



Taking Depositions “The Top of the Funnel”

J. Richard Ratcliffe, Esq.



Goals of the Program

- Demystify and simplify the process of taking or defending a deposition
- Give you an opportunity to experiment, try techniques, make mistakes
- Realistic experience in a testing laboratory where you control the experiment and get immediate feedback
- The NITA Privilege



Why take a deposition?

- Discovery / To build your case
 - To learn new information
 - To confirm facts you already know
 - To test your theories
- To educate your client
- To “see, hear, and smell” the witness

How Do You Use A Deposition?

- ✓ As affirmative evidence for motions or trial
- ✓ To refresh recollection of a testifying witness
- ✓ To impeach a testifying witness



LONG BEFORE THE DEPOSITION BEGINS...



Preparing Yourself

- REVIEW/CONSULT:
 - Documents produced
 - Other deposition transcripts
 - Motion papers
 - Your client, expert
 - Independent research
- MAKE NOTES:
 - Outline vs. script
 - Keyed to documents



TECHNIQUE: THE FUNNEL APPROACH

- Get the coverage or breadth of the topic first
- Start your questioning in broad areas to avoid unintended gaps
- Use open-ended questions - HOW, WHAT, WHO, WHEN, WHERE, WHY, DESCRIBE, EXPLAIN, TELL ME

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



The Funnel Approach (cont' d)

- Gradually narrow your areas as you gain confidence as to what is relevant and useful
- Ask narrow and pointed questions as you fill in details and seek admissions
- Insure completeness by always asking “anything else?”
- Recapitulate and summarize where useful, being careful of how you paraphrase

The Funnel Approach (cont' d)

- Listen to the answers and follow up when necessary and appropriate, then or later
- Exhaust each topic before moving on to a new topic
- Questions should be short and clear; try to use 10 words or less

You already understand the theory: you were deposed as a child!

- Did you go to a party last night? **Yes.**
- Was Susan there? **Yes.**
- Did Chris go too? **Yes.** Did Tommy go? **Yes.**
- Did you get there at 7:30 like you planned? **No.**
- No? 7:00? **No.** 8:00? **About.**
- Did you go straight home afterwards? **No.**
- Did you go to someone's house? **Yes.**
- Did you hang out at Starbucks? **No.**
- Did Karen's parents stay the whole time? **No.**
What do you mean? They weren't there? **I don't know.**

Your skills improve when you become a parent:

- **Where** were you tonight?
- **Who** was there with you? **Who** else? Anyone else?
- **What** did you do? **What else** did you do? Anything else?
- **When** did you get there? **When** did you leave?
- **Where** else did you go?
- **Who** went with you?
- **How long** did you stay?
- **Who** was in the house? **Who** chaperoned?

Consider:

- Which method was easier as the questioner?
- Which got you more information?
- Which got the person talking?
- Which gives you more confidence that you learned all the information there was to learn?
- **But**, as the one being interrogated, which do you prefer (especially if you have something to hide)?



Demonstration

- Closed vs Open Ended Questions at the Top of the Funnel