



TAKING DEPOSITIONS



The Top of
the Funnel





Before you even
Notice the Depo:
Have a Plan...

Why use steno only?

Why video?

What is gained, what is lost, given who
your deponent is and who the opposing
counsel is?

Power of Video v. Transcript



A newly released deposition video shows Roberta A. Kaplan, a lawyer for E. Jean Carroll, who has accused Donald J. Trump of raping her decades ago, asking Mr. Trump about an “Access Hollywood” tape made public in 2016.
Jefferson Siegel for The New York Times

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1 D. J. TRUMP

2 emotion. She actually indicated that she loved

3 it. Okay? She loved it until commercial

4 break. In fact, I think she said it was sexy,

5 didn't she? She said it was very sexy to be

6 raped. Didn't she say that?

7 BY MS. KAPLAN:

8 Q. So, sir, I just want to confirm: It's

9 your testimony that E. Jean Carroll said that she

10 loved being sexually assaulted by you?

11 A. Well, based on her interview with

12 Anderson Cooper, I believe that's what took place.

13 And we can define that. You'll have to show that.

14 I'm sure you're going to show that. But she was

15 interviewed by Anderson Cooper, and I think she said

16 that rape was sexy -- which it's not, by the way.

17 But I think she said that rape was sexy, and it

18 was -- she actually said things that were very

19 strange, and then she was a different person after

20 the -- when he said "We'll take a break right now.

21 We're going to take a break right now," he didn't

22 like what she was saying. He was very upset with

23 what -- and then she came back, and she was a much

24 different woman in the second half, so to speak.

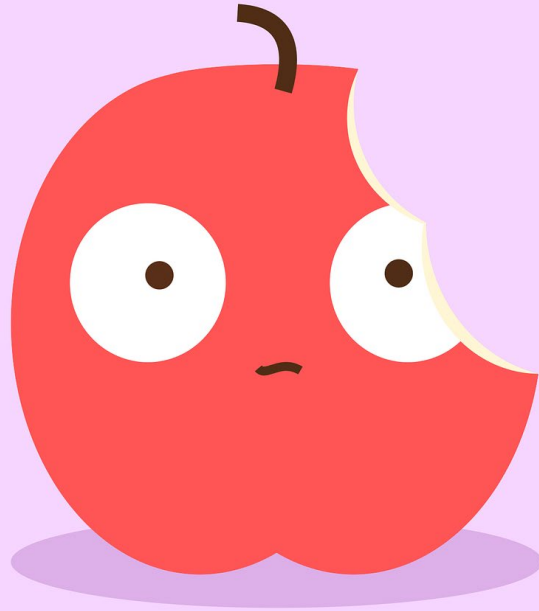
25 Q. So, again, just so the testimony is

Local Rules / General Orders

- LR Cv 39(b) – notice necessary at least 14 days prior to empanelment for use of recordings – transcripts required, other requirements
- General Order – (5/22/20) regarding depositions in civil cases during coronavirus pandemic
 - All done remotely by default... for now



FRAMING THE DEPOSITION



YOU HAVE ONE BITE OF THE APPLE!

FRCP 30 (d) Duration; Sanction; Motion to Terminate or Limit

(1) *Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to **1 day of 7 hours**. The court must allow additional time consistent with [Rule 26\(b\)\(1\) and \(2\)](#) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The court may impose an appropriate sanction—including the reasonable expenses and attorney’s fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in [Rule 26\(c\)](#). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* [Rule 37\(a\)\(5\)](#) applies to the award of expenses.



KNOW
YOURSELF,
KNOW YOUR
[DEPONENT],
AND YOU WILL
SUCCEED

- SUN TZU

Know Yourself





KNOW YOUR DEPONENT



Ethical limitations on researching deponents in social media

Rule 4.1. Truthfulness in statements to others. In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person...

Rule 5.3 Responsibilities regarding nonlawyer assistants.

Rule 5.3 (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer...

Rule 8.4. Misconduct. It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation...

Other Sources for Learning about the Deponent

- Discovery
 - Written Discovery
 - Interrogatory answers
 - Subpoena responses
 - RFPs
 - Admissions
 - Other Depositions
- Your Client(s)



What approach is likely to be most successful with this particular deponent?

- Who are they?
- What are their incentives?

“Everybody has a plan until they get punched in the mouth.”

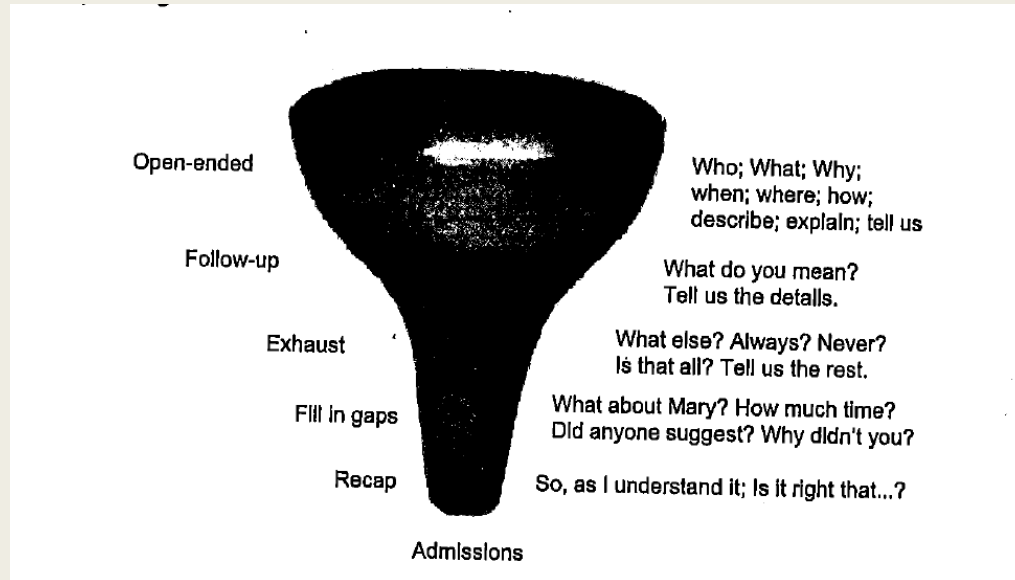


**Be Curious,
not
Judgmental**



FINALLY FUNNELS!

Depositions are Full of Funnels



VS.



Depositions are Full of Funnels

- “Funnel” as a Framework
- Not just one Funnel!
- A Funnel for Every Issue





DEVELOPING AND
TESTING CASE
THEORY:
WHAT DO YOU NEED
FROM THIS WITNESS?

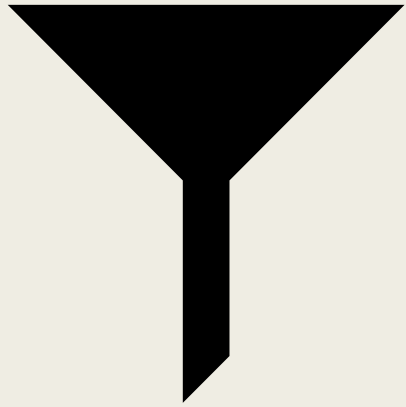


Why Take a Deposition?

- ✿ *Information gathering / follow up on discovery*
- ✿ *Evidence for Motions or Trial*
- ✿ *Refresh Recollection a Trial*
- ✿ *Impeachment material (non party)*

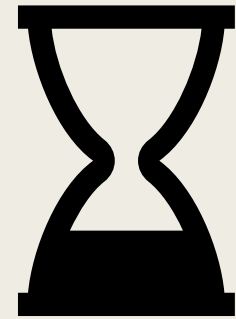


THE LIST



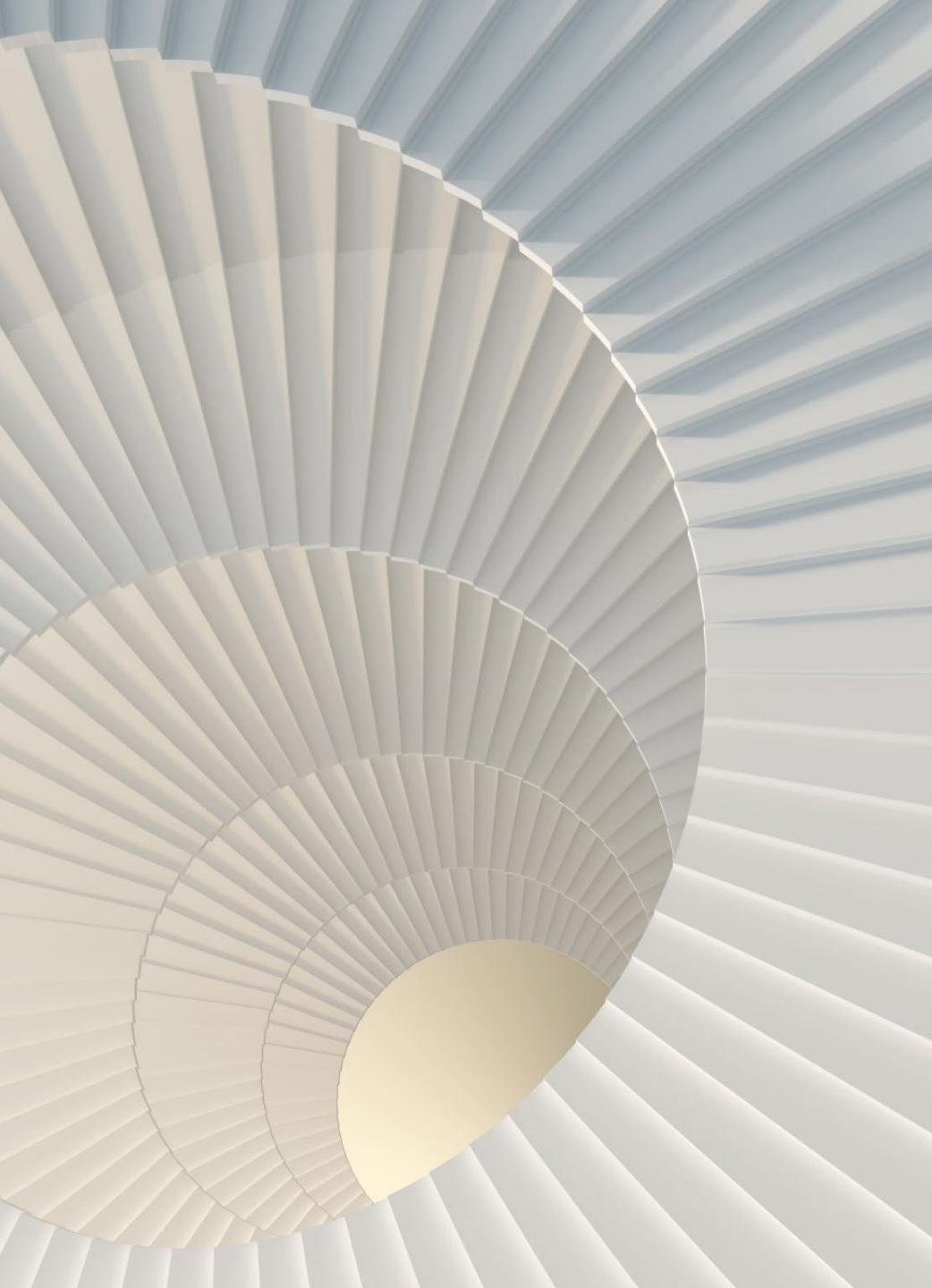
Opening Up Each Issue for Further Inquiry

- 🔍 Who?
- 🔍 What?
- 🔍 Where?
- 🔍 When?
- 🔍 How?
- 🔍 Why?




Some Pitfalls

- Craft the Question to Force them to Volunteer Information
 - “Why?” v. “Because.... Right?” Questions
 - Lay the Groundwork on Mutually Understood Parameters
- Give the Deponent Space to Answer the Question
 - How much time?
- Make a Record if there is a Time Goblin
- Listen to the Answer
 - Do I need more funnels?



MOVING UP AND DOWN THE FUNNEL



The End.



QUESTIONS?