

NEWSLETTER

SWIICL CALENDAR

2009 - European Academy Alumni Meeting, Lisbon, Portugal
October 1-3, 2009

[Program Details](#)

2009 - IICL Reception at the IBA Meeting in Madrid, Spain
October 8th, 2009

[Program Details](#)

International Corporate Compliance
TBA
Washington, DC

47th Academy of American and International Law
May 16-June 25, 2010
Plano, TX

Symposium on Global Markets
June 15-16, 2010
Plano, TX

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Volume 1 - Number 1

From the Institute's Chair

Dear members of the IICL, members of the Advisory Board, and Academy Alumni,

It is a great privilege and honor to introduce to you the first Newsletter of the Institute for International and Comparative Law. It is our goal to publish a Newsletter at least three times annually. The Newsletter is intended to expand the lines of communication between you and the IICL, and among the members and alumni, thereby strengthening your relationship with the IICL and among each other.

I want to express my great gratitude to all contributors, and to Ms. Sandra Ritzmann, Mr. Mark Smith, and our first editorial board: Mr. Pedro de la Fuente, Dr. Joachim Herrn, Hon. Mario Lopez, Mr. Jimoh Umoru, Mr. Xabier Unanue, Ms. Margarita Victorino, and Ms. Jane Wang. The Editors were the winners in a short writing contest held during the 2009 Academy. We introduced for the first time in the Academy a three day lecture on Legal Drafting. The lecturer was Bryan Garner, the best known U.S. expert in effective legal writing and Editor in Chief of Black's Law Dictionary.

I hope you will not only enjoy reading this Newsletter but that you will contribute to future issues. Please send your contributions (news, announcements, articles, or speeches) to our Vice President [Mark Smith](#), or [Sandra Ritzmann](#).

Please let us know your ideas and suggestions about how to improve the Newsletter and how to make it more interesting and relevant for you.

Dr. Anton G. Maurer
Chair

From the Center's President

I welcome this opportunity to speak to the Center's international family. I know that each of you has many demands on your time and your resources. We deeply appreciate the commitment you have shown to this Center and its Institute for International and Comparative Law.



2009-10 Academy Alumni officers
(left to right):
Deputy Secretary General
Takayuki Ozawa (Japan);
Secretary General
Margarita Victorino (Philippines);
Class Spokesperson
Joachim Herrn (Germany)

Newsletter Editorial Board

Pedro de la Fuente (Argentina)
Joachim Herrn (Germany)
Hon. Mario Lopez (Philippines)
Jimoh Umoru (Nigeria)
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Margarita Victorino (Philippines)
Jane Wang (Taiwan)
Mark Smith, Staff Director
Sandra Ritzmann, Staff Assistant
Bert Goodwin, Webmaster

In a global world, electronic communication is vitally important. My congratulations to Anton Maurer for launching this electronic newsletter. It is yet another example of the extraordinary leadership he has brought to the Institute. Anton has co-chaired and helped organize recent sessions of the annual Symposium on Global Markets, he played a prominent role in the first educational program we co-sponsored in India, and, as Chair of the Institute's Advisory Board, he oversaw a restructuring of the Academy curriculum.

Our goal is to provide the best possible educational forums for international lawyers. For more than four decades, we have sponsored the annual Symposium and Academy. With leadership from Homer Moyer and Kate Atkinson, we now offer an annual program on International Corporate Compliance. And Anton and the IICL Executive Committee are exploring a new advanced Academy.

These are exciting and challenging times for the Institute, and the vision and commitment of our members are vital to its continued success. Thank you for all you do to make us better.

Mike Marchand
President of the Center

Reception in Madrid, Spain on October 8, 2009 (19:00 - 21:00 hs)

All members and deputy members of the Advisory Board of IICL and all Alumni are invited. I want to thank our Vice Chair Fernando Pombo and his firm Gomez-Azebo & Pombo for this gracious invitation. Contact [Sandra Ritzmann](#) for details.

We hope to see many of you in Madrid.

European Alumni Meeting in Lisbon, Portugal on October 1-3, 2009

If you are not yet a member of the Institute, please [join](#).

Members in the News

**Fernando Pelaez-Pier
IBA President - June 2009**



Fernando Pelaez-Pier

A member of our Advisory Board and a staunch supporter of our Institute, Fernando Pelaez-Pier of the law firm Hoet Pelaez Castillo & Duque, Caracas, Venezuela is currently serving as President of the International Bar Association.

Anton G. Maurer is first Recipient of



Dr. Anton G. Maurer

IADC's Joan Fullam Irick Award

The International Association of Defense Counsel (IADC) is an association of in house counsel, insurance executives, and lawyers who represent corporations. It has approximately 2,500 members and membership is by invitation only. For the first time in its 87-year history, the IADC created an award to honor a "most impressive leader". The first recipient is Dr. Maurer, a partner in CMS Hasche Sigle, Stuttgart, Germany. Dr. Maurer currently chairs our Institute for International and Comparative Law.

2009 Storey Award presented to Bernard Hanotiau



At the June 2009 Storey Award presentation (from left to right): Anton Maurer, IICL Chair; Bernard Hanotiau, 2009 Storey Award Recipient; Jose Luis de Salles Freire, 2008 Storey Award Recipient; and Francesco Gianni, IICL Executive Committee Member.

Bernard Hanotiau is the 2009 recipient of the Storey Award. Mr. Hanotiau, one of the most respected members of the transnational arbitration community, is a partner in the Brussels law firm of Hanotiau & van den Berg. He is a 1971 alumnus of the Academy of American and International Law.

The Robert G. Storey International Award for Leadership was established in 1990 in recognition of Dean Storey's dedication to peace, justice, and the rule of law in the international community, and to commemorate his commitment to The Center for American and International Law. The award goes to a past participant of the Academy who has demonstrated the qualities of leadership and integrity that were embodied in Dean Storey.

IICL News - Announcements

New Curriculum and Fellowship Award for the Academy

The 2009 Academy of American and International Law not only had a new curriculum, but, for the first time, awarded a Fellowship Certificate to participants who successfully passed several tests.

The new curriculum concentrated on topics essential to all international lawyers. It included a three day lecture on Effective Legal Writing, and focused on several core legal issues: Business Organizations,

International Business Transactions, Negotiations, Contracts, International Litigation, and International Arbitration.

The revised curriculum was the result of a hard-working Committee led by Vice Chair Lisandro Allende of Brons & Salas in Buenos Aires. Members of the Committee included Maria Teresa Alonso Pardo (Argentina); Veronica Chu (Taiwan); Susan Karamanian (USA); Martin Lepiane (Argentina); Lelen Lim (Philippines); Patricia Menendez Cambo (USA); Giovanni Nanni (Brazil); Maria Oyaga (Colombia); Alexandra Schluck Amend (Germany); Joseph Vicario (USA); Raul Villarreal (Mexico) and William Zhang (China). Our thanks to all members for their involvement and their contributions.

For the first time, we also had several class exams. Students who passed were awarded a Fellowship title from the Institute for International and Comparative Law. This new title was suggested by Vice Chair Rajiv Luthra of New Delhi at the 2008 meeting of the Advisory Board.

Advanced Academy

IICL is considering an Advanced Academy for Alumni, which would also be open to other international lawyers.

We are organizing a committee to explore structure, topics, and duration for an Advanced Academy. The present idea is to meet for 3 to 5 days. Topics could range from business development and the science of social networking, to substantive law topics or legal writing. Please send an email to marksmith@cailaw.org if you have ideas or if you are interested in being involved in this committee.

Advisory Board – Deputy Members

The Advisory Board decided at its 2009 meeting to invite all members to nominate a deputy member to the Advisory Board. The goal is (i) to strengthen the relationship between each member and the IICL, and (ii) to increase the number of active members in our meetings of the Advisory Board.

For those of you who are members, please nominate a deputy to the IICL Advisory Board. Send your selections to sritzmann@cailaw.org.

New Members

Sponsoring Member: Legance Studio Legale Associato (Italy)

Associate Members: Bae, Kim & Lee, LLC (South Korea); Borenus & Kemppinen, Ltd., (Finland); Deere & Company (USA); Sycip Salazar Hernandez & Gatmaitan (Philippines)

Individual Members: Deitra Bryant (Virginia); Grace Ergbagbe (Maryland); James Harris (Virginia); Mario Lopez (Philippines); Centus Macauley (Sierra Leone); Jimoh Umoru (Nigeria); Margarita Victorino (Philippines)

Academy Alumni Members: Chidinma Obi (Nigeria); Seyilayo Ojo (Nigeria); Debebe Seineh (Ethiopia); Maria Tobia (Uruguay)

Individual Memberships for Academy Alumni

Too many Academy alumni have lost contact with IICL. Although their firms may be IICL members, they are not personally involved as members of the Advisory Board. To enhance Alumni participation, we decided to offer an individual membership to all Alumni. The annual membership fee is USD 150. Individual members will receive a discount when attending programs of IICL and will serve on the Advisory Board.

To help strengthen the Institute, please encourage alumni to join as individual members.

Great Symposium - 2009

Ms. Moira Huggard Caine of Tozzini Freire, Sao Paulo, Mr. Andrius R. Kontrimas of Fulbright & Jaworski, Houston, and Ms. Patricia Menendez Cambo of Greenberg Traurig, Miami, were Co-Chairs of the 2009 Symposium on "Making International Business Work in Distressed Markets". They did an outstanding job and we thank them very much for organizing an excellent program with even better speakers.

The [presentation](#) made by our Vice Chair Jose Luis Freire is published in this Newsletter.

Symposium 2010 - New Structure

The Advisory Board approved the suggestion of the Executive Board to change the structure of the 2010 Symposium. We want to bring together inhouse counsel and our members, and discuss topics which are particularly important to inhouse lawyers; at the same time we want to give our members the opportunity to participate in the presentations and discussions.

Historically, the IICL Symposia were conferences attended by inhouse lawyers, and U.S. and foreign lawyers, offering the opportunity to learn from each other and to meet new and old friends. We are looking for your suggestions and topics for the 2010 Symposium which will give our corporate members a better benefit, thereby also making our Symposium more attractive for representatives of member firms. We had outstanding programs in recent years; however, the number of participants did not match the quality of the programs. Our next Symposium will be held on June 15-16, 2010.

Articles

Maintaining Culture in a Rapidly Changing Future

by Jose Luis de Salles Freire (Tozzini Freire Advogados, Sao Paulo, Brazil) (presented at the June 16-17, 2009 Symposium in Plano, Texas, USA "Making International Business Work in Distressed Markets")

It is very difficult to speak about culture to an audience of lawyers and partners of law firms.

Why is it difficult? Well, I remember a program that I took at Stanford Business School on Leading Cultural Change. There I heard a funny example of how to change culture in an organization.

A company in bad need of changing its culture hired a new CEO to lead its cultural change. The first thing that the new CEO does is to invite the top 20 officers to lunch. By the end of lunch time he simply fires these people, goes back to the company, and hires 20 new officers with a different mindset. In just one day he changes the culture of the organization.

Obviously, one cannot do this with partners of law firms. Partners are also owners, not only the operating machines of the organization. This is the very reason why I said that the topic of culture in law firms is not an easy one.

I also have to confess that I have struggled with the topic of the conference. Is it how to maintain culture in a rapidly changing future or should it be how to change culture in order to adapt to a rapidly changing future?

In a scenario of rapid change I believe we have to be prepared to adopt changes to the existing culture of a given organization. As I also learned in Stanford, one cannot continue to do every day the same things and expect different results. So an organization has to be innovative. But being innovative does not mean that one has to lose its identity, and therefore the topic of how to maintain culture is highly important too.

What is culture? In a very simple definition, the culture of an organization is the written and unwritten rules, the formal and informal values, of the organization that contribute to the implementation of a desired strategy. The more formal the organization the more formalized these rules. The culture in more informal organizations can, however, be very strong to the extent that the informal values of the organization are widely known, understood and shared.

As one can notice in the foregoing definition, culture is attached to the strategy of the organization. There are various models for measuring the efficiency of the management of an organization. One of these models is through an analysis of the so-called 7 Ss. This model was developed by McKinsey, the well known consulting company. It argues that an organization is a complex system composed of many inter-related elements, each one of them contributing to the efficiency of its performance. There are, however, seven elements, the 7 Ss, which are critical to the efficiency of the organization and which must be aligned. These seven elements are: 1. Strategy; 2. Structure; 3. Systems; 4. Staffing; 5 Skills; 6. Style and 7. Shared Values, which is another name for culture.

Another method, this one adopted in Stanford, is the so-called congruency or consistency model. Pursuant to this model the desired performance in an organization is expressed in its vision, in its strategy and objectives.

Performance gaps are differences between the desired behavior and the behavior which exists in practice. Performance gaps generate opportunity gaps. Opportunity gaps may be viewed as mistakes or errors that an organization is making in trying to grab opportunities that the market is offering. Therefore, before discussing the opportunity gaps, which have to do with internal behaviors, the organization is not apt to take advantage of the alternatives or opportunities that the market is offering.

So the first step of this congruency model is to define what is the vision of the organization and its strategy. The vision must be simple and must reflect medium and long term objectives while the strategy must reflect short term objectives, be clear and challenging.

Therefore, I advocate that law firms in this current environment should revisit their vision and strategy. Probably the medium and long term vision is not as much affected as the strategy. Remember that the strategy must be simple and challenging. Jack Welch created a very simple and challenging strategy. GE was in hundreds of different business. He said: Either we are number one or two in a given business or otherwise we sell or close.

The next step is to check the kind of culture which is required in order to achieve the defined strategy and then identify the performance gaps which exist by reason of the existing culture. That is probably an enormous exercise in these difficult times because the existing culture is probably different than the traditional culture of the firm, be it because of lay-offs or other facts. Maintaining culture was already a difficult task in the past for many firms because of their extreme growth and the number of lateral hirings.

Going back to the 7 Ss model, I believe that one of the Ss has to be totally revisited in this environment post crisis, and that is the existing structures of the law firms. In my view, law firms have to undergo a tremendous process of deleveraging. The pyramid structure has to be changed. Clients are no longer willing to pay for training of young lawyers. They want to be assisted by senior people. In my view senior people, since they are more experienced, are less expensive. They do the work faster and better. And partners, because they will have to manage a smaller number of people, will have time to work more. Once the structure changes, other S's, like for instance staffing and the required skills, will also have to change. And finally the style of the firm and mainly its culture will have to adapt to these new times.

Let me close by saying that the firms which are able to solve the opportunity gaps that exist internally in their structure will be the winners. They will be able to grab faster the opportunities that the new market will offer.

I heard from a Harvard professor a month ago the following: proactive firms will outperform reactive firms by (i) aggressively seeking out new market opportunities, (ii) by actively adjusting their profile to changing demand mix, and (iii) by having already made the adjustments when the economy improves.

In the middle of all this process do not forget the importance of leadership. Leadership, however, is a subject for another whole panel.

The Time of My Life

by Margarita E. F. Victorino (2009 Academy participant from Philippines)

There is no such thing as a coincidence. I had initially intended to attend the 45th Academy but my application was not seasonably sent.

Thus, I was informed that my application will be considered for the next batch of the following year. Upon realization, I wanted to withdraw my application but decided otherwise a few days later. A year after, as I was leaving the empty halls of the Summerfield Suites, my residence for six weeks, I realized that truly things happen for a reason. There was a reason why I had to attend the 46th Academy of the American and International Law. If I had gone to the 45th Academy, I would have lived the life of my time in Dallas but with the 46th, I had the time of my life..



*2009 Mock Trial
(left to right)
Judge David Evans; Academy participant Margarita Victorino;
and Dallas trial attorneys Steve Malouf and Gil Daily*

It was late Saturday evening when I arrived in Dallas. As a pleasant surprise, I was met at the door of Room 1773 by a friendly Italian who introduced herself as Ada Esposito. Ada immediately invited me to dinner but after 24 hours of travel, I reluctantly refused. Later that evening as I was about to sleep, the door to my room was quietly opened by another beautiful Italian, Ginevra Orsini. It took just five minutes of conversation with her for me to realize that I was going to be spending the next six weeks with two equally attractive and generous women from my favorite city, Rome.

The following morning, Gine and I went to the lobby of the Summerfield to have breakfast with the rest of the 47 scholars from 28 countries. I was intimidated to step into the hall but I was ushered in by another scholar who opened the door for me. His name was Daniele Sotgiu. Little did I know that this Italian lawyer from Rome would introduce me to true espresso, teach me how to prepare *bruschetta* and challenge me to think beyond the four walls of my practice in Manila.

Over breakfast, Gine and I met Monica Represa, the lovely Spanish scholar who would later share my amazement with the various food choices in Wal-Mart. At that same time, I also had a first glance of a

group of stylish women who looked like they just stepped out of a French fashion magazine even before 8:00 in the morning! I did not know then that these women who later introduced themselves as Patricia Lyra Roza, Vivianne Magalhaes and Michelle Abagge Tanaka were from Brazil and that they will be one of the reasons why Dallas will always have a special place in my heart.

That afternoon, our group convened for the first time at the Center to meet our remarkable President, General Mike Marchand, our warm and considerate Dean, Mark Smith and Sandra Ritzmann whom we knew and loved even before we had the chance to meet her. It was our first time to enter the impressive building of the Academy. As our coach stopped at the entrance, I could not help but think how privileged I was in attending a prestigious and well respected center for learning. As we stepped out of the bus, we were ushered into the Hall of Flags where I immediately looked for the Philippine flag. Not long thereafter, our efficient facilitator Elyssa Winters requested us to proceed to the Hearing Room where we would be spending at least six hours of lectures a day for the next six weeks.

Before the afternoon ended, we were all made to realize that the Academy will require serious work from each and every one of us. Not only were we required to successfully hurdle 5 out of 6 written examinations to receive a Fellowship Certificate, we also had to defend a Memorandum to a Senior Dallas Law Partner on a case which required us to review a number of multilateral treaties and agreements on international trade. In this activity, I had the chance to learn from seven diligent lawyers namely Jane Wang, Yasu Yamazaki, Oscar Arias, Marcel De Melo Santos, Giovanni Meschia and Pedro De La Fuente from Taiwan, Japan, Mexico, Brazil, Italy and Argentina, respectively. To my great delight, our group never encountered any conflict in preparing our recommendation. At the end of our presentation, I realized that there was truth to what Mr. Pat Murphy had told us, "The right answer to the wrong question is always wrong."

Understanding the concept of common law when one comes from a predominantly civil law jurisdiction can be very tricky. This was my realization after listening for a few minutes to Dean Susan Karamanian of the George Washington University. The thought of taking a written examination on this very new concept immediately after completing almost 12 hours of lecture was nerve wracking but my colleagues and I pushed on. We then created a study group of sorts in our room. Soon, the Academy was no longer solely a place of academic growth. It became a birthing place of new friendships. Through these study sessions, I met Luca Spagna who would later miss lunch hours to help me translate correspondence I had to send to Italy. Moreover, Luca taught me that a friend is someone who is there for you when he would rather be somewhere else.

A few weeks into the Academy, I received disturbing news from family members in Europe. It was at that moment when my colleagues turned into dear friends. I remember Lucia Ottati, Iva Miteva and Mona Mukherjee constantly assuring me that things will be alright and

Marcel De Melo Santos tirelessly reminding me not to worry. My groupmate Giovanni Meschia likewise went as far as calling a colleague of his in Italy to be prepared to render immediate legal assistance should I require one. I knew then that these friends were the ones worth keeping.

While our days were spent in serious consideration of American laws and jurisprudence, our nights and weekends were used to relax. We enjoyed gathering together by the pool with Malcolm Deane and Diego Alvarez from Argentina cooking for us and even patiently teaching us to dance the *raggaton*.

Common activities sponsored by the Academy also allowed us to know more about the cultures of the other scholars in the group. Sometime near the end of our stay in Dallas, we had the International Food Festival where we had to prepare a dish from our native country. I was at a complete loss until Giacomo Gitti, another scholar from Milan offered to help me cook *adobo*, a Filipino dish of chicken and pork simmered in soy sauce, vinegar and garlic. I could not believe my luck! Imagine an Italian cooking a Filipino delicacy which he had never even seen or tasted! It was too bad that I did not find the soy sauce we needed at the Asian store so I had to be content with preparing a dessert. But even then, Giacomo stayed and helped me prepare *halo-halo*. He probably knew that I had no cooking skill at all.

Much later into the program, our group elected our officers to the Alumni Organization and our spokesperson. Taka Ozawa from Japan was elected our Deputy Secretary General and Joachim Herrn from Germany was voted our spokesperson. We could not have had a better set of representatives.

As I end this article, I could not help but feel a tinge of sadness. Then, I recall Sandra Ritzmann's voice saying, "*Don't cry because it is over. Smile because it happened.*" Indeed, Dallas brings so many beautiful memories to mind. To my dear friends, my life in Dallas is summed up in little parts of all of you.

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**Academy Students meet
Justice Antonin Scalia**

**by Xabier Unanue (2009
Academy participant from
Spain)**

This year, the 46 students of the Academy had the unique opportunity on June 25 to meet personally with one, if not the most, prominent justice of the U.S. Supreme Court, the Honorable Justice Antonin Scalia. This was first



*Academy Participants Meet Justice Scalia
(left to right)
Justice Antonin Scalia; Pedro de la Fuente;
and lecturer Bryan Garner*

time the Academy had met a Justice of the U.S. Supreme Court.

Following a generous invitation of their teacher on legal writing, Bryan Garner, editor in chief of *Black's Law Dictionary* and author of many leading works on legal style, our students attended a reception at LawProse, Inc., where Mr. Garner and Justice Scalia signed copies of their new book "*Making Your Case: The Art of Persuading Judges*". Justice Scalia was in Dallas to meet Texas lawyers at the State Bar of Texas' annual meeting, and offer tips on how to persuade judges to their point of view.

As it is well known, Mr. Scalia is the second-most senior Associate Justice of the Supreme Court of the United States, being nominated by President Reagan. He replaced William Rehnquist after Rehnquist became Chief Justice of the United States. Justice Scalia, a conservative whose nomination was backed by liberals such as Mario Cuomo, was approved by the Senate in a vote of 98-0, and he took his seat on September 26, 1986, becoming the first Italian-American Justice on the Supreme Court of the United States. He is one of twelve Catholic justices of the 110 judges who have served.

Characterized as a vigorous proponent of textualism in statutory interpretation and originalism in constitutional interpretation, which would seek to maximize the role of the legislature in shaping law and to minimize judicial discretion in its interpretation, Justice Scalia must favor bright-line rules and, therefore, pays a great deal of attention to concise and clear writing. He is known for his relaxed style of engagement within the courtroom, including his conspicuousness among the justices in using humor during his arguments and questioning. His written opinions are also known for their unusually commonplace phrasing, combining uncompromising and corrosive writing with his layman approach to penmanship. All of which our students learned from Mr Garner, as the articles by our prominent students Pedro de la Fuente and Jane Wang describe in this same newsletter.

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No More Gobbledygook, Use Plain English!

by Jane Wang (2009 Academy participant from Taiwan)

Legal writing has long been criticized for being too complicated. Just like the word "gobbledygook", it's too difficult for a lay person to understand. A campaign of writing in plain English would like to bring lawyers back to the earth. We are lucky to be part of this revolution.

In the three-day "Legal Drafting" course we had with Bryan Garner, we learned critical principles to make things we draft friendly and readable. The basic ones are: (1) framing your thoughts; (2) phrasing your sentences; and (3) choosing your words.

The principles above do not only apply to legal drafting, they apply to ALL written pieces. They are fundamental. If we have something to

say, we have to think it through first. Then we have to order it in a logical sequence, making it clear by dividing it into sections, omitting needless words, using simplified phrases, etc. One simple test is: speaking the paragraphs out. If you bite your own tongue or become breathless, revise it.

In addition to the basic principles, practical tips for legal drafting include bearing in mind to draft for an ordinary reader (instead of a mythical judge), deleting every “shall”, replace “and/or”, cutting provisions you don’t understand, etc. I can’t help laughing when Mr. Garner taught these tips. Being a lawyer and having reviewed tons of legal documents, I understand how confused a reader can be. If we don’t even understand the documents we have, how can we expect that the document can be used for important transactions or litigation

Bryan Garner is an evangelist of plain English. Although we don’t have to delete all traditional, elegant words from our legal works, it is a wonderful reminder for us to use plain English in preparing documents. What Garner preached is helpful for lawyers and clients. If we believe a lawyer’s duty is to prevent disputes, we had better make the contracts clear on the paper. If we believe a lawyer’s duty is to solve problems, we had better not create new ones by delivering lengthy legal opinions to our client.

After all, our professionalism is not built on mysterious terms and phrases we use. Rather, it is built on our ability to reach the clients’ needs. This, of course, includes the capability to communicate, to understand, and to be understood. Writing in plain English is a good start. And the achievement will be great.

Stop Riding Behind the Fog of Jargon

by Pedro Luis de la Fuente (2009 participant from Argentina)

Stop for a minute, take a deep breath and think about you as a lawyer in a modern democratic society. Now, let me share with you the following passage of Jonathan Swift’s *Gulliver’s Travels* around the remote nations of the World: “...*the profession of law forms a society of man brought up from their youth in the art of proving by words multiplied for the purpose that white is black and black is white according as they are paid... This society has a peculiar cant and jargon of its own that no other mortal can understand and wherein all their laws are written, which they take special care to multiply...*”

Now, take another breath and think again about your role as a lawyer. The words a lawyer selects and the arguments a lawyer crafts make an everyday difference around us. The use of plain language will allow us to communicate our daily quest for justice to an audience that is unfamiliar with legal jargon and technical terms we normally use. With a simple and clear communication skill, we will be able to improve people’s understanding and enforcement of their rights, and we will serve justice in a better way.

Ideas and words are the tools of a lawyer. I ask myself why then we lawyers hide ourselves behind the fog of jargon? It seems to me that we are trying to reserve for ourselves medieval phrases and formulas which would otherwise be plain words and techniques that anyone could apply today. Maybe we fear too much to lose our historical preeminent role in society.

This year, the Academy for American and International Law gave us the privilege to attend a three-day course on legal writing. All the lectures were given by Mr. Bryan Garner, a well known authority on legal writing in plain English.

Mr. Garner encouraged us to write in a language ‘understood of the people’ and also to develop a writing style of our own. As Bertrand Russell once said, “...*a style is not good unless it is an intimate and almost involuntary expression of the personality of the writer, and then only if the writer’s personality is worth expressing...*”

It is a simple truth that good legal writing involves grammar and punctuation. Then, a good bit of advice is to go back and review our grammar textbooks. This will give us the ability to master our language and make it to say what we want it to say in a shorter and more intelligible manner.

Once you master the language, you are then able to move forward. Developing ideas, phrasing your sentences, and choosing words are the most basic stages involved in writing. It is critical that you preserve the speed, clarity, and impact of your document. By all means, do not let the beginning of your sentence lead the reader to an expectation which is contradicted by the end.

With Mr. Garner’s help, we were able to improve our skills of structuring ideas while doing research. The use of a whirlybird in a blank paper may be a simple method, but it enables you to find both the strongest and weakest points. We focused in keeping ideas in a logical sequence and facts in a chronological order. In this regard, it may be useful to divide the document into sections or even smaller parts as needed.

We lawyers normally try to explain our clever solutions in complicated manners. It seems difficult to keep the average sentence length to about 20 words. It takes effort, but it is not impossible. Mr. Garner also emphasized that the subject, verb, and object should be kept together toward the beginning of the sentence. A final tip - always prefer active voice over the passive.

Plain writing is mostly choosing the right words. In this sense, Mr. Garner encouraged us to hate the simplifiable jargon. Back in my law firm, I now try to avoid all kind of new fangled acronyms as I battle everyday to simplify wordy phrases in my legal work. I have learned that it is better to use strong and precise verbs instead of recurring to the general verbs (e.g., to be). By all means, I try to avoid doublets and triplets: “*just say it well and say it once*”.

I am now consciously trying to make everything I write, polished and speak-able. In my opinion, it makes no sense to write in a jargon only to be understood by the ‘*erudite*’ few. I could not care less. Not only has jargon created a distance between attorneys and clients, but also it has caused a great deal of confusion amongst ordinary people. If we want to foster respect for and knowledge of the law and our democratic institutions, it is our duty to make it possible for ordinary people to understand our legal system. A modern democratic society, including my own nation, demands the meaningful participation of individual citizens.

Lawyers of the world: stop riding behind the fog of jargon and help us to build a new society in which our legal system and the goal of doing justice are understood by our community.

**Your comments, articles, pictures are welcome in future editions
of**

The Institute for International and Comparative Law Newsletter

Please forward to sritzmann@cailaw.org

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