

# Taking Depositions “The Top of the Funnel”



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# Goals of the Program

2

- 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

# Why take a deposition?

3

- 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?

5

- ✓ 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

7

## ○ 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 ...?

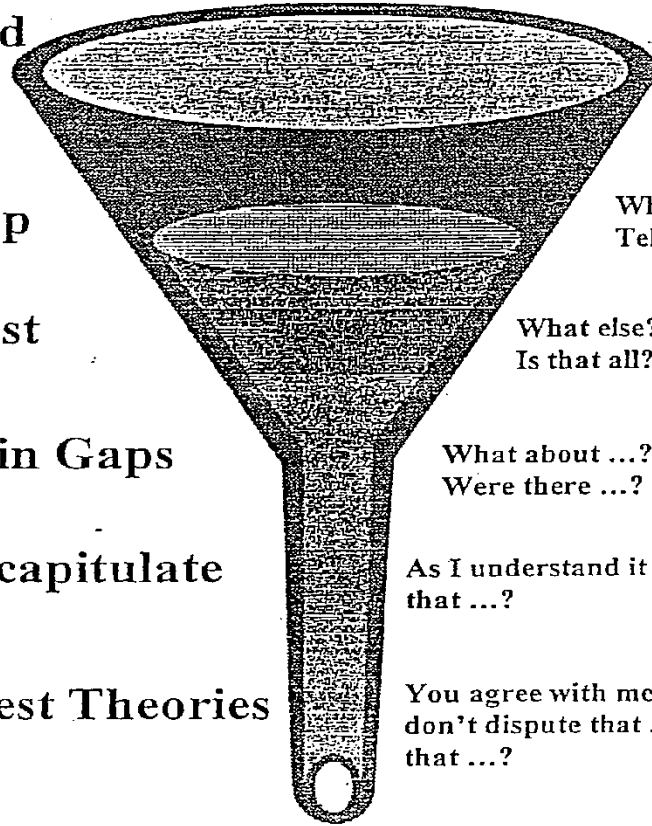
Recapitulate

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!

12

- 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:

13

- **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:

14

- 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

15

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

# Demonstration

18

## USING EXHIBITS