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10 Tips for Getting Jurors to Talk

by Maureen A. Howard

“Jury selection” is a misnomer because lawyers don’t actually get to “select” ideal jurors; they get a limited opportunity to “deselect” the worst prospective jurors. The goal of *voir dire* is to identify these jurors by uncovering their attitudes, beliefs, opinions, preconceptions, biases, and prejudices. To accomplish this, a lawyer has a difficult task: she must foster an honest, intimate conversation among strangers in a very public, formal environment.

Even honest jurors may give misleading answers during *voir dire* due to nervousness, inattention, faulty memory, or misunderstanding. The formal courtroom atmosphere can have a chilling effect at odds with the judge’s instructions and the oath to be honest and forthcoming. Jurors may resolve this conflict by interpreting questions narrowly and literally, and responding with short, technically truthful answers. The key to getting jurors to open up is to think about *voir dire* as an intimate conversation. The goal is to get the jurors talking, and once they start, to keep them talking.

1. Have jurors introduce themselves. Ask the judge to have the jurors introduce themselves, providing background information about children, reading material, or hobbies. This may not produce useful information, but it is effective as an icebreaker. Perhaps because it isn’t in a question-and-answer format, or because everyone is participating, it seems to help jurors relax.

2. Begin with a neutral topic. Start with a non-threatening topic, particularly if you are the first to talk with the jurors. Although identifying neutral topics may be more art than science, a fairly safe route is to get jurors to talk about themselves. One successful criminal defense lawyer was known for asking only about what folks did for a living. He successfully engaged them in conversation because he focused on what was important to them and seemed genuinely interested in what they had to say.

3. Include everyone. Begin with questions likely to prompt a majority of raised

hands. This helps jurors become comfortable responding. Then, narrow your questions until you get a manageable number of responses. Once you start polling jurors, give each a chance to speak: nothing makes a juror feel more left out than listening to other jurors express their opinions and then not getting a chance to share her thoughts as well. Remember to invite jurors who don’t respond to “join in,” but do this in a conversational, nonjudgmental way. When one juror answers, consider following up with other jurors: for example, “Mr. Jones, what do you think?” This allows even the slowest-responding and shyest jurors to be included.

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4. Develop rapport with jurors. Show an interest in and treat each juror with respect. The key is to be genuinely interested in what the jurors have to say, and to be yourself. This has two benefits: jurors are more likely to be open and candid in their answers if they like and trust you, and the positive impression you create increases your persuasiveness at trial.

5. Follow, don’t lead. Point jurors in a general direction, and then step back and take their lead. Open-ended questions allow jurors to answer in their own words, providing insight into their thought processes. Be careful of “why” questions,



however, because they can put jurors on the defensive. Given that some jurors already feel like they are being cross-examined, a “why” question can feel like a challenge. Do not make assumptions about or interpret answers, or finish sentences. When you do, you redirect jurors to your thinking, instead of discovering theirs.

6. Don’t telegraph the “right” answer. Jurors want to avoid looking unfair, prejudiced, or uneducated. Avoid questions beginning with phrases like “Do you understand that...” Such questions have the “correct” answers built right into them, and beg for agreement. “Do you understand the defendant is presumed innocent unless proven guilty?” will predictably be answered “Yes,” both because it presupposes the answer and because jurors are familiar with the mantra from television and movies. A better question is “If you had to go into the jury deliberation room right now, how would you vote?” A common answer is “I don’t know, I haven’t heard the evidence yet,” which is a great platform for discussion.

7. Ask clear, simple questions. Make sure everyone is using the same concepts and definitions. When asking whether jurors, or one of their family members, have ever been accused of sexual harassment, confirm what “sexual harassment” means. If a juror believes it is limited to physical contact or sexual demands, you may get a “no”

answer, even if the juror was fired for creating a sexually hostile work environment as a result of jokes and innuendo. Also, how is the juror defining “family member”? Does that include or exclude ex-husbands? Also, avoid double negatives. Questions beginning, “Wouldn’t you,” “Couldn’t you,” and “It’s true, isn’t it,” are confusing: does answering “yes” mean yes or no?

8. Listen to the answers. Nothing shuts down a conversation faster than demonstrating a lack of interest. Just like the gaffe of the cross-examiner who fails to follow-up on a patently absurd or outrageous answer by a witness because the lawyer is so focused on her next question, it is a mistake to fail to really listen to the answers of the jurors. Jurors know when lawyers are not paying attention, and they respond by cutting off the flow of information. Also avoid interrupting a juror: it tells the entire

venire that you don’t really care what they have to say and that the “conversation” is really all about you.

9. Use “active listening.” Encourage jurors to talk by using those cues we give when interested in what others are saying, like nodding and interjecting words like, “Uh huh,” “And...,” “Go on...,” “Really?,” “Is that so?” When you aren’t sure what a juror meant and you can’t think of a good follow-up question, try repeating the last few words of the juror’s answer, raising your voice at the end, like you were asking a question. See if the juror picks up your cue and continues talking.

10. Participate in the conversation. Don’t ask questions in a staccato-like series, one right after the other, because it makes jurors feel they are being interrogated. Follow the basic principles of good conversa-

tion. Look jurors in the eye as they answer your questions. Otherwise, you may seem rude and you’ll lose valuable information gained by watching facial expressions, general demeanor, and body language. If you use the jurors’ names, make sure you’re pronouncing them correctly. If in doubt, ask. Speak loudly and clearly, and stand when you talk. If you can, have a colleague take most of the notes. Even without the luxury of a note-taker, the benefits of information-gathering and rapport-building usually trump those of copious notes. ◇

De Novo is pleased to introduce a regular column on various aspects of trial practice by Professor Maureen Howard, director of trial advocacy at the University of Washington. She can be contacted at mahoward@u.washington.edu.

Outstanding Young Lawyer Award Winner Hails from Vancouver, Washington

by G. Martin Bingisser

During her tenure as a deputy district attorney with the Deschutes County Prosecutor’s Office in Oregon, Kelly Walsh, winner of the WSBA Young Lawyers Division’s Outstanding Lawyer of the Year Award for 2008, saw firsthand the tragic results of domestic violence. For Walsh, the tragedy of domestic violence is magnified by the fact that the victims of domestic violence do not have the power to control their future.

“Often there are women who want to leave, but don’t have the resources to do so,” Walsh said. This year, Walsh was honored for her drive and efforts to create the very resources that women in this turmoil need. Recipients of the WYLD Outstanding Young Lawyer Award are honored for their exceptional leadership and contribution to the profession and the local community, including a commitment to providing pro bono services.

Walsh left the Prosecutor’s Office in 2004 for an associate position with regional law firm Schwabe, Williamson & Wyatt in the firm’s Vancouver, Washington office. While in private practice, she could not leave behind her commitment to serving the public. She contacted the local YWCA to volunteer her time, and was introduced to the glaring need in Southwestern Wash-

ington for legal services geared to assisting victims of domestic violence. To fill this gap, Walsh and the YWCA opened the Safe Choice Legal Clinic.

The clinic now has eight regularly participating volunteer attorneys, supported by many occasional volunteers. Walsh has transitioned from YWCA volunteer to leader. She is the president-elect of the Clark County YWCA, and helps guide the organization’s other service efforts, such as the Sexual Assault and the Court Appointed Special Advocate (CASA) programs.

When not volunteering, Walsh is a commercial litigator who focuses on construction law. She has earned several awards for her work, including being named a “Rising Star” by *Washington Law & Politics* for the past three years. She also received an “Accomplished Under 40” award from the *Vancouver Business Journal* in 2007.

Walsh “takes quite a leadership role in our office and the community and is a great example to other associates in our office and throughout our firm,” Schwabe partner Lisa Lowe said about Walsh.

The past six winners of the award practiced in the Puget Sound area. “I am thrilled to receive this award, not only for myself, but for the Clark County legal community,” Walsh said. “It is nice for our

legal community to get recognized, since a vast majority of the attorneys in the state are from King or Pierce County.” She was presented with the award in September at her firm’s annual retreat.

While often considered the equivalent of Portland lawyers, attorneys in Vancouver and Clark County have their own distinct legal community, said Walsh. This community is small enough to encourage networking and to allow an attorney to make a name for him- or herself.

Mark Long, managing partner at Schwabe, expressed appreciation for Walsh’s work both in and outside the firm. “We are extremely proud of Kelly for receiving this honor,” said Long. “It is exceptional to be recognized by one’s peers and to be selected for this noteworthy award.” ◇



Kelly Walsh

G. Martin Bingisser received his J.D. and LL.M. from the University of Washington School of Law in 2008. He works part-time as a tax attorney and spends the remainder of this time training for the 2012 Olympic Games in the hammer throw. He can be reached at www.mbingisser.com.