



FAIR SPEECH

Gender-Neutral Language in the Courts

New York State Judicial Committee on Women in the Courts

BY HON. JONATHAN LIPPMAN, CHIEF JUDGE OF THE STATE OF NEW YORK;
HON. A. GAIL PRUDENTI, CHIEF ADMINISTRATIVE JUDGE

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In recent years, the formal language of the courts has changed in response to efforts to create, 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 idea that men are the norm and women

special cases. 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 critical information not just on paper but face to face. On any weekday, our courts are filled with clerks and court officers talking to litigants, lawyers discussing cases, 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-foot, 4-inch woman attacked by a 6-foot, 2-inch 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. Wanrow, 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 wrote this pamphlet over 20 years ago. Its purpose was to suggest a FAIRSPEECH Gender Neutral Language in the courts few simple rules that would help those who use the courts or work in the court system to avoid unintended slights or compromises to the ideal of equal justice. The original edition of this pamphlet was a great success. In only slightly altered form, it has been in print and in use ever since. Over the years, court users and the general public have become increasingly comfortable with gender neutral language, so that some ideas in the pamphlet that were novel when first made seem natural now, and many of the suggestions in the pamphlet have become mere reminders. Whether suggestions or reminders, the simple rules in this pamphlet remain important as we continue to nudge our speech toward a fuller embrace of the idea of equality.

A Few Simple Rules

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

USE	AVOID
chair	chairman
members of the jury	gentlemen of the jury
colleagues	brethren

Designations for professionals or categories of workers often are a source of lingering problems. Job segregation has been a great barrier to women’s equality, and using gendered terms has the effect of implying women still cannot hold certain jobs. Again, substitutes are now commonly used.

USE	AVOID
police officer	policeman
firefighter	fireman
worker	workman
homemaker	housewife
nurse	male nurse
executive	businessman
journalists	gentlemen of the press
representative	spokesman
member of the Assembly	Assemblyman
member of Congress	Congressman

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

USE	AVOID
reasonable person	reasonable man
artificial	man-made
staff	manpower
one-person operation	one-man operation
high-ranking officials	men in high places
diplomacy	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. 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.”
2. 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.”
3. Find a neutral article, such as a or the, to replace a gendered pronoun. “A judge may always make the ruling orally,” may replace “A judge may always make his ruling orally.”
4. 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.”
5. Replace the pronoun with a synonym. “You should find a court officer. That is the person who can help you,” may replace “You should find a court officer. He is the one who can help you.”
6. Substitute he or she for he. This may not be the most felicitous suggestion, but, if all else falls, it works. It is accurate, gender-neutral, and doesn’t give offense to anyone.

Use consistent forms of address

When no other title is appropriate, Ms. and Mr. are usually correct, 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. 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 but also because it is patronizing. The motives for calling someone Maria or Beth 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 natural tomorrow. The term chair, now a preferred designation for the person in charge of a meeting, predates chairman, and grammarians settled on the use of he as a generic pronoun less than 300 years ago.

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.”

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