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Legal Writing Lessons from American Presidents

*Communicators-in-Chief:
Lessons in Persuasion from
Five Eloquent American Presidents*

Julie Oseid

Megan E. Boyd, reviewer

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Communicators-in-Chief: Lessons in Persuasion from Five Eloquent American Presidents

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What can American presidents teach us about legal writing? Much, says Julie Oseid, author of *Communicators-in-Chief*. According to Oseid, the work of five of our past presidents—or communicators-in-chief—offers excellent examples of techniques legal writers should strive to employ. Oseid highlights the different writing techniques that Presidents Jefferson, Madison, Lincoln, Grant, and Roosevelt each used with aplomb, and gives examples of the use of that technique in the president's writing and speech. Oseid then explains why the examples are effective, particularly in the historical context in which they were offered, and suggests ways in which today's legal writers can employ these techniques in their writing.

The first president featured is Thomas Jefferson, who, according to Oseid, was a master of creating metaphors that are “simple, concrete, visual, creative, and concise.”¹ Jefferson, she explains, “recognized that metaphor could stand in the way of truth,” and thus used metaphors “for style and persuasion, but not as substitutes for complex abstract ideas.”² *Communicators* describes in detail the history of Jefferson's “wall of separation” metaphor, which he used only once in a letter to the Danbury Baptist Association after it sent Jefferson a letter congratulating him on his

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¹ JULIE OSEID, *COMMUNICATORS IN CHIEF: LESSONS IN PERSUASION FROM FIVE ELOQUENT AMERICAN PRESIDENTS* 25 (2017)

² *Id.* at 27.

election and asking him how its members could secure their religious liberty as a minority sect in Connecticut.³ Jefferson's response included the following:

Believing with you that religion is a matter which lies solely between man & his god, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that *their* legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof; thus building a wall of . . . separation between church and state.⁴

Oseid suggests that Jefferson used the "wall of separation" metaphor as a stylistic device and almost certainly did not intend for it to develop into the doctrinal metaphor that it did.⁵ She notes that Jefferson's "classical education . . . [made him] fully aware of the dangers of metaphor because all the classicists he admired pointed out those dangers," and he knew that "metaphor could stand in the way of truth."⁶ Oseid contends that Jefferson "did not intend the metaphor to be his final and all-encompassing statement about the First Amendment religion clause," but "once he released the metaphor[,] then it developed, over the last 200 years in the law, into a doctrinal metaphor."⁷

Oseid advocates for the use of metaphor in law but urges writers to take care in creating or borrowing metaphors in legal writing⁸ because while metaphors have "the potential for tremendous good, such as perfectly summarizing and simplifying a difficult concept," they also have "the potential for tremendous danger, such as oversimplifying or incorrectly summarizing a difficult concept."⁹ Thus, urges Oseid, legal writers should use metaphors that are "decorative" but "concrete" (as is a wall, both literally and figuratively), that are analogic, that are creative in that they assist the reader in understanding an idea "in a new way," and that put "complex legal concepts 'into a few words.'"¹⁰

³ *Id.* at 29–30.

⁴ *Id.* at 30–31 (quoting Letter from Thomas Jefferson, President of the U.S., to Danbury Baptist Ass'n (prelim. draft) (Jan. 1, 1802)). Oseid notes that Jefferson's first draft of the letter included the phrase "wall of eternal separation" but that for reasons unknown, Jefferson removed the word "eternal" from the final letter. *Id.* at 33.

⁵ *Id.* at 34–35. Oseid defines a doctrinal metaphor as one that expresses "doctrinal law, the rules and principles governing a legal issue, in the form of a metaphor." *Id.* at 6.

⁶ *Id.* at 27.

⁷ *Id.* at 34–35.

⁸ *Id.* at 40.

⁹ *Id.* at 23.

¹⁰ *Id.* at 38–39 (quoting DANIEL L. DREIBACH, THOMAS JEFFERSON AND THE WALL OF SEPARATION BETWEEN CHURCH AND STATE 112 (2002)).

Oseid next discusses James Madison's rigor, which she defines as "thoroughness, preparation, and diligence."¹¹ She offers No. 10 of *The Federalist Papers* as an example of that rigor. *Federalist No. 10* was "the distillation of Madison's effort over several years to understand the weaknesses of American government and to design and enact a better alternative."¹² It reflected "years of study and analysis, refined in stages."¹³ Madison's main argument in *Federalist No. 10* was that "an extensive republic—like the new federal government—is the most effective form of government to provide for liberty and neutralize self-interest and oppression."¹⁴

In *Federalist No. 10*, according to Oseid, Madison effectively "reversed the conventional logic" that republics are most effective in small geographic areas where representatives "identif[y] closely with the polity."¹⁵ Oseid highlights the ways in which, through No. 10 and his writings preceding it, Madison clearly and persuasively argued that "majority oppression [is] the greatest danger under popular governments"¹⁶ and is better controlled in a large republic rather than in a direct democracy.¹⁷ His persuasion, says Oseid, resulted from his process of taking "detailed notes" of events, "puzzl[ing] out the logical conclusions and practical consequences of both . . . arguments and counterarguments," and presenting work that was "precise, accurate, logical, anticipatory of other arguments, and persuasive."¹⁸ Eventually, Madison's "insight about the dangers of local majorities" that was at the heart of *Federalist No. 10* "became embodied in the Constitution through the Fourteenth Amendment, which restricted state action, and its incorporation of the Bill of Rights against state government."¹⁹

Even though Madison was not a lawyer, he wrote like one, says Oseid; "he was thorough, he was prepared, he viewed each problem from every side, and he knew the answers to all the questions about his position before his opponents even formulated those questions."²⁰ Oseid encourages legal writers to emulate Madison's rigorous process to "produc[e] tightly reasoned, persuasively argued texts."²¹

Oseid then analyzes the writing of Abraham Lincoln, calling the brevity he exemplified "critical" for legal writing.²² According to Oseid, Lincoln was a slow writer²³ who always started early in drafting his

11 *Id.* at 9.

12 *Id.* at 70.

13 *Id.* at 73.

14 *Id.* at 71.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.* at 54.

19 *Id.* at 73.

20 *Id.* at 55.

21 *Id.* at 56 (quoting GARRETT WARD SHELDON, *THE POLITICAL PHILOSOPHY OF JAMES MADISON* 2 (2001)).

speeches²⁴ and edited “ruthlessly,”²⁵ preferring “short sentences and short words whenever possible.”²⁶ But Lincoln did not eschew clarity in favor of brevity—he learned to visualize his audience when he was a litigator and chose his language carefully to appeal to his particular reader or listener.²⁷

Oseid uses Lincoln’s first inaugural address to demonstrate Lincoln’s process. In drafting that speech, Lincoln sought input from friends and colleagues and worked to eliminate redundant language while being cognizant of cadence.²⁸ Thus, because of his use of brevity in other areas of the speech, Lincoln felt comfortable incorporating several long sentences, including the “brilliant”²⁹ final sentence—“The mystic chords of memory, stretching from every battlefield, and patriot grave, to every living heart and hearthstone, all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.”³⁰

Oseid next highlights the writing of Ulysses S. Grant as a model for clarity, that is, the qualities of clear thought and clear expression.³¹ Oseid shows how Grant, a man who “preferred action,”³² wrote in a “crisp, forceful, and clear”³³ manner. As examples, she offers several of Grant’s military orders, including one to General George Gordon Meade, in which Grant wrote, “Lee’s army will be your objective point. Wherever Lee goes, there you will go also.”³⁴ While some have claimed that Grant’s writing is “without charm and without high breeding,”³⁵ Oseid points out that he wrote in a way that was “compact, yet packed with meaning.”³⁶ Oseid argues that legal writers should strive for the same type of clarity in their writing, noting that the “value that lawyers add when writing” should be to “clarify and explain the pertinent facts, issues, and law” in a way that is crystal clear.³⁷ Grant did that, says Oseid, and we should strive as legal writers to do that too.

Oseid’s final communicator-in-chief is Teddy Roosevelt. According to Oseid, the hallmark of Roosevelt’s writing is zeal, which she describes as a

22 *Id.* at 85.

23 *Id.* at 99.

24 *Id.* at 100.

25 *Id.* at 106.

26 *Id.* at 107.

27 *Id.* at 87.

28 *Id.* at 92.

29 *Id.* at 92 (quoting FRED KAPLAN, LINCOLN: THE BIOGRAPHY OF A WRITER 326 (2008)).

30 *Id.* at 91 (citing RONALD C. WHITE JR., THE ELOQUENT PRESIDENT: A PORTRAIT OF LINCOLN THROUGH HIS WORDS 62 (2005)).

31 *Id.* at 16.

32 *Id.* at 123.

33 *Id.* at 128.

34 *Id.* at 130 (citing ULYSSES S. GRANT, PERSONAL MEMOIRS OF ULYSSES S. GRANT 415–16 (1992)).

35 *Id.* at 140 (quoting JOHN WAUGH, U.S. GRANT: AMERICAN HERO, AMERICAN MYTH 210 (2009)).

36 *Id.* at 130.

37 *Id.* at 18.

way of “convinc[ing] the reader that the author actually believes what the author writes.”³⁸ Roosevelt, says Oseid, “lived his life with zeal,” and his days were “packed with work, adventure, and joy.”³⁹ Roosevelt’s writing was zealous, Oseid contends, because it was “accurate, simple, complete, and full of joy.”⁴⁰ Oseid offers several examples of Roosevelt’s zeal in speeches and his autobiography, including one of my favorite quotes—the man in the arena—from a 1910 speech:

The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes up short again and again because there is no effort without error or shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold timid souls who know neither victory nor defeat.⁴¹

Oseid further notes that Roosevelt is perhaps best known for his one-liners—“golden sentences” in which Roosevelt “shares his thoughts and ‘vividly sketches his ideals.’”⁴² These include such famous lines as, “I have always been fond of the West African proverb: ‘Speak softly and carry a big stick; you will go far.’”⁴³

The last chapters of *Communicators* are dedicated to a discussion of the five presidents’ reading habits and favorite books, the ways in which the presidents influenced the writing (and were influenced by the writing) of each other, and the common character traits that aided these presidents in being strong writers, including hard work, grit, confidence, realism, and creativity.⁴⁴

As a fan of history, I thoroughly enjoyed *Communicators*. Not only did I learn much about the presidents that I did not previously know, but through Oseid’s examples of their work, I found myself inspired to employ their writing techniques. *Communicators* does what it promises—gives lessons in persuasion while entertaining the reader with historical tidbits

³⁸ *Id.* at 20.

³⁹ *Id.* at 143.

⁴⁰ *Id.* at 144.

⁴¹ *Id.* at 163–64 (quoting THE WISDOM OF THEODORE ROOSEVELT 48 (Donald J. Davidson ed., 2003)).

⁴² *Id.* at 161 (quoting MURAT HALSTEAD, THE LIFE OF THEODORE ROOSEVELT: TWENTY-FIFTH PRESIDENT OF THE UNITED STATES 143 (1903)).

⁴³ *Id.* at 163 (quoting JAMES R. HOLMES, THEODORE ROOSEVELT AND WORLD ORDER: POLICE POWER IN INTERNATIONAL RELATIONS 19 (2006)).

⁴⁴ *Id.* at 229–41.

about some of the nation's most admired presidents. *Communicators* is part history book, part legal writing inspiration, and a must-read for anyone interested in either or both of these topics.