



Spring 3-1-1992

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Recommended Citation

William B. Hill, Jr., *A Need For The Use Of Nonsexist Language In The Courts*, 49 Wash. & Lee L. Rev. 275 (1992).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol49/iss2/4>

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A NEED FOR THE USE OF NONSEXIST LANGUAGE IN THE COURTS

WILLIAM B. HILL, JR.*

I want to discuss gender bias in the courts. Realizing the possible scope of such an endeavor, I do not intend to embark on a discussion of every conceivable aspect of gender bias in the courts. Rather, I will discuss gender bias as it exists and continues to be perpetuated, in the written and spoken words of the courts.

This topic interested me for several reasons. While in college I recall being forced to wade through a thick work by Gordon W. Allport entitled *The Nature of Prejudice* (Doubleday 1958). While the years have dulled my memory, I am still possessed of an impression from this reading. Prejudices and predispositions are part of us all and are not inherently insidious or of evil bent, and until acted upon are mere subjective states of mind. Once acted upon, however, these prejudices and predispositions translate into objective discrimination through the attachment, rightly or wrongly, of generalized qualitative values to entire groups of people. Prejudices and predispositions are shaped and contoured by our perception of our environment. Because our perception of our environment is to an enormous degree shaped, contoured and defined by language, any successful foray against gender bias in the courts must start with an examination of language usage.

Secondly, as a black person I am acutely aware that bias, prejudice and predisposition cannot be eradicated in some areas of human existence unless it is eradicated in all areas of human existence. Never can some of us be totally unencumbered by the weight of nomenclature irrelevant to our value as individuals until we are all unencumbered.

Thirdly, in order to engender, foster and nurture the public's confidence in the ability of the legal system to competently resolve disputes, it is imperative that the system treat all participants with both actual and perceived fairness. If the language employed is suggestive of a bias adverse to some fifty percent of the population, the public's confidence, if now possessed, will not be kept long.

Finally, I have chosen for discussion this specific aspect of gender bias because the elimination of gender bias language from the written and spoken word of the courts is the right thing to do.

INCLUSIVE/EXCLUSIVE LANGUAGE USAGE

If there is a profession that demands of its practitioners a reverence and respect for the power of the written and spoken word, then surely it

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must be the law. With pen and paper, birth can be given to what has never before existed. Given an opportunity to speak, mental images, feelings of rage and fear, and even prejudices and predispositions can be provoked. So interdependent is our perception of ourselves and our environment with our choice of words that it is problematic to ask which defines the other. Given race-based and sex-based inequalities, scholars and academicians do not lack for vehicles through which to carry on this debate.

Language conveys the norms, values, beliefs, and perceptions that help ensure an ordered social environment and help define the boundaries of acceptable social discourse. Language is defined as the systematic use of words by a people with a shared history or set of traditions.¹ When this systematic use of words is gender based to the detriment or exclusion of more than one-half of the population, then surely something is awry. Certainly, it would be intellectually dishonest to pretend of aspirations to include all members of a society as equal participants absent the use of language that eliminates inappropriate gender implications.

The implications of habitually used language so pervade the very fabric of our lives that its subtle but devastating effect is accepted as immutable. Language of gender exclusion, for example, is literally everywhere we turn in the courthouse. Whenever one reads "man," in the generic sense, it is to be understood that "man" includes "woman," "he" includes "she," "his" includes "her." Law school texts now contain the following notation:

The pronouns "he," "his," and "him," as used at various points in this book, are not intended to convey the masculine gender alone; this usage is employed in a generic sense so as to avoid awkward grammatical situations which would likely occur due to the limitations of the English language.²

The fact, however, is that the generic use of "man," "he" and "his," by way of examples, is gender exclusive. Nonsexist, genderless, gender free and gender neutral are terms descriptive of language that includes both men and women, rather than excludes women. The use of inclusive rather than exclusive language, both written and spoken, must be the business of all judges if we are to foster confidence in the ability of courts to truly comprehend and rule fairly.

GENDER IDENTIFICATION

Oftentimes gender identity is unnecessary and irrelevant to a court's written or spoken word, but nevertheless customarily appears. The more senior of my fellow southern practitioners refer to "the young lady from the Attorney General's office," "the little lady lawyer," "the lady policeman." Even when charging the jury, reference is often made to "the female

1. AMERICAN HERITAGE DICTIONARY 713 (2d College ed. 1982).

2. W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS at vii (5th ed. 1984).

expert witness." Gender identity is generally unnecessary and irrelevant in most contexts and should be eliminated. The continued use of unnecessary and irrelevant gender identification serves only to undermine the integrity of the profession and the public's confidence in the ability of the courts to dispense justice fairly without regard to race, sex, religion or national origin.

DEMEANING

Gender-identifying words are also often used to demean. In conversation or in written text reference is often made to adult males as men, while simultaneously referring to adult women as girls. In the text of old marriage vows that have been used and passed through chambers from one judge to another there is the well-known incongruence "man and wife." Inappropriate references to females as "dear," "sweetie," "sugar," "honey,"—and the list is endless—does absolutely nothing to aid the evolution and maturation of the legal profession. Neither does the continued use of gender-biased language facilitate the profession's self-examination of its perceptions and predispositions, and their impact on clients, the public, the courts and each other.

COMMISSION ON GENDER BIAS

At the request of the Council of Superior Court Judges, on March 15, 1989, the Supreme Court of Georgia created by order the Georgia Commission on Gender Bias in the Judicial System. The Commission was charged with the task of reviewing the court system of Georgia to determine whether and to what extent gender bias existed and to make recommendations to the Supreme Court for the correction of any ills found. The Chief Justice informed the commission that the issue before them was "fairness"—the assurance that equal justice be available to all without regard to gender. At the time of its creation in Georgia, 28 other states had charged task forces or commissions with the study of gender bias in the courts. After perusal and analysis of existing studies on gender bias, the Commission adopted a broad scope of inquiry which included:

- (1) Substantive laws and appellate decisions—is there gender bias in the law as written?
- (2) Application of the law—is the law applied in a fair and equal manner?
- (3) Rules of Court and the Code of Judicial Conduct—do these ensure that activities within the courtroom are conducted in an unbiased manner?
- (4) Bias by judges and court personnel against those using the court system—court personnel is defined as clerks, bailiffs, law enforcement officers, court administrators, judicial secretaries, probation officers, jurors, and attorneys. Those using the system are defined as attorneys, litigants, witnesses, jurors and others.
- (5) Bias by judges and court personnel against those within the court system—does bias exist in employment practices, including

hiring, firing, and pay policies as well as treatment, conduct and sexual harassment?

(6) Court facilities—do the physical aspects of the courthouse support and respond to the needs of men and women adequately?

(7) Selection of judges—does our system allow equal opportunity in both the election and appointment processes?

(8) Formal language of the courts—is gender-biased language found in jury charges, forms, correspondence, and other publications written or used by the judiciary?

In a 400 page report issued in August of 1991, the Commission found that there exists a perception that gender bias affects the judicial system and those making use of the system. Further, the Commission concluded:

[W]hile no widespread and overt gender bias was uncovered in Georgia's courts, there is evidence that gender bias does exist within Georgia's judicial system and that some citizens have consequentially suffered injustice within that system.³

With reference to the formal language of the courts, the Commission recommended the revision of all pattern jury instructions, bench books, court forms and documents, court rules and judicial opinions, orders and correspondence so as to eliminate language that is gender biased. Additionally, the Commission recommended that gender-neutral language be spoken in the courtroom, that law school materials for courses and professional responsibility contain information designed to create an awareness of the potential for gender bias in the practice, that judges and court personnel attend, on a continuing basis, seminars covering the topic of gender bias, and that the Georgia Courts Journal, the State Bar News, and other publications teach and highlight the need to eliminate gender bias in court language.

CONCLUSION

The elimination of gender bias in the written and spoken language of the courts constitutes no insurmountable task. There exist numerous publications designed to assist in the development of habitual use, in both the written and spoken word, of nonsexist language. One such publication is that by Val Dumond, entitled *The Elements of Nonsexist Usage, a Guide to Inclusive Spoken and Written English* (Prentice Hall Press 1990). Academicians, legal scholars, feminists, activists—the list can be endless—all offer thought-provoking reasons laden with theories of social impact, role determination and self-identification. I propose that the use of spoken and written gender-biased language be eliminated for the reason that “it is the right thing to do.”

3. GENDER AND JUSTICE IN THE COURTS, August, 1991, at xi.