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**Language Ideology and the Plain-Language Movement:
How Straight-Talkers Sell Linguistic Myths**

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I. Introduction

The language of the law is a battlefield. Lawyers, ever known for their propensity to argue, are waging war over the style of legal texts—those laws, regulations, court opinions, briefs, memorandums, client letters, contracts, wills, and other legal documents that create and comprise the law of the land. At stake are the grammar, vocabulary, syntax, structure, and organization of legal texts, as well as the ideology of the legal profession and rule of law itself. On one side of the field stand the proponents of the Plain Language movement, a revolutionary cadre of lawyers, government workers, professional writers, grammar enthusiasts, and educators marching under the banner of clarity and singing a hymn for straightforwardness and simplification.¹ On the other side of the field amble the amorphous others: a motley assortment of lawyers and lawmakers who write in diverse styles, but most notably in legalese, a term used by Plain Language advocates to describe this opposition.²

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¹ See, e.g., Peter Tiersma, *The Plain English Movement*, LANGUAGEANDLAW.ORG, <http://www.languageandlaw.org/plainenglish.htm> (last visited Mar. 10, 2015) (detailing the movement and noting that “[t]he crusade to make legal language less convoluted and more accessible to average citizens has also resonated outside the academy”).

² See, e.g., Holly Wheeler, *Plain English to Arrive in Legal Briefs Near You*, IND. LAW, Nov. 20, 2013, <http://www.theindianlawyer.com/plain-english-to-arrive-in-legal-briefs-near-you/PARAMS/article/32855> (“Legalese has become a language unto itself, and some attorneys think it should stay that way. Others, however, are embracing writing for the sake of truly communicating as opposed to writing for the sake of using words.”).

Plain Language advocates claim that the long, complicated style of legalese is elitist, bloated, and filled with gobbledygook, which makes it too dense and clouded for laypersons to understand.³ The Plain Language movement styles itself as an effort to demystify the legal process by requiring that lawyers write in a direct and straightforward manner, using, for example, such features as active voice, short sentences, and familiar words.⁴ The movement has become highly and formally organized, with several international and national groups, organizations, and clubs devoted to its purpose.⁵ It has won many victories and attracted some notable converts. In 2010, for example, President Barak Obama signed the “Plain Writing Act” into law, mandating that all documents written by the federal government when communicating with the public be in plain language.⁶ The proposed Plain Regulations Act of 2013 would extend these language requirements to federal regulations as well.⁷

Resistance to the Plain Language movement has been largely informal. For example, a recent article by Rebeea Assy, *Can the Law Speak Directly to its Subjects? The Limitation of Plain Language*, argues that even assuming that plain style is more *linguistically* clear, it is not more *legally* clear because of the complex and specialized functioning of the legal system and the rich legal history which imbues specialized meanings into both terms of art and seemingly “everyday” words.⁸ Thus, Assy concludes that it is not possible to simplify the law to an extent that lay people could dispense with a lawyer.⁹

Assy’s article is noteworthy, and the issues are well-framed and well-examined. It is also representative of scholarly critique of the movement,¹⁰ as most of the debate about plain language has centered on issues of

3 *E.g., id.*

4 *See, e.g., Federal Plain Language Guidelines*, THE PLAIN LANGUAGE ACTION AND INFORMATION NETWORK (2011), <http://www.plainlanguage.gov/howto/guidelines> (last visited Mar. 10, 2015); *Business Speak: Clean It Up or Else*, BUS. WEEK, Oct. 26, 1998, at 8.

5 *See, e.g.,* THE CENTER FOR PLAIN LANGUAGE, <http://www.centerforplainlanguage.org/> (last visited Mar. 10, 2015); THE PLAIN LANGUAGE ASSOCIATION INTERNATIONAL (PLAIN), <http://www.plainlanguagenetwork.org/> (last visited Mar. 10, 2015). Unsurprisingly, there are no formal associations dedicated to promoting legalese.

6 *See* 5 U.S.C. § 301 note (2014) (Plain Writing Act of 2010; Clear Government Communication).

7 H.R. 1557, 113th Cong. § 4(b) (2013).

8 Rebeea Assy, *Can the Law Speak Directly to Its Subjects? The Limitation of Plain Language*, 38 J. L. & SOC’Y 376, 390–98 (2011).

9 *Id.* at 378, 390–91, 404.

10 I do not claim to have exhausted all of the scholarly research on the Plain Language movement. The movement is popular and a number of individuals, organizations, and governmental bodies regularly contribute to a growing corpus of research. But it is certainly true that the number of articles *for* the movement far outnumber those *against*. Thus, I have tried only to characterize the debate for purposes of this analysis. For a more exhaustive summary of the debate, see generally Jeffrey Barnes, *The Continuing Debate About ‘Plain Language’ Legislation: A Law Reform Conundrum*, 27 STAT. L. REV., no. 2, 2006, at 83.

audience, the ability of the movement to accomplish its aims, or on desirable features of the movement itself.¹¹ Few articles question the underlying ideology of the movement, as the movement's aims are generally accepted as unproblematic.¹² For example, one particularly vocal and noteworthy Plain Language advocate, legal writing professor Joseph Kimble, has written several articles and books supporting the movement, including *Lifting the Fog of Legalese: Essays on Plain Language*¹³ and *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law*.¹⁴ One of Kimble's favorite rhetorical devices in these texts is to argue that traditional legal-discourse advocates believe in several myths about plain language.¹⁵ These myths arise, of course, from the very criticisms that opponents have raised about the Plain Language movement, such as plain style's lack of artfulness or inability to adequately address the needs of legal discourse.¹⁶ Kimble does not consider, however, whether the ideologies perpetuated in his own arguments—most particularly, those of prescriptivism, standardization, and superiority—could be harmful myths themselves.

In fact, to my knowledge, no one has systematically examined the Plain Language movement under current sociolinguistic theories of language ideology, a field of study that seeks to relate beliefs about language use to larger social and cultural hierarchies.¹⁷ This is unfortunate; for if the government and legal profession are to adopt a singular style as the standard for all written discourse, then it is important to understand these ideologies and their potential implications for the legal system. The aim of this article, therefore, is to begin this examination in the hopes that it will contribute to and further illuminate this stylistic battlefield.

11 See, e.g., Robyn Penman, *Unspeakable Acts and Other Deeds: A Critique of Plain Legal Language*, 7 INFO. DESIGN J., no. 2, 1993, at 121, 122–30 (criticizing the movement in part based on the inability to dictate a singular style in response to legal discourse needs); Brian Hunt, *Plain Language in Legislative Drafting: Is it Really the Answer?*, 23 STAT. L. REV., no. 1, 2002, at 24, 27–31 (questioning the audience of legislative texts).

12 Cf. Barnes, *supra* note 10, at 83–84 (noting lack of scholarly examination and assumption that Plain Language is “unproblematic”).

13 JOSEPH KIMBLE, *LIFTING THE FOG OF LEGALESE: ESSAYS ON PLAIN LANGUAGE* (2006).

14 JOSEPH KIMBLE, *WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW* (2012) (hereinafter KIMBLE, *WRITING FOR DOLLARS*).

15 *Id.* at 11–43. See also Joseph Kimble, *Answering the Critics of Plain Language*, 5 SCRIBES J. OF LEGAL WRITING 51 (1994–1995) (hereinafter Kimble, *Answering the Critics*).

16 Kimble was most particularly responding to criticisms from Robyn Penman. *Id.* at 62.

17 Robert Eagleson has suggested that the field of sociolinguistics generally supports the need for increased clarity in legal texts. Robert Eagleson, *Plain English: Some Sociolinguistic Revelations*, in *LANGUAGE IN AUSTRALIA* 362, 362–72 (Suzanne Romaine ed., 1991). But his analysis does not systematically examine the language ideologies of the movement under sociolinguistic theory, which this article aims to do. See *id.*

Before beginning this inquiry, however, I must emphasize that the problems identified in this article lie within the ideologies of the movement and not with the use of any particular style or language variety itself. As advocates of the Plain Language movement have so successfully argued, traditional legal styles perpetuate many of the very same disparities and inequalities criticized herein. This article is not a defense of legalese. I strongly support many of the same ideals espoused by advocates of the Plain Language movement, such as promoting access to justice and encouraging inclusiveness in legal discourse. Rather, my aim here is to question whether these ideals are in fact promoted by the Plain Language movement's current ideologies and practices. Thus, this article should be read as an attempt to contribute positively to the efforts to change legal discourse, and not as an attempt to reject or dissuade reform.

In the following sections, I begin by defining language ideology as a field of inquiry and proceed to examine the ideologies of the Plain Language movement using the methodology of linguistic differentiation. After identifying three ideologies from the movement—prescriptivism, standardness, and moral superiority—I discuss how each ideology perpetuates discriminatory norms and practices.

Plain style is a beautiful style; there is nothing wrong with it in and of itself. The problems occur, however, when advocates of the Plain Language movement begin to promote the style as the only correct or even the best way of using language. Plain style is neither more inclusive, nor more consistently effective, nor more democratic than other styles. All styles and languages have value. All styles can be used effectively in legal discourse. If we are to truly better our system, we must first relinquish the myths that obscure the truths of abiding and beneficial reform. Thus, I encourage all lawyers, lawmakers, and laypersons to examine the three ideologies discussed below and to consider how to improve legal discourse.

II. Methodology and Findings

A. Preliminary Considerations: Language Ideology

Language ideology is a sociolinguistic term describing a field of study that operates as “a much-needed bridge between linguistic and social theory, because it relates the microculture of communicative action to political economic considerations of power and social inequality, confronting macrosocial constraints on language behavior.”¹⁸ Broadly

¹⁸ Kathryn A. Woolard & Bambi B. Shieffelin, *Language Ideology*, 23 ANN. REV. ANTHRO. 55, 72 (1994) (internal citations omitted).

stated, the field examines the nexus between language, belief, and the social system:

Linguistic/language ideologies have been defined as “sets of beliefs about language articulated by users as a rationalization or justification of perceived language structure and use”; with greater social emphasis as “self-evident ideas and objectives a group holds concerning the roles of language in the social experiences of members as they contribute to the expression of the group” and “the cultural system of ideas about social and linguistic relationships, together with their loading of moral and political interests”; and most broadly as “shared bodies of commonsense notions about the nature of language in the world.”¹⁹

Language does more than convey information; it also creates and maintains social structures and possesses symbolic, cultural, and economic worth beyond its locutionary force.²⁰ Sociolinguists, therefore, study ideas or beliefs about language use—termed ideologies—in order to explain how those ideologies relate to and operate upon the intra- and inter-sociopolitical forces within various communities or groups.

For example, one particularly prevalent ideology is standard-language ideology, or the belief in an idealized, homogenized, and communicative-purpose-driven language that is also entangled with notions of linguistic, sociopolitical, and moral superiority and control.²¹ In other words, standard-language ideology is the belief that there are correct or proper ways of speaking or writing which everyone can and should use, and thus, any deviation from this norm is considered incorrect or improper. These notions of correctness or propriety largely arise from the norms and standards defined by those who are in control. As explored further below, in many ways the ideologies of the Plain Language movement mirror those of standard-language ideology, which makes this ideology particularly relevant here.

B. Linguistic Differentiation

There is, of course, a wide range of opinions and beliefs about the aims and features of the Plain Language movement, and this article does not attempt to cover every point of view. A selection of literature by the leading advocates of the Plain Language movement was reviewed in an attempt to identify trends or general beliefs. This included, for example,

19 *Id.* at 57 (citations omitted).

20 *Id.* at 57–58.

21 See, e.g., JAMES MILROY & LESLEY MILROY, AUTHORITY IN LANGUAGE: INVESTIGATING STANDARD ENGLISH 151–60 (3d ed. 1999).

reviewing usage guides by Bryan Garner²² and essays by Joseph Kimble.²³ Particular attention was paid to passages in these texts that displayed a level of awareness about the scope, methods, and aims of the movement, as these passages were considered to be especially revealing. A very brief selection of passages is included in the appendix below.

This literature was then analyzed under theories of linguistic differentiation, a theoretical model developed by sociolinguists Susan Gal and Judith Irvine as a way of studying how distinctions or boundaries are made between different language varieties (such as plain language and legalese).²⁴ Variations between the ways that different groups use language, including stylistic variations, “can become a pointer to (index of) speakers’ social identities, as well as of the typical activities of those speakers.”²⁵ As part of everyday life, language users start to notice variations in the way that linguistic features are used. For example, where one lawyer says “*ultra vires*,” the other says “beyond the court’s jurisdiction”; one lawyer says “*in limine*,” while the other says “to exclude.” Language users then start to associate these variations with different social groups; for example, active voice becomes associated with the Plain Language movement, and passive voice becomes associated the others who use legalese.²⁶ These associations are used to create ideologies about the behavior, aesthetics, effectiveness, and morality of the different language varieties and their associated social groups.²⁷ In other words, some groups start to believe that certain language varieties are clearer, more attractive, more effective, more moral, or generally just better than other language varieties. And these beliefs are in turn used to make judgments about different language-using groups: that some groups are, in turn, clearer, more attractive, more effective, more moral, or generally just better than others.²⁸ In the case of plain style versus legalese, it is important to note that the two opposing groups also comprise a single, larger group of professional elite, that of lawyers and lawmakers.²⁹

22 *E.g.*, BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES* (2001).

23 *E.g.*, KIMBLE, *supra* note 13; KIMBLE, *WRITING FOR DOLLARS*, *supra* note 14; Kimble, *Answering the Critics*, *supra* note 15.

24 Susan Gal & Judith Irvine, *The Boundaries of Languages and Disciplines: How Ideologies Construct Difference*, 62 *SOC. RES.* 967, 970–71 (1995) (emphasis in original). See also Judith Irvine, “Style” as Distinctiveness: *The Culture and Ideology of Linguistic Differentiation*, in *STYLE AND SOCIOLINGUISTIC VARIATION* 21, 32–43 (Penelope Eckert and John R. Rickford, eds., 2001) (applying linguistic differentiation to style).

25 Gal & Irvine, *supra* note 24, at 973.

26 See, e.g., *Federal Plain Language Guidelines*, *supra* note 4, at 20–21.

27 Gal & Irvine, *supra* note 24, at 973.

28 See generally *id.* (reviewing how linguistic differences have historically been used to create political differentiation and to buttress claims of superiority).

Gal and Irvine elucidate three semiotic processes through which groups construct these ideological boundaries: iconicity, recursiveness, and erasure:³⁰

Iconicity: “Iconicity involves a transformation of the sign relationship between linguistic practices, features, or varieties and the social images with which they are linked.”³¹ Through the process of iconicity, certain words or symbols become associated with and are then used to characterize the linguistic variety and its associated group.³² In other words, the Plain Language movement associates specific language features—such as obscure Latin terms or long, periodic sentences—with legalese and then uses these associations to make social evaluations about the group that uses such features. Plain style and its advocates thus are considered clear, understandable, straightforward, cogent, honest, and truthful, while legalese and its lawyers are considered full of gobbledygook, bloated, jargon-filled, pompous, ignorant, and artificial. Traditional legal writers are characterized as “wordy, stuffy, artificial, and often ungrammatical” individuals who rely upon “worn out, largely ineffective writing habits” as a result of defects in their legal education, which requires students to study “reams of linguistic dreck—jargon-filled, pretentious, flatulent legal tomes that seem designed to dim any flair for language.”³³ Legalese is depicted as a disease, caught through association with traditional legal writers; plain style is the inoculation or cure.³⁴

Recursiveness: Recursiveness refers to the process whereby the various oppositions between language varieties are projected to differentiate between language using groups, thereby creating distinct identities.³⁵ This is a complicated and unfixed process: “Reminiscent of fractals in geometry, and of the structures of segmentary kinship systems (as well as other phenomena involving segmentation), the myriad oppositions that can create identity may be reproduced and repeated, either within each side of a dichotomy or outside it.”³⁶ Recursiveness thus permits groups and actors within the group “with the discursive or

29 In fact, the debate about Plain Language may just be an attempt by the legal profession to maintain its legitimacy in a shifting marketplace. See, e.g., Soha Turfler, *The Goodman Speaking Well: Neoliberalism, Style, and the Ideologies of the Legal Profession* (forthcoming) (on file with author).

30 Gal & Irvine, *supra* note 24, at 972.

31 *Id.* at 973 (emphasis in original).

32 *Id.* at 973–74.

33 GARNER, *supra* note 22, at xvii–xviii.

34 See *id.* at xvii–xix.

35 Gal & Irvine, *supra* note 24, at 974.

36 *Id.* (footnote omitted).

cultural resources to claim and thus attempt to create shifting ‘communities,’ identities, and selves, at different levels of contrast, within a cultural field.”³⁷ A group does not need to create a simple dichotomy between itself and the other groups; similarities, as well as oppositions, can be used to maintain ideological distinctions. Likewise, plain-style advocates need not use plain style all the time; recursiveness allows for the shifting and complex nature of social identities and relationships. Recursiveness also allows Plain Language advocates to distinguish plain style from legalese, even when those advocates use similar stylistic features. One style can mirror the other and still those advocates’ identities can remain ideologically distinct.

The most obvious example of this arises from the use of terms of art in both legalese and plain style. When, for example, Plain Language advocates use potentially specialized terms, such as “reasonableness” or “consideration,” it is excusable because such terms are useful or unavoidable;³⁸ but when traditional legal discourse uses specialized terms as “*ab initio*” or “*res ipsa loquitur*,” they are “lawyerisms—words and formalisms that give legal writing its musty smell.”³⁹ Similarly, advocates often distinguish plain style by its reliance on active voice; yet these same advocates recognize that they sometimes use passive constructions, nevertheless explaining that passive voice is used only when necessary and appropriate.⁴⁰ On the other hand, passive voice is considered overused, unnecessary, and inappropriate when used in legalese.⁴¹ In this way, the Plain Language movement can legitimize the use of certain stylistic features in its own styles and discourses, while stigmatizing legalese when it relies on the very same features.

Erasure: Finally, “[e]rasure is the process in which ideology, in simplifying the field of linguistic practices, renders some persons or activities or sociolinguistic phenomena invisible. Facts that are inconsistent with the ideological scheme may go unnoticed or get explained away.”⁴² As Gal and Irvine recognize, “linguistic ideology is a totalizing vision[;] elements that do not fit its interpretive structure—that cannot be

37 *Id.*

38 KIMBLE, *supra* note 13, at 10.

39 *Id.* at 173.

40 See, e.g., *Federal Plain Language Guidelines*, *supra* note 4 at 21 (“In a very few instances, passive voice may be appropriate. For example, when one action follows another as a matter of law, and there is no actor (besides the law itself) for the second action, a passive sentence may be the best method of expression. You might also use passive when it doesn’t matter who is doing an action.”).

41 See, e.g., KIMBLE, *supra* note 13, at xi (“Legal sentences tend to be long and flabby. They overuse the passive voice and abstract nouns (in place of strong verbs).”).

42 Gal & Irvine, *supra* note 24, at 974 (emphasis in original).

seen to fit—must either be ignored or transformed.”⁴³ One of the most commonly erased facts is that of heterogeneity, or internal variation within linguistic varieties and groups.⁴⁴

A good example of erasure comes from the following definition of plain style, as adopted by one of its leading advocates:

A communication is in plain language if it meets the needs of its audience—by using language, structure, and design so clearly and effectively that the audience has the best possible chance of readily finding what they need, understanding it, and using it.⁴⁵

In other words, plain style is style that is clear and effective for the intended audience; whatever is not clear and effective is not in plain style. Of course, this definition is broad and subjective, allowing for any range of possible interpretations.⁴⁶ Plain Language advocates thus often rely on various lists of rules and preferences to further define the features of plain language and mark the boundaries of accepted usage.⁴⁷ For example, one common prescription is to use familiar or to avoid obsolete words.⁴⁸

But such rules often erase the potential heterogeneity of legal discourse. What are familiar words? Are they words that are used each day by a lawyer or college graduate? Or are they words used by a middle-school student? Do they include words used by native or second-language speakers? And how does race, ethnicity, gender, and socioeconomic class factor into this analysis? Of course, the answer to this quandary depends largely on audience. Legal discourse is a field that could potentially involve a great number of highly diverse participants; the law touches persons from every imaginable race, ethnicity, gender, socioeconomic class, and educational background. Each of these potential participants in legal discourse possesses his or her own dialect, language, or other linguistic

⁴³ *Id.*

⁴⁴ *Id.* at 975.

⁴⁵ Annetta Cheek, *Defining Plain Language*, 64 CLARITY, Nov. 2010, at 5.

⁴⁶ This is also why Plain Language advocates strongly suggest that plain style texts be measured for readability using various performance tests and surveys. For an example of such a test, see generally Eleanor Cornelius, *Plain Language as Alternative Textualisation*, 28 S. AFR. LINGUISTICS & APPLIED LANGUAGE STUD., no. 2, 2010, at 171. For a criticism of these tests, see Penman, *supra* note 11, at 125.

⁴⁷ See, e.g., Paul R. Timm & Daniel Oswald, *Plain English Laws: Symbolic or Real?*, 22 J. BUS. COMM., no. 2, 1985, at 31, 37 (summarizing requirements of various plain English laws). Timm and Oswald suggest that the definition of plain style should be through specific guidelines, not actual laws; otherwise, “plain English will be at the mercy of subjective determination by lawyers—professionals whose communication style is notorious for its lack of plain English.” *Id.* at 37. Of course, these scholars do not recognize the irony that requiring objective determinations of style through guidelines—which are, by nature, bureaucratic and disconnected from the communicative situation—comes with its own hosts of ambiguities and hegemonic problems.

⁴⁸ See, e.g., *id.* at 36; KIMBLE, *supra* note 13, at 164.

repertoires. Thus, the concept of audience often offers little help in defining “familiar” words when it comes to legal texts. But the Plain Language movement mostly erases this heterogeneity, relying instead on homogenous concepts to define its features.⁴⁹

Similarly, the movement often characterizes legalese as an antiquated and fixed style, which ignores the fact that style and usage in traditional legal discourse are both diverse and in constant flux. Indeed, legal style has been changing for centuries and continues to change today, shaped and molded through the discursive interchange between an increasingly diverse group of lawyers, lawmakers, and laypersons. There has never been just one legalese, just as there can be no perfect dichotomy between legalese and plain style. But whatever does not fit with an erasing ideology is ignored or explained away.

In fact, there are so many similarities between the features in plain style and what the movement terms legalese that arguably the only distinction between them is ideological: plain style is plain style, and legalese is legalese, because they are so characterized by Plain Language advocates. Moreover, underlying this ideological distinction are three basic assumptions:

One: That legal discourse is in need of correction;

Two: That plain style fulfills this corrective need and should be prescribed to provide more effective standards for legal discourse; and

Three: That plain style is therefore linguistically and morally superior to traditional legal discourse.

Plain Language advocates sincerely believe that traditional legal discourse is (at best) stagnating, or (at worst) decaying, and that plain style offers the solution by offering clearer and more understandable standards for legal communication.⁵⁰ Because this notion of clarity is equated with increasing access to justice, Plain Language advocates believe that plain style is thus linguistically, politically, and morally superior because it will lead to better mutual understanding and honest dealings between lawyers–lawmakers and their clients–citizens.

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⁴⁹ See, e.g., *Plain Language vs. Legalese Part 2*, THE FLORIDA ASSOCIATION OF LEGAL DOCUMENT PREPARERS, <http://www.faldp.org/legalese-part2.html> (last visited Mar. 10, 2015) (relying on a readability formula to propose that most Americans read at a seventh-grade level and hinting that this homogenous and erasing characterization could be used as the acceptable audience for plain-language texts).

⁵⁰ See generally *infra* Appendix.

III. Discussion: Language Subordination and Linguistic Myths

In many ways, the ideologies of the Plain Language movement follow the model of language subordination as described by sociolinguist Rosina Lippi-Greene, in which one language variety is subordinated to another through a process of mystification, prescription, and standardization.⁵¹ Mystification occurs whenever self-appointed language guardians claim that language is in decline and in need of correction.⁵² Prescription occurs when those same guardians then claim authority to prescribe rules for language use, legitimatizing certain usages or styles while stigmatizing others.⁵³ Finally, standardization occurs when guardians perpetuate the notion that these rules will lead to a purer and superior standard for all language use.⁵⁴ The Plain Language movement has followed these subordination processes to a large extent in its quest to rectify the problems it has associated with legalese. But each of these processes are based on specific myths about language that are criticized by current sociolinguistic literature. As self-appointed language guardians, Plain Language advocates should therefore be aware of the following three myths: prescriptivism, standard language ideology, and moral superiority.

A. The Myth of Decay and The Problems with Prescription

The Plain Language movement is a reform movement: it seeks to cure the evils it has identified in traditional legal discourse through the panacea of plain language. The movement is based on an overall assumption that legal style is in a state of stagnation or decay and in need of saving or correction. Sociolinguists have recognized that this is a common assessment: many language users believe “since the language is believed to be always on a downhill path, it is up to experts (such as dictionary-makers) to arrest and reverse the decline.”⁵⁵ This is the core of an ideology known as prescriptivism, in which a select group of language users self-proclaims the authority to distinguish between so-called “legitimate’ language change and ‘corruption’ or ‘decay.’”⁵⁶ Prescriptivists attempt to use these notions of legitimacy or correctness as a way to purify or control language use.⁵⁷ They depend upon “an ideology (or set of beliefs)

51 ROSINA LIPPI-GREEN, *ENGLISH WITH AN ACCENT: LANGUAGE, IDEOLOGY, AND DISCRIMINATION IN THE UNITED STATES* 69–70 (2d. ed., 2012)

52 *See id.*

53 *See id.*

54 *See id.*

55 MILROY & MILROY, *supra* note 21, at 4.

56 James Milroy, *The Consequences of Standardisation in Descriptive Linguistics*, in *STANDARD ENGLISH: THE WIDENING DEBATE* 16, 29–30 (Tony Bex & Richard J. Watts. eds., 1991).

57 *Id.* at 30–33.

concerning language which requires that in language use, as in other matters, things shall be done in the ‘right’ way.”⁵⁸

However, like other such social constructs such as table manners and clothing, there is little empirical foundation for these notions of legitimacy or correctness in terms of language style.⁵⁹ There is no singular, superior way of using language in linguistic terms. As Rosina Lippi-Greene explains, whether any communication is clear or effective in the sense of being understood is subjective.⁶⁰ Rules that address such issues as the length of a sentence or the etymological source of certain vocabulary (such as Romance or Anglo-Saxon) cannot ensure that any given communication will be effective.⁶¹ Thus, even if legal discourse was in need of correction, the imposition of a singular style or the adoption of drafting rules, guidelines, or standards could never offer an overarching and uncontestable cure.⁶²

Sociolinguists also recognize that language is a social construct that is in a constant state of change and modification; authors constantly draw on the wide resources of language to express diverse meanings in myriad contexts.⁶³ As authors do so, the language adapts and evolves to fit the needs of the participants in that situation, while still remaining influenced and informed by past situations and usages.⁶⁴ As such, the fears of language decaying are simply unfounded:

Plainly the idiom of “corruption and decay” is . . . balderdash and piffle. What is happening here is change, change, change, but the language is not getting worse as the result of it. Nor is it getting better. It is just—changing. It is keeping pace with society, as it always must, sometimes changing slowly, sometimes rapidly. Today, with so much social change about, especially as the result of increasing ethnic diversity, the spread of English as a global language, and effect of internet technology, we find the language changing more rapidly and widely than ever before.⁶⁵

58 MILROY & MILROY, *supra* note 21, at 1.

59 *Id.*

60 LIPPI-GREEN, *supra* note 51, at 14–15.

61 *Id.* See also Robyn Penman, *Plain English: Wrong Solution to an Important Problem*, 19 *Austl. J. Comm.*, no.3, 1992, at 1, 10–15 (discussing the limitations of plain language in light of the nature of language).

62 See generally Jeffrey Barnes, *When ‘Plain Language’ Legislation is Ambiguous—Sources of Doubt and Lessons for the Plain Language Movement*, 34 *Melbourne U. L. Rev.* 671 (2010) (analyzing several case studies of ambiguity in Plain Language legislation).

63 *Cf.* LIPPI-GREEN, *supra* note 51, at 7–8.

64 *Cf. id.*

65 DAVID CRYSTAL, *THE FIGHT FOR ENGLISH: HOW LANGUAGE PUNDITS ATE, SHOT, AND LEFT* 93 (2006).

This is true of legal discourse as well. Legal discourse is a social construct that has been developed throughout the centuries in relationship with the legal system, a system that is itself influenced by both change and tradition. Throughout the centuries, participants in the system have developed and manipulated that discourse in relationship with the demands of that system, creating a community with some unique linguistic features.⁶⁶ And because of the traditional and privileged role played by the legal profession in the rule of law, lawyers have served as primary participants in that community, molding the law into a professional discourse that the Plain Language movement has termed *legalese*.⁶⁷ Indeed, as a profession that deals almost entirely in words—from the interpretation and drafting of written laws and contracts to depositions and oral arguments—lawyers in many ways form their professional identities upon this discourse. The processes of change may have been accelerated in the twentieth century with the admission of women and minorities to law practice, as these new lawyers brought their own linguistic identities and changed the discourses of the profession.⁶⁸ But legal discourse has also retained many traditional practices, perhaps more so than the discourse of other communities because of its heavy emphasis on such stabilizing methodologies as *stare decisis* and codification.

In a sense, the movement argues that legal discourse is stagnating or decaying because of this professionalization and codification, for such elitism and inflexibility do not fit the needs of the current legal system.⁶⁹ There may be some merit to this assessment; after all, few would argue that our current practices and structures are ideal. But the imposition of new rules and standards for legal communication does little to cure this elitism and inflexibility; at most, it merely shifts elites. No group or individual should claim the right to control the communicative practices of an entire community. After all, such a claim assumes that language use is not in “the possession of the communities that use it . . . but [is] the property of small elite groups who have a moral duty to pronounce on language behaviour much as they might pronounce on moral behaviour.”⁷⁰

⁶⁶ See generally Peter Tiersma, *Some Myths About Legal Language*, 2 LAW, CULTURE & HUMAN., no. 2, 2006, at 29, 44–50 (discussing some of the developments in the features of legal discourse).

⁶⁷ See, e.g., J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 98–99 (1994) (discussing the law as a professional discourse community).

⁶⁸ See, e.g., Bozena Tieszen & Heather Pantoga, *Gender-Based Miscommunication in Legal Discourse and Its Impact on the Clarity of Legal Language*, 19 INT'L J. FOR THE SEMIOTICS OF LAW 69, 79–80 (2006) (noting less use of “legalese” by women lawyers and suggesting this is a result of differences in power).

⁶⁹ See, e.g., Burt A. Leete, *Plain Language Legislation: A Comparison of Approaches*, 18 AM. BUS. L.J., 511, 512 (1981), (suggesting that the economic marketplace demands plain language, especially in the case of consumer contracts).

⁷⁰ Milroy, *supra* note 56, at 16, 21.

It is therefore somewhat ironic that the Plain Language movement, which seeks to free legal language from the supposedly tyrannical and disaffected control imposed by lawyers, is itself a prescriptive movement.⁷¹ In this sense, the movement can be viewed as prescriptivism of a different sort, one that seeks only to alter the style of legitimate discourse rather than to dissipate false notions of legitimacy or correctness in the first place. The movement does nothing to actually free legal discourse from control of a select few self-appointed authorities—plain-language lawyers and lawmakers—even if it does assert that those authorities consider the needs of a wider audience. Control over legal language still rests in the hands of a few, and not in the hands of all those who must actually use it.

B. The Myth of Homogeneity and The Problems with Standardization

Moreover, the Plain Language movement's assertion that plain style should be accepted as a new standard for legal discourse perpetuates potentially harmful myths of an abstracted, idealized, homogenous language.⁷² This ideology—known as standard-language ideology—seeks to erase linguistic variety by establishing norms and standards in which some usages are accepted as legitimate and others are stigmatized.⁷³ As sociolinguists James and Lesley Milroy explain,

The whole notion of standardisation is bound up with the aim of functional efficiency of the language. Ultimately, the desideratum is that everyone should use and understand the language in the same way with the minimum of misunderstanding and the maximum of efficiency.⁷⁴

In other words, standard-language ideology asserts there are proper and improper ways of using language, and anyone who uses language improperly should be excluded or corrected.

⁷¹ See, e.g., Robert D. Eagleson, *Gobbledegook: The Tyranny of Linguistic Conceits*, in 2 LANGUAGE TOPICS: ESSAYS IN HONOUR OF MICHAEL HALLIDAY 191, 201 (Ross Steele & Terry Threadgold eds., 1987) ("Today, writers as well as readers suffer under the tyranny of linguistic conceits and whims. We do not simply have the manipulation of language to control, but the dread state of language in control. We will only overthrow this tyranny when we acknowledge the snare and encumbrance it has become for official and legal writers as well as for the community at large.") (emphasis in original).

⁷² LIPPI-GREEN, *supra* note 51, at 67 (footnote omitted).

⁷³ Lesley Milroy, *Standard English and Language Ideology in Britain and the United States*, in STANDARD ENGLISH: THE WIDENING DEBATE 173, 174–75 (Tony Bex & Richard J. Watts. eds., 1991) (hereinafter Milroy, *Standard English and Language Ideology*). Some advocates of the Plain Language movement seem to have recognized this link between plain style and standard languages; for example, Kali Jensen in her note on the movement discusses some of the research on Standard American English in relation to plain style. See generally Kali Jensen, note, *The Plain English Movement's Shifting Goals*, 13 J. GENDER RACE & JUST. 807 (2010). However, Jensen does not fully examine some of the implications of standard-language ideology, merely assuming that the style could possibly make the law more understandable to nonstandard-language-speaking groups. See *id.* at 817–21.

⁷⁴ MILROY & MILROY, *supra* note 21, at 19

But there are serious problems with the ideology. First, the ideology encourages a view of “language as a relatively fixed, invariant and unchanging entity”⁷⁵ which promotes the inaccurate and simplistic assumptions about language and communicative effectiveness discussed above. Moreover, by promoting notions of homogeneity, legitimacy, and correctness in language use, standard language ideology promotes hidden norms and discrimination, which favor privileged groups and classes.⁷⁶

The core of standard-language ideology is based on the assumption that there are norms of language that all people can and should use and understand;⁷⁷ but in reality, comprehension of and access to these proposed norms are not as uniform or absolute as assumed. There is intrinsic variation in language use, as spoken language is an innately acquired human capacity; so the linguistic features of any individual will be influenced by that individual’s background and identity.⁷⁸ Only in written language—which is primarily acquired through education—is any type of standardization possible.⁷⁹

But not all individuals or groups have access to the same education; as a cultural and social resource, education is subject to the sociopolitical forces of other limited resources.⁸⁰ As a result, individuals who are negatively affected by disparities in the distribution of power and other social and cultural resources will be similarly affected in access to these standards.⁸¹ Thus, nonstandard languages are often seen as a “marker” or associated with membership in a marginalized race, gender, and socioeconomic class.⁸²

For example, one commonly promoted standard language is that of Standard American English, a dialect of English that is considered correct and legitimate by language mavens and popular belief.⁸³ The dialect is historically linked to the linguistic practices of ruling, wealthy groups and classes.⁸⁴ In one study, a control group of instructors assumed texts written in Standard American English were written by White and middle-to upper-class authors.⁸⁵ Texts that were perceived to be written in standard languages were therefore associated with the wealthy, educated

75 *Id.* at 21.

76 LIPPI-GREEN, *supra* note 51, at 61.

77 *Id.* at 68.

78 *Id.* at 19–22.

79 MILROY & MILROY, *supra* note 21, at 18–19.

80 LIPPI-GREEN, *supra* note 51, at 68.

81 *Id.*

82 *Id.* at 61; Milroy, *Standard English and Language Ideology*, *supra* note 73, at 173–83.

83 LIPPI-GREEN, *supra* note 51, at 57–60.

84 See generally CRYSTAL, *supra* note 65 (detailing the history of Standard English); MILROY & MILROY, *supra* note 21, at 150–60.

85 Bethany Davila, *Indexicality and “Standard” Edited American English: Examining the Link Between Conceptions of Standardness and Perceived Authorial Identity*, 29 WRITTEN COMM. no. 2, 2012, at 180.

elite.⁸⁶ Texts that were perceived to be written in nonstandard languages, on the other hand, were considered inferior.⁸⁷

Standard American English can therefore serve as a gatekeeper to cultural and social resources, as individuals in a community must conform to the dialect in order to gain access to those resources. Continued assertion of the superiority or propriety of one language variety over others therefore forces nonconforming individuals into either identity-stripping assimilation—as they must relinquish their linguistic identity in order to conform and succeed—or further marginalization—as they are excluded due to their nonconformance.⁸⁸

Plain language, of course, relies on the rules of Standard American English. Thus, the imposition of plain-language standards will not increase access to justice for groups already marginalized by this dialect. This is true regardless of whether plain style actually has the potential to make the law more understandable to individuals who lack legal training. Nonstandard-language speakers may not have access to the resources that would allow them to understand these standard texts, no matter how plainly they are written.

But even if these marginalized individuals and groups have access to a standard dialect, an ideology that promotes belief in the standard will nevertheless require that marginalized individuals and groups give up their own nonstandard-language practices in order to conform and fit in. Mari Matsuda notes,

As feminist theorists have pointed out, everyone has a gender, but the hidden norm in law is male. As critical race theorists have pointed out, everyone has a race, but the hidden norm in law is white. In any dyadic relationship, the two ends are equidistant from each other. If the parties are equal in power, we see them as equally different from each other. When the parties are in a relationship of domination and subordination we tend to say that the dominant is normal, the subordinate is different from normal.⁸⁹

To a certain extent, the Plain Language movement can be characterized as an effort to challenge these hidden norms and discriminations by dislodging the legitimacy and correctness associated with the legalese

⁸⁶ See *id.* at 195–96.

⁸⁷ See *id.*

⁸⁸ LIPPI-GREEN, *supra* note 51, at 61, 69–70.

⁸⁹ Mari Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1361 (1991).

favored by the traditional legal elite. But rather than dispelling false notions of the correctness, legitimacy, and prestige of one language variety over another, the movement has merely embraced new standards, substituting new norms in place of the old.⁹⁰ Much of this has to do with the process of language subordination itself: the languages of the powerless become subordinated to those of the powerful through an assertion of legitimacy and correctness.⁹¹

By embracing standard-language ideology, the Plain Language movement comes dangerously close to promoting a system which favors, legitimatizes, and promotes individuals from privileged groups and which disfavors, stigmatizes, and marginalizes others. The faces of those in power may change, but the system remains the same. Those in the movement should therefore be especially careful to avoid promoting notions of legitimacy or correctness in the way that language resources are used. Otherwise, standard-language ideology will ensure that the language of the law not only remains in the hands of the few, but also in the hands of those privileged few who already possess most of the economic, social, political, and cultural resources in the first place.

C. The Myth of Superiority and the Problems of Morality

The final ideology critiqued in this article is the myth of superiority. This notion of superiority has three dimensions: first, that plain style is linguistically superior in that it is believed to be more clear or understandable than legalese; second, that plain style is politically superior in that it is believed to promote increased access to justice by making the law more understandable to laypersons; and third, that plain style is morally superior than legalese. The first two dimensions have been addressed above: plain style cannot ensure more effective communication and is in danger of perpetuating discriminations in our legal system that inhibit access to justice. This final section will therefore focus on the moral dimension of the Plain Language movement.

Of course, this notion of moral superiority is an ideology that the Plain Language movement has been cautious in adopting, and has even sometimes explicitly denied; but the ideology runs subtly throughout the movement's aims.⁹² See, for example, this discussion in *Clarity*, an international journal of the Plain Language movement:

⁹⁰ Once again, it is important to emphasize that this article is not meant to defend or argue on behalf of legalese. Instead, its purpose is to question whether the ideologies currently promoted by the Plain Language movement fit that movement's espoused ideals.

⁹¹ LIPPI-GREEN, *supra* note 51, at 69–71.

⁹² For example, plain-language advocates often equate use of the style with such moral values as “democracy, equity, authenticity and transparency.” Roslyn Petelin, *Considering Plain Language: Issues and Initiatives*, 15 CORP. COMM.: AN INT’L J., no.

One view is that if information is misleading it cannot be plain and that honesty is therefore an essential component of plain language. This is a seductive idea, as a lie can be expressed in plain language: I didn't do it. And George Orwell argued for another, less obvious, incompatibility: "The great enemy of clear language is insincerity. When there is a gap between one's real and one's declared aims, one turns as it were instinctively to long words and exhausted idioms, like a cuttlefish spurting out ink." So we believe we should define plain language without referring to honesty but that the need for honesty should be incorporated in the standards we set for plain language practitioners and documents.⁹³

Even though the movement did not officially incorporate honesty into its definition of plain language, the fact that this notion was seriously entertained is revealing. Indeed, such moralistic weighing is characteristic of the movement's evaluation of the relative merits of plain style versus legalese. The movement often speaks of the sense of prestige that has been associated with traditional legal discourse, but argues that such prestige is unearned or falsely assumed.⁹⁴

The reference to George Orwell in the above-quoted passage is also revealing. Many of the complaints levied by the Plain Language movement against legalese are similar to those levied in Orwell's *Politics and the English Language*, including a moral concern that style can be used to deceive and manipulate others or to corrupt thought.⁹⁵ Likewise, legalese is often portrayed as morally deficient puffery designed to manipulate and deceive, or as the intentional obfuscation of language for the purposes of maintaining current the hierarchy wherein lawyers possess unchallenged authority over legal discourse.⁹⁶

Orwell's and the Plain Language movement's moral concerns about language use are not new. Sociolinguists James Milroy and Lesley Milroy have noted that these types of moral complaints are quite pervasive, in that language guardians often portray certain styles and usages as signs of "stupidity, ignorance, perversity, moral degeneracy, etc."⁹⁷ The perceived

2, 2000, at 205, 212. Judgments about style are necessarily value judgments; after all, beauty is in the eye of the beholder, but we often rely on social and cultural norms to determine what we consider beautiful. For a good discussion of style as value judgments, see RICHARD LANHAM, *ANALYZING PROSE* 4–10 (2d ed. 2003).

⁹³ Cheek, *supra* note 45, at 9–10 (citation omitted).

⁹⁴ KIMBLE, *WRITING FOR DOLLARS*, *supra* note 14, at 26.

⁹⁵ George Orwell, *Politics and the English Language*, in 4 *THE COLLECTED ESSAYS, JOURNALISM, AND LETTERS OF GEORGE ORWELL* 127, 127–39 (Sonia Orwell & Ian Angus, eds., 1968).

⁹⁶ See, e.g., KIMBLE, *WRITING FOR DOLLARS*, *supra* note 14, at 28 (reviewing argument that lawyers have a "vested interest in obscurity").

⁹⁷ MILROY & MILROY, *supra* note 21, at 33.

decline in language use is linked to an overall moral decline, as it is feared that the abuse or improper use of language can corrupt thought.⁹⁸ In some ways these complaints have a valid basis: “[I]t is of course possible to cover up emptiness of thought by using [specialized] vocabulary, and even . . . to deny access to those who have not had the necessary classical education.”⁹⁹ However, the fault “does not lie in the language itself: it lies in the way that certain resources of language are being used and passively received. It is always possible for those resources to be used in responsible, thoughtful and critical ways.”¹⁰⁰ The fault does not lie in a style itself; it lies in the way that it is used.

In fact, the fuzzy distinctions between legalese and plain style, as well as the linguistic neutrality and diversity of language, suggests that the Plain Language movement’s belief that plain style is more moral or honest than legalese is not a belief about language at all. Rather, these complaints and concerns are an assessment of the relative moral merit or truthfulness of the users of these various styles. It is an assessment that arises through the process of linguistic revalorization, in which “[l]anguage varieties that are regularly associated with (and thus index) particular speakers are often revalorized—or misrecognized—not just as symbols of group identity, but as emblems of political allegiance or of social, intellectual, or moral worth.”¹⁰¹ Thus, the belief that legal discourse is in need of correction may be a belief that the legal profession and laws are in need of moral realignment, or at least superficial revision. The Plain Language movement has used the features of legalese to index an association of dishonesty, or at least, disaffectedness, with the traditions of the law and legal profession.

Seen in this light, plain style for these advocates has come “to signify not merely . . . good taste . . . but the values we cherish as essential to democracy . . .”¹⁰² As Deborah Cameron explains,

[P]lainness often stands symbolically against elitism. It is not acceptable in modern society for class or professional elites to address people in a way they find unintelligible, pretentious or suggestive of very distant and

⁹⁸ *Id.* at 40–41.

⁹⁹ *Id.* at 37.

¹⁰⁰ *Id.* at 39. See also Ed Smith, *Don't be Beguiled by Orwell: Using Plain and Clear Language is Not Always a Moral Virtue*, NEW STATESMAN, Feb. 9, 2013, <http://www.newstatesman.com/culture/2013/02/don%E2%80%99t-be-beguiled-orwell-using-plain-and-clear-language-not-always-moral-virtue> (“We can affect plainness and directness just as much as we can affect sophistication and complexity. We can try to mislead or to impress, in either mode. Or we can use either register honestly.”).

¹⁰¹ Woolard & Shieffelin, *supra* note 18, at 61 (footnote omitted).

¹⁰² DEBORAH CAMERON, *VERBAL HYGIENE* 68 (1995).

authoritarian social relations. But in addition, plainness has acquired another, even more morally compelling symbolic function. It has become a symbol of the struggle against totalitarianism.¹⁰³

But, as even the Plain Language movement has at times recognized, it is possible to deceive, manipulate, and hide the absence of critical thought in any style and any language.¹⁰⁴ In fact, one could even argue that a lie written in plain style is just as persuasive as a lie in legalese, if not more so. After all, does “I did not do it” sound any less convincing than “the alleged act was not perpetrated by me”?

The association between style and moral superiority is tenuous. Given the problems with prescriptivism and standard-language ideology, it is doubtful that any one style could be so closely linked with democratic, nontotalitarian ideals. Plain style is not more moral. Indeed, as we have seen, it can be used to perpetuate false notions of legitimacy and control in legal discourse through the ideologies of standardness and prescriptivism.

The Plain Language movement characterizes itself as a movement to address deficiencies in legal style. But any moral and social failings of our legal system lie not with the law’s vocabulary or usage, but within the system itself. By diverting attention towards stylistic revision, the Plain Language movement arguably inhibits substantive reforms that could actually address these moral concerns. In this sense, the movement is misguided. If the movement is concerned about the honesty of legal discourse, it would do better to address these issues through questions of ethics or systemic justice and not in the name of stylistics.

IV. Conclusion

The ideologies of the Plain Language movement, however well intentioned, are based on several linguistic myths that perpetuate inequalities and disparities in our legal system. Again, it is important to make explicit that the problems identified in this article lie within the ideologies of the movement and not with the use of plain style itself. The Plain Language movement has been useful insofar as it has encouraged lawyers to reconsider traditional notions of effective usage, to acknowledge that legal discourse often involves laypersons as well as lawyers and lawmakers, and to revise with these new understandings in mind. And, like other styles, plain style can be used effectively in legal discourse.

103 *Id.*

104 Cheek, *supra* note 45, at 9–10.

But it is simply inaccurate and unwise to assert that only one style or variation of language use should be considered legitimate. Rather, lawyers, lawmakers, and laypersons should be encouraged and educated to employ the full range of their linguistic and rhetorical repertoires in creating a true dialogue about the rule of law. If society wishes to address concerns with equalizing access to justice and ensuring the moral integrity of the legal process, then those concerns should be addressed directly, and not by perpetuating problematic ideologies of language use. Plain Language advocates could instead, for example, focus their efforts on revising the ways that that legal discourse is structured, and find means to reject unfair and discriminatory hierarchies in which certain ways of using language are more valued than others.

There are battles to be fought in the legal system, but the fight should be over substantive reformation and not painted as a skirmish between styles. As such, the Plain Language movement should reconsider some of the language ideologies that it has seemingly adopted. In this way, the movement can address some of the myths and inequalities that arise from the ideologies perpetuated in its current movement. Plain style can be a valuable tool; but it must be used wisely, and not as a hegemonic device which relies on notions of prescriptivism, standard-language ideology, and moral superiority to make pronouncements about the drafters and users of legal texts.

Appendix

Bryan A. Garner, *Legal Writing in Plain English: A Text with Exercises xvii–xviii* (2001).

“Most people don’t write so well—even many college graduates who think they do. . . . [W]hen you plunge groups of mediocre writers into a complex field with its own mind-boggling jargon, rife with bloated expressions that displace everyday words, the results are predictable enough. But it’s even worse: make law students pore over ream upon ream of tedious, hyperformal, creaky prose. Acculturate them to pomposity. Then what do you suppose you’ll get? You’ll end up with your average legal writer: wordy, stuffy, artificial, and often ungrammatical. . . . [L]awyers get ridiculed for their pompous writing. . . . We learn our trade by studying reams of linguistic dreck—jargon filled, pretentious, flatulent legal tomes that seem designed to dim any flair for language.”

Joseph Kimble, *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* 10 (2012).

“Plain English has nothing against an attractive writing style; or against a rhetorical flourish or strategy in the right context The trouble is that the successful and legitimate uses of expressive style have been overwhelmed by legalese”

Press Release, Office of United States Congressman Bill Bradley *Bradley Introduces Bill to Streamline Regulations, Save Small Businesses Money*, <http://web.archive.org/web/20141228051426/http://bradley.house.gov/press-release/bradley-introduces-bill-streamline-regulations-save-small-businesses-money/> (last visited March 18, 2015).

Representative Bruce Bradley states: “[G]obbledygook dominates the regulations issued by government agencies, making it almost impossible for small businesses to understand the rules of the road.”

Annetta Cheek, *Defining Plain Language*, 64 CLARITY, Nov. 2010, 5.

“A communication is in plain language if it meets the needs of its audience—by using language, structure, and design so clearly and effectively that the audience has the best possible chance of readily finding what they need, understanding it, and using it.”

Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* 43 (2006).

“[W]hen you redraft in plain language, you inevitably uncover gaps and uncertainties in legalistic writing. The fog lifts, the drizzle ends, and the light shines through. So I believe that plain language, far from being imprecise, is usually more precise than traditional legal style. The imprecisions of legalese are just harder to spot.”

Bryan A. Garner, *Legal Writing in Plain English: A Text with Exercises* xviii (2001).

“Because legal employers prize writing ability more highly than almost any other skill, you’ll gain several immediate advantages:

- You’ll be more likely to get whatever job you want.
- You’ll be more likely to be promoted quickly.
- You’ll have greater opportunities for career mobility, with a broad range of possibilities.

If you can write—really write—people will assume certain other things about you. The most important is that you’re a clear thinker.”

Joseph Kimble, *Writing for Dollars, Writing to Please*, 6 *Scribes J. Legal Writing* 1, 37 (1996–97).

“[P]lain language saves money and pleases readers: it is much more likely to be read and understood and heeded—in much less time. It could even help to restore faith in public institutions.”

Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* 10 (2006).

“Legitimate terms of art convey in a word or two a fairly specific, settled meaning. They are useful when lawyers write for each other, but when we write for a lay audience, terms of art impose a barrier. If we cannot avoid them, we should at least try to explain them.”

Bryan A. Garner, *Legal Writing in Plain English: A Text with Exercises* xix (2001).

“In the end, you might decide to write in a bold, clear, powerful way. It will be a struggle for you—in combatting both the natural human tendencies to write poorly and the unnatural pressure from colleagues to write poorly. But you’ll have struck a blow for yourself and for the law. You’ll be championing clarity, cogency, and truth. The law could certainly stand to have those qualities in greater abundance.”

Joseph Kimble, *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* 28 (2012).

“The push for plain language will not result in less work and less prestige for lawyers; it could even produce more work, and it will surely improve their image. Talk about naked self-interest—it’s one strange argument that writing plainly will hurt the legal profession financially. I’ve heard it though. What does this argument boil down to? That we lawyers want to persist in our hocus-pocus so that we can keep people under our sway—a kind of keep-’em-dumb theory? That we have a vested interest in obscurity, in clouding every law and legal paper with impenetrable legalese? That we owe it to our fellow lawyers to keep writing documents—an offer to sell a house, say, or a service contract—that a buyer will have to take to another lawyer to interpret? (Never mind that many times the other lawyer won’t understand it either.)

This whole notion is deeply cynical and even unethical. We cannot and should not expect to fool people forever. Obedience based on ignorance may work for a while but will eventually lead to disrespect and contempt. I’m sure most lawyers realize that, and I think very few of them, when pressed, would argue for deliberate obscurity. There’s no vast conspiracy to perpetuate legalese. It keeps its hold on many lawyers, sadly, for the reasons discussed in the previous section (inertia, habit, overre-

liance on old models, a misunderstanding of plain language, lack of training and self-awareness, and the specter of too little time).”

Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* 12 (2006) (footnote omitted).

“We may think that clients expect and pay for legalese, but it has prompted endless criticism and ridicule. And besides, since legalese has nothing of substance to recommend it, its dubious prestige value depends on ignorance. We cannot fool people forever. Our main goal should be to communicate, not to impress.”

Annetta Cheek, *Defining Plain Language*, 64 *Clarity*, Nov. 2010, 10 (internal citation omitted).

“One view is that if information is misleading it cannot be plain and that honesty is therefore an essential component of plain language. This is a seductive idea, as a lie can be expressed in plain language: I didn’t do it. And George Orwell argued for another, less obvious, incompatibility: ‘The great enemy of clear language is insincerity. When there is a gap between one’s real and one’s declared aims, one turns as it were instinctively to long words and exhausted idioms, like a cuttlefish spurting out ink.’ So we believe we should define plain language without referring to honesty but that the need for honesty should be incorporated in the standards we set for plain language practitioners and documents.”