

## **Bilingualism in the Workplace: A Case Study. Teaching Lawyers to Write in Plain English.**

*Joanna Richardson  
JMR@marval.com.ar*

### **Abstract**

English today is the international language of business. Leading companies must therefore be able to communicate effectively in English. But how? This is a case study of bilingualism in the workplace. I work at Marval, O'Farrell & Mairal, the largest law firm in Argentina, and one of the largest in Latin America. There are approximately 300 lawyers and a third of their clients are foreign or foreign derived, so at least a third of their business is conducted in English. All of the lawyers have a high level of English, however, it is one thing to speak a language and quite another to write it. Most of the communication with clients is written so it is vital for the lawyers to be able to write in English effectively, as for lawyers accuracy is paramount.

Many of the lawyers have learnt to write in so-called 'Legal English' and write long winded sentences like this one full of legalisms and unnecessary words.

Pursuant to the terms of such contract hereinafter, in the event of a continuation of this breach, my client will hereby effect an immediate termination of said contract.

However, in law firms around the English speaking world today there is an increasing tendency to move away from legalese. This tendency is called Plain English.

What is Plain English? It is a way of writing based on the principle that any educated lay person should be able to read a legal document and understand it. Therefore the legalese sentence above could change to: If the breach continues, my client will terminate the contract.

While Plain English is not obligatory for lawyers, as clients prefer it many modern law firms are following this tendency. My case study shows how in three stages I implement its principles: precision, conciseness, simplicity and clarity.

1) Plain English Writing Course I : theory

This course shows them how to:

- Make their sentences shorter
- Keep subject, verb and object close together

## *Symposium Proceedings*

- Use the active voice.
- Avoid hidden verbs
- Avoid legalisms

### 2). An individual class.

I then invite the lawyers who have taken the course to send me some of their written work. I analyze the work and look for any patterns. In an individual class I suggest how they can change their work. At the end of the class I give them a couple of pages of their own work and ask them to change it using the same techniques. This is particularly helpful as they can continue to change their writing alone.

### 3) Plain English Writing Course II: practice

This course puts the theory into practice. How to change working legal documents:

- Make a letter more forceful by using techniques of emphasis and word order.
- Analyze a contract and the justification for ‘shall’, hereinafter’ and other legalisms.
- Write a memo using different techniques, like planning and summarizing.
- Recognize an appropriate register for informal and formal writing.
- Work on translation techniques: false friends, free translation and interpretation of a statute.
- The writing process. Write a piece of prose in class and present all stages of the work: brainstorm, plan and a composition.

This case study of bilingualism in the workplace shows how Plain English can transform lawyers’ writing skills and enable them to communicate more effectively in the business world today.

There is no doubt that English is the international language of business today. In an increasingly globalized world English is the language of choice for the Internet and all business communication. Leading companies must therefore communicate effectively in English. But how?

This is a case study of bilingualism in the workplace. I work at Marval, O’Farrell & Mairal, the largest law firm in Argentina, and one of the largest in Latin America. There are approximately 300 lawyers and a third of their clients are foreign or foreign derived, so at least a third of their business is conducted in English. As most of their communication with clients is written

it is vital for the lawyers to write in English effectively.

All of the lawyers have a high level of English, however, it is one thing to speak a language and quite another to write it. For lawyers accuracy is paramount, as

"Most writers can expect their work to be read in good faith, that is, with an honest desire to understand what is meant. But the lawyer must write in constant fear of ... the reader in bad faith, ...and all the others who will want to twist the meaning of words for their own ends." (Weihofen)

Many lawyers believe that the only way of defending themselves from bad faith is to surround their ideas with unnecessary words and legalese. They have developed their own jargon and couch their thoughts in long-winded terms. This so-called 'Legal English' results in complicated incomprehensible sentences like this one. Pursuant to the terms of such contract hereinafter, in the event of a continuation of this breach, my client will hereby effect an immediate termination of said contract.

However, in law firms around the English speaking world today there is an increasing tendency to move away from legalese. This tendency is called Plain English.

What is Plain English? It is a way of writing based on the concept that any educated lay person should be able to read a legal document and understand it. By keeping the reader in mind and applying the principles of Plain English: precision, conciseness, simplicity and clarity, the legalese sentence above changes to: If the breach continues, my client will terminate the contract.

George Orwell pioneered this tendency in his essay 'Politics and the English Language' when he set out the following rules for clear writing:

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

Churchill himself wrote a memo to his War Cabinet extolling the virtues of 'short, crisp paragraphs', but it was not for another thirty years that Plain English took off as a serious movement on both sides of the Atlantic. In Britain, The Plain English Campaign (founded 1979), identified a need for government documentation to be written clearly when two elderly ladies

died one cold winter because they could not understand the application form for housing benefits. Chrissie Mahler still works for this ONG awarding Crystal Marks for clear language, while another forerunner, Martin Cutts, has moved on to Parliament showing legislators how to transform statutes. In the States, the movement was initiated by Jimmy Carter, who instituted the Crystal Awards. In Canada and Australia new laws must be drafted in plain English, and in the UK consumer and insurance documents are passed through a computer programme that 'Plain Englishes' them.

Well you may ask, how does this affect lawyers? Although Plain English is not obligatory for lawyers, as a result of client pressure many modern law firms in the Anglo-Saxon world have begun to implement the principles of Plain English in their writing. Time is money and clients today want to be able to understand the written documentation that lawyers prepare for them at a glance. The legal community is strongly linked to the world of finance and business, especially in corporate law, so the publication of the U.S. Securities and Exchange Commission's Plain English Handbook was a landmark. In the preface Warren E. Buffett gives the following advice on writing:

"I pretend that I'm talking to my sisters... Though highly intelligent, they are not experts in accounting or finance... My goal is simply to give them the information I would wish them to supply me if our positions were reversed."

Of course there are pockets of resistance to this tendency, as there is a commonly held assumption that legal writing cannot help being complicated. However, it should not differ, without good reason, from ordinary well-written English readily understood by the lay person. To quote one of the Law Lords in Martin Cutts's *Lucid Law*,

'But the law is... ought to be plain. It should be expressed in terms that can be easily understood by those who have to apply it... absence of clarity is destructive of the rule of law; it is unfair to those who wish to preserve the rule of law; it encourages those who wish to undermine it...'

In the English speaking world there are numerous courses and books for lawyers to write in Plain English. So it is only natural that a leading law firm in Latin America with a wide foreign client base not only has to have lawyers with good English but also with Plain English. This of course is much harder for lawyers whose second language is English.

Since 1998 Marval, O'Farrell & Mairal has had two people working on the Spanish writing of the lawyers using the same principles. I work with these people, one of whom is bilingual. I am also bilingual and my family too, so I have developed an ear for the nuances of error of a Spanish speaker writing in English. None of the writing skills' team at Marval are lawyers and we all have degrees in literature, which actually helps us to see the wood from the trees. The advice given by Buffett in the preface to the SEC's handbook holds true: if a text is not

clear enough for us to understand then it is not clear, and should be rewritten. Obviously there is a certain amount of legal jargon and some technical terms that have to be learnt.

When I started at Marval two years ago I discovered that the lawyers were fast and willing learners but the task of applying the principles of Plain English to people with English as a second language presented its own challenges. I could not simply use material from any of the courses for native speakers; I had to create my own.

So I developed a course which combines applying the principles of Plain English to the lawyers' writing while also working on the particular problems that Spanish speakers have in English: zero article, prepositions, false friends, long sentences, punctuation, informal and formal register and how to avoid sexist language. All examples are taken from the lawyers' work, which makes it more relevant and inspires them to improve. The lawyers find the course useful and easy to apply afterwards.

I teach in an informal workshop environment where groups of up to 12 lawyers discuss each point and try out different ideas. As Plain English is an optional tendency there is no concept of right and wrong in class. To avoid any embarrassment work is anonymous and criticism is constructive. The only points I actually correct are grammar points. This is important as the classes are always mixed ability so it is vital that no one feels inhibited about giving an answer. I always talk about any way of changing a sentence into Plain English as a 'possible solution'.

I will now show how I implement the principles of Plain English, in the following three stages:

### **Plain English Writing Course I : theory**

This course is given in eight sessions of one and a half hours.

#### **- Part 1**

Brief history of Plain English

Compare long 'legalese' sentence like first example with **short sentence** in Plain English.

Bring subject to front of the sentence, avoid glue words and use the **active voice**. e.g. trial by jury was requested by defendant becomes defendant requested trial by jury.

Active voice makes sentences more direct, immediately clarifies who did what to whom.

Though sometimes lawyers need the passive voice, e.g. The case was lost.

#### **- Part 2**

## *Symposium Proceedings*

Avoid excessive use of **legalisms** e.g. aforementioned, whereas, herewith, and such.

Cut out compound constructions like ‘in the event that’ Say ‘if’.

Avoid **nominalisation**, e.g. say ‘when the term expires’ not ‘the expiration of the term commences on ...’. Using a verb rather than an abstract noun makes sentences more direct.

### **-Part 3**

Use **personal pronouns** to appeal to reader.

Avoid impersonal passive ‘it is to be believed...’

With active voice and personal pronoun ‘defendant’s conclusion is supported by legislative history’, becomes ‘legislative history supports our conclusion’.

‘Shall’ Prefer the present tense, only use ‘shall’ for obligation, never future action.

e.g. game of chance shall exist when results are subject to a future and uncertain event becomes game of chance exists when results are subject to a future and uncertain event.

### **-Part 4**

**Avoid negatives** as force reader to think twice.

Also in English double negative means positive, e.g. It is not improbable that this law may be extended for another six-month period means that it is quite likely the law may be extended.

Do not put **phrases within sentences**.

e.g. *The proposed legal ethics rule would require an attorney to place all funds received on behalf of a client, including an advance for attorney fees not yet earned, but not including a flat fee paid in advance, in the attorney’s client trust fund account.*

*Subject too far away from the verb, so best solution split the sentence into two: The proposed legal ethics rule would require an attorney to place almost all funds received on behalf of a client in the attorney’s client trust fund account. This would include an advance for attorney fees not yet earned, but not a flat fee paid in advance.*

**Sentence** with one main idea, **paragraph** one main topic: topic sentence, development and a strong point.

### **-Part 5**

**Translation tips: false friends** for Spanish speakers in legal writing in ESL.

Words that sound right, look familiar, but meaning is different.

e.g. "Eventually" and "eventualmente" In legal writing, "eventually" translates as *finalmente*, not "eventualmente".

"Eventualmente" is "by chance" or "occasionally".

**Punctuation**, very important for lawyers as even a comma can change the meaning of a sentence.

Explanation of punctuation with exercises

Do not overuse commas, e.g. *It is also essential, that within the frame, set by the principle of equality the following be carried out, research analysis, and decision making.*

Should read *It is also essential that, within the frame set by the principle of equality, the following be carried out: research analysis and decision making.*

#### - Part 6

Prefer simple word of **Anglo-Saxon** origin rather than Latin word. eg. end instead of terminate.

When to use **phrasal verbs** like postpone and put off and differences in tone of informal and **formal writing**. Distinguish registers without mixing. e.g. do not begin an e-mail with Dear Sir, and end with keep you posted.

Write a **letter** in a Plain English style, name the subject clearly, make direct statements and requests and focus on the reader, e.g. *You will be glad to know that...*

#### -Part 7

Make writing **reader centered**. Layout and tabulation.

Examine structure of an article. **Plan** writing focussing on function of each paragraph: introduction, development and conclusion. Write a piece about their profession.

**Avoid sexist language** use they or he/she, e.g. Every trial lawyer must develop his own ways to deal with the witness who gives nonresponsive answers to his questions becomes Every trial lawyer must develop ways of dealing with witnesses who give nonresponsive answers to their questions. Use of Ms., political correctness.

#### -Part 8

## *Symposium Proceedings*

Drafting guidelines, words that are ambiguous for lawyers like between and among, precision traps like from and on as well as imprecise adjectives like reasonable.

Compare a badly and well written summary. Planning techniques for summary: include facts of the case, liability, status and end in a recommendation. Brief revision of the whole course.

### **B). An individual class.**

By the time the course is over a relationship of trust has built up and the lawyers are ready to show me some of their own work. I analyze a few pages and look for any patterns, like nominalisation, legalisms etc. In an individual class I suggest how to solve these problems. At the end of the class I give them a couple of pages of their own work and ask them to change it using the same techniques. This is particularly helpful as they can continue to change their writing alone.

### **C) Plain English Writing Course II: practice**

One year later I invite the lawyers to take a second course, which is divided up into six sessions of one and a half hours each. This course aims to put into practice all the theory learnt on the first course by actually changing legal working documents in class.

#### **- Part 1**

Make a **letter** more forceful using emphasis and word order, make sentences much shorter.

#### **- Part 2**

Change a **contract** by removing 'shall', 'hereinafter' and many other legalisms found to excess.

#### **-Part 3**

Examine a **memo**. Carry out a précis. Summarize for the client. Write the introduction and conclusion for a memo in class.

#### **- Part 4**

Revisit **informal and formal writing**.

Recognize and use a register appropriate to the situation. Write a reference letter and C.V.

#### **- Part 5**

More **translation techniques** combining free translation and interpretation of a statute.

The foreign client is generally not interested in a word by word translation of a statute, just a summary of the main ideas in clear language. The lawyers use précis skills and their translation skills to render a Spanish law into a piece of writing that is short and easily understood.

**- Part 6**

All stages of the **writing process**, focussing on different planning techniques.

Write a piece of prose in class and present all stages of their work: brainstorm, plan and a composition.

Because English is not their first language the lawyers always have grammar problems. So in each part of both courses I have included a grammar point which I have found throughout their work: position of indirect object, zero article, translating which for cuyo, phrasal verbs, prepositions of time and place, the difference between as and like, during and for and the inversion of verb after a negative, use of subjunctive, present perfect and the gerund. All the examples are taken from their work so they have an immediate impact. After explaining the particular point we go on to do grammar exercises so they learn how to recognize and solve these problems.

This case study of bilingualism in the workplace shows how Plain English can transform lawyers' writing skills and enable them to communicate more effectively in the business world today.

Some of them are initially reluctant to change but once they see the improvements in their own work they are hugely satisfied. For many of them it is literally a transformation and they often come back and thank me for helping them to think more clearly, not just write more clearly.

My courses are held over a light lunch, the only time the lawyers take a break in a long, highly stressful day. I try to keep my classes dynamic and always end on a light note with a joke, so that even after a lot of self-criticism they leave with a smile on their faces. I would like to end this paper with a joke too, which sums up exactly what Plain English aims to do for lawyers.

*"Think Like a Lawyer"*

*One day in Contract Law class, a Professor asked one of his better students, "Now, if you were to give someone an orange, how would you go about it?"*

*The student replied, "Here's an orange."*

## *Symposium Proceedings*

*The professor was livid.*

*"No! No! Think like a lawyer!" the Professor instructed.*

The student then recited, "Okay, I'd tell him: "I hereby give and convey to you all and singular, my estate and interests, rights, claim, title, claim and advantages of and in, said orange, together with all its rind, juice, pulp and seeds, hereinafter or in any deed, or deeds in anywise notwithstanding, domestically or internationally..."

### **References**

CUTTS, Martin, *Lucid Law, Plain Language Commission*, 2000

ORWELL, George, *Politics and the English Language*, 1946

PLAIN ENGLISH CAMPAIGN HANDBOOK

SMITH, Nancy, *A Plain English Handbook: how to create SEC disclosure documents* Washington, Office of Investor Education and Assistance, 1998

WEIHOFEN, Henry, *Legal Writing Style*, Second Edition, West Publishing, Minnesota, 1980