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Fairness, Clarity, Precision, and Reaction: Gender-free and Bias-free Word Choice

Tenielle Fordyce-Ruff

Every legal problem involves people. You cannot practice law without writing about people. But writing about people in a way that is clear and won't cause a negative reaction by the reader takes some effort. The language of the law is moving toward gender- and bias-free word choices, but not as fast as other disciplines. Yet, a few simple and easy changes can help move your writing toward being more precise, fair and clear, and help you avoid any negative reaction from the reader.



Gender-neutral word choice

The use of language in this arena has shifted rather quickly. Many terms previously meant to be inclusive are now recognized as exclusive.

Think about it — the last time you flew did you have a female flight attendant? Not so long ago she would have been called a stewardess. And many terms that include the root *man* to refer to all of humanity are also going the way of stewardess. Simply replacing terms can help make your writing gender neutral. It can also help your writing be more precise by not using a male expression to refer to a female. Here is a handy list to help when you're writing or editing.¹

- Businessman → Business Executive
- Chairman → Presiding Officer, Chair, Head, Manager
- Coed → Student
- Common Man/Average Man → Common Individual, Average Citizen, Ordinary Person
- Congressman → Representative, Member of Congress
- Councilman → Council Member

- Fireman → Firefighter
- Forefathers → Ancestors, Fore-runners, Forebears
- Foreman (head of a group of workers) → Supervisor, Head Worker, Section Chief
- Foreman (of a jury) → Foreperson
- Man/Mankind → People, Humanity, Human Race, Human Beings, Human Population
- Man (as a verb) → Staff, Operate, Run, Work
- Man-Made → Hand-crafted, Handmade
- Manpower → Human Energy, Human Resources, Workforce, Personnel, Staff
- Man and Wife → Man and Woman, Husband and Wife
- Middleman → Negotiator, Liaison, Intermediary
- Old Wives' Tale → Superstitious belief

Pronouns can present a similar problem — creating confusion. Last year Sweden added a gender-free pronoun, *hen*, to its language. We English speakers don't yet have that option.² Instead, we must avoid us-

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ing the pronoun *he* as a generic pronoun. While it used to be standard practice to use *he* to refer to an antecedent that could be either male or female, we must now use some creativity to avoid doing so.³

First, consider revising the sentence so that both the antecedent and the pronoun are plural.

A defendant's tortious conduct can serve as a source of specific personal ju-

isdiction when *he* (1) committed an intentional act, (2) the act was expressly aimed at the forum state, and (3) *he* knew that *his* actions were causing harm.

Defendants' tortious conduct can serve as a source of specific personal jurisdiction when they (1) committed an intentional act, (2) the act was expressly aimed at the forum state, and (3) *they* knew that *their* actions were causing harm.

Next, consider revising the sentence so that you don't need a pronoun.

The defendant's intent refers to his intent to perform an actual, physical act in the real world, rather than intent to accomplish a result or consequence of that act.

The defendant's intent refers to the intent to perform an actual, physical act in the real world, rather than intent to accomplish a result or consequence of that act.

Third, try replacing *he* with another pronoun.

Every man has the right to defend his home.

One has the right to defend one's home.

You have the right to defend your home.

*Everyone has the right to defend his or her home.*⁴

Finally, you can repeat the noun rather than use an inappropriate *he*.

The defendant asserted that the officer violated his right to be free from unreasonable searches.

The defendant asserted that the officer violated the defendant's right to be free from unreasonable searches.

Using a combination of these approaches can help make your writing gender-neutral and still flow well.⁵

Bias-free word choice

Naming and labeling has power and can create an almost instant reaction in the reader. Write with care when describing people.

First, unless a person's race is legally necessary — such as racially motivated crimes — avoid referring to that person's race at all. Use a description of a person's race only if it is necessary to the legal analysis.

This advice applies as well to other descriptions of people. Using language to describe a person's religion, sexual orientation, age, socioeconomic status, or differing abilities can shape the reader's perception of both the writer and the issue at hand.

Generally, use the term that a group of people prefers for their description. This bit of advice can be difficult to follow, however, because language shifts over time. To use the preferred term for a group of people requires that you stay abreast of current trends and preferences in language. Below is a list of older terms with the newer, preferred terms.

- Colored person, Negro, Black, Black American → African American
- Elderly → Senior Citizen
- Handicapped, Disabled → Physically Challenged, Person with Differing Abilities
- Homosexual → Gay/Lesbian
- Indian, American Indian → Native American
- Mexican American, Chicano/Chicana, Hispanic → Latino/Latina
- Oriental → Asian American

Additionally, if you know of a specific person's preferred term, use that if you are describing that person. If your client describes herself as a gay woman instead of a lesbian, honor that choice if you must describe her sexual orientation in writing.

Likewise, be careful with words that describe ethnicity, race, and religion; terms are not interchangeable. For instance, *Arab* and *Muslim* are not synonyms. Neither are *Spanish* and *Latina*. If you are going to use a description for a person, make sure to pick one that is accurate and precise.

Finally, use the most specific term possible. For instance, if you must describe a person with Japanese ancestry, choose to write Japanese American rather than Asian American.

Conclusion

Language has power, and the word-choices we make in writing can serve to avoid negative reactions in our readers. It can also serve to avoid insidious forms of prejudice. Taking the extra time to make thoughtful word choices can help your writing be credible and help avoid a negative reaction in the reader.

Endnotes

1. Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer*, 137-40 (3d ed. Aspen 2009).
2. Using *they* as a singular pronoun is becoming commonplace and accepted. Many legal readers, however, are still jarred by its usage. Bryan Garner, *Garner on Language and Writing*, 244 (ABA 2009).
3. You can find additional tips on avoiding gender-linked pronouns in my previous article: Tenielle Fordyce-Ruff, *Problems with Pronouns III: Gender-Linked Pronouns*, June/July, 2013 56-JUL Advocate (Idaho) 48.
4. *Just Writing* at 138.
5. In some less formal contexts, writers are substituting the plural pronoun for the singular pronoun. This substitution, however, creates grammar errors.

About the Author

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