errors up front
- Admit to errors deposing attorney discovers before you
- Answer only what is asked; you can elaborate at trial
- State the answer in your head, then orally state the answer
- Don't worry about consecutive "no's" and "I don't know's"
- Don't get into a fist fight [Video]



# Answering Questions at Deposition



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Remember:

- YOU control the clock
  - Tell deposing attorney from the start about your “rules”
  - Take breaks as necessary and do not allow them to tell you otherwise
  - Stand your ground [Read Depo excerpt]
  - Pause before responding; take as long as you need in non-video depositions and do not be intimidated into a quick answer [Video]



# Types of Testimony - Trial



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- Direct Examination, Cross Examination, Re-direct, Re-cross & Rebuttal
- “Elevator speech” ready [Video]
- Bench Trial
  - Can be more precise, but still be nontechnical
  - Use Demonstrative Exhibits and a pad and easel with or projector and screen with PowerPoint
- Jury Trial
  - Act as if you are assuming everyone has a 6th grade education



# Direct Examination Testimony



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- If the lawyer knows and trusts you enough, the questions may be very open-ended like: “What did you do in this engagement?” or “Tell me what you did next?”
- Usually follows this format:
  - 1. Your qualifications - CV
    - *Voir Dire* process
  - 2. The scope of the assignment
  - 3. The material reviewed
  - 4. The methods used in developing opinions
  - 5. The conclusions reached [Video]

# Cross Examination Testimony



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- The primary goal of cross is to reduce the weight that the judge or jury might otherwise give to the expert's opinion
- Become familiar with the opposing attorney's style, skills, and tactic, so try to observe her in another trial or ask around
- Your behavior during cross should not be noticeably different than that during direct

# Cross Examination Testimony



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- Cross usually follows this format:
  - 1.You are not qualified
  - 2.You did not consider all the facts
  - 3.You relied on erroneous facts
  - 4.Incorrect analysis of the facts
  - 5.Your testimony is inconsistent with prior testimony in this case or other cases
  - 6.You are biased or prejudiced



# Testimony - *Personal Aspects*



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- Be polite and friendly - not combative, but stand your ground
- Dress conservatively [Video]
- Speak slowly and clearly
- Always look the questioning attorney in the eye, but explain your answer while looking directly at the judge or the jury
- Control nervous hand gestures, blinking, etc.



# Testimony - *In General*



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- Inquire about opposing experts and the attorneys
  - Tip - Keep a file of ALL opposing expert reports
- Hearsay evidence is okay for experts to some degree
- Read depositions (yours and parties) and BE CONSISTENT!
- Read relevant pleadings

# Testimony - *In General*



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- Only take cases in which the client or law firm will pay you to prepare for testimony or at least go over direct exam questions ahead of time
- You are not a “hired gun” as long as you speak from the heart and experience and are very consistent
- Your job is not “expert witness”



# Testimony - *In General*



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- Read and know ALL of your own report

## Discount for Lack of Control

The ownership interest being valued is a non-control interest. As noted, this discount is infrequently applied in veterinary practice valuations, largely due to the level of influence on operations that minority owners are typically provided upon becoming an owner.<sup>4</sup> It is rare in the veterinary industry for a minority owner to not be consulted on key financial decisions or be directly involved in the management of staff and operations.

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<sup>4</sup> Business Valuation Resources (2015) *What It's Worth: Veterinary Practice Value, A BVR Special Report*  
[www.bvresources.com](http://www.bvresources.com)

- Pause before answering in case your attorney wants to object; watch to see if she stands

# Testimony - *In General*



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- Know your website, brochures, articles you have written and the qualifications of staff working on the engagement
- If your pause and the opposing attorney asks a new question, stop and say that the answer to the previous question has not been finished; you may have to insist on completing your answer [Video]



# Testimony - *DO NOT*



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- Advocate
- Guess
- Use the word “Speculate”
- Memorize
- Lose focus
- Project Diarrhea of the Mouth  
(No improvising)
- Use unnecessary words like “To  
be honest with you...”
- Sweat [Video]



# Testimony - *DO NOT*



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- Stray from your area of expertise
- Fall into the trap of “treatises”
- Fall into the trap of “are these all of the opinions you plan to give at trial?” (Answer-No, I don’t know what may be asked at trial)
- Use humor (unless you’re me)
- Surprise your attorney (unless you’re me) [House Improv. Pics]
- Display a Temper [Video]

# Testimony - *Listen Actively*



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- It is not your job to change the question
- When the answer is accurate and sufficient, it's okay to say Yes, No, I don't recall, or I don't know
- Take the opportunity to Explain a term or a confusing concept
- It's ok to ask for clarification
- Make sure you understand the question [Video]





# Testimony - *BEWARE OF*



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- Hypotheticals
- “Yes” or “No” answers only if instructed by opposing attorney; you can ALWAYS explain your answer of Yes or No afterwards
- Multi-part questions; answer only 1 question at a time - ask to repeat if you cannot remember the sub-parts [Video]



# Testimony - *BEWARE OF*



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- Questions with non-truths such as “Didn't you give a different answer at your deposition?”
- NEVER answer a question about a “quote” from your depo or a book or article unless you read along with the lawyer; insist on seeing a transcript or copy
- Attorney restating your answer incorrectly whether on Cross or Direct [Video]



# Testimony - *BEWARE OF*



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- Beware of misuse of technical terms or terms of art
  - Avoid terms of art like Cash Flow, Revenue Multiplier, Ongoing Earning Capacity, etc. **UNLESS** you explain each very simply
  - Take the opportunity to define a term or concept
- Questions that use absolute and “lock-in” terms such as Always, Never and Totally and vague terms such as Most or All [Video]



# Testimony - *BEWARE OF*



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- Questions that have been previously asked or asked in a slightly different way; be consistent [Video]
- Questions that rephrase or summarize your previous answers
  - The opposing attorney will almost always spin your answer in a way favoring his client, so rephrase the answer [Video]



# Testimony - *BEWARE OF*



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- Question that contains a suggestive premise that might permit later misinterpretation or if it is out of sequence with your procedures
- Okay to restate or rephrase a question as part of your answer if it adds clarification [Video]



# Acknowledgements



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- “Under Pressure”, Queen and David Bowie
- “My Cousin Vinnie”, Twentieth Century Fox, 1992
- “Back to School”, MGM Studios, 1986
- “The League”, FX Network, 2009

# Thank you!



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