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**Legal Studies Research Paper Series
Research Paper No. 2014-07**

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Published in the Winter 2014 issue of *Precedent*, the quarterly magazine of the Missouri Bar:

<http://www.mobar.org/uploadedFiles/Home/Publications/Precedent/2014/Winter/abrams.pdf>

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

By Douglas E. Abrams

In the Fall 2013 issue of *Precedent*, Part I of this two-part article discussed British writer George Orwell's 1946 essay, *Politics and the English Language*.¹ Judge Richard A. Posner calls the essay "[t]he best style 'handbook',"² and Nobel Prize-winning economist Paul Krugman recently called it a resource that "anyone who cares at all about either politics or writing should know by heart."³

Orwell rejected the notion that "we cannot by conscious action do anything about" the decline of language,⁴ and he believed instead that "the process is reversible."⁵ The essay's capstones, the subjects of this Part II, were his diagnosis of the maladies that afflicted writing, followed by his six curative rules.

DIAGNOSIS: "SWINDLES AND PERVERSIONS"

Orwell diagnosed four "tricks by means of which the work of prose-construction is habitually dodged."⁶ He called the foursome "swindles and perversions":⁷

1. Dying metaphors. The language, Orwell wrote, sustains "a huge dump of worn-out metaphors" that "have lost all evocative power and are merely used because they save

people the trouble of inventing phrases for themselves."⁸ He cited, among others, "toe the line," "run roughshod over," and "no axe to grind."⁹ To make matters worse, "incompatible metaphors are frequently mixed, a sure sign that the writer is not interested in what he is saying."¹⁰

2. Operators or verbal false limbs. Orwell said that these two devices "save the trouble of picking out appropriate verbs and nouns, and at the same time pad each sentence with extra syllables which give it an appearance of symmetry."¹¹

Among the shortcuts he assailed here were replacing simple, single-word verbs with phrases that add little, if any, meaning (such as "prove to," "serve to," and the like), and using the passive voice rather than the active voice "wherever possible."¹² Also, using noun constructions rather than gerunds (for example, "by examination of" rather than "by examining"), and replacing simple conjunctions and prepositions with such cumbersome phrases as "with respect to" and "the fact that."¹³ "The range of verbs is further cut down by means of the '-ize' and 'de-' formations, and the banal statements are given an appearance of profundity by means of the 'not un-' formation."¹⁴

3. Pretentious diction. Orwell included words that "dress up simple statement and give an air of scientific

impartiality to biased judgments" (such as "constitute" and "utilize"); and foreign phrases that "give an air of cultural elegance" (such as "ancien regime" and "deus ex machina").¹⁵ "Bad writers . . . are always nearly haunted by the notion that Latin or Greek words are grander than Saxon ones," even though "there is no real need for any of the hundreds of foreign phrases now current in English."¹⁶

4. Meaningless words. Here Orwell targeted art and literary criticism, and political commentary. In the former, "words like 'romantic,' . . . 'values,' . . . 'natural,' 'vitality' . . . are strictly meaningless." In the latter, the word "Fascism," for example, had "no meaning except in so far as it signifies 'something not desirable.'"¹⁷

ORWELL'S SIX CURATIVE RULES

Orwell believed that "the decadence of our language is probably curable,"¹⁸ and he proposed six rules as antidotes for the maladies he diagnosed. "These rules sound elementary, and so they are," Orwell wrote, "but they demand a deep change of attitude in anyone who has grown up used to writing in the style now fashionable."¹⁹

Rule One: "Never use a metaphor, simile, or other figure of speech which you are used to seeing in print."

Orwell discussed a variety of

clichés that might entertain, divert and perhaps even convince readers by replacing analysis with labels. “By using stale metaphors, similes and idioms,” he said, “you save much mental effort, at the cost of leaving your meaning vague, not only for your reader but for yourself. . . . People who write in this manner usually have a general emotional meaning . . . but they are not interested in the detail of what they are saying.”²⁰ He urged “scrapping of every word or idiom which has outworn its usefulness.”²¹

In 2003, concurring Judge Stephen R. Reinhardt of the U.S. Court of Appeals for the 9th Circuit cited Orwell’s essay to make the point in *Eminence Capital, LLC v. Aspeon, Inc.*, a securities fraud class action.²² The court of appeals held that the district court had abused its discretion by dismissing, without leave to amend, the first amended consolidated complaint for failure to state a claim. The panel reiterated, but rejected, the district court’s conclusion that the plaintiffs already had “three bites at the apple.”²³

“Such cliches,” Judge Reinhardt began, “too often provide a substitute for reasoned analysis.”²⁴ Noting that the district court failed to identify or analyze any of the traditional factors that would have supported dismissal without leave to amend,²⁵ Judge Reinhardt cautioned against “the use of cliches in judicial opinions, a technique that aids neither litigants nor judges, and fails to advance our understanding of the law.”²⁶

“Metaphors,” he explained, “enrich writing only to the extent that they add something to more pedestrian descriptions. Cliches do the opposite; they deaden our senses to the nuances of language so often critical to our common law tradition. The interpretation and application of statutes, rules, and case law

frequently depends on whether we can discriminate among subtle differences of meaning. The biting of apples does not help us.”²⁷

“The problem of cliches as a substitute for rational analysis,” Judge Reinhardt concluded, “is particularly acute in the legal profession, where our style of writing is often deservedly the subject of ridicule.”²⁸

Rule Two: “Never use a long word where a short one will do.”

This rule placed Orwell in good company. Ernest Hemingway said that he wrote “what I see and what I feel in the best and simplest way I can tell it.”²⁹ Hemingway and William Faulkner went back and forth about the virtues of simplicity in writing. Faulkner once criticized Hemingway, who he said “had no courage, never been known to use a word that might send the reader to the dictionary.”

“Poor Faulkner,” Hemingway responded, “Does he really think big emotions come from big words? He thinks I don’t know the ten-dollar words. I know them all right. But there are older and simpler and better words, and those are the ones I use.”³⁰

“Broadly speaking,” concurred Sir Winston Churchill, “the short words are the best, and the old words when short are best of all.”³¹ “Use the smallest word that does the job,” advised essayist and journalist E. B. White.³² In a letter, Mark Twain praised a 12-year-old boy for “us[ing] plain, simple language, short words, and brief sentences. That is the way to write English – it is the modern way and the best way. Stick to it; don’t let fluff and flowers and verbosity creep in.”³³

“[H]ere’s one good thing about language, there is always a short word for it,” said humorist Will Rogers. “Course the Greeks have a word for it, the dictionary has a word for it, but I believe in using your own word for

it. I love words but I don’t like strange ones. You don’t understand them, and they don’t understand you. Old words is like old friends – you know ‘em the minute you see ‘em.”³⁴

“One of the really bad things you can do to your writing,” novelist Stephen King explains, “is to dress up the vocabulary, looking for long words because you’re maybe a little bit ashamed of your short ones.”³⁵ “Any word you have to hunt for in a thesaurus,” he says, “is the wrong word. There are no exceptions to this rule.”³⁶

Rule Three: “If it is possible to cut a word out, always cut it out.”

What if the writer says, “In my opinion it is not an unjustifiable assumption that. . . .”? Orwell proposed a simpler, less mind-numbing substitute: “I think.”³⁷

“The most valuable of all talents is that of never using two words when one will do,” said lawyer Thomas Jefferson, who found “[n]o stile of writing . . . so delightful as that which is all pith, which never omits a necessary word, nor uses an unnecessary one.”³⁸ “Many a poem is marred by a superfluous word,” said poet Henry Wadsworth Longfellow.³⁹ “Less is more,” explained British Victorian poet and playwright Robert Browning, wasting no words.⁴⁰

Judges, in particular, can appreciate this short verse by Theodor Geisel (“Dr. Seuss”), who wrote for children, but often with an eye toward the adults: “[T]he writer who breeds/ more words than he needs/ is making a chore/ for the reader who reads./ That’s why my belief is/ the briefer the brief is,/ the greater the sigh/ of the reader’s relief is.”⁴¹

Rule Four: “Never use the passive where you can use the active.”

The passive voice usually generates

unnecessary verbiage and frequently leaves readers uncertain about who did what to whom. The active voice normally contributes sinew not fat, clarity not obscurity.

Consider the second line of the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.”

Would Jefferson have rallied the colonists and captivated future generations if he began instead with, “These truths are held by us to be self-evident. . . .”?

Rule Five: “Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.”

In 2008, the U.S. Court of Appeals for the 7th Circuit explained the pitfalls of jargon in *Indiana Lumbermens Mutual Insurance Co. v. Reinsurance Results, Inc.*, which held that the parties’ contract did not require the plaintiff insurer to pay commissions to the company it had retained to review the insurer’s reinsurance claims.⁴²

Writing for the *Lumbermens Mutual* panel, Judge Posner reported that the parties’ briefs “were difficult for us judges to understand because of the density of the reinsurance jargon in them.”⁴³ “There is nothing wrong with a specialized vocabulary – for use by specialists,” he explained. “Federal district and circuit judges, however, . . . are generalists. We hear very few cases involving reinsurance, and cannot possibly achieve expertise in reinsurance practices except by the happenstance of having practiced in that area before becoming a judge, as none of us has. Lawyers should understand the judges’ limited

knowledge of specialized fields and choose their vocabulary accordingly. Every esoteric term used by the reinsurance industry has a counterpart in ordinary English.”⁴⁴

Counsel “could have saved us some work and presented their positions more effectively,” wrote Judge Posner, “had they done the translations from reinsuranceese into everyday English themselves.”⁴⁵

Rule Six: “Break any of these rules sooner than say anything outright barbarous.”

Orwell punctuated each of his first five rules with “never” or “always.” Lawyers learn to approach these commands cautiously because most legal and non-legal rules carry exceptions based on the facts and circumstances.

Conventions of good writing ordinarily deserve adherence because most of them enhance content and style most of the time. They became conventions based on time-tested reactions elicited by accomplished writers. Orwell recognized, however, that “the worst thing one can do with words is to surrender” to them.⁴⁶ As writers strive for clear and precise expression, they should avoid becoming prisoners of language.

Orwell’s sixth rule wisely urges writers to follow a “rule of reason,” but I would rely on personal judgment and common sense even when the outcome would not otherwise qualify as “outright barbarous.” Good writing depends on sound grammar, spelling, style and syntax, but it also depends on willingness to bend or break the “rules” when advisable to maintain the bond between writer and reader. Within bounds, readers concern themselves more with the message than with what stylebooks say about conventions.

Orwell’s fourth rule illustrates why

good writing sometimes depends on departing from rules. The fourth rule commands, “Never use the passive where you can use the active.” Look again at the second line from the Declaration of Independence, quoted above. It contains a phrase written in the passive voice (“that they are endowed by their Creator with”). The active-voice alternative (“that their Creator endowed them with”) would not have been “outright barbarous,” but Jefferson would have sacrificed rhythm and cadence. Passive voice enhanced the flow, left no doubt about who did the endowing, and did not slow the reader with two extra words.

This rule of reason grounded in personal judgment and common sense extends beyond Orwell’s first five rules to writing generally. For example, when splitting an infinitive or ending a sentence with a preposition would enhance meaning or produce a more fluid style, then split the infinitive or end the sentence with a preposition. Maintaining smooth dialog with readers is more important than leafing through stylebooks.

Sir Winston Churchill, a pretty fair writer himself, reportedly had a tart rejoinder for people who chastised him for sometimes ending sentences with prepositions. “That,” he said, “is the sort of arrant pedantry up with which I shall not put.”⁴⁷

CONCLUSION

Lack of clarity, Orwell’s major target, normally detracts from the professional missions of lawyers and judges. What Justice William J. Brennan, Jr. called “studied ambiguity”⁴⁸ might serve the purposes of legislative drafters seeking to avoid specificity that could fracture a fragile majority coalition. Studied ambiguity might also serve the purposes of a lawyer whose client seeks to feel out the other parties early in a negotiation.

Without maximum clarity, however, written buck-passing may compel courts to finish the legislators' work, or may leave the parties saddled with an agreement whose misunderstandings lead parties to the courtroom.

Similar impulses prevail in litigation. Advocates persuade courts and other decision makers most effectively through precise, concise, simple and clear expression that articulates why the facts and the governing law favor their clients.⁴⁹ Judges perform their constitutional roles most effectively with forthright opinions that minimize future guesswork.

How often today do we still hear it said that someone "writes like a lawyer"? How often do we hear it meant as a compliment? Judge Stephen R. Reinhardt put it well in *Eminence Capital, LLC v. Aspeon, Inc.*: "It is long past time we learned the lesson Orwell sought to teach us."⁵⁰

ENDNOTES

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

3 Paul Krugman, *Orwell, China, and Me*, N.Y. TIMES BLOGS (July 20, 2013).

4 Orwell, *supra* note 1, at 325.

5 *Id.*

6 *Id.* at 327.

7 *Id.* at 330.

8 *Id.* at 327.

9 *Id.*

10 *Id.*

11 *Id.* at 328.

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.* at 329.

18 *Id.* at 334, 335.

19 *Id.*

20 *Id.* at 331-32.

21 *Id.* at 334.

22 316 F.3d 1048 (9th Cir. 2003).

23 *Id.* at 1053.

24 *Id.*

25 See *Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating the factors).

26 *Eminence Capital*, 316 F.3d at 1053.

27 *Id.* at 1053-54.

28 *Id.* at 1054.

29 A.E. HOTCHNER, PAPA HEMINGWAY 69 (1966) (quoting Hemingway).

30 *Id.* at 69-70 (1966) (quoting Hemingway); see also, e.g., Kurt Vonnegut, Jr., *The Latest Word* (reviewing THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1966)), N.Y. TIMES, Oct. 30, 1966, at BR1 ("I wonder now what Ernest Hemingway's dictionary looked like, since he got along so well with dinky words that everybody can spell and truly understand.").

31 Susan Wagner, *Making Your Appeals More Appealing: Appellate Judges Talk About Appellate Practice*, 59 ALA. LAW. 321, 325 (1998) (quoting Churchill).

32 Max Messmer, *It's Best to be Straightforward On Your Cover Letter, Resume*, PITTSBURGH POST-GAZETTE, Nov. 29, 2009, at H1 (quoting White).

33 ROBERT HARTWELL FISKE, THE DICTIONARY OF CONCISE WRITING: 10,000 ALTERNATIVES TO WORDY PHRASES 11 (2002); see also, e.g., British Victorian novelist George Eliot (Mary Ann Evans), *quoted at* Plainlanguage.gov, <http://www.plainlanguage.gov/resources/quotes/historical.cfm> ("The finest language is mostly made up of simple unimposing words"); Irish poet William Butler Yeats, *id.* ("Think like a wise man but communicate in the language of the people."); C.S. LEWIS' LETTERS TO CHILDREN 64 (Lyle W. Dorsett & Marjorie Lamp Mead eds., 1985) (emphasis in original) ("Don't implement promises, but keep them"; "Don't say 'infinitely' when you mean 'very', otherwise you'll have no word left when you want to talk about something really infinite.").

34 BETTY ROGERS, WILL ROGERS 294 (1941; new ed. 1979) (quoting Will Rogers).

35 STEPHEN KING, ON WRITING: A MEMOIR OF THE CRAFT 110 (2000).

36 Stephen King, *Everything You Need to Know About Writing Successfully in Ten Minutes* (1986), https://www.msu.edu/~jdowell/135/King_Everything.html.

37 Orwell, *supra* note 1, at 331.

38 Cindy Skrzycki, *Government Experts Tackle Bad Writing*, WASH. POST, June 26, 1998, at F1 ("most valuable," quoting Jefferson); THE FAMILY LETTERS OF THOMAS

JEFFERSON 369 (E.M. Betts and J.A. Bear, Jr. eds., 1966) (letter of Dec. 7, 1818) ("stile of writing").

39 III THE WORKS OF HENRY WADSWORTH LONGFELLOW WITH BIBLIOGRAPHICAL AND CRITICAL NOTES AND HIS LIFE, WITH EXTRACTS FROM HIS JOURNALS AND CORRESPONDENCE (1886-1891), at 278.

40 Robert Browning, *Andrea del Sarto*, in PICTOR IGNOTUS, FRA LIPPO LIPPI, ANDREA DEL SARTO 32 (1925); see also, e.g., SOMETHING TO SAY: WILLIAM CARLOS WILLIAMS ON YOUNGER POETS 96 (James E. B. Breslin ed., 1985) ("Everyone who writes strives for the same thing . . . To say it swiftly, clearly, to say the hard thing that way, using few words. Not to gum up the paragraph.").

41 Richard Nordquist, *"We Can Do Better": Dr. Seuss on Writing*, <http://grammar.about.com/od/advicefromthepros/a/seusswrite09.htm> (Aug. 9, 2010).

42 513 F.3d 652 (7th Cir. 2008).

43 *Id.* at 658.

44 *Id.*

45 *Id.*; see also, e.g., *Miller v. Illinois Cent. R.R. Co.*, 474 F.3d 951, 955 (7th Cir. 2007) ("much legal jargon can obscure rather than illuminate a particular case."); *New Medium LLC v. Barco N.V.*, No. 05 C 5620, 2009 WL 1098864 * 1 (N.D. Ill. Apr. 15, 2009) (Posner, J., sitting by designation as a trial judge) ("[a]ll submissions must be brief and non-technical and eschew patent-law jargon. Since I am neither an electrical engineer nor a patent lawyer, . . . the parties' lawyers must translate technical and legal jargon into ordinary language.").

46 Orwell, *supra* note 1, at 335.

47 See, e.g., Susan E. Rowe, *Six to Nix: Grammar Rules to Leave Behind*, 67 OR. ST. BAR BULL. 37 (Nov. 2006).

48 William J. Brennan, Jr., *Some Thoughts On the Supreme Court's Workload*, 66 JUDICATURE 230, 233 (1983).

49 HENRY WEIHOFEN, LEGAL WRITING STYLE 8-104 (2d ed. 1980) (discussing these four fundamentals).

50 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1054 (9th Cir. 2003).



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