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Recommended Citation

K.K. DuVivier, Gender Neutral II, 21 Colo. Law. 2373 (Nov. 1992).

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The Scrivener: Modern Legal Writing



Gender Neutral II



by K.K. DuVivier

*And specially from every shires ende
Of Engelond to Caunterbury they wende,
The hooly blisful martir for to seke,
That hem hath holpen whan that they were seeke.*

General Prologue, The Canterbury Tales
by Geoffrey Chaucer

Letters and comments I received in response to September's *Scrivener* column¹ reveal that readers were not satisfied the topic had been exhausted. This column addresses some of the additional issues raised.

Personal Pronouns

The September column focused on alternatives to the use of gender-specific personal pronouns that might offend a portion of one's audience. Some writers have gone so far with this advice as to avoid the gender pronouns altogether. However, few readers would object to the use of "he" when the antecedent is a man or "she" when the antecedent is a woman. The question arises when the pronoun is intended to be universal, but the use of either masculine or feminine alone might suggest that one sex is excluded.

Is "They" the Answer?

In a 1986 article, Irving Younger explained that "he" is a universal, or unmarked term, and "she" is the marked term in a word-couple where no both-sex term exists.² When a reference is made to both sexes together, it is appropriate to use the unmarked term; thus we use "lions" when referring to a pride of lions and lionesses and "he" when referring to both he and she.³ In exhorting this use of "he," Younger states, "English has no adequate substitute for the marked-unmarked usage."⁴ He adds, "The English of the future may

turn out to handle gender better than our English does, but we must let it happen slowly. . . . To jettison the marked-unmarked usage overnight, with nothing to take its place, would cripple the language."⁵

Now, just six years later, the English of the future may have arrived. In one of the letters I received, Denver attorney George E. Reeves suggests that the English language already has created a term to replace the marked-unmarked use of "he," and that this term is "they." Reeves notes, "I believe that we are in a transition period, in which the word 'they' is becoming, if it has not already become, what the English language has been sorely lacking, a third person singular, gender indefinite pronoun."⁶

"They" long has been interloping as a substitute for other pronoun forms. In Old English, the third-person pronoun had its own plural ("hem" in the Chaucer quote above), which continued in extreme southern English dialects until 1400.⁶ "They," "their" and "them" were forms borrowed from Scandinavia. Their use began in the north of England and gradually moved southward. Chaucer lived in a period of linguistic transition; as the quote shows, he often used the Scandinavian form "they" for the nominative and the Old English "hem" for the objective. Considering its evolution within the English language, "they" seems an appropriate pronoun again to take on a new role.

I have not yet found a grammar book that endorses the use of "they" when the antecedent is singular. However, as Reeves points out, this use is widespread in print and broadcast media. Even if this pronoun form is grammatically incorrect, Reeves notes, "It is easy to charge the persons using 'they' in this fashion with preferring to be seen as ungrammatical to being thought to be sexist (or perhaps more cynically, with realizing that their readers are more interested in detecting sexism than solecism)."

So if you are comfortable with using "they" with a singular antecedent, consider experimenting with it in your gender-neutral writing repertoire. However, be aware that this form

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401.

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may distract some readers because it is generally deemed to be incorrect. A grammatically correct sex-neutral construction diverts the least attention from your message.

Sex-neutral Terms

Because of space limitations, the September column was confined to a discussion of personal pronouns. However, a discussion of sensitivity to gender language is not complete without considering the substitution of sex-neutral terms. Never imply a value judgment based on sex. Both "a manly effort" and "a member of the gentler sex"⁷ may offend. Furthermore, make sure that you use parallel constructions to avoid any inference of inferiority. Both "men and their wives" and "The Prince of Wales and Di" should be avoided.⁸

Finally, many words or expressions—for example, "workman," "policeman" or "garbage man"—include within them the word "man." Some of these, such as "workers," can be replaced easily by a sex-neutral alternative with the same root. However, avoid awkward mouthfuls such as "police person" or "garbage person." When possible, such terms might be replaced entirely with new alternatives such as "police officer" and "sanitation engineer." The Hon. Warren O. Martin, District Court Judge for the Second Judicial District, wrote to seek just such a new universal gender noun for the word "foreman or forewoman" as follows:

You may have made a mistake to allow [T]he Lawyer to invite questions, because I do have one for you. It concerns the enclosed final jury instruction. This is taken from pattern instruction number 4:2. Five separate times "foreman or forewoman" is used. Aaargh and Aarrgh!!! The question is whether you can do anything about this instruction.

Readers, I'm throwing it open to you. Can anyone out there come up with a suggestion for an alternative term? Please do not bother Judge Martin. Send all of your letters and comments to me, and I will forward them.

NOTES

1. DuVivier, "Gender Neutral," 21 *The Colorado Lawyer* 1873 (September 1992).
2. Younger, "The English Language is Sex-Neutral," 72 *ABA Journal* 89 (1986).
3. *Id.*
4. *Id.*
5. *Id.*
6. *The Oxford English Dictionary*, 2 ed. (Oxford: Clarendon Press, 1989) at 928.
7. Wydick, *Plain English for Lawyers* (Durham, N.C.: Carolina Academy Press, 1985) at 65.
8. *See id.*



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