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Depositions Require Skills Leaders Don't Use on the Job

By George Anders from The Wall Street Journal
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Most of the time, hard-charging managers like to take command of a meeting going badly. They redefine the agenda around what they believe are the key issues. They argue their case so passionately that skeptics rally to their side. And if necessary, they overpower stubborn opponents with logic, humor or steely-eyed toughness.

Such techniques help leaders rocket up the organization. Go-getters use them to win customers' orders and get budgets approved. But all those techniques lose their magic if a company is being sued and a star manager is summoned by the opposing side's lawyers to give pretrial evidence in the form of an oral deposition.

Suddenly strong-willed managers can end up feeling like cowering idiots. They spend hours under oath, unable to duck even the most impertinent question. If they try to argue, joke or bluster their way out of an awkward spot, every word of their answers will be picked apart for inconsistencies or signs of arrogance that might hurt their company's ability to defend itself.

Like it or not, the deposition is becoming a major rite of passage for ambitious managers. It's a lot less fun than getting stock options or seeing one's promotions announced in press releases. But as executives gain prominence, it's increasingly likely that they will be the person chosen to explain their company's conduct in the face of suits alleging anything from patent infringement to product liability.

To survive being deposed, attorneys and executives say, it helps to keep four things in mind. Make answers brief and tightly focused, avoiding the temptation to expand beyond what was asked. Prepare diligently beforehand. At the deposition, stay calm and truthful. And understand your side's legal strategy well enough that you don't undermine your value as a witness for the company if the case goes to trial.

In Dallas, attorney C. Vernon Hartline Jr., a partner in the firm of Hartline, Dacus, Barger, Dreyer & Kern, says his first priority in advising executives is to get them to understand that this isn't another business meeting to be attacked and conquered.

"Nothing you can say or do will make the case go away," Mr. Hartline explains. "The other side is just looking for a sound bite that will make you appear deceitful, insensitive or stupid." The more talkative a witness is, the greater the chance of blundering into trouble.

To drive home that point, California attorney Lon Allan years ago told clients: "If you can get through this whole thing without saying more than 150 words, I'll buy you lunch. If you say more, then you have to buy for both of us."

Lately Mr. Allan has served as a director of several small high-tech companies. When he is deposed, "I really have to bite my tongue," he says. "We all have this psychological need to explain things. But this is not a social setting. The more information that anyone volunteers, the more questions they will get asked."

Minor habits of speech matter, too. Attorney Barbara Moses, a partner in the New York firm of Morvillo, Abramowitz, Grand, Iason & Silberberg, says she cringes when executives use phrases such as "To be candid," and "I hate to admit it, but..." Such language suggests other remarks aren't candid, she observes.

In some situations, Ms. Moses insists on a mock deposition ahead of time, then has executives watch the videotape. "That usually gets their attention," she says. "If they realize they are coming across badly, maybe they will spend more time preparing."

During her own depositions, executive recruiter Valerie Frederickson says she avoids witty turns of phrase that could come back to bite her. She also gets up for a break -- which is allowed in most jurisdictions -- if she feels her temper is rising. "One deposition came right after I had knee surgery," Ms. Frederickson recalls. "Anytime the deposition got awkward, all of a sudden my knee hurt too much to continue."

If lawsuits go to trial, then corporate executives may be asked to tell their side of the story under friendly questioning from their own attorneys. But more than 90% of corporate litigation is dismissed or settled before trial. And in a deposition, it's the opposing side's lawyers that are running the show.

So corporate legal strategists constantly debate whether it's wiser to encourage cautious, tight-lipped depositions or to let executives take a higher profile with an eye to preserving their credibility as defense witnesses if the case later goes to trial. "You can't remember something at trial if you spent your whole deposition insisting that you didn't know anything about it," says Mr. Allan, the California director. In the late 1990s, Microsoft Chairman Bill Gates adopted an extremely cautious stance when being deposed in federal antitrust litigation. When that case went to trial, a videotape of his long pauses and terse answers was widely seen as detrimental to Microsoft's defense.

"I tell clients that if you come across as stupid in a deposition, you've been neutralized," says Boris Feldman, a corporate-defense specialist at the Palo Alto, Calif., law firm of Wilson Sonsini Goodrich & Rosati. "Be careful. Don't be flip. But show that you tried to do a good job."