

## Nagel Deposition : VP of Training and Development:

8

1 A. I have.

2 Q. How many times, approximately?

3 A. I think this will be four. I'm not entirely  
4 sure.

5 Q. Okay.

6 A. I was deposed about a month or so ago.

7 Q. All right.

8 A. ~~Or a couple months ago.~~

9 Q. And you said you're vice president of sales and  
10 marketing?

11 A. No, vice president of training and development.

12 Q. I'm sorry, training and development.

13 Okay. And with regard to training, who -- who  
14 does the training apply to?

15 A. My responsibilities are customer training, sales  
16 training, education and lab operations.

17 Q. Okay. And so what would education consist of?

18 A. Education are materials that are created  
19 primarily used for the sales force. Like education  
20 materials.

21 Q. Understood. And what does -- when you say you're  
22 vice president of training and development, tell us about  
23 the development piece.

24 A. Development of, you know, sales, skills or -- you  
25 know, development in a sense of developing skills.

1 A. 1985.

2 Q. Okay.

3 A. And it's a degree in operations management and  
4 marketing.

5 Q. And any higher education after that?

6 A. No.

7 Q. And can you tell us briefly your job pathway that  
8 led you from graduating from college to winding up at  
9 Intuitive?

10 A. Sure. So -- I don't know how much detail you'd  
11 like me to get into it but --

12 Q. Basically just the job and roughly how long you  
13 held each position.

14 A. Yeah. So out of college, I started working for a  
15 distributor in -- it was Gallo winery.

16 Q. Uh-huh.

17 A. And I worked there as a salesperson, and I moved  
18 from Gallo Winery to a company called U.S. surgical --

19 Q. Okay.

20 A. -- based out of Connecticut.

21 Q. And approximately when would you have done that?

22 A. 19 -- I started there in September of 1991.

23 Q. Okay.

24 A. And in between, I forgot, I worked for a small  
25 family winery called Louis Martini for a brief period of

1 time.

2 Q. So U.S. Surgical was your first medical-related  
3 job?

4 A. Correct.

5 Q. Okay.

6 A. Yeah.

7 Q. How long did you stay with them?

8 A. I think I left there around October of 2000,  
9 September or October time frame 2000. So about nine  
10 years.

11 Q. Okay. And where did you go in October of 2000?

12 A. I started here at Intuitive in November of 2000.

13 Q. All right. What was your first position at  
14 Intuitive?

15 A. I came in as a senior director of training, and I  
16 was in -- primarily involved in sales training at that  
17 time, 'cause that's what I did primarily at U.S. Surgical.

18 Q. Okay. So you're -- you're teaching the  
19 salespeople how to sell essentially?

20 A. Yeah. I'm working with the salespeople to help  
21 build programs and teach them how to sell, correct.

22 Q. All right. And how long did you hold that senior  
23 director of training position?

24 A. I believe it was around mid year of 2007 that I  
25 became vice president. Roughly June or July of 2007 --

1 A. No.

2 Q. So what you've learned about medicine,  
3 you've learned either on the job at U.S. Surgical or at  
4 ISI?

5 A. Yeah. We're not -- I mean, I'm not sure what you  
6 mean by "medicine." I'm not -- we're not taught  
7 medicine --

8 Q. Right.

9 A. -- but I understand -- you know, we're taught to  
10 understand clinical procedures and products and things of  
11 that nature.

12 Q. Right. And that's all I'm getting at is you  
13 haven't had any higher education in medical-related  
14 subjects?

15 A. No.

16 Q. All right. Now, I should have walked you through  
17 this before we started the tape, but there's a notebook in  
18 front of you.

19 A. I can see that.

20 Q. The tabs are numerically ordered, but there are a  
21 lot tabs missing because I'm not going to ask you about  
22 missing tabs.

23 A. Okay.

24 Q. So for example, if you could go to Exhibit 6 or  
25 tab 6 in your book.

1 Q. Okay. What's the right term to use that you're  
2 comfortable with when we talk about this system, a medical  
3 device, medical instrument, surgical instrument, what -- I  
4 just want to have a term we're both comfortable with.

5 A. Sure. It's a medical device, a surgical tool.

6 Q. Okay.

7 A. Yeah.

8 Q. When you worked for U.S. Surgical, what did you  
9 work -- what did you do?

10 A. I started out as a salesperson in 1991, and I  
11 worked in that capacity probably for about four or five  
12 years. And then I was a manager, and then I moved into  
13 training. And I hope I got the right year here. I want  
14 to say it was around 1998.

15 Q. Uh-huh.

16 A. 'Cause I got married, and I remember moving to  
17 Connecticut and going in-house. So I might have started a  
18 little bit prior to that, but around '97, '98.

19 Q. All right. And what sort of products were you  
20 dealing with on behalf of U.S. Surgical?

21 A. We had a variety of devices. We had trocars. We  
22 had stapling products. We had handheld laparoscopic  
23 devices.

24 Q. Okay.

25 A. And open products as well. Pardon me.

1 Q. All right. And the one I saw was multiple choice  
2 questions with four options for each question.

3 A. Yeah, I think they're mostly multiple choice in  
4 here, yeah.

5 Q. All right. And then the one I saw, if you -- if  
6 you check the wrong answer, up comes a little icon saying,  
7 "Incorrect answer, please try again." And then the person  
8 can hit the next one. You know, if he checked A and that  
9 was the wrong answer, then they --

10 A. They can go back and try it again.

11 Q. Yeah, until they get the right answer. Is that  
12 how this one works as well?

13 A. I believe -- I believe you can -- you can go  
14 answer the question, and then if you don't get it right,  
15 they ask you to get it right.

16 Q. Right.

17 A. Yeah.

18 Q. So somebody who got the wrong answer on question  
19 number one could then try the next answer and the next  
20 answer 'til they got the right answer?

21 A. They could -- they could make a different  
22 selection 'til they -- yeah, 'til they get the right  
23 answer.

24 Q. Okay. And they could go on to question two?

25 A. Yes.

1 Q. All right. And so really as long as somebody's  
2 persistent, they're not going to fail this test?

3 A. Yeah. The idea -- first of all, this is a  
4 very -- very cursory basic overview of the system.

5 Q. Uh-huh.

6 A. And it's -- it's really meant to be introduction  
7 to here's -- here's what da Vinci is to your earlier point  
8 about people not recognizing and not understanding. So  
9 it's a basic overview and understanding of it. And so we  
10 want them to get the answer, right, to understand what it  
11 is.

12 Q. Uh-huh.

13 A. So if they don't get it right, then they'll find  
14 the one that is right.

15 Q. All right.

16 A. And they get much more hands-on training in other  
17 parts of the program.

18 Q. But in this phase, there's no way to fail this  
19 test, is there, unless you have a heart attack in the  
20 middle or something?

21 A. I don't know. I know that they need to get, you  
22 know, 80 percent or above. The idea is to have them  
23 understand the question.

24 Q. Right. But how would you ever get less than a  
25 hundred percent if you can't move on to the next question

1 until you get the first one right?

2 MR. JOHNSON: Object to the form of the question.

3 THE WITNESS: Yeah, I don't know -- I don't know  
4 the specifics of that.

5 MR. FRIEDMAN: Q. Okay.

6 A. I wasn't -- I didn't build it, but I know the  
7 idea was to give them a basic understanding of it and make  
8 sure that they understand the question and the answer.

9 Q. Are you aware of anybody ever failing this test?

10 A. I'm not.

11 Q. Okay. Now, did you -- I'm sorry if I asked you  
12 this. Did you say who created this test?

13 A. Education department would have created it.

14 Q. That would have been here in California then?

15 A. Yes.

16 Q. All right. And then phase II involves the --  
17 what do you call it, the lab?

18 A. Yeah. Yes, we call it off-site training --

19 Q. Off-site training.

20 A. -- but it's working in the lab.

21 Q. Okay. And Dr. Bildsten and Hedges came here to  
22 Sunnyvale, to the Sunnyvale lab. Is that an  
23 institution -- or a lab owned by ISI?

24 A. Yeah. That's our corporate facility, yes.

25 Q. All right. Now, would it be accurate to say that

1           So I was kind of dusting off my memory. We did  
2 like a road show and work with different physicians at  
3 centers and -- and build those protocols.

4           Q. And then the finalization takes place here in  
5 California?

6           A. Yes.

7           Q. All right. This phase II training, what does it  
8 consist of at present? Or I'm sorry, I should really ask  
9 you about 2008. What did it consist of in 2008?

10          MR. JOHNSON: Can you read that back?

11          MR. FRIEDMAN: I'll just reask it.

12          MR. JOHNSON: Yeah.

13          MR. FRIEDMAN: Q. I'm trying to focus in now on  
14 the off-site training --

15          A. Sure.

16          Q. -- that existed in 2008.

17          A. Okay.

18          Q. What did it consist of at that point?

19          A. So there would be an initial meeting like this  
20 where the physician would sit down with a training  
21 specialist and they'd go over kind of the agenda, what was  
22 going to happen during the day. So there's an initial  
23 20-minute introduction, talk about, you know, the system,  
24 and, you know, what they're going to be doing, and then  
25 the rest of the day is spent in the lab.

1 training.

2 Q. Gotcha. All right. And phase III then is back  
3 to on-site training?

4 A. Phase III is back to the hospital with the CSR,  
5 and they're doing that procedure dry run.

6 Q. All right. And then phase IV -- focusing in on  
7 the training offered by Intuitive in phase IV is what?

8 A. So phase IV is opportunities for surgeons to do  
9 peer-to-peer learning. So let's say that a surgeon says,  
10 man, I want to go and see Dr. X do a procedure.

11 Q. Uh-huh.

12 A. Or I want to be -- I want to spend time with an  
13 experienced physician. So those physicians that had run  
14 these advanced training programs are like the host of it,  
15 and then groups of surgeons will come and they'll teach  
16 them about their experiences and techniques.

17 Q. But ISI really has nothing to do that with that  
18 phase IV?

19 A. ISI will work with the physicians to set up the  
20 program and then the physicians run the program.

21 Q. Okay. All right. So you'll tell a physician for  
22 example, Dr. So and So in Missouri is going to have this  
23 program, you might want to go as part of your phase IV  
24 training?

25 A. So a CSR -- and I don't know the breadth of it in

1     came in here --

2             Q.    Okay.

3             A.    -- is when I saw this.

4             Q.    Did you ever see this, say, in the first five  
5     years of your work at Intuitive as you were developing the  
6     training program?

7             A.    I can't recall, Rick, if I -- if I reviewed it  
8     when I -- as I said when I first started I was, you know,  
9     doing sales training, and I don't know if this was  
10    introduced to me. I can't say specifically.

11            Q.    Okay. Is there any -- focusing in on 2008 for a  
12   minute. Was there any tests other than the tests we  
13   discussed, the ten question multiple choice test, was  
14   there any test that a surgeon was required to pass in  
15   order to go from phase to phase of the training?

16            A.    No.

17            Q.    And if you look at our page 814 here, Roman  
18   numeral II (b).

19            A.    Okay.

20            Q.    It says, "Each training center will be required  
21   to follow a standard curriculum and utilize standard  
22   performance assessment for each phase prior to moving a  
23   learner to the next phase."

24            In 2008 was there a standard performance  
25   assessment for each phase?

1 A. No.

2 Q. Okay. When you were hired to develop the  
3 training program for ISI, who was the person who  
4 supervised you? So we're back in 2000 or 2001 time  
5 period.

6 A. I was -- yeah, I was -- hopefully I'm answering  
7 the question right. I was hired by a gentleman by the  
8 name of Doug Bruce when I first started.

9 Q. Uh-huh.

10 A. And so he was my direct manager at that time.

11 Q. And do you know what his title was?

12 A. He was a VP of some sort. It might have been  
13 technology, Rick, but I'm not a hundred percent sure.

14 Q. Okay.

15 A. And then I worked for him, and I'd say probably  
16 to around midyear 2001. So maybe July-ish of 2001, and  
17 then I was moved over and worked under sales at that  
18 point.

19 Q. And what were you told about how ISI wanted you  
20 to develop the sales training program? What did you  
21 understand your mission was?

22 A. Well, I had worked at U.S. Surgical prior and  
23 develop sales training programs, and -- and they wanted me  
24 to -- they didn't really have much of a sales training  
25 program.

1 during the -- during the protocols, during phase II or --  
2 yeah.

3 Q. Phase II and phase III and phase IV?

4 MR. JOHNSON: Well, object to the form of the  
5 question.

6 THE WITNESS: Yeah. They were -- my  
7 understanding was that they're -- they were going through  
8 the process that they designed.

9 MR. FRIEDMAN: Q. Okay.

10 A. Yeah.

11 Q. And so who made the decision to stop that  
12 performance assessment?

13 A. I was actively involved in that.

14 Q. Uh-huh.

15 A. My understanding regarding this was there was an  
16 initial kind of pilot of this program, and it ran -- I  
17 don't know the exact date, Rick, that it stopped, but when  
18 I took over probably in mid 2001 and had a chance to see  
19 some of -- mostly phase II --

20 Q. Uh-huh.

21 A. -- is what I would see, it probably ran maybe  
22 into 2002. That's just a rough estimate of when we  
23 decided to make some changes.

24 Q. And why -- why was it decided to stop performance  
25 assessments at each phase?

1       them a general understanding of the product before they  
2       see it. That's really the primary focus of it.

3           Q.    So why not eliminate the test and just have them  
4       watch the PowerPoint?

5           A.    You know, I think it's good. The test at least  
6       we know that they paid attention and that they're -- you  
7       know, that they've watched it and paid attention to it and  
8       responded accordingly.

9           Q.    Go the next page paragraph, D as in dog.

10          A.    815?

11          Q.    Yes.

12          A.    Okay.

13          Q.    It says, "The second phase will be conducted at  
14       an approved training center during a three-day, hands-on  
15       program."

16                Now, I take it -- well, let me just ask. Was it  
17       still a three-day, hands-on program when you arrived at  
18       Intuitive?

19          A.    My understanding was yes.

20          Q.    All right. You say "my understanding." Were you  
21       not -- I mean --

22          A.    Yeah, they were -- they were running this  
23       practicum.

24          Q.    Okay.

25          A.    I don't know that I was always involved in all

1 three days, so -- but they were running this, yes.

2 Q. All right. And that was in your area of  
3 responsibility?

4 A. Not -- not initially.

5 Q. But eventually?

6 A. Yeah, in 2000 and, whatever it was, mid probably  
7 2001 time frame, yeah.

8 Q. Okay. And are you the person who decided to  
9 change it from a three-day, hands-on program to a one-day,  
10 hands-on program?

11 A. Well, they get more than -- they get more than a  
12 one-day, hands-on program because they -- remember we  
13 talked about the on-site training as well?

14 Q. Uh-huh.

15 A. So they get on-site training. The lab portion,  
16 just the tissue portion --

17 Q. Yes.

18 A. -- is a full day. And the feedback we get from  
19 surgeons, it's much more -- you know, it's better to get  
20 the bolus of hands-on time in the tissue so...

21 Q. Let me be clear.

22 A. Yeah.

23 Q. This is saying to the FDA, "The second phase will  
24 be conducted at an approved training center during a  
25 three-day, hands-on program." And that was going on when

1 you arrived?

2 A. Yes.

3 Q. And at some point this phase that's conducted at  
4 an approved training center changed from a three-day to a  
5 one-day program, correct?

6 A. But the phases are a little bit different now,  
7 right?

8 Q. Uh-huh.

9 A. So they get on-site -- I thought I -- I'm sorry,  
10 I thought I answered that. They get on-site training.

11 Q. Uh-huh.

12 A. Right. So they get hands-on, on-site training,  
13 and then they get a full day in the lab.

14 Q. Right.

15 A. Yeah.

16 Q. Okay. So are you the person who decided to  
17 change the three days in the lab to one day in the lab?

18 MR. JOHNSON: Object to the form of the question.

19 THE WITNESS: Yeah, I -- I was the one who  
20 decided to move from three days in the lab to on-site and  
21 one full day in the lab.

22 MR. FRIEDMAN: Okay.

23 MR. JOHNSON: Are you ready for a short break?

24 It's up to you.

25 THE WITNESS: Soon.