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The most difficult part of voir dire is getting jurors to talk. If you can just get them to talk - about anything - they will reveal information about their attitudes, experiences, predispositions which are important for you to know in your jury selection. There is gold in them thar' hills; the problem is how to dig it out.

The following excerpt was taken from a voir dire by an attorney representing a real estate developer. He begins by asking:

Q. What are your general attitudes about people who develop real estate?

A. Well, some are good and some are bad.

Q. Do you have in mind any specific developers who you feel are bad?

A. No.

Q. How did you come to the decision that some developers are bad?

A. Well, sometimes if you talk to people about their job, they say something about having to do something that isn't right, and knowing it isn't right .... like some jobs I've worked .... I don't know, they don't do things right sometimes.

Although this voir dire had some nice open probes, we still don't know about the juror's attitude toward developers. He thinks some developers do bad things, but we do not know what those bad things are or how they might have affected this juror. The attorney stopped the probe too soon, probably because he sensed he was moving into dangerous waters that he couldn't control.

But that is just the point in voir dire.

### **Be Ready to Probe the Unknown**

An effective voir dire demands your taking a leap into the unknown, i.e, asking the questions you don't know the answer to.

Leaping into the abyss flies in the face of traditional wisdom. But in voir dire - unlike cross-examination - if you know the answer, you don't have to ask the question. So when you need jurors to open up and talk about their beliefs and feelings, you have to be ready to probe uncharted waters.

Attorneys fear probing the unknown not only because it is unnerving - given their training in keeping control of the information flow - but also out of concern that a juror might reveal biases against their client and contaminate other jurors. Or they fear a juror might reveal biases in favor of their client and be struck for cause.

In voir dire, you face the fact that a potential bomb might be sitting on the panel, ready to explode. The only question is whether you want to know in whose face? If you choose to know, you have to

be ready to take the probe to a deeper level.

In this case, the next level of the probe would have been:

Q. What do you mean when you say, "Developers don't do things right sometimes?"

Q. What kind of jobs have you worked which made you feel 'they don't do things right sometimes?'

Q. What have other people told you about their experiences with developers who don't do things right sometimes.

You continue the probe until you hit pay dirt, i.e., when the juror reveals enough about himself that you can make an intelligent strike decision.

## **How to Probe Effectively: Three Techniques**

### **Ask open questions**

Open ended questions encourage people to talk; closed ended questions do not. So in voir dire, ask open ended questions.

Open questions begin with 'what,' 'how,' 'could you,' 'would you.' 'What' questions elicit information. 'How' questions encourage jurors to talk about feelings. 'Would you' and 'could you' questions will elicit either information or feelings.

Avoid asking 'why' questions because they put jurors on the defensive. Avoid asking questions in a series, one right after the other, because they make jurors feel like they are being interrogated.

### **Repeat the words the juror uses**

One of the most effective ways to encourage jurors to talk is to use the same phrases in your question that they have used in their answer. When a juror says: " They don't do things right sometimes ...." then in your probe, you will want to repeat the phrase your juror used, i.e., "Could you tell me what you mean when you say 'they don't do things right sometimes...'"

Resist the temptation to interpret a juror's phrase, or to make assumptions about what the juror means or to rescue him by ending an unfinished sentence. By changing the wording, you are redirecting the jurors' thinking along your lines, instead of probing the juror to find out what he means. Give jurors the time and space they need to feel comfortable about revealing themselves to you; this means following your jurors instead of leading them.

### **Give verbal and nonverbal cues to keep jurors talking**

Sometimes you might not know how to phrase your next probe. You aren't sure what the juror meant by his answer and you can't think of a follow-up question. The solution is simple: Repeat the last few words of the juror's answer, raising your voice at the end, like you were asking a question. Then wait for the juror to pick up your cue and he'll continue talking. Jurors - like everybody else - love to hear their words repeated back to them. By doing so, you are communicating that you have heard them, are interested in what they have to say, and want them to continue talking.

Other listening responses which keep the conversation going are the little grunts and nods that we naturally give people when we are interested in what they are saying. We will urge them to continue by nodding our heads and softly mumbling encouraging words like: 'huh,' 'and.....' 'go on....,' 'is that so?' 'and then what.....?' 'it was Tuesday morning, and .....?'

These seemingly insignificant verbal and nonverbal cues are crucial to the communication process. When we do not get them, we stop talking. Too often, during voir dire, attorneys fail to give jurors the listening responses jurors need to answer questions in any detail.

## **Conclusion**

Dare to probe deeper in voir dire. Ask open questions, repeat the words of your jurors and give appropriate listening responses. Using these probe techniques will turn an interrogation into a conversation, as well as help you through those awkward moments when you don't know what to ask next.

The key to an effective probe is to be genuinely interested in what your jurors have to say. When you are open and interested in them, you will naturally ask open questions and give listening responses which will stimulate the jurors to open up to you.

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