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Julie Clement

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We encourage you to submit articles to be considered for publication in *Clarity*. Send submissions directly to editor in chief Julie Clement. Please limit submissions to approximately 1,500 or 3,000 words.

Clarity 61 includes some of the papers presented in November 2008 at the 3rd International Clarity Conference, *Legal language: transparent and efficient*, co-hosted by the Instituto Tecnológico Autónomo de México (ITAM), the Underministry of Public Administration in Mexico and Clarity.

We think of this conference as the opportunity for Spanish speakers to meet plain-language experts from all over the globe. During 5 days, public servants from different government offices, officers from the judicial branch, teachers, students, and consultants from Mexico, Argentina, Chile, and Peru learned about the legendary Swedish experience in using plain language, the recent experience of the Bureautaal on rewriting the Constitution of the Netherlands, and the techniques used in some English-speaking countries to teach plain language.

In this issue you will find Christopher Balmford's opening remarks of the Conference, which were superbly delivered by Joe Kimble, explaining why, how, and what was the purpose of organizing it in Mexico City. You will also find, for the first time in *Clarity*, more papers written by Spanish experts such as the one about the experience of Chile's National Library Congress in publishing laws in a citizen-friendly language by Claudia Poblete and Carla Firmani; another one by Luis Raigosa, a distinguished Mexican lawyer who elaborates for the first time on the technique for legislative drafting in Mexico; and the one by a prestigious law practitioner, Gerardo Laveaga, which presents a serious and thoughtful case on the Mexican Constitution.

We also included two more papers on plain-language training: one focused on business language by the consultant Sergio Block, and the other one on Plain English for Spanish-speaking lawyers written by Joanna Richardson, an Argentinean plain-language trainer. You will also find a contribution by Margarita Galan, the President of the Plain Language Network in Mexico and the proud co-organizer of this splendid Conference.

For those with an English background, we have included Christine Smith's remarks on how to leave legalese behind and the article by Neil James about setting standards and defining the profession, which has been the

most important topic in the current plain-language world.

We sincerely hope you enjoy reading this issue as much as Julie Clement and I did enjoy putting together these papers and the hundred details required to make the Conference possible. If you want to get more information about other sessions please go to www.funcionpublica.gob.mx/lenguajeclaro.

I will end this long introduction thanking all the people that attended Mexico City's Conference, as it was thanks to you that a seed of plain language has been sowed in Spanish speakers. We are sure that after November 2008, some of them understand how using plain language can bear fruits in their professions.

Let's keep sowing the seeds of plain language but this time in Oceania. Hope to see you again at the PLAIN's Sydney, Australia, conference in October 2009.

Salomé Flores Sierra Franzoni
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Raising the standard

The Plain English Foundation is delighted to host the seventh biennial Plain Language Association InterNational (PLAIN) conference.

When: Thursday 15 October to Saturday 17 October 2009.

Where: Four Points by Sheraton, Darling Harbour, Sydney, Australia.

Who: Government, industry and plain language practitioners from Australia and around the world.

Why: To learn how plain language is improving services and saving money in government, industry, the law, medicine, engineering and finance.

For more information, visit the conference web page: <http://www.plainenglishfoundation.com/tabid/3276/Default.aspx>

SIMPLE LAW: laws in citizen-friendly language: a program implemented by Chile's National Library of Congress

Carla S. Firmani

Journalist (Chile)

Claudia O. Poblete

*Professor, Universidad de Valparaíso
Clarity's representative in Chile*

"Nobody can claim ignorance of a law after it has become effective," establishes Article 8 of Chile's Civil Code. And once a law is published in the Public Record, "it will be understood that it is known to all citizens" (Article 7 of the Civil Code).

The statement above implies that Chile's law-making process is closely linked to its public: the citizen. However, nothing is further from the truth in Chile because although laws are passed a dime a dozen, the public for whom these laws are meant know very little about the rights and responsibilities contained within this legislation.

The process of passing a law in Chile starts with the *Initiative*, in which a legislative proposal is analyzed by the National Congress. Afterwards, a *Discussion* occurs, in which the Senate and the House of Representatives study and analyze the bill. The bill is debated within Congress and voted upon during the *bill approval* phase, and then is sent to the President for approval or veto. If approved, the bill becomes a law and is published in the Public Record. From this moment on, the law is *in effect and presumably known to all citizens*.

As can be seen, laws in Chile are made *by and for specialists*. Many professionals are involved throughout this entire process: senators, representatives, parliamentary advisors, etc, the vast majority of whom are attorneys. The final public for whom the law is meant is not considered in any of the stages.

The main challenge of creating laws in clear language is that when writing laws, lawmakers generally rely on their predilection for “baroque writing,” which is considered prestigious in Chilean society. As such, they usually consider the following principles:

- Using intellectual and technical terms to add value and prestige to the text.
- If the text is difficult to understand, it is more valuable.
- Legislation is complex. Therefore, the text should also be complex.

This set of principles contradicts the guidelines of writing, which has the following premises:

- A good text uses language suitable for its target audience or reader.
- A high-quality text uses language appropriate for the document, that is, its subject and objective.
- Any text targeting citizens should be designed so that the most important points can be found easily.
- The law should be understood after reading the text only once.
- A law written in clear language should meet all these guidelines as well as legal requirements.

Given this scenario, we can deduce that legislative technique (understood as the steps taken to create and write laws adequately) is not an essential element in creating laws in Chile. In this sense, our legislative situation is very different from countries such as Sweden, where a law cannot be passed if it has not undergone careful review by a language commission to ensure it is clear and understandable to citizens.

A study carried out by the Faculty of Law at the Universidad de Chile in 2002 included a survey in several of Chile’s regions to assess citizens’ knowledge on laws regarding labor, family, and access to justice. The results: 3.58% did not respond; 0.66% responded that they did not know anything; 14.92% stated that they “knew a little”; 52.54% said that they knew “somewhat” about laws; and only 15.75% responded that they “thought” they had sufficient knowledge to apply the laws independently. Approximately 28.3% of those surveyed did not believe they possessed basic

knowledge of the rights and responsibilities in question and thereby felt that *they were not capable of applying these kinds of laws independently*.

Given this scenario and considering that the National Library of Congress (BCN, as per its name in Spanish) has the mission of improving knowledge and understanding about legislation and how it is created, this institution has offered to become a bridge between law creation and citizens. As such, at the end of 2004, the SIMPLE LAW was created in response to the multitude of citizens’ questions received via email (over 1,000 per month). The SIMPLE LAW is a way to connect laws and the Chilean citizens by using simple, clear, and direct language. This information is freely available on the BCN website (www.bcn.cl), where it is the site’s third-most visited page.

SIMPLE LAW for reading, distributing, and listening

The SIMPLE LAW includes four formats:

- a) Frequently asked questions. The FAQ section explains a law or several laws linked to a topic by presenting the most common questions and answers about how this law affects citizens. Content is focused on citizen action.

To date, over 100 simple laws exist on different topics related to public administration, consumers, culture, defense, human rights, education, elections, companies, families, taxes, justice, labor, environment, social organizations, health, social security, transportation, and housing. They are available at www.bcn.cl.

- b) Brochures. The brochures on SIMPLE LAW are the result of a request made by members of Congress, so they could distribute this information in their regions and counties in order to increase knowledge on the laws. These brochures can be personalized for each senator or representative using a space set aside for their picture and signature.

Over 70 brochures have been published to date, all of which are available on the Congressional intranet, where legislators can download and print them.

- c) Podcasts. Now laws can be listened to. In two minutes, a story is told with the law's most important points, using a radio drama style to make the information more interesting.

More than 30 podcasts have been recorded and are available at www.bcn.cl. They can be listened to online or downloaded.

- d) Simple law in Mapudungun. Recently, SIMPLE LAW was translated to Mapudungun, the language of the Mapuche people, one of Chile's indigenous peoples. Eighteen laws were translated, in audio-visual (DVD) format and audio, which are also available at www.bcn.cl.

More simple laws may be translated into Aymara and Rapa Nui, the language spoken on Easter Island.

How is the SIMPLE LAW made?

1. Selection

Two criteria are used for selecting the laws or topics to be address: bills of national social importance that have already passed through Congress and will soon be made into laws; and laws that are frequently asked about at the BCN.

2. Content

First, the text of the law is reviewed to identify necessary background information, and in some cases, depending on the law's complexity, an expert attorney is consulted for insight on the key aspects to emphasize.

Once this analysis has been completed, the text is designed, considering which content will be addressed, what will be left out, and what questions people would most likely ask. So begins the challenge of explaining the law in the clearest and most concise way possible.

3. Editing and legal review

Once a preliminary draft has been written, it is reviewed by a style editor. Any comments are considered, and changes are made; a second draft is then sent to the legal review. This stage is critical, since the result of this "negotiation" is fundamental to using the desired content. We talk about "negotiation," since attorneys often feel uncomfortable with the reader-friendly language used, which to them may seem less rigorous and appropri-

ate. Yet this is precisely the task that the journalist must undertake: saying the same thing but in a way that is easier to understand.

For example, we can consider the differences between the original text of the Tobacco Law and the content presented as SIMPLE LAW.

- Read the Law at <http://www.bcn.cl/leyes/pdf/actualizado/30786.pdf>
- Read the FAQ and listen to the podcast at: <http://www.bcn.cl/guias/ley-del-tabaco>
- Read the brochure on page 7.

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Biblioteca del Congreso Nacional. URL: <http://www.bcn.cl/>

Cassany, D. (2005). *El lenguaje como instrumento democratizador*. Conferencia. Valparaíso: Senado de Chile.

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Claudia O. Poblete has a Masters Degree in Applied Linguistics from the Pontificia Universidad Católica de Valparaíso. She currently teaches at the Universidad de Valparaíso and is Clarity's representative in Chile.



SIMPLE LAW Brochure with English translations in boxes.

Advertising control **(A)**

In order to avoid an increase in smokers and the harm caused by smoking, tobacco advertising is prohibited, except in places where tobacco products are sold.

Modification of the Law on Tobacco Advertising and Consumption

Law 19.4179

(B)

Control a la Publicidad **(A)**

Con el fin de evitar el aumento de la población fumadora y de los daños que esto provoca, se propone la prohibición de la publicidad del tabaco, salvo en lugares de venta de dichos productos.



También se prohíbe que las tabacaleras empleen promociones, concursos o premios para atraer consumidores.

Carabineros y el Ministerio de Salud serán los encargados de fiscalizar el cumplimiento de esta ley.

(C)



(D)

El Congreso hace leyes para usted



Biblioteca del Congreso Nacional de Chile

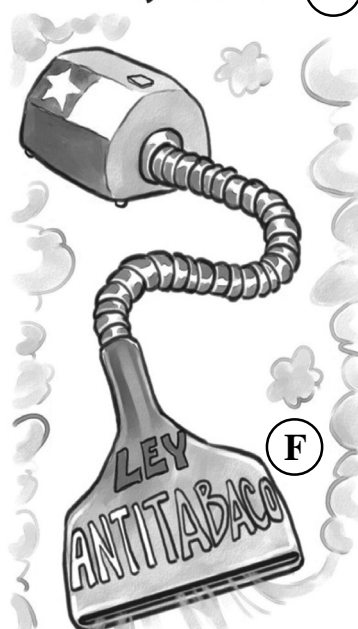
www.bcn.cl

(E)

Modificación a la ley sobre publicidad y consumo del tabaco

Ley 19.419

(B)



(F)

(C)

In addition, tobacco companies cannot use promotions, contests, or prizes to attract consumers.

The police and the Ministry of Health will be responsible for enforcing this law.

(D)

Congress makes laws for you

(F)

Anti-tobacco law

(E)

National Library of Congress
www.bcn.cl

From plain language to business language

Sergio Block

*Associate, Contexto
Didáctico, S.C. Mexico City*

What is needed to improve the way people write on the job? And how can we make sure this improvement generates benefits for the organization? These are questions I've asked myself during 20 years of teaching written communications techniques and methods (including Plain Language) in both public and private organizations in Mexico.

Plain Language is part of the answer, but other conditions are necessary for people to change the way they write. As I see it, the most important are:

- Aligning training towards business
- Achieving management commitment
- Integrating learning into the work environment
- Providing a complete set of tools
- Stimulating a different way of thinking

When these five conditions are met, plain-language projects become business-language projects. And that makes a difference because business people care about business language.

Aligning training towards business

The first condition that must exist for an organization to achieve benefits through written communications is the alignment of training towards specific, relevant business results. This may seem like an obvious argument, but too often the training goal is improving writing for its own sake. In these cases, where there's no visible tie between writing and an organization's desired results, it's very hard to generate the "traction" necessary for changing old habits.

I've experienced successful training processes when, for example,

- a loan approval committee recognizes that credit analysis quality affects loan portfolio quality,
- a call center discovers a relation between the trainer guide design and the length and quality of calls,
- a VP of sales needs to understand complex information in a short time so he can make correct decisions,
- a tax collector's office discovers a connection between taxpayers' willingness to comply and the tone and content of its messages to taxpayers, or
- the quality of training materials significantly cuts time to market (TTM).

On the other hand, I don't remember a single successful training process when improving document quality was an end in itself. In such cases, training tends to be a waste of time and resources for the organization.

It's important to find the business problems to be solved with better writing and to evaluate training efforts with metrics that determine the business impact, and not with metrics that only report how many people took a course or how many documents were improved to the extent that they comply with plain language standards. It's sad to say, however, that these methods are the ones most commonly used in Mexico. I think it's urgent to change this practice. Only measurements of the impact of communications on business can generate and maintain management involvement, the second condition for success in learning and applying plain language.

Achieving management commitment

It's very hard to change writing habits (which tend to be deeply entrenched in an organization) when management doesn't show an emphatic, visible, consistent commitment to change. Without this, people tend to be afraid of change or lack the motivation to go to the trouble, or use the management's attitude as an excuse for not changing ("My boss likes it this way . . ." a devastating phrase that I've heard hundreds of times, always when the boss alluded to is not there to deny it).

Commitment is visible when managers

- publicly affirm the need for clear reader- and business-oriented documents,

- actively participate in the process (in training events as well as in document planning and review activities), and
- help obtain resources and remove obstacles.

Once you can count on the management's commitment, it's possible to generate the third condition: the integration of learning into the work environment.

Integrating learning into the work environment

A person may be able to learn plain-language techniques in a workshop, but this will not be enough to change on-the-job habits. Integrating learning into the workplace environment is basic for converting new skills into new writing habits. Workshop activities must be applied in daily practice.

After a course, the responsibility for achieving ongoing, visible results is shared by participants who apply what they learned, managers who help to revise documents and make them more specific, and instructors who work with participants to create a bridge between writing and business.

Important questions come up after the course when specific documents satisfying concrete needs are generated in daily work. In this stage of integrating skills into work, one tends to discover that plain language is only part of the solution. Communications problems in a real situation require a more complete set of tools.

Providing a complete set of tools

Many plain language courses are limited to presenting general recommendations for writing clearly and directly and, sometimes, to a few pre-writing techniques. Although all this is important, other tools are also needed for resolving real problems, such as:

- Methods for analyzing and organizing information.

These are necessary for working with long, complex texts like reference manuals and training materials. They tend to include more robust pre-writing techniques, taxonomies for analyzing and classifying content, and specific guidelines for presenting the various types of information.

- Graphic communications techniques.

Such techniques are always desirable and sometimes indispensable. This is true, for example, in communicating quantitative analysis results or in communicating with people with low reading capacity, whether due to lack of ability or to insufficient time.

- Models and guidelines for specific documents.

Examples include how to express an audit finding, how to construct a convincing sales argument, and how to diagram the steps in a process. Such tools allow for the application of general recommendations in plain language in real, specific circumstances. They help in thinking and writing about concrete subjects.

- E-writing tools and techniques.

These include interface and navigation design.

Stimulating a different way of thinking

Given the five previously mentioned conditions, only the final ingredient is lacking. Better writing requires better thinking and, in turn, stimulates it. It's not enough to convince people to change from the passive to the active voice. We must convince them to think more and to think better. I'd like to end with these words by Orwell that reflect the most important conclusion of my experience in teaching and promoting plain language.

It (the English language) becomes ugly and inaccurate because our thoughts are foolish, but the slovenliness of our language makes it easier for us to have foolish thoughts. The point is that the process is reversible. Modern English, especially written English, is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble. If one gets rid of these habits one can think more clearly, and to think clearly is a necessary first step toward political regeneration: so that the fight against bad English is not frivolous and is not the exclusive concern of professional writers.

I think that if you replace "political regeneration" with "economical regeneration", Orwell's argument remains true.

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Sergio Block has worked with the company Contexto Didáctico (formerly Soluciones Didácticas) since 1989. Its purpose is to help improve peoples' performance through better communication of the knowledge and information they need in order to act and decide. Contexto Didáctico is the exclusive distributor of Information Mapping products and services in Mexico.



He has participated in more than 150 company projects related to written communication. Some examples are:

- Better communication of audit results (financial groups and governmental regulatory and supervisory agencies)
- Better communication of credit analysis results (financial groups)
- Better sales communication (consulting and information services)
- Design and preparation of learning materials (all kinds of businesses)
- Standards and training design for training developers (telephone company)
- Standards and training design for processes and systems documentation (industrial and service companies, Federal Public Administration branch offices)
- Design and development of e-Learning programs on subjects such as Medicine for Non Doctors, sales products information, and text repair

Clarity seminars on clear legal writing

conducted by Mark Adler

Mark Adler uses many before-and-after examples to teach the theory and practice of clear, modern legal writing, covering style, layout, typography, and structure. One handout gives an outline of the lecture, which is interspersed with exercises and discussion; the other gives model answers to the exercises.

The seminars are held on your premises, and you may include as many delegates as you wish, including guests from outside your organisation. The normal size ranges between 4 and 25 delegates.

The length of the seminars can be tailored to your convenience but they usually run for 3 hours, 5 hours, or 1.5 days.

Individual tuition is also available (in person or by email) to combine training with the improvement of your own documents.

Contact Mark Adler at
adler@adler.demon.co.uk

Members by country

Argentina	3	Germany	2	Peru	1
Australia	83	Hong Kong	18	Philippines	1
Austria	1	India	7	Portugal	4
Bahamas	2	Ireland	3	Singapore	6
Bangladesh	6	Isle of Man	1	Slovak Republic	1
Belgium	7	Israel	4	South Africa	162
Bermuda	1	Italy	6	Spain	3
Brazil	1	Jamaica	1	St. Lucia	1
British Virgin Islands	1	Japan	7	Sweden	20
British West Indies	3	Jersey	1	Switzerland	1
Canada	60	Lesotho	2	Thailand	1
Chile	4	Malaysia	1	Trinidad and Tobago	3
China	1	Mexico	6	United Kingdom	132
Cote d'Ivoire	1	Mozambique	1	USA	211
Denmark	2	Netherlands	7	Zimbabwe	1
Finland	7	New Zealand	21		
France	2	Nigeria	9		
				Total	830

Opening ceremony remarks for Clarity's third international conference

Christopher Balmford

President, Clarity

**Mexico City, Mexico
20–23 November 2008**

*— as delivered by Professor Joseph Kimble,
immediate past president*

Welcome

- Mr Sergio Penagos García, the Under Minister of Public Administration
- Ms Rosa Margarita Galán Vélez, the President of the Mexican Plain Language Network
- Dr. Alejandro Hernández Delgado, Chief of the Academic Division for Economics, Law & Social Sciences
- Mr José Roldán Xopa, the Head of ITAM Law School
- Ambassador of Sweden, Ms Anna Lindstedt
- Distinguished guests, ladies and gentlemen

My name is Joe Kimble, I am the immediate past-president of Clarity.

I'm here today representing Clarity's president, Christopher Balmford from Australia, who is unable to be here for personal reasons. Christopher sends his deepest apologies to you all. He has asked me to deliver his welcoming remarks to you.

Here goes . . .

Welcome to Clarity's 3rd international conference.

It is exciting that we are here (. . . and a pity that I am not!).

From Cambridge, England, our first conference in 2002, to Boulogne Sur Mer, in France in 2005, and now here today in Mexico City

at this marvellous university (which I visited last year as part of organising this conference), it is clear that the themes and concerns that unite us at Clarity are shared in many languages and in many countries.

The need for clear legal and administrative communications is universal. For helping us to explore these universal themes, Clarity's warmest thanks:

- to our sponsor the Underministry of Public Administration; and
- to our sponsor and host, ITAM.

Mexico and plain language

At Clarity, we first became aware of Mexico's wonderful plain-language activities when—at our conference in France in 2005—Salomé Flores Sierra Franzoni outlined Mexico's project.

Salomé told us that the project began, more or less, when her boss said to her something like:

Salomé, out there in the world there is something called "plain language". Go out into the world. Find out what it is. And bring it home to Mexico.

Salomé and her colleagues have achieved that task admirably. And now, today, we the plain-language world, have come here to learn from Mexico.

Already, just in setting the theme for this conference, our journey has been worthwhile. Mexico's plain-language activities have identified, and made prominent, a new addition to the many benefits of plain language—namely, the fact that the transparency a clear document delivers can help overcome corruption.

Conventionally, the benefits of plain language are:

- **First**, “fairness”—under any standard of decency and equity, clear documents are needed so that people can make informed and confident decisions.
- **Second**, “efficiency” and “effectiveness”—reducing cost and improving outcomes.
- **Third**, aligning an organisation’s documents with its brand and culture. By which I mean, if an organisation claims to be, say, “customer or client focussed” or “easy to do business with”, or “open and transparent”, then it needs to write in a style that proves those claims to be true. For example, a conservative bank should write in a quite different style to that of a progressive mobile phone company. This concept of aligning a writing style with a brand extends even to countries. For example the South African Constitution contains a Bill of Rights, which includes the statement that:

This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.¹

Those are inspiring brand values for any nation: “dignity, equality and freedom”.

- **Fourth**, “democracy”—as the honorable A M Omar MP, Minister of Justice, Republic of South Africa, said at a conference in Cape Town in March 1995:

Clear, simple communication is . . . an absolute and critical necessity for democracy. People have a right to understand the laws that govern them, to understand court proceedings in matters that affect them, to understand what government is doing in their name.²

And as Phil Knight, Professor Joseph Kimble, and I said in a report to the same Minister:

Most importantly, plain language allows people to visualize themselves as subjects of the law, and to imagine themselves in the circumstances with which the law deals. This ability to place or imagine oneself within the law is an important distinction between a system of justice and a regime of enforced order.³



Members of the Clarity Committee at a post-conference meeting.

These characteristics of fairness, of efficiency and effectiveness, and of democracy have a common link: “transparency”. Plain-language law and documents are transparent. Meaning shines through. Ideas are laid bare.

Where language is transparent, it is harder to hide purpose or to “spin” meaning—much, much harder.

With transparency comes a reduction in the opportunities for corruption. By “corruption”, I mean not only blatant abuse of power, but also improper bureaucratic decisions and judicial bias. Plain language—particularly plain-language laws and regulations—reduces the opportunity for these kinds of activities.

The benefits of this alone are enormous. One cost of corruption is public contempt for the law and the judicial process. A just society requires transparent laws. And plain language helps ensure transparent laws.

Clarity and the collapse of Enron

An example of the benefits of transparency—or rather, the horrors of its absence—comes from the collapse in 2005 of the US energy company Enron. Enron’s collapse cost investors so many billions of dollars that the number is meaningless to most of us.

The story of Enron—its spectacular rise and fall—is, at its heart, a story of deceit concealed by a lack of transparency, by a lack of clarity.

Even though Enron’s management was lying, the real problem was that the documents concealed the truth—even though they contained that truth.



The panel on standards. From the left: Lynda Harris, Helena Englund, Annetta Cheek, and Neil James. Not pictured: Mark Adler (moderator).

The proof that the documents contained the truth is shown by the work of 6 business students at Cornell University. The students wrote a 23 page report analysing Enron for their term project. According to Malcolm Gladwell in *The New Yorker*, Jan 8, 2007, the students found that “Enron may be manipulating its earnings”.

The students recommended “Sell”.

Their timing was impressive. They recommended selling Enron shares in the Northern spring of 1998—about two and a half years before the company collapsed.

If Enron’s lies had not been hidden by complexity, if its documents had been clear, could Enron have grown so large, could its share price have ridden so high?

To be sure, the truth was in Enron’s documents. But truth without clarity has little value.

Clarity and the credit crisis

Enron’s reports—perpetuating and concealing the lies from Enron’s management—were toxically obscure.

Like the collapse of Enron, the current credit crisis has its roots in unintelligible documents.

Banks have been unwilling to lend to other banks because none of them could be sure how much toxic, sub-prime debt they, or any of the other banks, hold.

Being uncertain of the extent of the risk must to some extent be because, after months of looking in the right place (the interbank loan documents), the best banking minds supported by the sharpest legal advisers can’t find the answers.

The unintelligibility of those interbank documents—not just the debt itself—is toxic. First it was toxic for the organisations that signed the documents. Now it is toxic for the global financial system, and for us all.

If the contracts for the bundling and transfer of sub-prime products had been clear, then surely the banks would have known from early in the sub-prime crisis which of the banks held how much sub-prime debt.



U.S. panel on “Language, regulations, and accessibility.” From the left: Amy Bunk, Miriam Vincent, Edder Espinoza Arellano (moderator), and Joanne Locke.

With that knowledge, banks would be lending to the banks still viable. There would be a sub-prime crisis, but less of a credit crisis.

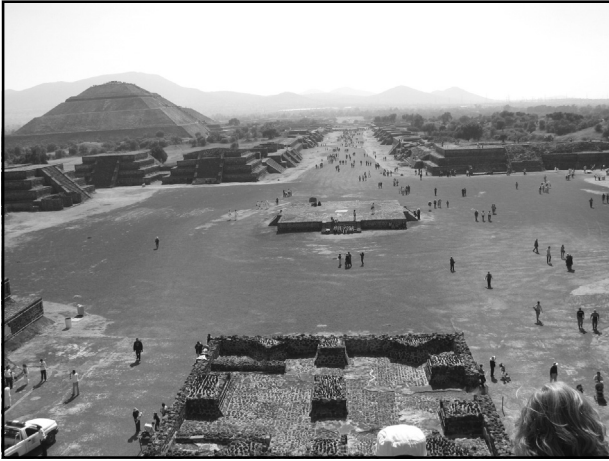
Conclusion

Again and again a lack of clarity causes much worse than mere confusion.

It is wonderful that the Mexican government has focussed on improving clarity to deliver



Joe Kimble (center) with conference organizers Salome Flores and Carlos Valdovinos (Director for Regulatory Simplification of the Ministry of Public Administration).



The pyramid site viewed from the Temple of the Moon.

transparency—the theme of our conference—“delivering transparency and efficiency” and all the benefits they bring.

My apologies for being unable to be here. I look forward to reading the proceedings in the next issue of *Clarity*. You will receive that issue too—thanks to your conference package which makes you a member for *Clarity* for 12 months. We hope you’ll renew your *Clarity* membership then. And we hope that along the way, you’ll sign up many other members.

Just before I close, enormous thanks to Salomé for all her work in organising the conference, and for making my role so manageable.

Lastly, thank you for coming to the conference. Thank you, indeed.

May the conference be interesting, entertaining, and useful for you. May it help plain



The Temple of the Sun at the Teotihuacan pyramids, the day after the conference.

language everywhere—especially in Latin America and especially, especially in Mexico where our hosts and our sponsors have already done so much and are being so hospitable.

Endnotes

- ¹ *Constitution of the Republic of South Africa* 1996, Chapter 2 Bill of Rights, section 7(1).
- ² At a plain language conference in Cape Town sponsored by the Plain English Campaign (United Kingdom) in March 1995, quoted by PHIL KNIGHT, PROF. JOSEPH KIMBLE, and CHRISTOPHER BALMFORD in TOWARDS PLAIN LANGUAGE LEGISLATION: A DEMONSTRATION PROJECT ON LEGISLATIVE DRAFTING, A MODEL REVISION OF THE HUMAN RIGHTS COMMISSION BILL in the authors’ covering letter. The model was prepared in May 1995 as a demonstration of plain-language principles at the request of Hon. A M Omar MP, Minister of Justice, Republic of South Africa.
- ³ See Knight, Kimble, and Balmford, note 1, at 3.

Call for Papers

The journal *ESP Across Cultures* (www.unifg.it/esp) will be devoting the whole of vol. 7 (2010) to the topic of ‘legal English across cultures’. We therefore invite anyone interested in writing about legal English from a cross-cultural perspective to send an abstract of 250-300 words before 15 July 2009, and the completed paper (approx 5,000 words) by 31 December 2009. Please send your abstracts and any queries to Christopher Williams at cjwilliams72@hotmail.com or c.williams@lex.unifg.it.

Legal language and the technique for legislation drafting in Mexico: an unresolved matter

Luis Raigosa

Distinguished lawyer and professor, ITAM

The recent International Conference held in Mexico City from November 20 to 23, 2008, untitled Legal language: transparent & efficient, started a discussion in the Mexican legal circles about a very important topic for those who are concerned with increasing the quality of the laws in our country. The topic is critical to how we produce laws and to our legal-political system.

A. A brief note on the context of legislative drafting in Mexico

The Mexican congressmen's workload has grown considerably over the last years. It is well known that from 1917, the year in which our current Constitution was written, and during several years of our recent history, the Revolutionary Institutional Party (PRI) occupied the political scene, nationally and in the states, becoming the formal federal structure of our political system.

The political system allowed the president of the Republic to be the "great congressman" as his party comfortably controlled both chambers of the Congress, as well as all 31 state congresses in the Mexican federation. The power of drafting laws and the power over the legislative bodies unleashed a controlled system for drafting the most important rules of our country: the laws. This stopped in 1997.

In our current parliamentary history, three political parties dominate: the same PRI, which today is the second national political force; the National Action Party (PAN), currently the first political force in both chambers of the Congress; and the Democratic Revolutionary Party (PRD), holding the third position.

The legislation drafting process takes place in a context of negotiation among these parliamentary forces, in which other minor political forces occasionally weigh in.

B. The size of the Mexican federal legal order

As a federal system, we have a national Constitution, which includes 136 articles and 32 local constitutions. The national Constitution has a unique characteristic of suffering amendments an extraordinarily high number of times. According to my calculation, between 1917 and mid-2008, the content of its articles has been amended 450 times. This has caused a significant increase in the volume of constitutional regulations. In fact, today, the constitutional text is twice as large as the original document.

In my opinion, we have reached a moment in our country in which we need to analyze the treatment we have given to the constitutional content, as this fundamental law now contains numerous regulations that are not proper for its regulatory level. This has distorted the normal functions of the constitutional and secondary bodies; it has also disturbed the working order of the constitutional court in charge of overseeing the amendments of secondary law contents according to the highly volatile constitutional texts.

On the other hand, the system includes more than 252 legal ordinances with a rank or category of federal law, which contain over 30,000 articles. Seven out of 10 ordinances were issued during the last 26 years. These numbers show that it is not only the parliamentary work that is causing the vigorous growth of the "legal mass" in the Mexican federal legal order.

These numbers do not include the legal ordinances under the law, which are dramatically more numerous and complex than the ones produced by our congressmen. And as one can imagine, the Public Administration has no fewer prospects for writing documents in plain language as it establishes relationships with private citizens, as well as in its internal relations.

The volume of written regulations in the Mexican federal legal order invites us to reflect about the need to seriously start to professionalize the work of technical legislation drafters. It is not only legislative bodies that are responsible for issuing better and clearer legislative messages within an increasingly complex regulatory universe. We believe that universities have a significant role in promoting professional training for legal language, in every field in which legal drafting is involved and legal documents (general or specific) are issued.

C. Plain language as a tool to improve the quality of the law

The problem with the quality of the laws is not merely a problem of studying the contents and the format for drafting regulations. We have to admit that the practice of legal drafting, generally, is a highly specialized task which requires the assistance of professionals from other bodies of knowledge.

This is not only because we have to convey legal messages that are adequate, clear, and understandable to all readers, considering content, structure, style, grammar and design, but also because (this is very important) this has to be done without infringing what is stipulated in the rest of the legal ordinances. If a regulation is clear but it does not satisfy all the required legal mandates for its drafting, it is endangering its legal quality as it could be null and void. Furthermore, any regulation is of little use if it does not properly solve the social problem that motivated its creation. Finally, clarity goes together with legality, as well as with regulatory efficiency and effectiveness. But let's insist: the means that will allow the congressman to reach adequate legal solutions to social problems is the language; and for that, it is essential to issue clear regulations.

It is true that there are developments for putting together technical groups to support the work of our congressmen in both federal legislative Chambers: offices for legislative

studies and support for their work were created. There is also a start on training professional bodies of advisors to congressmen. However, there is a lot to be done to create a civil service of professionals in legislative drafting, as only a few advisors are members of these bodies.

We believe that a legislative civil service is where we should train experts in plain-language legal drafting. Legislation drafters must not only be experts in law, but they also must be able to use legal language appropriately, considering their area of expertise and the need to formulate clear legal messages. In our opinion, we need professionals with a double profile: experts in law and experts in legal language. We must emphasize the need to provide congress's lawyers with linguistic training.

University programs for lawyers should include training on drafting regulations (general or particular) with plain-language techniques. Considering that drafting regulations is almost always supported by natural language, it is recommended to get support from legal-language professionals or philologists with knowledge of the law. We believe that the collaboration between different fields will lead to a positive development and application of law. Finally, creating clear legal documents is a demand of the rule of law.

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What our Constitution has to learn from religion

Gerardo Laveaga

Director of the Mexican National Institute for the Study of Criminal Science; (INACIPE in Spanish).

What makes a society identify with its Constitution and consequently obey it? It is certainly not a coercive system. Such a system may temporarily sanction those who violate it—arrest, jail, and even death. But in the long run, the costs become very high and a threat of ungovernability arises.

What identifies a society with its Constitution, written or not, is the will of this society to live up to its principles, its unity, its cohesion. Naturally, such will require a coercive system to correct deviations. But this system must have limits: Why is it that only a few members of a community steal, rape, or murder? Why is it that the majority of community members do not do it? Is it fear of punishment? If terrorism were decriminalized tomorrow, how many of us would go out in the streets to place bombs or assassinate children?

If we think about it, the regulations that govern us, the regulations that we obey every day, do not have to be printed on a document, and there need not be prescribed sanctions for those who do not obey them. According to Lycurgus, “The most important regulations to achieve the happiness in a city and its virtue of the people remained inalterable if it was inculcated in the character of its citizens.” He was right: What identifies a society with its Constitution is consensus. When this consensus has resulted from whatever historical, cultural, political, or economical reasons, neither sanctions nor constitutional text are necessary. Conversely, if there is no consensus, there is no repressive system or document that can keep that society united.

In order to have a Constitution that is imprinted in the character of the people, it is necessary that it be the result of the broadest possible agreement. The more groups or individuals participate in what the classic thinkers

called “covenant,” the easier it will be to comply with and uphold. When this is not the case, when the most important judicial regulations are imposed without regard to society, or only considering the immediate interests of the minority, society at large does not find any reasons to comply, but it does have plenty of reasons not to comply.

So demonstrate the civil disobedience movements, ever with more philosophical foundations, that are proliferating world wide. From Washington to Kabul, and from Bologna to Cancun, more and more people ask themselves, “Why should I obey this law?” “Why should I have to pay taxes that only benefit a few?” “Why do I have to be drafted to a military service in which I do not believe?” The more access people have to the media or the Internet, the more informed they are, the more critical they become, and the more willing they are to enjoy the benefits of other communities.

Now, therefore, how to reach consensus? By increasing the social participation channels, in the first place. Second, by creating bureaucracies that will elicit and generate the conditions where consensus can develop. But that is not enough, especially if we consider that the benefits a few members of a group may receive from consensus could be detrimental to others. Let us think about issues such as abortion or “legalization” of certain drugs . . . That is why it is necessary that those bureaucracies help society debating on the advantages and disadvantages of each law initiative, of each public policy, as well as to evaluate the utility they will have to each group. For this reason, this exercise presupposes a permanent educational effort.

Why is it then that, if things appear to be so simple, in reality this is not the case? At least in Mexico’s case, because some political or economic power groups are afraid that civil society, in an exercise of democracy, understands its laws, measures their scope, and

decides to reform them so that the distribution of privileges is wider. To achieve their purpose, they take pains to have confusing laws—almost incomprehensible.

Laws are the result of bargaining and negotiation, conciliation and agreement. But, in the end, they are reduced to words. That is why, if this bargaining and negotiation, this conciliation and agreement, are not clear to the majority of the men and women that are part of a State, the terms of consensus are left to the mercy of those who want to manipulate them to their advantage. A Constitution without a shared concept of democracy or liberty, of justice or tolerance, cannot serve its purpose of cohesion that would be expected of it.

Recently, the question of whether our country needs a new Constitution has again occupied the imagination of many jurists. I think it is easy to agree that we do not need a new Constitution. Even those who consider that some institutions have weakened would admit that they could get strengthened again with new leadership or minor reforms. However, what does seem to be urgent—and this is not difficult to guess—is a simpler text. A text that outlines Mexico's great principles, its great ideals, in an accessible language: A text easy to understand for the majority of Mexicans and that encourages unity and solidarity of the distinctive groups of our country. We do not have it.

How can we demand a farmer to participate in Mexico's decisions if he cannot understand the exceptions to the nullity with respect of lands "that would have been titled in the grants made according to the June 25, 1856 law, and possessed, in one's own name in title and dominion for more than ten years, as long as their surface does not exceed fifty hectares," such as Article 27 of the Constitution provides?

How do we expect that a worker or a small-business person, victimized by the abuse of some authority, would go to the tribunals—before arbitration—if, as much as this person tries, he does not have the elements to understand the appeal for legal protection ['amparo'] "against definitive sentences, or arbitration awards and resolutions that put an end to the trial, about which there is no ordinary recourse by which they can be modified or reformed, whether the violation occurred in them or occurred during the process, affect the defenses of the complainant, transcend-

ing to the result of the finding; as long as in civil matter the violation has been objected to in the course of the process through an ordinary remedy established by the law and invoked as an injury in the second instance, if it was committed in the first one," such as is established in Article 107?

How can we promote the right to vote and speak of the dangers of abstentionism; do we really expect that an average voter take into consideration at the time of electing representatives, according to the proportional representation principle, that "in no case may one political party have a number of representatives that for both principles represents a total percentage of the House that exceeds by eight points the percentage of the national votes cast," even if this provision does not apply "to the political party that, due to its triumphs in uninominal districts receives a percentage of magistrates of the total of the House higher than the sum of the percentage of its national votes cast plus eight percent," as is established in Article 54 of our Magna Carta?

If what we intend is that the drafting, application, and interpretation of the Constitution continue in the hands of a few "experts," we do not need to worry about promoting any changes. But, that being the case, we should not expect either that Mexico will advance to greater heights of governability and obedience of the law. Now that some American politicians point out that Mexico is a "Failed State" this uneasiness becomes relevant. If we endeavor in formulating constitutional precepts or complex laws that contradict each other, it will be more costly each day that passes.

The Law has to be ductile, which is not to say that it has to be expressed in such a complex way. If, for technical reasons it has to be done that way, complexity should not go beyond the regulations. To take it to the Constitution would provoke greater divisions in society and the proliferation of multiple mexicos, with different and even contradicting national projects. It is not that a simpler constitutional text will repair social and economic inequities, but, no doubt, it can become the beginning point. In destiny and orientation. Easy to understand regulations are easy to obey, especially if one participated in their making. As in all modern States, there has to be some room for ambiguity and interpretation, because

it would be impossible to anticipate every possible economic, political, and social transformation. It would be impossible to anticipate every case. But this gap should be narrower each time.

Those of us who study the Constitution, those of us who enjoy unraveling it and imagining its scope, have a lot to learn from the great religions: "If you want eternal life [says Judaism and now Christianity], follow these ten commandments." If you aspire to find "the essence of being [Buddhism states] guide yourself by these four noble truths" (Satyani). "If you aspire total submission to the will of God [proclaims Islam] follow these four essential duties" (five, say those who promote yihad, the holy war). They all offer much in exchange for little. They all promote simplicity. Believers have hope in their god and a full life. They know what they have to do because they learned that as children. In his essay, *On the Laws*, Cicero tells us how, from the time he was a child, he had to learn and recite the XII Tables. Those were other times, when the foundation of the State was being laid.

Why not the take back the invitation from Häberle and other academics to convert the legal culture into a secular religion? A religion where one uses the least possible words and where these few words have an understandable reach for the majority of people. The times of the legislator priests may be behind us, but not the needs that inspired their workings. It is possible that there is no room for a Hammurabi, Moses of Mahammed, but there will always be room for the man or woman who wants justice from the State of which he or she is a part. And it is because the administrative processes of a modern State can be extremely complex, but their essential foundations are not. The theoretical models to explain the moment in which each conduct becomes a crime may be indecipherable for those who do not know the formulas and the cryptic language of its authors, but the need that a State has to punish those who endanger these essential foundations is not.

Some years ago, business administration scholars began using the term "reengineering." It was a concept that referred to the convenience of reviewing an administrative system to see whether it worked for that for which it had been created. If the answer was no, it

had to be dismantled and rebuilt. I do not think this is the case with our Constitution, but it is the case of its text: It is urgent to reengineer it, if I may use that term. In their zeal for judicial technique and dogmatic embellishment—in the best of cases—or because of the excessive demagogic desire to elevate everything to constitutional level—in the worst case scenario—our legislators have distanced this text from the majority of Mexicans.

Let us decide, then, what it is that we want of our Constitution: A mystery reserved for only a few initiates or an instrument that will propitiate social participation in the construction of the Legal State. Both alternatives have advantages and disadvantages for various groups; both presuppose losses and gains for different constituencies of the country. That is why, independently of what we resolve, we must not lose sight of the fact that our Nation's unity is at stake.

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Call for papers:

We've talked a lot about standards in recent years. *Clarity* 62 will be devoted to this topic. Our goal is to publish it slightly earlier than the regular November publication date, so you'll have even more to talk about at PLAIN's conference in Sydney. If you would like to contribute, please email editor-in-chief Julie Clement at clementj@cooley.edu as soon as possible.

Plain English for Spanish-speaking lawyers: specific language based issues

Joanna Richardson

Joanna Richardson teaches plain-English writing skills to lawyers at Marval, O'Farrell & Mairal in Buenos Aires, Argentina.

Much has already been written in earlier issues of *Clarity* about the advantages of plain English when communicating between different nationalities using English as a common language. For a bilingual or multilingual company, there are many advantages to writing in a plain-English style. English has become a common language for people of different nationalities; therefore, a clearer, more concise way of writing in English will be more readily understood by non-native English speakers. In the bilingual workplace, plain English helps lawyers write with the reader in mind and keep their writing concise and direct.

This article is a result of six years' experience teaching plain-English writing skills to lawyers at Marval, O'Farrell & Mairal, Argentina's largest law firm. Based in Buenos Aires, this law firm employs over 400 lawyers, specializing in IP and Corporate law, and a third of its business is foreign or foreign-derived. To carry out business with their clients abroad, these Spanish-speaking lawyers must be able to communicate clearly and effectively in English, and plain English helps them do so. Taking real life examples from the lawyers' work, this article will address the particular difficulties for the Spanish-speaking lawyer writing in plain English.

The majority of these language-based issues are foundation stones of plain-language writing like compact sentence structure, use of personal pronouns and language of obligation, as well as avoiding hidden verbs, sexist language and the negative. But there are also topics that occur only to Spanish speakers, some of which have a more grammatical base, like zero article. Others are simply problem areas for many second-language speakers such as register and false friends.

There are, of course, other key areas of plain language for lawyers which I have not touched on here, such as passive voice and legalisms; as neither of these seems to be an issue specific to the Spanish-speaking lawyer, I have not considered them relevant. Let us now look in detail at ten language-based issues for the Spanish-speaking lawyer writing in plain English.

1. Short sentences

Because of the structure of their own language, Spanish speakers are very comfortable with long, clause-laden sentences and tend to replicate them in English. When translating from the Spanish, they have to be encouraged to break up one long sentence into two or three shorter ones.

They must remember to keep their sentences with the subject, verb and object close together. In Spanish, long sentences are acceptable, but in English, unless you are Henry James, a sentence with two clauses is not considered good style, and short sentences are one of the foundations of plain English. The long sentence must be broken up and, where necessary, the subject must be repeated.

For example,

Marval, O'Farrell & Mairal, the largest law firm in Latin America, which specializes in patents and trademarks as well as corporate law, was voted best law firm in 'Apertura', a top business magazine.

Would become:

Marval, O'Farrell & Mairal is the largest law firm in Latin America and specializes in patents and trademarks, as well as corporate law. This firm was voted best law firm in 'Apertura', a top business magazine.

It can be very difficult to convince Spanish-speaking lawyers to adopt this 'free translation' approach where they change the structure of the original Spanish sentence. It is important

for them to understand that the new structure actually makes more sense in English and, what is more, is closer to the original meaning.

2. Sentence structure

In both Spanish and English, all sentences must have a subject and a main verb, most have an object, and some have an indirect object. But here there is an important grammatical difference between the two languages. In English, the indirect object must follow the direct object. In Spanish, it may go in front. When translating, the Spanish-speaking lawyer often retains the same sentence structure, creating sentences which are tortuous and grammatically incorrect in English.

For example:

We are attaching as exhibit B, the above mentioned letters.

The indirect object here is ‘as exhibit B’, which should go after the object, as follows:

We are attaching the above mentioned letters as exhibit B.

3. Personal Pronouns

Personal pronouns are another foundation stone of plain English, as they address the reader directly. In the US, the Securities and Exchange Commission’s (SEC’s) proposed “plain language” rule (release 33-7380) notes that:

Although not a part of our proposed rules, another effective tool for producing plain English documents is to use personal pronouns. Personal pronouns immediately engage your readers’ attention. A familiar writing style where “we” or “I” refers to management or the company, and “you” refers to the investor, involves your reader and increases comprehension.

The aim is to use the first person plural—we, us, our/ours—and second-person singular—you, your/yours. This is particularly difficult for the Spanish speaker who, in Spanish, as in other Romance languages, distinguishes between the formal “Ud” and the informal “tú”. In English there are other ways of being polite, e.g. use of the conditional and saying “please” and “thank-you”, which are both used far more than in Spanish. Many Spanish speakers initially feel uncomfortable using

“you” as they feel it sounds too informal, but once they begin to practice using it, they realize that they get a much better response from their clients.

Note the differences between these examples:

before

The table above is intended to show the state of current oil reserves in the Middle East.

after

You may observe the state of current oil reserves in the Middle East in the table above.

Addressing the reader directly and avoiding the passive voice is still perfectly polite and makes the writing fresher and more appealing.

4. Avoid hidden verbs

Another aim of plain English is to use strong verbs to give writing accuracy and power. Always try to express action through a verb. Often the strong verb has been converted into a noun.

Eg: We made the application for the permit.

We can omit the weak verb and turn the noun back into a strong verb.

We applied for the permit.

This is particularly hard for the Spanish speaker whose instinct is to opt for more Latinate language. In legal English, we are already expressing complex ideas. Therefore, plain English prefers to use shorter, more common Anglo-Saxon words so as not to overwhelm the reader.

For example,

Even if these terms have a similar use in both subsections, it is not clear if the legislator had the intention of distinguishing them.

Would change to:

Even if these terms have a similar use in both subsections, it is not clear if the legislator intended to distinguish them.

Although we have only removed one hidden verb, the sentence is stronger and more direct.

5. Avoid the Negative

Another point that the Spanish-speaking lawyer must be aware of is the double negative, which does not exist in English. In

Spanish you can say “*no tengo nada*” but in English this construction is grammatically incorrect. Another problem with the negative is that when readers are faced with a negative, they must first imagine the positive alternative, then mentally cancel it out. This is not a clear way of thinking.

For example,

It is not improbable that this law may be extended for another six-month period.

Should read:

It is probable that this law may be extended for another six-month period.

6. Language of Obligation

As Bryan A. Garner says in his book “Legal Writing in Plain English”, “the word *shall* is a mess.” Many lawyers incorrectly use *shall* for future action as well as for obligation, leading to confusion. Thus, leading modern legal drafting experts concur with Garner that “*must*” is a clearer alternative. Many of the lawyers at Marval, O’Farrell & Mairal are now using “*must*” instead of “*shall*”, for the sake of clarity.

For example,

*National Decree XXX provides that the entities or individuals that are registered to render these services **shall** comply with the following conditions: . . .*

Should read:

*National Decree XXX provides that the entities or individuals that are registered to render these services **must** comply with the following conditions: . . .*

But for the Spanish-speaking lawyer, the real difficulty comes when making statements of fact; for example, *the definitions provided in this Agreement **have** the following meaning:*

In English, unlike in Spanish, the present tense can imply the future, hence the Spanish-speaking lawyer always tries to make a statement of fact using either “*shall*” or “*will*” incorrectly.

For example,

*From a legal point of view, a game of chance **shall/will** exist when results are subject to a future and uncertain event.*

Here, there is no obligation and the sentence should be in the present tense, as follows:

*From a legal point of view, a game of chance **exists** when results are subject to a future and uncertain event.*

Once they realize that saying something in the present tense means that it is true today, tomorrow, next week and next year, the Spanish-speaking lawyer has no problems in using the present to express statements of fact.

7. Avoid sexist language

In Spanish, the issue of sexist language does not arise at all, as the masculine gender is considered automatically to cover the feminine, making this a particularly complicated area for the Spanish-speaking lawyer writing in English. Spanish has only one possessive pronoun “*su*” so lawyers will often incorrectly translate it as “*his*”, assuming that the masculine possessive pronoun covers both genders. They also have to learn to write using *he* or *she* and using gender-neutral nouns as much as possible.

For example,

The employer must pay 30% of his employees’ social benefits.

Should read:

The employer must pay 30% of his or her employees’ social benefits.

Another common error in translations is to refer to a company as “*she*”. In English, a company is an “*it*”. Only a ship can be a “*she*”.

The title *Ms* is another problem area as it has no translation in Spanish. But in the modern business world, lawyers must become accustomed to addressing any business woman as “*Ms*” on paper.

8. Register

For a lawyer, it is much safer to keep language formal, and for most legal writing this is relatively easy. The problem arises when writing less formal things because the lawyer with English as a second language finds it harder to judge the level of formality and achieve an appropriate tone. Sometimes the Spanish-speaking lawyer will mix tones, leading to an inappropriate register as in the examples below, where the legalism of ‘*thereafter*’ seems out of place with the rest of the email, and the formality of ‘*deem*’ clashes with the friendliness of the final salutation ‘*cheers*’.

1. Original e-mail: a request for work.

Reply: Dear Frank,

I am forwarding a piece of my work in English.

Thereafter I will send you more samples of same.

Rgds,

2. Dear Mike,

You can summarize the information in the Power Point slides in the way you deem better.

Cheers,

I teach lawyers that it is important to empathize with your client at all times, so they should start off formally, but if the client becomes more informal, follow the client's initiative and respond in a similar tone while remaining consistent and not mixing register.

9. Zero article

While not a plain-English point, this error is so common for Spanish speakers that I felt it was important to include it here. In Spanish, the definite article is used much more than in English. 'The' is often used incorrectly in translation, which looks very unprofessional.

For example,

The judge defines the public service as the activity carried out by either the Government or the private sector that satisfies the general needs.

Should read:

The judge defines public service as an activity carried out by either the Government or the private sector that satisfies general needs.

12. False Friends

False friends are words that sound right, look familiar but have a different meaning when translated directly from Spanish to English. While this list is by no means comprehensive, it covers false friends that Spanish-speaking lawyers need to be particularly aware of, as some of them may mean the opposite of what they intended.

- **Actually** means **in reality**, or *en realidad* not *actualmente*.
- *Actualmente* means **now**, or **at present**, **currently**.

- **Adequate** translates as *suficiente*, not *adecuado*
- *Adecuado* translates as **appropriate**, **correct** or **right**.

- A **billion** is a thousand million in English. In Spanish it is a million million.

- *Camara de apelaciones* translates as **court of appeals** not **chamber of appeals**.

- *Carrera* translates as **studies** or **degree**.
- In English, your career is your profession.

- **Comply** translates as *obedecer*.
- *Cumplir* can translate as **comply with**.
- You can also use **fulfill**, **perform** or **carry out**.

- *Conveniente* should be translated as **appropriate**.
- *Inconvenientes* translates as **adverse effects** not **inconvenience**.

- *Comprometerse* should not be translated as 'compromise', but as 'commit'.

- **Compromise** means **a concession on both sides**.

- **Commitment** means a **promise** or **undertaking**.

Although, if you say that 'information is compromised', i.e. it has been leaked, that does translate as *información comprometida*.

- *Derechos politicos* when voting in a company are translated as **voting rights**.

- **Domestic markets** should not be translated as *mercados domésticos* but as *mercados locales*.

- **Doctrine** is not an acceptable translation of *doctrina*.

- Use **leading commentators**, **legal authors**, **scholars** or **legal text writers**.

- **Eventually** translates as *finalmente*, not *eventualmente*.

- *Eventualmente* is **by chance**, **possibly** or **occasionally**.

- *Explotación económica*. The verb **exploit** is correct but it would be incorrect to say **economical exploitation**. Prefer **exploit commercially**.

- *Inconsecuente* should not be translated as **inconsequent** which in English means **unimportant**. The correct translation is **inconsistent**. e.g. The ruling was inconsistent with the Law.

- **Imply** translates as *inferir* in Spanish.
- *Implicar* would translate as **involve** or **implicate**.
- **Incorporation** of a new company is the translation of “*constitución de una sociedad*.”
- *Incorporación de una sociedad* translates as **admission** of a new society, e.g. to a group or joint venture.
- *Intimar* is a verb meaning **to notify, summons, announce** or **convey an order**.
- Do not translate as **intimate** which is only an adjective in English, and means to get close to someone, in all senses of the word!
- *Jurisprudencia* should be translated as **case law** not jurisprudence, which is the philosophy of the law.
- **Notorious** has a negative connotation in English. e.g. *Police officers have been involved in many of the most nation's most notorious crimes, such as the 1994 terrorist attack on the AMIA.* Buenos Aires Herald. Translate *notorio* as **manifest, evident** or **well-known**.
- **Organism** is mainly used in English to describe something biological, when translating *organismo gubernamental* say **governmental agency, entity** or **body**.
- To **pretend** means to make out you are something you are not and translates as *simular*. Use **intend** or in legal English **purport** to mean that you want or aim to do something, e.g. the applicant intended to obtain unfair advantage. You may also use **expect, claim** and **aim**, depending on context.
- **Relevant** adj. means **pertinent**, or having direct bearing on the matter in hand. In English it conveys no sense of urgency or importance as does the Spanish *relevante*.

- *Último* in Spanish has two different meanings in English: *Fue el último en la carrera* translates as **he was the last one in the race** but *últimas novedades* is the **latest news**, i.e. the most recent news.
- **Tax haven**, not tax heaven, is the correct translation of *paraíso fiscal* and is a country or state with a lower rate of taxation than elsewhere. The word haven (pronounced with an open ‘a’ as in save,) means a **safe port** for your savings.

In conclusion, Spanish-speaking lawyers tell me that although they may have particular difficulties with the language areas described in this article, they often find it easier to write more concisely in English than they do in Spanish. In part, this may be because they are limited by the constraints of writing in a second language, but also because English lends itself more easily to precision. With the guidelines laid down by plain English, they find that they can be more easily understood by their colleagues across the world, particularly when using English as a common language. My aim is that by paying attention to the ten language points discussed in this article, Spanish-speaking lawyers will be able to communicate more effectively in the English-speaking business world today.

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Paths that meet: the plain language network

Rosa Margarita Galán Vélez

*President, the Plain Language Network, Mexico;
proud co-organizer of this splendid Conference*

María Isabel López Santibáñez

Professor, ITAM

La palabra es nuestra morada, en ella nacimos y en ella moriremos (...). Sus muros son transparentes y a través de esas paredes diáfanos vemos al mundo. [Words are our home; in them we are born and die (. . .). Their walls are transparent and it is through these diaphanous walls that we see the world.]

—Octavio Paz
1980 Literature Nobel Prize

Now more than ever, transparency in language is a social imperative. With this idea in mind, and driven by an inescapable international trend, in 2005, the Plain Language Network was set up in Mexico, the second international network after Sweden's and the first in the Spanish-speaking world. The potential of this network is enormous and on the rise, particularly since Spanish is currently the fourth most widely spoken language in the world: today, nearly 400 million speak Spanish in 23 countries, 9 out of 10 of whom are Latin American.

The Plain Language Network is a not-for-profit association that provides a neutral, pluralistic perspective for monitoring and promoting the use of transparent language that will improve the capacity for communication in Spanish in all social spheres. The Network is an impartial forum, with no links to political parties or private interests. It is a crossroads and a meeting point that encourages discussion and interest in plain language. The Network comprises professionals from various spheres, with very different profiles: academicians, government officials, businessmen and freelance professionals. This variety enriches the network and enables it to influence complementary areas. Despite this diversity, we are linked by our interest in language as well as the commit-

ment we have assumed to improving the clarity and effectiveness of communication in Spanish.

In the case of Mexico, although it is true that the initiative to promote a plain-language movement primarily emerged to improve the civic-administrative relations of the federal government, we now have a network that goes beyond government and is working to ensure that plain language permeates the various spheres of social and academic influence. An evident proof of this is the efforts that, with the support of *Clarity*, led to the organization of the International Conference "Legal language: transparent & efficient," which took place in Mexico in November 2008.

One of the most gratifying aspects of this meeting is that it was attended by representatives from around the globe, gathered together in this corner of the "Extreme Occident," as French political scientist Alain Rouquié would say. At this conference, we managed to provide a fairly consistent overview of plain language, through a variety of representatives: mainly government and legal organizations, academic institutions, civil (non-governmental) organizations, firms and international organizations. For Mexico, hosting this meeting is the first step towards genuine cultural change. Nevertheless, whereas in Mexico we continue to discuss the value of plain language in the construction of a more egalitarian society in which transparency will take precedence, other countries have gone beyond this discussion and are experiencing a change of paradigm in which citizens (and their organizations) are evolving and growing hand in hand with the institutions. We obviously still have a long way to go

Whilst dealing with the issue of the transparency and efficiency of legal language in general, the discussion focused on one aspect that appears to be a fundamental new right: "the right to understand" and its counterpart: "the obligation to be understood." This last aspect may well elicit the greatest resistance and justification of the obscure technical term as a tool of legal argumentation.

At the meeting, we all agreed, to varying degrees, that the point is not to create univocal but rather inclusive laws. We believe that those that produce, interpret and apply the law must bear in mind that it is essential to improve consistency in the style of expressing legislation, without changing the meaning. It is also

essential to improve clarity in the process and application of the law without losing sight of citizens and rejecting monopolistic, authoritarian attitudes that enable power to be wielded through language.

In one of the panels, someone raised the following question, "How can institutional structures be improved so that plain language becomes a profession?" We believe that in this respect, the school system has a key role to play, which begins in elementary education and continues into specific training at the university level, and even as a specialization within the discipline of law, public administration, information sciences and even linguistic studies. In this respect, the Swedish experience has provided crucial lessons, not only in the conception and implementation of a national project of plain language, but above all, in the way of linking it to the formal education system, in which there is an academic program that trains plain-language advisors.

We also discussed, for as long as the conference permitted, the importance of qualitative and, above all, quantitative research in precisely delimiting a shared view of what is known as plain language today, and an analysis of the "before" and "after" of its implementation in various countries and regions and even in specific projects. This would also enable us to get to the bottom of reflections on the need and relevance (or not) of establishing international standards of plain language.

The papers at the Conference inevitably extended the original proposal far beyond the purely legal sphere. They also dealt with an aspect that is now unavoidable: that of new technologies. Plain language obviously shares the stage with all possible expressions of language, by which we not only mean the oral and the written, but also the iconic, the graphic, the audiovisual and the typographical. It is no longer enough to inform; one must explicitly seek to communicate. In this respect, new technologies have rapidly contributed to modifying the structure of language, forcing us to reflect on the new notions of "usability," "legibility" "iconicity" and "accessibility" that undoubtedly go hand in hand with the issue of transparency in legal language.

Several questions, however, were left in the air. How exactly does one define plain language? What key words does it include? How can one determine its specificity in such a diverse

world? If, in the last analysis, what plain language seeks is a positive, radical change in the ability to communicate by societies and their organizations, any effort to reduce the noise and obscurity of messages is, quite simply, plain language.

The Plain Language Network has taken the initiative in the Spanish-speaking world to help achieve this change. As we have seen, the possibilities are infinite and cannot be reduced to a series of formulas but must respond to precise communicative situations, specific needs and the particular spirit or nature of an organization. In any case, the proposals must be determined by specific guidelines that will undoubtedly facilitate human exchanges. Perhaps one day we will all be able to look at the world through diaphanous walls, built of words.

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María Isabel López Santibáñez's professional experience has focused on the areas of editing, translation and communication at various public and private institutions. She is currently a full-time professor and linguistic consultant at the Academic Department of Languages at the Instituto Tecnológico Autónomo de México (ITAM), as well as managing editor of the Foreign Affairs Latinoamérica journal. She holds a BA in Communication Studies and an MA in Translation and is a doctoral candidate in French Philology. She was involved in the organization of the International Conference on "Legal language: transparent & efficient."



The journey of Citizen Language

Salomé Flores Sierra Franzoni

*Director for Regulatory Effectiveness at the
General Direction of Regulatory Simplification,
Ministry of Public Administration in Mexico*

The journey of Citizen language

There are several definitions about what plain language is among English-speaking countries. Experts define it as a way of communicating which includes several elements that, combined together, allow the intended audience to focus on the message that it is receiving—understanding and remembering it easily. A message stated in plain language should help the listener or the reader to trigger any action without complications.

For decades, the Americans, the British and the Canadians have discussed, written and proposed how to make plain-English work best. We have seen how, in the US, the plain English movement had strong support at all levels of government, resulting in interesting success stories. The British did their part as private sector organisations demanded government to clarify some regulations. Canadians, on their account, have a solid development on how to apply plain language within a bilingual context.

We also have seen plain language at work in other non-English speaking countries. The Ministry of Justice in Sweden targeted unclear pieces of legislation and complex government communications to apply plain language through the engagement of high-level management and the development of a clear legal foundation. Other countries such as France and Italy have also taken steps toward the benefits of applying plain language within government institutions.

But what about plain language in Spanish? On one hand, this is the third most spoken language in the world, after Mandarin and Hindi, with over 400,000 million people. But there is also another factor as Spanish speak-

ing nations become more developed and democratic, their governments demand profound reforms and alternative ways of management. Plain language offers an opportunity for public officials to do things differently in order to establish better communications and become more productive.

In this context, Mexico created the Good Government Agenda, which included a strategy for Better Regulation. This strategy was created to help citizens and public servants complete their formalities easily, securely and quickly. Citizen Language was created as one of the tools for improving the regulatory framework within the Federal Government.

In 2002, the Ministry of Public Administration started developing tools for reviewing, organizing and standardizing the internal regulatory framework of the institutions at the Federal Public Administration. This exercise led us to identify a common problem in the government: official documents were written using a complex and technical language.

The following lines describe some of the activities that the Mexican government did to start promoting plain language. These ideas might inspire other Spanish-speaking countries to start their own plain-language projects and take the chance of getting clearer and more precise.

Plain language in Mexico

Back in 2004, the Ministry for Public Administration in Mexico created Citizen Language. This concept encapsulated the basic elements of Plain English:

- Use clear and simple words,
- Write short (when possible) and concise sentences,
- Structure information logically,
- Use a reader-friendly design that allows users to find the most relevant information easily.

The combination of these elements created useful communications to citizens and public servants, allowing them to achieve their own objectives easily and rapidly.

The spirit of Citizen Language was to create a cultural change in public servants, incorporating the following values:

1. Efficiency. Clear messages save time and help public servants to reduce mistakes or further explanations about the meaning of a text.
2. Transparency. Plain language increases accountability and certainty. Access to public information is not useful if the available information is not comprehensible.
3. Trust. Precise communications establish clear expectations for their users.

However, the foremost reason of promoting and using plain or citizen language in Mexico has to do with rights and obligations. Clear information, on one hand, allows citizens to understand and exercise their rights and, on the other, helps them to comply with their obligations without unnecessary complexities or having to pay expensive intermediaries.

Once Citizen Language as a concept was defined, it was launched officially with high-level support from the Ministry of Public Administration and the President's Office for Innovation. The following years were dedicated to develop handbooks, training sessions, a website (www.funcionpublica.gob.mx/lenguajeclaro) and even an on-line course and a test for certifying a basic set of skills and knowledge about plain language. We aimed to create awareness among public servants of the impact of their writing skills on citizens and their colleagues.

In 2006, the Ministry of Public Administration led a strategy in which 92 institutions selected strategic documents, considering their impact on citizens or in several public institutions. The documents were tested with their usual readers registering the time they took to read the documents and the number of questions or doubts they had after reading

them. After selecting the documents, about 6,000 public servants attended seminars on citizen language and were required to re-write the original documents. To finish this first attempt to apply plain language and track the results, we required every institution to test the new documents and compare their numbers before and after rewriting the documents; we obtained these results:

Number of readers	3,400,000
Number of questions or doubts	From 18,693 to 4,694
Number of minutes to read	From 4,381 to 2,300

At the end of the year, the Ministry of Public Administration awarded prizes to different authorities to publicly acknowledge their efforts to improve their written communication. These were the first steps taken for creating a plain-language culture in Mexico.

Every person reading this article can decide how to assess this journey. Some may say it has been a huge development in a short period of time, and some others may think that this has been an unstructured attempt to create an ongoing government program. Perhaps both perspectives are right; we have done a lot with relatively little resources, as other plain-language projects in the world have done it. Still, we have not been able to promulgate a legal mandate to institutionalize a plain-language culture which contributes to government efficiency and promotes a participative democracy in which society gets involved in government decision-making processes. But we must insist on promoting plain language, not only in government but in the judiciary and the legislative branch as well. A plain language culture should bring a different meaning to the traditional bureaucratic rhetoric, transforming it into a more efficient and transparent dialogue between public institutions and citizens.

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Salomé is currently working as a Director for Regulatory Effectiveness at the General Direction of Regulatory Simplification in the Ministry of Public Administration in Mexico. Carrying on this activity has given her the opportunity to have an intense counseling and teaching activity addressed to the institutions of the Federal Government and also to some state governments in topics related to Good Government and Modernization, specifically in internal regulatory improvement and Plain Language. She represents Clarity in Mexico and was the key organizer for Clarity's third international conference, held in November 2008: "Legal language: transparent and efficient."

What do you think?

Regardless what we print in *Clarity*, some readers would prefer we take a different direction. For a time, readers expressed that they would like the journal to take a more academic approach . . . to delve further into theoretical topics. On the other hand, some readers are turned off by this; they prefer, instead, to read articles that are much more practical in scope. Recent editions have tended to focus on legislative drafting, largely because the majority of articles submitted addressed that topic.

The aim of *Clarity*—the organization—is "the use of good, clear language by the legal profession." With that in mind, what path would you like to see the journal take? Do you have an article you would like published? Can you recommend authors or potential guest editors? No organization or publication can survive for long if its members (or readers) are not gaining something of value. How can *Clarity* help you? Please contact editor-in-chief Julie Clement at clementj@cooley.edu with your suggestions and other comments.

Leaving legalese behind

Christine Smith

Write Group, New Zealand

After several years of ground-breaking work, an intellectual property law firm in New Zealand is reaping the benefits of creating a plain-English culture. A J Park's move away from traditional legal writing was primarily a business decision intended to improve client service. But as Christine Smith from Write Group observes, the benefits haven't stopped there.

Using plain English saves the firm time—and plenty of it. As one of the firm's executives explains, 'When you take over a file from someone else, it's easier to understand what's happened. And because clients can understand our advice and instructions more easily, they respond.'

While the number of clients missing deadlines has dropped, the number of tenders the firm wins has increased. Clients have responded positively to the change with comments such as, 'This was the first legal document I've read in years that I could understand'.

Perhaps one of the unexpected benefits is that the plain English culture crosses social boundaries within the firm—it has demystified the work of the executive staff and included support staff. 'The culture change has pulled us together as a firm,' says one of A J Park's partners. 'It's given us a common goal, a common standard to strive for. We have some great debates about writing now.'

Communicating in plain English differentiates A J Park from its competitors. The firm has received significant media attention for its commitment to using plain English. That commitment was first recognised in the 2006 WriteMark New Zealand Plain English Awards when A J Park won Best Plain English Organisation. The awards were judged by an independent panel of experts including well-known consumer advocate, David Russell. 'The evidence

of cultural change was all there. Their approach is a wonderful model for others to follow. And they practise what they preach—reading their submission was a breeze.’

In New Zealand recently, the Lawyers and Conveyancers Act introduced new client care rules. While some law firms struggled to come to grips with the rules, A J Park embraced the client care ethos and developed a client care charter written in plain English.

The charter received wider recognition by making it to the finals in the ‘Best Plain English Document—Private Sector’ in the 2008 WriteMark awards. The awards attracted a record number of entries, and A J Park was the only law firm in the finals.

The judges described A J Park’s charter as ‘a significant long-life document. It shows leadership in the profession for providing an equal exchange of information. It reflects the spirit of the legislation by communicating with openness and honesty and answering anticipated questions’.

So how does such a significant culture change come about in a law firm that has been doing business since 1891?

In 2005, some of the firm’s leaders recognised the need to move away from traditional legal writing to writing in plain English. They were convinced that the firm could improve the quality of its service to clients by using clear, concise communication, despite the firm’s specialist area of law being based on technical subject matter and processes.

The leaders realised that for the culture change to succeed, it needed the support and commitment of all the partners. By outlining the benefits and also highlighting the challenges, the leaders gained 100% partner approval. The mood of the approval ranged from enthusiastic to passive approval, but there was no active opposition.

So the firm set out to make plain English ‘the way we write at A J Park’. To help bring about the culture change, the firm employed the

services of Write Group, and I started getting to know around 230 staff working in the Auckland and Wellington offices.

A J Park partners and executives are all lawyers or patent attorneys; many are both. Among them, they have 30 post-graduate qualifications, including 11 PhDs. Over 100 managers, secretaries, and clerical staff complete a sophisticated, intelligent, and good-humored workforce.

Most of the firm’s science and engineering staff were specifically trained to write in a scientific style. Their documents dealt with highly technical subject matter but were often too difficult to understand for clients who weren’t subject-matter experts. We needed to find ways to re-train people who were in one respect accomplished writers, but who had particular writing skills that were unsuited to the job they were now doing.

Executives relied heavily on a huge bank of documents, precedents, clippings, and templates stored in the firm’s document management system. Because the system represents over a hundred years of practice, its content didn’t always sit well in modern business documents.

Staff turnover at A J Park is relatively low, and the firm enjoys significant loyalty from its staff. Because so many of the executive staff are long-serving, they tended to use and encourage a traditional writing style. That style was knowledgeable, credible, and authoritative, but it didn’t focus on the reader.

Initially, the key message to staff was that writing in plain English was not ‘dumbing down’ but a way to write appropriately for the intended reader and build client relationships.

The understanding from the outset was that making plain English ‘the way we write’ would take time, and we needed to be patient. The focus of the training was on finding ways to improve the standard of writing without being critical of the past.



Plain English— the way we write at A J Park

The firm appointed a plain English project manager to prepare a project plan to train staff, communicate progress, and revise the huge bank of standard documents. The project manager created a brand for the project and started producing regular internal newsletters with links to the global plain-English movement. A J Park's writing style guide was updated with modern writing conventions, and the firm introduced a plain-English standard and checklist to help staff to change their writing style.

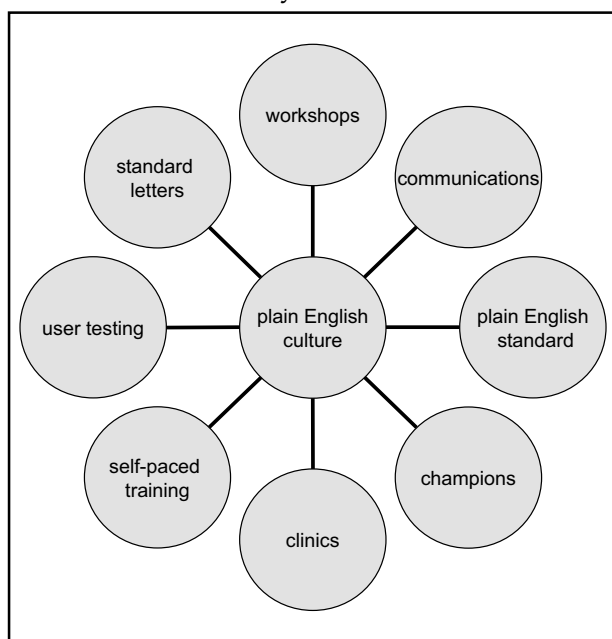
Teamwork was crucial to the success of the project. Over the years, A J Park and Write Group have worked closely to deliver writing training for all staff, develop self-paced training materials for A J Park's new staff, and carry out user testing on the firm's key documents. We trained plain-English champions who support the project by promoting plain English, coaching staff, and organising training sessions.

Partners demonstrated their commitment to the project by being the first to attend workshops. Executives and support staff followed,

and then the secretaries attended workshops. Executives have found that having the secretaries trained as well is great. 'They will often say that they haven't included a word or phrase because it's not plain English. And they're right. It's a great back-up when we're under pressure and using a Dictaphone.'

These days A J Park is quite self-sufficient in maintaining its hard-earned plain-English culture. My role now is to visit each office several times a year and hold 'clinics' to reinforce the plain-English training.

On clinic days, the programme is varied and enjoyable and caters to busy staff. I'm available to meet with anyone who would like to



discuss a document in progress or have private coaching in a specific area. I lead a one-hour interactive workshop open to everyone in the firm. Topics can include Using a writing process, or Creating the right tone, or Maximising the flow of a document.

We also offer document critique sessions for small groups of executives and support staff. Once staff have a sound knowledge of plain English, a critiquing session is an effective way to achieve excellent results in a short timeframe. One partner describes this session as the 'best single training activity I have attended. The small group allows us to get into detail.'

The firm has been innovative and smart in its approach to creating culture change. The leaders have always been open to new ideas and never afraid to change direction.

A J Park's leadership position now extends beyond providing specialist intellectual property advice to clients. In 2007, the firm felt confident enough in its plain English communication to adopt the strap line 'A J Park—the clear leaders in intellectual property'.

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Christine Smith has been a consultant and trainer with Write Group since 2003. Christine has pioneered much of Write's plain-English culture-change work across the public and private sectors and has a particular interest in plain legal language. She has delivered workshops for Write's clients throughout New Zealand and in Washington, Los Angeles, and Mexico.



An energetic and innovative trainer and speaker, Christine can convince even the most skeptical audience that plain English is a requirement for any business. She believes the best way to help clients achieve the results they want is to create learning environments that are non-threatening, interactive, and loads of fun.

Christine began her work with words in 1988 writing advertising copy at Radio New Zealand. She moved into the print media in 1992. Her career includes a 9-year stopover in Dublin where she edited non-fiction, wrote advertising campaigns, delivered customised writing workshops, and attended as many workshops at the Irish Writers' Centre as she could squeeze in to her schedule.

The Plain English Foundation will host the seventh biennial Plain Language Association InterNational (PLAIN) conference in Sydney, Australia, from the 15th through the 17th of October, 2009. For more information, visit the conference web page: <http://www.plainenglishfoundation.com/tabid/3276/Default.aspx>

How to join Clarity

Complete the application form and send it with your subscription to your country representative listed on page 2. For the address, please see www.clarity-international.net/membership/wheretosend.htm.

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Defining the profession: placing plain language in the field of communication

Dr. Neil James

*Executive Director
Plain English Foundation (Australia)*

1. A confusing array

We've already heard a lot during the conference about the problems with traditional legal language. But spare a thought for any of the lawyers schooled in that tongue who decide to do something about it. They might well walk into a bookshop or a library to see what references they can find.

Immediately they would be faced with a confusing array of titles. There are books on technical writing, information design, discourse analysis, business communications, usability, psycholinguistics, transformational grammar, plain English, readability, style and usage. Where does plain language fit into this broadening field of communication? Exactly which texts should a lawyer turn to for help?

2. Seven traditions of communication

It may be little consolation, but our lawyers are not alone in facing this problem. Communication specialists themselves have trouble reaching a firm consensus about their field.

In 1996, J A Anderson surveyed seven major communications texts and identified no less than 249 distinct 'theories' of communication. Nearly 80 per cent (195) of these appeared in only one book. Amazingly, only seven per cent (18) were found in more than three of the seven titles.¹

So far from being a coherent field with a common intellectual base, communication tends to be a series of isolated disciplines that for the most part ignore each other. Which one of these does plain language belong to?

Robert Craig has identified what he calls seven major communication 'traditions' and traced the overlaps and tensions between them:

Rhetorical—communication as practical discourse.

Semiotic—communication as intersubjective mediation by signs.

Phenomenological—communication as the experience of otherness.

Cybernetic—communication as information processing.

Sociopsychological—communication as expression, interaction and influence.

Sociocultural—communication as the (re)production of social order.

Critical—communication as discursive reflection.²

We don't have time to traverse all this territory today, but I want to argue that the tradition of most use for the practical problems of legal communication is the rhetorical tradition. Today, I will outline why this is important and what implications this has for our current debate about plain language standards.

3. The rhetorical tradition

Plain language and rhetoric apply to the same contexts

First of all, the rhetorical tradition is a practical one. Like plain language, it has always offered audience-focused methods for delivering public discourse to achieve practical outcomes.

Rhetoric emerged in the early days of democracy in Greece, when any citizen could argue for a particular action, and being a gifted communicator brought you power and influence. The first teachers of public speaking emerged, and became quite the fashion in the fifth century BC. Then a clever bloke called Aristotle developed the 'techne' or craft of rhetoric as a systematic method of communication, and this applies as well to modern

communication as it did to the classical oration.

Aristotle's *Ars Rhetorica* started by outlining three spheres that rhetoric applied to:

- Deliberative—assessing or acting on public policy.
- Judicial—making legal judgments about past actions.
- Ceremonial—celebrating or commemorating a public event or person.³

I would argue that most of the examples we will hear about during the conference fit into one or other of these categories. Because of the explosion of text in the information age, we might add a fourth sphere for purely informational documents. But for the most part, plain language today applies to the same scenarios Aristotle identified over two thousand years ago.

Plain language and rhetoric have a similar scope and methods

Of course, having a common context doesn't on its own place plain language in the rhetorical tradition. It is the 'techne' itself, the processes and methods the two have in common, that are of most importance.

By the time of the Roman Republic, the rhetorician and lawyer Cicero had divided the discipline into five 'canons': invention, arrangement, style, delivery and memory. Although these have developed over time, we can still see the five canons operating in plain language practice today.

Invention relates to our work with content, arrangement to structure, and style to expression. While delivery in classical times meant vocal delivery of a speech, for the modern document it now involves the design. Similarly, while rhetoric originally offered techniques for memorising a long speech, today we are more likely to use databases and content management systems to achieve the same ends. The focus has evolved, but the underlying elements remain the same.

Let's compare the traditional canons to a modern definition of plain language. This comes from the South African National Credit Act:

A document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the **content, significance, and import** of the document without undue effort, having regard to-

- (a) the **context, comprehensiveness and consistency** of the document;
- (b) the **organisation, form and style** of the document;
- (c) the **vocabulary, usage and sentence structure** of the text; and
- (d) the **use of any illustrations, examples, headings, or other aids** to reading and understanding.⁴

(emphasis added)

Traditional canon	Traditional application	Plain language equivalent
Inventio	'Discovery' of arguments	Content: accuracy, completeness and logic.
Dispositio	Arrangement of a speech	Structure: effective sequencing of a document structure for its purpose
Elocutio	Setting the style to a level appropriate to audience and context	Expression: elements such as word choice, syntax, sentence length, efficiency and tone.
Pronuntiatio	Delivery of a speech	Document design: typography, layout and other visual elements.
Memoria	Memorising techniques for long passages of text	Databases, manuals, help files and content management systems.

4. Six reasons this matters

So the parallels between plain language and rhetoric are very strong, if not comprehensive. But is this more than just an intellectual exercise? I want to suggest six reasons that this connection matters:

1. It makes our lawyer's task easier

Firstly, it greatly helps our lawyers struggling to find the books of most practical application for their work. These will be within the rhetorical tradition rather than books in the cybernetic or sociocultural traditions.

2. It provides strong intellectual foundations

Secondly, placing ourselves in the rhetorical tradition gives us an immensely rich intellectual tradition to draw on. It offers both a sound theoretical base and centuries of applied experience to build on. There is no point in reinventing the wheel when so much is already available. It doesn't stop us reaching out to other disciplines as well, but we will do so more effectively working from a sound base.

3. It helps overcome definitional confusion

Thirdly, it will help us overcome confusion about what plain language actually is, a difficulty that David Melinkoff captured humorously when he defined plain language as 'an imprecise expression of hope for improvement in the language of the law'.

The most common definitions tend to take a rhetorical approach similar to the one I've quoted so far. They define plain language by the 'elements' that it works with. One of the best would be Joe Kimble's Plain English Charter⁵, which is divided into sections covering 36 general, design, organisation, sentence and word elements.

However, more recent definitions of plain language are becoming more general, focusing on the outcomes plain language produces:

A communication is in plain language if the people who are the audience for that communication can quickly and easily

- find what they need
- understand what they find
- act appropriately on that understanding.⁶

The writing and setting out of essential

information in a way that gives a cooperative, motivated person a good chance of understanding it at first reading, and in the same sense that the writers meant it to be understood.⁷

Now I like both these definitions and I quote them often. But I have to confess they also worry me. They tell us more about what plain language achieves rather than how it achieves it. This is not far from saying that anything is plain language if it is good.

At the other end of the spectrum, some practitioners define plain language by focusing narrowly on readability:

Plain Language is language that is easy to read by matching the reading skill of your audience. Plain language increases comprehension, retention, reading speed, and persistence.⁸

If we place ourselves in the rhetorical tradition, we might be able to strike a definition somewhere in the middle ground, including both outcomes and the elements of focus in the overall plain language process.

Plain language communication adapts and tests the content, structure, expression and document design of a text so that its audience can achieve intended outcomes.⁹

This definition may not be quite right either, but I hope to have highlighted the problem we need to address. We can't yet call ourselves a coherent field, let alone a profession, while we offer such varying definitions of what we do.

4. It equips us to answer criticism and competition

Fourthly, the main danger of an unclear definition is that as practitioners we may find ourselves defined out of our own field. Already, adherents of other communication models have wrongly criticised plain English for a narrow focus on expression techniques. If we do not agree on an authoritative definition, these criticisms will recur.

But more recently, there has been growing competition for the applied communication work that we do. Disciplines such as information design and usability have emerged as competing fields defining themselves with a broader focus that threatens to take over the

territory of plain language. Ginny Redish, one of the pioneers of usability, revealed this danger when she said in an interview:

My definition of usability is identical to my definition of Plain Language, my definition of reader-focused writing, my definition of document design . . . We're here to make the product work for people.¹⁰

If we do not resolve these definitional boundaries, plain language's 15 minutes of fame might rapidly fade. A Clarity conference in 20 years time might be talking about information design instead of plain language.

5. It provides a model for the development of standards

Fifthly, rhetoric provides an excellent model for resolving these issues. It theorises communication in the exact spheres we operate in. It systematically ties together the elements we work with when improving public communication. It offers practical techniques to apply when doing so, but it stresses a flexible process rather than fixed, immutable rules. At its heart is the sovereignty of the audience in each context to determine the right content, the best structure, an appropriate style, effective design and the right channel for communication. It is a sound intellectual model that should inform any standards we might develop.

6. It helps us work at an institutional level

Having this grounding would also help us to set the right institutional framework for the profession. This includes developing our own institutions and interacting with others.

A prime example would be our place within the academy. Although plain language training exists at university level in Sweden, this is a rare exception. For the most part, writing courses at universities are not taught by plain language specialists. Most plain language practitioners are outside the academy patching up the communications problems that it perpetuates. Placing ourselves consciously within the rhetorical tradition would give us one means of entering the academy and spreading the work we do at one of the sources of the problem.

5. Institutional structure

Having our intellectual foundations more firmly placed will also help us develop our own institutional base, which should include the following elements:

1. An agreed definition of plain language and its scope
2. Plain language standards
3. A formal plain language institution
4. Accreditation of practitioners
5. Research activities to develop the profession
6. Training support for practitioners

Of course, there is an awful lot to be done to get to step number six. But with an international working group meeting for the first time at this conference, the process has begun. I am looking forward to hearing from other panelists who will talk about further these steps. In kicking off the discussion, my purpose was to flag the importance of starting with a clear definition of plain language, but to do so by drawing on a sound intellectual tradition.

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Endnotes

- ¹ J A Anderson, *Communication Theory: Epistemological Foundations*, Guilford Press, New York, 1996.
- ² Robert Craig, 'Communication Theory as a Field' in *Communication Theory* Nine: Two, May 1999, pp 119-161.
- ³ Aristotle, *The Art of Rhetoric*, Translated by Hugh Lawson-Tancred, Penguin Classics, London, 1991.
- ⁴ For a useful account of the Act, see <http://www.simplified.co.za/default.aspx?link=thinking_legalframework>.
- ⁵ Joe Kimble, 'Plain English: A Charter for Plain Writing.' 9 *T.M. Cooley L. Rev.* 1, 1992, pp 11-14.
- ⁶ Center for Plain Language, <<http://www.centerforplainlanguage.org>>.
- ⁷ Martin Cutts, *Oxford Guide to Plain English*, Oxford University Press, Oxford, 1995 and 2004.
- ⁸ Impact Information Plain Language Services, <<http://www.impact-information.com>>.
- ⁹ Plain English Foundation, <<http://www.plainenglishfoundation.com>>.
- ¹⁰ Clifford Anderson, 'Thumbnail: Ginny Redish', *UPA Voice*, June 2005.

Dr Neil James is Executive Director of the Plain English Foundation in Australia, which combines plain English training, editing and auditing with a public campaign for more ethical language practice. It is also hosting the 2009 PLAIN conference in Sydney. Neil has published three books and over 50 articles and essays on language and literature. His latest book, *Writing at work*, (Allen and Unwin, 2007) is on the language of the professions. He is currently chair of the International Working Group on Plain Language Standards.



Does Clarity have your email address?

If you're willing, would you please send your email address to Mark Adler <adler@adler.demon.co.uk> so that he can add you to his email list of Clarity members. We promise not to bombard you with emails, but from time to time Mark sends out information that should be of interest to members. You will also receive a PDF version of the journal as soon as it's available.

New members

Argentina

Maria Cristina Vignolo
Mar del Plata

Canada

Jean-Paul Chapdelaine
Ottawa, Ontario

Chile

Luis Bates
Santiago

Carla Firmani
Viña Del Mar

Finland

Heikki Mattila
Helsinki

Hong Kong

Sunny Chan
Queensway
Hong Kong
Polytechnique University
[Ruth Benny]
Hung Hom, Kowloon

Ireland

John Moloney
Dublin

Mexico

Gustavo Alejandro
Eslava Salinas
Mexico, D.F.

The Netherlands

Hélène Butijn
Culemborg

New Zealand

Crown Law Office
[Amelia De Lorenzo]
Wellington

Paul Morten
Wellington

Christine Smith
Wellington

Peru

Ricardo León-Pastor
Lima

South Africa

Judge Dhaya Pillay
Hyper by the Sea
Connie Smit
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Olle Hed
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Rebecca Forster
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Michael Holland
Derby

Hope Liebersohn
London

Simon Wesley
Lyon

United States

Bruce Corsino
Washington, D.C.

Michael Kaye
Kansas

Helen Osborne
Massachusetts

Chris Trudeau
Michigan

U.S. Sentencing
Commission/Library
[Jennifer Preston]
Washington, D.C.

Miriam Vincent
Colorado

Member news

It is with deep sadness that we report the passing of **Bill Sabin**, author of the *Gregg Reference Manual*, on January 1, 2009. Read about his many accomplishments and his invaluable contributions to plain language at <http://www.villagesoup.com/obits/story.cfm?storyID=141157>.

On Thursday, 14 May, the most recent Clarity breakfast meeting was held in London. Clarity member **Tamara Goriely**, of the Law Commission, reported on how legislation on unfair contract terms can promote plain language in consumer contracts. Attendees also discussed a variety of other plain-language topics. Many thanks to **Daphne Perry** for helping to coordinate these breakfast meetings. Watch **Mark Adler**'s email alerts for more details about the next meeting, which will be held in July 2009. Meanwhile, if you have ideas about similar meetings in or around London, contact **Richard Castle** at schlossmeister@gmail.com.

Clarity member and US Judge **Mark P. Painter** has been appointed to the United Nations Appeals Tribunal, which was created in 2007 "to help bolster the world body's system of dealing with internal grievances and disciplinary cases."

Sarah Carr reports that edition 26 of "Pikestaff" is available at <http://www.clearest.co.uk>. "Pikestaff" is the free newsletter available from the Plain Language Commission. In fact the Commission's website has a wealth of information on the practical application of plain-language principles.

Dr K R Chandratre has released the second edition—improved and enlarged—of *Legal & Business Writing in Plain English*, published by Taxmann in October 2008. Please tell us what you think of this new edition.

Some country representatives for Clarity have expressed frustration with recruiting new members. Do you have recommendations? Please help us build Clarity's membership by sharing your copy of the journal with interested colleagues, by recommending potential members to your country representative, and by sending the Clarity committee your ideas for membership recruitment. Thank you!

Share your thoughts

Regardless what we print in *Clarity*, some readers would prefer we take a different direction. For a time, readers expressed that they would like the journal to take a more academic approach . . . to delve further into theoretical topics. On the other hand, some readers are turned off by this; they prefer, instead, to read articles that are much more practical in scope. Recent editions have tended to focus on legislative drafting, largely because the majority of articles submitted addressed that topic.

The aim of Clarity—the organization—is "the use of good, clear language by the legal profession." With that in mind, what path would you like to see the journal take? Do you have an article you would like published? Can you recommend authors or potential guest editors? No organization or publication can survive for long if its members (or readers) are not gaining something of value. How can *Clarity* help you? Please contact editor-in-chief Julie Clement at clementj@cooley.edu with your suggestions and other comments.

From the President

Christopher Balmford

Mexico conference a success

A huge “thank you and congratulations” to everyone involved in organising our Mexico conference. Extra congratulations and mountains of “thank yous”:

- to Clarity’s Mexico representative Salomé Flores Sierra Franzoni who did so much of the organising;
- to our co-host Mexico’s Underministry of Public Administration—which is responsible for the Mexican government’s extensive ongoing plain-language activities; and
- to our co-host, the prestigious private university, ITAM (Instituto Tecnológico Autónomo de México).

From all sorts of people, I have heard much positive—indeed, extremely positive—feedback about the conference and our welcoming hosts. Miserably, at the last minute, I was unable to attend due to personal reasons. My thanks to former Clarity president Professor Joe Kimble for filling in for me at the last minute.

Next conference October 2010

We are happy to announce that our next conference will be in Lisbon. Plain language is just taking off in Portugal, and this will be a great opportunity for both seasoned professionals and newcomers to meet and share

ideas. The conference will have the support of the Portuguese Bar Association.

PLAIN conference, October 2009 in Sydney

If you can’t wait for Clarity’s 2010 conference, then October in Sydney, Australia is the place to be at PLAIN’s (The Plain Language Association InterNational) conference *Raising the Standard!* The dates are October 15–17, 2009, see <http://plainlanguagenetwork.org/>

Formal link between PLAIN and Clarity

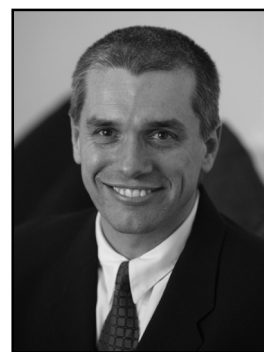
By the way, former Clarity president Mark Adler who is a member of both PLAIN’s board and Clarity’s committee has been appointed to a liaison role between the 2 organisations.

Paying your dues

We continue to research the best (and most economical) online payment arrangement for Clarity. I hope to be able to tell you about this soon. Implementing a system will make life easier for all of us.

Becoming involved in Clarity

The process for appointing the next president, who is due to take over on 1 January, begins now. We are keen for more people to be involved. If you’re interested in putting your name forward—or someone else’s name, with their consent—do let me know.



PolishMyWriting.com

Raphael Mudge has recently launched a new website, <http://www.polishmywriting.com/>, which provides the following plain-language aids at no cost to you:

- finds complex phrases and gives suggestions for simple ones
- locates the passive voice
- roots out hidden verbs (also known as abstract nouns or nominalizations)
- searches for redundant phrases and suggests what to drop
- finds clichés and bias-language, so you can cut them from your writing

Give this site a try and let us know what you think.

If the Revised Rent payable on and from any Review Date has the relevant Review Date rent R payable at the rate prev eed Revised Rent pa forthwith pay to d i c e between f Rent in respect e relevant Review ceeding t e Rent Date attainment

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Please complete this form, print it, and post it to us.

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Firm	
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Occupation (if different)	

or

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Nature of organisation	
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