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Thoughts on Legal Writing from the Greatest of Them All: George Orwell

George Orwell, the great novelist, essayist, and critic, was a man of strong opinions — and strong writing. During his wide and varied career, he produced hundreds of articles and essays, six novels, and three works of non-fiction — including, most famously, Animal Farm and 1984.

Here, we focus on Orwell’s brief but influential 1946 essay Politics and the English Language. 1 In this essay, Orwell discussed how poor writing encourages poor thinking and suggested ways for writers to avoid flaws of contemporary writing.

Orwell emphasized above all that prose should convey the writer’s ideas as simply and clearly as possible. Although Politics and the English Language is almost 75 years old and a product of the political and social scene of its time, its lessons remain valuable for legal writers today. 2

In this column, we focus on Orwell’s critique of poor writing and his explanation of basic principles for writers to improve their work.

THE PROBLEM OF WORDS THAT OBSCURE THOUGHTS, NOT CONVEY THEM

Orwell criticized poor writing as showing a “lack of precision”: a writer “has a meaning and cannot express it,” or “inadvertently says something else,” or is “almost indifferent as to whether his words mean anything or not.”3

Writers, Orwell argued, too often rely on rhetorical devices that seem meaningful but say little. For example:

- “Dying metaphors”: phrases that “have lost all evocative power and are merely used because they save people the trouble of inventing phrases for themselves.” 4 An example in modern legal writing is “second bite at the apple.” Does anyone who uses this metaphor in a legal filing (or decision) know why it’s bad for someone to bite an apple twice? Certainly we don’t.

- Verbal scaffolding: taking a simple verb and tacking on nouns or adjectives around it. 5 The result? Phrases, says Orwell, like “be subjected to,” “give rise to,” “having the effect of,” “serve the purpose of,” “with respect to,” and “in view of.” Similarly, says the Legal Writer, like “in opposition to,” “by means of,” “in order to,” “on the assumption that,” and “with an eye toward.” These phrases sound formal, but they’re empty. They do little more than pad word count.

- Pretentious diction: using long or jargon-y words, often with Latin or Greek roots, to dress up simple statements or ideas. 6 Lawyers often suffer from this problem. Arguendo, inter alia, ipso facto, gravamen, or (shudder) in haec verba. Also “the case at bar,” “to wit,” “your affirmant,” and so on. These instances of legalese, and others like them, add no precision or layer of meaning; they’re merely harder to understand than any plain-English equivalent.

A BIG-PICUTRE SOLUTION: GENERAL PRINCIPLES OF THINKING AND WRITING CLEARLY

Orwell contrasts the preceding three bad habits with questions that a “scrupulous writer” should always ask: What am I trying to say in this sentence? What words will best express my meaning? Can I express my idea more concisely? Have I said anything avoidably ugly? 7


Then, say it as simply and clearly as you can. Make sure that each sentence, and each phrase within a sentence,
adds something to the whole — substance, precise and accurate description, persuasive rhetoric, and so on. And make it as easy to understand as possible.

MORE SPECIFIC SOLUTIONS: ORWELL’S SIX RULES FOR BETTER WRITING

These principles are straightforward, yet difficult to apply consistently. As Orwell himself said, “look back through this essay, and for certain you will find that I have again and again committed the very faults I am protesting as much.”

To aid writers in this task, Orwell’s essay gives six “rules that one can rely on when instinct fails.” He says these rules “cover most cases.”

1. “NEVER USE A METAPHOR, SIMILE, OR OTHER FIGURE OF SPEECH WHICH YOU ARE USED TO SEEING IN PRINT.”

   • If you decide to use rhetorical imagery in a sentence, keep it fresh. Don’t strive merely to avoid clichés; discard all oft-used figures of speech. Understand the particular metaphor or simile you’re using, rather than merely resort to it out of habit. “Metaphors enrich writing only to the extent that they add something to more pedestrian descriptions,” rather than “deaden[ing] our senses to the nuances of language.”

   • If only stale metaphors or similes come to mind, consider whether using one in that particular sentence will add persuasive force to your point. You might decide that a phrase, though familiar, remains evocative; or that you have found a fresh way to employ old figurative language. If not, leave it out.

2. “NEVER USE A LONG WORD WHERE A SHORT ONE WILL DO.”

   • Keep it simple. Keep it short. You want to make your writing easy to read. Shorter words are easier to read and follow than long ones. If you can say it simply, you gain nothing by saying it with longer words. That said, sometimes short words won’t do; sometimes you do need to resort to a more complicated vocabulary. That’s fine. Just be conscious of what words you’re using.

3. “IF IT IS POSSIBLE TO CUT A WORD OUT, ALWAYS CUT IT OUT.”

   • Again, shorter is better. You want to make it easy for the judge to rule for you. A shorter filing takes less time and energy to get through. Legal readers always appreciate that. This way, they have more time and energy to think about your arguments. Your goal in each sentence is to make every word count, to cut every word that can be removed without losing substance. With practice, you’ll develop a sense of when a sentence is as tight as it can get, and when flab remains.

4. “NEVER USE THE PASSIVE WHERE YOU CAN USE THE ACTIVE.”

   • Most authors now endorse this rule. Passive-voice sentences use more words than necessary. These extra words add to vagueness and tangled phrases. And that leads to reader uncertainty. Passive sentences often require one to re-read them for a reader to know who did what to whom.

   • Using the active voice means that the subject of the sentence comes first and performs the action that the rest of the sentence describes. This is the most straightforward way to present ideas. It cre-
5. "NEVER USE A FOREIGN PHRASE, A SCIENTIFIC WORD, OR A JARGON WORD IF YOU CAN THINK OF AN EVERYDAY ENGLISH EQUIVALENT."

- Don’t make your legal writing hard to read and understand — legal readers are busy and skeptical. They don’t enjoy extra work. The goal of legal writing isn’t to show off your education or your vocabulary. It’s to communicate your arguments effectively and persuasively.

- Lawyers in New York (and no doubt lawyers elsewhere) are prone to using legalese — legal jargon that adds nothing beyond what can be expressed in ordinary English. Legalese may overawe an unsophisticated reader. Judges aren’t so easily swayed.

- Some legal jargon serves a purpose: for example, to describe concepts specific to law succinctly, or perhaps for rhetorical color in an appropriate context. (Just ask an appellant whose brief emphasizes that the trial court acted sua sponte in ruling against her.) Always remember, though, that most judges are generalists, and tune your language accordingly. Even in highly specialized areas of law, esoteric terms will usually have “a counterpart in ordinary English” that’ll be easier for the reader to understand. And if it’s not necessary to use jargon, it’s necessary not to use it.

6. "BREAK ANY OF THESE RULES SOONER THAN SAY ANYTHING OUTRIGHT BARBAROUS."

- Orwell’s sixth rule is an odd but useful safety valve. He advises writers to deviate from any of his five earlier rules if following them will result in awkward prose. Orwell’s rules are made for writers, not writers for his rules.

- Writers should follow a “rule of reason.” This leaves room for writers’ personal judgment and common sense even when the outcome isn’t otherwise “outright barbarous.” Good writing depends on sound grammar, spelling, style, and syntax. It also depends on a willingness to bend or break the rules to maintain the bond between writer and reader. As writers strive for clear and precise expression, they should avoid becoming prisoners of language. Writing needn’t conform to a particular style, lest it loses its charm.

CONCLUSION

Orwell’s Politics and the English Language was revolutionary in its day. Today we accept and agree with his advice. He taught lazy, mediocre, and unskilled writers that clear and simple communication is honest communication. He taught that unpretentious communication makes what you mean obvious, so that all (including lawyers) should write like generalists. He taught readers how to detect falsehoods in writing when writers hide the ball with bureaucratic writing.

The modern message? Life’s too short to drink bad beer or read bad writing.

The Legal Writer will continue its series on what we can learn from the great writing teachers — lawyers and non-lawyers.