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He Said—She Said: Gender-Neutral Writing

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He Said—She Said: Gender-Neutral Writing

BY GERALD LEBOVITS

Gender neutrality in judicial-opinion writing is official policy in the New York State Unified Court System. As the court's anti-gender-bias committee has explained, "all of us who work in the courts or work in the court system [must] avoid unintended slights or compromises to the ideal of justice."¹ What of practitioners, for whom internal court policy is not binding? Should they write gender neutrally? Yes. If you do not believe me, ask any successful law man. He, she, he or she, his or her, they, and all their henchpersons will tell you that I am right.

Some believe that gender neutrality is part of an unfortunate, passing phase of political correctness. To each her own, but they are wrong. It is a fortunate phase—and one here to stay. Sexist writing offends readers of both genders. Discriminatory beliefs are reflected in discriminatory writing, and discriminatory writing perpetuates discrimination. Sexism is also often double discrimination. Consider the old-fashioned labels *Jewess* and *Negress*. Have you ever heard of a *Christianess*, a *whitess*, or a *Caucasianess*? And who can forget the expression "woman lawyer"? Perhaps one reason no one used *lawyerette* is that women were excluded from the profession when *ette* suffixes were popular.² Opinion writers must be gender neutral so that they can render, and be seen as rendering, fair and equal justice under the law. But no practitioner who wants to persuade can afford to offend or distract readers with gender-biased language.

Others believe that gender-neutral writing sacrifices precision. They are wrong about that, too. Those who accept that gendered writing is discrimination in print will try to write gender-

neutrally. It is simple to be both precise and non-sexist. Chief Judge Kaye said it well: "[G]ender-neutral writing is not only a good habit but also an easy one to acquire and internalize."³

Here are some ways to get into the good habit of using precise, non-sexist language.

Use gender-neutral terms. "Brother Justice" (or "fellow Justice" or "brethren") becomes "sibling Justice" or "colleague Justice." "King" becomes "sovereign." "Madam Justice Ginsburg" becomes "Justice Ginsburg." "Mr. Justice Souter" becomes "Justice Souter." "Sister state" becomes "sibling state." "Statesmanship" becomes "diplomacy."

Delete the suffix "-man." "Assemblyman" becomes "Assembly Member." Sit down for this one: "Chairman" and the inelegant "chairperson" become "chair." "Con man" becomes "con artist." "Fireman" becomes "firefighter." "Jury foreman" becomes "presiding juror" or the peculiar but standard "foreperson." "Foreman" becomes "supervisor." "Mailman" becomes "mail carrier." "Policeman" becomes "police officer."

Delete the prefix "man-." "Manpower" becomes "staff."

Mutilate masculine terms. "Common man" becomes "average person." "Mankind" becomes "humanity." "Manmade" becomes "made by hand."

Change terms once reserved for women. "Mrs." and "Miss" become "Ms.," unless the person prefers "Mrs." or "Miss."

Out with suffixes "-ette," "-ess," and "-trix." "Actress" becomes "actor." "Poetess" becomes "poet." "Stewardess" becomes "steward" or "flight attendant." "Waitress" becomes "waiter" or "server," not "waitron." "Executrix" and "prosecutrix" become "executor" and "prosecutor."

Retain only historical usages like "suffragette."

Promote parallel language. "Man and wife" becomes "husband and wife" or "man and woman."

Make the antecedent plural. "An infant younger than seven may not be convicted of petit larceny. He is immune from prosecution." Becomes: "Infants younger than seven may not be convicted of petit larceny. They are immune from prosecution." Plural antecedents like *judges* instead of *judge* will let you use the personal pronoun *they* instead of *he* or *she*.

Perhaps no one used lawyerette because women were excluded from the profession when ette suffixes were popular.

Ply personal pronouns. Substitute personal pronouns (*they, them, their*) for singular ones (*he, she, his, her*).

Rephrase to eliminate the pronoun. "A gourmet likes her steak rare." Becomes: "A gourmet likes rare steak." "To avoid fee disputes, a lawyer should return his phone calls." Becomes: "To avoid fee disputes, lawyers should return phone calls."

Is "anyone" out there? Use *anyone, human, people, person, someone, or you* for nouns like *man* and *woman*. "A man [or *he*] who cannot do the time should not do the crime." Becomes: "Anyone who cannot do the time should not do the crime." Or "If you cannot do the time, do not do the crime."

"One" more rule. Y2K Star Trek: "To go boldly where no one [or *none*, but not *where no man*] has gone before."⁴ Note, however, that *one*, as a synonym for the informal *you*, can

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Romney may indicate the advantages of negative statements to confuse the questioner. Governor Romney is said to have answered a reporter who questioned the governor about a statement he had previously made: "I didn't say that I didn't say it. I said that I didn't say I didn't say it. I want to make that perfectly clear."

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seem too stuffy for legal writing. The informal *you*, on the other hand, is best not used to tell courts what to do. "You should deny the motion" becomes "This Court should deny the motion."

Dab in the double passive. People think in the active voice: who does what to whom. The active voice identifies the subject or actor early in the sentence. The active voice is also more concise than the passive voice. Thus, "The passive voice is avoided by good lawyers" becomes "Good lawyers avoid the passive voice." Double, or blank, passives do not identify the subject or actor: "The passive voice is avoided." Passives can be helpful; more about that another time. Double passives can also help. When all else fails, use double passives to remove gender from your legal writing. "The court wrote her decision" is incorrect because a court is an *it* (its decision), not a *him* or *her*. If you cannot recall that rule, write, "The decision was written."

Be elegant. Inelegance includes the clumsy *s/he*, *(s)he*, *s/he/it* (think about this one), *he or she*, *him or her*; and alternating between *he* and *she*. These options are as distracting as *he* or *she*. To maintain credibility, "write in such

a way that no one would ever consider either sexist or awkwardly non-sexist. Then the question of sexism doesn't even occur to the reader, who can concentrate without distraction on the ideas presented."⁵

Do not agree to disagree. The worst inelegance is gender disagreement. "Someone is eating their soup." *Becomes*: "Someone is eating his soup." *Becomes*, by eliminating the pronoun: "Someone is eating soup." "[I]f someone is a good legal writer, they may score better on exams than you do, even if you 'know more law' than they do."⁶ *Becomes*, by eliminating the pronoun: "A good legal writer will score better on exams than you will, even if you know more law." *Someone* cannot be *they*. No singular can be *they*.

Womyn is too *je ne sais quoi* for legal writing.

Elegant variation. Repeat the noun to avoid gendered writing. Do not use a different noun. "Find a court officer. He can help you." *Should not become* "Find a court officer. That is the official who can help you." Instead of finding a synonym for "court officer," repeat "court officer," as in, "Find a court officer. A court officer can help you." Or "Find a court officer who can help you." Besides, those who know their way around a courthouse know that a court officer is a *who*, not a *that*.⁷

Stunt stereotyping. Wrong: "Real writers write every day, right after they put on their makeup." Wrong: "Real writers write every day, right after they shave." Possibly right: "Real writers write every day, right after they get to work."

English usage being what it is, some stereotyped language is still standard: *fiancé* (man), *fiancée* (woman); *née* (Jane Smith, née Clark) (woman's maiden or birth name); and *blonde* ("a blonde woman," "a blond-headed man").

A practitioner who does not want to offend his or her judge and her henchmen by language he or she will find distracting will use every gender-neutral device they can. S/he will write

something that does not look like s/he/it wrote it at the last minute, long after they have put on their make-up or shaved.

1. N.Y.S. Judicial Committee on Women in the Courts, *Fair Speech: Gender-Neutral Language in the Courts* (2d ed., OCA 1997).
2. *See In re Motion to Admit Miss Lavinia Goodell to the Bar of this Court*, 39 Wis. 232, 236 (1875) (Ryan, C.J.) ("This is the first application for admission of a female to the bar of this court. And it is just matter for congratulation that it is made in favor of a lady whose character raises no personal objection: something perhaps not always to be looked for in women who forsake the ways of their sex for the ways of ours.").
3. Judith S. Kaye, Perspective, *A Brief for Gender-Neutral Brief-Writing*, N.Y.L.J., Mar. 21, 1991, at 2, col. 1 (arguing in Point I that gender-neutral writing "is simply the right thing to do").
4. Why the redundant *before* after *gone*? Why the split infinitive "to boldly go"? Stay tuned for future columns on these and other questions. I plan to go boldly where no man has gone before.
5. Bryan A. Garner, *The Winning Brief* 226 (1999).
6. Original from Marion T.D. Lewis, *The Law School Rules* 56 (1999).
7. *Contra*, N.Y.S. Judicial Committee on Women in the Courts, *supra* note 1, at 8 ("Replace the pronoun with a synonym. 'You should find a court officer. That is the official who can help you,' may replace 'You should find a court officer. He is the one who can help you.'" (emphasis in the original)).

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