



Middle of the funnel

or the other stuff you need to be thinking about.

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THE FUNNEL APPROACH

Open-ended

Who; What;
Where; When Why,
How; Describe,
Explain; Tell me;

Follow-up

What do you mean?;
Tell me the details;

Exhaust

What else?; Always?; Never?;
Is that all?

Fill in Gaps

What about ...?; Have you ...?;
Were there ...?

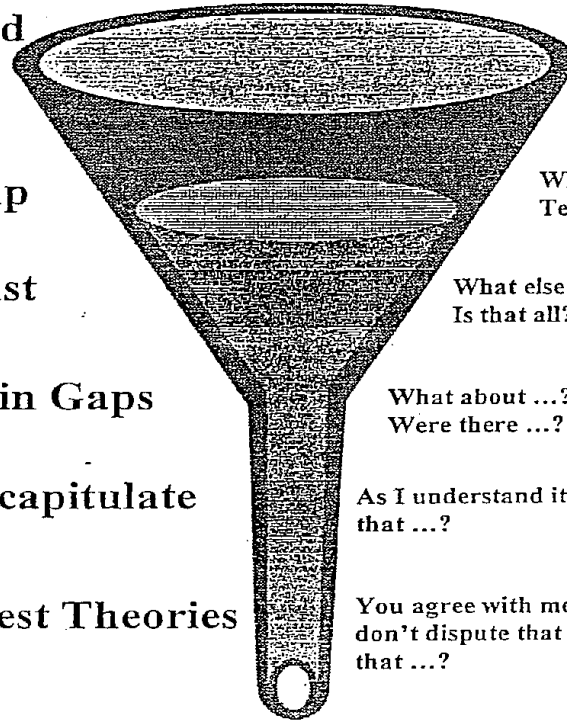
Recapitulate

As I understand it ...; Is it right
that ...?

Test Theories

You agree with me that ...?; You
don't dispute that ...?; You will admit
that ...?


Admissions



You're Half Way There....

Or so you think. "Middle" is a misnomer.

- Funnels galore
- Open-ended questions
- Narrative answers
- Feeling good!! But you feel the need...

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- To follow up
 - To learn facts that underlie answers to your open-ended questions
 - To flesh out details of a topic
 - To fully explore the witness' knowledge



Q: When did you first see the plaintiff?


A: He was about 200 yards away – on Kirby, approaching Main Street.

Q: How far was plaintiff from the intersection?

A: About 100 yards.

Q: How far were you from the intersection?

A: About the same distance.



Q: “Describe the process for shipping parts once they have been ordered.”

A: “My assistant will send an email to the warehouse. The warehouse will pick the parts, package them, notify UPS to come get them and then they are taken away, usually by the end of the same day.”



Q: *“Who was your assistant in December 2013?”*

A: *“Virginia Young.”*

Q: *“How long had Virginia Young been your assistant?”*

A: *“Just over three years.”*

Q: *“Describe Virginia Young’s experience with processing shipments prior to December 2013.”*

A: *“[yadda, yadda, yadda.]”*


And so on.....

CLOSE OFF AND LOCK IN

Q: “Have you told me everything you know about the topic?”

[But the witness is well-prepared.]

A: “That’s all I can remember at this time”

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- Did you make notes?
 - Did anyone else make notes?
 - Did you talk to anyone else about it?
 - Is there any place you can check?
 - Is there anyone you can talk to?
 - Is there anything that might trigger a memory?
 - If you had to do something to record it what would that be?
 - What are your habits or procedures?

Going Back up the Funnel


Funnel rarely ends with “Yes” or “No”

More often its “*Yes, but.....*” or “*No, but sometimes.....*”


New information – New funnel

Multiple Funnels

- New series of funnels for each new subtopic in a single topic
- Topic – How witness learned information
 - Q: *“How did you learn that the buyer wanted insurance on the shipment?”*
 - A: *“I received an email to that effect.”*


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- New subtopic – Handling of emails
 - Q: *“How do you receive your email?”*
 - A: *“When I’m in the office, I open them on my lap top computer.”*

 - New sub-subtopic – Handling email when he’s not in the office
 - Q: *“How is email handled when you’re not in the office?”*
 - A: *“One of my assistants opens them and saves them to my mail folder.”*

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- New sub sub subtopic – The assistants
 - Q: *“Who are your assistants?”*
 - A: *“Tom, Dick and Harriet.”*
 - New sub sub sub sub subtopics – Tom, Dick and Harriet
 - And so on.....


Notes, outlines, scripts and note-taking

- Listen
- Watch
- Observe
- Respond

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- PREPARATION - There is no substitute for knowing your file
 - ORGANIZATION – Minimal outline
 - Key areas
 - Key terms
 - *Perhaps* in the order you want to go
 - NOTE TAKING
 - Lists
 - Key terms/names
 - You have a transcript

Exhaustion

- Goal to obtain every important piece of information about a topic
- Its important if it:
 - Aids your understanding
 - Aids your case analysis
 - Aids your presentation of the case
 - Is **NOT** a waste of time or money

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- How far do you go?
 - Time available
 - Importance of topic
 - Budget

 - Leapfrogging – Dangers
 - Forget to go back and pick up
 - Breaks your concentration

- Suggest new facts
 - Get to the end of the funnel and witness says *“That’s all.”*


 - But you know there’s more
 - Q: *“Describe the shipping process.”*
 - A: *“[blah, blah, blah]”*
 - Q: *“Is that all?”*
 - A: *“Yes.”*
 - Q: *“What about shipping insurance?”*
 - A: *“Oh yeah.”*

Conversations

The litany

- Where
- When
- Who
- Witnesses*
- What was said
 - Generally first
 - Then specifics

* ...and what could they hear


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- I would add:
 - Was it recorded?
 - Audio
 - Video
 - Written
 - By you
 - By someone else
 - Why?

Conversations - The Four C's

- Context
- Conversation
- Close off
- Confirm

Handling Documents


- “I am handing a document to the stenographer. Please mark this as Exhibit I for the deposition.”
- “I am showing Exhibit I to opposing counsel and to the witness.”
- [to the witness]“Please take as long as you need to review Exhibit I.”

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- “Have you had an opportunity to review Exhibit I?”
 - “What is Exhibit I?”

Document now has a new name. It is **EXHIBIT I!!** Every single reference to it now “Exhibit I”. It is no longer “the letter” or “the contract” or “the ledger” or whatever.

Handling photographs.

- “I am handing a photograph to the stenographer. Please mark this as Exhibit 2 for the deposition.... On the back please.”
- I am showing Exhibit 2 to opposing counsel and to the witness.”
- Have you had a chance to see Exhibit 2?”

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- “What is Exhibit 2?”
 - A: “It’s a picture of my house after the flood.”
 - “Is the photograph marked Exhibit 2 a fair and accurate likeness of your house as it appeared after the flood?”
 - A: “Yes.”



It's all about the record!