Montana Law Review

Volume 68
Issue 1 *Winter 2007*

Article 6

1-2007

Why George Orwell's Ideas about Language Still Matter for Lawyers

Judith D. Fischer
University of Louisville, Louis D. Brandeis School of Law, judith.fischer@louisville.edu

WHY GEORGE ORWELL'S IDEAS ABOUT LANGUAGE STILL MATTER FOR LAWYERS

Judith D. Fischer*

I. INTRODUCTION

"[T]he English language is in a bad way," wrote George Orwell in his 1946 essay *Politics and the English Language*.[1] He faulted the writing of his day for its "inflated style"[2] and use of "swindles and perversions."[3] Inflated style, he believed, was "a kind of euphemism" that hid real meaning,[4] while perversions of language obscured the truth.[5] In the half-century since his death, Orwell has been credited with changing society's view of "the role of language in its basic political and social processes."[6] His ideas remain particularly relevant for lawyers.

Orwell was born Eric Blair in 1903[7] in Motihari, Bengal, where his father served in the Indian civil service.[8] His family returned the next year to England,[9] where he received a traditional English education.[10] He later worked in the Indian Imperial Police in Burma,[11] fought in the Spanish Civil War,[12] and held various other jobs.[13] But his main profession was writing as an essayist,[14] war correspondent,[15] and novelist, under the pen

---

* Judith D. Fischer is an assistant professor at the University of Louisville's Louis D. Brandeis School of Law. She thanks Professors C. Anthony Arnold; Timothy Hall, and David Leibson for their insightful comments on an earlier draft. She is also grateful to Mitchi McNabb for her very helpful research assistance.

1. George Orwell, *Politics and the English Language*, in *George Orwell: Essays* 954, 954 (Alfred A. Knopf 2003) [hereinafter Orwell, *Politics*].
2. *Id.* at 964.
3. *Id.* at 960.
4. *Id.* at 964.
5. *Id.* at 959.
6. Bob Hodge & Roger Fowler, *Orwellian Linguistics*, in Roger Fowler et al., *Language and Control* 6, 25 (Routledge & Kegan Paul Ltd. 1979).
7. Peter Davison, *George Orwell: A Literary Life* at xv (St. Martin's Press 1996).
8. Jenni Calder, *Orwell: The Man*, in *George Orwell &* Nineteen Eighty-Four*: The Man and the Book* 25, 27 (Lib. of Cong. 1985).
9. Davison, *supra* n. 7, at xv.
10. Calder, *supra* n. 8, at 27.
11. Davison, *supra* n. 7, at 15.
12. Calder, *supra* n. 8, at 34–35.
13. Davison, *supra* n. 7, at xvi–xvii.
14. *Id.* at 88.
15. *Id.* at 121.

name George Orwell.[16] He had a deep interest in language, and he feared the dangers of totalitarianism.[17] Two of his works, the essay *Politics and the English Language* and the novel *1984*,[18] explored both of these topics.

The twin themes of *Politics and the English Language* are that writers should express themselves in plain English[19] and that "euphemism, question-begging and sheer cloudy vagueness"[20] prevent or conceal clear thought.[21] "[T]he fight against bad English is not frivolous," he argued, because clear thought is necessary for cogent analysis, and writers who avoid bad habits in their use of language will think more clearly.[22]

Three years later, Orwell provided a striking illustration of these ideas in his novel *1984*,[23] which has been called his "major work on language."[24] The book describes a dystopia[25] set thirty-five years after its publication.[26] Its main character, Winston Smith, is an "Outer Party" member in London, which is part of the totalitarian state of Oceania.[27] Enormous posters proclaim that "BIG BROTHER," Oceania's leader, "IS WATCHING YOU."[28] "Thought Police" do the watching through two-way television screens[29] installed in all homes except those of the proles, the members of the proletariat who are too ignorant and preoccupied with minutiae to be worth monitoring.[30] Governed by the Party, Oceania is perpetually at war with Eurasia or Eastasia, the world's two other major powers.[31] Smith's job is to edit past publications to erase references to anything the Party finds inconsistent with its current views.[32] When the powers realign and a former enemy becomes an ally, Smith's workload increases, because

16. *Id.* at 39.
17. William H. Rehnquist, *Orwell:* 1984, 102 Mich. L. Rev. 981, 984 (2004).
18. George Orwell, *1984* (New Am. Lib. 1977) [hereinafter Orwell, *1984*].
19. Orwell, *Politics*, *supra* n. 1, at 966.
20. *Id.* at 963.
21. *Id.* at 966.
22. *Id.* at 954–55.
23. Orwell, *1984*, *supra* n. 18.
24. Hodge & Fowler, *supra* n. 6, at 9.
25. *Merriam-Webster's Encyclopedia of Literature* 1152 (Merriam-Webster 1995) (explaining that *dystopia* is the opposite of *utopia*).
26. Orwell, *1984*, *supra* n. 18.
27. *Id.* at 1, 3, 31.
28. *Id.* at 2.
29. *Id.* at 2–3.
30. *Id.* at 69–71.
31. *Id.* at 13.
32. Orwell, *1984*, *supra* n. 18, at 37–40.

no trace of the former relationships may remain.[33] The book's plot centers on Smith's desire to free himself from the state's grip.

Language is one of the Party's most important tools for enforcing its totalitarian regime. Three prominently displayed mottos, "WAR IS PEACE," "FREEDOM IS SLAVERY," and "IGNORANCE IS STRENGTH,"[34] illustrate the kinds of "swindles and perversions" Orwell decried in *Politics and the English Language*.[35] The seemingly contradictory mottos manipulate the public's thought in order to control citizens by altering their perceptions of reality.[36] The Party also introduces "Newspeak," a version of English that limits citizens' thoughts to ideas the Party finds acceptable.[37] The word "Orwellian" has now entered the English language as shorthand for this kind of manipulation.[38]

Some have seen *1984* as a literal prediction of the world's condition in the year 1984.[39] If predicting the future was Orwell's purpose, the novel would have value only as a period piece today, because much of its vision did not come true: the world was not dominated by three totalitarian powers in 1984, television sets did not continually watch citizens in their homes, and past publications remained unchanged on library shelves. But this view mistakes the purpose of dystopias. While utopian works describe ideal worlds, their opposites, dystopias (or anti-utopias), carry existing trends to extremes[40] to warn readers what may happen if the trends continue. *1984* is not a failed prediction. It is a warning, one that still resonates today.[41]

This Article examines Orwell's two themes in the context of legal language in the United States today. Part II shows that legal writers have reduced inflated language. The extent to which

33. *Id.* at 182.

34. *Id.* at 4.

35. Orwell, *Politics*, *supra* n. 1, at 960.

36. Orwell, *1984*, *supra* n. 18, at 35.

37. *Id.* at 298–99.

38. *E.g. Newman-Green, Inc. v. Alfonzo-Larrain R.*, 605 F. Supp. 793, 796 (N.D. Ill. 1985).

39. *E.g.* Frank A. Kaufman, *1984 Wasn't So Bad after All*, 50 Md. L. Rev. 68, 68 (1991) (referring to Orwell's "prediction" about the world in *1984*).

40. *See Merriam-Webster's Encyclopedia of Literature*, *supra* n. 25, at 1152 (providing examples of dystopias and anti-utopias).

41. *See* Davison, *supra* n. 7, at 138 (stating that Orwell "did not intend prophecy"); Stephen Ingle, *George Orwell: A Political Life* 95, 105 (Manchester U. Press 1993) (stating that *1984* is a warning about what could happen if technology is misused and human values are subverted for political purposes); Gary T. Marx, *Seeing Hazily (but Not Darkly) through the Lens: Some Recent Empirical Studies of Surveillance Technologies*, 30 L. & Soc. Inquiry 339, 380 (2005) (stating that Orwell "offered a warning, not a prediction").

this is due to Orwell's legacy cannot be precisely quantified, but some legal writing experts have explicitly acknowledged their debt to Orwell.[42] On the other hand, Orwell's warnings about misleading and duplicitous governmental language have not been so well heeded. Part III shows that misleading language is common in today's laws and legal discourse. Orwell's second theme, then, remains relevant as a cautionary guide for lawyers and for society, a warning to avoid the cloudy thinking Orwell exposed in *Politics and the English Language* and illustrated so vividly in *1984*.

II. ORWELL'S FIRST THEME: WRITING IN PLAIN ENGLISH

In this Article, *plain English* means familiar, succinct, understandable English, generally written in the active voice without legalese and unnecessary jargon or foreign phrases. *Plain language* can have a broader meaning, applying to languages other than English, but it is used interchangeably with *plain English* here.

A movement for plain English in the law has gathered momentum in the United States for more than a hundred years. A few lawyers advocated plain English in the nineteenth century. One such lawyer was Ohio judge Timothy Walker, who parodied a lawyer saying "I give you that orange":

> I give you all and singular my estate and interest, right, title, and claim, and advantage of and in that orange, with all its rind, skin, juice, pulp, and pips, and all right and advantage therein, with full power to bite, cut, suck, and otherwise eat the same, or give the same away, as fully and effectually as I, said A B, am now entitled to bite, cut, suck, or otherwise eat the same orange . . . .[43]

Walker concocted this legalese to illustrate the virtues of its opposite, plain English. His parody was on the mark: Thomas Jefferson had observed early in the nineteenth century that lawyers tended to "mak[e] every other word a 'said' or 'aforesaid,' and say[ ] everything over two or three times."[44] Walker hoped to convince lawyers that a "reduction of four-fifths [in any pleading or

42. *See infra* nn. 57–60 and accompanying text.

43. W.S. Groesbeck & Chas. L. Telford, *Miscellaneous: Law Phraseology*, 5 W. L.J. 574, 574 (1848).

44. Thomas Jefferson, *Plan for Elementary Schools*, in *The Writings of Thomas Jefferson* vol. 17, 417, 418 (Albert Ellery Bergh ed., Thomas Jefferson Meml. Assoc. 1907) (quoted in Richard C. Wydick, *Plain English for Lawyers* 3 (5th ed., Carolina Academic Press 2005)).

conveyance] might be made, without the slightest injury to perspicuity or precision."[45]

A few others in the nineteenth and early twentieth centuries argued for plainer legal language. In 1888 an Illinois judge disapproved of Latin in a jury instruction on the ground that jury instructions should be intelligible to ordinary jurors.[46] And in 1907 a judge chided a lawyer whose brief was "a little prolix in the many foreign phrases used largely by the old law-writers."[47] A few practicing lawyers were also beginning to favor plain English. Two examples are noted lawyers Joseph A. Ball[48] and John W. Davis.[49] Yet the old inflated style predominated well into the twentieth century.[50]

Near the middle of the century, in England, Orwell published *Politics and the English Language*, which proposed six rules of style for English writers:

> (i) Never use a metaphor, simile or other figure of speech which you are used to seeing in print.
> (ii) Never use a long word where a short one will do.
> (iii) If it is possible to cut a word out, always cut it out.
> (iv) Never use the passive where you can use the active.
> (v) Never use a foreign phrase, a scientific word or a jargon word if you can think of an everyday English equivalent.
> (vi) Break any of these rules sooner than say anything outright barbarous.[51]

Orwell had achieved wide recognition by the time of his death in 1950,[52] and *Politics and the English Language* made its way into numerous college English textbooks in the following decades.[53] Due to its wide distribution, the essay undoubtedly

45. T. Walker, *Miscellaneous: General Law Reform*, 1 W. L.J. 78, 78 (1843).

46. *C. Aultman & Co. v. Connor*, 25 Ill. App. 654, 656 (1888).

47. *Collier v. Catherine Lead Co.*, 106 S.W. 971, 973 (Mo. 1907).

48. Joseph A. Ball & Judith D. Fischer, *A Century in the Life of a Lawyer: Reflections by Joseph A. Ball*, 36 Cal. W. L. Rev. 77, 85 (1999) (describing how, in the late 1920s, Ball adopted a writing style that was "plain, simple, unadorned English, with short sentences").

49. Chad C. Schmucker, *John W. Davis—An Early Advocate of Plain English*, 77 Mich. B.J. 1322, 1322–23 (Dec. 1998) (recounting how Davis rewrote a report in plain English in 1953).

50. *See* David Mellinkoff, *The Language of the Law* 11 (Little, Brown & Co. 1963) [hereinafter Mellinkoff, *Language*].

51. Orwell, *Politics*, *supra* n. 1, at 966.

52. W.F. Bolton, *The Language of* 1984*: Orwell's English and Ours* 15 (U. of Tenn. Press 1984).

53. *Id.* at 16 (" 'Politics and the English Language' became a favourite text in American freshman English courses, and was anthologized in many freshman readers and 'taught' in hundreds of classrooms."). College textbooks containing *Politics and the English Language* include *The Borzoi College Reader* 79 (Charles Muscatine & Marlene Griffith eds., 2d ed.,

reached many future lawyers during their formative college years and thus influenced legal writing in ways that cannot be precisely documented.

Seventeen years after *Politics and the English Language*, UCLA law professor David Mellinkoff's book *The Language of the Law*[54] appeared. Mellinkoff presented a history of legal English and recommended that lawyers write in simpler language without archaic legalisms.[55] Some identify his book's publication as the beginning of the contemporary plain-English-in-the-law movement.[56] Mellinkoff cited Orwell.[57]

As the plain English movement gathered momentum, other writers about legal writing style, including Bryan Garner, Maureen Arrigo-Ward, and James Lindgren, acknowledged Orwell's influence on their ideas.[58] Judge Richard Posner called *Politics and the English Language* "[t]he best style 'handbook' " for lawyers,[59] and Wayne Schiess wrote that "George Orwell gave me the best legal-writing advice I ever got" in his six rules.[60]

Today, legal writing experts nearly all promote the same ideas about plain English that Orwell did.[61] The Legal Writing Institute, an organization of legal writing professors, adopted a plain language resolution in 1992 to promote "language that is

---

Alfred A. Knopf, Inc. 1971); *The Harper & Row Reader: Liberal Education through Reading and Writing* 210–11 (Marshall W. Gregory & Wayne C. Booth eds., 3d ed., HarperCollins Publishers 1992); *Prose & Criticism* 507 (John Hamilton McCallum ed., Harcourt, Brace & World 1966).

54. Mellinkoff, *Language*, *supra* n. 50.

55. *Id.* at 303–04.

56. *E.g.* George H. Hathaway, *The Plain English Movement in the Law—A 1994 Update*, 50 J. Mo. B. 19, 19 (1994) (stating that Mellinkoff's book *The Language of the Law* "started the modern plain English movement in the law" (referring to Mellinkoff, *Language*, *supra* n. 50); Michael G. Byers, Student Author, *Eschew Obfuscation—The Merits of the SEC's Plain English Doctrine*, 31 U. Mem. L. Rev. 135, 138 (2000) (stating that *The Language of the Law* introduced the legal profession to the plain English movement).

57. Mellinkoff, *Language*, *supra* n. 50, at 463.

58. Bryan A. Garner, *The Elements of Legal Style* 157, 231, 235 (2d ed., Oxford U. Press 2002) [hereinafter Garner, *Legal Style*]; Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 Val. U. L. Rev. 557, 608 (1995); James Lindgren, *Style Matters: A Review Essay on Legal Writing*, 92 Yale L.J. 161, 185 (1982) (reviewing *Writing from a Legal Perspective* and *Effective Legal Writing: A Style Book for Law Students and Lawyers*).

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

60. Wayne Schiess, *Writing a Brief the George Orwell Way*, 14 App. Advoc.: St. B. of Tex. App. Sec. Rpt. 6, 6 (Spring 2001).

61. *But see* Drury Stevenson, *Book Review*, 77 U. Colo. L. Rev. 257, 264–65 (2006) (reviewing *Forensic Linguistics: An Introduction to Language in the Justice System*) (stating that the plain English movement does have a few "lonely detractors").

clear and readily understandable to the intended readers."[62] Scribes, a society of legal writers, has been particularly devoted to promoting "lucidity [and] concision" in legal writing.[63] So have the Michigan and Texas state bar organizations, which have established plain language committees.[64] And the major legal writing textbooks counsel law students to write in plain language[65] and have done so for years.[66] Many practicing lawyers strive to follow those guidelines as well. Judge Richard Posner recently wrote that the writing of lawyers who appear before federal judges is "generally serviceable" and "pretty clearly written," although he identified areas for improvement.[67] And judges have publicly recognized lawyers for their clear, effective writing.[68]

With justification, movement leader David Mellinkoff pronounced in 1994 that "the plain English movement has spread coast-to-coast and throughout the English-speaking world."[69] Whether or not they attribute their ideas to Orwell, today's legal writing experts, professors, and courts promote stylistic guidelines that comport with Orwell's.

A. Avoiding Clichés

Orwell's first rule is "[n]ever use a metaphor, simile or other figure of speech which you are used to seeing in print."[70] Clichés,

---

62. Mary S. Lawrence, *The Legal Writing Institute—The Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 Leg. Writing 213, 250 (2005).

63. 9 Scribes J. Leg. Writing at back cover (2003–2004).

64. Carol M. Bast, *Lawyers Should Use Plain Language*, 69 Fla. B.J. 30, 32 (Oct. 1995).

65. *E.g.* Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* 221–28 (4th ed., Aspen Publishers 2006); Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* § 19.2 (5th ed., Aspen Publishers 2005); Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook: Analysis, Research, and Writing* § 25.3 (4th ed., Aspen Publishers 2006); Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, *Writing and Analysis in the Law* 207–11, 215–16, 219 (4th rev. ed., Found. Press 2003).

66. *See State v. Eason*, 629 N.W.2d 625, 656 (Wis. 2001) (Abrahamson, J., dissenting) (stating that "law students have been taught for at least the last 50 years to avoid . . . legalese").

67. Richard A. Posner, *Legal Writing Today*, 8 Scribes J. Leg. Writing 35, 35 (2001–2002) (emphasis omitted).

68. Judith D. Fischer, *Pleasing the Court: Writing Ethical and Effective Briefs* at x (Carolina Academic Press 2005) [hereinafter Fischer, *Pleasing*] (citing *Ray v. Chisum*, 260 S.W.2d 118, 128 (Tex. Civ. App. 1953); *Quirk v. Premium Homes, Inc.*, 999 S.W.2d 306, 310 n. 5 (Mo. App. 1999); *In re Est. of Kendall*, 968 P.2d 364, 365 n. 1 (Okla. App. 1998)).

69. David Mellinkoff, *Plain English in the Law*, 73 Mich. B.J. 22, 22 (Jan. 1994).

70. Orwell, *Politics*, *supra* n. 1, at 966.

Orwell believed, have "the same relation to living English as a crutch has to a leg."[71]

Contemporary legal writing experts agree. In *The Elements of Legal Style*, Bryan Garner suggests that writers avoid a list of clichés that includes phrases like "fall on deaf ears" and "trials and tribulations."[72] Although Garner would not forbid all clichés, he advises writers to use them with caution, to consider whether a cliché is the best way to make the point, and to check for "a tone of banality."[73] Two other commentators have made similar points through tongue-in-cheek advice to "think out of the box"[74] and "avoid clichés and puns like the plague."[75] One experienced practitioner wrote that judges hate clichés.[76] Clichés that appear often in legal documents can be particularly annoying. Judge Stephen Reinhardt of the Ninth Circuit recently cited *Politics and the English Language* when he disapproved of the overworked phrase "three bites at the apple."[77] "Such clichés," he wrote, "too often provide a substitute for reasoned analysis, . . . deaden[ing] our senses to the nuances of language so often critical to our common law tradition."[78] Similarly, the phrase "the document speaks for itself" has become tiresome.[79] One judge even strikes briefs containing trite language, returning them to counsel with notes about improving their writing.[80] A cliché, however, can be effective when a writer gives it a new turn, as in the phrase "unwritten law is not worth the paper it isn't written on,"[81] or in Justice Scalia's statement that a particular issue, instead of being a wolf in

71. George Orwell, *The English People*, in *George Orwell: Essays*, *supra* n. 1, at 635.

72. Garner, *Legal Style*, *supra* n. 58, at 203–06.

73. *Id.* at 206.

74. Steven T. Taylor, *Can We Think out of the Box? Or, Is That a No-Brainer?* 22 Of Counsel 3, 3 (Feb. 2003).

75. Gerald Lebovits, *Writing on a Clean Slate: Clichés and Puns*, 75 N.Y. St. B.J. 64, 64 (Mar./Apr. 2003).

76. *Practice Pointers for New (and Not-So-New) Media Lawyers*, 23 Communs. Law. 6, 6 (Fall 2005).

77. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1053 (9th Cir. 2003) (Reinhardt, J., concurring).

78. *Id.* at 1053–54.

79. Taylor, *supra* n. 74, at 4.

80. *Id.*

81. Garner, *Legal Style*, *supra* n. 58, at 203 (quoting Judge Biddle in Henry Weihofen, *Legal Writing Style* 123 (2d ed., West 1980)).

sheep's clothing, "comes as a wolf."[82] Such fresh twists create lively prose,[83] not the stale writing Orwell decried.

B. *Preferring Shorter Words*

Legal writing experts consistently agree with Orwell's second rule: "[n]ever use a long word where a short one will do."[84] Garner points out that using unnecessarily long words may suggest that a lawyer is deliberately obfuscating. He therefore urges lawyers to "[s]trike out and replace fancy words" like *perscrutation*, which can be replaced with the shorter and more familiar *scrutiny*.[85] Similarly, Terri LeClercq advises lawyers to avoid nominalizations, which she defines as "nouns created from verbs," those "multisyllabic words with Latinate suffixes and prefixes such as -ize, -osity [and] -ate."[86] Thus, instead of writing "[d]espite the lawyer's protestations," she suggests writing "[a]lthough the lawyer protested."[87] Richard Wydick counsels legal writers to use familiar words, and even among familiar words, to "prefer the simple to the stuffy."[88] For example, write *use* instead of *utilize*.[89] Enquist and Oates advise, "[d]on't [u]se [p]ompous [l]anguage."[90] Other commentators[91] and textbook authors[92] agree.

Courts agree, too. One court criticized a document's language because it contained overblown wording like "transverse aperture," "therebetween," and "presenting a line edge transversely of the axial center."[93] Another judge suggested that appellate advo-

82. Yury Kapgan, *Of Golf and Ghouls: The Prose Style of Justice Scalia*, 9 Leg. Writing 71, 75 (2003) (citing *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting)).

83. D'Ann Rasmussen, *A Fresh Look at Clichés*, 5 Scribes J. Leg. Writing 152, 152 (1994–1995) (stating that, "given a refreshing twist, a cliché may even brighten a line").

84. Orwell, *Politics*, *supra* n. 1, at 966.

85. Garner, *Legal Style*, *supra* n. 58, at 30.

86. Terri LeClercq, *Guide to Legal Writing Style* 58–59 (3d ed., Aspen Publishers 2004) (emphasis omitted).

87. *Id.*

88. Wydick, *supra* n. 44, at 57–58.

89. *Id.* at 58.

90. Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 127–28 (2d ed., Aspen Publishers 2005).

91. *E.g.* George H. Hathaway, *A Summary of Our Review of Legal Writing*, 74 Mich. B.J. 50, 50 (Jan. 1995) (cautioning against "unnecessarily long words").

92. *E.g.* Bradley G. Clary & Pamela Lysaght, *Successful Legal Analysis and Writing: The Fundamentals* 101 (2d ed., West 2006) (advising the writer to "[p]refer short words"); Robin Wellford Slocum, *Legal Reasoning, Writing, and Persuasive Argument* 247 (Matthew Bender & Co. 2006) (advising legal writers to "[s]ubstitute [s]imple [w]ords for [l]onger [w]ords").

93. *Thomas & Betts Corp. v. Panduit Corp.*, 138 F.3d 277, 290 (7th Cir. 1998).

cates "avoid using 'fifty-cent' words . . . obscure terms, and inflated language."[94]

C. *Deleting Unnecessary Words*

Orwell's third rule is "[i]f it is possible to cut a word out, always cut it out."[95] The major commentators about legal writing all agree that writing should be succinct. Ray and Ramsfield report that "[c]onciseness is highly valued in legal writing,"[96] Wydick advises, "omit the surplus words,"[97] and LeClercq provides suggestions for eliminating wordiness.[98] Garner states, "[i]deally, legal writing is taut. . . . Strike out every slack syllable. . . . Make every word tell."[99] Authors of legal writing textbooks agree.[100]

Courts often chastise lawyers for wordy writing, which not only detracts from clarity but also wastes judges' time.[101] Recently, a judge decried a lawyer's wordy documents as "chaotic" and filled with "prolix, meandering stream-of-consciousness argumentation."[102] He pointed out the folly of submitting numerous claims when "one good claim or one sound theory would do."[103] In another case, even after the court had demanded one "plain English" rewrite, counsel submitted an "order of mind-numbing turgidness and prolixity, the very first sentence of which extends for nearly four pages."[104] Calling the order "gobbledygook," the court again asked the lawyer to rewrite it.[105] Numerous other courts have stressed the importance of concise writing.[106] Recent data show that these views are widespread: in one study, judges from around the nation ranked conciseness highest on a list of

94. James H. Coleman, Jr., *Appellate Advocacy and Decisionmaking in State Appellate Courts in the Twenty-First Century*, 28 Seton Hall L. Rev. 1081, 1099 (1998).

95. Orwell, *Politics*, *supra* n. 1, at 966.

96. Mary Barnard Ray & Jill J. Ramsfield, *Legal Writing: Getting It Right and Getting It Written* 95 (4th ed., West 2005).

97. Wydick, *supra* n. 44, at 7.

98. LeClercq, *supra* n. 86, at 50–54.

99. Garner, *Legal Style*, *supra* n. 58, at 53.

100. *E.g.* Clary & Lysaght, *supra* n. 92, at 101; Neumann, *supra* n. 65, at § 19.2.

101. *See* Judith D. Fischer, *The Role of Ethics in Legal Writing: The Forensic Embroiderer, the Minimalist Wizard, and Other Stories*, 9 Scribes J. Leg. Writing 77, 77–78, 100 (2003–2004).

102. *MacArthur v. San Juan Co.*, 391 F. Supp. 2d 895, 1053 (D. Utah 2005).

103. *Id.*

104. *In re Ephedra Prods. Liab. Litig.*, 2006 WL 435556 at *1 (S.D.N.Y. Feb. 21, 2006).

105. *Id.*

106. Fischer, *Pleasing*, *supra* n. 68, at 27–31.

their preferred stylistic traits,[107] while in another study, "ninety percent of [responding] judges said that conciseness is 'essential' or 'very important.' "[108]

D. *Preferring the Active Voice over the Passive*

Legal writing experts also promote Orwell's fourth rule: "[n]ever use the passive where you can use the active."[109] The active voice offers two advantages. First, it clearly identifies the actor, eliminating a potential source of vagueness. "The white car hit the blue car" is clearer than the passive and vague "[t]he blue car was hit," which may create ambiguity.[110] Second, the active voice often requires fewer words, partly because all passive verbs contain at least two words. The active "Wilson shot Henley" is thus more succinct than the passive "Henley was shot by Wilson."[111]

Two recent studies show that judges agree with these writing experts' approach. Responding judges in the federal courts of appeals for the First, Second, and Tenth Circuits agreed that "[i]t bothers [them] when a brief uses the passive voice frequently."[112] Similarly, judges and staff attorneys in the San Diego division of the California Court of Appeals disliked "excessive use of passive voice."[113]

In *United States v. Torres*, the Seventh Circuit explained how the passive voice can cause problems.[114] Drug enforcement agent Guiffre's affidavit stated, " 'the brown paper bag carried by [Pedro Jose] Torres was opened revealing a white powdery substance to

---

107. Susan Hanley Kosse & David ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. Leg. Educ. 80, 85 (2003).

108. Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think about the Way Lawyers Write*, 8 Leg. Writing 257, 279 (2002).

109. Orwell, *Politics*, *supra* n. 1, at 966; *e.g.* LeClercq, *supra* n. 86, at 37; Garner, *Legal Style*, *supra* n. 58, at 40–42; Wydick, *supra* n. 44, at 30–32; Philip Frost, *Plain Language in Transition*, 84 Mich. B.J. 46, 46 (Aug. 2005).

110. *See* Wydick, *supra* n. 44, at 30–31.

111. For explanations of the active voice and its advantages, see Garner, *Legal Style*, *supra* n. 58, at 40–42; LeClercq, *supra* n. 86, at 37–38; Ray & Ramsfield, *supra* n. 96, at 4–6.

112. David Lewis, *If You Have Seen One Circuit, Have You Seen Them All? A Comparison of the Advocacy Preferences of Three Federal Circuit Courts of Appeal*, 83 Denv. U. L. Rev. 893, 906 (2006).

113. Charles A. Bird & Webster Burke Kinnaird, *Objective Analysis of Advocacy Preferences and Prevalent Mythologies in One California Appellate Court*, 4 J. App. Prac. & Process 141, 153 (2002).

114. *U.S. v. Torres*, 965 F.2d 303, 310 (7th Cir. 1992).

the undercover agent.' "[115] The passive voice made it unclear who opened the bag. The court upheld Torres's conviction for possession of drugs but acknowledged the affidavit's lack of clarity:

> Good writers eschew the passive voice not only because a sentence written passively is often not as forceful as a sentence written actively, but more importantly, because sentences written passively are often more ambiguous than those written actively. Agent Guiffre's sentence poignantly illustrates how a passively written sentence can lead to possible confusion.[116]

In its brief in *Torres*, the government argued against what it saw as law schools' and law journals' "universal[ ]" disapproval of the passive voice.[117] That is an exaggeration. The same experts who advise lawyers to prefer the active voice also recognize that sometimes the passive voice is more appropriate. LeClercq recommends the passive voice when the writer does not know the identity of the actor ("The girl was propelled out of the train"); when the writer wants to avoid directly identifying an actor ("Marta was dismissed from law school"); or when the writer wants to emphasize a result ("George was murdered by a drunken driver").[118] And like Orwell, Wydick emphasizes that one should *prefer* the active voice rather than excluding it entirely.[119] Authors of legal writing textbooks have incorporated similar suggestions.[120]

E. Avoiding Jargon and Foreign Words

Orwell's fifth rule tells writers to avoid jargon and foreign words if they "can think of an everyday English equivalent."[121]

1. Jargon or Legalese

Jargon is the specialized language of a particular field. Unnecessary legal jargon is often called *legalese*—that is, the inflated language some lawyers use instead of simpler, more familiar phrasing. Examples of legalese include redundant pairs that sur-

115. *Id.*
116. *Id.*
117. *Id.*
118. LeClercq, *supra* n. 86, at 38.
119. Wydick, *supra* n. 44, at 31–32.
120. *E.g.* Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* 190–92 (2d. ed., Aspen Publishers 2006); Charles R. Calleros, *Legal Method and Writing* 255 (5th ed., Aspen Publishers 2006); Margaret Z. Johns, *Professional Writing for Lawyers: Skills and Responsibilities* 159–60 (Carolina Academic Press 1998); Nancy L. Schultz & Louis J. Sirico, Jr., *Legal Writing and Other Lawyering Skills* 123 (4th ed., Lexis 2004).
121. Orwell, *Politics*, *supra* n. 1, at 966.

vive from medieval times,[122] like "give and bequeath,"[123] and stilted phrases that add no meaning, like "aforementioned," which is either unnecessary or imprecise.[124] By contrast, appropriate specialized legal terms, called *terms of art*, are "a shorthand to underlying concepts,"[125] conveying meaning more precisely and economically than ordinary English does.[126] An example of an appropriate term of art is *dictum*. No everyday English word would adequately convey its meaning.

Garner cautions against assuming that a term really is a necessary term of art. For example, he finds the phrase *ratio decidendi* "too imprecise to be properly so classed."[127] But once writing experts decide a term is legalese, they almost always disapprove of it.[128] Calling such terms "lawyerisms," Wydick mentions as examples *aforementioned* and *whereas*.[129] He advises, similarly to Orwell, that instead of using a lawyerism, the legal writer should "stop to see if your meaning can be expressed as well or better in a word or two of ordinary English."[130] Similarly, LeClercq identifies "archaic legalisms" like *herein* and *forthwith*, and provides a list of plain English synonyms like *in this document* and *immediately*.[131] She also lists redundant pairs like *void and of no effect*, stating that most can be condensed to one word.[132]

---

122. *See* John Gibbons, *Forensic Linguistics: An Introduction to Language in the Judicial System* 43 (Blackwell Publg. 2003); and Mellinkoff, *Language*, *supra* n. 50, at 121–22 (both listing origins of words in common redundant pairs). Most such pairs are redundant today. *Id.* at 349; *see also* LeClercq, *supra* n. 86, at 49.

123. For a list of redundant doublets and triplets, *see* Bryan A. Garner, *The Redbook: A Manual on Legal Style* 192–94 (2d ed., Thomson/West 2006) [hereinafter Garner, *Redbook*].

124. Wydick points out that in a phrase like "the aforementioned plot," *aforementioned* is unnecessary if the document has identified only one plot; but if the document has mentioned more than one plot, *the aforementioned* does not clarify which plot the writer means. Wydick, *supra* n. 44, at 59.

125. LeClercq, *supra* n. 86, at 48.

126. *See id.* at 48–49; Wydick, *supra* n. 44, at 58–59.

127. Garner, *Legal Style*, *supra* n. 58, at 193.

128. Douglas Litowitz, *Legal Writing: Its Nature, Limits, and Dangers*, 49 Mercer L. Rev. 709, 715 (1998) (stating "almost everybody (except a few hardliners) is convinced that legalese serves no purpose and ought to be eliminated"); George H. Hathaway, *The Clarity Awards (after Five Years)*, 75 Mich. B.J. 1198, 1198 (Nov. 1996) (stating "[e]veryone criticizes legalese").

129. Wydick, *supra* n. 44, at 58.

130. *Id.* at 60.

131. LeClercq, *supra* n. 86, at 48.

132. *Id.* at 49.

Garner also urges the legal writer to avoid legalese,[133] and many other commentators agree.[134]

Courts also disapprove of legalese. In one recent case, the Eighth Circuit criticized a trust document for containing "nefarious and nonsensical legalese,"[135] and in another it denounced a plea agreement that "drown[ed] in clauses" as a "monument to legalese."[136] And when a lawyer used the word *effluxion* in a brief, a court called the term "arcane and archaic legalese" that should be abandoned.[137] Surveys show that these views are widespread. In one survey, judges and their research attorneys saw briefs laden with legalese as "weaker and less persuasive" than briefs in plain English.[138] In another survey, judges and staff attorneys reported that they were "bothered by legalese."[139]

2. *Foreign Words*

Lawyers sometimes use foreign phrases in an effort to seem erudite[140] or, as one commentator put it, to "bully the reader."[141] But Orwell recognized that "[a] mass of Latin words falls upon the facts like soft snow, blurring the outlines and covering up all the details."[142] Rather than engage in a misguided attempt to impress, it's better to communicate.[143]

Some foreign words and phrases are useful terms of art.[144] Garner writes that *habeas corpus* and *res ipsa loquitur* are appropriate terms of art.[145] While lawyers may occasionally disagree

133. Garner, *Legal Style*, *supra* n. 58, at 6–7.

134. *E.g.* Lee Dembart, *Style Guidelines for a Set of Local Rules*, 84 Mich. B.J. 52, 52 (Nov. 2005); Gerald Lebovits, *Academic Legal Writing: How to Write and Publish*, 78 N.Y. St. B.J. 64, 64 (Jan. 2006); Nancy A. Wanderer, *Writing Better Opinions: Communicating with Candor, Clarity, and Style*, 54 Me. L. Rev. 47, 62 (2002).

135. *Jefferson Co. v. Halverson*, 276 F.3d 389, 393 (8th Cir. 2002).

136. *U.S. v. Taylor*, 258 F.3d 815, 819 (8th Cir. 2001).

137. *Fifth Third Bank v. Ducru LP*, 811 N.E.2d 1165, 1167 (Ohio App. 2004).

138. Robert W. Benson & Joan B. Kessler, *Legalese v. Plain English: An Empirical Study of Persuasion and Credibility in Appellate Brief Writing*, 20 Loy. L.A. L. Rev. 301, 301 (1987).

139. Bird & Kinnaird, *supra* n. 113, at 153.

140. Garner, *Legal Style*, *supra* n. 58, at 195.

141. Daniel Richardson, *Book Review*, 30 Vt. B.J. 52, 53 (Summer 2004) (reviewing *The Redbook: A Manual on Legal Style*).

142. Orwell, *Politics*, *supra* n. 1, at 964.

143. Garner, *Legal Style*, *supra* n. 58, at 193–95. *See also* Dembart, *supra* n. 134, at 52; George Hathaway & Karen Willard, *Resolutions*, 74 Mich. B.J. 695, 697 (July 1995); Wanderer, *supra* n. 134, at 62.

144. *See e.g.* Garner, *Legal Style*, *supra* n. 58, 194–95.

145. Garner, *Redbook*, *supra* n. 123, at 194.

about whether a certain foreign phrase is really useful, the experts agree that English phrasing could replace many foreign terms.[146] Garner notes, for example, that *ab initio* and *inter alia* may be replaced by *from the beginning* and *among others* with no loss of meaning.[147]

Two courts found even *res ipsa loquitur* unduly confusing, urging lawyers to find a plain English way to express the concept.[148] Another court urged lawyers to abandon the phrase *res gestae* because it "adds nothing but confusion to an already complex area of the law."[149]

F. Using Common Sense

Orwell's final rule recommends common sense: "[b]reak any of these rules sooner than say anything outright barbarous."[150] Writing, after all, is an art, and art cannot be created by formula.[151] Writers must exercise judgment in choosing, for example, when to use the passive voice[152] or a foreign phrase.[153] And Philip Frost pointed out that mechanically using short words and the active voice can lead to this kind of choppy phrasing:

> Johnson and two others were sitting in his parked car. Two police officers approached. They had no grounds for an arrest or even a *Terry* stop. They ordered the three occupants to get out of the car. One of the officers searched under Johnson's seat and found drugs there. The other officer searched the two passengers. He found drugs and counterfeit money on their persons.[154]

Frost recommended editing the paragraph for a more pleasing flow:

> Johnson and two others were sitting in his parked car *when* two police officers approached. *Without any* grounds for an arrest or even a *Terry* stop, the *officers* ordered the three occupants to get out of the car. *While* one of the officers searched under Johnson's seat

146. *E.g.* Oates & Enquist, *supra* n. 65, at § 25.3.2; Ray & Ramsfield, *supra* n. 96, at 201–02.

147. Garner, *Legal Style*, *supra* n. 58, at 194–95.

148. *Metro. Mortg. & Secs. Co. v. Wash. Water Power*, 679 P.2d 943, 944 (Wash. App. 1984); and *Gelinas v. New England Power Co.*, 268 N.E.2d 336, 339 (Mass. 1971) (both stating that the concept of *res ipsa loquitur* should be expressed in English).

149. *State v. Hansen*, 989 P.2d 338, 354 (Mont. 1999).

150. Orwell, *Politics*, *supra* n. 1, at 966.

151. Jill J. Ramsfield, *The Law as Architecture: Building Legal Documents* at xvii (West 2000) (stating that "we can produce good legal writing by studying it as an art").

152. *See supra* nn. 117–20 and accompanying text.

153. *See supra* nn. 144–49 and accompanying text.

154. Frost, *supra* n. 109, at 46.

> and found drugs there, the other officer searched the two passengers *and* found drugs and counterfeit money on their persons.[155]

The second example uses artful transitions and varied sentence structure to avoid the grating effect of the first. Orwell would approve.

G. Applying the Substance of Orwell's Rules to Statutes, Regulations, and Jury Instructions

The viewpoints embodied in Orwell's six rules have also guided the drafters of many current statutes, regulations, and jury instructions. Over the past thirty years, numerous government entities have begun to require plain English. At the federal level, President Carter ordered federal agencies to write regulations that were "as simple and clear as possible,"[156] and President Clinton issued a similar directive.[157] Various federal statutes also require plain English. For example, the 1975 Magnuson-Moss Warranty Act requires that warranties be in "simple and readily understandable language,"[158] and the Employee Retirement Income Security Act of 1974 provides that plan descriptions must be easy for plan participants to understand.[159]

In 1998, the Securities and Exchange Commission required that prospectuses be written in plain English.[160] Before then, the frequent use of "arcane, complex, and incomprehensible language" often detracted from the SEC's goal of providing clear information to investors.[161] To help users implement the new directive, the commission published *A Plain English Handbook*, which provides guidelines for writing disclosure documents in plain English.[162] It explains that "[a] plain English document uses words economically and at a level the audience can understand. Its sentence structure is tight."[163] The *Handbook*'s guidelines are reminiscent

155. *Id.*

156. Exec. Or. 12044, 43 Fed. Reg. 12661, 12661 (Mar. 23, 1978) (quoted in Stephen M. Ross, *On Legalities and Linguistics: Plain Language Legislation*, 30 Buff. L. Rev. 317, 317 (1981)).

157. William J. Clinton, *The Recent Presidential Memorandum on Plain Language*, 6 Scribes J. Leg. Writing 39, 39–40 (1997).

158. 15 U.S.C. § 2302(a) (2000) (quoted in Michael S. Friman, *Plain English Statutes: Long Overdue or Underdone?* 7 Loy. Consumer L. Rep. 103, 105 (1995)).

159. 29 U.S.C. § 1022(a)(1) (1982) (cited in Friman, *supra* n. 158, at 105).

160. 17 C.F.R. § 230.421(d)(1)–(2) (2005).

161. Plain English Disclosure, 62 Fed. Reg. 3152, 3153 (Jan. 21, 1997).

162. Arthur Levitt, *Introduction to A Plain English Handbook: How to Create Clear SEC Disclosure Documents* 3–4, http://sec.gov/pdf/handbook.pdf (Aug. 1998).

163. *Id.* at 5.

of Orwell's: they counsel writers to use the active voice,[164] use common words instead of jargon,[165] and replace long words with shorter synonyms.[166]

Numerous states have also passed laws requiring plain English, often in consumer or insurance contracts.[167] And California recently redid its jury instructions in plain English so the explanations of the law would be intelligible to ordinary jurors.[168] For example, "willfully false" has now become "lied," and "innocent misrecollection" has become "honestly forget."[169] Alaska, Delaware, Michigan, Minnesota, Missouri, and North Dakota have also adopted plain language jury instructions.[170]

III. Orwell's Second Theme: Avoiding Misleading or Duplicitous Language

While Orwell's ideas about style coincide with the accepted legal writing style today, his ideas about perversions in language have been heeded mainly in their breach. Numerous instances of misleading and duplicitous language exist in contemporary American laws and discourse about the law.

Orwell objected to political speech and writing that are intended to deflect attention from the facts, even to "make lies sound truthful."[171] He dramatized this in *1984*, where the Party encouraged doublethink, which meant holding two contradictory ideas at once and forgetting "whatever it was necessary to forget."[172] By extension, "[d]oublespeak is language that pretends to communicate but really doesn't. It is language that makes the bad seem good, the negative appear positive, the unpleasant ap-

164. *Id.* at 19.

165. *Id.* at 30.

166. *Id.* at 31.

167. *See* George H. Hathaway, *An Overview of the Plain English Movement for Lawyers*, 62 Mich. B.J. 945, 947 tbl. 5 (Nov. 1983) (listing statutes that require plain English).

168. Dean E. Murphy, *The New Language for Jurors in California: Plain English*, N.Y. Times, §§ 1, 12 (Aug. 28, 2005); Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 Notre Dame L. Rev. 449, 475–76 (2006).

169. Murphy, *supra* n. 168, at 12.

170. James D. Wascher, *The Long March toward Plain English Jury Instructions*, 19 CBA Rec. 50, 51 (Feb./Mar. 2005) (citing Am. Judicature Socy., *Plain-English Jury Instructions*, http://www.ajs.org/jc/juries/jc_improvements_plainenglish.asp (accessed Feb. 22, 2007)).

171. Orwell, *Politics*, *supra* n. 1, at 967.

172. Orwell, *1984*, *supra* n. 18, at 35.

pear attractive or at least tolerable."[173] An example is Oceania's motto "War is peace."[174] On initial reading, the motto seems nonsensical. But its doublespeak reflects a chilling paradox: war *is* a peace for Oceania's government—it keeps the public pacified.

In *Politics and the English Language*, Orwell provided examples of real-life euphemisms crafted to conceal the truth. In his time, the bombing of civilian villages was called "pacification,"[175] ousting peasants from their homes was called "transfer of population or rectification of frontiers," and imprisoning people without trials or sending them to the Arctic to die in camps was "elimination of unreliable elements."[176] The purpose of these terms, Orwell said, was to refer to things "without calling up mental pictures of them," often to defend "the indefensible."[177]

Despite Orwell's warnings, misleading language continues to thrive in contemporary America. Indeed, William Lutz concluded that "the language Orwell described has become the language of public discourse."[178] At least three types of Orwellian language are common today: meaningless words, euphemisms, and evasions.

The first category, "meaningless words,"[179] consists of vague terms intended to arouse positive emotions. The problem with meaningless words is that "the person who uses them has his own private definition, but allows his hearer to think he means something quite different."[180] Orwell's examples of such words included *democracy*, *freedom*, and *patriotic*.[181]

A variant of *patriotic* appears in the "almost Orwellian"[182] name of the USA PATRIOT Act, passed shortly after September 11, 2001. Its official name is the awkward mouthful "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism,"[183] which produces the acro-

173. William Lutz, *The New Doublespeak: Why No One Knows What Anyone's Saying Anymore* 4 (HarperCollins Publishers 1996).

174. *Id.* at x (citing Orwell, *1984*, *supra* n. 18, at 4).

175. Orwell, *Politics*, *supra* n. 1, at 963 (emphasis omitted).

176. *Id.* (emphasis omitted).

177. *Id.*

178. Lutz, *supra* n. 173, at x.

179. Orwell, *Politics*, *supra* n. 1, at 959.

180. *Id.*

181. *Id.*

182. Eric J. Gouvin, *Bringing out the Big Guns: The USA Patriot Act, Money Laundering, and the War on Terrorism*, 55 Baylor L. Rev. 955, 960 (2003) (calling the act's title an "almost Orwellian acronym").

183. Pub. L. No. 107–56, 115 Stat. 272 (2001) (codified in various sections of the U.S.C.).

nym "USA PATRIOT." Placing the word *patriot* in the act's popular title deflects attention from the act's "encroach[ment] on civil liberties"[184] by allowing, for example, searches and surveillance without a prior finding of probable cause.[185] Moreover, naming terrorism as the enemy[186] adds the sort of vagueness Orwell disliked:[187] it will be difficult to know when we have won a war against an abstract noun. There is further disingenuousness in the act's purported genesis in the September 11 terrorist attacks. As one scholar observed, "Although it appeared to be a response to the terrorist attacks, the proposed law was not new. Precursors of the various components of the Patriot Act, including the money laundering provisions, had been floating around Congress for years prior to September 11, 2001."[188]

Orwell identified a second type of linguistic abuse, the euphemism,[189] which attempts to make something bad sound better. Today's common phrase "collateral damage" is an "Orwellian euphemism for killing, maiming, and wounding civilians when attempting to bomb 'military targets.' "[190] The phrase recalls Orwell's caution that political language is sometimes designed to make killing sound respectable.[191]

A third kind of linguistic abuse, the evasion,[192] hides a concept's real meaning. Some current evasions are calculated to mask disagreements or controversies. For example, the phrase "tort reform" has been called Orwellian because it refers not to even-handed reform but to curtailment of tort liability.[193] Thus it

184. Edward S. Herman, *From* Ingsoc *and* Newspeak *to* Amcap, Amerigood, *and* Marketspeak, in *On* Nineteen Eighty-Four*: Orwell and Our Future* 112, 123 (Abbott Gleason et al. eds., Princeton U. Press 2005); *see also* Michael Traynor, Address, *Citizenship in a Time of Repression* (U. of Wis. L. Sch., Apr. 23, 2004), in 2005 Wis. L. Rev. 1, 3 (stating that the Patriot Act "stifles liberty"); Rita Shulman, Student Author, *USA Patriot Act: Granting the U.S. Government the Unprecedented Power to Circumvent American Civil Liberties in the Name of National Security*, 80 U. Det. Mercy L. Rev. 427 (2003) (arguing that the Patriot Act violates civil liberties).

185. Shulman, *supra* n. 184, at 430.

186. *See* Alex Schmid, *Terrorism—The Definitional Problem*, 36 Case W. Res. J. Intl. L. 375, 376 (2004).

187. Orwell, *Politics*, *supra* n. 1, at 956.

188. Gouvin, *supra* n. 182, at 960.

189. Orwell, *Politics*, *supra* n. 1, at 963.

190. Thomas Michael McDonnell, *Cluster Bombs over Kosovo: A Violation of International Law?* 44 Ariz. L. Rev. 31, 77 (2002). *See also* Herman, *supra* n. 184, at 123.

191. Orwell, *Politics*, *supra* n. 1, at 967.

192. *See id.* at 964.

193. Mae Kuykendall, *Symmetry and Dissonance in Corporate Law: Perfecting the Exoneration of Directors, Corrupting Indemnification and Straining the Framework of Corporate Law*, 1998 Colum. Bus. L. Rev. 443, 460, 505 n.187 (stating that "tort reform" is "Orwellian

masks the existence of the views of other reformers who argue not for curtailment but for expansion of tort liability.[194]

Similarly, "*faux* reformers"[195] have promoted "[S]ocial [S]ecurity reform," a plan for privatization that would "neither reform nor preserve Social Security,"[196] but instead is aimed at dismantling it.[197] Economist Paul Krugman found the plan "Orwellian" and based on doublethink.[198] Recalling the Party's attempt to make Winston Smith believe 2 + 2 = 5,[199] Krugman said the idea that social security can be partly privatized while retirees still receive full benefits is like saying 2 - 1 = 4. Krugman also identified Newspeak in the plan, because promoters first called it "privatization" but, when that term acquired negative connotations, changed their terminology to "personal accounts."[200]

Opponents of estate taxes have also attempted to mask controversy by renaming them "death taxes" after political advisor Frank Luntz's polls revealed that " 'death tax' kindled voter resentment in a way that 'inheritance tax' and 'estate tax' didn't."[201] The name "faith-based initiatives" is also Orwellian[202] because it obscures the initiatives' true purpose, directing tax dollars to sup-

---

language" for corporate interests' push to "eliminate their liability") (quoting Ralph Nader, *The Beltway Talks Back: Wake Up, America: Apathy Can Be Dangerous*, N.Y. Times E15 (July 20, 1997).

194. *E.g.* Leslie Bender, *"To Err Is Human" ART Mix-ups: A Labor-Based, Relational Proposal*, 9 J. Gender Race & Just. 443, 505–07 (2006) (arguing that the law should afford remedies to persons whose gametes are involved in mix-ups in the *in vitro* fertilization process). *See generally* Jeffrey W. Stempel, *Not-So-Peaceful Coexistence: Inherent Tensions in Addressing Tort Reform*, 4 Nev. L.J. 337 (2003–2004) (discussing disagreements between those who would expand and those who would curtail tort liability).

195. Michael Hiltzik, *The Plot against Social Security* 17 (HarperCollins Publishers 2005).

196. *Id.* at 3.

197. *Id.* at ix; *see also* Nancy J. Altman, *The Battle for Social Security: From FDR's Vision to Bush's Gamble* 313 (John Wiley & Sons 2005) (stating that "President George W. Bush is engaged in a high-profile campaign to undo Social Security"); J. Larry Brown, Robert Kuttner & Thomas M. Shapiro, *Building a Real "Ownership Society"* 17, 21 (Cent. Found. 2005) (stating that "privatization would end the dependability and safety of Social Security as insurance" and that privatization is "the stalking horse to weaken Social Security").

198. Paul Krugman, *The Bully's Pulpit*, N.Y. Times A23 (Sept. 6, 2002).

199. Orwell, *1984*, *supra* n. 18, at 249–52.

200. Krugman, *supra* n. 198, at A23.

201. William H. Gates, Sr. & Chuck Collins, *Wealth and Our Commonwealth: Why America Should Tax Accumulated Fortunes* 58 (Beacon Press 2003) (calling Luntz's advice about language "Orwellian").

202. Robert Kuttner, *Shame on Journalists for Forgetting Orwell*, Bos. Globe D11 (July 1, 2001).

port the work of religious institutions.[203] The term *faith* is inexact, because there are kinds of faith other than religious faith. But the word *religious* is omitted to mask any transgression of the First Amendment's prohibition of government-established religion.

Other evasions are less subtle: they simply state the opposite of the actual situation. Michael Traynor recently identified two such evasions in the titles of the "Clear Skies Initiative," which applies to a law that "would increase pollution," and the "Healthy Forests Restoration Act," which would "deplete forests."[204] He concluded that "George Orwell's prescient warnings against Newspeak and Doublethink" are as important today as ever.[205]

Because meaningless words, euphemisms, and evasions remain common, Orwell's warnings are as important today as when he made them. Lawyers can help society heed those warnings by promoting clear, honest discourse. We can recognize and identify the Orwellian phrases in others' language. And in our speech and writing, we can recall Orwell's principle that language should be "an instrument for expressing and not for concealing or preventing thought."[206] By recognizing and avoiding the kinds of perversions Orwell decried, lawyers can elevate legal language and public discourse.

IV. Conclusion

Sixty years after *Politics and the English Language*, the direct, succinct language George Orwell advocated predominates among effective legal writers in the United States. His six rules about style thus remain useful guidelines for legal writers. His warnings about misleading language also remain useful, but for a different reason: our culture has too often failed to heed them. Lawyers can assume a role in changing that by attempting to eliminate the meaningless words, euphemisms, and evasions from our own speech and writing, and by recognizing these Orwellian strategies in others' language. The result will be clearer, more honest discourse.

---

203. *Id.*; Scott M. Michelman, *Faith-Based Initiatives*, 39 Harv. J. on Legis. 475, 475 (2002).

204. Traynor, *supra* n. 184, at 6.

205. *Id.*

206. Orwell, *Politics*, *supra* n. 1, at 966.