

Fair Speech



Gender-Neutral Language in the Courts

The New York State Judicial Committee
on Women in the Courts

This pamphlet has been prepared by the New York State Judicial Committee on Women in the Courts, a committee appointed by the Chief Judge of New York to assure equal justice, equal treatment, and equal opportunity. Originally established in 1986 in response to a task force report detailing the effects of gender bias in New York State courts, the Committee addresses concerns of women as litigants, attorneys, and employees within the court system.



Introduction to the Second Edition

Advocating the use of gender neutral language, New York Chief Judge Judith S. Kaye has said, “It’s simply the right thing to do.” *Fair Speech; Gender Neutral Language in the Courts* was an effort to make doing this “right thing” easy and comfortable. Widely distributed when it originally appeared in 1991, the pamphlet remains in demand, both within the state and without.

This second edition has been published by the New York State Judicial Committee on Women in the Courts to answer the continuing interest in the pamphlet’s concise suggestions as well as to keep before the court community a standard for language that speaks fairly of—and to—us all.



Fair Speech: Gender Neutral Language in the Courts

In recent years, the formal language of the courts has changed in response to efforts to make, in the words of the New York Task Force on Women in the Courts, “a justice system more fully committed to fairness and equality.” Forms, regulations, and statutes have been reviewed to eliminate words and expressions that exclude women or perpetuate the notion that men are the norm. Regulations no longer say *he* when they mean *he* or *she*, and official letters are not addressed to *Dear Sir* when the recipients are judges, lawyers, or any other group that may include both men and women.

Spoken language is equally important. In courts people communicate great quantities of critical information, not just on paper, but face to face. On any weekday, our courts are filled with clerks and court

officers addressing litigants, lawyers talking with each other, and judges making rulings from the bench. All of them are conveying not only data and facts but subtle messages about the status of the participants in the exchanges and their relations to each other.

At stake are not just claims for equality. Clarity is another victim of language that inappropriately incorporates gender. The ambiguous use, for example, of male terms to refer to both men and women can create confusion, sometimes with profound effects. In one notorious case, the Supreme Court of the State of Washington reversed a murder conviction in part because a jury was instructed on the “reasonable man” standard for a claim of self-defense on behalf of a 5’4” woman attacked by a 6’2” man. In its opinion the Court faulted the “persistent use of the masculine gender” that left the impression that the measure for reasonableness was an altercation between two men. *State v. Warrow*, 599 P.2d 548, 558 (1977).

Acknowledging the critical role that words play in the climate of courthouses and courtrooms, the New York State Judicial Committee on Women in the

Courts has written this pamphlet. Its purpose is to suggest a few fairly simple rules that will help all of us who use the courts or work in the court system to avoid unintended slights or compromises to the ideal of equal justice.



Use inclusive terms, rather than masculine forms . Many forms of address exclude women. Good substitutes, however, are easy to find:

USE chair
members of the jury
colleagues

AVOID chairman
gentlemen of the jury
brethren

Designations for professionals or categories of workers often are a source of lingering problems. Since job segregation has been a great barrier to women's equality in the past, using gendered terms may have the effect of implying women still cannot

rightfully hold certain jobs. Again, substitutes are now commonly used:

USE police officer
fire fighter
worker
homemaker
nurse
executive
journalists
representative
Member of the Assembly
Member of Congress
Representative

AVOID policeman
fireman
workman
housewife
male nurse
businessman
gentlemen of the press
spokesman
Assemblyman
Congressman

Expressions with the words *man* or *men* may be changed so that women too are included:

USE reasonable person
artificial
staff
a one-person operation
high ranking officials
diplomacy

AVOID reasonable man
man-made
manpower
one-man operation
men in high places
statesmanship



Avoid using *he* as a generic pronoun. *He* should not be used to refer to a group of people that may include men and women or an individual whose gender is unknown. To avoid the generic *he*, you might:

1. Eliminate the pronoun altogether. For example, “A court clerk can give you advice on that form,” may replace “A court clerk can give you *his* advice on that form.”
2. Find a neutral article or pronoun, such as *a, the*, or *his*. “A judge may always make ~~the~~ ruling orally,” may replace “A judge may always make ~~his~~ ruling orally.”
3. Rearrange the sentence to use *who* as the pronoun. “A person *who* wants an adjournment should ask for it during the calendar call,” may replace “If someone wants an adjournment, *he* should ask for it during the calendar call.”
4. 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.”
5. Use plural nouns. “Jurors must make *their* own assessments of the credibility of each witness,” may replace “A juror must make *his* own assessment of the credibility of each witness.”



Use consistent forms of address . When no other title is appropriate, *Ms.* and *Mr.* are usually the correct forms of address, not *Miss* or *Mrs.* and *Mr.* While *Miss* or *Mrs.* may be acceptable when a woman specifically asks for such a designation, in general these forms should be avoided because, unlike *Mr.*, they gratuitously call attention to a person's marital status.

Often you can use exactly the same form of address for men and women by calling them by their professional titles. Of course, these titles should be used consistently for both men and women. All physicians are *Doctor* (not *Dr.* and *Ms.*), police personnel are *Officer* (not *Officer* and *Ma'am*), and lawyers are *Counselor* (not *Counselor* and *Ms.*).



Use formal rather than informal forms of address . Using first names to refer to litigants and witnesses should be avoided not only because the informality is inappropriate to the courtroom setting,

but also because it is patronizing. The motives for calling someone Maria or Jeanette may be habit on the part of a court official or an attempt by a woman's own lawyer to put her at ease. However, all litigants, including defendants in criminal cases, deserve a proper form of address, and the dignity conferred by the formal designation may do more to make a witness comfortable than the intimacy implied by the use of a first name.



Altering speech habits may require conscious thought for a period of time, but change is part of any living language, and English, which is an unusually rich tongue, is still evolving. What was considered questionable usage a decade ago may be commonly accepted now. What feels awkward today may seem eminently natural tomorrow. The term *chair*, now the preferred designation for the person in charge of a meeting, predates *chairman*, although *chair* fell into disuse until its recent revival. Indeed, grammarians settled on the use of *he* as a generic pronoun less than

three hundred years ago. Even the *New York Times* has changed. It now uses *Ms.*, a term it staunchly eschewed for many years.

The goal is worth the effort it takes to reach it. After all, as an essay by Wendy Martyna, a scholar studying language and gender, has suggested, when we change old habits of speech we are doing nothing less than creating “a language that speaks more fairly and clearly of us all.”

*The New York State Judicial
Committee on Women in the Court*

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A Brief for Gender-Neutral Brief-Writing by Hon. Judith S. Kaye

Chief Judge of the State of New York

My argument to the bar for gender-neutral brief-writing rests on four points.

I.

First, it's simply the right thing to do. It is a continuing source of wonder to me that lawyers who spend such time and effort searching out precisely the right word to embody and communicate their ideas, would so often deliberately settle for precisely the wrong word in matters involving gender. Bad habits and lack of care must account for that. Surely no one today would consciously choose a male noun or pronoun

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where the intention was to include women as well as men. “He” definitionally, is not a female person; nor is “himself”; nor is “man” in just about all of its combinations (e.g., *chairman, foreman, gentlemen, reasonable man*). Even going beyond the dictionary definitions of those terms, researchers have amply established that readers encountering masculine words think of men; common sense tells us that would be so.

Doing what is right and correct should itself make the case for gender-neutral writing, but there are three additional points.

II.

Second is that gender-neutral writing serves the sheer self-interest of the brief-writer. However one may personally rank the importance of language in the quest to eradicate gender bias, the fact remains that many brief-readers—male and female judges and their staffs—do notice and do care. If

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once prized, and then tolerated, gendered writing is today genuinely disagreeable to many readers. They cannot overlook, or read by, distinctly masculine words and attitudes in sentences addressing gender-neutral situations. Invariably, that sort of prose catches the eye, like a cinder.

I can well recall from my own days as a litigator the attention paid to learning all we could about the court or judge to whom a brief was addressed, so that the argument might be framed most appealingly for that decision-maker. I now know that it is impossible to learn all there is to know about the decision-maker, and even more impossible to know all there is to know about the law clerks and others who may read a submitted brief and contribute their own impressions.

Obviously, it is decidedly in the brief-writer's self-interest to eliminate the cinders. With so much in a brief that is beyond a lawyer's control—like the facts and

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law—why risk alienating or even discomfoting the reader with a matter that is wholly within a lawyer's control?

III.

My third point ties into the other two: gender-neutral writing is not only a good habit but also an easy one to acquire and internalize. Like so many things in life, when we are mindful of a goal, and make the initial effort required to attain it, it can quickly become second-nature. If what is right and correct and in one's self-interest is also easy to do, what can be the countervailing argument?

In October 1989, the Committee to Implement Recommendations of the New York Task Force on Women in the Courts, through Judge Kathryn McDonald (its chair), issued a memorandum to all Office of Court Administration speakers and panelists, reminding them of the need "to present material in a manner that does not

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unwittingly support offensive stereotypes about men and women,” and illustrating how that might be accomplished. In place of “he” or “she,” for example, a neutral pronoun might be used; the noun repeated or pluralized; the pronoun eliminated, pluralized or even randomly alternated. “Policeman” easily becomes “police officer”; “fireman,” “firefighter”; “brethren,” “colleagues”; “workmen,” “workers”; “reasonable man,” “reasonable person.”

The Committee (now the New York Judicial Committee on Women in the Courts) will shortly mark its fifth anniversary with a pamphlet containing a similar message, this time addressed to people who work in the courts or use them regularly. Again, the numerous examples given show how easy it is to avoid writing that ignores and demeans women. As Judge McDonald’s Committee points out, “[a]ltering speech habits may require conscious thought for a period of time, but change is part of any

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living language and English, which is an unusually rich tongue, is still evolving. What was considered questionable usage a decade ago may be commonly accepted now. What feels awkward today may seem eminently natural tomorrow.”

It is not my intention here to repeat all of the examples given in these and other publications, or to set out mechanics. For a ready illustration, just compare the new Code of Professional Responsibility and the bylaws of the Association of the Bar of the City of New York with their predecessors. I believe that the opinions of the Court of Appeals are another example of gender-neutral writing, and I know for sure that every effort is made to see that that is so.

IV.

Fourth and finally, that which is right and correct, and in lawyers' self-interest, and easy to do, has the additional advantage that it offers an example of appropriate

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behavior to the bar generally, as well as to clients and others in society. And why shouldn't lawyers lead others in promoting equality in every way possible?

It is the evolution of society and the evolution of the English language that have brought us to the realization that gendered writing is no longer tolerable. We can immediately recognize certain ancient court writings as stilted, bombastic, archaic, sometimes even comical today, though once they were held up as beautiful, indeed exemplary. I believe that gendered writing also will one day be immediately recognized as archaic and ludicrous. My only message to brief-writers is that, to many brief-readers today, it already is.

Conclusion

Based upon the foregoing, I would urge upon the bar a practice of gender-neutral brief-writing.

The New York State Judicial Committee on Women in the Courts

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