

TRIAL TIP:

JUROR JEOPARDY: WHAT IS GENDER FLUIDITY AND HOW DOES IT IMPACT VOIR DIRE?

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Recently, we were preparing for a trial in San Francisco County, California. As part of preparation, we consulted with colleagues who practice in the area seeking insights into the practical aspects of how the court conducted voir dire. We expected to learn typical things, such as the educational and economic status of the jury pool, the number of jurors called vs. the number seated in the jury box, the types of questions the court permitted the parties to include in the jury questionnaire, the judge's level of involvement, and how the judge resolved preemptive strikes and objections thereto. We did not anticipate a discussion of gender fluidity.

Merriam-Webster defines gender-fluid as: "of, relating to, or being a person whose gender identity is not fixed." Many Americans identify as non-binary, rather than male or female. As society becomes more diverse, so do potential jurors. We were advised that, starting with elementary school, people in San Francisco are taught about the issue of gender fluidity.

So, how does this relate to voir dire? During the jury selection process, lawyers often address potential jurors as "Ladies and Gentlemen" and using personal titles such as, "Mr.," "Mrs.," or "Miss." Individuals who self-identify as non-binary, however, may not want to be addressed with such conventional titles. On the other hand, even if a juror does self-identify as male or female, you may not be able to identify easily which gender-specific title is appropriate. Ultimately, we did not have to address these issues because our case resolved before the trial started. However, we will incorporate what we learned about gender fluidity into all future voir dire.

Trial Tips for Dealing with Gender Fluidity During Voir Dire

You only get one chance to make a first impression. This is the time you begin gaining the jury's trust and respect. Here are some tips on addressing gender fluidity during the voir dire process:

1. **Ask.** If you are unsure as to whether a juror may self-identify as male, female, or non-gender, consider asking the juror of their preference. For example, state: "How would you like to be addressed?" or "May I call you Ms. Smith?"
2. **Address jurors by number.** Check to see if the court can or will assign numbers to each potential juror. If so, instead of addressing the jurors by name, address them by number.

3. **Be respectful.** This is a sensitive issue. If you approach it that way and demonstrate your knowledge of these sensitivities, you will garner the respect of not only the intended juror, but also other members of the pool.

4. **Do your research!** Before trial, speak with friends, colleagues and local counsel regarding the potential jury pool. Ask about the LGBTQ population, noteworthy issues or events in the local news, and other jurisdiction-specific issues.