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Recommended Citation

K.K. DuVivier, All for One: Subject-Verb Agreement for Compounds and Collective Subjects, 34 Colo. Law. 61 (Jan. 2005).

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All for One: Subject–Verb Agreement for Compounds and Collective Subjects

by K.K. DuVivier
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I frequently get questions from readers, and when possible, answer them immediately. However, the following question was complex enough that I thought I would share it, as well as my response, through a column.

KK: I missed the memo that changed noun-verb agreement on nouns formerly defined as singular i.e. "staff," meaning more than one person, as in "the staff ***are.****" When did it change from "the staff* ***is****"? Who decided on this change, and why wasn't I notified? I'm making light of this issue, but I'm perplexed. P.S. Grammar check didn't get the memo either.*

District Judge Marilyn Leonard

Compound Subjects

The general rule is that a singular subject takes a singular verb and a plural subject takes a plural verb.

Examples:

—*She enjoys chocolate cake.* (Singular subject with singular verb.)

—*They enjoy chocolate cake, too.* (Plural subject with plural verb.)

But what happens when the subject is two or more nouns combined by a conjunction? These "conjunctive-compound subjects" usually take a plural verb.

Example:

—*The plaintiff and defendant agree to the continuance.*

(Nouns joined by the conjunction "and" create a plural subject both acting on the verb.)[1]

There are at least two exceptions to the general rule. First, if the nouns are joined by a disjunctive compound, such as "or" or "nor," the verb should agree with the subject closest to the verb.[2] When the subject involves both a singular and plural noun, it is best to place the plural noun near the verb to avoid an awkward result.

Examples:

—*Neither the prosecution nor the defense is ready for trial.*

(Nouns joined by the disjunctive "nor" act independently and warrant a singular verb.)

—*Neither the jurors nor the judge seems sympathetic to our argument.*

(This version correctly uses a singular verb after the singular noun "judge," but seems more awkward than the construction below.)

—*Neither the judge nor the jurors seem sympathetic to our argument.*

(This version uses the plural noun "jurors" and follows it with a plural verb.)[3]

The second exception to the rule that compound subjects require a plural verb is a compound subject representing a singular object or idea. When the compound subject is singular in this way, the verb should be singular to match.

Examples:

—*Black tie and tails is the designated attire.*

—*To forsake my client and to settle for less than my client has actually paid in medical bills is out of the question.*

(The two indefinite phrases refer to the same action, so the sense is singular in number.)

—*A philanthropist, author, and scholar is with us tonight.*

("Philanthropist, author, and scholar" all refer to the same person. The singular determiner "a" before the list is a clear signal that the phrase is singular in meaning.)[4]

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkduvivier@law.du.edu or call her at (303) 871-6281.

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Subject–Verb Agreement—Collective Nouns

A collective noun is a noun "that appears singular in formal shape but denotes a group of persons or objects."[5] Some of the most commonly-used collective nouns in legal writing include "jury," "family," "appellate court," and "majority."[6] Many of us had conscientious writing teachers drum into our heads that these collective nouns always require a singular verb. Thus, even if the Supreme Court is composed of nine justices, the proper form requires a singular verb: "*the Supreme Court issues its decision*," instead of "*the Supreme Court issue their decision*."[7]

Although the consistency of a rule requiring a singular verb with all collective nouns may be comforting, use of plural verbs with some collective nouns has long been recognized.[8] The frayed pages of my vintage unabridged dictionary contain the same rule on collective nouns as that set out in most recent authorities on writing style.[9] If we are using a collective noun as the subject, the context of the sentence will cue us as to whether the verb should be singular or plural. If the collective noun describes a combined group action, we should use a singular verb. If the sentence describes actions of individuals in the collective group, we use a plural verb.[10]

Examples:

— *The band plays The Star Spangled Banner.* (Clearly collective.)

—*The band warm up on their instruments.* (Clearly individual.)[11]

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Conclusion

So, my answer to Judge Leonard's question above is a lawyer-like, "it depends." If her staff is taking a collective action, the verb should be singular. If the staff are acting independently, however, she should use a plural verb.

Example:

— *The staff agrees to the contract change.* (Collective action.)

—*The staff are divided in their views about the contract language.* (Individual action.)

Furthermore, if the context allows either a singular or plural interpretation, the choice often comes down to which form reads most smoothly.[12] Because the goal is to avoid constructions that might distract readers from the content of our writing, we must primarily be consistent about whichever choice we make within a document. Unfortunately, because the decision about whether to use a singular or plural verb requires discretion, we can't always trust grammar check to set us straight.

NOTES

1. Garner, *The Redbook, A Manual of Legal Style* 140 (St. Paul, MN: West Group, 2002).
2. *Id.* at 138-39.
3. Examples taken verbatim from *The Redbook, supra*, note 1 at 143.
4. *Id.* at 138-39.
5. *See* Stein, ed., *The Random House Dictionary of the English Language* 290, unabridged ed. (New York, NY: Random House, 1971).
6. Enquist and Oates, *Just Writing* 187 (Gaithersburg, NY: Aspen Law & Business, 2001).
7. Ray and Ramsfield, *Getting It Right and Getting It Written* 217, 3rd ed. (St. Paul, MN: West Group, 2000).
8. *The Redbook, supra*, note 1 at 141 (Although this is not the main thrust of the rule, this section of *The Redbook* notes, "The American preference is to use collective nouns (*e.g., committee*) as singular, and to specify individuals (*e.g., committee members*) when individual action is implied." None of the other authorities indicates this is an American peculiarity.)
9. "When a singular verb is used with [a collective] noun, it is thought of as naming a unit, as *family* in '*My family is related to Washington*'; when a plural verb is used, it is thought of as referring to individuals, as in '*My family are all at home*.'" *The Random House Dictionary, supra*, note 5 at 290.
10. *The Redbook, supra*, note 1 at 141; *Just Writing, supra*, note 6 at 187-88. *See also* Sebranek, Kemper, and Meyer, *Writers Inc.* 479 (Wilmington, MA: Write Source, 2001). *But cf. Getting It Right, supra*, note 7 at 217 (suggesting only the singular form is appropriate for collective subjects).
11. Examples taken verbatim from *The Redbook, supra*, note 1 at 141.
12. *Id.* at 141. ■

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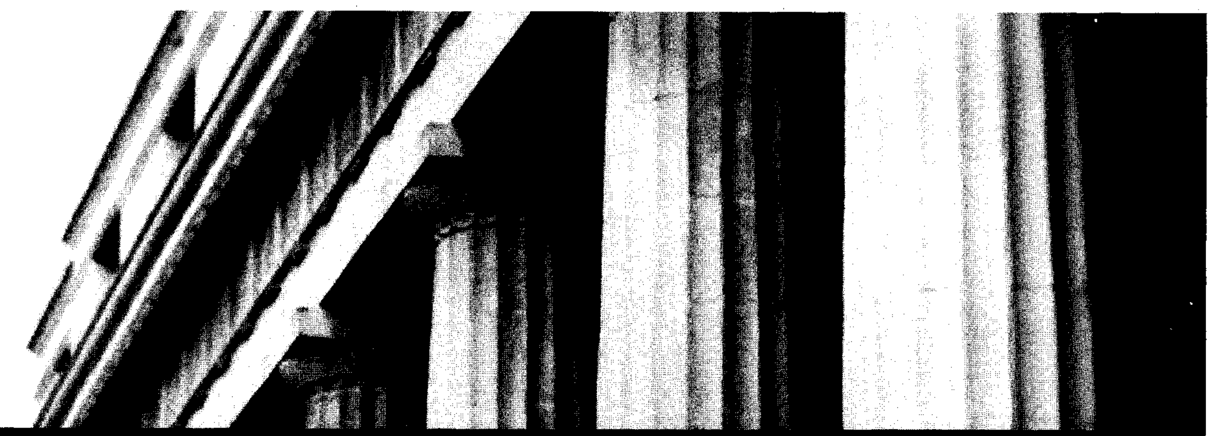

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HISTORICAL PERSPECTIVES

"An Immoral Course of Life": Vagrancy Conviction for Interracial Marriage

This historical perspective was written by Frank Gibbard, a staff attorney with the Tenth Circuit Court of Appeals and Secretary of the Tenth Circuit Historical Society. The author thanks Dan Cordova of the Tenth Circuit Library for research assistance with this article. Frank Gibbard may be reached at Frank_Gibbard@ca10.uscourts.gov. The views expressed herein are those of the author and not of the Tenth Circuit or its judges.

A generation growing up in a new millennium may find it hard to believe that just over fifty years ago, interracial marriage was illegal in a majority of the states. At its peak, between 1913 and 1948, an anti-miscegenation regime was in force in thirty out of the forty-eight states, covering territory roughly congruent with today's so-called "red states," plus California and Oregon. [*See* map in Wellenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law—An American History* 160, fig. 8 (New York, NY: Palgrave, 2002)].

Colorado's anti-miscegenation law, in force from its Territorial days, was typical in that it made "all marriages between [N]egroes or mulattoes, of either sex, and white persons . . . absolutely void." [*See, e.g.*, Colo. Stat. Ann. Ch. 107, § 2 (1935).] The law had a unique local twist, however: it did not prohibit "the people living in that portion of the state acquired from Mexico from marrying according to the custom of that country." [*Id.*] "Thus a marriage might be legal in most of Salida, but illegal over in Hollywood Heights. . . . A couple could be legally married in Buena Vista, but guilty of illegal cohabitation if they moved to Leadville." ["Colorado Once Had Two States of Marriage," 121 *Colo. Central Magazine* 6 (2004)].

In 1942, this statute was tested in an unusual way—on appeal from a vagrancy conviction. [*See Jackson v. City & County of Denver*, 124 P.2d 240 (Colo. 1942) (*en banc*).] James W. Jackson was an African-American. His common-law wife, Lydia Jackson, was white. Although they claimed to be married at common law, the Jacksons were convicted of vagrancy for living together, under a statute that prohibited persons from leading an "immoral course of life." [Den. Mun. Code §§ 1345, 1346 (1927)].

Jackson provides an excellent example of how differences in framing the facts and issues of a case can be used to support radically different outcomes. The *en banc* majority in *Jackson* heaped scorn on the Jacksons' protestation of common-law marriage: The man testified, "I asked her if she would be my wife, she said 'Yes.' She asked me if I would be her husband, I said 'Yes.' Just like that. Nothing more." [*Jackson*, 124 P.2d at 241.] The majority further de-legitimized Mrs. Jackson's marital claim by repeatedly referring to her as "the woman" and stating, "[i]f there was no marriage the woman's name was Brethaner." [*Jackson*, 124 P.2d at 241.]

Turning to legal analysis, the majority brushed aside the defendants' argument that their alleged offense did not fit within the common-law definition of vagrancy, finding that under the statute, cohabitation "by such people . . . constitutes gross immorality and a clear violation of the ordinance." [*Id.*] The majority found no racial discrimination in the ordinance, because it applied equally to blacks and whites found cohabitating. Since Mr. Jackson admitted that he was African-American and did not claim to be in a part of the state acquired from Mexico, he could not assert that the statute was vague or limited to only a portion of the state.

The dissenting opinion, authored by Justice Otto Bock, seems to have come from an entirely different universe than the majority. It began "Defendants herein, *Mr. and Mrs. James W. Jackson*, were charged separately in a complaint with vagrancy." [*Id.* at 242 (Bock, J., dissenting) (*emphasis added*)]. The dissent castigated the police for "invad[ing] the home of the Jacksons" without a warrant to arrest them at eleven o'clock at night, a "vindictive, rather than a careful, execution of the vagrancy laws." [*Id.* at 243.] It censured the majority for mentioning a prior vagrancy conviction, finding the reference "purely gratuitous and absolutely immaterial to the issues." [*Id.*]

The dissent concluded that the vagrancy conviction, which was based on an allegedly immoral lifestyle, was inappropriate and could not survive the Jacksons' presumptively valid common-law marriage. If interracial marriage was "immoral," then the anti-miscegenation statute, which was valid in only part of the state, had created a "geographical immorality." [*Id.* at 242.] A course of life that was only immoral in part of the state could not form the basis for a charge of vagrancy.

The dissent in *Jackson* was something of a last hurrah for Justice Bock. He died less than five months after *Jackson* was issued. Colorado's anti-miscegenation statute survived for another fifteen years, before finally being repealed in 1957, in part due to efforts by attorney John E. Gorsuch, chair of the Domestic Relations Committee of the Colorado Bar Association. Ten years later, the U.S. Supreme Court decided *Loving v. Virginia*, 388 U.S. 1 (1967), holding unconstitutional such laws in the remaining seventeen states that had them.

In addition to the resources cited above, the researcher may find the following useful: Cummins and Kane, Jr., "Miscegenation, the Constitution, & Science," 38 Dicta *24 (1961); Sickles,* Race, Marriage & the Law *(Albuquerque, NM: Univ. of N.M. Press 1972). The Tenth Circuit upheld Oklahoma's anti-miscegenation statute in* Stevens v. United States, *146 F.2d 120, 123 (10th Cir. 1944). There also is an interesting chapter on the continued effect of American attitudes toward interracial marriage on legal issues such as adoption in Bell,* Race, Racism & American Law *253-88, 5th ed. (New York, NY: Aspen Publishers, 2004).*

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