Gender Neutral

by K.K. DuVivier

> *Oedipus [old and blinded] said [to the Sphinx], "I want to ask one question. Why didn't I recognize my mother?"*
>
> *"You gave the wrong answer," said the Sphinx. . . . "When I asked, What walks on four legs in the morning, two at noon, and three in the evening, you answered, Man. You didn't say anything about woman."*
>
> *"When you say Man," said Oedipus, "you include women too. Everyone knows that."*
>
> *She said, "That's what you think."*
>
> *Myth* by Muriel Rukeyser

You may believe that use of "he" for both men and women is yet another sign of male dominance and the suppression of women.[1] On the other hand, you may feel that the use of "he" as a both-sex term is a time-honored example of appropriate "unmarked usage."[2]

Regardless of your preference, you should be aware that the use of "he" as a universal gender pronoun now is controversial, and your reader probably will follow only one of two very divergent ideologies. Therefore, fall back on a primary rule of persuasive writing: *avoid any words or structures that alienate your reader or distract from your message.*

Here are four techniques commonly used to avoid the need for a potentially offending masculine pronoun:

First, use the second person pronoun, instead of the third person pronoun. Note that I avoided a problem above by writing, "Regardless of your preference, *you* should . . ." rather than, "Regardless of one's preference, *he or she* should be aware that. . . ."

Second, if you must use the third person, use the plural rather than the singular. Thus, in the italicized clause above, I could have substituted "readers" for "reader" with no loss of meaning. In fact, the use of the plural often is more open and embracing.

Third, if you must use the third person singular, omit the gender-specific pronoun. Note that in the same italicized clause, I did not write "alienate your reader or distract *him or her* from your message." Frequently, the pronoun is not necessary to your meaning.

Fourth, repeat the original noun instead of using a pronoun. For example, the italicized clause could read, "that alienate your reader or distract *the reader* from your message." Although this structure does not flow as smoothly as some of the other alternatives, it eliminates the judgment statement, and the resulting controversy, that use of a pronoun might create.

Avoid more obvious methods of dealing with the dilemma unless you intend to emphasize your position, perhaps to the detriment of how your other ideas will be received. For example, some readers believe "he or she" is a clinker and that "s/he" is grotesque.[3]

You can try to alternate between the masculine and feminine pronouns in each of your sentences or paragraphs, but this device is confusing and may look artificial. Furthermore, if you are not careful, you "may perform a sex change on somebody in the middle of paragraph."[4]

In his dissent in *Nordlinger v. Hahn,*[5] U.S. Supreme Court Justice Stevens quotes language from Justice Blackmun's majority opinion that employs the unmarked use of "he" to describe a new owner's tax burden. The use of "he" is especially distracting in this instance because the "new owner" in the case is a woman, petitioner Stephanie Nordlinger.

When the language of the two justices is juxtaposed, their different approaches to the gender pronoun are obvious. Instead of using "he" and "him," Justice Stevens uses "her" to describe both new and existing owners. Furthermore, he artfully sidesteps the gender issue in the ensuing discussion by simply using the plural "taxpayers" and "homeowners" with

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.

K.K. DuVivier is an instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, Boulder.

the corresponding "their" and "them" in the remainder of the discussion.

So, before using a gender-specific pronoun to refer to both men and women, pause and consider your audience. In this, as in many other matters, neither the U.S. Supreme Court nor the public has reached consensus.

NOTES

1. "Until relatively recent time . . . females were excluded from the category of humans who function as thinkers." Ronald K.L. Collins, "Language, History, and the Legal Process: A Profile of the 'Reasonable Man,'" 8 *Rut.-Cam. L.J.*, 311 (1977)(quoting Mary Ritchie Key).

> It has become evident that the use of "he" alone is unsatisfactory in view of past history leaving women out of the scene. There needs to be some evidence that . . . females are in consideration.

Id. at 323.

2. Younger, "The English Language is Sex-Neutral," 72 *ABA Journal* 89 (1986).

3. *Id.*

4. Wydick, *Plain English for Lawyers* (Durham, N.C.: Carolina Academy Press 1985) at 67.

5. 60 U.S.L.W. 4563, 4573-4574 (June 18, 1992).

Correction to Alzheimer's Association Memory Walk Date

The announcement in the August issue of *The Colorado Lawyer* about the Alzheimer's Memory Walk (page 1638) contained an incorrect date. The actual date of the Walk is September 26 (rather than September 2), and participants still are needed. For more information, contact (303) 733-1669.

Colorado Bar Association 1992/1993 Ethics Committee

The list below is the correct, updated list of the members of the 1992/1993 CBA Ethics Committee. This list replaces that which appeared in the August 1992 issue of The Colorado Lawyer *on page 1578.*

Susan Smith Fisher, Littleton, Chair
Richard F. Hennessey, Denver, Vice-Chair

Arthur Abplanalp Jr., Vail
Bennett S. Aisenberg, Denver
Gordon W. Allott Jr., Denver
Claude W. Appel, Walsenburg
Kenneth Barnhill Jr., Golden
Michael H. Berger, Denver
Larry W. Berkowitz, Denver
Mark H. Boscoe, Denver
Rebecca L. Bradley, Denver
Vicki F. Braunagel, Denver
Alan H. Bucholtz, Denver
Donald H. Burkhardt, Denver
Kenneth G. Christianssen, Denver
Nancy L. Cohen, Lakewood
John P. Congdon, Denver
Cynthia F. Covell, Denver
Kenneth L. Covell, Colorado Springs
Wiley Y. Daniel, Denver
Marilyn J. David, Greeley
Thomas O. David, Greeley
Joseph de Raismes III, Boulder
Lucy Hojo Denson, Denver
David R. Eason, Denver
Richard L. Eason, Denver
Stephen G. Everall, Englewood
Timothy L. Fasing, Englewood
Phillip S. Figa, Englewood
Cecelia A. Fleischner, Denver
Mark A. Fogg, Denver
Douglas D. Foote, Littleton
Beverly Fulton, Boulder
Mari Gierman-Jackson, Grand Junction
Peter B. Goldstein, Denver
Cathy H. Greer, Denver
Cathryn L. Hazouri, Boulder
Stephen J. Hensen, Denver
James P. Hollaway, Denver
Robert Horowitz, Denver
Philip R. James, Denver
Raymond Dean Jones, Denver
John A. Jostad, Fort Collins
Charles J. Kall, Denver
Steven B. Katzman, Littleton
J. Patrick Kelly, Colorado Springs
Roger A. Klein, Greeley
John E. Kochenburger, Fort Collins
John M. Lebsack, Denver
Stephen H. Leonhardt, Denver
Scott L. Levin, Englewood
C. Randel Lewis, Denver
Gary Lozow, Denver
Charles F. Luce Jr., Denver
Kathie Fliss Martell, Aurora
Michael S. McCarthy, Denver
Annita M. Menogan, Denver
Raymond P. Micklewright, Colorado Springs
Edward C. Moss, Denver
Carroll E. Multz, Grand Junction
Georgia Noriyuki, Winter Park
Edward J. Nottingham Jr., Denver
William T. Pizzi, Boulder
Ruthanne Polidori, Littleton
Gerald D. Pratt, Denver
Joann Ranta, Colorado Springs
Jeffrey F. Reiman, Denver
James T. Robinson, Denver
Stacy L. Rouse, Colorado Springs
Cassandra G. Sasso, Denver
Raymond N. Satter, Denver
Janet A. Savage, Denver
Don W. Sears, Boulder
Lance M. Sears, Colorado Springs
Allan R. Singer, Denver
Marcus Squarrell, Denver
David W. Stark, Denver
Daniel M. Taubman, Denver
Terry L. Tomsick, Denver
Jeffrey Villanueva, Denver
Daniel F. Warden, Denver
Patrick M. Westfeldt, Denver
Albert B. Wolf, Denver
Leo Wotan Jr., Loveland
Thomas H. Young, Denver