

BVU PROFILES

Survival Tips for BV Experts Put on the Witness Stand

Keith Meyers, CPA/ABV/CFF, has been in the expert witness arena for 20 years, having started as a CPA in the early 1980s, where he became a partner with a small regional firm before shifting over to Perkins & Co., one of Portland's largest local CPA firms. Over the years, his role has shifted from 50% tax and 50% valuation to nearly 100% valuation. Stuart Weiss, CPA/ABV, a business valuation practitioner in Portland, Ore., conducted this interview.

Stuart Weiss: I remember my first case. All of a sudden, all the fluids from my mouth went away. Since then, when I do occasional cases, I make sure there is water nearby because when, your mouth gets dry like that, you appear extremely nervous. That's my recollection of the first time I was asked to be an expert witness.

Keith Meyers: Even today, I get nervous. It would be the rare person who doesn't have a certain amount of nerves up there. It's a tense situation. You are the focus of attention once you're up there. I, as you do, ask for water. I have a little routine I do. I'll get up there, and, before they even start asking me things, like my name, I will find the water, and I'll make a very deliberate motion of getting the cup and pouring the water out of the jug into the cup and setting it down. It's just part of my process of calming myself down.

SW: Tell me about an interesting case.

KM: Last summer, I got hired by some attorneys in Texas. This was a federal criminal case. I was hired by the defense. On the other side were experts from the FBI, the IRS, and other federal agencies. The two defendants were current Texas residents who immigrated from Iran in

the late 1970s. There were questions about whether they were funneling money in violation of a federal embargo and possibly for terrorism. It was fascinating. It was a little disconcerting being cross-examined by the federal assistant attorney general. But I thought we got along OK.

The husband-and-wife couple had been making large contributions to a nonprofit located in Oregon, which is why the trial was here. The FBI was sure that this nonprofit was funneling money. My expertise was mostly forensics—"follow the money." My opinion was that some of the money went to their family in Iran. The nonprofit was an organization that sends money to Iran to provide scholarships for girls to go to high school and college. They could have done better recordkeeping, but I saw no indication that this money was going to terrorism. The couple got convicted. That was the most interesting case I ever worked on.

SW: It's important for you as the expert to have good communication with the attorney with whom you are working. But that's not always possible.

KM: We're always being asked to value the closely held company in divorce settings. That's probably half of my testimony. A few months ago, I had a case where the attorney-expert communications broke down. This was a pretty straightforward valuation case. I had a certain amount of constraints on me, which is not unusual. I was hired by the attorney for the nonmoneyed spouse, so I didn't have access to the company or management. There's always concern on my end when I get on the stand and I'm doing a valuation when I don't have the whole picture. But the courts understand that. Every time I've done it, it seems like they give you a certain amount



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of latitude. In the end, they're just trying to figure out what value to put on this asset so they can get this divorce settled. The law firm that hired me designated a younger attorney who had not had a lot of experience. I told the attorney, "Listen, all you need to do is ask me two things: ask my qualifications, then ask me what I did. Just wind me up and let me go." But he didn't do that. Stuart, it totally threw me off. He started asking me specific questions out of order. I want to tell him, "No, don't ask me that now. I haven't laid any foundation for that." In the end, I did OK, but it made it much harder.

SW: Your own attorney was your own worst enemy.

KM: Exactly. There are times when I will tell an attorney: "Don't ask me this question. You're not going to like the answer. It will be the other side's job to find the weakness, but don't lead them to it."

SW: What is an example of a "lesson learned"?

KM: Here's an example of what not to do. It was a divorce case, and I was testifying as to the value of a husband's interest in a law firm. There were two owners with 25 associates on staff to work about 500 active personal injury cases at the time of the divorce. I did a fair amount of work trying to value each case. Since they were personal injury, they didn't bill time. They just got a contingency fee of say 30%. I established a value for this work in process. The expert for the other side claimed it was just book value of the law firm. In a "normal" law firm valuation, I would agree. However, in this case, I said, "No, the estimated value of these cases in the pipeline need to be included in the value of the practice." I got into—for lack of a better term—an argument with the judge. Here's another piece of advice: Don't get into an argument with the judge, even if you are sure you're right. The judge said there's no intangible value in a law firm. I said, "I agree, normally, that there's no goodwill in a law firm." The judge made the argument that the attorney can just go across the street and start a new practice. I agreed, but half of these 500 cases, which belong to the firm, would stay at

the law firm, and he can't take them across the street. So that intangible value is the time, effort, and money it would take to build up his pipeline. Most of these cases he didn't touch. The associates did all the work. The judge did not agree.

SW: Because the judge is a lawyer, she figures she knows how to value law firms?

KM: That's exactly right. "I know law firms, you don't." What happened? We lost. My takeaway was that I might have been right, but what good did it do? I should have done a better job explaining my position and accept that my job is done.

SW: This brings up an interesting broader issue. What does an appraiser do when legal precedent produces a "wrong" conclusion?

KM: I see that occasionally, but most of the time the courts eventually get things reasonably correct. We have to work within the system the best we can. It would be foolish to go against legal precedent. In this case, I should have done a better job of explaining why, in this specific situation, the court's normal understanding of a law firm's value might not result in the best answer.

SW: What don't you like about certain expert witness opponents?

KM: When I know that the experts on the other side are not playing it straight up. If they were the expert for the other side, they wouldn't testify the same way. That's the thing I don't respect the most. And I see it more often than I would like. Maybe they don't always realize it, and we all have the capacity for that. When you're hired by one side, you know you're primarily going to get that side of the story. You need to continue to remind yourself that there are two sides to every story. You've got to take everything that your client and attorney say to you with a grain of salt. We have a higher responsibility to look through the facts and the story as much as we can to make sure we aren't being manipulated. I get the subtle pressure. Sometimes it's not that

subtle. But, you know, Stuart, we've been around long enough to ignore it.

SW: One of the issues that I have about being an expert witness is that I feel like the attorneys are pushing all their stress onto me, and I'm not getting paid enough to deal with it. Second, I don't like the fact that the cases interfere with my personal schedule, to the point where I might have to cancel a vacation because a trial is delayed.

KM: I think they're both valid issues. We have every right to push back, especially in situations where you have been hired months ago and you don't hear from the attorney until the trial is three days away. All of a sudden, they get motivated and this case becomes all consuming. Somehow, you're supposed to be able to get through a fire hose of information, get reviewed, get documented in some way, and get some type of report out in a very short period of time. This is not the best way to work, obviously. The better attorneys in town understand that. They don't want us to come in half-prepared either. Other attorneys let the case run them, and therefore they let the case run us. Human nature, I guess. Whenever a date gets set for trial, I know that this will change four times before it really happens. I got called last week and was told "it's been rescheduled for March 12. Is that OK?" Yes, it's on my calendar. If they move it to a vacation, and it's a vacation I planned to Hawaii where I can't change the date, then they're just not going to have me.

SW: How do you deal with the technology of the testimony?

KM: I think I worry about it more than anything else. My best testimony is when I just talk. The most important thing is to get the message to the trier of fact as simply as possible. Sometimes, a one-pager with an outline works well. Other times, graphs work really well. I don't think it's absolutely necessary to do it unless the facts are complicated enough where graphs would help you. In the end, if you come across as prepared and trustworthy, then how you say it is almost as important as what you say. "I like Mr.

Meyers and he seems to know what he's talking about. I haven't a clue as to how he got to his number, but I'm going to accept it." I think that's what happens more often than we would like to admit.

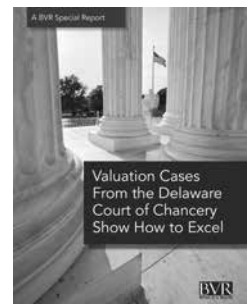
SW: Any tips for the newbies out there?

KM: If you can, get into that courtroom before you have to testify. A lot of times, you can't. They just won't let you in. But it's always great to be in there, even if it's only a half hour before you testify, just to get an idea of who everybody is on each side, who the judge is, where is the court reporter. Is the judge active, passive, is the courtroom full, is it empty? I hate going into a courtroom totally blind. Where's the witness stand? Is it on the left side, is it on the right side? Is there water there? Is the AV system working well? Those are things that I like to know, just because it allows me to calm down a bit. ♦

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