From the Editor

As we go to print, the COVID-19 pandemic persists, extending our isolation and social distancing past the half-year mark. Online interaction has been something of a saving grace, and the Twitter videos by our founding editor, Bryan Garner, have been a highlight for me.

In one, Professor Garner describes a time-honored tradition that has seemingly fallen into disuse: "commonplacing," or the "commonplace book." The commonplace book, Garner explains, is a book of blank pages that the owner — a person who values a "well-stocked mind" — fills with "favorite phrases, sayings, and quotations." Thus, the verb *to commonplace* might be defined as the act of "excerpt[ing] a phrase or a line or two" to have ready when "apt to the moment." The selected phrase or line might be from a poem, an essay, or, for legal professionals, a court opinion.

The idea is that the commonplacer will occasionally but conscientiously review the commonplace book so that the "felicitous phrasing" collected within becomes "a part of your mental makeup." There was a time, Garner says, when virtually every apprentice lawyer created a commonplace book, often to record and learn the common law. Nowadays, a lawyer might wish to record and memorize a favorite maxim or legal canon that could come in handy during oral argument. Or we might commonplace words that gracefully or powerfully articulate a special legal or moral truth, a truth that we never want to be too far away from us.

Consider a line from Justice Frank Murphy's dissent in the World War II–era case *Korematsu v. United States*. His words are a study in decorous outrage, decrying the internment of American citizens of Japanese descent: "Racial discrimination . . . is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the

Constitution of the United States."[1] Some 70-plus years later, what words could be more trenchant? More worthy of keeping close to hand and mind?

It occurred to me while editing this volume that our contributors have offered words and ideas worthy of recording. We might well create a legal-writing commonplace book from the volume you hold in your hands.

On the legal profession's resistance to plain language, Professor Joseph Kimble remarks, "At bottom, the integrity of legal writing lies in clarity." He adds that "clarity and accuracy are complementary — not competing — goals." Appellate advocate Raymond Ward picks up on that theme, pointing out that "a reader experiencing fluency is more likely to trust what the writer says and to accept the writing as true." Professor Megan Boyd notes in a book review that "[o]ffsetting the negative effects of reader fatigue should be a serious concern for legal writers." Professor Patrick Barry observes that "[n]umbers can be numbing," while veteran advocate John Browning reminds overzealous attorneys that "[i]t's a pleading, not a screenplay."

From inside chambers, appellate judge Michael Hyman speaks to the distractions of so-called talking footnotes: "Any information important enough to communicate to a judge belongs in the body of the document, not in a subterranean reservoir." And veteran Seventh Circuit judicial clerk Brian Potts urges advocates, "Don't throw headings away. Make them meaningful."

From the halls of government, Jery Payne continues his series of articles on the pitfalls of legislative lists: "Lawyers love lists. That love is unrequited." Also on the legislative front, Professor David Marcello points out that "plain-language drafting techniques lead drafters into a deeper understanding of their own texts and will often illuminate policymakers' intent."

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[1] 323 U.S. 214, 242 (1944).

As for the finer points of language, Professor Guha Krishnamurthi reminds us that "for better or worse, our profession — and our calling — is to pay great attention to every linguistic detail, especially when the courts speak." Adam Eakman laments that "correct usage doesn't deserve its current place on the bottom rung of the legal-writing ladder." And Professor Doug Coulson refines and heightens our appreciation of thoughtful word choice. Our selection of a verb, for instance, can affect perceptions about an actor's legal culpability: "[V]olition inheres in the meaning of certain verbs, such as those indicating desire or design . . . ."

Our legal-writing commonplace book might include a line on judicial tone, which a team of Canadian lawyers and academics studied, using IBM's Watson. The results prompted Kelly VanBuskirk and his team to "wonder whether conscientiousness as a component of judicial writing makes it less relatable or agreeable to the general public."

Finally, in a year in which twists, turns, and adaptations have been unrelenting, Professor Diana Simon reminds us to "treat [the] road bumps as teachable moments."

So like the commonplace books described by Professor Garner, volume 19 is worth reviewing and making a part of our mental makeup. I hope you enjoy it.

My heartfelt thanks to our contributors and editors. And a special note of appreciation to Brad "Galley Guru" Charles and to the extraordinary Karen Magnuson, whose copyediting prowess is matched only by her kindness.

— Mark Cooney