

# Strategies and Techniques in Defending C-Suite Depositions via Zoom

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## Agenda

- Why C-Suite depositions are different
- Preparation strategies and techniques
  - Substance of the prep
  - The critical role of mock cross
  - The critical role of in-house counsel when outside counsel is retained
  - What makes remote depositions different
- Technology considerations
- Defending remote C-Suite depositions
- Questions

## Introductions



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## Why Are C-Suite Depositions Different?

## Ex-Theranos CEO Elizabeth Holmes says 'I don't know' 600-plus times in never-before-broadcast deposition tapes

*Elizabeth Holmes has pleaded not guilty to wire fraud charges.*

By Taylor Dunn, Victoria Thompson, Rebecca Jarvis, and Ashley Louszko  
January 23, 2019, 5:12 PM • 30 min read



## Forbes

Jul 20, 2016, 02:59pm EDT

### Court Sanctions TransPerfect Cofounder Phil Shawe For Lying Under Oath, Destroying Evidence



**Katia Savchuk** Forbes Staff  
Lists

*I write about billionaires and entrepreneurs around the world*

This article is more than 4 years old.

**Update:** In an Aug. 19 judgment, Delaware Chancery Court Chancellor Andre Bouchard directed Phil Shawe to pay \$7.1 million in attorney's fees to Liz Elting within 10 business days.

A Delaware judge today issued sanctions against the cofounder of one of the world's leading translation firms, concluding he had repeatedly lied under oath and intentionally destroyed evidence during a two-year legal battle with his business partner. The ruling ordered Phil Shawe, co-CEO of New York-based TransPerfect, to pay a large share of the attorney's fees and expenses that his opponent, co-CEO Liz Elting, incurred.

## C-Suite Depositions: Higher Stakes

- Higher stakes for the company and the case
  - What they know (e.g., more sensitive/privileged info)
  - What they **should** know
  - Position gives their testimony weight
  - Viewed as speaking for the company: de-facto 30(b)(6) designee
- Cost: internal & external
- Time constraints
- Unique pressures on the lawyer preparing them
- Different personality traits and expectations
- More publicly available information
  - Bios
  - Press releases and media quotes



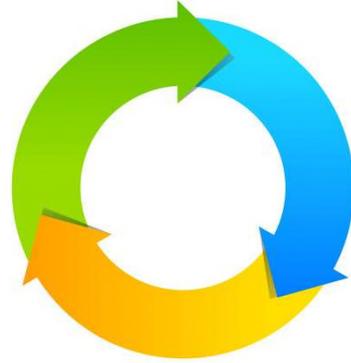
## Long-Term Strategies to Prevent C-Suite Depositions

- Developing other witnesses with knowledge
  - Courts may quash CEO deposition if others have information
    - In-house attorney critical to identify alternative witnesses
  - The danger of other witnesses who don't know
  - Consider how witnesses will answer: "who would know?"
- Framing defenses to avoid CEO's unique knowledge
- Deciding whether to move to quash or negotiate scope



## Turning the C-Suite Deposition to Your Advantage

- C-Suite deposition can break, or make, a case
- Advantages of C-Suite as witness
  - Unique ability to communicate the company's vision
  - May be able to "personalize" the company
  - Smart, savvy, likable
  - More comfortable in higher-pressure situations



## Preparation Strategies and Techniques

## Laying the Groundwork

- Anticipate possible C-Suite depositions in advance
  - Proactive scheduling to avoid time crunch
- The pre-work (beyond the prep outline)
  - Identify and plan for tricky confidentiality and privilege issues
  - Identify and avoid potentially sensitive, unrelated issues
    - Set scope in advance
    - Involve court up-front if needed



## In-House Counsel's Role

- In-house counsel's critical role, even if you have outside counsel
  - Institutional knowledge
    - Confidentiality/privilege issues
    - The witness as a person
    - Other litigation/depositions
    - The company's mission/goals
  - Protecting the witness
    - Securing preparation time
    - Gaining trust
    - Pre-work
  - Efficiency



## Preparation Strategies and Techniques

- Timing, length, cadence of the prep sessions
  - Preference for multiple, shorter (4 hr. max) sessions
  - Beginning, middle, end
- Mental picture of what to expect
  - The room, the players
  - Logistics of reviewing documents
- Tone: thoughtful, honest executive

## Preparation Strategies and Techniques

- Substance of the prep (documents, documents, documents)
  - What they will be asked about
  - Refreshing memory
  - Context - facts, timeline, and themes of the case



## Preparation Strategies and Techniques

- **Mock cross**

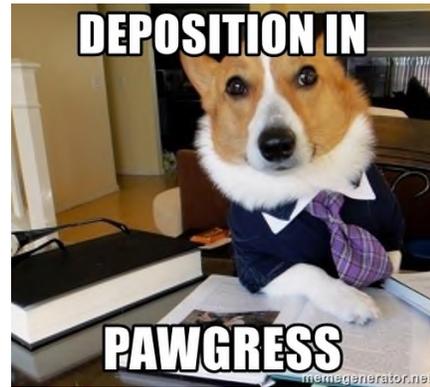
- Most critical part
- Do not ad lib all of the mock cross; plan out what will be the hardest questions
- Adjust depending on your opposing counsel
- If you have outside counsel, make clear this is expected
- Ensure enough time to “build the witness back up”



## Mock Cross Example

## Preparation Strategies and Techniques

- Pros and cons of using C-Suite deponent as 30(b)(6)
- If the witness is the 30(b)(6) designee
  - Additional homework
  - More time needed
  - Prepare for the inevitable: What did you do to prepare?
  - Plan to avoid second “bites at the apple”



## Preparation Strategies and Techniques

- What's different about remote deposition prep
  - Logistics of the prep
  - Walk through the tech and its functions
    - Different screen views (make sure they can see you during the deposition)
  - Dry run through the platform
    - How exhibits will work
  - Plans for
    - Break outs
    - Technology glitches
  - Appearance
    - Attire
    - Background
    - Lighting
    - Camera placement
    - Audio



## Additional Technology Considerations

- The platform - know it and its functions
  - Zoom vs. Microsoft Teams vs. GoToMeeting vs. WebEx
  - Views
  - Break out rooms
  - Screen sharing
  - Recording
  - Security
  - Mute button
- Your appearance/background, etc.
- Back up plan for tech issues
  - Tech person on call
  - Dialing in without video as a last resort



## Defending the Deposition

- Stipulations/ground rules
  - Exhibit timing (enough time for you/witness to print)
  - Confidentiality
  - Tech issues
  - If you need to add exhibits
- Objections
  - The virtual hand in front of the witness
- Exhibits
  - Insist the witness look at the hard copy in front of them?
- Break outs (use another form of technology)
- Ethical issues unique to remote depositions
- In-house counsel's role if outside counsel is retained: ensure a plan is in place

## Questions?



## Thank you

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