PREFACE

Words matter. When we write or speak, we are choosing words to communicate our ideas, to persuade, to advise. But as this issue of *LC&R* demonstrates, we must always remember that every word is a choice and those choices have consequences. Consequences for us, for our clients, for our very ability to engage in meaningful discourse with others. The articles in this issue come at this concept from a variety of angles but each one shows that word choice has far-reaching, and often unintended, consequences.

Teri McMurtry-Chubb's article, "There Are No Outsiders Here: Rethinking Intersectionality as Hegemonic Discourse in the Age of #MeToo," begins this issue with a hard look at the modern socio-legal concept of intersectionality and critiques that term's ability to conceptualize difference without also alienating those who do not fit within the dominant social group. According to McMurtry-Chubb, by focusing on our membership in various groups divided by gender, race, sexual orientation, etc., we merely reinforce these differences, eliminate intra-group nuance, and discourage those who belong to the dominant group from examining their own victimization at the hands of white supremacy, patriarchy, and capitalism. As in all things, words matter, and we should be careful of the words we choose, especially when discussing complex socio-legal issues.

In "Abandoning Predictions," Kevin Bennardo warns against the misuse of predictive words when explaining the law to clients because lawyers cannot possibly predict what a judge will actually do when confronted with a case. Bennardo's essay reminds us that judicial or jury decisions are often heavily influenced by the personal prejudices of the trier of law and the trier of fact and, therefore, no matter how well you understand the relevant law and facts of your case, you cannot presume to know how the case will turn out. Bennardo's emphasis on how we communicate to our clients is essential to good lawyering. The words we choose to use to explain legal concepts to laypeople matter, and we should choose with care.

Joe Fore's article, "A Court Would Likely (60-75%) Find...," also looks at the validity of legal predictions but from a more empirical angle. Fore begins with the premise that both lawyers and clients discuss the client's case in terms of the likelihood of success and then seeks to find more precise language to determine how likely the success is. Instead of focusing on what factors to consider when determining success, as Bennardo does, Fore focuses on how that likelihood is communicated to the client and whether using percentages can make those communications more effective and less prone to misinterpretation. Fore's article therefore shows us how even a small change in presenting a choice to our client—by choosing different words to indicate likelihood of success—can improve our own communication skills with those who have entrusted us with their legal problems.

Mark Cooney's article, "Analogy through Vagueness," celebrates the often-maligned word "vague" by showing its essential utility in the crafting of workable analogies. Even if "vague" can be used to criticize a legal argument, without vagueness, we would not be able to maneuver through prior case law to craft persuasive arguments that older cases should apply in a certain way to our new case. Cooney presents vagueness as a valid technique that lawyers use all the time, a choice to broaden our understanding of a set of facts so that it can apply to our own client's situation. Although criticized, using vague language is often a choice, and a well-considered one.

In "Why Congress Drafts Gibberish," Richard K. Neumann Jr. takes the negative aspects of vagueness and raises it to an artform: statutory gibberish. Neumann first shows some examples of statutes so poorly drafted that even those who were tasked with interpreting them—the judiciary—couldn't understand what they meant. Neumann then hypothesizes that the reason Congress drafts statutes this way is because legislators are overly focused on how a statute will be enforced and then do not place any importance in designing the statute so it can be understood. For that reason, legislative drafters, who do have expertise in crafting legislation that is clear to the reader, are excluded from much of the drafting process, and members of Congress end up creating statutes that cannot be understood. Neumann's article reminds us of how important it is to choose our words carefully and with all our goals in mind.

Helena Whalen-Bridge's article, "Negative Narrative: Reconsidering Client Portrayals," uses two case studies to show that some clients could be better served by a narrative that does not seek to only portray them in a positive light. For some clients, a negative portrayal is better than omitting facts and giving an incomplete or unethical use of the available evidence to create a case theory. Again, lawyers must choose how to present their

clients, knowing that their words will have consequences. Whalen-Bridge makes a strong case for expanding lawyers' range of narrative choices when confronted with a client who is not easily portrayed positively.

The books covered in the reviews—some new manuscripts, some timeless classics—give thoughtful guidance on a wide variety of issues: how to think deeply amongst the distractions of the digital age, how to practice law with a focus on social justice, how to find happiness in the midst of a stressful profession, how to persuade by knowing your audience, how to understand and appreciate the untamable nature of language, and how humor and law intersect. Mary Beth Beazley's review "The Digital Natives will Not Save Us: Reflections on THE SHALLOWS," looks at Nicholas Carr's THE SHALLOWS; Sha-Shana Crichton reviews Peter J. Hammer and Trevor W. Coleman's CRUSADER FOR JUSTICE: FEDERAL JUDGE DAMON J. KEITH; Tessa L. Dysart's "[T]he pursuit of Happiness" reviews HOW TO BE (SORT OF) HAPPY IN LAW SCHOOL by Kathryne M. Young; Karin Mika reviews Jeffrey Toobin's THE NINE: INSIDE THE SECRET WORLD OF THE SUPREME COURT; Zachary Schmook's review "Words, Wolves, and Show Dogs," examines Lane Greene's TALK ON THE WILD SIDE: WHY LANGUAGE CAN'T BE TAMED; and Jeff Todd's "A Scholarly Though Accessible Exploration of Humor and Law" reviews GUILTY PLEASURES: COMEDY AND LAW IN AMERICA by Laura Little. Whether a biography, empirical study, or litany of jokes, each book (and each review) gives its reader something to think about and something to enjoy.

Last, we invite you to read our short piece about Professor Kathryn M. Stanchi, the recent recipient of the Linda L. Berger Lifetime Achievement Award for Excellence in Legal Writing Scholarship.

This issue also marks the first issue for our new Co-EIC, JoAnne Sweeny. Jumping from the micro-editing level of the Associate Editor to the big-picture focus of Co-EIC has been a bit dizzying but also very exciting. The machinery involved in getting this publication out to our readers is (perhaps not surprisingly) complex and requires the work of a lot of people. In particular, JoAnne is incredibly grateful for the mentoring of Co-EIC Ruth Anne Robbins and the ability of both Managing Editors Susan Bay and Jessica Wherry to keep everything moving and the new Co-EIC focused on the next step when she often doesn't know what it is.

This Preface is also the place where we say goodbye to editors who have completed their terms on the editorial board. For ten years, Professor Melissa Weresh has been a strong, stalwart contributor to the work of this Journal. As the editorial board members debated submissions, Mel's opinions were consistently careful, thoughtful, and perceptive. She took her editing duties very seriously, working to ensure the author had a

positive experience while simultaneously bringing the article up to its potential. Mel's own scholarship is vibrant. As a scholar, her curiosity and energy are nearly limitless—there's never a time when she isn't working on at least one project. All of what she knows about the scholarship endeavor she has freely shared with other editors and with our authors.

Mel likes to tell people that she liked serving on the editorial board because it was a happy assignment. Mel may not fully appreciate her own role in this joyful vibe. If we were to assign her a color it would be bright-gold sunlight. We have been nourished by her intellect and will lament her departure from the editorial board.

Ruth Anne Robbins and Dr. JoAnne Sweeny (Summer, 2019)