When to Stay Away From *Him*, *Her*, and *Them*

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In legal and other formal writing, when you don't know the gender identity of a specific human individual and are not in a position to inquire, it's best to avoid using any of the singular personal pronouns to refer to the person.

The August, 2020 installment of this column addressed the use of *they* as a singular, gender-neutral pronoun and its increasing acceptance when referring to a person in the general, or hypothetical, sense, e.g., "When weighing the evidence, a juror is expected to use their common sense." Less commonly accepted, however, is use of the word to refer to a particular human being whose gender identity or preferred pronoun is unknown to the writer, e.g., "I was impressed by the work of J.T. Smith and wanted to meet them." While some progressive-minded organizations like the American Psychological Association and the Modern Language Association suggest using *they* in this manner—as a kind of default, singular, personal pronoun, most authorities warn that such usage may draw criticism, and is likely to do so in the context of formal writing.

Say, for example, that you are writing a brief and describing the facts of a case you want the court to follow. Following the sage advice of legal writing experts, you avoid referring to the parties solely as "plaintiff" and "defendant" and provide their full names. On second or third reference, however, you want to refer to them by their personal pronouns, but find that the gender of one party is not revealed in the text. Or, say you don't even know the name of the specific individual, much less the person's preferred pronoun or gender identity, and are not in a position to ask or find out.

In those situations, it's best to avoid the singular *they*, as well as the male and female personal pronouns, and instead employ one of these common write-arounds, while avoiding unpronounceable and non-inclusive terms like *he/she*, *s/he* and the awkward and non-inclusive phrase *he or she*.

Change the pronoun to an article.

Not this: The defendant, Pat Douglas, argued that the police officers' search of his/her cell phone was unconstitutional because they failed to get a warrant beforehand.

But this: The defendant, Pat Douglas, argued that the police officers' search of the cell phone was unconstitutional because they failed to get a warrant beforehand.

The latter example works only if you already have made it clear that the cell phone belongs to Pat Douglas. Otherwise, you may unintentionally make the reader wonder whether Douglas has standing to challenge the search.

Drop the pronoun.

Not this: The plaintiff, Robin Welsh, needed time away from their work to heal from their injuries.

But this: The plaintiff, Robin Welsh, needed time away from work to heal.

Repeat the noun.

Not this: The accountant who handled the company's tax filings was responsible for ensuring their accuracy. The company's chief executive officer relied on his or her work in preparing the annual report for shareholders.

But this: The accountant who handled the company's tax filings was responsible for ensuring their accuracy. The company's chief executive officer relied on the accountant's work in preparing the annual report for shareholders.

Note that in the first example, it's not clear whether "his or her" refers to the chief executive officer or to the accountant.

Reword the sentence.

Not this: If the court denies Phillips' *Marsden* motion tomorrow, the attorney the court appointed to represent him on the charges must continue to do so, though they cannot represent Phillips at the hearing on the motion.

But this: If the court denies Phillips' *Marsden* motion tomorrow, Phillips' court-appointed attorney must continue the representation. The attorney, however, cannot represent Phillips at the hearing on the motion.

Use *who*.

Not this: Since the court-appointed attorney still had not learned the facts of Phillips' case by the start of trial, Phillips had strong grounds for filing a *Marsden* motion asking the court to replace them as his counsel.

But this: Phillips had strong grounds for filing a *Marsden* motion asking the court to replace the court-appointed attorney who still had not learned the facts of Phillips' case by the start of trial.

In sum, in legal writing, feel free to use *they* as a singular, gender-neutral pronoun when referring to a person in the general sense or when referring to indefinite pronouns such as *anyone*, *someone*, or *everyone*. But, when you don't know the gender identity or preferred pronoun of a specific individual, avoid using any of the singular personal pronouns (and awkward combined terms) to refer to the person and find a suitable way to write around the issue.

About the Author:

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