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George Orwell's Classic Essay on Writing: The Best Style "Handbook" for Lawyers and Judges (Part I)

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By Douglas E. Abrams

Like other Americans, lawyers and judges most remember British novelist and essayist George Orwell (1903-1950) for his two signature books, *Animal Farm* and *1984*. Somewhat less known is his abiding passion about the craft of writing. It was a lifelong passion,[1] fueled (as Christopher Hitchins recently described) by Orwell's "near visceral feeling for the English language."[2]

Orwell's most exhaustive commentary about writing was his 1946 essay, *Politics and the English Language*,[3] which minced no words. "[T]he English language is in a bad way,"[4] he warned. "Debased"[5] contemporary prose was marked by "abuse,"[6] "slovenliness,"[7] and a "lifeless, imitative style"[8] that was nearly devoid of "a fresh, vivid, homemade turn of speech."[9] A "tendency . . . away from concreteness"[10] had left writing "dreary, . . . ugly and inaccurate."[11] "[V]agueness and sheer incompetence," he said, "is the most marked characteristic of modern English prose."[12]

Orwell's 12-page essay catalogued specific maladies that characterized the "decay of language" and offered six curative rules.[13] The catalog and rules still reverberate among professional writers. Judge Richard A. Posner calls the essay "[t]he best style 'handbook.'"[14] Nobel Prize-winning economist Paul Krugman recently went a step further, calling the essay a resource that "anyone who cares at all about either politics or writing should know by heart."[15]

If I were a law partner employing young lawyers or a judge employing law clerks, I would add Orwell's essay to a list of reading recommended on the way in. If I were a young lawyer not required to read the essay, I would read it anyway. The entire essay is available for downloading at http://orwell.ru/library/essays/politics/english/e_polit.

Orwell stressed that he was dissecting not "the literary use of language, but merely language as an instrument for expressing and not for concealing or preventing thought."[16] The narrower scope does not deprive legal writers because Justice Felix Frankfurter was right that "[l]iterature is not the goal of lawyers, though they occasionally attain it."[17] Orwell's essay approached language as a tool for clear communication, the goal that defines what lawyers and judges do. "The power of clear statement," said Daniel Webster, "is the great power at the bar."[18]

As its title intimates, the essay included criticism of political writing done by government officials and private observers. The essay's staying power, however, transcends the political arena. By calling on writers of all persuasions to "simplify your English,"[19] Orwell helped trigger the plain English movement, which still exerts influence in legislative halls, courts, administrative agencies, and law school legal writing classes.

This is a two-part article. Here I describe how judges, when they challenge colleagues or advocates in particular cases, sometimes quote from Orwell's essay as a touchstone for clear expression and careful reasoning. In the Winter 2014 issue of *Precedent*, Part II will present Orwell's description of maladies that plagued contemporary prose. Part II will close with discussion of Orwell's six curative rules and their continuing relevance for today's lawyers and judges.

"TAKE THE NECESSARY TROUBLE"

"[W]ritten English," said Orwell in his essay, "is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble."[20] In 2012, the United States Court of Appeals for the District of Columbia Circuit quoted this passage in *National Association of*

Regulatory Utility Commissioners v. United States Department of Energy.[21]

The D.C. Circuit held that the challenged agency determination violated the Nuclear Waste Policy Act of 1982. Without conducting a valid cost evaluation required by the Act, the agency had refused to adjust or suspend annual fees collected from owners and operators of nuclear power plants to cover costs of the government's long-term disposal of civilian nuclear waste.

The parties hotly contested the case with hefty servings of alphabet soup. On page 48 of its 58-page brief, for example, the National Association argued that, "Although DOE has not disclaimed its obligation to dispose of SNF, it is undisputed that DOE currently has no active waste disposal program. . . . The BRC is undertaking none of the waste disposal program activities identified in NWPA § 302(d). Its existence therefore cannot justify continued NWF fee collection."[22]

On page 24 of its 60-page brief, the agency countered that "[t]he plain language of the NWPA . . . provides the Secretary [of Energy] with broad discretion in determining whether to recommend a change to the statutory NWF fee. . . . In section 302(a)(2) of the NWPA, Congress set the amount of the NWF fee – which is paid only by utilities that enter into contracts with DOE for the disposal of their SNF and HLW. . . ."[23]

Writing for the unanimous panel in *National Association of Regulatory Utility Commissioners*, Judge Laurence H. Silberman quoted Orwell and admonished the parties for "abandon[ing] any attempt to write in plain English, instead abbreviating every conceivable agency and statute involved, familiar or not, and littering their briefs with" acronyms.[24]

Other decisions have also quoted Orwell's call to "take the necessary trouble" to achieve maximum clarity.[25] In *Sure Fill & Seal, Inc. v. GFF, Inc*.,[26] for example, the federal district court awarded attorneys' fees to the defendant on its motion to enforce the parties' settlement agreement. The court criticized both parties' submissions. "Imprecision and lack of attention to detail," wrote Judge Elizabeth A. Kovachevich, "severely dampen the efficacy of Plaintiff's written submission to this Court. Equally unhelpful is Defendant's one sentence, conclusory response that is completely devoid of any substance. Advocates, to be effective, must take the 'necessary trouble' to present the Court with coherent, well-reasoned and articulable points for consideration."[27]

"At times," Judge Kovachevich specified, "the Court was forced to divine some meaning from the incomprehensible prose that plagued Plaintiffs' written objections. Lest there be any confusion, the Court graciously did so even though it could have simply refused to give the faulty objections any consideration at all. The Court would have been equally obliged to treat Defendant's failure to provide meaningful response as a concession of Plaintiffs' objections."[28]

"LIKE SOFT SNOW"

George Orwell held keen interest in politics, and his 1946 essay attributed "the decadence of our language" partly to political motivation.[29] "[P]olitical language," he wrote, "has to consist largely of euphemism, question-begging and sheer cloudy vagueness. . . . [W]ords fall[] upon the facts like soft snow, blurring the outlines and covering up all the details."[30]

This passage appeared in *Stupak-Thrall v. United States,*[31] an en banc decision of the U.S. Court of Appeals for the 6th Circuit that carried no political overtones. The full court remained evenly divided on the question of whether the plaintiffs' riparian rights may count as "valid existing rights" to which U.S. Forest Service regulations are subject under the federal Michigan Wilderness Act (MWA). Dissenting judge Danny J. Boggs criticized his colleagues who favored affirmance of the decision below. "The interpretation of the 'valid existing rights' language in Section 5 of the MWA to mean that [plaintiff] has no rights that the Forest Service is bound to respect is a good example of the distortion of language decried by" Orwell in his essay.[32]

IN THE NEXT ISSUE OF *PRECEDENT*: ORWELL'S SIX RULES

In the Winter 2014 issue of *Precedent*, Part II will present Orwell's catalog of the maladies that plagued contemporary prose, together with his six curative rules. To provide a flavor for what will come, here are the rules:

> "1. Never use a metaphor, simile, or other figure of speech which you are used to seeing in print.
> 2. Never use a long word where a short one will do.
> 3. If it is possible to cut a word out, always cut it out.
> 4. Never use the passive where you can use the active.
> 5. Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.
> 6. Break any of these rules sooner than say anything outright barbarous."[33]

More about each of the six next time.

ENDNOTES

1 George Orwell, *Why I Write* (1946) ("From a very early age, perhaps the age of five or six, I knew that when I grew up I should be a

writer.").

2 Christopher Hitchins, *The Importance of Being Orwell*, Vanity Fair, Aug. 2012, at 66, 66.

3 George Orwell, *Politics and the English Language*, in Essays on Language and Usage (Leonard F. Dean & Kenneth G. Wilson eds., 2d ed. 1963).

4 *Id*. at 325.

5 *Id*. at 333.

6 *Id.* at 325.

7 *Id*.

8 *Id*. at 332.

9 *Id*.

10 *Id*. at 330.

11 *Id*. at 325, 334.

12 *Id.* at 327.

13 *Id*. at 336.

14 Richard A. Posner, *Judges' Writing Styles (and Do They Matter?)*, 62 U. Chi. L. Rev. 1421, 1423 n.8 (1995).

15 Paul Krugman, *Orwell, China, and Me*, N.Y. Times Blogs (July 20, 2013).

16 Orwell, *supra* note 3, at 335.

17 Felix Frankfurter, *When Judge Cardozo Writes*, The New Republic, Apr. 8, 1931.

18 Letter from Daniel Webster to R.M. Blatchford (1849), in Peter Harvey, Reminiscences and Anecdotes of Daniel Webster 118 (1877).

19 Orwell, *supra* note 3, at 336.

20 *Id*. at 325.

21 680 F.3d 819 (D.C. Cir. 2012); *see* Douglas E. Abrams, *Acronyms*, 6 Precedent 44 (Fall 2012).

22 *Nat'l Ass'n of Regulatory Utility Comm'rs, Final Brief of Consolidated Petitioners* 48, 2011 WL 5479247 (2012).

23 *Nat'l Ass'n of Regulatory Utility Comm'rs, Final Brief for Respondent* 24-25, 2011 WL 5479246 (2012).

24 *Nat'l Ass'n*, 680 F.3d at 820 n.1.

25 *See, e.g.*, *Delgadillo v. Astrue*, 601 F. Supp.2d 1241 (D. Colo. 2007) (discussing confusion caused by confusing "attorney fees" and "attorney's fees" under the Equal Access to Justice Act); *Anthony A Gagliano & Co. v. Openfirst, LLC*, 828 N.W. 2d 268, 271 n.2 (Wis. Ct. App. 2013) ("acronyms and initials make comprehension more, not less, difficult").

26 2012 WL 5199670, No. 8:08-CV-882-T-17-TGW (M.D. Fla. Oct. 22, 2012).

27 *Id*. * 3.

28 *Id*.

29 Orwell, *supra* note 3, at 334.

30 *Id*. at 333.

31 89 F.3d 1269 (6th Cir. 1996) (en banc).

32 *Id*. at 1292 (Boggs, J., dissenting); *see also, e.g.*, *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002) (en banc) (Boggs, J., dissenting), *aff'd*, 539 U.S. 306 (2003) ("[W]hatever else Michigan's policy may be, it is not 'affirmative action,'" quoting Orwell's "soft snow" metaphor); *Palm Beach County Sheriff v. State*, 854 So.2d 278 (Fla. Dist. Ct. App. 2003) (quoting Orwell's "soft snow" metaphor and holding that in applying sovereign immunity, there is no distinction between the "reimbursement" and "recovery" to which the plaintiff sheriff said his office was clearly entitled, and the right to "damages" which sovereign immunity precedent rejected); *cf. Quartman v. Martin*, 2001 WL 929949, No. 18702 (Ohio Ct. App. Aug 17, 2001) (in discussion of probable cause, quoting Orwell essay that "[p]olitical language . . . is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind").

33 Orwell, *supra* note 3, at 335.

Douglas E. Abrams, a law professor at the University of Missouri, has written or co-authored five books. Four U.S. Supreme Court decisions have cited his law review articles.