

ON THE VALUES OF WORDS

BOOK REVIEW:

BETWEEN YOU AND ME: CONFESSIONS OF A COMMA QUEEN
MARY NORRIS (W.W. NORTON & COMPANY 2015), 228 PAGES

WORD BY WORD: THE SECRET LIFE OF DICTIONARIES

KORY STAMPER (VINTAGE BOOKS PAPERBACK EDITION 2018), 300 PAGES

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Introduction

That a legal writing professor would review two books about language could be read to admit that the field of legal writing is primarily concerned with grammar and usage. Indeed, if the books were didactic or unsophisticated, they might even support such a view. However, the best books in the field, like those under review here, serve the same ends as the field of legal writing itself: they point to deeper truths about the use of language and its consequences.

The legal writing process involves deep analytical work that is carried on through the medium of language. Creating language in contracts, briefs, judicial opinions, and even the humble legal memo creates law itself: cases turn on the meanings of words, and at times cases turn even on marks of punctuation, as a recent celebrated case involving the so-called Oxford comma illustrates.¹ When legal writing professors initiate students into the legal discourse community, we

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¹ Daniel Victor, *A Judge, a Lawsuit, and One Very Important Comma*, N.Y. TIMES, Mar. 16, 2017, at A21 (reporting on *O'Connor v. Oakhurst Dairy*, 851 F.3d 69 (1st Cir. 2017)). The case was later settled. Daniel Victor, *Oxford Comma Dispute Is Settled as Maine Drivers Get \$5 Million*, N.Y. TIMES, Feb. 9, 2018, at A11.

provide them a new set of language tools. We care, as we should, that students know how to express themselves clearly and concisely, becoming skillful at handling these tools. Moreover, we should also want them to be sensitive to the ways in which legal language protects or abrogates claimed rights by including and excluding people from legal categories.

In support of these goals, books about language ought to occupy pride of place on lawyers' and legal writing professors' bookshelves. Two recent contributions to that genre use observations about language as a touchstone for a nuanced examination of deeper truths about language, culture, and law in a changing world. Mary Norris, a longtime copy editor at *The New Yorker*, and Kory Stamper, a veteran lexicographer for Merriam-Webster, have contributed *Between You & Me: Confessions of a Comma Queen*² and *Word By Word: The Secret Life of Dictionaries*³, respectively. These books joyfully embrace the ways language shapes the society in which we live and influences its legal culture. Law students, lawyers, and law professors will benefit from journeying with Norris and Stamper through the world of language towards the goal of crafting prose that is clear, accurate, and inclusive. The itinerary for this review's journey traverses the changing world of writing and publishing, navigates the rough terrain of attempting to define consistent, binding linguistic rules, and concludes by considering the consequences of language as a medium for conveying law.

I. Against a backdrop of change

The process of how writers work has been upended in the past twenty years or so. The digital revolution has wrought massive changes in American society and culture, and during this period both Norris and Stamper have been eyewitnesses to the impacts of increased interconnectedness and big data on writers. Their books are a bit nostalgic for the pre-digital era. Stamper's early years, in which dictionary writers used an elaborate system of color-coded index cards, seem a delightful time to work, presenting an environment in

² MARY NORRIS, *BETWEEN YOU AND ME: CONFESSIONS OF A COMMA QUEEN* (2015).

³ KORY STAMPER, *WORD BY WORD: THE SECRET LIFE OF DICTIONARIES* (1st ed. 2017) [hereinafter STAMPER, *WORD BY WORD*]; KORY STAMPER, *WORD BY WORD: THE SECRET LIFE OF DICTIONARIES* (Vintage Books paperback edition 2018) [hereinafter STAMPER, *PAPERBACK*]. Please note, except where the 2018 version is different and specifically cited, all citations are to the hardback edition.

which knowledge could be written down, managed, categorized, and saved in physical files. Similarly, Norris' portraits of *The New Yorker's* copy editing giants Eleanor Gould and Lu Burke evoke a bygone era, as does her ode to the copy editor's pencil and its sharpeners. While the world still has room for printed media and pencils, Stamper admits that "everything has been electronic for some time," and she details how big data in the form of corpus linguistics (large, digitized, searchable collections of source-texts) has transformed lexicographers' efforts to track the use of a particular word in our language.⁴ To an extent, Norris endorses technological tools, proclaiming that disabling spell-check would be an act of "hubris."⁵ At the same time, she recognizes that every new technology does not improve life and that she could "do without" autocorrect.⁶ Keeping up with technological change prevents writers from becoming mired in the chaos created by the deluge of digital information; Norris and Stamper are thoughtful writers who have weathered these changes well.

Changes in how content is created are, of course, only the tip of the iceberg. Technology has also transformed content delivery and the economics of publication writ large. Stamper writes honestly about the challenges, describing Merriam-Webster's "first large-scale layoff in decades" as "neither interesting nor unique" given the fact that lexicography is a "shrinking industry."⁷ Both lexicography and print journalism face ongoing, existential threats from the ready availability of (often unfiltered, unedited) online content, and both industries constantly adapt to remain relevant and viable. Both Merriam-Webster and *The New Yorker* offer online subscriptions and cabin some content behind a paywall, but they also employ websites and social media accounts to tease their products and spur interest in their brands.⁸

As these evolving developments in the world of publication unfold, written language continues to be central to the human experience, and people still care about it. Even modern readers and

⁴ STAMPER, WORD BY WORD, *supra* note 3, at 18 n. *, 80-81, 88.

⁵ NORRIS, *supra* note 2, at 16.

⁶ *Id.*

⁷ STAMPER, WORD BY WORD, *supra* note 3, at 259-60.

⁸ Indeed, part of this content includes videos about current issues. Norris has posted videos of her work. See Mary Norris, *Comma Queen*, YOUTUBE (Mar. 10, 2015), <https://www.youtube.com/watch?v=zwsanKHRkOg>. Stamper has also discussed her work online. See Kory Stamper, *How a Dictionary Writer Defines English*, YOUTUBE (Mar. 14, 2017), <https://www.youtube.com/watch?v=uLgn3geod9Q>.

writers continue to expect dictionary definitions that are “right on the money”⁹ and continue to value *The New Yorker’s* contributions to the head, heart, and soul of the nation. Stamper and Norris both wax eloquent about the joys of their chosen professions. The last word goes to Norris on this point: “Except for writing,” Norris declares, “I have never seriously considered doing anything else.”¹⁰

II. On Grammar

Each book is more collection than curriculum. The writers have not written systematic grammatical treatises; instead, they describe common linguistic problems and propose solutions tempered by anecdote, experience, and common sense. Stamper focuses on the definition of words and matters of usage, while Norris’s docket includes these topics and extends to matters of punctuation and style. To skim the surface, Stamper devotes chapters to “wrong words,” like “irregardless;” to the murky meaning of “small words” like “take” (take a cookie, take a hike (in both senses), being on the take, etc.); and to the basics of writing a dictionary—defining words, crafting example sentences, recording pronunciations, and researching etymology.¹¹ Similarly, Norris devotes chapters to the major marks of punctuation (her discussion of hyphens and dashes is delightful for its exploration of the work of writers such as Emily Dickenson and Herman Melville) as well as profanity, pronouns, and common usage errors.¹²

For both Norris and Stamper, the concept of grammar itself implicates larger forces at work. Both writers wrestle with the question whether grammar should describe the language as it is used (the “descriptivist” position) or whether grammar should prescribe rules for all to follow (the “prescriptivist” position). Both books recount the dictionary wars of the 1960s, triggered by the 1961 publication of the descriptivist *Webster’s Third New International Dictionary*.¹³ Through the lens of these struggles, the relationship between language and culture begins to come into view.

⁹ STAMPER, WORD BY WORD, *supra* note 3, at 261 (quoting fellow lexicographer Emily Brewster).

¹⁰ NORRIS, *supra* note 2, at 12.

¹¹ *See generally* STAMPER, WORD BY WORD, *supra* note 3.

¹² *See generally* NORRIS, *supra* note 2.

¹³ *Id.* at 18-19; STAMPER, WORD BY WORD, *supra* note 3, at 246-47. Interestingly, the descriptivism of Webster’s Third led to the publication of the (mildly) prescriptivist *American Heritage Dictionary*, first published in 1969. The editors of that esteemed dictionary sent controversial words to a

Stamper, as a modern lexicographer, adheres to a decidedly descriptivist view, decrying most commonly understood grammar rules (for example, the admonition against ending a sentence with a preposition) as merely “the personal peeves, codified into law, of dead white men of yore.”¹⁴ Stamper adopts the linguist’s definition of grammar: “systematic rules” that govern “the way that words interact with each other in a sentence.”¹⁵ On her view, a lexicographer’s personal peeve must yield in light of contrary evidence of how language is actually used.¹⁶ Yet, this simply begs the question of whose usage will be the authority—we may no longer limit ourselves to the “white men of yore,” but should we discount them entirely? And who else should be our guide?

Norris, even though she works at *The New Yorker*, a “bastion of prescriptivism,”¹⁷ is herself mainly descriptivist. She admits that “[y]ou cannot legislate language”¹⁸ and resists the image of the copy editor as “someone who favors a rigid constancy, a mean person who enjoys pointing out other people’s errors.”¹⁹ Norris herself is hardly mean or rigid, but she does hold to standards. The title of the book (“Between You and Me”) is intended to correct “one of the most barbarous habits in contemporary usage,” the ubiquitous “between you and I” error²⁰—an error for which Norris calls out former-President Barack Obama, though she does allow that Obama was “our most eloquent president in decades.”²¹

Indeed, as those of us who teach writing know, our students will be held to standards, and those standards may at times seem

“usage panel” consisting of language experts, including, for many years, Antonin Scalia. *Id.* at 251-52. Stamper reports that an ad for the first edition of the *American Heritage* pictured a “long-haired young hippie” alongside copy that read, “He doesn’t like your politics. Why should he like your dictionary?” *Id.* at 247. One can imagine Justice Scalia smiling at such an ad.

¹⁴ STAMPER, *WORD BY WORD*, *supra* note 3, at 46.

¹⁵ *Id.* at 32.

¹⁶ *Id.* at 34.

¹⁷ NORRIS, *supra* note 2, at 19.

¹⁸ *Id.* at 168.

¹⁹ *Id.* at 35.

²⁰ *Id.* at 78-79.

²¹ *Id.* at 83. Indeed, at the recent funeral of Senator John McCain, former President Obama again used I for me, when he said of McCain, “After all, what better way to get a last laugh than to make George [Bush] and I say nice things about him to a national audience?” Nora Kelly, *Barack Obama’s Eulogy for John McCain*, THE ATLANTIC (Sept. 1, 2018), <https://www.theatlantic.com/politics/archive/2018/09/barack-obama-eulogy-john-mccain/569065/>.

arbitrary. Court rules impose limits that in most cases have little relation to the subject matter being litigated. The Bluebook insists on citation standards that, to put it mildly, do not always make logical sense. Supervising attorneys will judge writing based upon their own experiences and ideas about what is “correct.” Norris and Stamper recognize that language expresses acceptance and rejection in myriad ways. Stamper raises the delicate issue of dialect, noting that speakers of certain dialects can be subjected to “stereotype and scrutiny.”²² She describes her own youthful experiences of absorbing linguistic habits from black and Chicano classmates and recounts how these habits exposed her to the judgment of others, including her own mother.²³ For Norris, the consequences of language play out a bit differently but no less consequentially. After tilling the familiar terrain surrounding English’s lack of a gender-neutral third-person singular pronoun, Norris relates in starkly personal terms how pronouns nearly came between her and a transgender sibling.²⁴

In a similar vein, Stamper acknowledges the minefield lexicographers face in defining words like “bitch” or “nude.” Stamper is disquieted that the entry for “bitch” managed to go decades without an indication that it is vulgar, obscene, or some other taboo.²⁵ Further, she notes Merriam-Webster’s struggle with race in the definition of the word “nude,” initially defined (in part) as “having the color of a white person’s skin.”²⁶ Even a descriptivist dictionary, it turns out, reflects cultural norms relating to gender and race. For Norris, a matter as small as punctuation can be a marker of class. I shudder upon reading her description of the semi-colon—a punctuation mark I favor (read: overuse)—as “upper-crust” and “best used by the British.”²⁷ In her view, emphasized twice, “Americans can do without

²² STAMPER, WORD BY WORD, *supra* note 3, at 60.

²³ I use the term “Chicano” here because it is the word Stamper uses to describe her classmates. *Id.* at 61.

²⁴ NORRIS, *supra* note 2, at 71-76.

²⁵ STAMPER, WORD BY WORD, *supra* note 3, at 149-168. Stamper’s “Author’s Note” to her 2018 paperback edition reports that a usage note was added after the initial publication of WORD BY WORD in 2017. STAMPER, PAPERBACK, *supra* note 3, at 265.

²⁶ STAMPER, WORD BY WORD, *supra* note 3, at 221. The definition has been changed to “having a color (such as pale beige or tan) that matches the wearer’s skin tones.” *Id.* at 228.

²⁷ NORRIS, *supra* note 2, at 140. The basis for her view is that semi-colons are markers of “a classical education . . . perhaps because they are needed to translate Latin and Greek.” *Id.*

the semicolon,”²⁸ though she does admit that she would not change a single semicolon in the work of Henry James.²⁹ Language, especially written language, has the power to reveal one’s priors, to let slip one’s views of life and the world.

III. Implications for the Legal Community

Like language, law plays out against a backdrop of cultural change in which norms about the treatment of various groups of people have been shifting rapidly. As an initial matter, Stamper’s description of the process of defining words³⁰ is not dissimilar to the lawyer’s craft of articulating rules of law synthesized from various authorities. A lexicographer sifts evidence of how a word has been used, reconciles conflicting examples, and operates in a system that preferences some people and marginalizes others,³¹ just as a lawyer must collect, analyze, and evaluate past precedents.

Stamper’s reflections on the changing definition of the word “marriage” illustrate the connections between law and culture and provide yet another example of a situation where use of language reflects judgments about inclusion and exclusion. In 2003, Merriam-Webster added the following to the definition of marriage: “the state of being united to a person of the same sex in a relationship like that of a traditional marriage.”³² At the time, two states had enacted domestic partnership or civil union legislation, and four states had limited marriage to one man and one woman. By 2009, the marriage wars intensified. Marriage rights were extended to same-sex couples in three states by decisions of the states’ highest courts, and a handful of additional states enacted civil unions. Other states enacted state-level defense-of-marriage acts or constitutional amendments. Moreover, by 2009, Barack Obama had become the nation’s first black President. Although Obama was not, at the time, a supporter of equal marriage rights, the anxieties of culturally conservative citizens were raised over this issue. Predictably, complaints and hate mail over the changed definition of “marriage” began to pour into Merriam-Webster’s inboxes.³³

²⁸ *Id.* at 140, 142.

²⁹ *Id.* at 145.

³⁰ STAMPER, WORD BY WORD, *supra* note 3, at 56-57.

³¹ Consider, for example, as Stamper does, the gender implications of a definition that refers to a “presidential candidate and his running mate.” *Id.* at 107. Stamper helpfully includes a gender-neutral rewrite. *Id.*

³² *Id.* at 233-34.

³³ *Id.* at 237.

Stamper captures the outrage: writers “believe that if we make a change to the dictionary, then we have made a change to the language, and if we make a change to the language, then we also make a change to the culture around that language.”³⁴ Stamper unsurprisingly disclaims this level of power for dictionaries (noting that we cannot eliminate pejorative use of the word “retarded” by removing it from the dictionary)³⁵, but the episode illustrates the powerful interactions between language, law, and culture. Interestingly, Stamper points out that *Obergefell* was decided after “every major dictionary in use” made changes to the definition of marriage³⁶ It may be true that the Court’s substantive due process jurisprudence follows the culture; but perhaps the dictionary is the best place to look for evidence of cultural change.³⁷

What does this mean for law students and professors of legal writing? The same words that memorialize legal rights speak to underlying cultural realities. The language of the law has consequences that humanize and dehumanize people. To point to a timely and controversial example, the Immigration Act refers to people who are not citizens of the United States as “aliens.”³⁸ Many in the popular culture, including the current President of the United States, refer to these people as “illegals” when they are present in the country without authorization.³⁹ We should want our students to consider their words carefully, especially as they address the hardest issues they will face, because denotative and connotative meanings matter. Norris and Stamper provide insights that will help us teach our students to approach writing tasks in a literate, thoughtful, and sensitive way. Framing legal issues in better language, we can hope,

³⁴ *Id.* at 241.

³⁵ *Id.* at 241-42.

³⁶ *Id.* at 252. Stamper notes that the only *Obergefell* opinion to actually cite dictionaries is Chief Justice Roberts’ dissent. *Id.*

³⁷ Stamper adds an important postscript to the 2018 paperback edition of her book, noting that the “straight” and “gay” subsenses of “marriage” have been merged into one definition that is gender-neutral. STAMPER, PAPERBACK, *supra* note 3, at 263-64. Stamper terms this a “correction.” *Id.* at 263. After *Obergefell*, “[l]egally, same-sex marriage wasn’t *an analogue* to straight marriage anymore; it was all just ‘marriage’ now. The revision reflects the current legal status of gay marriage in the United States.” *Id.* at 264.

³⁸ 8 U.S.C. § 1101(a)(3) (2012). The definitions section does not use the term “illegal” in reference to people. *Id.*

³⁹ A search of Donald Trump’s archived tweets reveals fifty-three tweets dated from April 1, 2013 to July 11, 2018 that use the term “illegals” in reference to people. TRUMP TWITTER ARCHIVE, <http://www.trumptwitterarchive.com> (last visited August 21, 2018).

will lead to legal solutions to the hardest problems that are both just and humane.

Conclusion

Norris highlights a wonderful word in her book: “ultracrepidate,” which she defines as “a big, fancy word for ‘going beyond your province.’”⁴⁰ Norris uses the word as a caution to copy editors not to get in the writer’s way while editing for linguistic clarity, a concept similar to Stamper’s efforts not to put a thumb on the cultural or legal scale while ensuring that the definition of various words accurately reflects the way they are, used. Yet we should be grateful that these writers willingly venture beyond the narrowest conceptions of their fields in their books. Stamper’s observations about how lexicography functions alongside currents and trends in culture and law, and Norris’ reflections on changing norms as reflected in language and life are perhaps the best argument for the importance of exacting study and use of language. If language (like culture and ultimately law) is determined by the community that surrounds us, legal writers and professors of legal writing would do well to have Mary Norris and Kory Stamper in their community and on their bookshelves.

⁴⁰ NORRIS, *supra* note 2, at 37. Alas, this word is not found in the online Merriam-Webster dictionary or in Merriam-Webster’s Collegiate. One has to go back to Webster’s New International Dictionary: Second Edition Unabridged, published in 1934, for a definition. *Ultracrepidate*, WEBSTER’S NEW INTERNATIONAL DICTIONARY (2d ed. 1934).