

Moving from a rule-based approach to a functional understanding in Plain Legal Language

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Abstract

In the past years, different Hispanic countries have witnessed a rise in Plain Language (*Lenguaje Claro*) initiatives by public institutions, including the publication of Plain Language guides. Since these types of actions seek to influence how a linguistic community uses language through training, regulations, teaching materials, etc., it is useful to evaluate them in light of the most recent findings in Applied Linguistics and Writing Pedagogy. In this article, we analyze a corpus of Plain Legal Language guides in Spanish to identify patterns in the understanding of clarity within them. Results show that these guides differ very little from one another and that they have tended to replicate a series of abstract rules focused on grammatical accuracy and style correctness ("write short sentences," "avoid the passive voice," "respect the subject, verb, object order") that ended up becoming universal principles for clarity.

This current form-focused approach fails to grasp that clarity is not achieved by mechanically following form-centered rules at the sentence level. Moreover, it contradicts the most recent findings in writing pedagogy and may even be what causes so much resistance in certain professionals. Thus, we draw on the theoretical principles of Myhill et al. (2020) writing instruction proposal to offer new directions on how to approach plain language teaching and to design impactful plain language policies and resources. We argue that plain language should even be a part of general legal writing instruction, but for that to happen, we need to think of plain language, not as a set of rules to be followed, but as a set of literacy skills that are useful for any legal practitioner.

Keywords: plain language, plain legal language, writing, legal education, language policy, writing pedagogy, systemic functional linguistics.

Introduction

In the past years, different Hispanic countries, from Spain to Latin America, have witnessed a rise in the publication of Plain Language (*Lenguaje Claro*) guides by public institutions. With both detractors and advocates, one thing is certain: plain language is part of the agenda of most public administrations in these places.

However, a more careful reading of these guides shows they differ very little from one another and that they have tended to replicate a series of abstract rules with few examples and short explanations ("write short sentences," "avoid the passive voice," "respect the subject, verb, object order") that ended up becoming universal standards for clarity. Although any legal practitioner today likely knows which elements of legal style are criticized, that is not necessarily useful for professionals who want to draft clear legal texts. Instead, it has resulted in certain linguistic forms being demonized, when it should be about developing literacy skills that help writers evaluate the situation and choose the appropriate linguistic resources in accordance with it (Halliday & Matthiesen, 2014).

The current form-focused approach fails to grasp that clarity is not achieved by mechanically following form-centered rules at the sentence level. Moreover, it contradicts the most recent findings in writing pedagogy and may even be what causes so much resistance in certain professionals. First, because no linguistic form is clear *per se*, they acquire their value in context. Second, by focusing solely on grammatical accuracy and style correctness, text-level elements that may also be undermining clarity are left unaddressed, and with them literacy skills that are fundamental to legal practice, such as selecting relevant information or those involved in reading sources. This concerns not only lawyers who want to write clearly but any lawyer who writes at all.

Thus, Plain Language teaching can occur within the teaching of general legal writing. This is achieved by leaving behind a superficial form-focused approach and adopting a functionally oriented theoretical understanding of language, and through training the writer's understanding of the possibilities of language choices in writing (Myhill et al. 2020). Also, this merger between legal

writing instruction and plain language could be a good way to incorporate legal writing instruction into the university curricula in countries where it is not part of university education yet.

Since Plain Legal Language is a language policy (Arnoux & Lauría, 2022) -in that it seeks to influence how a linguistic community uses language through training, regulations, and teaching materials, among other resources- it is useful to evaluate it in light of the most recent findings in applied linguistics and writing pedagogy. In this article, we build on the theoretical principles of Myhill et al. (2020) writing instruction proposal to offer new directions on how to approach plain language teaching and to design impactful plain language policies and resources. We argue that plain language should even be a part of general legal writing instruction, but for that to happen, we need to think of plain language, not as a set of rules to be followed, but as a set of literacy skills that are useful for any legal practitioner.

2. Plain Legal Spanish Movement

Specialists in the field agree that the first initiative linked to Plain Language in Spanish-speaking countries emerged in Spain with the "Manual de estilo del lenguaje administrativo" (Style Guide for the Administration) published in 1990 by the National Institute of Public Administration (Marazzato Sparano, 2021; Poblete, 2018). In her study on Plain Legal Language actions across Latin America, Poblete (2018) explains that, although this document does not explicitly mention Plain Legal Language and does not solely focus on clarity, it does address techniques to "write better" and to deliver information efficiently. Spain was thus the pioneer in implementing and carrying out projects that sought to rethink and improve how the government and the Judiciary communicated with citizens.

By 2005, initiatives of various kinds started emerging in countries like Mexico, Colombia, and Chile. These various actions were mainly propelled by different agencies belonging to the Administrative and Judicial sectors, not by private companies or institutions, and ranged from the review and clarification of existing texts and documents to the signing of inter-institutional agreements or the creation of commissions for the modernization of legal language.

The adopted name varied according to the country: "clear language" (in Chile and Argentina, among others), "citizen language" (in Mexico), and "modernization of language" (in Spain); although recently it has started to be more specific and has become "plain legal language".

One element is common to the efforts most of the Hispanic countries under analysis made: publishing plain language guides, which goal is to provide tools for drafting administrative and legal documents that can be understood by the public. Poblete mentions the following publications as milestones in the region: from Spain, the Report of the Commission for the Modernization of the Legal Language (*Informe de la Comisión de Modernización del Lenguaje Jurídico*) (2011); from México, the Handbook of Citizen Language (*Manual de Lenguaje Ciudadano*) (2006), published by the Ministry of Public Administration; from Colombia, the Guide for Citizen Language for the Administration (*Guía de lenguaje ciudadano para la Administración Pública*) (2011) and the Plain Language Guide for Public Servants from Colombia (*Guía de lenguaje claro para servidores públicos de Colombia*); from Argentina, the SAIJ Plain Language Handbook (*Manual SAIJ de lenguaje claro*) (2016); and, from Perú, the Judiciary Handbook of Plain and Accessible Language (*Manual judicial de lenguaje claro y accesible a los ciudadanos*) (2014).

To this day, materials continue to be published, and new versions of old guides continue coming out. Likewise, training courses on Plain Legal Language are highly popular. Another common milestone is the formation of plain language networks, which are responsible for keeping it on the agenda of the Administrations. Other recent initiatives are also worth mentioning, such as the ArText system designed by linguist Iria da Cunha, the diploma course in Plain Language designed by the University of El Salvador in Argentina or the various conferences on the topic that were organized, such as Plain's Conference 2023, which took place in Buenos Aires, Argentina.

3. An Overview of the Published Materials

For this study, we analyzed 12 guides⁶ on Plain Legal Spanish published over the past ten years by different government agencies from Spain (2), Argentina (2), Chile (2), Colombia (1), Peru (1), and Mexico (1), and three guides published by other international institutions, such as Clarity, the Instituto Nacional Demócrata, and the European Commission. To construct the sample, we established the following selection criteria:

- The document must be a written production: guides, handbooks, or books.

6. We will keep these guides' names and authors anonymous for our goal was to be able to address the Plain Language movement in general, and to identify patterns within the guides and in the conception of Plain Legal Language that underlies them.

- The document must include recommendations directly related to plain *legal or administrative* language in Spanish.
- The document must have been published in the last 10 years (2013-2023).
- Geographical scope: Spain and Spanish-speaking countries from Latin America.

After selecting the sources, we listed each section and recommendations included in them. This allowed us to compare the documents and detect similarities and differences. Following Da Cunha and Escobar's (2021) methodology, we grouped those recommendations that referred to the same strategy to count the number of appearances, even though they were not called or phrased in the exact same way. We counted 92 recommendations in total.

Results showed that most guides followed a similar global structure: 83.33% of the sources are structured in introductory sections about Plain Legal Language history and fundamentals, and "Recommendations" sections. Also, although in some cases they aimed at helping members of that specific agency, 83.33% of the sources gave general recommendations without specifying text genre, and only 16.66% included sections focusing on one specific genre, such as court rulings or proceedings, among others.

We also found a high level of coincidence in the content of each guide, with 60% of the recommendations appearing in more than one source⁷. Additionally, we calculated the most frequent recommendations, as shown below:

Recommendation	% of sources	Example	Linguistic Level
Write short sentences	75%	"Write sentences and paragraphs of short length. Proposed maximums: between 2 and 3 lines in a sentence. ⁸ "	Structural features
Use active voice/Avoid using passive voice	75%	"Avoid the repeated use of passive voice constructions."	Structural features

7. Although this number itself is already significant, the percentage is lower than it would be because one of the guides included a list of highly technical grammatical errors -such as solecisms, so-called barbarisms, etc.- that not many guides focus on.

8. The translation is always ours.

Use simple words	75%	“Whenever possible, use simple words. Writing in a simple style will not make you appear less cultured and elegant; on the contrary, you will gain credibility.”	Word Selection
Avoid legal jargon	75%	“Excessive use of technical-legal terms may result in wording that confuses the reader.”	Word Selection
Use inclusive language	75%	“Choose pronouns without gender marking. For example: the citizenship, the population, and so on.”	Punctuation, spelling, style, and correction
Use titles, subtitles, and headings	75%	“... using headings helps to organize the reading and clarify the message.”	Document Design
Plan your draft	67%	“Before starting to write the content, it is necessary to spend a few minutes reflecting on how the communicative situation is going to develop. This reflection allows the person writing to achieve an empathetic and respectful attitude...”	Writing Process
Use visual aids	67%	“Remember a picture (almost always) is worth 1000 words. Therefore, you can use graphics, drawings, or photographs to illustrate your message.”	Document Design
Revise the final draft	67%	“Reread your document critically, putting yourself in the reader's shoes.”	Writing Process
Respect the subject + verb + object/complements order	58%	“Remember the unfailing order: subject, verb, and predicate.”	Structural features

Avoid gerunds	58%	“Be careful when using this verbal form and, in addition, avoid overusing it when writing.”	Punctuation, spelling, style, and correction
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This last data point goes in line with Da Cunha and Escobar’s study (2021), in which they analyzed the recommendations on plain language in Spanish included in the most relevant sources on the subject published in Spain and the European Union and found that the most frequent recommendations were the following: 1) write short sentences, 2) use the active voice, 3) use common words instead of jargon when possible, 4) write short paragraphs, 5) follow the “subject + verb + object” order, 6) explain the meaning of technical terms, 7) use connectors, 8) do not abuse of subordinate clauses, 9) avoid gerunds, 10) choose precise words instead of ambiguous ones.

A particularly interesting fact is that, of the total number of recommendations listed (92), 41.76% refer to punctuation, spelling, grammar rules, and correctness. 58,33% of the guides also contain checklists with a summary of the elements to be verified to ensure that the text is clear. The items to be checked are usually formal elements, such as "Are sentences arranged according to the subject-verb-object order?", "Are paragraphs less than eight lines long?", “Are words spelled correctly?”, “Can sentences be read without running out of breath?”.

The analysis also included a qualitative stage in which we verified *how* recommendations were formulated and their components. Thus, we first identified whether their tone was imperative or suggestive and second, if the recommendations included the following elements: 1) a strategy, 2) an explanation, and 3) examples along with the presented rules. We chose these elements because they were proven to be pedagogically important to language teaching and writing instruction, and to improve performance (see, for example, Myhill et al., 2020, and Duijnhouwer, 2010). Below, we will describe the results.

As for the tone, of the total number of guides, 84% use an imperative tone, this means that most guides tend to formulate Plain Language recommendations as instructions. As the examples cited above show, rules tend to be formulated as monoglossic statements and in terms of "Avoid X", "Be careful with Z," and "Use Y", and words such as "abuse", "vices" and other pejorative vocabulary abound. Monoglossia refers to statements made by writers or speakers that suggest no relation to other points of view. In these, the author presents his or her voice in an independent,

authoritative, and categorical manner (Guerra Lyons & Herrera Bonilla, 2017). Only two guides used a suggestion tone throughout the whole text, this is, they phrased rules as recommendations and used mitigators such as "when possible", "in some cases". These are also heteroglossic statements, since these mitigators relativize the statement and give the possibility that what is affirmed can be realized in another way⁹.

As for strategies, we define strategy as the information or indication provided to repair the error or improve future production. For example, for planning, a strategy may explain how to make an outline to clarify text structure. Strategies are the least present element of the three we coded for. An example of a recommendation with no strategy would be the following:

- "It is suggested to avoid the abuse of quotations when they are not relevant to the case since one of the most common problems in legal discourse is the use of chained quotations. Such "chain quotations" should be avoided as far as possible, as they seriously hamper comprehension."

As we see, there is no instruction on how to avoid such abuse in the future. Most of the recommendations that contain an explicit strategy are those related to the planning of the writing. Additionally, we encountered two patterns within the provided strategies. First, a great amount of the strategies provide a formal indication to solve the problem. For example, the solution to oversized sentences with excessive information is to use periods more frequently. On the other hand, we find another range of strategies where the indications are not concrete actions but are based on abstract criteria. For example:

- "Avoid **unnecessary words**: verify that **all words provide information** and make sure that it is possible to say the same thing with fewer words."
- "Choose the most appropriate words. The vocabulary of your texts must be **clear, current, rich, and understandable** for your reader."
- "In this example, what you should avoid is more than one topic sentence in a paragraph and segment the information also **in the format and layout for clarity of the text.**"
- "Do not tell what is **obvious**. Rely on the **common sense** of the readers."
- "Pay particular attention that the text contains all the necessary information..."

9. An example to contrast monoglossic and heteroglossic statements would be the following: "The earth is round" v. "The most recent studies establish that the earth is round". The first statement is monoglossic because it is categorical and there are no external voices included. In the second, on the other hand, the content is attributed to a certain enunciator, which historicizes it and makes it subjective.

As for explanations, we define “explanation” as the explication, reason, or justification given for a claim. For example, “Avoid passive voice when writing contractual clauses, **because** it hides the agent and thus can cause misunderstandings...”. While there were more explanations than strategies, there was also no consistency within the guides. An example of lack of explanation is seen in the following recommendation (where the reader is not told why the alteration of the elements should be avoided):

- "In this case, what should be avoided is wording that alters the logical order of the sentence elements and their components."

As these texts are brief, explanations are usually brief as well, such as the following:

- "Avoid the abuse of pronouns because they are ambiguous and they make it hard to determine the referent, especially in long paragraphs".

In many cases, the explanation simply reduces to it being the "clear" way to do it, as in the following examples:

- "If you have a choice, opt for the affirmative formulation of your idea. It is more understandable and easier to interpret."
- "Here are some examples to you change those expressions to simpler ones that the brain picks up immediately."
- "Using written accents incorrectly disturbs the comprehension of texts."

Finally, we also identified other technical explanations that describe the linguistic element (some of which were not always accurate):

- "The best way to use the citizen language, both orally and in writing, is with the use of simple sentences, whose complete meaning is given by the relationship that exists between subject and predicate."
- "Commas indicate a brief pause in reading."

Finally, the “examples” requisite refers to whether the rule is illustrated or not. 100% of the guides included examples of the rules. Examples tended to illustrate the correct version and the incorrect one. Below, we show some of the most representative ones:

Recommendation	Provided Example
<ul style="list-style-type: none"> Illustrate some terms through the use of synonyms or explanatory phrases that account for the specialized term. 	<p>Definition of ordinary courts. Ordinary courts <i>are those established</i> in paragraph 2 of Article 5° and Titles III, IV, V and VI of the Organic Code of Courts and that entail the idea of subordination of the inferior to the superior.</p>
<ul style="list-style-type: none"> Write concise rather than overloaded sentences. 	<p>Overloaded sentences</p> <p>The judge has issued an arrest warrant. The building closed its doors exactly at five o'clock in the afternoon.</p> <p>Concise sentences</p> <p>The judge issued an arrest warrant. The building closed at 5 o'clock in the afternoon.</p>
<ul style="list-style-type: none"> Use concrete words or expressions 	<p>X</p> <p>Job opportunities</p> <p>✓</p> <p>Job vacancy</p>
<ul style="list-style-type: none"> Use of simple words 	<p>More complicated</p> <p>Complexity</p> <p>Easier</p> <p>Difficulty</p>
<ul style="list-style-type: none"> Brevity: avoid superfluous details, superfluous prepositions, conjunctions, and adverbs, both orally and in writing. 	<p>Why write:</p> <p>According to the country's specialist and dean of procedural law, José Álvarez Díaz, when issuing his comments on the trial being followed by the accused, he said that he could serve up to 15 years in a maximum-security prison.</p> <p>It is better to write or say:</p> <p>Álvarez Díaz, a specialist in law, said that the accused could serve up to 15 years in prison.</p>

Finally, another interesting phenomenon is that plain language is often presented as a different language. Thus, we find sections with titles such as "Examples of texts *in* plain language".

4. Discussion: What are the Limitations of a Rule-Based Approach?

As we can see from the quantitative analysis, the guides tend to focus on formal and stylistic issues, i.e., elements of the textual surface and on the sentence level or lower such as sentence structure, the vocabulary used, grammatical accuracy, and style. This becomes clear when we see which were the most frequent recommendations of our analysis and that of Da Cunha and Escobar (2021), but also when we see that, in most cases, the strategies provided are reduced to formal changes. Thus, for example, the solution to oversized sentences is to add periods or a reformulation consists of using the connector "that is to say that" or similar ones.

These guides also have a rule-based approach because they consider clarity (and also language) a result of following certain rules. This is why recommendations are phrased as instructions and use imperative language, such as "use X" and "avoid Y".

However, this approach has its limitations. The first one is related to the generalizations made. As the name indicates, a rule-based approach offers directions to be applied when drafting so texts turn out in a certain way (in this case, as easily understandable documents). The problem is that to create rules, one needs to establish general or universal principles. Thus, we encounter indications such as "Avoid pronouns because they are ambiguous", which are questionable. Effectively, pronouns *can* be ambiguous if used in certain contexts, but they are not always ambiguous and, moreover, they are a highly used word-type which is hard to avoid. Therefore, the rule-based approach is not always accurate. Generalizing certain effects to a whole word class or any type of generalization usually leads to claiming things that are not valid.

This has to do with how language works in general: the value of the elements used is defined contextually, which means that, for example, while there are certain prototypical greetings for certain occasions, we will not be able to define whether something was considered polite or impolite until we are in the situation in which it is used. Another example would be passive voice. As argued in most of the cited guides, passive voice hides who did the action, but is this always unclear? In legal writing, is it *always* convenient to specify who did the action? In fact, while in some cases it may be in the lawyer's interest to identify the agent for clarity, many times it may be in the lawyer's interest to conceal the agent. Although it could be argued that these "strategies" or language uses belong to different text types, when writing a factual statement, a lawyer will most likely want to be clear, he will want to be understood, but only that which he chooses to make clear.

And it is important that legal professionals have both resources up their sleeves to use them in the appropriate situations¹⁰.

In this respect, an important point is that the need for clarity in writing does not only apply to the language of the Administration or communications between experts and non-experts. “Clarity,” in the end, is about drafting effective texts in which what the author intends to say is understood in that same way. Having the ability to do that is vital for any legal professional. Clarity will be of a “different kind” in each case, but it is useful to know how to use linguistic resources in different cases. Therefore, the rule-based approach is insufficient because it only shows one side of the story, one of the ways of doing things with words, instead of showing what effects each element has.

Returning to generalizations, these caused particular problems with the examples. For instance, many of them pointed to “the need for brevity.” If we look at example 14, we will see that, in order to be brief, certain pieces of information are eliminated, such as the fact that Diaz is an expert in, specifically, procedural law. The resulting sentence is briefer and may be easier to understand, but is it more appropriate? That will depend on the context: in certain situations, specific indication of Díaz’s area of expertise may be relevant and even necessary. For instance, when making an argument, it is not the same to be an expert in law as to be an expert in procedural law. Something similar happens with the second sentence of example 14. In certain cases, it may be necessary to emphasize that the building closed at *exactly* that time. In that example, the adverb functions as an intensifier which cannot simply be eradicated. It is also questionable if the resulting sentence became easier to understand just because those words were removed.

What this shows is that the parameter to define what is clear and what is not should not be the form: a number of words or a number of sentences cannot be the criterion on which professionals rely. Nor can be brevity only for brevity’s sake because brief is not always more adequate. Nor can the criterion be to “add a word”: if we look at example 13, we see that the explanatory phrase does indeed appear, but what comes after it is a reference to a rule that can be found in a different document. Does that explanation actually give useful information to the reader? Thus, a rule-based approach is inaccurate and may be what causes rejection among some law professionals who understand the need for resources such as repetitions, adverbs, and adjectives in

10. Since passive voice changes the word order, it can also be useful to keep cohesion between sentences, for example.

legal drafting. The parameter to determine what is clear should be the writer and the communicative situation.

But it is not simply a matter of saying that one must put oneself in the reader's place. Such a guideline is not informative enough and does not serve as a useful strategy. This is what happens with the second type of strategy described above, which was based on what we called “abstract criteria”, such as “Do not tell what is **obvious**. Rely on the **common sense** of the readers.” These abstract criteria are made up of what Turner (1999) calls “taken-for-granted terms”, i.e., terms whose understanding is taken for granted because they are assumed to be transparent but which, in truth, are relative and vary contextually and subjectively. While it may seem like an excellent strategy to avoid stating the obvious, the actual problem writers have is in determining *what* the obvious means. It is also difficult to find the balance between explaining further because the reader is not an expert in law and avoiding stating “the obvious.” We can even assume that if a person knew he was stating the obvious and had the tools to say the same thing with fewer words, he would do it. Although it is useful to have a general guideline as to how our writing style should be, without a concrete definition of what “obvious” means in that concrete context and a specification on how to detect “obvious” information, said style will be hard to achieve.

Similarly, we believe that the tone of the guides, a tone that tends to point to those elements with which one must “be careful”, demonizes certain linguistic elements, especially considering that in many cases the rules are given without an explanation that justifies the indication or a strategy that allows readers to appropriate them. An illustration of this is example 14, where sentences with one more word than the corrected ones are categorized as “overloaded”. In this sense, we believe it would also be useful to be more precise about whether the use of certain words or linguistic resources really hampers understanding or whether, instead, it is incorrect, boring, or unattractive.

This is especially relevant when it comes to style and correctness rules, since, although there are certain cases in which a missing comma or accent can lead to misinterpretations, in reality, grammatical correctness or a “proper” style are not the touchstone of effective writing. Although in the world of law, rules are the undisputed benchmark against which conduct is evaluated, when it comes to language, the rules of academia (like the Real Academia Española or RAE) matter little when it comes to evaluating what works and what does not. Still, Plain Legal Spanish is too mindful of what the RAE establishes.

We would like to end this section by claiming that, although this article analyses the limitations of the approach Plain Legal Language guides have taken so far, we understand that the content of these guides is very useful and does impact the clarity of the texts. We argue, though, that form should never be the starting point, neither in language teaching in general nor in legal language teaching in particular. Our argument is that the “problem” of writers who are not brief when writing does not start with the number of quotations they copy-paste, but before when reading the sources when they did not know how to correctly identify the relevant information. On several occasions, law professionals (especially, young ones) write the way they do because they do not know they can do it differently or how to do it differently, because they have not got the training to do so, or because they did not understand the sources, so they do not dare to paraphrase. This is especially true in the case of Hispanic countries where law degree programs usually do not include specific training in legal writing.

Considering this, the focus should no longer be on correcting what someone has written but showing how language works. This knowledge about how language works is technically called “metalinguistic understanding”, and it is defined as: “the explicit bringing into consciousness of an attention to language as an artifact, and the conscious monitoring and manipulation of language to create desired meanings, grounded in socially shared understandings” (Myhill, 2011, p. 250).

This is why we consider that Plain Legal Language should be less about style and correctness rules, and more about legal literacy skills and metalinguistic understanding that lawyers should train to be better writers. Again, this does not mean that structural recommendations are not useful, but that, for the Plain Legal Language movement to advance, it is necessary, first, to move away from a rules-based approach and, second, to start addressing global issues about writing, which have a greater impact on the quality of the text. While it could be argued that these skills should be taught at university, therein lies the importance of localizing initiatives: the remedial approach may be useful in countries where there is extensive training in legal writing, but it is insufficient in those where there is none.

The current approach may be the result of the fact that the guides are formulated mainly for government agencies and that their main end is to provide recommendations to improve already existing text formats or templates. Thus, they function more as style guides. But, even then, we claim it is time to broaden the scope of Plain Legal Spanish to other legal practice functions. As we

said, clarity is not only useful in lawyer-non lawyer communication but also in interactions between two legal professionals.

5. Moving from a form-focused approach to a functionally oriented one.

So far, we have conducted an analysis of the guides to identify patterns in the type of recommendations they included and in how those recommendations were phrased. The purpose of detecting these patterns is to identify what conception of Plain Legal Language underlies these guides, this is, to understand what a clear text or clarity itself is thought to look like. We found that the guides have a rule-based approach with a focus on formal issues (including grammatical accuracy, correct spelling, and punctuation, among others) and concluded that this approach may be insufficient for three central reasons: 1) because posing universal rules around linguistic usage can lead to inaccurate recommendations that are inapplicable in legal drafting, 2) because style and correctness issues may be relevant but good writing is more than grammatical accuracy and proper style, and 3) because the "writing problems" encountered in legal texts may, in fact, be difficulties faced by writers with other skills required in legal writing, and these difficulties are not solved by memorizing language rules.

This same dilemma was faced by the field of Applied Linguistics concerning grammar and its role or value in the teaching of writing. Traditionally, until the 1960s, writing instruction was primarily teaching and learning grammar. However, over time educators saw that this was not having an effect on the students, whose capabilities as language users, specifically to write well did not improve. Education professionals saw that merely teaching grammar "had no educational relevance or impact on language development" (Myhill & Watson, 2014, p. 13).

Over the past decade, researchers in the field have come to see that it is not a matter of excluding grammar teaching from the curricula. Grammar knowledge is indeed relevant when writing. Myhill et al. (2020) describe the keys to *meaningful* grammar instruction: "purposeful grammar teaching occurs *within* the teaching of writing, not divorced from it; and that this teaching develops students' metalinguistic understanding..." (p. 1).

Grammar knowledge is useful only to the extent that it allows us to make informed decisions about how to improve our texts, it is a resource for learning about writing that can enable writers to "make choices from among a range of linguistic resources, and to be aware of the effects

of different choices on the rhetorical power of their writing” (Lefstein, 2009, p. 284). For this reason, metalinguistic awareness (defined above) can help writers become more autonomous and agentic decision-makers in writing (Myhill et al., 2020). This approach can be relevant to rethinking Plain Language since one of our central theses as to why current resources may be insufficient and why legal language is complex and archaic is that in many cases writers were never taught how to do things with words.

What underlies Myhill’s proposal is a functional understanding of language, that sees grammar and vocabulary as a set of resources available to speakers. It is functional because form serves a function: the speaker/writer chooses resources based on his goals and other contextual variables. From this perspective, teaching how to use language “properly”, either written or oral, consists of training to choose the appropriate resources based on the characteristics of the communicative situation. It also stands in contrast to the form-focused view of grammar which is more concerned with grammatical accuracy and compliance with grammatical rules in writing.

Many of the elements of the author’s theory can be transferred to Plain Legal Language. The first lesson would be that formal issues should not become the focus of attention and overshadow other problems of legal texts. Here, we must separate two textual aspects that we have been referring to as one: on the one hand, rules of grammatical and style correctness and punctuation, and on the other, formal recommendations that involve grammar but do not respond to correction rules. Correction rules are a secondary element in writing. They are not what makes legal style or legal texts complicated, nor what can solve legal texts’ issues. On the other hand, structural recommendations are those that can promote metalinguistic knowledge, and have a high impact on clarity and it is useful to be aware of them, for instance, how to arrange the elements in a sentence or sentence length. It is important, however, that the aim is not to memorize rules but to have knowledge of how language works¹¹.

Along with structure, it is equally important to address higher-order issues in the text that can hinder its readability. An example would be how the information progresses in the text, the much talked about but little explained "cohesion", which is much more than just using connectors to link ideas. It also involves knowing what information to include or not (for instance, knowing what

11. This can be complex because it is always easier and more comfortable to have a list of rules that tell us what to do and what not to do, and it is perhaps even more similar to how law is learned in some codified countries. But it is not how the language really works, nor is it a lasting solution.

elements are necessary to make a valid argument), knowing what information to start from, and how to provide new information to the reader, among other things. Undoubtedly, this is more difficult to address in a guide because it is also done differently depending on the text genre. This brings us to a key point and best practice of writing instruction which is that the resources produced should be as situated as possible. This means that the more general the recommendations, the more difficult they will be to apply because the instruction to use them will be less specific. In the last decade, it has been shown that transferring general knowledge about writing to concrete realizations does not happen easily or very often.

Returning to content that needs to be addressed in addition to structure, we mentioned above that there are literacy skills required for legal writing that many writers do not have and that this can be what causes problems in texts. The chart below presents an easy way to unpack the literacy skills involved in achieving a certain result. One the first column we see the original recommendation, and, in the second column, we brake that result down into the different operations and skills involved in it. All these skills need to be mastered to achieve the recommended result, for which they need to be explicitly addressed.

Recommendation	Required Literacy Skills
<p>It is suggested to avoid the abuse of quotations when they are not relevant to the case, since one of the most common problems in legal discourse is the use of chained quotations. Such "chain quotations" should be avoided as far as possible, as they seriously hamper comprehension.</p>	<ul style="list-style-type: none"> • Reading and understanding caselaw (among other legal sources). • Identifying what information is relevant to my case. • Using the identified relevant information to carry out my analysis. • Contrasting diverse sources and elements from different cases. • Organizing the relevant information identified in the different sources. • Selecting relevant information that can be of use to the reader. • Summarizing the compiled information. • Selecting, out of the compiled information, the most important pieces. • Planning what the document will be like. • Explaining what I read. • Reformulating technical information.

This method involves moving the focus away from the product (what we expect the text to look like when finished) and into the process (what it takes to get to that result). Understanding the processes carried by writers can help us see where they are having difficulties, and even find out that the problem is not the quote itself but, for example, the conception of “relevance” they have. Another example would be reading: although writing is thought of mostly as the process of planning, textualization, and revising, it usually involves reading and comprehending other texts most of the time.

These contents are usually not associated with Plain Legal Language, but rather with general legal drafting skills. But we believe that many of the keys for a clear text depend on these skills and that they could be addressed in guides or by the different materials published by different agencies and institutions. We also consider any legal professional needs to master these skills. As stated before, clarity is communicative efficacy, a goal most professionals aim at.

As mentioned in the results section, in many cases, the guides treated plain language as a language different from the language in which legal texts are written. However, part of the change of approach that we propose involves understanding clarity as a potential feature of legal texts, not as a different language. Clarity is achieved not only by "translating" the texts by inverting the structures or changing the words, but from the very beginning, when information is selected, or the text is planned. We suggest ceasing to differentiate so strongly between the language that is currently used in legal texts and Plain Legal Language because professionals are more likely to be afraid to use it or simply oppose it if presented as such a radical change.

In light of Myhill’s contributions, Plain Legal Language can and ideally should occur within the teaching of general legal writing, not divorced from it. But, to do so, both sides of the story must be taught: active and passive voice, long and short sentences, adjectives and adverbs, etc. Also, legal writers must know that genres are mutable and not static and that if they innovate or try a new format or way of doing something that has conventionally been done in a certain way, it can still be right and even better as long as the requirements of validity are met.

Conclusion: Possible Next Steps for Plain Legal Language.

This article is part of a special issue that evaluates the benefits and drawbacks of Plain Legal Language. We have made a review of several Plain Legal Language guides published in Hispanic

countries since they are one of the actions *par excellence* taken by different agencies or institutions seeking to promote the use of plain language. We must clarify that we used these guides as objects of analysis because of their easy availability and free access; however, the results obtained, as well as the observations made about them, apply to any Plain Legal Language action that seeks to promote a new style of writing. This means that it includes trainings provided by specialists in the Plain Legal Language field and even entire books of a more academic tone that have been published on the subject. The formal, rule-based approach runs through any kind of Plain Legal Language action, at least in Spanish-speaking countries. The rules that are replicated throughout the guides are replicated in Plain Legal Language trainings, which are often also reduced to formal questions about, for example, how to change gerunds to shorten sentence length.

We argued that this approach today represents a limitation for the Plain Legal Language movement because to achieve changes in writing, the formal rule-based approach is not effective in the long run. Moreover, much of what makes a text unclear lies not in formal or stylistic issues, but in global problems. These global problems do not occur because the writer does not know grammar or punctuation rules, but because he or she possibly has problems with legal literacy skills or lacks the required metalinguistic awareness that makes writing effective texts possible.

We, therefore, proposed that Plain Legal Language be taught in conjunction with or as part of legal writing in general because mastering skills such as knowing how to summarize is relevant for any law professional and any legal professional would appreciate training them. As we clarified above, this proposal is mainly intended for countries where the teaching of writing is not part of the university curriculum, which means that graduate lawyers do not have many tools. Along these lines, we advise not to make such a sharp distinction between Plain Legal Language and the language already used in legal writing, and also to take into consideration private legal practice. We believe that it is rare for someone to oppose to Plain Legal Language because clarity is communicative efficiency and who does not want to be clear in those terms? However, what may be causing aversion is a product of the rule-based approach: establishing as a general rule that it is always necessary to be brief or that adverbs and adjectives must be eradicated.

Still, drawing on writing pedagogy expert Myhill (2020), we proposed that grammar instruction is useful as long as it is aimed at developing writers understanding of how language works (i.e., metalinguistic understanding). It is a matter of moving to a functionally oriented approach that trains the writer's understanding of the possibilities of language choices in writing.

We believe that these guidelines will be useful in the design of future materials, regardless of their format.

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