



Proven Strategies For Handling Difficult Deposition Questions

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When we prepare 30(b)(6) corporate representatives and executives for their depositions, they are often fearful that the questioning attorney will try to trick them into admitting something that is not entirely accurate. They are also anxious that the attorney will use a few bad facts to distort the underlying message they hope to convey.

In other words, the witness fears losing control. Control of the deposition; control of an accurate recounting of the facts; control of the narrative. Just about everything a witness does while under attack in a deposition is intended to maintain that control. But many of those instinctual reactions can actually make matters worse.

Coping Strategies

Coping strategies help a witness know when he is off course and how to get back to his message, all while under a barrage of questions.

The first step in developing coping strategies is recognizing that the true audience for your deposition is not the attorney, but the jury and judge. Understand that you will lose credibility with them if it sounds like you are avoiding the question or being uncooperative. When confronted with a difficult question, don't stall by trying to hide behind a claim that you "don't understand" the question when an ordinary listener would. At the same time, resist the urge to concede the attorney's spin by submissively answering "yes" or "no" to uncomfortable questions.

Instead, like the games of tag you played as a child, when under attack, look for ways to get back to home base. But what is home base?

Home Base

As you prepare for your deposition, get clear on the one or two messages about the underlying facts you want to convey in your testimony. These messages are often affirmative responses to the major criticisms being leveled against the company. These will be the themes of your case; the bigger picture of what you or your company did, and why. Then come up with a concept for each message—a simple phrase or sentence that will represent a core theme of your testimony. This concept is your "home base." It will be the idea that you want your audience to hear, remember, and use when evaluating your case. Then, when you feel yourself losing control in the deposition, use your home bases to pivot away from an aggressive questioner and toward the affirmative message you want to send.

Here's an example: Imagine you are a senior manager of an environmental compliance consulting firm that has been accused of failing to properly inspect a client's manufacturing facility, which was later cited for illegally discharging hazardous waste. You certified the results of your firm's inspection, even though you had no involvement in the inspection itself. Your client has sued your firm alleging that the inspection certification was false, and that you couldn't have believed it was accurate when you signed it. And now, the client has noticed your deposition, so you need a home base to deal with the expected line of questioning. During a preparation meeting, you explain to your attorney that your firm has procedures in place to ensure that each step of an inspection is

confirmed before any certification can be signed, and that you followed those procedures. Get comfortable with that message and practice saying it, because you will be returning to it again and again when your deposition gets rough.

So, what are some of the coping strategies? Here are a few we like to use.

Admit-Deny

This is a strategy for responding to questions that are only partially accurate, or when answering with a simple “yes” could leave your audience with a false and negative impression. Consider the following line of questioning:

Q: You don’t recall signing this certification, right?

A: That’s right. It was five years ago, so I don’t specifically recall having signed it.

Q: But you agree that’s your signature on it?

A: Yes, that’s my signature.

Q: So, you admit that you signed it?

A: Yes.

Q: When you signed it, you were certifying that your firm had performed each and every step of the inspection, right?

A: Yes.

Q: But you didn’t perform the inspection yourself, did you?

A: No, I didn’t.

Q: And you weren’t present at the plant when the inspection occurred, were you?

A: No, I was not.

Q: So, you signed the certification even though you didn’t perform or even witness the inspection?

How do you respond? If you try to avoid the question by explaining why you did what you did, a good interrogator will demand that you give a direct answer to the question (“Q: Mr. Smith, will you please answer my question?”). Resist the question again and you risk looking evasive. At this point, you may be tempted to respond, “Yes, but [fill in your explanation here].” By leading with “yes,” however, you run the danger of giving more credence to the question than it deserves. And following with “but” just sounds like you’re making excuses.

Instead, “admit” the general accuracy of the question, but do so by starting your answer with “while,” “although,” or “even though.” Then immediately “deny” any incorrect assumptions or negative implications in the question. And use your denial as an opportunity to weave in your home base.

Q: So, you signed the certification even though you didn’t perform or even witness the inspection?

A: Although I didn’t conduct the inspection myself, we had an established procedure for reviewing the written inspection results and confirming each item with the lead inspector before any certification could be signed, and I never departed from this procedure, so I did confirm the inspection before the certification was signed.

Answering in this way makes it clear that you are not avoiding the question, but treats the admission almost as an aside, focusing the meat of your answer instead on a strong rebuttal of the misleading spin and a reminder of your home base message. Remember, answers like this are difficult to construct on the fly. Preparation and practice is key.

Letting Go of the Rope

When an attorney doesn't like the explanation you've given and insists on a "yes" or "no" response, your instinct may be to keep fighting, out of fear that otherwise you'll undo all the hard work you've done weaving your home base into your previous answers. But if you're fighting, you're not in control. Worse, you may come off sounding like you have something to hide. Sometimes the best way to regain control and preserve your credibility is to stop playing tug-of-war by "letting go of the rope" and moving on to the next subject.

Q: So, you signed the certification even though you didn't perform or even witness the inspection?

A: Although I didn't conduct the inspection myself, we had an established procedure for reviewing the written inspection results and confirming each item with the lead inspector before any certification could be signed, and I never departed from this procedure, so I'm certain that we followed the procedure and confirmed the inspection before I signed the certification.

Q: Mr. Smith, I asked you a very simple question, you signed the certification even though you didn't perform or even witness the inspection, didn't you?

A: Yes, as I previously explained.

The last phrase is key when your adversary tries to use your deposition against you during trial. By adding "as I previously explained" at the end you are making it clear to your audience that there's an explanation for your answer, and it's the questioning attorney who's trying to avoid a complete and accurate response to his question. Then, when your adversary tries to use the admission against you at trial, your own attorney can invoke the "rule of completeness" and demand that your previous explanation be read to the jury.

Sorting the Junk Mail

This is a good strategy for responding to a multilayered question, some parts of which make you uncomfortable. The question may be accurate, but simply answering "that's correct" could leave your audience with an inaccurate understanding of what really happened. Instead, sort through the parts of the question, like you would with junk mail, and keep only those you want to respond to, hopefully by weaving in one of your home bases. These answers often start with a phrase like, "If you're asking me"

Q: You have no specific recollection of having signed the certification, you didn't conduct the inspection, and you weren't even present when the inspection was conducted, yet it's your testimony that you're certain all of the steps of the inspection were completed five years ago?

A: If you're asking me how I know the inspection was completed, as I've previously explained, we had strict procedures for confirming each step of the inspection, and those procedures were followed before the certification was signed.

You have now delivered your home base (yet again), and the questioning attorney will have to decide whether it's worth trying to mount another attack (knowing that it will probably solicit yet another recitation of your home base).

These are only a few of the strategies we work on when preparing our clients for challenging depositions. They are all aimed at giving you, the witness, the tools you need to tell the story you want to tell and send the message you want to send, even when under attack, and to preserve your credibility in the process. In other words, they are all aimed at keeping you in control of the deposition.

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